

37:1-28 to 37:1-36

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2006 **CHAPTER:** 103

NJSA: 37:1-28 to 37:1-36 (Revises the marriage laws; establishes civil unions; establishes the "New Jersey Civil Union Review Commission)

BILL NO: A3787 (Substituted for S2407)

SPONSOR(S) Caraballo and others

DATE INTRODUCED: December 4, 2006

COMMITTEE: **ASSEMBLY:** Judiciary

SENATE:

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 14, 2006

SENATE: December 14, 2006

DATE OF APPROVAL: December 21, 2006

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (2nd reprint enacted)

A3787

[SPONSOR'S STATEMENT](#) (Begins on page 57 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: No

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

S2407

[SPONSOR'S STATEMENT:](#) (Begins on page 58 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENT: No

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FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>.

REPORTS: No

HEARINGS: No

SEE: [Lewis v. Harris, 188 N.J. 415 \(2006\)](#)

NEWSPAPER ARTICLES: Yes

- "State gives mayors a choice: All or nothing," 12-22-06, The Record, p. 8
- "Corzine enacts civil unions," 12-22-06, The Record. P.A01
- "You may now kiss your partner?" 12-22-06, The Trentonian, p.4
- "N.J. takes step with civil unions," 12-22-06, The Philadelphia Inquirer, p.1
- "Civil unions arrive," 12-22-06, The Press, p. A1
- "Mayors ready for civil unions," 12-22-06, Courier News, p.1
- "Gays prepare for civil union," 12-22-06, The Times, p.A01
- "Gays get marriage without the name," 12-22-06, The Star-Ledger, p. 1
- "NJ okays civil union for gays," 12-22-06, The Trentonian, p.4
- "Civil unions for gays now law," 12-22-06, Burlington County Times, P.1
- "Civil unions legalized, but fight now over," 12-22-06, Asbury Park Press, p. 1
- "Civil union law takes effect Feb. 19," 12-22-06, Courier-Post, p.7A

Title 37.
Chapter 1.
ARTICLE 6.
CIVIL UNIONS
§§1-5, 92, 95, 93,
94-C.37:1-28 to
37:1-36
§64 - C.2A:34-2.1
§91 - C.26:8A-4.1
§96 - Note

P.L. 2006, CHAPTER 103, *approved December 21, 2006*
Assembly, No. 3787 (*Second Reprint*)

1 AN ACT concerning marriage and civil unions, establishing a
2 commission and revising and supplementing various parts of the
3 statutory law.

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 that:
9 a. Same-sex couples in New Jersey live together in committed
10 relationships without the benefits and rights afforded to
11 heterosexual couples who choose to marry;
12 b. Promoting such stable and durable relationships as well as
13 eliminating obstacles and hardships these couples may face is
14 necessary and proper and reaffirms this State's obligation to insure
15 equality for all the citizens of New Jersey;
16 c. New Jersey was one of the first states to adopt
17 comprehensive legislation prohibiting discrimination based on
18 affectional or sexual orientation and one of the first states to
19 formally recognize domestic partnerships by enacting the
20 "Domestic Partnership Act," P.L.2003, c.246 (C.26:8A-1 et seq.) on
21 January 12, 2004 thereby guaranteeing in law certain rights and
22 benefits to those individuals who enter into domestic partnerships;
23 d. Those rights and benefits afforded to same-sex couples
24 under the "Domestic Partnership Act" should be expanded by the
25 legal recognition of civil unions between same-sex couples in order
26 to provide these couples with all the rights and benefits that married
27 heterosexual couples enjoy;
28 e. It is the intent of the Legislature to comply with the
29 constitutional mandate set forth by the New Jersey Supreme Court
30 in the recent landmark decision of Lewis v. Harris, 188 N.J. 415,
31 (October 25, 2006) wherein the Court held that the equal protection
32 guarantee of Article I, paragraph 1 of the State Constitution was
33 violated by denying rights and benefits to committed same-sex
34 couples which were statutorily given to their heterosexual

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 7, 2006.

²Assembly floor amendments adopted December 11, 2006.

1 counterparts. The Court stated that the “State can fulfill that
2 constitutional requirement in one of two ways. It can either amend
3 the marriage statutes to include same-sex couples or enact a parallel
4 statutory structure by another name, in which same-sex couples
5 would not only enjoy the rights and benefits, but also bear the
6 burdens and obligations of civil marriage.” *Id.* at 463.

7 f. The Legislature has chosen to establish civil unions by
8 amending the current marriage statute to include same-sex couples.
9 In doing so, the Legislature is continuing its longstanding history of
10 insuring equality under the laws for all New Jersey citizens by
11 providing same-sex couples with the same rights and benefits as
12 heterosexual couples who choose to marry.

13

14 2. (New section) As used in this act:

15 ¹ “Civil union couple” means two persons who have established a
16 civil union pursuant to this act.¹

17 “Civil union license or civil union certificate” means a document
18 that certifies that the persons named on the license or certificate
19 have established a civil union in this State in compliance with this
20 act.

21 “Civil union” means the legally recognized union of two eligible
22 individuals of the same sex established pursuant to this act. Parties
23 to a civil union shall receive the same benefits and protections and
24 be subject to the same responsibilities as spouses in a marriage.

25 “Commissioner” means the Commissioner of Health and Senior
26 Services.

27 ¹ **“Civil union partner”** ¹ “One partner in a civil union couple”¹
28 means a person who has established a civil union pursuant to the
29 provisions of this act.

30 ¹ **“Party to a civil union”** means a person who has established a
31 civil union pursuant to the provisions of this act.¹

32

33 3. (New section) For two persons to establish a civil union in
34 this State, it shall be necessary that they satisfy all of the following
35 criteria:

36 a. Not be a party to another civil union, domestic partnership or
37 marriage in this State;

38 b. Be of the same sex ¹ **“and therefore be excluded from the**
39 **marriage laws of this State or any other state”**¹;

40 c. Be at least 18 years of age, except as provided in section 10
41 of this act.

42

43 4. (New section) a. ¹ **“Parties to a civil union”** Civil union
44 couples¹ shall have all of the same benefits, protections and
45 responsibilities under law, whether they derive from statute,
46 administrative or court rule, public policy, common law or any
47 other source of civil law, as are granted to spouses in a marriage.

- 1 b. The dissolution of civil unions shall follow the same
2 procedures and be subject to the same substantive rights and
3 obligations that are involved in the dissolution of marriage.
- 4 c. The laws of domestic relations, including annulment,
5 premarital agreements, separation, divorce, child custody and
6 support, property division and maintenance, and post-relationship
7 spousal support, shall apply to '[the parties to a civil union]civil
8 union couples'.
- 9 d. '[The parties to a civil union]Civil union couples' may
10 modify the terms, conditions or effects of their civil union in the
11 same manner and to the same extent as married person who execute
12 an antenuptial agreement or other agreement recognized and
13 enforceable under the law, setting forth particular understandings
14 with respect to their union.
- 15 e. The rights of '[the parties to a civil union] civil union
16 couples' with respect to a child of whom either becomes the parent
17 during the term of the civil union, shall be the same as those of a
18 married couple with respect to a child of whom either spouse 'or
19 partner in a civil union couple' becomes the parent during the
20 marriage.
- 21 f. All contracts made between persons in contemplation of a
22 civil union shall remain in full force after such civil union takes
23 place.
- 24 g. A copy of the record of the civil union received from the
25 local or State registrar shall be presumptive evidence of the civil
26 union in all courts.
- 27
- 28 5. (New section) The following list of legal benefits,
29 protections and responsibilities of spouses shall apply in like
30 manner to '[the parties to a]' civil union 'couples', but shall not be
31 construed to be an exclusive list of such benefits, protections and
32 responsibilities:
- 33 a. laws relating to title, tenure, descent and distribution,
34 intestate succession, '[waiver of will,]' survivorship, or other
35 incidents of the acquisition, ownership or transfer, inter vivos or at
36 death, of real or personal property, including but not limited to
37 eligibility to hold real and personal property as tenants by the
38 entirety;
- 39 b. causes of action related to or dependent upon spousal status,
40 including an action for wrongful death, emotional distress, loss of
41 consortium, or other torts or actions under contracts reciting, related
42 to, or dependent upon spousal status;
- 43 c. probate law and procedure, including nonprobate transfer;
- 44 d. adoption law and procedures;
- 45 e. laws relating to insurance, health and pension benefits;

- 1 f. domestic violence protections pursuant to the “Prevention of
- 2 Domestic Violence Act of 1991,” P.L.1991, c.261 (2C:25-17 et
- 3 seq.) and domestic violence programs;
- 4 g. prohibitions against discrimination based upon marital
- 5 status;
- 6 h. victim's compensation benefits, including but not limited to
- 7 compensation to spouse, children and relatives of homicide victims;
- 8 i. workers' compensation benefits pursuant to chapter 15 of
- 9 Title 34 of the Revised Statutes, including but not limited to
- 10 survivors' benefits and payment of back wages;
- 11 j. laws relating to emergency and nonemergency medical care
- 12 and treatment, hospital visitation and notification, and any rights
- 13 guaranteed to a hospital patient pursuant to P.L.1989,
- 14 c.170(C.26:2H-12.7 et seq.) or a nursing home resident pursuant to
- 15 P.L.1976, c.120 (C.30:13-1 et seq.);
- 16 k. advance directives for health care and designation as a health
- 17 care representative pursuant to P.L.1991, c.201 (C.26:2H-53 et
- 18 seq.);
- 19 l. family leave benefits pursuant to P.L.1989, c.261 (C.34:11B-
- 20 1 et seq.);
- 21 m. public assistance benefits under State law, including, but not
- 22 limited to: Work First New Jersey benefits pursuant to P.L.1997,
- 23 c.38 (C.44:10-55 et seq.); medical assistance pursuant to P.L.1968,
- 24 c.413 (C.30:4D-1 et seq.); Supplemental Security Income pursuant
- 25 to P.L.1973, c.256 (C.44:7-85 et seq.); pharmaceutical assistance
- 26 pursuant to P.L.1975, c.194 (C.30:4D-20 et seq.) and P.L.2001, c.96
- 27 (C.30:4D-43 et seq.); hearing aid assistance pursuant to P.L.1987,
- 28 c.298 (C.30:4D-36 et seq.); and utility benefits pursuant to
- 29 P.L.1979, c.197 (C.48:2-29.15 et seq.) and P.L.1981, c.210 (C.48:2-
- 30 29.30 et seq.);
- 31 n. laws relating to taxes imposed by the State or a municipality
- 32 **['other than estate taxes,']** including but not limited to homestead
- 33 rebate tax allowances, tax deductions based on marital status or
- 34 exemptions from realty transfer tax based on marital status;
- 35 o. laws relating to immunity from compelled testimony and the
- 36 marital communication privilege;
- 37 p. the home ownership rights of a surviving spouse;
- 38 q. the right of a spouse to a surname change without petitioning
- 39 the court;
- 40 r. laws relating to the making of, revoking and objecting to
- 41 anatomical gifts pursuant to P.L.1969, c.161 (C.26:6-57 et seq.);
- 42 s. State pay for military service;
- 43 t. application for absentee ballots;
- 44 u. legal requirements for assignment of wages; and
- 45 v. laws related to tuition assistance for higher education for
- 46 surviving spouses or children.
- 47
- 48 6. R.S.37:1-1 is amended to read as follows:

1 37:1-1. Certain marriages or civil unions prohibited.

2 a. A man shall not marry or enter into a civil union with any of
3 his ancestors or descendants, or his sister or brother, or the daughter
4 or son of his brother or sister, or the sister or brother of his father or
5 mother, whether such collateral kindred be of the whole or half
6 blood.

7 b. A woman shall not marry or enter into a civil union with any
8 of her ancestors or descendants, or her sister or brother, or the
9 daughter or son of her brother or sister, or the sister or brother of
10 her father or mother, whether such collateral kindred be of the
11 whole or half blood.

12 c. A marriage or civil union in violation of any of the foregoing
13 provisions shall be absolutely void.

14 (cf: R.S.37:1-1)

15

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

17 37:1-2. Necessity of marriage or civil union license; "licensing
18 officer" defined.

19 Before a marriage or a civil union can be lawfully performed in
20 this **State**, the persons intending to be married or to enter
21 into a civil union shall obtain a marriage or civil union license from
22 the licensing officer and deliver it to the person who is to officiate,
23 but if the marriage or civil union is to be performed by or before
24 any religious society, institution or organization, the license shall be
25 delivered to such religious society, institution or organization, or
26 any officer thereof.

27 As used in this chapter, "licensing officer" means, as to cities of
28 the first class, the city clerk; as to other municipalities, the registrar
29 of vital statistics; or the deputy of any said official designated by
30 him to issue licenses during his absence.

31 (cf: R.S.37:1-2)

32

33 8. R.S.37:1-3 is amended to read as follows:

34 37:1-3. Where marriage or civil union license to be obtained.

35 The **licensing officer shall issue the** marriage or civil union
36 license **which** shall be **obtained**:

37 a. In the municipality of this state in which the female party to
38 the proposed marriage resides; or

39 b. In the municipality in which the male party resides, if the
40 female party is a nonresident of this state; or

41 c. In the municipality in which the proposed marriage is to be
42 performed, if both parties are nonresidents of this state] issued by
43 the licensing officer in the municipality in which either party
44 resides or, if neither party is a resident of the State, in the
45 municipality in which the proposed marriage or civil union is to be
46 performed.

47 (cf: R.S.37:1-3)

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

2 37:1-4. Issuance of marriage or civil union license, emergencies,
3 validity.

4 Except as provided in [sections 37:1-5 and] R.S.37:1-6 [of this
5 Title], the marriage or civil union license shall not be issued by a
6 licensing officer sooner than 72 hours after the application therefor
7 has been made; provided, however, that the Superior Court may, by
8 order, waive all or any part of said 72-hour period in cases of
9 emergency, upon satisfactory proof being shown to it. Said order
10 shall be filed with the licensing officer and attached to the
11 application for the license.

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

15 (cf: P.L.1991, c.91, s.366)

16

17 10. R.S.37:1-6 is amended to read as follows:

18 37:1-6. A marriage or civil union license shall not be issued to a
19 minor under the age of 18 years, unless the parents or guardian of
20 the minor, if there be any, first certify under their hands and seals,
21 in the presence of two reputable witnesses, their consent thereto,
22 which consent shall be delivered to the licensing officer issuing the
23 license. If the parents, or either of them, or guardian of any such
24 minor shall be of unsound mind, the consent of such parent or
25 guardian to the proposed marriage or civil union shall not be
26 required.

27 When a minor is under the age of 16 years, the consent required
28 by this section must be approved in writing by any judge of the
29 Superior Court, Chancery Division, Family Part. Said approval shall
30 be filed with the licensing officer.

31 The licensing officer shall transmit to the State Bureau of Vital
32 Statistics all such consents, orders, and approvals so received by
33 him in the same manner and subject to the same penalty as in the
34 case of certificates of marriage or civil union and marriage or civil
35 union licenses.

36 [If any such male applicant for a license to marry shall be a
37 minor under the age of 18 years, and shall have been arrested on the
38 charge of sexual intercourse with a single, widowed or divorced
39 female of good repute for chastity who has thereby become
40 pregnant, a license to marry the female may be immediately issued
41 by any licensing officer to the minor upon his application therefor,
42 without the consent or approval required by this section.]

43 (cf: P.L.1991, c.91, s.367)

44

45 11. R.S.37:1-7 is amended to read as follows:

46 37:1-7. Issuing of license; remarriage or reaffirming a civil
47 union.

1 The licensing officer is hereby empowered to issue marriage or
 2 civil union licenses to the contracting parties who apply therefor
 3 and are entitled under the laws of this State to contract matrimony
 4 or establish a civil union , authorizing the marriage or civil union
 5 of such parties, which license shall be substantially in the
 6 following form:

7 "State of New Jersey. County of city, town or township of
 8 This is to certify that any person, religious society, institution or
 9 organization authorized by law to perform marriage or civil union
 10 ceremonies within the State of New Jersey to whom this may come,
 11 he or they not knowing any lawful impediment thereto, is hereby
 12 authorized and empowered to solemnize the rites of matrimony or
 13 the civil union between

14 A B of in the county of and State of and
 15 C D of , in the county of and State of , and to
 16 certify the same to be the said parties, or either of them, under his
 17 hand and seal in his ministerial or official capacity.

18 In testimony whereof, I have hereunto set my hand and affixed
 19 the seal of said town, township or city at this day
 20 of **【one thousand nine hundred】** two thousand and
 21 , (Name and official title)"

22 If the contracting parties desire both a civil and a religious
 23 marriage or civil union ceremony, the licensing officer shall issue a
 24 license in duplicate, marking one as "issued for civil marriage or
 25 civil union ceremony" and one as "issued for religious marriage or
 26 civil union ceremony."

27 Nothing in this section shall be construed to prevent the
 28 remarriage of a couple already married to each other or to prevent a
 29 couple who has entered into a civil union to reaffirm their
 30 commitment to one another; provided, a new license is obtained and
 31 the marriage or civil union properly reported. Such license shall be
 32 plainly marked "Issued for remarriage--originally married to same
 33 mate at (state place) on (state date) or Issued for reaffirmation of a
 34 civil union—originally entered into a civil union to same mate at
 35 (state place) on (state date)." Such a license shall be issued without
 36 compliance with the provisions of **【section】** R.S.37:1-4 **【of the**
 37 **Revised Statutes】** and if applicable of the provisions of "An act
 38 concerning marriages" approved May third, one thousand nine
 39 hundred and thirty-eight (P.L.1938, c.126). **‘【When such marriage**
 40 or civil union report is received by the State registrar he shall, if an
 41 original marriage or civil union certificate is recorded, make a
 42 notation thereon of the remarriage or reaffirmation and its date and
 43 place. **】’**

44 (cf: P.L.1941, c.354, s.1)

45

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

47 37:1-8. Testimony under oath by applicants as to legality of
 48 proposed marriage or civil union; witnesses; perjury

1 A licensing officer shall, before issuing a marriage or civil union
2 license, require the contracting parties to appear before him and
3 subscribe and swear to an oath attesting the truth of the facts
4 respecting the legality of the proposed marriage or civil union as set
5 forth in the form supplied by the State ¹**【Bureau of Vital Statistics】**
6 Registrar¹. Said testimony shall be verified by a witness of legal
7 age. A licensing officer shall issue a license only if it is thus made
8 to appear before him that no legal impediment to the marriage or
9 civil union exists. Every licensing officer may administer oaths to
10 the contracting parties and their identifying witness.

11 Any identifying witness or applicant applying for a marriage or
12 civil union license who shall knowingly make false answers to any
13 of the inquiries asked by the licensing officer shall be guilty of
14 perjury.

15 (cf: P.L.1946, c.185, s. 4)

16

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

18 37:1-11. Illegal issuance of license a **【misdemeanor】** disorderly
19 persons offense.

20 Any licensing officer who issues a marriage or civil union
21 license except as provided in this chapter shall be guilty of a
22 **【misdemeanor】** disorderly persons offense.

23 (cf: R.S.37:1-11)

24

25 14. R.S.37:1-12 is amended to read as follows:

26 37:1-12. Fees; disposition in cities of first class.

27 For issuing a marriage or civil union license, the licensing officer
28 shall be entitled to receive from the applicants the sum of three
29 dollars (\$3.00). **【All fees so received by the city clerk in cities of**
30 **the first class shall be paid into the treasury of such city to be used**
31 **for the relief of its poor.】**

32 (cf: P.L.1948, c. 285, s. 3)

33

34 15. Section 1 of P.L.1981, c.382 (C.37:1-12.1) is amended to
35 read as follows:

36 1. In addition to the fee for issuing a marriage or civil union
37 license authorized pursuant to R.S.37:1-12, each licensing officer
38 shall collect a fee of \$25 from the marriage license or civil union
39 license applicants which shall be forwarded on a quarterly basis to
40 the Department of Human Services.

41 (cf: P.L.1992, c.136, s.1)

42

43 16. Section 2 of P.L.1981, c.382 (C.37:1-12.2) is amended to
44 read as follows:

45 2. The Department of Human Services shall establish a trust
46 fund for the deposit of the fees received pursuant to section 1 of
47 **【this act】** of P.L.1981, c.382 (C.37:1-12.1). The moneys from the
48 trust fund shall be used for the specific purpose of establishing and

1 maintaining shelters for the victims of domestic violence, or a. for
2 providing grants-in-aid to such shelters established by local
3 governments or private nonprofit organizations; or b. for providing
4 grants-in-aid to non-residential agencies whose primary purpose is
5 to serve victims of domestic violence in those counties which do not
6 have emergency residential shelters for victims; or c. for providing
7 grants-in-aid to any nonprofit, Statewide coalition whose
8 membership includes a majority of the programs for battered
9 women in New Jersey and whose board membership includes a
10 majority of representatives of these programs and whose purpose is
11 to provide services, community education, and technical assistance
12 to these programs to establish and maintain shelter and related
13 services for victims of domestic violence and their children.
14 (cf: P.L.1992, c.136, s.2).

15

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

17 37:1-13 Authorization to solemnize marriages and civil unions.

18 Each judge of the United States Court of Appeals for the Third
19 Circuit, each judge of a federal district court, United States
20 magistrate, judge of a municipal court, judge of the Superior Court,
21 judge of a tax court, retired judge of the Superior Court or Tax
22 Court, or judge of the Superior Court or Tax Court, the former
23 County Court, the former County Juvenile and Domestic Relations
24 Court, or the former County District Court who has resigned in
25 good standing, surrogate of any county, county clerk and any mayor
26 or the deputy mayor when authorized by the mayor, or chairman of
27 any township committee or village president of this State, and every
28 minister of every religion, are hereby authorized to solemnize
29 marriage or civil union between such persons as may lawfully enter
30 into the matrimonial relation or civil union; and every religious
31 society, institution or organization in this State may join together in
32 marriage or civil union such persons according to the rules and
33 customs of the society, institution or organization.

34 (cf: P.L.2001, c.143, s.1)

35

36 18. R.S.37:1-15 is amended to read as follows:

37 37:1-15. Solemnizing without presentation of license;
38 **【misdemeanor】** disorderly persons offense .

39 Any person, not authorized by **【section】**R.S.37:1-13 **【of the**
40 **Revised Statutes】** to solemnize marriages or civil unions, who
41 solemnizes a marriage or civil union or any person or religious
42 society, institution or organization, authorized to solemnize
43 marriages or civil unions, who solemnizes a marriage or civil union
44 without the presentation of a license therefor, obtained in
45 accordance with the provisions of article two of this chapter (s.37:1-
46 2 et seq.), shall be guilty of a **【misdemeanor】** disorderly persons
47 offense, and punished by a fine not exceeding five hundred dollars

1 (\$500.00), or imprisonment not exceeding six months, or both.
2 (cf: P.L.1948, c.127, s.1).

3

4 19. R.S.37:1-16 is amended to read as follows:

5 37:1-16. Interrogation of applicants under oath; perjury.

6 Any person authorized to solemnize marriages or civil unions
7 may administer oaths to the parties applying to be married or to
8 enter into a civil union, and may require them, or either of them, to
9 make true answers to any inquiries made by him in order to
10 ascertain whether, in his judgment, any legal impediment to the
11 proposed marriage or civil union exists.

12 Any person who willfully makes false answers to any such
13 inquiries shall, if the answers are reduced to writing, signed by the
14 party making the same and attached to the certificate of marriage or
15 civil union, be deemed guilty of perjury pursuant to N.J.S.2C:28-1.
16 (cf: R.S. 37:1-16)

17

18 20. R.S.37:1-17 is amended to read as follows:

19 37:1-17. Marriage or civil union license; information provided.

20 On the marriage or civil union license shall be the form for the
21 certificate of marriage or civil union in quadruplicate, to which the
22 licensing officer shall have set forth particularly therein the name,
23 age, parentage, birthplace, residence, Social Security number and
24 **[condition (whether single, widowed or divorced) of each of the**
25 **married persons,]** domestic status of each party, whether single,
26 widowed, divorced, or a former ¹**[party to a]** civil union or
27 domestic [partnership] partner¹ and the names and county of birth
28 of their parents. The Social Security number shall be kept
29 confidential and may only be released for child support enforcement
30 purposes, and shall not be considered a public record pursuant to
31 P.L.1963, c.73 (C.47:1A-1 et seq.). The person by whom or the
32 religious society, institution, or organization by or before which, the
33 marriage or civil union was solemnized, shall personally or by
34 legally authorized agent subscribe where indicated on the form the
35 date and place of the marriage or civil union. Each certificate of
36 marriage or civil union shall also contain the signature and
37 residence of at least two witnesses who were present at the marriage
38 or civil union ceremony.

39 (cf: P.L.2002, c.88, s.3)

40

41 21. Section 2 of P.L.1980, c.128 (C.37:1-17.1) is amended to
42 read as follows:

43 2. License and certificate of marriage or civil union; transmittal

44 The license and the original certificate shall be transmitted
45 pursuant to R.S.26:8-41. One copy of the certificate shall be
46 retained by the local registrar and one copy shall be given to the
47 persons contracting the marriage or civil union. The remaining copy
48 shall be retained by the person solemnizing the marriage or civil

1 union.

2 (cf: P.L.1980, c.128, s.2)

3

4 22. Section 3 of P.L.1980, c.128 (C.37:1-17.2) is amended to
5 read as follows:

6 37:1-17.2. Delayed reports; filing; contents; affidavits; evidence.

7 Any marriage or civil union which has occurred or which may
8 hereafter occur and which is not recorded with the State Registrar
9 as required by this chapter, may be recorded by filing a delayed
10 report with the State Registrar, documented by a copy of the
11 application for the license. The delayed report shall contain an
12 affidavit of the person performing the marriage or civil union or if
13 he is deceased or not available, of one or both witnesses to the
14 marriage or civil union ceremony confirming that the ceremony was
15 performed and the date and place of the marriage or civil union.

16 When it is impossible to secure the affidavit of the officiant or
17 either of the witnesses, the affidavit may be made by a person who
18 was present at the marriage or civil union ceremony, or the
19 contracting parties, provided additional documentary evidence is
20 presented.

21 The State Registrar may require evidence of the correctness of
22 the information in a delayed report and may refuse to accept a
23 delayed report if the evidence is not submitted.

24 (cf:P.L.1980, c.128, s.3)

25

26 23. R.S.37:1-18 is amended to read as follows:

27 37:1-18. Penalty for false certificate.

28 Any person, religious society, institution or organization
29 authorized to solemnize marriages or civil unions, who makes and
30 false certificate of marriage or civil union, shall be liable to a
31 penalty of **【one hundred dollars】** \$100.00.

32 (cf: R.S.37:1-18)

33

34 24. R.S.37:1-19 is amended to read as follows:

35 37:1-19. Penalty; how recovered.

36 Any penalty incurred under any of the provisions of this article
37 may be recovered with costs, in an action at law by and in the name
38 of the local board of health of the municipality where the marriage
39 or civil union occurred, or by and in the name of the **【state**
40 **department of health】** Department of Health and Senior Services.

41 (cf: R.S.37:1-19)

42

43 25. Section 1 of P.L.1977, c.282 (C.37:1-27) is amended to read
44 as follows:

45 37:1-27. Tests; information; distribution by issuer of marriage or
46 civil union licenses.

47 A licensing officer or other person issuing marriage or civil
48 union licenses shall make information available to applicants

1 concerning places where such applicants may be tested for genetic
2 diseases including, but not limited to Cooley's Anemia, Sickle Cell
3 Anemia, and Tay-Sachs Disease. Literature containing such
4 information which has been prepared and provided by private
5 organizations may be distributed to applicants by a licensing officer
6 or other person issuing marriage or civil union licenses.
7 (cf: P.L.1977, c.282, s.1)

8
9 26. R.S.37:2-31 is amended to read as follows to read as
10 follows:

11 37:2-31. This article shall be known and may be cited as the
12 "Uniform Premarital and Pre-Civil Union Agreement Act." Source:
13 New.
14 (cf: P.L.1988, c.99, s.1).

15
16 27. R.S.37:2-32 is amended to read as follows to read as
17 follows:

18 37:2-32. As used in this article:

19 a. "Premarital or pre-civil union agreement" means an
20 agreement between prospective spouses or partners ¹in a civil union
21 couple¹ made in contemplation of marriage or a civil union and to be
22 effective upon marriage or upon the parties establishing a civil
23 union;

24 b. "Property" means an interest, present or future, legal or
25 equitable, vested or contingent, in real or personal property,
26 including income and earnings;

27 c. "Unconscionable premarital or pre-civil union agreement"
28 means an agreement, either due to a lack of property or
29 unemployability:

30 (1) Which would render a spouse or partner ¹in a civil union
31 couple¹ without a means of reasonable support;

32 (2) Which would make a spouse or partner ¹in a civil union
33 couple¹ a public charge; or

34 (3) Which would provide a standard of living far below that
35 which was enjoyed before the marriage or civil union.

36 (cf: P.L.1988, c.99, s.1)

37
38 28. R.S.37:2-33 is amended to read as follows:

39 37:2-33. Formalities; consideration.

40 A premarital or pre-civil union agreement shall be in writing,
41 with a statement of assets annexed thereto, signed by both parties,
42 and it is enforceable without consideration.

43 (cf: P.L.1988, c.99, s.1)

44
45 29. R.S.37:2-34 is amended to read as follows:

46 37:2-34. Contents of premarital or pre-civil union agreement. .

47 Parties to a premarital or pre-civil union agreement may contract
48 with respect to:

- 1 a. The rights and obligations of each of the parties in any of the
2 property of either or both of them whenever and wherever acquired
3 or located;
- 4 b. The right to buy, sell, use, transfer, exchange, abandon,
5 lease, consume, expend, assign, create a security interest in,
6 mortgage, encumber, dispose of, or otherwise manage and control
7 property;
- 8 c. The disposition of property upon separation, marital
9 dissolution, dissolution of a civil union, death, or the occurrence or
10 nonoccurrence of any other event;
- 11 d. The modification or elimination of spousal or **'[civil union**
12 **partner]** one partner in a civil union couple¹ support;
- 13 e. The making of a will, trust, or other arrangement to carry out
14 the provisions of the agreement;
- 15 f. The ownership rights in and disposition of the death benefit
16 from a life insurance policy;
- 17 g. The choice of law governing the construction of the
18 agreement; and
- 19 h. Any other matter, including their personal rights and
20 obligations, not in violation of public policy.
- 21 (cf: P.L.1988, c.99, s.1)

22

23 30. R.S.37:2-35 is amended to read as follows:

24 37:2-35. Premarital or pre-civil union agreement not to adversely
25 affect right of child support .

26 A premarital or pre-civil union agreement shall not adversely
27 affect the right of a child to support.

28 (cf: P.L.1988, c.99, s.1)

29

30 31. R.S.37:2-36 is amended to read as follows:

31 37:2-35. When premarital or pre-civil union agreement becomes
32 effective,

33 A premarital or pre-civil union agreement becomes effective
34 upon marriage of the parties or upon the parties establishing a civil
35 union.

36 (cf: P.L.1988, c.99, s.1)

37

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

39 37:2-37. Amendment or revocation of premarital or pre-civil
40 union agreement .

41 After marriage of the parties or the parties establishing a civil
42 union, a premarital or pre-civil union agreement may be amended or
43 revoked only by a written agreement signed by the parties, and the
44 amended agreement or revocation is enforceable without
45 consideration.

46 (cf: P.L.1988, c.99, s.1)

47

48 33. R.S.37:2-38 is amended to read as follows:

1 37:2-38. Enforcement of premarital or pre-civil union agreement;
2 generally.

3 The burden of proof to set aside a premarital or pre-civil union
4 agreement shall be upon the party alleging the agreement to be
5 unenforceable. A premarital or pre-civil union agreement shall not
6 be enforceable if the party seeking to set aside the agreement
7 proves, by clear and convincing evidence, that:

8 a. The party executed the agreement involuntarily; or

9 b. The agreement was unconscionable at the time enforcement
10 was sought; or

11 c. That party, before execution of the agreement:

12 (1) Was not provided full and fair disclosure of the earnings,
13 property and financial obligations of the other party;

14 (2) Did not voluntarily and expressly waive, in writing, any
15 right to disclosure of the property or financial obligations of the
16 other party beyond the disclosure provided;

17 (3) Did not have, or reasonably could not have had, an adequate
18 knowledge of the property or financial obligations of the other
19 party; or

20 (4) Did not consult with independent legal counsel and did not
21 voluntarily and expressly waive, in writing, the opportunity to
22 consult with independent legal counsel.

23 d. The issue of unconscionability of a premarital or pre-civil
24 union agreement shall be determined by the court as a matter of
25 law.

26 (cf: P.L.1988, c.99, s.1)

27

28 34. R.S.37:2-39 is amended to read as follows:

29 37:2-39. Enforcement of premarital or pre-civil union agreement;
30 marriage or civil union determined void

31 If a marriage or civil union is determined to be void, an
32 agreement that would otherwise have been a premarital or pre-civil
33 union agreement is enforceable only to the extent necessary to
34 avoid an inequitable result.

35 (cf: P.L.1988, c.99, s.1).

36

37 35. R.S.37:2-40 is amended to read as follows:

38 37:2-40. Construction of article.

39 ¹a. ¹This article shall be construed to effectuate its general
40 purpose to make uniform the law with respect to the subject of the
41 article among states enacting the "Uniform Premarital ¹[or Pre-
42 Civil Union]¹ Agreement Act."

43 ¹b. This article shall be construed to apply to pre-civil union
44 agreements executed on and after the effective date of P.L. ,

45 c. (C.) (pending before the Legislature as this bill).¹

46 (cf: P.L.1988, c.99, s.1)

47

48 36. R.S.37:2-41 is amended to read as follows:

1 37:2-41. Application of article.

2 This article shall apply to premarital agreements executed on and
3 after its effective date.

4 This article as amended by P.L. .c. (C.)(pending before
5 the Legislature as this bill) shall apply to pre-civil union agreements
6 executed on and after the effective date of P.L. .c. (C.)
7 (pending before the Legislature as this bill).

8 (cf: P.L.1988, c.99, s.1)

9

10 37. R.S.26:8-1 is amended to read as follows:

11 26:8-1. As used in this chapter:

12 "Vital statistics" means statistics concerning births, deaths, fetal
13 deaths, marriages, civil unions and domestic partnerships
14 established pursuant to P.L.2003, c.246 (C.26:8A-1 et al.).

15 "Vital records" means the birth, death, fetal death, marriage, civil
16 union and domestic partnership records from which vital statistics
17 are produced.

18 "State registrar" means the State registrar of vital statistics;
19 "Local registrar" or "registrar" means the local registrar of vital
20 statistics of any district; and "registration district" or "district"
21 means a registration district as constituted by this article.

22 "Live birth" or "birth" means the complete expulsion or
23 extraction from its mother of a product of conception, irrespective
24 of the duration of pregnancy, which, after such separation, breathes
25 or shows any other evidence of life such as beating of the heart,
26 pulsation of the umbilical cord, or definite movement of voluntary
27 muscles, whether or not the umbilical cord has been cut or the
28 placenta attached.

29 "Authentication" means the entry by the State Medical Examiner
30 or a county medical examiner, funeral director or physician into the
31 New Jersey Electronic Death Registration System of a personal
32 identification code, digital signature or other identifier unique to
33 that user, by which the information entered into the system by the
34 user is authenticated by the user who assumes responsibility for its
35 accuracy. "Authentication" also means the process by which the
36 State registrar or a local registrar, deputy registrar, alternate deputy
37 registrar or subregistrar indicates that person's review and approval
38 of information entered into the system by the State Medical
39 Examiner or a county medical examiner, funeral director or
40 physician.

41 "Electronic registration system" means any electronic method,
42 including, but not limited to, one based on Internet technology, of
43 collecting, transmitting, recording and authenticating information
44 from one or more responsible parties, which is necessary to
45 complete a vital record, and is designed to replace a manual, paper-
46 based data collection, recordation and signature system.

47 "New Jersey Electronic Death Registration System" or "NJ-
48 EDRS" is an electronic registration system for completing a

1 certification of death or fetal death record that is authorized,
2 designed and maintained by the State registrar.

3 (cf: P.L.2003, c.246, s.14).

4

5 38. R.S.26:8-4 is amended to read as follows:

6 26:8-4. Duty to furnish information relative to birth, death,
7 marriage, civil union, domestic partnership. Upon demand of the
8 State registrar in person, by mail, by means of the NJ-EDRS, or
9 through the local registrar, every physician, midwife, informant,
10 funeral director, or other person having knowledge of the facts
11 relative to any birth, death, fetal death, marriage, civil union or
12 domestic partnership, shall supply such information as he may
13 possess, upon a form provided by the State registrar, or through the
14 NJ-EDRS, or upon the original birth, death, fetal death, marriage,
15 civil union or domestic partnership certificate or its electronic
16 facsimile or digitized form thereof.

17 (cf: P.L.2003, c.246, s.16).

18

19 39. R.S.26:8-17 is amended to read as follows:

20 26:8-17. The local registrar, immediately upon acceptance of the
21 appointment, shall appoint a deputy to assist in the normal, day-to-
22 day operation of the office and whose duty shall be to act in the
23 registrar's stead in case of absence, disability or death of the
24 registrar. In case of death of the local registrar the deputy shall act
25 as local registrar until a new local registrar has been appointed and
26 qualified.

27 In addition to a deputy registrar, the local registrar may appoint
28 one or two alternate deputy registrars if the local registrar deems
29 such an appointment to be necessary for the office to function
30 efficiently and to provide quality service to the public. The deputy
31 registrar and alternate deputy registrar shall have the authority to
32 receive birth certificates and death certificates; to issue burial
33 permits, and copies of birth, death, marriage, civil union and
34 domestic partnership certificates; to take the oath on marriage and
35 civil union license applications; and to issue marriage and civil
36 union licenses and register domestic partnerships. The deputy
37 registrar and alternate deputy registrar shall receive instructions
38 from and perform their duties under the direct supervision of the
39 registrar, who shall be the final authority with the responsibility of
40 fulfilling the duties of the local registrar outlined in R.S.26:8-25.
41 The deputy registrar and any alternate deputy registrar shall serve at
42 the pleasure of the local registrar.

43 (cf: P.L.2003, c.246, s.16).

44

45 40. R.S.26:8-23 is amended to read as follows:

46 26:8-23. The Department of Health and Senior Services shall
47 have charge of the registration of births, deaths, fetal deaths,
48 marriages, civil unions and domestic partnerships and shall procure

1 the prompt and accurate registration of the same in each registration
2 district and in the department. The department may promulgate any
3 rule or regulation which it deems necessary for the uniform and
4 thorough enforcement of this section.

5 The department may decline permission to examine any record
6 except in the presence of an officer or employee of the department.
7 (cf: P.L.2003, c.246, s.17).

8
9 41. R.S.26:8-24 is amended to read as follows:

10 26:8-24. The State registrar shall:

11 a. Have general supervision throughout the State of the
12 registration of vital records;

13 b. Have supervisory power over local registrars, deputy local
14 registrars, alternate deputy local registrars, and subregistrars, in the
15 enforcement of the law relative to the disposal of dead bodies and
16 the registration of vital records;

17 c. Prepare, print, and supply to all registrars, upon request
18 therefor, all blanks and forms used in registering the records
19 required by said law, and provide for and prescribe the use of the
20 NJ-EDRS. No other blanks or methods of registration shall be used
21 than those supplied or approved by the State registrar;

22 d. Carefully examine the certificates or electronic files received
23 periodically from the local registrars or originating from their
24 jurisdiction; and, if any are incomplete or unsatisfactory, require
25 such further information to be supplied as may be necessary to
26 make the record complete and satisfactory;

27 e. Arrange or bind, and permanently preserve the certificates of
28 vital records, or the information comprising those records, in a
29 systematic manner and in a form that is deemed most consistent
30 with contemporary and developing standards of vital statistical
31 archival record keeping;

32 f. Prepare and maintain a comprehensive and continuous index
33 of all vital records registered, the index to be arranged
34 alphabetically;

35 1. In the case of deaths, by the name of the decedent;

36 2. In the case of births, by the name of child, if given, and if
37 not, then by the name of father or mother;

38 3. In the case of marriages, by the surname of the husband and
39 also by the maiden name of the wife;

40 4. In the case of civil union, by the surname of each of the
41 parties to the civil union;

42 5. In the case of domestic partnerships, by the surname of each
43 of the partners; and

44 g. Mark the birth certificate of a missing child when notified by
45 the Missing Persons Unit in the Department of Law and Public
46 Safety pursuant to section 3 of P.L.1995, c.395 (C.52:17B-9.8c);
47 and

48 h. Develop and provide to local registrars an education and

1 training program, which the State registrar may require each local
2 registrar to complete as a condition of retaining that position, and
3 which may be offered to deputy local registrars, alternate deputy
4 local registrars and subregistrars at the discretion of the State
5 registrar, that includes material designed to implement the NJ-
6 EDRS and to familiarize local registrars with the statutory
7 requirements applicable to their duties and any rules and regulations
8 adopted pursuant thereto, as deemed appropriate by the State
9 registrar.
10 (cf: P.L.2003, c.246, s.18)

11

12 42. R.S.26:8-25 is amended to read as follows:

13 26:8-25. The local registrar, under the supervision and direction
14 of the State registrar, shall:

15 a. Strictly and thoroughly enforce the law relative to the
16 disposal of dead bodies and the registration of vital records in his
17 registration district;

18 b. Supply blank forms of certificates to such persons as require
19 them;

20 c. Supply to every physician, midwife, and funeral director a
21 copy of the law relative to the registration of vital records and the
22 disposal of dead bodies, together with such rules and regulations as
23 may be prepared by the State registrar relative to their enforcement;

24 d. Sign his name and insert the date of filing on each certificate
25 of birth, marriage, civil union, domestic partnership and death or
26 otherwise authenticate the local registrar's identity through the NJ-
27 EDRS as prescribed by the State registrar;

28 e. Examine each certificate of birth, marriage, civil union,
29 domestic partnership or death when presented for record in order to
30 ascertain whether or not it has been made in accordance with law
31 and the instructions of the State registrar; and if incomplete and
32 unsatisfactory, have the same corrected;

33 f. At the expense of the municipality make a complete and
34 accurate copy of each birth, marriage, civil union, domestic
35 partnership and death certificate registered by him on a form or in a
36 manner prescribed by the State registrar, to be preserved in his
37 office as the local record or in the NJ-EDRS as prescribed by the
38 State registrar;

39 g. On the tenth day of each month or sooner if requested by the
40 department, transmit to the State registrar all original birth,
41 marriage, civil union, domestic partnership and death certificates
42 received by him for the preceding month, except that a record
43 created on the NJ-EDRS as prescribed by the State registrar shall be
44 deemed to have been transmitted. If no births, marriages, civil
45 union, domestic partnerships or deaths occurred in any month, he
46 shall, on or before the tenth day of the following month, report that
47 fact to the State registrar on a card provided for such purpose;

48 h. Make an immediate report to the State registrar of any

1 violation of R.S.26:6-1 et seq., R.S.26:8-1 et seq., or R.S.37:1-1 et
2 seq. or P.L. , c. (C.)(pending before the Legislature as this
3 amendatory and supplementary bill) coming to his knowledge;

4 i. In the case of any birth in his registration district to parents
5 who are residents of another registration district or of the marriage
6 or civil union in his registration district of any couple who obtained
7 the marriage or civil union license in another registration district, or
8 of the death in his registration district of any person who at the time
9 of death was a resident of another registration district notify the
10 registrar of the other registration district, within five days of the
11 birth, marriage, civil union, or death, on forms prescribed by the
12 State registrar. All entries relating to cause of death on the original
13 certificate shall be entered on the death form sent to the registrar of
14 the other registration district. A record created on the NJ-EDRS as
15 prescribed by the State registrar shall be deemed to have been
16 transmitted to the registrar of the other registration district;

17 j. Mark the birth certificate of a missing child born in his
18 registration district when notified by the State registrar pursuant to
19 section 3 of P.L.1995, c.395 (C.52:17B-9.8c); and

20 k. Make computer facilities with access to the NJ-EDRS
21 available to funeral directors and physicians registered with the NJ-
22 EDRS, within the regular established business hours of the local
23 registrar, for the purpose of providing information necessary to
24 complete a death record.

25 (cf:P.L.2003, c.246, s.19).

26

27 43. R.S.26:8-27 is amended to read as follows:

28 26:8-27. Inquiries to applicants for marriage or civil union
29 license. The department shall issue to each local registrar and to
30 city clerks of cities of the first class, the form and substance of the
31 several inquiries to be made of applicants for a marriage license or a
32 civil union license and their witnesses for the purpose of
33 ascertaining whether any legal impediment to any proposed
34 marriage or civil union exists.

35 The form shall not contain any inquiries or information which
36 concerns the race of an applicant for a marriage or civil union
37 license.

38 (cf: P.L.2002,c.88, c.1)

39

40 44. R.S.26:8-41 is amended to read as follows:

41 26:8-41. Transmission of marriage and civil union licenses and
42 certificates.

43 Every person or religious society, institution or organization
44 solemnizing a marriage or '【performing a】' civil union shall,
45 within 5 days thereafter, transmit the certificate of marriage or civil
46 union and the marriage or civil union license to the local registrar of
47 the registration district in which the marriage or civil union occurs
48 or to the clerk of the county board of health.

1 The local registrar or clerk of the county board of health shall
2 stamp every certificate of marriage or civil union so received with
3 the date of its receipt and the name of the registration district in
4 which it is filed.

5 (cf: P.L.1965, c.78, s.59)

6

7 45. R.S.26:8-42 is amended to read as follows:

8 26:8-42. The local registrar who receives the certificate of a
9 marriage or the certificate of a civil union within the district under
10 his jurisdiction, the license for which was issued in another
11 registration district, shall, within 5 days after receipt of the marriage
12 or civil union certificate, copy the names of the persons married or
13 the '[parties to a civil union]partners in a civil union couple'; the
14 date of marriage or civil union; the place of marriage or the civil
15 union and the marriage or civil union license number upon a form
16 provided by the State registrar and transmit it by mail to the officer
17 legally designated to receive certificates of marriage or civil union
18 in the registration district in which the license was issued.

19 (cf: P.L.1965, c.78, s.60)

20

21 46. R.S.26:8-43 is amended to read as follows:

22 26:8-43. Transmission of marriage and civil union certificates
23 and licenses to state registrar.

24 Each local registrar and the clerk of the county board of health
25 shall, on or before the tenth of each calendar month, or sooner if
26 requested by the department, transmit by mail, express or
27 messenger to the State registrar in an envelope or package marked
28 "vital statistics" all the certificates of marriages and civil unions,
29 marriage and civil union licenses and consents to the marriage or
30 civil union of minors received by them.

31 (cf: P.L.1965, c.78, s.61)

32

33 47. R.S.26:8-44 is amended to read as follows:

34 26:8-44. The State registrar shall cause all certificates of
35 marriages and civil unions and marriage and civil union licenses
36 received to be alphabetically indexed and shall cause to be
37 transcribed or otherwise recorded from the certificates such of the
38 vital facts appearing thereon as the department may deem necessary
39 or useful.

40 The certificates of marriage and civil union shall be so tabulated
41 as to present in separate and distinct classes the record of each
42 county or registration district of over 5,000 inhabitants, which
43 record shall be preserved as a public record and the original
44 certificates shall be preserved in the archives of the department.

45 (cf: P.L.1965, c.78, s.62)

46

47 48. R.S.26:8-45 is amended to read as follows:

48 26:8-45. Cancellation of records of marriages and civil unions

1 declared void.

2 If a marriage or a civil union has been declared void by the
3 Superior Court in an action instituted for that purpose and the court
4 is satisfied by the proof taken before the final judgment or by
5 affidavit or otherwise after the final judgment that a record of the
6 marriage or civil union is filed with the State registrar, it may order
7 the record to be canceled.

8 It shall not be necessary to make the custodian of the record a
9 party to the cause.

10 The order need only recite that there was a ceremony of marriage
11 or civil union between parties to the cause (naming them),
12 performed on (date) by (naming the officer) and that by a final
13 judgment entered on (date), the marriage or civil union was
14 declared void and may then direct that the said record be canceled.
15 (cf: P.L.1965, c.78, s.63)

16

17 49. R.S.26:8-46 is amended to read as follows:

18 26:8-46. Upon presenting a certified copy of said order to the
19 State Registrar, he shall indorse on the return of the marriage or
20 civil union the following words: "This marriage or civil union
21 declared void by the Superior Court. See order hereto annexed" and
22 shall annex the certified copy to the return.
23 (cf: P.L.1953, c.26, p.483, s.59)

24

25 50. R.S.26:8-47 is amended to read as follows:

26 26:8-47. Preparation of forms for marriage and civil union
27 licenses, certificates.

28 The department shall cause to be prepared blank forms of
29 certificates of marriages or civil unions and marriage or civil union
30 licenses corresponding to the requirements of R.S.37:1-7 and
31 R.S.37:1-17. The forms, together with such sections of the laws
32 concerning marriages or civil unions and such instructions and
33 explanations thereof as the department may deem useful to persons
34 having duties to perform under such laws shall be printed and
35 supplied upon request therefor to the local registrars and to the city
36 clerks of cities of the first class.

37 All certificates of marriages or civil unions and marriage or civil
38 union licenses shall be written upon the said blanks or blanks
39 approved by the department and shall not contain any inquiries or
40 information which concerns the race of an applicant for a marriage
41 or civil union license.

42 (cf: P.L.2002, c.88, s.2)

43

44 51. R.S.26:8-48 is amended to read as follows:

45 26:8-48. A certificate of birth, fetal death, marriage, civil union,
46 domestic partnership or death heretofore or hereafter filed with the
47 State registrar shall not be altered or changed otherwise than by
48 amendments properly signed, dated and witnessed, or as otherwise

1 recorded and authenticated on the NJ-EDRS as prescribed by the
2 State registrar.

3 (cf: P.L.2003, c.246, s.20).

4

5 52. R.S.26:8-50 is amended to read as follows:

6 26:8-50. Correcting marriage or civil union licenses

7 Correction to marriage or civil union licenses shall be signed by
8 the person who issued the license or his successor in office.

9 (cf: R.S.26:8-50)

10

11 53. R.S.26:8-51 is amended to read as follows:

12 26:8-51. Corrections to marriage, civil union, domestic
13 partnership certificates. Corrections to marriage, civil union or
14 domestic partnership certificates shall be signed by the person who
15 signed the certificate or by any other person having personal
16 knowledge of the matters sought to be corrected which other person
17 shall state such matters on his oath.

18 (cf:P.L.2003, c.246, s.21)

19

20 54. R.S.26:8-55 is amended to read as follows:

21 26:8-55. Any person knowingly submitting a certificate pursuant
22 to this article containing incorrect particulars relating to any birth,
23 marriage, civil union, domestic partnership or death shall be subject
24 to a penalty of not more than \$500, which shall be recovered with
25 costs in a summary proceeding in the name of the department.

26 (cf: P.L.2003, c.246, s.22)

27

28 55. R.S.26:8-60 is amended to read as follows:

29 26:8-60. Each local registrar shall be entitled to receive from the
30 proper disbursing officer of the municipality or county the sum of
31 \$1 for each marriage, civil union or domestic partnership certificate
32 properly transmitted to the State Registrar.

33 In any registration district, the body appointing local registrars
34 may, in lieu of fees, provide that officers performing the above
35 service shall receive a fixed compensation to be determined by such
36 body.

37 (cf: P.L.2003, c.246, s.23)

38

39 56. R.S.26:8-61 is amended to read as follows:

40 26:8-61. Fee for cancellation of marriage or civil union record.

41 The person procuring the cancellation of a marriage or civil
42 union record pursuant to [sections]R.S.26:8-45 and R.S.26:8-46
43 [of this Title] shall first pay to the State Registrar the sum of \$2.00
44 and the State Registrar shall pay the same over to the State
45 Treasurer. Such fee may be included in the taxable costs in the
46 annulment suit.

47 (cf: P.L.1983, c.275, s.16)

1 57. R.S.26:8-62 is amended to read as follows:

2 26:8-62. a. The State registrar or local registrar shall, upon
3 request, supply to a person who establishes himself as one of the
4 following: the subject of the record of a birth, death, fetal death,
5 certificate of birth resulting in stillbirth, domestic partnership, civil
6 union or marriage, as applicable; the subject's parent, legal guardian
7 or other legal representative; the subject's spouse, '[civil union
8 partner] one partner in a civil union couple¹, child, grandchild or
9 sibling, if of legal age, or the subject's legal representative; an
10 agency of State or federal government for official purposes; a
11 person possessing an order of a court of competent jurisdiction; or a
12 person who is authorized under other emergent circumstances as
13 determined by the commissioner, a certified copy, or release of the
14 data and information of that record registered under the provisions
15 of R.S.26:8-1 et seq., or P.L. _____, c. (C. _____)(pending before the
16 Legislature as this bill) or any domestic partnership registered under
17 the provisions of P.L.2003, c.246 (C.26:8A-1 et al.), for any of
18 which, except as provided by R.S.26:8-63, the State registrar shall
19 be entitled to a search fee, if any, as provided by R.S.26:8-64, to be
20 paid by the person. A certification may be issued in other
21 circumstances and shall state that it is for informational purposes
22 only, and is not to be used for identification purposes. The registrar
23 shall authenticate the identity of the requestor and the requestor's
24 relationship with the subject of the vital record. For the purposes of
25 this subsection, any employee of a mortuary registered pursuant to
26 P.L.1952, c.340 (C.45:7-32 et seq.), or a funeral director licensed
27 pursuant to that act who is affiliated with a registered mortuary, if
28 the mortuary was recorded on the original certificate of death, shall
29 be construed to be the subject's legal representative and entitled to
30 obtain full and complete copies of death certificates or certifications
31 thereof.

32 b. The State registrar shall, upon request, supply to any
33 applicant a certified transcript of any entry contained in the records
34 of the New Jersey State census for which, except as provided by
35 R.S.26:8-63, he shall be entitled to a search fee as provided by
36 R.S.26:8-64, to be paid by the applicant.

37 c. For each death registration initiated on the NJ-EDRS on or
38 after the first day of the first month following the date of enactment
39 of P.L.2003, c.221 but before the first day of the thirty-seventh
40 month following the date of enactment of P.L.2003, c.221, the State
41 registrar shall be paid a recording fee for each record filed, whether
42 by means of the current paper process or electronically, in an
43 amount to be determined by the State registrar but not exceeding
44 \$10, from the account of the funeral home, which may include this
45 amount in the funeral expenses charged to the estate or person
46 accepting responsibility for the disposition of the deceased's human
47 remains and the costs associated therewith; provided however, this
48 fee shall not apply to the death registration of a person who died

1 while in the military or naval or maritime or merchant marine
2 service of the United States whose death is recorded pursuant to
3 section 1 of P.L.1950, c.299 (C.26:6-5.2). The State registrar shall
4 deposit the proceeds from the recording fee into the New Jersey
5 Electronic Death Registration Support Fund established pursuant to
6 section 17 of P.L.2003, c.221 (C.26:8-24.2).

7 d. Notwithstanding any other provision of this section to the
8 contrary, the Commissioner of Health and Senior Services shall
9 designate specifications for uniform forms for the issuance of all
10 vital records, which shall be used by registrars beginning on a date
11 established by the commissioner. The form designated for certified
12 copies of vital records shall contain safety features for
13 authentication purposes and to deter forgery, and shall be readily
14 distinguishable from the form designated for certifications of vital
15 records. Local registrars may include in the fee for a certified copy
16 the additional cost of the form containing such safety features.

17 The commissioner may issue and enforce orders to implement
18 the provisions of this subsection.

19 (cf: P.L.2005, c.222, s.32)

20
21 58. R.S.26:8-63 is amended to read as follows:

22 26:8-63. The State registrar shall:

23 a. Furnish a certification or certified copy of a birth, marriage,
24 civil union, domestic partnership, fetal death or death certificate
25 without fee in the prosecution of any claim for public pension or for
26 military or naval enlistment purposes; and

27 b. Furnish the United States Public Health Service without
28 expense to the State, microfilm or photocopy images of birth,
29 marriage, civil union, domestic partnership, fetal death and death
30 certificates without payment of the fees prescribed in this article;
31 and

32 c. Furnish a certified transcript of any entry in the records of
33 the New Jersey State census without fee for certification in the
34 prosecution of any claim for public pension, for military or naval
35 enlistment purposes; and

36 d. Furnish without fee upon request for administrative use by
37 any city, State or Federal agency a certified transcript of any New
38 Jersey State census entry, or a certification or certified copy of a
39 birth, death, fetal death, marriage, civil union or domestic
40 partnership certificate.

41 (cf: P.L.2003, c.246, s.25).

42
43 59. R.S.26:8-64 is amended to read as follows:

44 26:8-64. a. For any 'genealogical'¹ search of the files and records
45 of births, deaths, marriages, civil unions or domestic partnerships
46 when 'information required on the application for a certification or
47 certified copy of a vital record, and'¹ the correct year only is
48 supplied by the applicant, whether or not a certification or a

1 certified copy is made, the State Registrar shall be entitled to a
2 minimum fee of \$4, plus a fee of \$1 for each additional year
3 searched, which fee shall be paid by the applicant, except as
4 provided by R.S.26:8-63. The fee for each additional copy ¹of the
5 same record ordered at the same time¹ shall be \$2.

6 b. ¹~~For all searches of the New Jersey State census records,~~
7 ~~except as otherwise provided herein, the State Registrar shall be~~
8 ~~entitled to a fee of \$2 for each address searched in any census~~
9 ~~year.] ¹For any non-genealogical search of the files and records of
10 births, deaths, marriages, civil unions or domestic partnerships
11 when the exact date of the event is supplied, along with all other
12 information required on the application for a certification or
13 certified copy of a vital record, whether or not a certification or
14 certified copy is made, the State Registrar shall be entitled to a
15 minimum fee of \$4, which shall be paid by the applicant, except as
16 provided by R.S.26:8-63. The fee for each additional copy of the
17 same record ordered at the same time shall be \$2.¹~~

18 c. Conduct without fee upon request for administrative use by
19 any city, state, or federal agency, a search for any New Jersey State
20 census entry.

21 (cf: P.L.2003, c.246, s.26)

22

23 60. R.S.26:8-66 is amended to read as follows:

24 26:8-66. The State registrar either personally or by accredited
25 representative, may investigate any case of irregularity or violation
26 of ~~this chapter, or chapter 6 of this Title (s. 26:6-1 et seq.), as well~~
27 ~~as chapter 1 of Title 37 of the Revised Statutes] R.S.26:6-1 et seq.,~~
28 ~~R.S.8-1 et seq., R.S.37:1-1 et seq., or P.L. , c. (C.) (pending~~
29 ~~before the Legislature as this bill, and every local registrar shall aid~~
30 ~~him in such investigation.~~

31 (cf: P.L.1965, c.78, s.75)

32

33 61. R.S.26:8-67 is amended to read as follows:

34 26:8-67. Duty of ~~prosecutor of the pleas] county prosecutor.~~

35 When the State registrar shall deem it necessary, he shall report
36 any violation of any provision of ~~this chapter or chapter 6 of this~~
37 ~~Title (s. 26:6-1 et seq.), as well as chapter 1 of Title 37 of the~~
38 ~~Revised Statutes] R.S.26:6-1 et seq., R.S.26:8-1 et seq., R.S.37:1-1~~
39 ~~et seq. or P.L. , c. (C.) (pending before the Legislature as this~~
40 ~~bill), to the county prosecutor [of the pleas of the proper county],~~
41 ~~with a statement of the facts and circumstances. Upon such report,~~
42 ~~the county prosecutor [of the pleas] shall forthwith institute and~~
43 ~~prosecute the necessary proceedings for such alleged violation.~~

44 (cf: P.L.1965, c.78, s.76)

45

46 62. R.S.26:8-68 is amended to read as follows:

47 26:8-68. Upon request of the State registrar, the Attorney

1 General shall assist in the enforcement of the provisions of [this
2 chapter and chapter 6 of this Title (s. 26:6-1 et seq.), as well as
3 chapter 1 of Title 37 of the Revised Statutes] R.S.26:6-1 et seq.,
4 R.S.26:8-1 et seq., R.S.37:1-1 et seq. or P.L. _____, c. (C. _____)
5 (pending before the Legislature as this bill), or the State registrar
6 may direct that local registrars institute proceedings or civil actions
7 in the name of the State department. Such a proceeding or action
8 may be instituted in any court of competent jurisdiction.
9 (cf: P.L.1965, c.78, s.77)

10

11 63. N.J.S.2A:34-1 is amended to read as follows:

12 2A:34-1. Causes for judgments of nullity.

13 (1) Judgments of nullity of marriage may be rendered in all
14 cases, when:15 a. Either of the parties has another wife ¹[or],¹ husband ¹,
16 partner in a civil union couple or domestic partner¹ living at the time
17 of a second or other marriage;18 b. The parties are within the degrees prohibited by law. If any
19 such marriage shall not have been annulled during the lifetime of
20 the parties the validity thereof shall not be inquired into after the
21 death of either party.22 c. The parties, or either of them, were at the time of marriage
23 physically and incurably impotent, provided the party making the
24 application shall have been ignorant of such impotency or
25 incapability at the time of the marriage, and has not subsequently
26 ratified the marriage.27 d. The parties, or either of them, lacked capacity to marry due
28 to want of understanding because of mental condition, or the
29 influence of intoxicants, drugs, or similar agents; or where there
30 was a lack of mutual assent to the marital relationship; duress; or
31 fraud as to the essentials of marriage; and has not subsequently
32 ratified the marriage.33 e. The demand for such a judgment is by the wife or husband
34 who was under the age of 18 years at the time of the marriage,
35 unless such marriage be confirmed by her or him after arriving at
36 such age.37 f. Allowable under the general equity jurisdiction of the
38 Superior Court.39 (2) Judgments of nullity of a civil union may be rendered in all
40 cases, when:41 a. Either of the parties has another wife, husband, ¹[civil union
42 partner] partner in a civil union couple¹ or domestic partner living
43 at the time of establishing the new civil union or;44 b. The parties are within the degrees prohibited by the law
45 from entering into a marriage or establishing a civil union or
46 domestic partnership. If any such civil union shall not have been
47 annulled during the lifetime of the parties the validity thereof shall
48 not be inquired into after the death of either party.

1 c. The parties, or either of them, lacked capacity to enter into a
2 civil union due to want of understanding because of mental
3 condition, or the influence of intoxicants, drugs, or similar agents;
4 or where there was a lack of mutual assent to the civil union;
5 duress; or fraud as to the essentials of a civil union; and has not
6 subsequently ratified the civil union.

7 d. The demand for such a judgment is by the party who was
8 under the age of 18 years at the time of the civil union, unless such
9 civil union be confirmed by him after arriving at such age.

10 e. Allowable under the general equity jurisdiction of the
11 Superior Court.

12 (cf: P.L.1971, c.212, s.1)

13
14 64. (New section). The dissolution of a civil union may be
15 adjudged for the following causes:

16 a. voluntary sexual intercourse between a person who is in a
17 civil union and an individual other than the person's ¹['civil union
18 partner'] partner in a civil union couple¹;

19 b. willful and continued desertion for a period of 12 or more
20 consecutive months, which may be established by satisfactory proof
21 that the parties have ceased to cohabit as ¹['civil union']¹ partners
22 ¹in a civil union couple¹;

23 c. extreme cruelty, which is defined as including any physical
24 or mental cruelty that endangers the safety or health of the plaintiff
25 or makes it improper or unreasonable to expect the plaintiff to
26 continue to cohabit with the defendant; except that no complaint for
27 termination shall be filed until after three months from the date of
28 the last act of cruelty complained of in the complaint, but this
29 provision shall not be held to apply to any counterclaim;

30 d. separation, provided that the ¹['civil union']¹ partners ¹in a
31 civil union couple¹ have lived separate and apart in different
32 habitations for a period of at least 18 or more consecutive months
33 and there is no reasonable prospect of reconciliation; and provided
34 further that, after the 18-month period, there shall be a presumption
35 that there is no reasonable prospect of reconciliation;

36 e. voluntarily induced addiction or habituation to any narcotic
37 drug, as defined in the "New Jersey Controlled Dangerous
38 Substances Act," P.L.1970, c.226 (C.24:21-2) or the
39 "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al.,
40 or habitual drunkenness for a period of 12 or more consecutive
41 months subsequent to establishment of the civil union and next
42 preceding the filing of the complaint;

43 f. institutionalization for mental illness for a period of 24 or
44 more consecutive months subsequent to establishment of the civil
45 union and next preceding the filing of the complaint; or

46 g. imprisonment of the defendant for 18 or more consecutive
47 months after establishment of the civil union, provided that where
48 the action is not commenced until after the defendant's release, the

1 parties have not resumed cohabitation following the imprisonment.

2

3 65. N.J.S.2A:34-3 is amended to read as follows:

4 2A:34-3. Causes for divorce from bed and board or legal
5 separation from '[civil union partner] partner in a civil union
6 couple'.

7 a. Divorce from bed and board may be adjudged for the same
8 causes as divorce from the bonds of matrimony whenever both
9 parties petition or join in requesting such relief and they or either of
10 them present sufficient proof of such cause or causes to warrant the
11 entry of a judgment of divorce from the bonds of matrimony,
12 provided further that in the case of a reconciliation thereafter the
13 parties may apply for a revocation or suspension of the judgment,
14 and provided further that the granting of a bed and board divorce
15 shall in no way prejudice either party from thereafter applying to
16 the court for a conversion of said divorce to a divorce from the
17 bonds of matrimony, which application shall be granted as a matter
18 of right.

19 b. Legal separation from a '[civil union partner] partner in a
20 civil union couple' may be adjudged for the same causes as
21 dissolution of a civil union whenever both parties petition or join in
22 requesting such relief and they or either of them present sufficient
23 proof of such cause or causes to warrant the entry of a judgment of
24 dissolution of a civil union, provided further that in the case of a
25 reconciliation thereafter the parties may apply for a revocation or
26 suspension of the judgment, and provided further that the granting
27 of a legal separation from a '[civil union partner] partner in a civil
28 union couple' shall in no way prejudice either party from thereafter
29 applying to the court for a conversion of said legal separation from
30 a '[civil union partner] partner in a civil union couple' to a
31 dissolution of a civil union, which application shall be granted as a
32 matter of right.

33 (cf: P.L.1971, c.212, s.3)

34

35 66. N.J.S.2A:34-6 is amended to read as follows:

36 2A:34-6. Divorce from bed and board or legal separation from a
37 civil union; property rights

38 For and during the time that any judgment for divorce from bed
39 and board or legal separation from a '[civil union partner] partner
40 in a civil union couple' shall remain in force and effect all property
41 rights of the parties shall be as though a judgment of absolute
42 divorce or dissolution had been entered.

43 In any property transaction **[had]** by either of the parties in such
44 status the fact of the existence of such judgment shall be distinctly
45 recited and reference to the public record thereof shall be clearly set
46 forth.

47 (cf: N.J.S.2A:34-6).

1 67. N.J.S.2A:34-7 is amended to read as follows:

2 2A:34-7. Certain defenses abolished.

3 Recrimination, condonation and the clean hands doctrine are
4 hereby abolished as defenses to divorce from the bonds of
5 matrimony **[or from]** , dissolution of a civil union, divorce from
6 bed and board or legal separation from a **'[civil union partner]**
7 partner in a civil union couple¹, and if both parties make out
8 grounds for a divorce, dissolution or legal separation a decree may
9 be granted to each; provided that nothing herein shall preclude or
10 abrogate the responsibility of a party for the penalty provided by
11 law for perjury or the subornation of perjury.

12 (cf: P.L.1971, c.212, s.4)

13

14 68. N.J.S.2A:34-8 is amended to read as follows:

15 2A:34-8. Jurisdiction stated.

16 The Superior Court shall have jurisdiction of all causes of
17 divorce, dissolution of a civil union, bed and board divorce, legal
18 separation from a **'[civil union partner]** partner in a civil union
19 couple¹ or nullity when either party is a bona fide resident of this
20 State. The Superior Court shall have jurisdiction of an action for
21 alimony and maintenance when the defendant is subject to the
22 personal jurisdiction of the court, is a resident of this State, or has
23 tangible or intangible real or personal property within the
24 jurisdiction of the court. The Superior Court may afford incidental
25 relief as in other cases of an equitable nature and by rule of court
26 may determine the venue of matrimonial and civil union actions.

27 (cf: P.L.1971, c.212, s.5).

28

29 69. N.J.S.2A:34-9 is amended to read as follows:

30 2A:34-9. Jurisdiction in nullity proceedings or dissolution
31 proceedings; residence requirements; service of process

32 Jurisdiction in actions for nullity of marriage or dissolution of a
33 civil union may be acquired when:

34 a. Either party is a bona fide resident of this **[state]** State at the
35 time of the commencement of the action; and

36 b. Process is served upon the defendant as prescribed by the
37 rules of the **[supreme court]** Supreme Court.

38 (cf: N.J.S.2A:34-9)

39

40 70. N.J.S.2A:34-10 is amended to read as follows:

41 2A:34-10. Jurisdiction in divorce proceedings, dissolution of a
42 civil union, legal separation from a **'[civil union partner]** partner in
43 a civil union couple¹; service of process; residence requirements

44 Jurisdiction in actions for divorce, either absolute or from bed
45 and board, and in actions for dissolution of a civil union or legal
46 separation from a **'[civil union partner]** partner in a civil union

1 couple¹ may be acquired when process is served upon the defendant
2 as prescribed by the rules of the Supreme Court, and

3 1. When, at the time the cause of action arose, either party was
4 a bona fide resident of this State, and has continued so to be down
5 to the time of the commencement of the action; except that no
6 action for absolute divorce or dissolution of a civil union shall be
7 commenced for any cause other than adultery, unless one of the
8 parties has been for the 1 year next preceding the commencement of
9 the action a bona fide resident of this State; or

10 2. When, since the cause of action arose, either party has
11 become, and for at least 1 year next preceding the commencement
12 of the action has continued to be, a bona fide resident of this State.
13 (cf: P.L.1971, c.212, s.6).

14

15 71. N.J.S.2A:34-11 is amended to read as follows:

16 2A:34-11. Jurisdiction by acknowledgment of service of process,
17 appearance, etc.

18 In divorce, dissolution and nullity actions, the jurisdiction of the
19 court over the defendant's person for all purposes of the action shall
20 be fully established by the filing of an acknowledgment of service
21 of process, or of an appearance, or of an answer by the defendant
22 pro se, or on his behalf by a duly authorized attorney, in such
23 manner as may be prescribed by rules of the **[supreme court]**
24 Supreme Court.

25 (cf: N.J.S.2A:34-11)

26

27 72. N.J.S.2A:34-12 is amended to read as follows:

28 2A:34-12. Counterclaims.

29 Whenever the court shall have acquired jurisdiction of any action
30 under the provisions of this chapter or P.L. __, c. (C. __) (pending
31 before the Legislature as this bill), the defendant therein may, by
32 counterclaim, state any cause of action under this chapter or P.L. __,
33 c. (C. __)(pending before the Legislature as this bill) which exists
34 at the time of the service of the counterclaim.

35 (cf: N.J.S.2A:34-12)

36

37 73. N.J.S.2A:34-13 is amended to read as follows:

38 2A:34-13. Matrimonial or civil union action.

39 A person who has attained the age of 16 years may prosecute or
40 defend any matrimonial or civil union action in person or by
41 attorney.

42 (cf: P.L.1988, c.153, s.1)

43

44 74. N.J.S.2A:34-14 is amended to read as follows:

45 2A:34-14. Parent or guardian may prosecute or defend.

46 A parent or guardian shall not be precluded by the provisions of
47 this chapter from prosecuting or defending any action respecting the

1 marriage or civil union status or relation of his minor child or ward.
2 (cf: N.J.S.2A:34-14)

3

4 75. N.J.S.2A:34-15 is amended to read as follows:

5 2A:34-15. Co-respondent in adultery or dissolution of a civil
6 union actions

7 Where a person is named as co-respondent in a charge of
8 adultery or in a charge giving rise to a cause of action for
9 dissolution of a civil union pursuant to subsection a. of section
10 '[53] 64' of P.L. , c. (C.)(pending before the Legislature
11 as this bill), the party making the charge shall give the co-
12 respondent written notice of the charge within the time and in the
13 manner prescribed by the rules of the [supreme court]Supreme
14 Court.

15 Any such co-respondent shall be entitled to intervene in the
16 action on [the] this particular issue [of adultery].

17 (cf: N.J.S.2A:34-15)

18

19 76. N.J.S.2A:34-18 is amended to read as follows:

20 2A:34-18. Final judgment; appeal

21 If after the hearing of any cause the court shall determine that the
22 plaintiff or counterclaimant is entitled to a judgment of nullity of
23 marriage or nullity of a civil union or a judgment for divorce from
24 the bonds of matrimony or judgment for dissolution of a civil union,
25 a final judgment shall be entered.

26 Appeals shall be taken only from the final judgment.

27 (cf: P.L.1969, c.82, s.1)

28

29 77. N.J.S.2A:34-21 is amended to read as follows:

30 2A:34-21. Surname.

31 The court, upon or after granting a divorce from the bonds of
32 matrimony to either spouse or dissolution of a civil union to either
33 partner 'in a civil union couple', may allow either spouse or partner
34 'in a civil union couple' to resume any name used by the spouse or
35 partner 'in a civil union couple' before the marriage or civil union,
36 or to assume any surname.

37 (cf: P.L.1988,c.153,s.2)

38

39 78. N.J.S.2A:34-23 is amended to read as follows:

40 2A:34-23 Alimony, maintenance.

41 Pending any matrimonial action or action for dissolution of a
42 civil union brought in this State or elsewhere, or after judgment of
43 divorce or dissolution or maintenance, whether obtained in this
44 State or elsewhere, the court may make such order as to the alimony
45 or maintenance of the parties, and also as to the care, custody,
46 education and maintenance of the children, or any of them, as the
47 circumstances of the parties and the nature of the case shall render
48 fit, reasonable and just, and require reasonable security for the due

1 observance of such orders, including, but not limited to, the creation
2 of trusts or other security devices, to assure payment of reasonably
3 foreseeable medical and educational expenses. Upon neglect or
4 refusal to give such reasonable security, as shall be required, or
5 upon default in complying with any such order, the court may
6 award and issue process for the immediate sequestration of the
7 personal estate, and the rents and profits of the real estate of the
8 party so charged, and appoint a receiver thereof, and cause such
9 personal estate and the rents and profits of such real estate, or so
10 much thereof as shall be necessary, to be applied toward such
11 alimony and maintenance as to the said court shall from time to
12 time seem reasonable and just; or the performance of the said orders
13 may be enforced by other ways according to the practice of the
14 court. Orders so made may be revised and altered by the court from
15 time to time as circumstances may require.

16 The court may order one party to pay a retainer on behalf of the
17 other for expert and legal services when the respective financial
18 circumstances of the parties make the award reasonable and just. In
19 considering an application, the court shall review the financial
20 capacity of each party to conduct the litigation and the criteria for
21 award of counsel fees that are then pertinent as set forth by court
22 rule. Whenever any other application is made to a court which
23 includes an application for pendente lite or final award of counsel
24 fees, the court shall determine the appropriate award for counsel
25 fees, if any, at the same time that a decision is rendered on the other
26 issue then before the court and shall consider the factors set forth in
27 the court rule on counsel fees, the financial circumstances of the
28 parties, and the good or bad faith of either party.

29 a. In determining the amount to be paid by a parent for support
30 of the child and the period during which the duty of support is
31 owed, the court in those cases not governed by court rule shall
32 consider, but not be limited to, the following factors:

33 (1) Needs of the child;

34 (2) Standard of living and economic circumstances of each
35 parent;

36 (3) All sources of income and assets of each parent;

37 (4) Earning ability of each parent, including educational
38 background, training, employment skills, work experience,
39 custodial responsibility for children including the cost of providing
40 child care and the length of time and cost of each parent to obtain
41 training or experience for appropriate employment;

42 (5) Need and capacity of the child for education, including
43 higher education;

44 (6) Age and health of the child and each parent;

45 (7) Income, assets and earning ability of the child;

46 (8) Responsibility of the parents for the court-ordered support of
47 others;

48 (9) Reasonable debts and liabilities of each child and parent; and

1 (10) Any other factors the court may deem relevant.

2 The obligation to pay support for a child who has not been
3 emancipated by the court shall not terminate solely on the basis of
4 the child's age if the child suffers from a severe mental or physical
5 incapacity that causes the child to be financially dependent on a
6 parent. The obligation to pay support for that child shall continue
7 until the court finds that the child is relieved of the incapacity or is
8 no longer financially dependent on the parent. However, in
9 assessing the financial obligation of the parent, the court shall
10 consider, in addition to the factors enumerated in this section, the
11 child's eligibility for public benefits and services for people with
12 disabilities and may make such orders, including an order involving
13 the creation of a trust, as are necessary to promote the well-being of
14 the child.

15 As used in this section "severe mental or physical incapacity"
16 shall not include a child's abuse of, or addiction to, alcohol or
17 controlled substances.

18 b. In all actions brought for divorce, dissolution of a civil
19 union, divorce from bed and board, legal separation from a ¹[civil
20 union partner] partner in a civil union couple¹ or nullity the court
21 may award one or more of the following types of alimony:
22 permanent alimony; rehabilitative alimony; limited duration
23 alimony or reimbursement alimony to either party. In so doing the
24 court shall consider, but not be limited to, the following factors:

25 (1) The actual need and ability of the parties to pay;

26 (2) The duration of the marriage or civil union;

27 (3) The age, physical and emotional health of the parties;

28 (4) The standard of living established in the marriage or civil
29 union and the likelihood that each party can maintain a reasonably
30 comparable standard of living;

31 (5) The earning capacities, educational levels, vocational skills,
32 and employability of the parties;

33 (6) The length of absence from the job market of the party
34 seeking maintenance;

35 (7) The parental responsibilities for the children;

36 (8) The time and expense necessary to acquire sufficient
37 education or training to enable the party seeking maintenance to
38 find appropriate employment, the availability of the training and
39 employment, and the opportunity for future acquisitions of capital
40 assets and income;

41 (9) The history of the financial or non-financial contributions to
42 the marriage or civil union by each party including contributions to
43 the care and education of the children and interruption of personal
44 careers or educational opportunities;

45 (10) The equitable distribution of property ordered and any
46 payouts on equitable distribution, directly or indirectly, out of
47 current income, to the extent this consideration is reasonable, just
48 and fair;

1 (11) The income available to either party through investment of
2 any assets held by that party;

3 (12) The tax treatment and consequences to both parties of any
4 alimony award, including the designation of all or a portion of the
5 payment as a non-taxable payment; and

6 (13) Any other factors which the court may deem relevant.

7 When a share of a retirement benefit is treated as an asset for
8 purposes of equitable distribution, the court shall not consider
9 income generated thereafter by that share for purposes of
10 determining alimony.

11 c. In any case in which there is a request for an award of
12 permanent alimony, the court shall consider and make specific
13 findings on the evidence about the above factors. If the court
14 determines that an award of permanent alimony is not warranted,
15 the court shall make specific findings on the evidence setting out
16 the reasons therefor. The court shall then consider whether alimony
17 is appropriate for any or all of the following: (1) limited duration;
18 (2) rehabilitative; (3) reimbursement. In so doing, the court shall
19 consider and make specific findings on the evidence about factors
20 set forth above. The court shall not award limited duration alimony
21 as a substitute for permanent alimony in those cases where
22 permanent alimony would otherwise be awarded.

23 An award of alimony for a limited duration may be modified
24 based either upon changed circumstances, or upon the
25 nonoccurrence of circumstances that the court found would occur at
26 the time of the award. The court may modify the amount of such an
27 award, but shall not modify the length of the term except in unusual
28 circumstances.

29 In determining the length of the term, the court shall consider the
30 length of time it would reasonably take for the recipient to improve
31 his or her earning capacity to a level where limited duration
32 alimony is no longer appropriate.

33 d. Rehabilitative alimony shall be awarded based upon a plan
34 in which the payee shows the scope of rehabilitation, the steps to be
35 taken, and the time frame, including a period of employment during
36 which rehabilitation will occur. An award of rehabilitative alimony
37 may be modified based either upon changed circumstances, or upon
38 the nonoccurrence of circumstances that the court found would
39 occur at the time of the rehabilitative award.

40 This section is not intended to preclude a court from modifying
41 permanent alimony awards based upon the law.

42 e. Reimbursement alimony may be awarded under
43 circumstances in which one party supported the other through an
44 advanced education, anticipating participation in the fruits of the
45 earning capacity generated by that education.

46 f. Nothing in this section shall be construed to limit the court's
47 authority to award permanent alimony, limited duration alimony,
48 rehabilitative alimony or reimbursement alimony, separately or in

1 any combination, as warranted by the circumstances of the parties
2 and the nature of the case.

3 g. In all actions for divorce or dissolution other than those
4 where judgment is granted solely on the ground of separation the
5 court may consider also the proofs made in establishing such
6 ground in determining an amount of alimony or maintenance that is
7 fit, reasonable and just. In all actions for divorce **[or]** dissolution
8 of civil union, divorce from bed and board, legal separation from a
9 '[civil union partner] partner in a civil union couple' where
10 judgment is granted on the ground of institutionalization for mental
11 illness the court may consider the possible burden upon the
12 taxpayers of the State as well as the ability of the party to pay in
13 determining an amount of maintenance to be awarded.

14 h. In all actions where a judgment of divorce **[or]** dissolution
15 of civil union, divorce from bed and board or legal separation from
16 a '[civil union partner] partner in a civil union couple' is entered
17 the court may make such award or awards to the parties, in addition
18 to alimony and maintenance, to effectuate an equitable distribution
19 of the property, both real and personal, which was legally and
20 beneficially acquired by them or either of them during the marriage
21 or civil union. However, all such property, real, personal or
22 otherwise, legally or beneficially acquired during the marriage or
23 civil union by either party by way of gift, devise, or intestate
24 succession shall not be subject to equitable distribution, except that
25 interspousal gifts or gifts between '[parties to a civil union]
26 partners in a civil union couple' shall be subject to equitable
27 distribution.

28 (cf: P.L.2005, c.171, s.1)

29

30 79. Section 1 of P.L.1997,c.405 (C.2A:34-23d) is amended to
31 read as follows:

32 1. Maintenance of certain insurance coverage in action for
33 divorce or dissolution.

34 a. Upon filing of a complaint for an action for divorce,
35 dissolution, nullity or separate maintenance, where the custody,
36 visitation or support of a minor child is an issue, the party who has
37 maintained all existing insurance coverage or coverage traditionally
38 maintained during the marriage or civil union, including but not
39 limited to, all health, disability, home or life insurance, shall
40 continue to maintain or continue to share in the cost of maintaining
41 the coverage.

42 b. If a party who has maintained the existing insurance
43 coverage or has shared in the cost of maintaining the coverage has
44 had a voluntary or involuntary change in employment status, which
45 may cause the existing insurance coverage to terminate, then that
46 party shall notify the other party that it may be necessary to
47 reallocate the financial responsibilities of maintaining the coverage.

1 c. Upon receipt of this notice, the party may petition the court
2 to reallocate financial responsibilities.

3 d. The court may take any action it deems appropriate to
4 reallocate financial responsibilities including but not limited to
5 ordering a party to obtain comparable coverage or releasing a party
6 from the obligation or any other order.
7 (cf: P.L.1997, c.405, s.1)

8
9 80. '[N.J.S.2A:34-23.1]Section 4 of P.L.1988, c.153 (C.2A:34-
10 23.1)' is amended to read as follows:

11 '[2A:34-23.1 Equitable distribution criteria.]'

12 4. In making an equitable distribution of property, the court
13 shall consider, but not be limited to, the following factors:

14 a. The duration of the marriage or civil union;

15 b. The age and physical and emotional health of the parties;

16 c. The income or property brought to the marriage or civil
17 union by each party;

18 d. The standard of living established during the marriage or
19 civil union;

20 e. Any written agreement made by the parties before or during
21 the marriage or civil union concerning an arrangement of property
22 distribution;

23 f. The economic circumstances of each party at the time the
24 division of property becomes effective;

25 g. The income and earning capacity of each party, including
26 educational background, training, employment skills, work
27 experience, length of absence from the job market, custodial
28 responsibilities for children, and the time and expense necessary to
29 acquire sufficient education or training to enable the party to
30 become self-supporting at a standard of living reasonably
31 comparable to that enjoyed during the marriage or civil union;

32 h. The contribution by each party to the education, training or
33 earning power of the other;

34 i. The contribution of each party to the acquisition, dissipation,
35 preservation, depreciation or appreciation in the amount or value of
36 the marital property, or the property acquired during the civil union
37 as well as the contribution of a party as a homemaker;

38 j. The tax consequences of the proposed distribution to each
39 party;

40 k. The present value of the property;

41 l. The need of a parent who has physical custody of a child to
42 own or occupy the marital residence or residence shared by the
43 '[parties to a civil union] partners in a civil union couple' and to
44 use or own the household effects;

45 m. The debts and liabilities of the parties;

46 n. The need for creation, now or in the future, of a trust fund to
47 secure reasonably foreseeable medical or educational costs for a
48 spouse, partner 'in a civil union couple' or children;

1 o. The extent to which a party deferred achieving their career
2 goals; and

3 p. Any other factors which the court may deem relevant.

4 In every case, the court shall make specific findings of fact on
5 the evidence relevant to all issues pertaining to asset eligibility or
6 ineligibility, asset valuation, and equitable distribution, including
7 specifically, but not limited to, the factors set forth in this section.

8 It shall be a rebuttable presumption that each party made a
9 substantial financial or nonfinancial contribution to the acquisition
10 of income and property while the party was married.

11 (cf: P.L.1997, c.407, s.1).

12

13 81. Section 1 of P.L.1954, c.187 (C.2A:34-24.1) is amended to
14 read as follows:

15 1. Court-ordered support, maintenance.

16 When a spouse or '[civil union partner] partner in a civil union
17 couple' has secured a judgment or decree of divorce, whether
18 absolute or from bed and board, dissolution of a civil union, legal
19 separation from a '[civil union partner] partner in a civil union
20 couple', or of nullity or annulment of marriage or civil union, in an
21 action whether brought in this State or elsewhere, wherein
22 jurisdiction over the person of the other spouse or the other '[civil
23 union partner] partner in a civil union couple' was not obtained, the
24 court may make the same orders and judgments touching the
25 suitable support and maintenance to be paid and provided by the
26 spouse or '[civil union partner] partner in a civil union couple', or
27 to be made out of the spouse's or partner's property, for the other
28 spouse or partner and their children, or any of them, by their
29 marriage or civil union and for such time, as the nature of the case
30 and circumstances of the parties render suitable and proper,
31 pursuant to the provisions of chapter 34 of Title 2A of the New
32 Jersey Statutes notwithstanding the securing of such judgment or
33 decree.

34 (cf: P.L.1988, c.153, s.6)

35

36 82. N.J.S.2A:34-25. Termination of alimony.

37 2A:34-25. If after the judgment of divorce or dissolution a
38 former spouse shall remarry or a former partner shall enter into a
39 new civil union, permanent and limited duration alimony shall
40 terminate as of the date of remarriage or new civil union except that
41 any arrearages that have accrued prior to the date of remarriage or
42 new civil union shall not be vacated or annulled. A former spouse
43 or '[civil union partner] former partner in a civil union couple'
44 who remarries 'or enters into a new civil union' shall promptly so
45 inform the spouse or partner paying permanent or limited duration
46 alimony as well as the collecting agency, if any. The court may
47 order such alimony recipient who fails to comply with the

1 notification provision of this act to pay any reasonable attorney fees
2 and court costs incurred by the recipient's former spouse or partner
3 as a result of such non-compliance.

4 The remarriage or establishment of a new civil union of a former
5 spouse or partner receiving rehabilitative or reimbursement alimony
6 shall not be cause for termination of such alimony by the court
7 unless the court finds that the circumstances upon which the award
8 was based have not occurred or unless the payer spouse or partner
9 demonstrates an agreement or good cause to the contrary.

10 Alimony shall terminate upon the death of the payer spouse or
11 partner, except that any arrearages that have accrued prior to the
12 date of the payer spouse's or partner's death shall not be vacated or
13 annulled.

14 Nothing in this act shall be construed to prohibit a court from
15 ordering either spouse or partner to maintain life insurance for the
16 protection of the former spouse, partner, or the children of the
17 marriage or civil union in the event of the payer spouse's or
18 partner's death.

19 (cf: P.L.1999, c.199, s.2)

20

21 83. N.J.S.2A:34-26 is amended to read as follows:

22 2A:34-26. Attachment of property.

23 When a spouse or ¹**[civil union partner]** one partner in a civil
24 union couple¹ cannot be found within this State to be served with
25 process, the spouse's or partner's estate, property and effects within
26 this State and the rents and profits thereof may be attached to
27 compel the spouse's or partner's appearance and performance of any
28 judgment or order which may be made in the action. Where the
29 proceedings are by process of attachment and the defendant does
30 not appear, the judgment shall be enforceable only out of and
31 against the property attached.

32 (cf: P.L.1988,c.153, s.8)

33

34 84. N.J.S.22A:2-10 is amended to read as follows:

35 22A:2-10. Chancery Division of Superior Court; costs awarded.

36 Upon the completion and determination of the following actions
37 and proceedings in the Chancery Division of the Superior Court, the
38 costs awarded to a party therein for the drawing of papers, including
39 orders, writs and judgments, shall be as stated below:

40	Plaintiff's costs, foreclosure	\$50 ₀₀
41	Plaintiff's costs, partition	70 ₀₀
42	Plaintiff's and receiver's costs, receivership	125 ₀₀
43	Plaintiff's costs, receivership	62 ₅₀
44	Receiver's costs, receivership	62 ₅₀
45	Plaintiff's costs, divorce, <u>dissolution of civil</u>	
46	<u>union</u> , nullity, custody	30 ₀₀
47	Plaintiff's costs, causes of action for other relief	65 ₀₀
48	Plaintiff's costs, incompetency action	47 ₅₀

1	Plaintiff's costs, sale of lands of infant or incompetent	50 ₀₀
2	Plaintiff's costs, release of dower or curtesy	50 ₀₀
3	Plaintiff's costs, mortgage lands of an infant or	
4	incompetent ...	50.00
5	Plaintiff's costs, interpleader	35 ₀₀
6	Plaintiff's costs, appointment of tax receiver	27 ₅₀
7	Plaintiff's costs, actions for payment of money	
8	into court; to hold real estate; to limit creditors	22 ₅₀
9	Plaintiff's costs, action for appointment of trustee	
10	or substituted trustee	33 ₅₀
11	Costs on contempt proceedings	25 ₀₀
12	Costs on application to fix dower or curtesy	22 ₅₀
13	Costs on application to pay moneys out of court	23 ₅₀
14	Costs on application for instructions, or to	
15	approve account	30 ₀₀
16	Costs on application for writ of execution	10 ₀₀
17	Costs on application for relief from final judgment	
18	or, in a matrimonial cause from judgment	
19	nisi or order..	20 ₀₀
20	Costs on application for writ of possession	30 ₀₀
21	Costs on application for alimony pendente lite,	
22	attorney fee, suit money	20 ₀₀
23	Defendant's costs where final judgment is taken by him ...	30 ₀₀
24	Defendant's costs where final judgment is not taken by him .	20 ₀₀
25	Costs upon any other litigated or special motion,	
26	subsidiary or interlocutory, not heretofore provided for ...	20 ₀₀
27	(cf: N.J.S.22A:2-10)	

28

29 85. N.J.S.22A:2-12 is amended to read as follows:

30 22A:2-12. Payment of fees in Chancery Division of Superior
31 Court upon filing of first paper. Upon the filing of the first paper in
32 any action or proceeding in the Chancery Division of the Superior
33 Court, there shall be paid to the clerk of the court, for the use of the
34 State, the following fees, which, except as hereinafter provided,
35 shall constitute the entire fees to be collected by the clerk for the
36 use of the State, down to the final disposition of the cause:

37 Receivership and partition, \$200.00.

38 All other actions and proceedings except in probate cases and
39 actions and proceedings for divorce or dissolution of a civil union
40 union, \$200.00.

41 Actions and proceedings for divorce or dissolution of civil union,
42 \$250.00, \$25.00 of which shall be forwarded by the Clerk of the
43 Superior Court as provided in section 2 of P.L.1993, c.188
44 (C.52:27D-43.24a).

45 Any person filing a motion in any action or proceeding shall pay
46 to the clerk \$30.00.

47 (cf: P.L.2003, c.117, s.41)

1 86. Section 2 of P.L.1993, c.188 (C.52:27D-43.24a) is amended
2 to read as follows:

3 2. Forwarding of filing fee. The Clerk of the Superior Court
4 shall forward \$25.00 of the \$250.00 filing fee for a divorce or a
5 dissolution of a civil union provided for in N.J.S.22A:2-12 on a
6 quarterly basis to the Department of Community Affairs.
7 (cf: P.L.2003, c.117, s.42)

8

9 87. Section 5 of P.L.1945, c.169 (C.10:5-5) is amended to read
10 as follows:

11 5. As used in this act, unless a different meaning clearly
12 appears from the context:

13 a. "Person" includes one or more individuals, partnerships,
14 associations, organizations, labor organizations, corporations, legal
15 representatives, trustees, trustees in bankruptcy, receivers, and
16 fiduciaries.

17 b. "Employment agency" includes any person undertaking to
18 procure employees or opportunities for others to work.

19 c. "Labor organization" includes any organization which exists
20 and is constituted for the purpose, in whole or in part, of collective
21 bargaining, or of dealing with employers concerning grievances,
22 terms or conditions of employment, or of other mutual aid or
23 protection in connection with employment.

24 d. "Unlawful employment practice" and "unlawful
25 discrimination" include only those unlawful practices and acts
26 specified in section 11 of this act.

27 e. "Employer" includes all persons as defined in subsection a.
28 of this section unless otherwise specifically exempt under another
29 section of this act, and includes the State, any political or civil
30 subdivision thereof, and all public officers, agencies, boards or
31 bodies.

32 f. "Employee" does not include any individual employed in the
33 domestic service of any person.

34 g. "Liability for service in the Armed Forces of the United
35 States" means subject to being ordered as an individual or member
36 of an organized unit into active service in the Armed Forces of the
37 United States by reason of membership in the National Guard, naval
38 militia or a reserve component of the Armed Forces of the United
39 States, or subject to being inducted into such armed forces through
40 a system of national selective service.

41 h. "Division" means the "Division on Civil Rights" created by
42 this act.

43 i. "Attorney General" means the Attorney General of the State
44 of New Jersey or his representative or designee.

45 j. "Commission" means the Commission on Civil Rights
46 created by this act.

47 k. "Director" means the Director of the Division on Civil
48 Rights.

1 l. "A place of public accommodation" shall include, but not be
2 limited to: any tavern, roadhouse, hotel, motel, trailer camp,
3 summer camp, day camp, or resort camp, whether for entertainment
4 of transient guests or accommodation of those seeking health,
5 recreation or rest; any producer, manufacturer, wholesaler,
6 distributor, retail shop, store, establishment, or concession dealing
7 with goods or services of any kind; any restaurant, eating house, or
8 place where food is sold for consumption on the premises; any
9 place maintained for the sale of ice cream, ice and fruit preparations
10 or their derivatives, soda water or confections, or where any
11 beverages of any kind are retailed for consumption on the premises;
12 any garage, any public conveyance operated on land or water, or in
13 the air, any stations and terminals thereof; any bathhouse,
14 boardwalk, or seashore accommodation; any auditorium, meeting
15 place, or hall; any theatre, motion-picture house, music hall, roof
16 garden, skating rink, swimming pool, amusement and recreation
17 park, fair, bowling alley, gymnasium, shooting gallery, billiard and
18 pool parlor, or other place of amusement; any comfort station; any
19 dispensary, clinic or hospital; any public library; any kindergarten,
20 primary and secondary school, trade or business school, high
21 school, academy, college and university, or any educational
22 institution under the supervision of the State Board of Education, or
23 the Commissioner of Education of the State of New Jersey.
24 Nothing herein contained shall be construed to include or to apply
25 to any institution, bona fide club, or place of accommodation, which
26 is in its nature distinctly private; nor shall anything herein contained
27 apply to any educational facility operated or maintained by a bona
28 fide religious or sectarian institution, and the right of a natural
29 parent or one in loco parentis to direct the education and upbringing
30 of a child under his control is hereby affirmed; nor shall anything
31 herein contained be construed to bar any private secondary or post
32 secondary school from using in good faith criteria other than race,
33 creed, color, national origin, ancestry or affectional or sexual
34 orientation in the admission of students.

35 m. "A publicly assisted housing accommodation" shall include
36 all housing built with public funds or public assistance pursuant to
37 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
38 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949,
39 c.184, and all housing financed in whole or in part by a loan,
40 whether or not secured by a mortgage, the repayment of which is
41 guaranteed or insured by the federal government or any agency
42 thereof.

43 n. The term "real property" includes real estate, lands,
44 tenements and hereditaments, corporeal and incorporeal, and
45 leaseholds, provided, however, that, except as to publicly assisted
46 housing accommodations, the provisions of this act shall not apply
47 to the rental: (1) of a single apartment or flat in a two-family
48 dwelling, the other occupancy unit of which is occupied by the

1 owner as a residence; or (2) of a room or rooms to another person or
2 persons by the owner or occupant of a one-family dwelling
3 occupied by the owner or occupant as a residence at the time of
4 such rental. Nothing herein contained shall be construed to bar any
5 religious or denominational institution or organization, or any
6 organization operated for charitable or educational purposes, which
7 is operated, supervised or controlled by or in connection with a
8 religious organization, in the sale, lease or rental of real property,
9 from limiting admission to or giving preference to persons of the
10 same religion or denomination or from making such selection as is
11 calculated by such organization to promote the religious principles
12 for which it is established or maintained. Nor does any provision
13 under this act regarding discrimination on the basis of familial
14 status apply with respect to housing for older persons.

15 o. "Real estate broker" includes a person, firm or corporation
16 who, for a fee, commission or other valuable consideration, or by
17 reason of promise or reasonable expectation thereof, lists for sale,
18 sells, exchanges, buys or rents, or offers or attempts to negotiate a
19 sale, exchange, purchase, or rental of real estate or an interest
20 therein, or collects or offers or attempts to collect rent for the use of
21 real estate, or solicits for prospective purchasers or assists or directs
22 in the procuring of prospects or the negotiation or closing of any
23 transaction which does or is contemplated to result in the sale,
24 exchange, leasing, renting or auctioning of any real estate, or
25 negotiates, or offers or attempts or agrees to negotiate a loan
26 secured or to be secured by mortgage or other encumbrance upon or
27 transfer of any real estate for others; or any person who, for
28 pecuniary gain or expectation of pecuniary gain conducts a public
29 or private competitive sale of lands or any interest in lands. In the
30 sale of lots, the term "real estate broker" shall also include any
31 person, partnership, association or corporation employed by or on
32 behalf of the owner or owners of lots or other parcels of real estate,
33 at a stated salary, or upon a commission, or upon a salary and
34 commission or otherwise, to sell such real estate, or any parts
35 thereof, in lots or other parcels, and who shall sell or exchange, or
36 offer or attempt or agree to negotiate the sale or exchange, of any
37 such lot or parcel of real estate.

38 p. "Real estate salesperson" includes any person who, for
39 compensation, valuable consideration or commission, or other thing
40 of value, or by reason of a promise or reasonable expectation
41 thereof, is employed by and operates under the supervision of a
42 licensed real estate broker to sell or offer to sell, buy or offer to buy
43 or negotiate the purchase, sale or exchange of real estate, or offers
44 or attempts to negotiate a loan secured or to be secured by a
45 mortgage or other encumbrance upon or transfer of real estate, or to
46 lease or rent, or offer to lease or rent any real estate for others, or to
47 collect rents for the use of real estate, or to solicit for prospective
48 purchasers or lessees of real estate, or who is employed by a

1 licensed real estate broker to sell or offer to sell lots or other parcels
2 of real estate, at a stated salary, or upon a commission, or upon a
3 salary and commission, or otherwise to sell real estate, or any parts
4 thereof, in lots or other parcels.

5 q. "Disability" means physical disability, infirmity,
6 malformation or disfigurement which is caused by bodily injury,
7 birth defect or illness including epilepsy and other seizure
8 disorders, and which shall include, but not be limited to, any degree
9 of paralysis, amputation, lack of physical coordination, blindness or
10 visual impediment, deafness or hearing impediment, muteness or
11 speech impediment or physical reliance on a service or guide dog,
12 wheelchair, or other remedial appliance or device, or any mental,
13 psychological or developmental disability resulting from
14 anatomical, psychological, physiological or neurological conditions
15 which prevents the normal exercise of any bodily or mental
16 functions or is demonstrable, medically or psychologically, by
17 accepted clinical or laboratory diagnostic techniques. Disability
18 shall also mean AIDS or HIV infection.

19 r. "Blind person" means any individual whose central visual
20 acuity does not exceed 20/200 in the better eye with correcting lens
21 or whose visual acuity is better than 20/200 if accompanied by a
22 limit to the field of vision in the better eye to such a degree that its
23 widest diameter subtends an angle of no greater than 20 degrees.

24 s. "Guide dog" means a dog used to assist deaf persons or
25 which is fitted with a special harness so as to be suitable as an aid to
26 the mobility of a blind person, and is used by a blind person who
27 has satisfactorily completed a specific course of training in the use
28 of such a dog, and has been trained by an organization generally
29 recognized by agencies involved in the rehabilitation of the blind or
30 deaf as reputable and competent to provide dogs with training of
31 this type.

32 t. "Guide or service dog trainer" means any person who is
33 employed by an organization generally recognized by agencies
34 involved in the rehabilitation of persons with disabilities as
35 reputable and competent to provide dogs with training, and who is
36 actually involved in the training process.

37 u. "Housing accommodation" means any publicly assisted
38 housing accommodation or any real property, or portion thereof,
39 which is used or occupied, or is intended, arranged, or designed to
40 be used or occupied, as the home, residence or sleeping place of one
41 or more persons, but shall not include any single family residence
42 the occupants of which rent, lease, or furnish for compensation not
43 more than one room therein.

44 v. "Public facility" means any place of public accommodation
45 and any street, highway, sidewalk, walkway, public building, and
46 any other place or structure to which the general public is regularly,
47 normally or customarily permitted or invited.

- 1 w. "Deaf person" means any person whose hearing is so
2 severely impaired that the person is unable to hear and understand
3 normal conversational speech through the unaided ear alone, and
4 who must depend primarily on a supportive device or visual
5 communication such as writing, lip reading, sign language, and
6 gestures.
- 7 x. "Atypical hereditary cellular or blood trait" means sickle cell
8 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
9 fibrosis trait.
- 10 y. "Sickle cell trait" means the condition wherein the major
11 natural hemoglobin components present in the blood of the
12 individual are hemoglobin A (normal) and hemoglobin S (sickle
13 hemoglobin) as defined by standard chemical and physical analytic
14 techniques, including electrophoresis; and the proportion of
15 hemoglobin A is greater than the proportion of hemoglobin S or one
16 natural parent of the individual is shown to have only normal
17 hemoglobin components (hemoglobin A, hemoglobin A2,
18 hemoglobin F) in the normal proportions by standard chemical and
19 physical analytic tests.
- 20 z. "Hemoglobin C trait" means the condition wherein the major
21 natural hemoglobin components present in the blood of the
22 individual are hemoglobin A (normal) and hemoglobin C as defined
23 by standard chemical and physical analytic techniques, including
24 electrophoresis; and the proportion of hemoglobin A is greater than
25 the proportion of hemoglobin C or one natural parent of the
26 individual is shown to have only normal hemoglobin components
27 (hemoglobin A, hemoglobin A2, hemoglobin F) in normal
28 proportions by standard chemical and physical analytic tests.
- 29 aa. "Thalassemia trait" means the presence of the thalassemia
30 gene which in combination with another similar gene results in the
31 chronic hereditary disease Cooley's anemia.
- 32 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
33 which in combination with another similar gene results in the
34 chronic hereditary disease Tay-Sachs.
- 35 cc. "Cystic fibrosis trait" means the presence of the cystic
36 fibrosis gene which in combination with another similar gene
37 results in the chronic hereditary disease cystic fibrosis.
- 38 dd. "Service dog" means any dog individually trained to the
39 requirements of a person with a disability including, but not limited
40 to minimal protection work, rescue work, pulling a wheelchair or
41 retrieving dropped items. This term shall include a "seizure dog"
42 trained to alert or otherwise assist persons subject to epilepsy or
43 other seizure disorders.
- 44 ee. "Qualified Medicaid applicant" means an individual who is a
45 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).
- 46 ff. "AIDS" means acquired immune deficiency syndrome as
47 defined by the Centers for Disease Control and Prevention of the
48 United States Public Health Service.

- 1 gg. "HIV infection" means infection with the human
2 immunodeficiency virus or any other related virus identified as a
3 probable causative agent of AIDS.
- 4 hh. "Affectional or sexual orientation" means male or female
5 heterosexuality, homosexuality or bisexuality by inclination,
6 practice, identity or expression, having a history thereof or being
7 perceived, presumed or identified by others as having such an
8 orientation.
- 9 ii. "Heterosexuality" means affectional, emotional or physical
10 attraction or behavior which is primarily directed towards persons
11 of the other gender.
- 12 jj. "Homosexuality" means affectional, emotional or physical
13 attraction or behavior which is primarily directed towards persons
14 of the same gender.
- 15 kk. "Bisexuality" means affectional, emotional or physical
16 attraction or behavior which is directed towards persons of either
17 gender.
- 18 ll. "Familial status" means being the natural parent of a child,
19 the adoptive parent of a child, the resource family parent of a child,
20 having a "parent and child relationship" with a child as defined by
21 State law, or having sole or joint legal or physical custody, care,
22 guardianship, or visitation with a child, or any person who is
23 pregnant or is in the process of securing legal custody of any
24 individual who has not attained the age of 18 years.
- 25 mm. "Housing for older persons" means housing:
- 26 (1) provided under any State program that the Attorney General
27 determines is specifically designed and operated to assist elderly
28 persons (as defined in the State program); or provided under any
29 federal program that the United States Department of Housing and
30 Urban Development determines is specifically designed and
31 operated to assist elderly persons (as defined in the federal
32 program); or
- 33 (2) intended for, and solely occupied by persons 62 years of age
34 or older; or
- 35 (3) intended and operated for occupancy by at least one person
36 55 years of age or older per unit. In determining whether housing
37 qualifies as housing for older persons under this subsection, the
38 Attorney General shall adopt regulations which require at least the
39 following factors:
- 40 (a) the existence of significant facilities and services
41 specifically designed to meet the physical or social needs of older
42 persons, or if the provision of such facilities and services is not
43 practicable, that such housing is necessary to provide important
44 housing opportunities for older persons; and
- 45 (b) that at least 80 percent of the units are occupied by at least
46 one person 55 years of age or older per unit; and

1 (c) the publication of, and adherence to, policies and procedures
2 which demonstrate an intent by the owner or manager to provide
3 housing for persons 55 years of age or older.

4 Housing shall not fail to meet the requirements for housing for
5 older persons by reason of: persons residing in such housing as of
6 September 13, 1988 not meeting the age requirements of this
7 subsection, provided that new occupants of such housing meet the
8 age requirements of this subsection; or unoccupied units, provided
9 that such units are reserved for occupancy by persons who meet the
10 age requirements of this subsection.

11 nn. "Genetic characteristic" means any inherited gene or
12 chromosome, or alteration thereof, that is scientifically or medically
13 believed to predispose an individual to a disease, disorder or
14 syndrome, or to be associated with a statistically significant
15 increased risk of development of a disease, disorder or syndrome.

16 oo. "Genetic information" means the information about genes,
17 gene products or inherited characteristics that may derive from an
18 individual or family member.

19 pp. "Genetic test" means a test for determining the presence or
20 absence of an inherited genetic characteristic in an individual,
21 including tests of nucleic acids such as DNA, RNA and
22 mitochondrial DNA, chromosomes or proteins in order to identify a
23 predisposing genetic characteristic.

24 qq. "Domestic partnership" means a domestic partnership
25 established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

26 rr. "Civil Union" means a legally recognized union of two
27 eligible individuals established pursuant to R.S.37:1-1 et seq. and
28 P.L. ,c. (C.) (pending before the Legislature as this bill).
29 (cf: P.L.2004, c.130, s.37)

30
31 88. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to
32 read as follows:

33 11. It shall be an unlawful employment practice, or, as the case
34 may be, an unlawful discrimination:

35 a. For an employer, because of the race, creed, color, national
36 origin, ancestry, age, marital status, civil union status, domestic
37 partnership status, affectional or sexual orientation, genetic
38 information, sex, disability or atypical hereditary cellular or blood
39 trait of any individual, or because of the liability for service in the
40 Armed Forces of the United States or the nationality of any
41 individual, or because of the refusal to submit to a genetic test or
42 make available the results of a genetic test to an employer, to refuse
43 to hire or employ or to bar or to discharge or require to retire, unless
44 justified by lawful considerations other than age, from employment
45 such individual or to discriminate against such individual in
46 compensation or in terms, conditions or privileges of employment;
47 provided, however, it shall not be an unlawful employment practice
48 to refuse to accept for employment an applicant who has received a

1 notice of induction or orders to report for active duty in the armed
2 forces; provided further that nothing herein contained shall be
3 construed to bar an employer from refusing to accept for
4 employment any person on the basis of sex in those certain
5 circumstances where sex is a bona fide occupational qualification,
6 reasonably necessary to the normal operation of the particular
7 business or enterprise; provided further that nothing herein
8 contained shall be construed to bar an employer from refusing to
9 accept for employment or to promote any person over 70 years of
10 age; provided further that it shall not be an unlawful employment
11 practice for a club exclusively social or fraternal to use club
12 membership as a uniform qualification for employment, or for a
13 religious association or organization to utilize religious affiliation
14 as a uniform qualification in the employment of clergy, religious
15 teachers or other employees engaged in the religious activities of
16 the association or organization, or in following the tenets of its
17 religion in establishing and utilizing criteria for employment of an
18 employee; provided further, that it shall not be an unlawful
19 employment practice to require the retirement of any employee
20 who, for the two-year period immediately before retirement, is
21 employed in a bona fide executive or a high policy-making position,
22 if that employee is entitled to an immediate non-forfeitable annual
23 retirement benefit from a pension, profit sharing, savings or
24 deferred retirement plan, or any combination of those plans, of the
25 employer of that employee which equals in the aggregate at least
26 \$27,000.00; and provided further that an employer may restrict
27 employment to citizens of the United States where such restriction
28 is required by federal law or is otherwise necessary to protect the
29 national interest.

30 The provisions of subsections a. and b. of section 57 of
31 P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of
32 P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an
33 unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

34 For the purposes of this subsection, a "bona fide executive" is a
35 top level employee who exercises substantial executive authority
36 over a significant number of employees and a large volume of
37 business. A "high policy-making position" is a position in which a
38 person plays a significant role in developing policy and in
39 recommending the implementation thereof.

40 b. For a labor organization, because of the race, creed, color,
41 national origin, ancestry, age, marital status, civil union status,
42 domestic partnership status, affectional or sexual orientation,
43 disability or sex of any individual, or because of the liability for
44 service in the Armed Forces of the United States or nationality of
45 any individual, to exclude or to expel from its membership such
46 individual or to discriminate in any way against any of its members,
47 against any applicant for, or individual included in, any apprentice
48 or other training program or against any employer or any individual

1 employed by an employer; provided, however, that nothing herein
2 contained shall be construed to bar a labor organization from
3 excluding from its apprentice or other training programs any person
4 on the basis of sex in those certain circumstances where sex is a
5 bona fide occupational qualification reasonably necessary to the
6 normal operation of the particular apprentice or other training
7 program.

8 c. For any employer or employment agency to print or circulate
9 or cause to be printed or circulated any statement, advertisement or
10 publication, or to use any form of application for employment, or to
11 make an inquiry in connection with prospective employment, which
12 expresses, directly or indirectly, any limitation, specification or
13 discrimination as to race, creed, color, national origin, ancestry,
14 age, marital status, civil union status, domestic partnership status,
15 affectional or sexual orientation, disability, nationality or sex or
16 liability of any applicant for employment for service in the Armed
17 Forces of the United States, or any intent to make any such
18 limitation, specification or discrimination, unless based upon a bona
19 fide occupational qualification.

20 d. For any person to take reprisals against any person because
21 that person has opposed any practices or acts forbidden under this
22 act or because that person has filed a complaint, testified or assisted
23 in any proceeding under this act or to coerce, intimidate, threaten or
24 interfere with any person in the exercise or enjoyment of, or on
25 account of that person having aided or encouraged any other person
26 in the exercise or enjoyment of, any right granted or protected by
27 this act.

28 e. For any person, whether an employer or an employee or not,
29 to aid, abet, incite, compel or coerce the doing of any of the acts
30 forbidden under this act, or to attempt to do so.

31 f. (1) For any owner, lessee, proprietor, manager,
32 superintendent, agent, or employee of any place of public
33 accommodation directly or indirectly to refuse, withhold from or
34 deny to any person any of the accommodations, advantages,
35 facilities or privileges thereof, or to discriminate against any person
36 in the furnishing thereof, or directly or indirectly to publish,
37 circulate, issue, display, post or mail any written or printed
38 communication, notice, or advertisement to the effect that any of
39 the accommodations, advantages, facilities, or privileges of any
40 such place will be refused, withheld from, or denied to any person
41 on account of the race, creed, color, national origin, ancestry,
42 marital status, civil union status, domestic partnership status, sex,
43 affectional or sexual orientation, disability or nationality of such
44 person, or that the patronage or custom thereof of any person of any
45 particular race, creed, color, national origin, ancestry, marital status,
46 civil union status, domestic partnership status, sex, affectional or
47 sexual orientation, disability or nationality is unwelcome,
48 objectionable or not acceptable, desired or solicited, and the

1 production of any such written or printed communication, notice or
2 advertisement, purporting to relate to any such place and to be made
3 by any owner, lessee, proprietor, superintendent or manager thereof,
4 shall be presumptive evidence in any action that the same was
5 authorized by such person; provided, however, that nothing
6 contained herein shall be construed to bar any place of public
7 accommodation which is in its nature reasonably restricted
8 exclusively to individuals of one sex, and which shall include but
9 not be limited to any summer camp, day camp, or resort camp,
10 bathhouse, dressing room, swimming pool, gymnasium, comfort
11 station, dispensary, clinic or hospital, or school or educational
12 institution which is restricted exclusively to individuals of one sex,
13 from refusing, withholding from or denying to any individual of the
14 opposite sex any of the accommodations, advantages, facilities or
15 privileges thereof on the basis of sex; provided further, that the
16 foregoing limitation shall not apply to any restaurant as defined in
17 R.S.33:1-1 or place where alcoholic beverages are served.

18 (2) Notwithstanding the definition of "public accommodation "
19 as set forth in subsection l. of section 5 of P.L.1945, c.169 (C.10:5-
20 5), for any owner, lessee, proprietor, manager, superintendent,
21 agent, or employee of any private club or association to directly or
22 indirectly refuse, withhold from or deny to any individual who has
23 been accepted as a club member and has contracted for or is
24 otherwise entitled to full club membership any of the
25 accommodations, advantages, facilities or privileges thereof, or to
26 discriminate against any member in the furnishing thereof on
27 account of the race, creed, color, national origin, ancestry, marital
28 status, civil union status, domestic partnership status, sex,
29 affectional or sexual orientation, disability or nationality of such
30 person.

31 In addition to the penalties otherwise provided for a violation of
32 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)
33 of subsection f. of this section is the holder of an alcoholic beverage
34 license issued under the provisions of R.S.33:1-12 for that private
35 club or association, the matter shall be referred to the Director of
36 the Division of Alcoholic Beverage Control who shall impose an
37 appropriate penalty in accordance with the procedures set forth in
38 R.S.33:1-31.

39 g. For any person, including but not limited to, any owner,
40 lessee, sublessee, assignee or managing agent of, or other person
41 having the right of ownership or possession of or the right to sell,
42 rent, lease, assign, or sublease any real property or part or portion
43 thereof, or any agent or employee of any of these:

44 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
45 to deny to or withhold from any person or group of persons any real
46 property or part or portion thereof because of race, creed, color,
47 national origin, ancestry, marital status, civil union status, domestic
48 partnership status, sex, affectional or sexual orientation, familial

1 status, disability, nationality, or source of lawful income used for
2 rental or mortgage payments;

3 (2) To discriminate against any person or group of persons
4 because of race, creed, color, national origin, ancestry, marital
5 status, civil union status, domestic partnership status, sex,
6 affectional or sexual orientation, familial status, disability,
7 nationality or source of lawful income used for rental or mortgage
8 payments in the terms, conditions or privileges of the sale, rental or
9 lease of any real property or part or portion thereof or in the
10 furnishing of facilities or services in connection therewith;

11 (3) To print, publish, circulate, issue, display, post or mail, or
12 cause to be printed, published, circulated, issued, displayed, posted
13 or mailed any statement, advertisement, publication or sign, or to
14 use any form of application for the purchase, rental, lease,
15 assignment or sublease of any real property or part or portion
16 thereof, or to make any record or inquiry in connection with the
17 prospective purchase, rental, lease, assignment, or sublease of any
18 real property, or part or portion thereof which expresses, directly or
19 indirectly, any limitation, specification or discrimination as to race,
20 creed, color, national origin, ancestry, marital status, civil union
21 status, domestic partnership status, sex, affectional or sexual
22 orientation, familial status, disability, nationality, or source of
23 lawful income used for rental or mortgage payments, or any intent
24 to make any such limitation, specification or discrimination, and the
25 production of any such statement, advertisement, publicity, sign,
26 form of application, record, or inquiry purporting to be made by any
27 such person shall be presumptive evidence in any action that the
28 same was authorized by such person; provided, however, that
29 nothing contained in this subsection shall be construed to bar any
30 person from refusing to sell, rent, lease, assign or sublease or from
31 advertising or recording a qualification as to sex for any room,
32 apartment, flat in a dwelling or residential facility which is planned
33 exclusively for and occupied by individuals of one sex to any
34 individual of the exclusively opposite sex on the basis of sex;

35 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
36 to deny to or withhold from any person or group of persons any real
37 property or part or portion thereof because of the source of any
38 lawful income received by the person or the source of any lawful
39 rent payment to be paid for the real property; or

40 (5) To refuse to rent or lease any real property to another person
41 because that person's family includes children under 18 years of
42 age, or to make an agreement, rental or lease of any real property
43 which provides that the agreement, rental or lease shall be rendered
44 null and void upon the birth of a child. This paragraph shall not
45 apply to housing for older persons as defined in subsection mm. of
46 section 5 of P.L.1945, c.169 (C.10:5-5).

47 h. For any person, including but not limited to, any real estate
48 broker, real estate salesperson, or employee or agent thereof:

1 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
2 sale, rental, lease, assignment, or sublease any real property or part
3 or portion thereof to any person or group of persons or to refuse to
4 negotiate for the sale, rental, lease, assignment, or sublease of any
5 real property or part or portion thereof to any person or group of
6 persons because of race, creed, color, national origin, ancestry,
7 marital status, civil union status, domestic partnership status,
8 familial status, sex, affectional or sexual orientation, disability,
9 nationality, or source of lawful income used for rental or mortgage
10 payments, or to represent that any real property or portion thereof is
11 not available for inspection, sale, rental, lease, assignment, or
12 sublease when in fact it is so available, or otherwise to deny or
13 withhold any real property or any part or portion of facilities thereof
14 to or from any person or group of persons because of race, creed,
15 color, national origin, ancestry, marital status, civil union status,
16 domestic partnership status, familial status, sex, affectional or
17 sexual orientation, disability or nationality;

18 (2) To discriminate against any person because of race, creed,
19 color, national origin, ancestry, marital status, civil union status,
20 domestic partnership status, familial status, sex, affectional or
21 sexual orientation, disability, nationality, or source of lawful
22 income used for rental or mortgage payments in the terms,
23 conditions or privileges of the sale, rental, lease, assignment or
24 sublease of any real property or part or portion thereof or in the
25 furnishing of facilities or services in connection therewith;

26 (3) To print, publish, circulate, issue, display, post, or mail, or
27 cause to be printed, published, circulated, issued, displayed, posted
28 or mailed any statement, advertisement, publication or sign, or to
29 use any form of application for the purchase, rental, lease,
30 assignment, or sublease of any real property or part or portion
31 thereof or to make any record or inquiry in connection with the
32 prospective purchase, rental, lease, assignment, or sublease of any
33 real property or part or portion thereof which expresses, directly or
34 indirectly, any limitation, specification or discrimination as to race,
35 creed, color, national origin, ancestry, marital status, civil union
36 status, domestic partnership status, familial status, sex, affectional
37 or sexual orientation, disability, nationality, or source of lawful
38 income used for rental or mortgage payments or any intent to make
39 any such limitation, specification or discrimination, and the
40 production of any such statement, advertisement, publicity, sign,
41 form of application, record, or inquiry purporting to be made by any
42 such person shall be presumptive evidence in any action that the
43 same was authorized by such person; provided, however, that
44 nothing contained in this subsection h., shall be construed to bar
45 any person from refusing to sell, rent, lease, assign or sublease or
46 from advertising or recording a qualification as to sex for any room,
47 apartment, flat in a dwelling or residential facility which is planned

1 exclusively for and occupied exclusively by individuals of one sex
2 to any individual of the opposite sex on the basis of sex;

3 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
4 to deny to or withhold from any person or group of persons any real
5 property or part or portion thereof because of the source of any
6 lawful income received by the person or the source of any lawful
7 rent payment to be paid for the real property; or

8 (5) To refuse to rent or lease any real property to another person
9 because that person's family includes children under 18 years of
10 age, or to make an agreement, rental or lease of any real property
11 which provides that the agreement, rental or lease shall be rendered
12 null and void upon the birth of a child. This paragraph shall not
13 apply to housing for older persons as defined in subsection mm. of
14 section 5 of P.L.1945, c.169 (C.10:5-5).

15 i. For any person, bank, banking organization, mortgage
16 company, insurance company or other financial institution, lender
17 or credit institution involved in the making or purchasing of any
18 loan or extension of credit, for whatever purpose, whether secured
19 by residential real estate or not, including but not limited to
20 financial assistance for the purchase, acquisition, construction,
21 rehabilitation, repair or maintenance of any real property or part or
22 portion thereof or any agent or employee thereof:

23 (1) To discriminate against any person or group of persons
24 because of race, creed, color, national origin, ancestry, marital
25 status, civil union status, domestic partnership status, sex,
26 affectional or sexual orientation, disability, familial status or
27 nationality, in the granting, withholding, extending, modifying,
28 renewing, or purchasing, or in the fixing of the rates, terms,
29 conditions or provisions of any such loan, extension of credit or
30 financial assistance or purchase thereof or in the extension of
31 services in connection therewith;

32 (2) To use any form of application for such loan, extension of
33 credit or financial assistance or to make record or inquiry in
34 connection with applications for any such loan, extension of credit
35 or financial assistance which expresses, directly or indirectly, any
36 limitation, specification or discrimination as to race, creed, color,
37 national origin, ancestry, marital status, civil union status, domestic
38 partnership status, sex, affectional or sexual orientation, disability,
39 familial status or nationality or any intent to make any such
40 limitation, specification or discrimination; unless otherwise
41 required by law or regulation to retain or use such information;

42 (3) (Deleted by amendment, P.L.2003, c.180).

43 (4) To discriminate against any person or group of persons
44 because of the source of any lawful income received by the person
45 or the source of any lawful rent payment to be paid for the real
46 property; or

47 (5) To discriminate against any person or group of persons
48 because that person's family includes children under 18 years of

1 age, or to make an agreement or mortgage which provides that the
2 agreement or mortgage shall be rendered null and void upon the
3 birth of a child. This paragraph shall not apply to housing for older
4 persons as defined in subsection mm. of section 5 of P.L.1945,
5 c.169 (C.10:5-5).

6 j. For any person whose activities are included within the
7 scope of this act to refuse to post or display such notices concerning
8 the rights or responsibilities of persons affected by this act as the
9 Attorney General may by regulation require.

10 k. For any real estate broker, real estate salesperson or
11 employee or agent thereof or any other individual, corporation,
12 partnership, or organization, for the purpose of inducing a
13 transaction for the sale or rental of real property from which
14 transaction such person or any of its members may benefit
15 financially, to represent that a change has occurred or will or may
16 occur in the composition with respect to race, creed, color, national
17 origin, ancestry, marital status, civil union status, domestic
18 partnership status, familial status, sex, affectional or sexual
19 orientation, disability, nationality, or source of lawful income used
20 for rental or mortgage payments of the owners or occupants in the
21 block, neighborhood or area in which the real property is located,
22 and to represent, directly or indirectly, that this change will or may
23 result in undesirable consequences in the block, neighborhood or
24 area in which the real property is located, including, but not limited
25 to the lowering of property values, an increase in criminal or anti-
26 social behavior, or a decline in the quality of schools or other
27 facilities.

28 l. For any person to refuse to buy from, sell to, lease from or
29 to, license, contract with, or trade with, provide goods, services or
30 information to, or otherwise do business with any other person on
31 the basis of the race, creed, color, national origin, ancestry, age,
32 sex, affectional or sexual orientation, marital status, civil union
33 status, domestic partnership status, liability for service in the Armed
34 Forces of the United States, disability, nationality, or source of
35 lawful income used for rental or mortgage payments of such other
36 person or of such other person's spouse, partners, members,
37 stockholders, directors, officers, managers, superintendents, agents,
38 employees, business associates, suppliers, or customers. This
39 subsection shall not prohibit refusals or other actions (1) pertaining
40 to employee-employer collective bargaining, labor disputes, or
41 unfair labor practices, or (2) made or taken in connection with a
42 protest of unlawful discrimination or unlawful employment
43 practices.

44 m. For any person to:

45 (1) Grant or accept any letter of credit or other document which
46 evidences the transfer of funds or credit, or enter into any contract
47 for the exchange of goods or services, where the letter of credit,
48 contract, or other document contains any provisions requiring any

1 person to discriminate against or to certify that he, she or it has not
2 dealt with any other person on the basis of the race, creed, color,
3 national origin, ancestry, age, sex, affectional or sexual orientation,
4 marital status, civil union status, domestic partnership status,
5 disability, liability for service in the Armed Forces of the United
6 States, or nationality of such other person or of such other person's
7 spouse, partners, members, stockholders, directors, officers,
8 managers, superintendents, agents, employees, business associates,
9 suppliers, or customers.

10 (2) Refuse to grant or accept any letter of credit or other
11 document which evidences the transfer of funds or credit, or refuse
12 to enter into any contract for the exchange of goods or services, on
13 the ground that it does not contain such a discriminatory provision
14 or certification.

15 The provisions of this subsection shall not apply to any letter of
16 credit, contract, or other document which contains any provision
17 pertaining to employee-employer collective bargaining, a labor
18 dispute or an unfair labor practice, or made in connection with the
19 protest of unlawful discrimination or an unlawful employment
20 practice, if the other provisions of such letter of credit, contract, or
21 other document do not otherwise violate the provisions of this
22 subsection.

23 n. For any person to aid, abet, incite, compel, coerce, or induce
24 the doing of any act forbidden by subsections l. and m. of section
25 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
26 do so. Such prohibited conduct shall include, but not be limited to:

27 (1) Buying from, selling to, leasing from or to, licensing,
28 contracting with, trading with, providing goods, services, or
29 information to, or otherwise doing business with any person
30 because that person does, or agrees or attempts to do, any such act
31 or any act prohibited by this subsection; or

32 (2) Boycotting, commercially blacklisting or refusing to buy
33 from, sell to, lease from or to, license, contract with, provide goods,
34 services or information to, or otherwise do business with any person
35 because that person has not done or refuses to do any such act or
36 any act prohibited by this subsection; provided that this subsection
37 shall not prohibit refusals or other actions either pertaining to
38 employee-employer collective bargaining, labor disputes, or unfair
39 labor practices, or made or taken in connection with a protest of
40 unlawful discrimination or unlawful employment practices.

41 o. For any multiple listing service, real estate brokers'
42 organization or other service, organization or facility related to the
43 business of selling or renting dwellings to deny any person access
44 to or membership or participation in such organization, or to
45 discriminate against such person in the terms or conditions of such
46 access, membership, or participation, on account of race, creed,
47 color, national origin, ancestry, age, marital status, civil union

1 status, domestic partnership status, familial status, sex, affectional
2 or sexual orientation, disability or nationality.

3 (cf: P.L.2003, c.246, s.12)

4

5 89. Section 3 of P.L.1989, c.261 (C.34:11B-3) is amended to
6 read as follows:

7 3. As used in this act:

8 a. "Child" means a biological, adopted, or resource family
9 child, stepchild, legal ward, or child of a parent who is

10 (1) under 18 years of age; or

11 (2) 18 years of age or older but incapable of self-care because of
12 a mental or physical impairment.

13 b. "Director" means the Director of the Division on Civil
14 Rights.

15 c. "Division" means the Division on Civil Rights in the
16 Department of Law and Public Safety.

17 d. "Employ" means to suffer or permit to work for
18 compensation, and includes ongoing, contractual relationships in
19 which the employer retains substantial direct or indirect control
20 over the employee's employment opportunities or terms and
21 conditions of employment.

22 e. "Employee" means a person who is employed for at least 12
23 months by an employer, with respect to whom benefits are sought
24 under this act, for not less than 1,000 base hours during the
25 immediately preceding 12-month period.

26 f. "Employer" means a person or corporation, partnership,
27 individual proprietorship, joint venture, firm or company or other
28 similar legal entity which engages the services of an employee and
29 which:

30 (1) With respect to the period of time from the effective date of
31 this act until the 365th day following the effective date of this act,
32 employs 100 or more employees for each working day during each
33 of 20 or more calendar workweeks in the then current or
34 immediately preceding calendar year;

35 (2) With respect to the period of time from the 366th day
36 following the effective date of this act until the 1,095th day
37 following the effective date of this act, employs 75 or more
38 employees for each working day during each of 20 or more calendar
39 workweeks in the then current or immediately preceding calendar
40 year; and

41 (3) With respect to any time after the 1,095th day following the
42 effective date of this act, employs 50 or more employees for each
43 working day during each of 20 or more calendar workweeks in the
44 then current or immediately preceding calendar year. "Employer"
45 includes the State, any political subdivision thereof, and all public
46 offices, agencies, boards or bodies.

47 g. "Employment benefits" means all benefits and policies
48 provided or made available to employees by an employer, and

1 includes group life insurance, health insurance, disability insurance,
2 sick leave, annual leave, pensions, or other similar benefits.

3 h. "Parent" means a person who is the biological parent,
4 adoptive parent, resource family parent, step-parent, parent-in-law
5 or legal guardian, having a "parent-child relationship" with a child
6 as defined by law, or having sole or joint legal or physical custody,
7 care, guardianship, or visitation with a child.

8 i. "Family leave" means leave from employment so that the
9 employee may provide care made necessary by reason of:

10 (1) the birth of a child of the employee;

11 (2) the placement of a child with the employee in connection
12 with adoption of such child by the employee; or

13 (3) the serious health condition of a family member of the
14 employee.

15 j. "Family member" means a child, parent, [or]'[.]'¹ spouse,
16 or '[civil union partner] one partner in a civil union couple'¹.

17 k. "Reduced leave schedule" means leave scheduled for fewer
18 than an employee's usual number of hours worked per workweek
19 but not for fewer than an employee's usual number of hours worked
20 per workday, unless agreed to by the employee and the employer.

21 l. "Serious health condition" means an illness, injury,
22 impairment, or physical or mental condition which requires:

23 (1) inpatient care in a hospital, hospice, or residential medical
24 care facility; or

25 (2) continuing medical treatment or continuing supervision by a
26 health care provider.

27 (cf: P.L.2004, c.130, s.111).

28

29 90. Section 17 of P.L.1960, c.52 (C.2A:84A-17) is amended to
30 read as follows:

31 2A:84A-17. Privilege of accused

32 (1) Every person has in any criminal action in which he is an
33 accused a right not to be called as a witness and not to testify.

34 (2) The spouse or '[civil union partner] one partner in a civil
35 union couple'¹ of the accused in a criminal action shall not testify in
36 such action except to prove the fact of marriage or civil union
37 unless (a) such spouse or partner consents, or (b) the accused is
38 charged with an offense against the spouse or partner, a child of the
39 accused or of the spouse or partner, or a child to whom the accused
40 or the spouse or partner stands in the place of a parent, or (c) such
41 spouse or partner is the complainant.

42 (3) An accused in a criminal action has no privilege to refuse
43 when ordered by the judge, to submit his body to examination or to
44 do any act in the presence of the judge or the trier of the fact, except
45 to refuse to testify.

46 (cf: P.L.1992, c.142, s.1)

1 91. (New section) On or after the effective date of this act, no
2 domestic partnerships shall be registered under P.L.2003, c. 246
3 (C.26:8A-1 et seq.), except that two persons who are each 62 years
4 of age or older '~~and not of the same sex~~'¹ may establish a
5 domestic partnership pursuant to the provisions of P.L.2003, c.246
6 (C.26:8A-1 et seq.). This act shall not alter the rights and
7 responsibilities of domestic partnerships existing before the
8 effective date of this act, except that eligible domestic partners shall
9 be given notice and opportunity to enter into a civil union pursuant
10 to the provisions of this act. Entry into a civil union, when joined
11 by both parties to an existing domestic partnership, shall operate to
12 terminate the domestic partnership.

13
14 92. (New section) Whenever in any law, rule, regulation,
15 judicial or administrative proceeding or otherwise, reference is
16 made to "marriage," "husband," "wife," "spouse," "family,"
17 "immediate family," "dependent," "next of kin," ¹"widow,"
18 "widower," "widowed"¹ or another word which in a specific
19 context denotes a marital or spousal relationship, the same shall
20 include a civil union pursuant to the provisions of this act.

21
22 93. The Commissioner of Health and Senior Services in
23 consultation with the Director of the Administrative Office of the
24 Courts, pursuant to the "Administrative Procedure Act," P.L.1968,
25 c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations
26 necessary to effectuate the purposes of this act. ¹These rules and
27 regulations shall address the issue of how partners in a civil union
28 couple may legally answer questions on forms, governmental and
29 private, concerning their status as partners in a civil union couple. ¹

30
31 94. a. There is hereby established the New Jersey Civil Union
32 Review Commission commencing on the effective date of P.L. ,
33 c. (C.) (pending before the Legislature as this bill).

34 b. The commission shall be composed of 13 members to be
35 appointed as follows: the Attorney General or his designee, the
36 Commissioner of the Department of Banking and Insurance or his
37 designee, the Commissioner of Health and Senior Services or his
38 designee, the Commissioner of Human Services or his designee, the
39 Commissioner of the Department of Children and Families or his
40 designee, the Director of the Division of Civil Rights in the
41 Department of Law and Public Safety of his designee, one public
42 member appoint by the President of the Senate, one public member
43 appointed by the Speaker of the General Assembly, and five public
44 members appointed by the Governor, with the advise and consent of
45 the Senate, no more than three who shall be of the same political
46 party.

- 1 c. It shall be the duty of the commission to study all aspects of
2 P.L. ,c. (C.)(pending before the Legislature as this bill)
3 which authorizes civil unions including, but not limited to:
- 4 (1) evaluate the implementation, operation and effectiveness of
5 the act;
 - 6 (2) collect information about the act's effectiveness from
7 members of the public, State agencies and private and public sector
8 businesses and organizations;
 - 9 (3) determine whether additional protections are needed;
 - 10 (4) collect information about the recognition and treatment of
11 civil unions by other states and jurisdictions including the
12 procedures for dissolution; ¹**[and]**¹
 - 13 (5) 'evaluate the effect on same-sex couples, their children and
14 other family members of being provided civil unions rather than
15 marriage;
 - 16 (6) evaluate the financial impact on the State of New Jersey of
17 same-sex couples being provided civil unions rather than marriage;
18 and
 - 19 (7)¹ review the "Domestic Partnership Act," P.L.2003, c.246
20 (C.26:8A-1 et seq.) and make recommendations whether this act
21 should be repealed.
- 22 d. The commission shall organize as soon as possible after the
23 appointment of its members. The commission shall be established
24 for a term of three years and the members shall be appointed for the
25 full term of three years. Vacancies in the membership of the
26 commission shall be filled in the same manner as the original
27 appointment. The commission members shall choose a Chair from
28 among its members.
- 29 e. The members of the commission shall serve without
30 compensation, but may be reimbursed for necessary expenses
31 incurred in the performance of their duties, within the limits of
32 funds appropriated or otherwise made available to the commission
33 for its purposes.
- 34 f. The commission is entitled to the assistance and service of
35 the employees of any State, county or municipal department, board,
36 bureau, commission or agency as it may require and as may be
37 available to it for its purposes, and to employ stenographic and
38 clerical assistance and to incur traveling or other miscellaneous
39 expenses as may be necessary in order to perform its duties, within
40 the limits of funds appropriated or otherwise made available to it
41 for its purposes.
- 42 g. The commission shall report ¹**[annually]** semi-annually¹ its
43 findings and recommendations to the Legislature and the Governor.
- 44 h. The commission shall expire three years from the date of its
45 initial organizational meeting and upon submission of its ¹**[third**
46 **and]**¹ final report.

1 ¹95. (New section) A civil union relationship entered into
2 outside of this State, which is valid under the laws of the
3 jurisdiction under which the civil union relationship was created,
4 shall be valid in this State.¹

5
6 ¹[95.] 96.¹ This act shall take effect on the ²[30th]60th² day
7 after the enactment of this act, but the Commissioner of Health and
8 Senior Services and the Director of the Administrative Office of the
9 Courts may take such anticipatory administrative action in advance
10 as shall be necessary for the implementation of the act.

11

12

13

14

15 Revises the marriage laws; establishes civil unions; establishes
16 the “New Jersey Civil Union Review Commission.”

ASSEMBLY, No. 3787

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED DECEMBER 4, 2006

Sponsored by:

Assemblyman WILFREDO CARABALLO

District 29 (Essex and Union)

SYNOPSIS

Revises the marriage laws; establishes civil unions; establishes the “New Jersey Civil Union Review Commission.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning marriage and civil unions, establishing a
2 commission and revising and supplementing various parts of the
3 statutory law.

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 that:

9 a. Same-sex couples in New Jersey live together in committed
10 relationships without the benefits and rights afforded to
11 heterosexual couples who choose to marry;

12 b. Promoting such stable and durable relationships as well as
13 eliminating obstacles and hardships these couples may face is
14 necessary and proper and reaffirms this State's obligation to insure
15 equality for all the citizens of New Jersey;

16 c. New Jersey was one of the first states to adopt comprehensive
17 legislation prohibiting discrimination based on affectional or sexual
18 orientation and one of the first states to formally recognize domestic
19 partnerships by enacting the "Domestic Partnership Act," P.L. 2003,
20 c. 246 (C.26:8A-1 et seq.) on January 12, 2004 thereby
21 guaranteeing in law certain rights and benefits to those individuals
22 who enter into domestic partnerships;

23 d. Those rights and benefits afforded to same-sex couples under
24 the "Domestic Partnership Act" should be expanded by the legal
25 recognition of civil unions between same-sex couples in order to
26 provide these couples with all the rights and benefits that married
27 heterosexual couples enjoy;

28 e. It is the intent of the Legislature to comply with the
29 constitutional mandate set forth by the New Jersey Supreme Court
30 in the recent landmark decision of Lewis v. Harris, 188 N.J. 415,
31 (October 25, 2006) wherein the Court held that the equal protection
32 guarantee of Article I, paragraph 1 of the State Constitution was
33 violated by denying rights and benefits to committed same-sex
34 couples which were statutorily given to their heterosexual
35 counterparts. The Court stated that the "State can fulfill that
36 constitutional requirement in one of two ways. It can either amend
37 the marriage statutes to include same-sex couples or enact a parallel
38 statutory structure by another name, in which same-sex couples
39 would not only enjoy the rights and benefits, but also bear the
40 burdens and obligations of civil marriage." Id. at 463.

41 f. The Legislature has chosen to establish civil unions by
42 amending the current marriage statute to include same-sex couples.
43 In doing so, the Legislature is continuing its longstanding history of
44 insuring equality under the laws for all New Jersey citizens by
45 providing same-sex couples with the same rights and benefits as

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 heterosexual couples who choose to marry.

2

3 2. (New section) As used in this act :

4 “Civil union license or civil union certificate” means a document
5 that certifies that the persons named on the license or certificate
6 have established a civil union in this State in compliance with this
7 act.

8 “Civil union” means the legally recognized union of two eligible
9 individuals of the same sex established pursuant to this act. Parties
10 to a civil union shall receive the same benefits and protections and
11 be subject to the same responsibilities as spouses in a marriage.

12 “Commissioner” means the Commissioner of Health and Senior
13 Services.

14 “Civil union partner” means a person who has established a civil
15 union pursuant to the provisions of this act.

16 “Party to a civil union” means a person who has established a
17 civil union pursuant to the provisions of this act.

18

19 3. (New section) For two persons to establish a civil union in
20 this State, it shall be necessary that they satisfy all of the following
21 criteria:

22 a. Not be a party to another civil union, domestic partnership or
23 marriage in this State;

24 b. Be of the same sex and therefore be excluded from the
25 marriage laws of this State or any other state;

26 c. Be at least 18 years of age, except as provided in section 10 of
27 this act.

28

29 4. (New section) a. Parties to a civil union shall have all of the
30 same benefits, protections and responsibilities under law, whether
31 they derive from statute, administrative or court rule, public policy,
32 common law or any other source of civil law, as are granted to
33 spouses in a marriage.

34 b. The dissolution of civil unions shall follow the same
35 procedures and be subject to the same substantive rights and
36 obligations that are involved in the dissolution of marriage.

37 c. The laws of domestic relations, including annulment,
38 premarital agreements, separation, divorce, child custody and
39 support, property division and maintenance, and post-relationship
40 spousal support, shall apply to the parties to a civil union.

41 d. The parties to a civil union may modify the terms, conditions
42 or effects of their civil union in the same manner and to the same
43 extent as married person who execute an antenuptial agreement or
44 other agreement recognized and enforceable under the law, setting
45 forth particular understandings with respect to their union.

46 e. The rights of the parties to a civil union with respect to a child
47 of whom either becomes the parent during the term of the civil
48 union, shall be the same as those of a married couple with respect to
49 a child of whom either spouse becomes the parent during the

1 marriage.

2 f. All contracts made between persons in contemplation of a
3 civil union shall remain in full force after such civil union takes
4 place.

5 g. A copy of the record of the civil union received from the local
6 or State registrar shall be presumptive evidence of the civil union in
7 all courts.

8

9 5. (New section) The following list of legal benefits, protections
10 and responsibilities of spouses shall apply in like manner to the
11 parties to a civil union, but shall not be construed to be an exclusive
12 list of such benefits, protections and responsibilities:

13 a. laws relating to title, tenure, descent and distribution, intestate
14 succession, waiver of will, survivorship, or other incidents of the
15 acquisition, ownership or transfer, inter vivos or at death, of real or
16 personal property, including but not limited to eligibility to hold
17 real and personal property as tenants by the entirety;

18 b. causes of action related to or dependent upon spousal status,
19 including an action for wrongful death, emotional distress, loss of
20 consortium, or other torts or actions under contracts reciting, related
21 to, or dependent upon spousal status;

22 c. probate law and procedure, including nonprobate transfer;

23 d. adoption law and procedures;

24 e. laws relating to insurance, health and pension benefits;

25 f. domestic violence protections pursuant to the "Prevention of
26 Domestic Violence Act of 1991," P.L.1991, c.261 (2C:25-17 et
27 seq.) and domestic violence programs;

28 g. prohibitions against discrimination based upon marital status;

29 h. victim's compensation benefits, including but not limited to
30 compensation to spouse, children and relatives of homicide victims;

31 i. workers' compensation benefits pursuant to chapter 15 of Title
32 34 of the Revised Statutes, including but not limited to survivors'
33 benefits and payment of back wages;

34 j. laws relating to emergency and nonemergency medical care
35 and treatment, hospital visitation and notification, and any rights
36 guaranteed to a hospital patient pursuant to P.L.1989, c.170
37 (C.26:2H-12.7 et seq.) or a nursing home resident pursuant to
38 P.L.1976, c.120 (C.30:13-1 et seq.);

39 k. advance directives for health care and designation as a health
40 care representative pursuant to P.L.1991, c.201 (C.26:2H-53 et
41 seq.);

42 l. family leave benefits pursuant to P.L.1989, c.261 (C.34:11B-1
43 et seq.);

44 m. public assistance benefits under State law, including, but not
45 limited to: Work First New Jersey benefits pursuant to P.L.1997,
46 c.38 (C.44:10-55 et seq.); medical assistance pursuant to P.L.1968,
47 c.413 (C.30:4D-1 et seq.); Supplemental Security Income pursuant
48 to P.L.1973, c.256 (C.44:7-85 et seq.); pharmaceutical assistance
49 pursuant to P.L.1975, c.194 (C.30:4D-20 et seq.) and P.L.2001, c.96

1 (C.30:4D-43 et seq.); hearing aid assistance pursuant to P.L.1987,
2 c.298 (C.30:4D-36 et seq.); and utility benefits pursuant to
3 P.L.1979, c.197 (C.48:2-29.15 et seq.) and P.L.1981, c.210 (C.48:2-
4 29.30 et seq.);

5 n. laws relating to taxes imposed by the State or a municipality
6 other than estate taxes, including but not limited to homestead
7 rebate tax allowances, tax deductions based on marital status or
8 exemptions from realty transfer tax based on marital status;

9 o. laws relating to immunity from compelled testimony and the
10 marital communication privilege;

11 p. the home ownership rights of a surviving spouse;

12 q. the right of a spouse to a surname change without petitioning
13 the court;

14 r. laws relating to the making of, revoking and objecting to
15 anatomical gifts pursuant to P.L.1969, c.161 (C.26:6-57 et seq.);

16 s. State pay for military service;

17 t. application for absentee ballots;

18 u. legal requirements for assignment of wages; and

19 v. laws related to tuition assistance for higher education for
20 surviving spouses or children.

21

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

23 37:1-1. Certain marriages or civil unions prohibited.

24 a. A man shall not marry or enter into a civil union with any of
25 his ancestors or descendants, or his sister or brother, or the
26 daughter or son of his brother or sister, or the sister or brother of his
27 father or mother, whether such collateral kindred be of the whole
28 or half blood.

29 b. A woman shall not marry or enter into a civil union with any
30 of her ancestors or descendants, or her sister or brother, or the
31 daughter or son of her brother or sister, or the sister or brother of
32 her father or mother, whether such collateral kindred be of the
33 whole or half blood.

34 c. A marriage or civil union in violation of any of the foregoing
35 provisions shall be absolutely void.

36 (cf: R.S.37:1-1)

37

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

39 37:1-2. Necessity of marriage or civil union license; "licensing
40 officer" defined.

41 Before a marriage or a civil union can be lawfully performed in
42 this [state] State, the persons intending to be married or to enter
43 into a civil union shall obtain a marriage or civil union license from
44 the licensing officer and deliver it to the person who is to officiate,
45 but if the marriage or civil union is to be performed by or before
46 any religious society, institution or organization, the license shall be
47 delivered to such religious society, institution or organization, or
48 any officer thereof.

1 As used in this chapter, "licensing officer" means, as to cities of
2 the first class, the city clerk; as to other municipalities, the registrar
3 of vital statistics; or the deputy of any said official designated by
4 him to issue licenses during his absence.

5 (cf: R.S.37:1-2)

6

7 8. R.S.37:1-3 is amended to read as follows:

8 37:1-3. Where marriage or civil union license to be obtained.

9 The **[licensing officer shall issue the]** marriage or civil union
10 license **[which]** shall be **[obtained]:**

11 a. In the municipality of this state in which the female party to
12 the proposed marriage resides; or

13 b. In the municipality in which the male party resides, if the
14 female party is a nonresident of this state; or

15 c. In the municipality in which the proposed marriage is to be
16 performed, if both parties are nonresidents of this state] issued by
17 the licensing officer in the municipality in which either party
18 resides or, if neither party is a resident of the State, in the
19 municipality in which the proposed marriage or civil union is to be
20 performed.

21 (cf: R.S.37:1-3)

22

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

24 37:1-4. Issuance of marriage or civil union license, emergencies,
25 validity.

26 Except as provided in **[sections 37:1-5 and]** R.S.37:1-6 **[of this**
27 **Title]**, the marriage or civil union license shall not be issued by a
28 licensing officer sooner than 72 hours after the application therefor
29 has been made; provided, however, that the Superior Court may, by
30 order, waive all or any part of said 72-hour period in cases of
31 emergency, upon satisfactory proof being shown to it. Said order
32 shall be filed with the licensing officer and attached to the
33 application for the license.

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

37 (cf: P.L.1991, c.91, s.366)

38

39 10. R.S.37:1-6 is amended to read as follows:

40 37:1-6. A marriage or civil union license shall not be issued to a
41 minor under the age of 18 years, unless the parents or guardian of
42 the minor, if there be any, first certify under their hands and seals,
43 in the presence of two reputable witnesses, their consent thereto,
44 which consent shall be delivered to the licensing officer issuing the
45 license. If the parents, or either of them, or guardian of any such
46 minor shall be of unsound mind, the consent of such parent or
47 guardian to the proposed marriage or civil union shall not be
48 required.

1 When a minor is under the age of 16 years, the consent required
2 by this section must be approved in writing by any judge of the
3 Superior Court, Chancery Division, Family Part. Said approval shall
4 be filed with the licensing officer.

5 The licensing officer shall transmit to the State Bureau of Vital
6 Statistics all such consents, orders, and approvals so received by
7 him in the same manner and subject to the same penalty as in the
8 case of certificates of marriage or civil union and marriage or civil
9 union licenses.

10 **【If any such male applicant for a license to marry shall be a**
11 **minor under the age of 18 years, and shall have been arrested on the**
12 **charge of sexual intercourse with a single, widowed or divorced**
13 **female of good repute for chastity who has thereby become**
14 **pregnant, a license to marry the female may be immediately issued**
15 **by any licensing officer to the minor upon his application therefor,**
16 **without the consent or approval required by this section.】**

17 (cf: P.L.1991, c.91, s.367)

18

19 11. R.S.37:1-7 is amended to read as follows:

20 37:1-7. Issuing of license; remarriage or reaffirming a civil
21 union.

22 The licensing officer is hereby empowered to issue marriage or
23 civil union licenses to the contracting parties who apply therefor
24 and are entitled under the laws of this State to contract matrimony
25 or establish a civil union , authorizing the marriage or civil union
26 of such parties, which license shall be substantially in the
27 following form:

28 "State of New Jersey. County of city, town or township of

29 This is to certify that any person, religious society, institution or
30 organization authorized by law to perform marriage or civil union
31 ceremonies within the State of New Jersey to whom this may come,
32 he or they not knowing any lawful impediment thereto, is hereby
33 authorized and empowered to solemnize the rites of matrimony or
34 the civil union between

35 A B of in the county of and State of and C D
36 of , in the county of and State of , and to certify the
37 same to be the said parties, or either of them, under his hand and
38 seal in his ministerial or official capacity.

39 In testimony whereof, I have hereunto set my hand and affixed
40 the seal of said town, township or city at this day of
41 **【one thousand nine hundred】** two thousand and

42 , (Name and official title)"

43 If the contracting parties desire both a civil and a religious
44 marriage or civil union ceremony, the licensing officer shall issue a
45 license in duplicate, marking one as "issued for civil marriage or
46 civil union ceremony" and one as "issued for religious marriage or
47 civil union ceremony."

48 Nothing in this section shall be construed to prevent the
49 remarriage of a couple already married to each other or to prevent a

1 couple who has entered into a civil union to reaffirm their
2 commitment to one another; provided, a new license is obtained
3 and the marriage or civil union properly reported. Such license
4 shall be plainly marked "Issued for remarriage--originally married
5 to same mate at (state place) on (state date) or Issued for
6 reaffirmation of a civil union—originally entered into a civil union
7 to same mate at (state place) on (state date)." Such a license shall
8 be issued without compliance with the provisions of **[section]** R.S.
9 37:1-4 [of the Revised Statutes] and if applicable of the provisions
10 of "An act concerning marriages" approved May third, one
11 thousand nine hundred and thirty-eight (P.L.1938, c. 126). When
12 such marriage or civil union report is received by the State registrar
13 he shall, if an original marriage or civil union certificate is
14 recorded, make a notation thereon of the remarriage or
15 reaffirmation and its date and place.

16 (cf: P.L.1941, c. 354, s. 1)

17

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

19 37:1-8. Testimony under oath by applicants as to legality of
20 proposed marriage or civil union; witnesses; perjury

21 A licensing officer shall, before issuing a marriage or civil union
22 license, require the contracting parties to appear before him and
23 subscribe and swear to an oath attesting the truth of the facts
24 respecting the legality of the proposed marriage or civil union as set
25 forth in the form supplied by the State Bureau of Vital Statistics.
26 Said testimony shall be verified by a witness of legal age. A
27 licensing officer shall issue a license only if it is thus made to
28 appear before him that no legal impediment to the marriage or civil
29 union exists. Every licensing officer may administer oaths to the
30 contracting parties and their identifying witness.

31 Any identifying witness or applicant applying for a marriage or
32 civil union license who shall knowingly make false answers to any
33 of the inquiries asked by the licensing officer shall be guilty of
34 perjury.

35 (cf: P.L.1946, c. 185, s. 4)

36

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

38 37:1-11. Illegal issuance of license a **[misdemeanor]** disorderly
39 persons offense.

40 Any licensing officer who issues a marriage or civil union license
41 except as provided in this chapter shall be guilty of a
42 **[misdemeanor]** disorderly persons offense.

43 (cf: R.S.37:1-11)

44

45 14. R.S.37:1-12 is amended to read as follows:

46 37:1-12. Fees; disposition in cities of first class.

47 For issuing a marriage or civil union license, the licensing officer
48 shall be entitled to receive from the applicants the sum of three

1 dollars (\$3.00). [All fees so received by the city clerk in cities of
2 the first class shall be paid into the treasury of such city to be used
3 for the relief of its poor.]

4 (cf: P.L.1948, c. 285, s. 3)

5
6 15. Section 1 of P.L.1981, c.382 (C.37:1-12.1) is amended to
7 read as follows:

8 1. In addition to the fee for issuing a marriage or civil union
9 license authorized pursuant to R.S.37:1-12, each licensing officer
10 shall collect a fee of \$25 from the marriage license or civil union
11 license applicants which shall be forwarded on a quarterly basis to
12 the Department of Human Services.

13 (cf: P.L.1992, c.136, s.1)

14

15 16. Section 2 of P.L.1981, c.382 (C.37:1-12.2) is amended to
16 read as follows:

17 2. The Department of Human Services shall establish a trust
18 fund for the deposit of the fees received pursuant to section 1 of
19 **[this act]** of P.L.1981, c.382 (C.37:1-12.1). The moneys from the
20 trust fund shall be used for the specific purpose of establishing and
21 maintaining shelters for the victims of domestic violence, or a. for
22 providing grants-in-aid to such shelters established by local
23 governments or private nonprofit organizations; or b. for providing
24 grants-in-aid to non-residential agencies whose primary purpose is
25 to serve victims of domestic violence in those counties which do not
26 have emergency residential shelters for victims; or c. for providing
27 grants-in-aid to any nonprofit, Statewide coalition whose
28 membership includes a majority of the programs for battered
29 women in New Jersey and whose board membership includes a
30 majority of representatives of these programs and whose purpose is
31 to provide services, community education, and technical assistance
32 to these programs to establish and maintain shelter and related
33 services for victims of domestic violence and their children.

34 (cf: P.L.1992, c.136, s.2).

35

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

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

38 Each judge of the United States Court of Appeals for the Third
39 Circuit, each judge of a federal district court, United States
40 magistrate, judge of a municipal court, judge of the Superior Court,
41 judge of a tax court, retired judge of the Superior Court or Tax
42 Court, or judge of the Superior Court or Tax Court, the former
43 County Court, the former County Juvenile and Domestic Relations
44 Court, or the former County District Court who has resigned in
45 good standing, surrogate of any county, county clerk and any mayor
46 or the deputy mayor when authorized by the mayor, or chairman of
47 any township committee or village president of this State, and every
48 minister of every religion, are hereby authorized to solemnize
49 marriage or civil union between such persons as may lawfully enter

1 into the matrimonial relation or civil union; and every religious
2 society, institution or organization in this State may join together in
3 marriage or civil union such persons according to the rules and
4 customs of the society, institution or organization.

5 (cf: P.L. 2001, c.143, s. 1)

6
7 18. R.S.37:1-15 is amended to read as follows:

8 37:1-15. Solemnizing without presentation of license;
9 **[misdemeanor]** disorderly persons offense .

10 Any person, not authorized by **[section]**R.S.37:1-13 **[of the**
11 **Revised Statutes]** to solemnize marriages or civil unions, who
12 solemnizes a marriage or civil union or any person or religious
13 society, institution or organization, authorized to solemnize
14 marriages or civil unions, who solemnizes a marriage or civil union
15 without the presentation of a license therefor, obtained in
16 accordance with the provisions of article two of this chapter (s.
17 37:1-2 et seq.), shall be guilty of a **[misdemeanor]** disorderly
18 persons offense, and punished by a fine not exceeding five hundred
19 dollars (\$500.00), or imprisonment not exceeding six months, or
20 both.

21 (cf:P.L.1948, c.127, s. 1).

22
23 19. R.S.37:1-16 is amended to read as follows:

24 37:1-16. Interrogation of applicants under oath; perjury.

25 Any person authorized to solemnize marriages or civil unions
26 may administer oaths to the parties applying to be married or to
27 enter into a civil union, and may require them, or either of them, to
28 make true answers to any inquiries made by him in order to
29 ascertain whether, in his judgment, any legal impediment to the
30 proposed marriage or civil union exists.

31 Any person who willfully makes false answers to any such
32 inquiries shall, if the answers are reduced to writing, signed by the
33 party making the same and attached to the certificate of marriage or
34 civil union, be deemed guilty of perjury pursuant to N.J.S.2C:28-1.

35 (cf: R.S. 37:1-16)

36
37 20. R.S.37:1-17 is amended to read as follows:

38 37:1-17. Marriage or civil union license; information provided.

39 On the marriage or civil union license shall be the form for the
40 certificate of marriage or civil union in quadruplicate, to which the
41 licensing officer shall have set forth particularly therein the name,
42 age, parentage, birthplace, residence, Social Security number and
43 **[condition (whether single, widowed or divorced) of each of the**
44 **married persons,]** domestic status of each party, whether single,
45 widowed, divorced, or a former party to a civil union or domestic
46 partnership and the names and county of birth of their parents. The
47 Social Security number shall be kept confidential and may only be
48 released for child support enforcement purposes, and shall not be

1 considered a public record pursuant to P.L.1963, c.73 (C.47:1A-1 et
2 seq.). The person by whom or the religious society, institution, or
3 organization by or before which, the marriage or civil union was
4 solemnized, shall personally or by legally authorized agent
5 subscribe where indicated on the form the date and place of the
6 marriage or civil union. Each certificate of marriage or civil union
7 shall also contain the signature and residence of at least two
8 witnesses who were present at the marriage or civil union
9 ceremony.

10 (cf: P.L.2002, c.88, s.3)

11

12 21. Section 2 of P.L.1980, c.128 (C.37:1-17.1) is amended to
13 read as follows:

14 2. License and certificate of marriage or civil union; transmittal
15 The license and the original certificate shall be transmitted
16 pursuant to R.S. 26:8-41. One copy of the certificate shall be
17 retained by the local registrar and one copy shall be given to the
18 persons contracting the marriage or civil union. The remaining copy
19 shall be retained by the person solemnizing the marriage or civil
20 union.

21 (cf: P.L.1980, c.128, s.2)

22

23 22. Section 3 of P.L.1980, c.128 (C.37:1-17.2) is amended to
24 read as follows:

25 37:1-17.2. Delayed reports; filing; contents; affidavits; evidence.
26 Any marriage or civil union which has occurred or which may
27 hereafter occur and which is not recorded with the State Registrar
28 as required by this chapter, may be recorded by filing a delayed
29 report with the State Registrar, documented by a copy of the
30 application for the license. The delayed report shall contain an
31 affidavit of the person performing the marriage or civil union or if
32 he is deceased or not available, of one or both witnesses to the
33 marriage or civil union ceremony confirming that the ceremony was
34 performed and the date and place of the marriage or civil union.

35 When it is impossible to secure the affidavit of the officiant or
36 either of the witnesses, the affidavit may be made by a person who
37 was present at the marriage or civil union ceremony, or the
38 contracting parties, provided additional documentary evidence is
39 presented.

40 The State Registrar may require evidence of the correctness of
41 the information in a delayed report and may refuse to accept a
42 delayed report if the evidence is not submitted.

43 (cf:P.L.1980, c.128, s.3)

44

45 23. R.S.37:1-18 is amended to read as follows:

46 37:1-18. Penalty for false certificate.

47 Any person, religious society, institution or organization
48 authorized to solemnize marriages or civil unions, who makes any

1 false certificate of marriage or civil union, shall be liable to a
2 penalty of [one hundred dollars] \$100.00.
3 (cf: R.S.37:1-18)

4

5 24. R.S.37:1-19 is amended to read as follows:

6 37:1-19. Penalty; how recovered.

7 Any penalty incurred under any of the provisions of this article
8 may be recovered with costs, in an action at law by and in the name
9 of the local board of health of the municipality where the marriage
10 or civil union occurred, or by and in the name of the [state
11 department of health] Department of Health and Senior Services.

12 (cf: R.S.37:1-19)

13

14 25. Section 1 of P.L.1977, c.282 (C.37:1-27) is amended to read
15 as follows:

16 37:1-27. Tests; information; distribution by issuer of marriage or
17 civil union licenses.

18 A licensing officer or other person issuing marriage or civil
19 union licenses shall make information available to applicants
20 concerning places where such applicants may be tested for genetic
21 diseases including, but not limited to Cooley's Anemia, Sickle Cell
22 Anemia, and Tay-Sachs Disease. Literature containing such
23 information which has been prepared and provided by private
24 organizations may be distributed to applicants by a licensing
25 officer or other person issuing marriage or civil union licenses.

26 (cf: P.L.1977, c.282, s.1)

27

28 26. R.S.37:2-31 is amended to read as follows to read as
29 follows:

30 37. 2-31. This article shall be known and may be cited as the
31 "Uniform Premarital and Pre-Civil Union Agreement Act." Source:
32 New.

33 (cf: P.L.1988, c.99, s.1).

34

35 27. R.S.37:2-32 is amended to read as follows to read as
36 follows:

37 37:2-32. As used in this article:

38 a. "Premarital or pre-civil union agreement" means an agreement
39 between prospective spouses or partners made in contemplation of
40 marriage or a civil union and to be effective upon marriage or upon
41 the parties establishing a civil union;

42 b. "Property" means an interest, present or future, legal or
43 equitable, vested or contingent, in real or personal property,
44 including income and earnings;

45 c. "Unconscionable premarital or pre-civil union agreement"
46 means an agreement, either due to a lack of property or
47 unemployability:

48 (1) Which would render a spouse or partner without a means of
49 reasonable support;

- 1 (2) Which would make a spouse or partner a public charge; or
2 (3) Which would provide a standard of living far below that
3 which was enjoyed before the marriage or civil union.
4 (cf: P.L.1988, c.99, s.1)

5

6 28. R.S.37:2-33 is amended to read as follows:

7 37:2-33. Formalities; consideration.

8 A premarital or pre-civil union agreement shall be in writing,
9 with a statement of assets annexed thereto, signed by both parties,
10 and it is enforceable without consideration.

11 (cf: P.L.1988, c.99, s.1)

12

13 29. R.S.37:2-34 is amended to read as follows:

14 37:2-34. Contents of premarital or pre-civil union agreement. .

15 Parties to a premarital or pre-civil union agreement may contract
16 with respect to:

17 a. The rights and obligations of each of the parties in any of the
18 property of either or both of them whenever and wherever acquired
19 or located;

20 b. The right to buy, sell, use, transfer, exchange, abandon, lease,
21 consume, expend, assign, create a security interest in, mortgage,
22 encumber, dispose of, or otherwise manage and control property;

23 c. The disposition of property upon separation, marital
24 dissolution, dissolution of a civil union, death, or the occurrence or
25 nonoccurrence of any other event;

26 d. The modification or elimination of spousal or civil union
27 partner support;

28 e. The making of a will, trust, or other arrangement to carry out
29 the provisions of the agreement;

30 f. The ownership rights in and disposition of the death benefit
31 from a life insurance policy;

32 g. The choice of law governing the construction of the
33 agreement; and

34 h. Any other matter, including their personal rights and
35 obligations, not in violation of public policy.

36 (cf: P.L.1988, c.99, s.1)

37

38 30. R.S.37:2-35 is amended to read as follows:

39 37:2-35. Premarital or pre-civil union agreement not to adversely
40 affect right of child support .

41 A premarital or pre-civil union agreement shall not adversely
42 affect the right of a child to support.

43 (cf: P.L.1988, c.99, s.1)

44

45 31. R.S.37:2-36 is amended to read as follows:

46 37:2-35. When premarital or pre-civil union agreement becomes
47 effective,

1 A premarital or pre-civil union agreement becomes effective
2 upon marriage of the parties or upon the parties establishing a civil
3 union.

4 (cf: P.L.1988, c.99, s.1)

5

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

7 37:2-37. Amendment or revocation of premarital or pre-civil
8 union agreement .

9 After marriage of the parties or the parties establishing a civil
10 union, a premarital or pre-civil union agreement may be amended or
11 revoked only by a written agreement signed by the parties, and the
12 amended agreement or revocation is enforceable without
13 consideration.

14 (cf: P.L.1988, c.99, s.1)

15

16 33. R.S.37:2-38 is amended to read as follows:

17 37:2-38. Enforcement of premarital or pre-civil union agreement;
18 generally.

19 The burden of proof to set aside a premarital or pre-civil union
20 agreement shall be upon the party alleging the agreement to be
21 unenforceable. A premarital or pre-civil union agreement shall not
22 be enforceable if the party seeking to set aside the agreement
23 proves, by clear and convincing evidence, that:

24 a. The party executed the agreement involuntarily; or

25 b. The agreement was unconscionable at the time enforcement
26 was sought; or

27 c. That party, before execution of the agreement:

28 (1) Was not provided full and fair disclosure of the earnings,
29 property and financial obligations of the other party;

30 (2) Did not voluntarily and expressly waive, in writing, any right
31 to disclosure of the property or financial obligations of the other
32 party beyond the disclosure provided;

33 (3) Did not have, or reasonably could not have had, an adequate
34 knowledge of the property or financial obligations of the other
35 party; or

36 (4) Did not consult with independent legal counsel and did not
37 voluntarily and expressly waive, in writing, the opportunity to
38 consult with independent legal counsel.

39 d. The issue of unconscionability of a premarital or pre-civil
40 union agreement shall be determined by the court as a matter of
41 law.

42 (cf: P.L.1988, c.99, s.1)

43

44 34. R.S.37:2-39 is amended to read as follows:

45 37:2-39. Enforcement of premarital or pre-civil union agreement;
46 marriage or civil union determined void

47 If a marriage or civil union is determined to be void, an
48 agreement that would otherwise have been a premarital or pre-civil

1 union agreement is enforceable only to the extent necessary to
2 avoid an inequitable result.
3 (cf: P.L.1988, c.99, s.1).

4

5 35. R.S.37:2-40 is amended to read as follows:

6 37:2-40. Construction of article.

7 This article shall be construed to effectuate its general purpose
8 to make uniform the law with respect to the subject of the article
9 among states enacting the "Uniform Premarital or Pre-Civil Union
10 Agreement Act."

11 (cf: P.L.1988, c.99, s.1)

12

13 36. R.S.37:2-41 is amended to read as follows:

14 37:2-41. Application of article.

15 This article shall apply to premarital agreements executed on and
16 after its effective date.

17 This article as amended by P.L. .c. (C.)(pending before the
18 Legislature as this bill) shall apply to pre-civil union agreements
19 executed on and after the effective date of P.L. .c. (C.)(pending
20 before the Legislature as this bill).

21 (cf: P.L.1988, c.99, s.1)

22

23 37. R.S.26:8-1 is amended to read as follows:

24 26:8-1. As used in this chapter:

25 "Vital statistics" means statistics concerning births, deaths, fetal
26 deaths, marriages, civil unions and domestic partnerships
27 established pursuant to P.L.2003, c.246 (C.26:8A-1 et al.).

28 "Vital records" means the birth, death, fetal death, marriage, civil
29 union and domestic partnership records from which vital statistics
30 are produced.

31 "State registrar" means the State registrar of vital statistics;
32 "Local registrar" or "registrar" means the local registrar of vital
33 statistics of any district; and "registration district" or "district"
34 means a registration district as constituted by this article.

35 "Live birth" or "birth" means the complete expulsion or
36 extraction from its mother of a product of conception, irrespective
37 of the duration of pregnancy, which, after such separation, breathes
38 or shows any other evidence of life such as beating of the heart,
39 pulsation of the umbilical cord, or definite movement of voluntary
40 muscles, whether or not the umbilical cord has been cut or the
41 placenta attached.

42 "Authentication" means the entry by the State Medical Examiner
43 or a county medical examiner, funeral director or physician into the
44 New Jersey Electronic Death Registration System of a personal
45 identification code, digital signature or other identifier unique to
46 that user, by which the information entered into the system by the
47 user is authenticated by the user who assumes responsibility for its
48 accuracy. "Authentication" also means the process by which the
49 State registrar or a local registrar, deputy registrar, alternate deputy

1 registrar or subregistrar indicates that person's review and approval
2 of information entered into the system by the State Medical
3 Examiner or a county medical examiner, funeral director or
4 physician.

5 "Electronic registration system" means any electronic method,
6 including, but not limited to, one based on Internet technology, of
7 collecting, transmitting, recording and authenticating information
8 from one or more responsible parties, which is necessary to
9 complete a vital record, and is designed to replace a manual, paper-
10 based data collection, recordation and signature system.

11 "New Jersey Electronic Death Registration System" or "NJ-
12 EDRS" is an electronic registration system for completing a
13 certification of death or fetal death record that is authorized,
14 designed and maintained by the State registrar.

15 (cf: P.L.2003, c.246, s.14).

16

17 38. R.S.26:8-4 is amended to read as follows:

18 26:8-4. Duty to furnish information relative to birth, death,
19 marriage, civil union, domestic partnership. Upon demand of the
20 State registrar in person, by mail, by means of the NJ-EDRS, or
21 through the local registrar, every physician, midwife, informant,
22 funeral director, or other person having knowledge of the facts
23 relative to any birth, death, fetal death, marriage, civil union or
24 domestic partnership, shall supply such information as he may
25 possess, upon a form provided by the State registrar, or through the
26 NJ-EDRS, or upon the original birth, death, fetal death, marriage,
27 civil union or domestic partnership certificate or its electronic
28 facsimile or digitized form thereof.

29 (cf:P.L.2003, c.246, s.16).

30

31 39. R.S.26:8-17 is amended to read as follows:

32 26:8-17. The local registrar, immediately upon acceptance of the
33 appointment, shall appoint a deputy to assist in the normal, day-to-
34 day operation of the office and whose duty shall be to act in the
35 registrar's stead in case of absence, disability or death of the
36 registrar. In case of death of the local registrar the deputy shall act
37 as local registrar until a new local registrar has been appointed and
38 qualified.

39 In addition to a deputy registrar, the local registrar may appoint
40 one or two alternate deputy registrars if the local registrar deems
41 such an appointment to be necessary for the office to function
42 efficiently and to provide quality service to the public. The deputy
43 registrar and alternate deputy registrar shall have the authority to
44 receive birth certificates and death certificates; to issue burial
45 permits, and copies of birth, death, marriage, civil union and
46 domestic partnership certificates; to take the oath on marriage and
47 civil union license applications; and to issue marriage and civil
48 union licenses and register domestic partnerships. The deputy
49 registrar and alternate deputy registrar shall receive instructions

1 from and perform their duties under the direct supervision of the
2 registrar, who shall be the final authority with the responsibility of
3 fulfilling the duties of the local registrar outlined in R.S.26:8-25.
4 The deputy registrar and any alternate deputy registrar shall serve at
5 the pleasure of the local registrar.
6 (cf: P.L.2003, c.246, s.16).

7
8 40. R.S.26:8-23 is amended to read as follows:

9 26:8-23. The Department of Health and Senior Services shall
10 have charge of the registration of births, deaths, fetal deaths,
11 marriages, civil unions and domestic partnerships and shall procure
12 the prompt and accurate registration of the same in each registration
13 district and in the department. The department may promulgate any
14 rule or regulation which it deems necessary for the uniform and
15 thorough enforcement of this section.

16 The department may decline permission to examine any record
17 except in the presence of an officer or employee of the department.
18 (cf: P.L.2003, c.246, s.17).

19
20 41. R.S.26:8-24 is amended to read as follows:

21 26:8-24. The State registrar shall:

22 a. Have general supervision throughout the State of the
23 registration of vital records;

24 b. Have supervisory power over local registrars, deputy local
25 registrars, alternate deputy local registrars, and subregistrars, in the
26 enforcement of the law relative to the disposal of dead bodies and
27 the registration of vital records;

28 c. Prepare, print, and supply to all registrars, upon request
29 therefor, all blanks and forms used in registering the records
30 required by said law, and provide for and prescribe the use of the
31 NJ-EDRS. No other blanks or methods of registration shall be used
32 than those supplied or approved by the State registrar;

33 d. Carefully examine the certificates or electronic files received
34 periodically from the local registrars or originating from their
35 jurisdiction; and, if any are incomplete or unsatisfactory, require
36 such further information to be supplied as may be necessary to
37 make the record complete and satisfactory;

38 e. Arrange or bind, and permanently preserve the certificates of
39 vital records, or the information comprising those records, in a
40 systematic manner and in a form that is deemed most consistent
41 with contemporary and developing standards of vital statistical
42 archival record keeping;

43 f. Prepare and maintain a comprehensive and continuous index
44 of all vital records registered, the index to be arranged
45 alphabetically;

46 1. In the case of deaths, by the name of the decedent;

47 2. In the case of births, by the name of child, if given, and if not,
48 then by the name of father or mother;

49 3. In the case of marriages, by the surname of the husband and

- 1 also by the maiden name of the wife;
- 2 4. In the case of civil union, by the surname of each of the parties
- 3 to the civil union;
- 4 5. In the case of domestic partnerships, by the surname of each
- 5 of the partners; and
- 6 g. Mark the birth certificate of a missing child when notified by
- 7 the Missing Persons Unit in the Department of Law and Public
- 8 Safety pursuant to section 3 of P.L.1995, c.395 (C.52:17B-9.8c);
- 9 and
- 10 h. Develop and provide to local registrars an education and
- 11 training program, which the State registrar may require each local
- 12 registrar to complete as a condition of retaining that position, and
- 13 which may be offered to deputy local registrars, alternate deputy
- 14 local registrars and subregistrars at the discretion of the State
- 15 registrar, that includes material designed to implement the NJ-
- 16 EDRS and to familiarize local registrars with the statutory
- 17 requirements applicable to their duties and any rules and regulations
- 18 adopted pursuant thereto, as deemed appropriate by the State
- 19 registrar.
- 20 (cf: P.L.2003, c.246, s.18)
- 21
- 22 42. R.S.26:8-25 is amended to read as follows:
- 23 26:8-25. The local registrar, under the supervision and direction
- 24 of the State registrar, shall:
- 25 a. Strictly and thoroughly enforce the law relative to the
- 26 disposal of dead bodies and the registration of vital records in his
- 27 registration district;
- 28 b. Supply blank forms of certificates to such persons as require
- 29 them;
- 30 c. Supply to every physician, midwife, and funeral director a
- 31 copy of the law relative to the registration of vital records and the
- 32 disposal of dead bodies, together with such rules and regulations as
- 33 may be prepared by the State registrar relative to their enforcement;
- 34 d. Sign his name and insert the date of filing on each certificate
- 35 of birth, marriage, civil union, domestic partnership and death or
- 36 otherwise authenticate the local registrar's identity through the NJ-
- 37 EDRS as prescribed by the State registrar;
- 38 e. Examine each certificate of birth, marriage, civil union,
- 39 domestic partnership or death when presented for record in order to
- 40 ascertain whether or not it has been made in accordance with law
- 41 and the instructions of the State registrar; and if incomplete and
- 42 unsatisfactory, have the same corrected;
- 43 f. At the expense of the municipality make a complete and
- 44 accurate copy of each birth, marriage, civil union, domestic
- 45 partnership and death certificate registered by him on a form or in a
- 46 manner prescribed by the State registrar, to be preserved in his
- 47 office as the local record or in the NJ-EDRS as prescribed by the
- 48 State registrar;
- 49 g. On the tenth day of each month or sooner if requested by the

1 department, transmit to the State registrar all original birth,
2 marriage, civil union, domestic partnership and death certificates
3 received by him for the preceding month, except that a record
4 created on the NJ-EDRS as prescribed by the State registrar shall be
5 deemed to have been transmitted. If no births, marriages, civil
6 union, domestic partnerships or deaths occurred in any month, he
7 shall, on or before the tenth day of the following month, report that
8 fact to the State registrar on a card provided for such purpose;

9 h. Make an immediate report to the State registrar of any
10 violation of R.S.26:6-1 et seq., R.S.26:8-1 et seq., or R.S.37:1-1 et
11 seq. or P.L. , c. (C.)(pending before the Legislature as this
12 amendatory and supplementary bill) coming to his knowledge;

13 i. In the case of any birth in his registration district to parents
14 who are residents of another registration district or of the marriage
15 or civil union in his registration district of any couple who obtained
16 the marriage or civil union license in another registration district, or
17 of the death in his registration district of any person who at the time
18 of death was a resident of another registration district notify the
19 registrar of the other registration district, within five days of the
20 birth, marriage, civil union, or death, on forms prescribed by the
21 State registrar. All entries relating to cause of death on the original
22 certificate shall be entered on the death form sent to the registrar of
23 the other registration district. A record created on the NJ-EDRS as
24 prescribed by the State registrar shall be deemed to have been
25 transmitted to the registrar of the other registration district;

26 j. Mark the birth certificate of a missing child born in his
27 registration district when notified by the State registrar pursuant to
28 section 3 of P.L.1995, c.395 (C.52:17B-9.8c); and

29 k. Make computer facilities with access to the NJ-EDRS
30 available to funeral directors and physicians registered with the NJ-
31 EDRS, within the regular established business hours of the local
32 registrar, for the purpose of providing information necessary to
33 complete a death record.

34 (cf:P.L.2003, c.246, s.19).

35
36 43. R.S.26:8-27 is amended to read as follows:

37 26:8-27. Inquiries to applicants for marriage or civil union
38 license. The department shall issue to each local registrar and to
39 city clerks of cities of the first class, the form and substance of the
40 several inquiries to be made of applicants for a marriage license or a
41 civil union license and their witnesses for the purpose of
42 ascertaining whether any legal impediment to any proposed
43 marriage or civil union exists.

44 The form shall not contain any inquiries or information which
45 concerns the race of an applicant for a marriage or civil union
46 license.

47 (cf: P.L.2002,c.88, c.1)

48
49 44. R.S.26:8-41 is amended to read as follows:

1 26:8-41. Transmission of marriage and civil union licenses and
2 certificates.

3 Every person or religious society, institution or organization
4 solemnizing a marriage or performing a civil union shall, within 5
5 days thereafter, transmit the certificate of marriage or civil union
6 and the marriage or civil union license to the local registrar of the
7 registration district in which the marriage or civil union occurs or to
8 the clerk of the county board of health.

9 The local registrar or clerk of the county board of health shall
10 stamp every certificate of marriage or civil union so received with
11 the date of its receipt and the name of the registration district in
12 which it is filed.

13 (cf: P.L.1965, c. 78, s. 59)

14

15 45. R.S.26:8-42 is amended to read as follows:

16 26:8-42. The local registrar who receives the certificate of a
17 marriage or the certificate of a civil union within the district under
18 his jurisdiction, the license for which was issued in another
19 registration district, shall, within 5 days after receipt of the marriage
20 or civil union certificate, copy the names of the persons married or
21 the parties to a civil union; the date of marriage or civil union; the
22 place of marriage or the civil union and the marriage or civil union
23 license number upon a form provided by the State registrar and
24 transmit it by mail to the officer legally designated to receive
25 certificates of marriage or civil union in the registration district in
26 which the license was issued.

27 (cf: P.L.1965, c.78, s.60)

28

29 46. S.26:8-43 is amended to read as follows:

30 26:8-43. Transmission of marriage and civil union certificates
31 and licenses to state registrar.

32 Each local registrar and the clerk of the county board of health
33 shall, on or before the tenth of each calendar month, or sooner if
34 requested by the department, transmit by mail, express or
35 messenger to the State registrar in an envelope or package marked
36 "vital statistics" all the certificates of marriages and civil unions,
37 marriage and civil union licenses and consents to the marriage or
38 civil union of minors received by them.

39 (cf: P.L.1965, c.78, s.61)

40

41 47. R.S.26:8-44 is amended to read as follows:

42 26:8-44. The State registrar shall cause all certificates of
43 marriages and civil unions and marriage and civil union licenses
44 received to be alphabetically indexed and shall cause to be
45 transcribed or otherwise recorded from the certificates such of the
46 vital facts appearing thereon as the department may deem necessary
47 or useful.

48 The certificates of marriage and civil union shall be so tabulated
49 as to present in separate and distinct classes the record of each

1 county or registration district of over 5,000 inhabitants, which
2 record shall be preserved as a public record and the original
3 certificates shall be preserved in the archives of the department.

4 (cf: P.L.1965, c. 78, s. 62)

5

6 48. R.S.26:8-45 is amended to read as follows:

7 26:8-45. Cancellation of records of marriages and civil unions
8 declared void.

9 If a marriage or a civil union has been declared void by the
10 Superior Court in an action instituted for that purpose and the court
11 is satisfied by the proof taken before the final judgment or by
12 affidavit or otherwise after the final judgment that a record of the
13 marriage or civil union is filed with the State registrar, it may order
14 the record to be canceled.

15 It shall not be necessary to make the custodian of the record a
16 party to the cause.

17 The order need only recite that there was a ceremony of marriage
18 or civil union between parties to the cause (naming them),
19 performed on (date) by (naming the officer) and that by a final
20 judgment entered on (date), the marriage or civil union was
21 declared void and may then direct that the said record be canceled.
22 (cf: P.L.1965, c.78, s.63)

23

24 49. R.S.26:8-46 is amended to read as follows:

25 26:8-46. Upon presenting a certified copy of said order to the
26 State Registrar, he shall indorse on the return of the marriage or
27 civil union the following words: "This marriage or civil union
28 declared void by the Superior Court. See order hereto annexed" and
29 shall annex the certified copy to the return.

30 (cf: P.L.1953, c.26, p.483, s.59)

31

32 50. R.S.26:8-47 is amended to read as follows:

33 26:8-47. Preparation of forms for marriage and civil union
34 licenses, certificates.

35 The department shall cause to be prepared blank forms of
36 certificates of marriages or civil unions and marriage or civil union
37 licenses corresponding to the requirements of R.S.37:1-7 and
38 R.S.37:1-17. The forms, together with such sections of the laws
39 concerning marriages or civil unions and such instructions and
40 explanations thereof as the department may deem useful to persons
41 having duties to perform under such laws shall be printed and
42 supplied upon request therefor to the local registrars and to the city
43 clerks of cities of the first class.

44 All certificates of marriages or civil unions and marriage or civil
45 union licenses shall be written upon the said blanks or blanks
46 approved by the department and shall not contain any inquiries or
47 information which concerns the race of an applicant for a marriage
48 or civil union license.

49 (cf: P.L.2002,c.88,s.2)

1 51. R.S.26:8-48 is amended to read as follows:

2 26:8-48. A certificate of birth, fetal death, marriage, civil union,
3 domestic partnership or death heretofore or hereafter filed with the
4 State registrar shall not be altered or changed otherwise than by
5 amendments properly signed, dated and witnessed, or as otherwise
6 recorded and authenticated on the NJ-EDRS as prescribed by the
7 State registrar.

8 (cf: P.L.2003, c.246, s.20).

9

10 52. R.S.26:8-50 is amended to read as follows:

11 26:8-50. Correcting marriage or civil union licenses

12 Correction to marriage or civil union licenses shall be signed by
13 the person who issued the license or his successor in office.

14 (cf: R.S.26:8-50)

15

16 53. R.S.26:8-51 is amended to read as follows:

17 26:8-51. Corrections to marriage, civil union, domestic
18 partnership certificates. Corrections to marriage, civil union or
19 domestic partnership certificates shall be signed by the person who
20 signed the certificate or by any other person having personal
21 knowledge of the matters sought to be corrected which other person
22 shall state such matters on his oath.

23 (cf:P.L.2003, c.246, s.21)

24

25 54. R.S.26:8-55 is amended to read as follows:

26 26:8-55. Any person knowingly submitting a certificate pursuant
27 to this article containing incorrect particulars relating to any birth,
28 marriage, civil union, domestic partnership or death shall be subject
29 to a penalty of not more than \$500, which shall be recovered with
30 costs in a summary proceeding in the name of the department.

31 (cf: P.L. 2003, c.246, s.22)

32

33 55. R.S.26:8-60 is amended to read as follows:

34 26:8-60. Each local registrar shall be entitled to receive from the
35 proper disbursing officer of the municipality or county the sum of
36 \$1 for each marriage, civil union or domestic partnership certificate
37 properly transmitted to the State Registrar.

38 In any registration district, the body appointing local registrars
39 may, in lieu of fees, provide that officers performing the above
40 service shall receive a fixed compensation to be determined by such
41 body.

42 (cf: P.L.2003, c.246, s.23)

43

44 56. R.S.26:8-61 is amended to read as follows:

45 26:8-61. Fee for cancellation of marriage or civil union record.

46 The person procuring the cancellation of a marriage or civil
47 union record pursuant to **[sections]**R.S. 26:8-45 and R.S.26:8-46
48 **[of this Title]** shall first pay to the State Registrar the sum of \$2.00
49 and the State Registrar shall pay the same over to the State

1 Treasurer. Such fee may be included in the taxable costs in the
2 annulment suit.

3 (cf: P.L.1983, c.275, s.16)

4

5 57. R.S.26:8-62 is amended to read as follows:

6 26:8-62. a. The State registrar or local registrar shall, upon
7 request, supply to a person who establishes himself as one of the
8 following: the subject of the record of a birth, death, fetal death,
9 certificate of birth resulting in stillbirth, domestic partnership, civil
10 union or marriage, as applicable; the subject's parent, legal guardian
11 or other legal representative; the subject's spouse, civil union
12 partner, child, grandchild or sibling, if of legal age, or the subject's
13 legal representative; an agency of State or federal government for
14 official purposes; a person possessing an order of a court of
15 competent jurisdiction; or a person who is authorized under other
16 emergent circumstances as determined by the commissioner, a
17 certified copy, or release of the data and information of that record
18 registered under the provisions of R.S.26:8-1 et seq., or P.L. , c.
19 (C. _____)(pending before the Legislature as this bill) or any
20 domestic partnership registered under the provisions of P.L.2003,
21 c.246 (C.26:8A-1 et al.), for any of which, except as provided by
22 R.S.26:8-63, the State registrar shall be entitled to a search fee, if
23 any, as provided by R.S.26:8-64, to be paid by the person. A
24 certification may be issued in other circumstances and shall state
25 that it is for informational purposes only, and is not to be used for
26 identification purposes. The registrar shall authenticate the identity
27 of the requestor and the requestor's relationship with the subject of
28 the vital record. For the purposes of this subsection, any employee
29 of a mortuary registered pursuant to P.L.1952, c.340 (C.45:7-32 et
30 seq.), or a funeral director licensed pursuant to that act who is
31 affiliated with a registered mortuary, if the mortuary was recorded
32 on the original certificate of death, shall be construed to be the
33 subject's legal representative and entitled to obtain full and
34 complete copies of death certificates or certifications thereof.

35 b. The State registrar shall, upon request, supply to any
36 applicant a certified transcript of any entry contained in the records
37 of the New Jersey State census for which, except as provided by
38 R.S.26:8-63, he shall be entitled to a search fee as provided by
39 R.S.26:8-64, to be paid by the applicant.

40 c. For each death registration initiated on the NJ-EDRS on or
41 after the first day of the first month following the date of enactment
42 of P.L.2003, c.221 but before the first day of the thirty-seventh
43 month following the date of enactment of P.L.2003, c.221, the State
44 registrar shall be paid a recording fee for each record filed, whether
45 by means of the current paper process or electronically, in an
46 amount to be determined by the State registrar but not exceeding
47 \$10, from the account of the funeral home, which may include this
48 amount in the funeral expenses charged to the estate or person
49 accepting responsibility for the disposition of the deceased's human

1 remains and the costs associated therewith; provided however, this
2 fee shall not apply to the death registration of a person who died
3 while in the military or naval or maritime or merchant marine
4 service of the United States whose death is recorded pursuant to
5 section 1 of P.L.1950, c.299 (C.26:6-5.2). The State registrar shall
6 deposit the proceeds from the recording fee into the New Jersey
7 Electronic Death Registration Support Fund established pursuant to
8 section 17 of P.L.2003, c.221 (C.26:8-24.2).

9 d. Notwithstanding any other provision of this section to the
10 contrary, the Commissioner of Health and Senior Services shall
11 designate specifications for uniform forms for the issuance of all
12 vital records, which shall be used by registrars beginning on a date
13 established by the commissioner. The form designated for certified
14 copies of vital records shall contain safety features for
15 authentication purposes and to deter forgery, and shall be readily
16 distinguishable from the form designated for certifications of vital
17 records. Local registrars may include in the fee for a certified copy
18 the additional cost of the form containing such safety features.

19 The commissioner may issue and enforce orders to implement
20 the provisions of this subsection.

21 (cf: P.L.2005, c.222, s.32)

22
23 58. R.S.26:8-63 is amended to read as follows:

24 26:8-63. The State registrar shall:

25 a. Furnish a certification or certified copy of a birth, marriage,
26 civil union, domestic partnership, fetal death or death certificate
27 without fee in the prosecution of any claim for public pension or for
28 military or naval enlistment purposes; and

29 b. Furnish the United States Public Health Service without
30 expense to the State, microfilm or photocopy images of birth,
31 marriage, civil union, domestic partnership, fetal death and death
32 certificates without payment of the fees prescribed in this article;
33 and

34 c. Furnish a certified transcript of any entry in the records of
35 the New Jersey State census without fee for certification in the
36 prosecution of any claim for public pension, for military or naval
37 enlistment purposes; and

38 d. Furnish without fee upon request for administrative use by
39 any city, State or Federal agency a certified transcript of any New
40 Jersey State census entry, or a certification or certified copy of a
41 birth, death, fetal death, marriage, civil union or domestic
42 partnership certificate.

43 (cf: P.L.2003, c.246, s.25).

44
45 59. R.S.26:8-64 is amended to read as follows:

46 26:8-64. a. For any search of the files and records of births,
47 deaths, marriages, civil unions or domestic partnerships when the
48 correct year only is supplied by the applicant, whether or not a
49 certification or a certified copy is made, the State Registrar shall be

1 entitled to a minimum fee of \$4, plus a fee of \$1 for each additional
2 year searched, which fee shall be paid by the applicant, except as
3 provided by R.S.26:8-63. The fee for each additional copy shall be
4 \$2.

5 b. For all searches of the New Jersey State census records,
6 except as otherwise provided herein, the State Registrar shall be
7 entitled to a fee of \$2 for each address searched in any census year.

8 c. Conduct without fee upon request for administrative use by
9 any city, state, or federal agency, a search for any New Jersey State
10 census entry.

11 (cf: P.L.2003, c.246, s.26)

12

13 60. R.S.26:8-66 is amended to read as follows:

14 26:8-66. The State registrar either personally or by accredited
15 representative, may investigate any case of irregularity or violation
16 of **[this chapter, or chapter 6 of this Title (s. 26:6-1 et seq.), as well**
17 **as chapter 1 of Title 37 of the Revised Statutes]** R.S.26:6-1 et seq.,
18 R.S.8-1 et seq., R.S.37:1-1 et seq., or P.L. , c. (C.)(pending
19 before the Legislature as this bill, and every local registrar shall aid
20 him in such investigation.

21 (cf: P.L.1965, c.78, s.75)

22

23 61. R.S.26:8-67 is amended to read as follows:

24 26:8-67. Duty of **[prosecutor of the pleas]** county prosecutor.

25 When the State registrar shall deem it necessary, he shall report
26 any violation of any provision of **[this chapter or chapter 6 of this**
27 **Title (s. 26:6-1 et seq.), as well as chapter 1 of Title 37 of the**
28 **Revised Statutes]** R.S.26:6-1 et seq., R.S.26:8-1 et seq., R.S.37:1-1
29 et seq. or P.L. , c. (C.)(pending before the Legislature as this
30 bill), to the county prosecutor **[of the pleas of the proper county],**
31 with a statement of the facts and circumstances. Upon such report,
32 the county prosecutor **[of the pleas]** shall forthwith institute and
33 prosecute the necessary proceedings for such alleged violation.

34 (cf: P.L.1965, c.78, s.76)

35

36 62. R.S.26:8-68 is amended to read as follows:

37 26:8-68. Upon request of the State registrar, the Attorney
38 General shall assist in the enforcement of the provisions of **[this**
39 **chapter and chapter 6 of this Title (s. 26:6-1 et seq.), as well as**
40 **chapter 1 of Title 37 of the Revised Statutes]** R.S.26:6-1 et seq.,
41 R.S.26:8-1 et seq., R.S.37:1-1 et seq. or P.L. , c. (C.)(pending
42 before the Legislature as this bill), or the State registrar may direct
43 that local registrars institute proceedings or civil actions in the
44 name of the State department. Such a proceeding or action may be
45 instituted in any court of competent jurisdiction.

46 (cf: P.L.1965, c.78, s.77)

47

48 63. N.J.S.2A:34-1 is amended to read as follows:

1 2A:34-1. Causes for judgments of nullity.

2 (1) Judgments of nullity of marriage may be rendered in all
3 cases, when:

4 a. Either of the parties has another wife or husband living at the
5 time of a second or other marriage;

6 b. The parties are within the degrees prohibited by law. If any
7 such marriage shall not have been annulled during the lifetime of
8 the parties the validity thereof shall not be inquired into after the
9 death of either party.

10 c. The parties, or either of them, were at the time of marriage
11 physically and incurably impotent, provided the party making the
12 application shall have been ignorant of such impotency or
13 incapability at the time of the marriage, and has not subsequently
14 ratified the marriage.

15 d. The parties, or either of them, lacked capacity to marry due to
16 want of understanding because of mental condition, or the
17 influence of intoxicants, drugs, or similar agents; or where there
18 was a lack of mutual assent to the marital relationship; duress; or
19 fraud as to the essentials of marriage; and has not subsequently
20 ratified the marriage.

21 e. The demand for such a judgment is by the wife or husband
22 who was under the age of 18 years at the time of the marriage,
23 unless such marriage be confirmed by her or him after arriving at
24 such age.

25 f. Allowable under the general equity jurisdiction of the
26 Superior Court.

27 (2) Judgments of nullity of a civil union may be rendered in all
28 cases, when:

29 a. Either of the parties has another wife, husband, civil union
30 partner or domestic partner living at the time of establishing the
31 new civil union or;

32 b. The parties are within the degrees prohibited by the law from
33 entering into a marriage or establishing a civil union or domestic
34 partnership. If any such civil union shall not have been annulled
35 during the lifetime of the parties the validity thereof shall not be
36 inquired into after the death of either party.

37 c. The parties, or either of them, lacked capacity to enter into a
38 civil union due to want of understanding because of mental
39 condition, or the influence of intoxicants, drugs, or similar agents;
40 or where there was a lack of mutual assent to the civil union;
41 duress; or fraud as to the essentials of a civil union; and has not
42 subsequently ratified the civil union.

43 d. The demand for such a judgment is by the party who was
44 under the age of 18 years at the time of the civil union, unless such
45 civil union be confirmed by him after arriving at such age.

46 e. Allowable under the general equity jurisdiction of the Superior
47 Court.

48 (cf: P.L.1971, c.212, s.1)

1 64. (New section). The dissolution of a civil union may be
2 adjudged for the following causes:

3 a. voluntary sexual intercourse between a person who is in a
4 civil union and an individual other than the person's civil union
5 partner;

6 b. willful and continued desertion for a period of 12 or more
7 consecutive months, which may be established by satisfactory proof
8 that the parties have ceased to cohabit as civil union partners;

9 c. extreme cruelty, which is defined as including any physical or
10 mental cruelty that endangers the safety or health of the plaintiff or
11 makes it improper or unreasonable to expect the plaintiff to
12 continue to cohabit with the defendant; except that no complaint for
13 termination shall be filed until after three months from the date of
14 the last act of cruelty complained of in the complaint, but this
15 provision shall not be held to apply to any counterclaim;

16 d. separation, provided that the civil union partners have lived
17 separate and apart in different habitations for a period of at least 18
18 or more consecutive months and there is no reasonable prospect of
19 reconciliation; and provided further that, after the 18-month period,
20 there shall be a presumption that there is no reasonable prospect of
21 reconciliation;

22 e. voluntarily induced addiction or habituation to any narcotic
23 drug, as defined in the "New Jersey Controlled Dangerous
24 Substances Act," P.L.1970, c. 226 (C.24:21-2) or the
25 "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al.,
26 or habitual drunkenness for a period of 12 or more consecutive
27 months subsequent to establishment of the civil union and next
28 preceding the filing of the complaint;

29 f. institutionalization for mental illness for a period of 24 or
30 more consecutive months subsequent to establishment of the civil
31 union and next preceding the filing of the complaint; or

32 g. imprisonment of the defendant for 18 or more consecutive
33 months after establishment of the civil union, provided that where
34 the action is not commenced until after the defendant's release, the
35 parties have not resumed cohabitation following the imprisonment.
36

37 65. N.J.S.2A:34-3 is amended to read as follows:

38 2A:34-3. Causes for divorce from bed and board or legal
39 separation from civil union partner.

40 a. Divorce from bed and board may be adjudged for the same
41 causes as divorce from the bonds of matrimony whenever both
42 parties petition or join in requesting such relief and they or either of
43 them present sufficient proof of such cause or causes to warrant the
44 entry of a judgment of divorce from the bonds of matrimony,
45 provided further that in the case of a reconciliation thereafter the
46 parties may apply for a revocation or suspension of the judgment,
47 and provided further that the granting of a bed and board divorce
48 shall in no way prejudice either party from thereafter applying to
49 the court for a conversion of said divorce to a divorce from the

1 bonds of matrimony, which application shall be granted as a matter
2 of right.

3 b. Legal separation from a civil union partner may be adjudged
4 for the same causes as dissolution of a civil union whenever both
5 parties petition or join in requesting such relief and they or either of
6 them present sufficient proof of such cause or causes to warrant the
7 entry of a judgment of dissolution of a civil union, provided further
8 that in the case of a reconciliation thereafter the parties may apply
9 for a revocation or suspension of the judgment, and provided further
10 that the granting of a legal separation from a civil union partner
11 shall in no way prejudice either party from thereafter applying to
12 the court for a conversion of said legal separation from a civil union
13 partner to a dissolution of a civil union, which application shall be
14 granted as a matter of right.

15 (cf: P.L.1971, c.212, s.3)

16

17 66. N.J.S.2A:34-6 is amended to read as follows:

18 2A:34-6. Divorce from bed and board or legal separation from a
19 civil union; property rights

20 For and during the time that any judgment for divorce from bed
21 and board or legal separation from a civil union partner shall remain
22 in force and effect all property rights of the parties shall be as
23 though a judgment of absolute divorce or dissolution had been
24 entered.

25 In any property transaction **[had]** by either of the parties in such
26 status the fact of the existence of such judgment shall be distinctly
27 recited and reference to the public record thereof shall be clearly set
28 forth.

29 (cf: N.J.S.2A:34-6).

30

31 67. N.J.S.2A:34-7 is amended to read as follows:

32 2A:34-7. Certain defenses abolished.

33 Recrimination, condonation and the clean hands doctrine are
34 hereby abolished as defenses to divorce from the bonds of
35 matrimony **[or from]** , dissolution of a civil union, divorce from
36 bed and board or legal separation from a civil union partner, and if
37 both parties make out grounds for a divorce, dissolution or legal
38 separation a decree may be granted to each; provided that nothing
39 herein shall preclude or abrogate the responsibility of a party for the
40 penalty provided by law for perjury or the subornation of perjury.

41 (cf: P.L.1971, c.212, s.4)

42

43 68. N.J.S.2A:34-8 is amended to read as follows:

44 2A:34-8. Jurisdiction stated.

45 The Superior Court shall have jurisdiction of all causes of
46 divorce, dissolution of a civil union, bed and board divorce, legal
47 separation from a civil union partner or nullity when either party is
48 a bona fide resident of this State. The Superior Court shall have
49 jurisdiction of an action for alimony and maintenance when the

1 defendant is subject to the personal jurisdiction of the court, is a
2 resident of this State, or has tangible or intangible real or personal
3 property within the jurisdiction of the court. The Superior Court
4 may afford incidental relief as in other cases of an equitable nature
5 and by rule of court may determine the venue of matrimonial and
6 civil union actions.

7 (cf: P.L.1971, c.212, s.5).

8

9 69. N.J.S.2A:34-9 is amended to read as follows:

10 2A:34-9. Jurisdiction in nullity proceedings or dissolution
11 proceedings; residence requirements; service of process

12 Jurisdiction in actions for nullity of marriage or dissolution of a
13 civil union may be acquired when:

14 a. Either party is a bona fide resident of this **[state]** State at the
15 time of the commencement of the action; and

16 b. Process is served upon the defendant as prescribed by the rules
17 of the **[supreme court]** Supreme Court.

18 (cf: N.J.S.2A:34-9)

19

20 70. N.J.S.2A:34-10 is amended to read as follows:

21 2A:34-10. Jurisdiction in divorce proceedings, dissolution of a
22 civil union, legal separation from a civil union partner; service of
23 process; residence requirements

24 Jurisdiction in actions for divorce, either absolute or from bed
25 and board, and in actions for dissolution of a civil union or legal
26 separation from a civil union partner may be acquired when process
27 is served upon the defendant as prescribed by the rules of the
28 Supreme Court, and

29 1. When, at the time the cause of action arose, either party was a
30 bona fide resident of this State, and has continued so to be down to
31 the time of the commencement of the action; except that no action
32 for absolute divorce or dissolution of a civil union shall be
33 commenced for any cause other than adultery, unless one of the
34 parties has been for the 1 year next preceding the commencement of
35 the action a bona fide resident of this State; or

36 2. When, since the cause of action arose, either party has
37 become, and for at least 1 year next preceding the commencement
38 of the action has continued to be, a bona fide resident of this State.

39 (cf: P.L.1971, c.212, s.6).

40

41 71. N.J.S.2A:34-11 is amended to read as follows:

42 2A:34-11. Jurisdiction by acknowledgment of service of process,
43 appearance, etc.

44 In divorce, dissolution and nullity actions, the jurisdiction of the
45 court over the defendant's person for all purposes of the action shall
46 be fully established by the filing of an acknowledgment of service
47 of process, or of an appearance, or of an answer by the defendant
48 pro se, or on his behalf by a duly authorized attorney, in such

1 manner as may be prescribed by rules of the [supreme court]
2 Supreme Court.

3 (cf: N.J.S.2A:34-11)

4

5 72. N.J.S.2A:34-12 is amended to read as follows:

6 2A:34-12. Counterclaims.

7 Whenever the court shall have acquired jurisdiction of any action
8 under the provisions of this chapter or P.L. ,c. (C.)(pending
9 before the Legislature as this bill), the defendant therein may, by
10 counterclaim, state any cause of action under this chapter or
11 P.L. ,c. (C.)(pending before the Legislature as this bill) which
12 exists at the time of the service of the counterclaim.

13 (cf: N.J.S.2A:34-12)

14

15 73. N.J.S.2A:34-13 is amended to read as follows:

16 2A:34-13. Matrimonial or civil union action.

17 A person who has attained the age of 16 years may prosecute or
18 defend any matrimonial or civil union action in person or by
19 attorney.

20 (cf: P.L.1988, c.153, s.1)

21

22 74. N.J.S.2A:34-14 is amended to read as follows:

23 2A:34-14. Parent or guardian may prosecute or defend.

24 A parent or guardian shall not be precluded by the provisions of
25 this chapter from prosecuting or defending any action respecting the
26 marriage or civil union status or relation of his minor child or ward.

27 (cf: N.J.S.2A:34-14)

28

29 75. N.J.S.2A:34-15 is amended to read as follows:

30 2A:34-15. Co-respondent in adultery or dissolution of a civil
31 union actions

32 Where a person is named as co-respondent in a charge of adultery
33 or in a charge giving rise to a cause of action for dissolution of a
34 civil union pursuant to subsection a. of section 53 of P.L. , c.
35 (C.)(pending before the Legislature as this bill), the party
36 making the charge shall give the co-respondent written notice of the
37 charge within the time and in the manner prescribed by the rules of
38 the [supreme court]Supreme Court.

39 Any such co-respondent shall be entitled to intervene in the
40 action on [the] this particular issue [of adultery].

41 (cf: N.J.S.2A:34-15)

42

43 76. N.J.S.2A:34-18 is amended to read as follows:

44 2A:34-18. Final judgment; appeal

45 If after the hearing of any cause the court shall determine that the
46 plaintiff or counterclaimant is entitled to a judgment of nullity of
47 marriage or nullity of a civil union or a judgment for divorce from
48 the bonds of matrimony or judgment for dissolution of a civil union,
49 a final judgment shall be entered.

1 Appeals shall be taken only from the final judgment.
2 (cf: P.L.1969, c.82, s.1)

3
4 77. N.J.S.2A:34-21 is amended to read as follows:
5 2A:34-21. Surname.

6 The court, upon or after granting a divorce from the bonds of
7 matrimony to either spouse or dissolution of a civil union to either
8 partner, may allow either spouse or partner to resume any name
9 used by the spouse or partner before the marriage or civil union, or
10 to assume any surname.
11 (cf: P.L.1988,c.153,s.2)

12
13 78. N.J.S.2A:34-23 is amended to read as follows:
14 2A:34-23 Alimony, maintenance.

15 Pending any matrimonial action or action for dissolution of a
16 civil union brought in this State or elsewhere, or after judgment of
17 divorce or dissolution or maintenance, whether obtained in this
18 State or elsewhere, the court may make such order as to the alimony
19 or maintenance of the parties, and also as to the care, custody,
20 education and maintenance of the children, or any of them, as the
21 circumstances of the parties and the nature of the case shall render
22 fit, reasonable and just, and require reasonable security for the due
23 observance of such orders, including, but not limited to, the creation
24 of trusts or other security devices, to assure payment of reasonably
25 foreseeable medical and educational expenses. Upon neglect or
26 refusal to give such reasonable security, as shall be required, or
27 upon default in complying with any such order, the court may
28 award and issue process for the immediate sequestration of the
29 personal estate, and the rents and profits of the real estate of the
30 party so charged, and appoint a receiver thereof, and cause such
31 personal estate and the rents and profits of such real estate, or so
32 much thereof as shall be necessary, to be applied toward such
33 alimony and maintenance as to the said court shall from time to
34 time seem reasonable and just; or the performance of the said orders
35 may be enforced by other ways according to the practice of the
36 court. Orders so made may be revised and altered by the court from
37 time to time as circumstances may require.

38 The court may order one party to pay a retainer on behalf of the
39 other for expert and legal services when the respective financial
40 circumstances of the parties make the award reasonable and just. In
41 considering an application, the court shall review the financial
42 capacity of each party to conduct the litigation and the criteria for
43 award of counsel fees that are then pertinent as set forth by court
44 rule. Whenever any other application is made to a court which
45 includes an application for pendente lite or final award of counsel
46 fees, the court shall determine the appropriate award for counsel
47 fees, if any, at the same time that a decision is rendered on the other
48 issue then before the court and shall consider the factors set forth in

1 the court rule on counsel fees, the financial circumstances of the
2 parties, and the good or bad faith of either party.

3 a. In determining the amount to be paid by a parent for support
4 of the child and the period during which the duty of support is
5 owed, the court in those cases not governed by court rule shall
6 consider, but not be limited to, the following factors:

7 (1) Needs of the child;

8 (2) Standard of living and economic circumstances of each
9 parent;

10 (3) All sources of income and assets of each parent;

11 (4) Earning ability of each parent, including educational
12 background, training, employment skills, work experience,
13 custodial responsibility for children including the cost of providing
14 child care and the length of time and cost of each parent to obtain
15 training or experience for appropriate employment;

16 (5) Need and capacity of the child for education, including
17 higher education;

18 (6) Age and health of the child and each parent;

19 (7) Income, assets and earning ability of the child;

20 (8) Responsibility of the parents for the court-ordered support of
21 others;

22 (9) Reasonable debts and liabilities of each child and parent; and

23 (10) Any other factors the court may deem relevant.

24 The obligation to pay support for a child who has not been
25 emancipated by the court shall not terminate solely on the basis of
26 the child's age if the child suffers from a severe mental or physical
27 incapacity that causes the child to be financially dependent on a
28 parent. The obligation to pay support for that child shall continue
29 until the court finds that the child is relieved of the incapacity or is
30 no longer financially dependent on the parent. However, in
31 assessing the financial obligation of the parent, the court shall
32 consider, in addition to the factors enumerated in this section, the
33 child's eligibility for public benefits and services for people with
34 disabilities and may make such orders, including an order involving
35 the creation of a trust, as are necessary to promote the well-being of
36 the child.

37 As used in this section "severe mental or physical incapacity"
38 shall not include a child's abuse of, or addiction to, alcohol or
39 controlled substances.

40 b. In all actions brought for divorce, dissolution of a civil
41 union, divorce from bed and board, legal separation from a civil
42 union partner or nullity the court may award one or more of the
43 following types of alimony: permanent alimony; rehabilitative
44 alimony; limited duration alimony or reimbursement alimony to
45 either party. In so doing the court shall consider, but not be limited
46 to, the following factors:

47 (1) The actual need and ability of the parties to pay;

48 (2) The duration of the marriage or civil union;

49 (3) The age, physical and emotional health of the parties;

1 (4) The standard of living established in the marriage or civil
2 union and the likelihood that each party can maintain a reasonably
3 comparable standard of living;

4 (5) The earning capacities, educational levels, vocational skills,
5 and employability of the parties;

6 (6) The length of absence from the job market of the party
7 seeking maintenance;

8 (7) The parental responsibilities for the children;

9 (8) The time and expense necessary to acquire sufficient
10 education or training to enable the party seeking maintenance to
11 find appropriate employment, the availability of the training and
12 employment, and the opportunity for future acquisitions of capital
13 assets and income;

14 (9) The history of the financial or non-financial contributions to
15 the marriage or civil union by each party including contributions to
16 the care and education of the children and interruption of personal
17 careers or educational opportunities;

18 (10) The equitable distribution of property ordered and any
19 payouts on equitable distribution, directly or indirectly, out of
20 current income, to the extent this consideration is reasonable, just
21 and fair;

22 (11) The income available to either party through investment of
23 any assets held by that party;

24 (12) The tax treatment and consequences to both parties of any
25 alimony award, including the designation of all or a portion of the
26 payment as a non-taxable payment; and

27 (13) Any other factors which the court may deem relevant.

28 When a share of a retirement benefit is treated as an asset for
29 purposes of equitable distribution, the court shall not consider
30 income generated thereafter by that share for purposes of
31 determining alimony.

32 c. In any case in which there is a request for an award of
33 permanent alimony, the court shall consider and make specific
34 findings on the evidence about the above factors. If the court
35 determines that an award of permanent alimony is not warranted,
36 the court shall make specific findings on the evidence setting out
37 the reasons therefor. The court shall then consider whether alimony
38 is appropriate for any or all of the following: (1) limited duration;
39 (2) rehabilitative; (3) reimbursement. In so doing, the court shall
40 consider and make specific findings on the evidence about factors
41 set forth above. The court shall not award limited duration alimony
42 as a substitute for permanent alimony in those cases where
43 permanent alimony would otherwise be awarded.

44 An award of alimony for a limited duration may be modified
45 based either upon changed circumstances, or upon the
46 nonoccurrence of circumstances that the court found would occur at
47 the time of the award. The court may modify the amount of such an
48 award, but shall not modify the length of the term except in unusual
49 circumstances.

1 In determining the length of the term, the court shall consider the
2 length of time it would reasonably take for the recipient to improve
3 his or her earning capacity to a level where limited duration
4 alimony is no longer appropriate.

5 d. Rehabilitative alimony shall be awarded based upon a plan
6 in which the payee shows the scope of rehabilitation, the steps to be
7 taken, and the time frame, including a period of employment during
8 which rehabilitation will occur. An award of rehabilitative alimony
9 may be modified based either upon changed circumstances, or upon
10 the nonoccurrence of circumstances that the court found would
11 occur at the time of the rehabilitative award.

12 This section is not intended to preclude a court from modifying
13 permanent alimony awards based upon the law.

14 e. Reimbursement alimony may be awarded under
15 circumstances in which one party supported the other through an
16 advanced education, anticipating participation in the fruits of the
17 earning capacity generated by that education.

18 f. Nothing in this section shall be construed to limit the court's
19 authority to award permanent alimony, limited duration alimony,
20 rehabilitative alimony or reimbursement alimony, separately or in
21 any combination, as warranted by the circumstances of the parties
22 and the nature of the case.

23 g. In all actions for divorce or dissolution other than those
24 where judgment is granted solely on the ground of separation the
25 court may consider also the proofs made in establishing such
26 ground in determining an amount of alimony or maintenance that is
27 fit, reasonable and just. In all actions for divorce **[or]** .dissolution
28 of civil union, divorce from bed and board, legal separation from a
29 civil union partner where judgment is granted on the ground of
30 institutionalization for mental illness the court may consider the
31 possible burden upon the taxpayers of the State as well as the ability
32 of the party to pay in determining an amount of maintenance to be
33 awarded.

34 h. In all actions where a judgment of divorce **[or]** .dissolution
35 of civil union, divorce from bed and board or legal separation from
36 a civil union partner is entered the court may make such award or
37 awards to the parties, in addition to alimony and maintenance, to
38 effectuate an equitable distribution of the property, both real and
39 personal, which was legally and beneficially acquired by them or
40 either of them during the marriage or civil union. However, all such
41 property, real, personal or otherwise, legally or beneficially
42 acquired during the marriage or civil union by either party by way
43 of gift, devise, or intestate succession shall not be subject to
44 equitable distribution, except that interspousal gifts or gifts between
45 parties to a civil union shall be subject to equitable distribution.
46 (cf: P.L.2005, c.171, s.1)

47
48 79. Section 1 of P.L.1997,c.405 (C.2A:34-23d) is amended to
49 read as follows:

1 1. Maintenance of certain insurance coverage in action for
2 divorce or dissolution.

3 a. Upon filing of a complaint for an action for divorce,
4 dissolution, nullity or separate maintenance, where the custody,
5 visitation or support of a minor child is an issue, the party who has
6 maintained all existing insurance coverage or coverage traditionally
7 maintained during the marriage or civil union, including but not
8 limited to, all health, disability, home or life insurance, shall
9 continue to maintain or continue to share in the cost of maintaining
10 the coverage.

11 b. If a party who has maintained the existing insurance
12 coverage or has shared in the cost of maintaining the coverage has
13 had a voluntary or involuntary change in employment status, which
14 may cause the existing insurance coverage to terminate, then that
15 party shall notify the other party that it may be necessary to
16 reallocate the financial responsibilities of maintaining the coverage.

17 c. Upon receipt of this notice, the party may petition the court
18 to reallocate financial responsibilities.

19 d. The court may take any action it deems appropriate to
20 reallocate financial responsibilities including but not limited to
21 ordering a party to obtain comparable coverage or releasing a party
22 from the obligation or any other order.

23 (cf: P.L.1997, c.405, s.1)

24

25 80. N.J.S.2A:34-23.1 is amended to read as follows:

26 2A:34-23.1 Equitable distribution criteria.

27 4. In making an equitable distribution of property, the court
28 shall consider, but not be limited to, the following factors:

29 a. The duration of the marriage or civil union;

30 b. The age and physical and emotional health of the parties;

31 c. The income or property brought to the marriage or civil
32 union by each party;

33 d. The standard of living established during the marriage or
34 civil union;

35 e. Any written agreement made by the parties before or during
36 the marriage or civil union concerning an arrangement of property
37 distribution;

38 f. The economic circumstances of each party at the time the
39 division of property becomes effective;

40 g. The income and earning capacity of each party, including
41 educational background, training, employment skills, work
42 experience, length of absence from the job market, custodial
43 responsibilities for children, and the time and expense necessary to
44 acquire sufficient education or training to enable the party to
45 become self-supporting at a standard of living reasonably
46 comparable to that enjoyed during the marriage or civil union;

47 h. The contribution by each party to the education, training or
48 earning power of the other;

- 1 i. The contribution of each party to the acquisition, dissipation,
2 preservation, depreciation or appreciation in the amount or value of
3 the marital property, or the property acquired during the civil union
4 as well as the contribution of a party as a homemaker;
- 5 j. The tax consequences of the proposed distribution to each
6 party;
- 7 k. The present value of the property;
- 8 l. The need of a parent who has physical custody of a child to
9 own or occupy the marital residence or residence shared by the
10 parties to a civil union and to use or own the household effects;
- 11 m. The debts and liabilities of the parties;
- 12 n. The need for creation, now or in the future, of a trust fund to
13 secure reasonably foreseeable medical or educational costs for a
14 spouse, partner or children;
- 15 o. The extent to which a party deferred achieving their career
16 goals; and
- 17 p. Any other factors which the court may deem relevant.

18 In every case, the court shall make specific findings of fact on
19 the evidence relevant to all issues pertaining to asset eligibility or
20 ineligibility, asset valuation, and equitable distribution, including
21 specifically, but not limited to, the factors set forth in this section.

22 It shall be a rebuttable presumption that each party made a
23 substantial financial or nonfinancial contribution to the acquisition
24 of income and property while the party was married.

25 (cf: P.L.1997, c.407, s.1).

26

27 81. Section 1 of P.L.1954, c.187 (C.2A:34-24.1) is amended to
28 read as follows:

29 1. Court-ordered support, maintenance.

30 When a spouse or civil union partner has secured a judgment or
31 decree of divorce, whether absolute or from bed and board,
32 dissolution of a civil union, legal separation from a civil union
33 partner, or of nullity or annulment of marriage or civil union, in an
34 action whether brought in this State or elsewhere, wherein
35 jurisdiction over the person of the other spouse or the other civil
36 union partner was not obtained, the court may make the same orders
37 and judgments touching the suitable support and maintenance to be
38 paid and provided by the spouse or civil union partner, or to be
39 made out of the spouse's or partner's property, for the other spouse
40 or partner and their children, or any of them, by their marriage or
41 civil union and for such time, as the nature of the case and
42 circumstances of the parties render suitable and proper, pursuant to
43 the provisions of chapter 34 of Title 2A of the New Jersey Statutes
44 notwithstanding the securing of such judgment or decree.

45 (cf: P.L.1988, c.153, s.6)

46

47 82. N.J.S.2A:34-25. Termination of alimony.

48 2A:34-25. If after the judgment of divorce or dissolution a
49 former spouse shall remarry or a former partner shall enter into a

1 new civil union, permanent and limited duration alimony shall
 2 terminate as of the date of remarriage or new civil union except that
 3 any arrearages that have accrued prior to the date of remarriage or
 4 new civil union shall not be vacated or annulled. A former spouse
 5 or civil union partner who remarries shall promptly so inform the
 6 spouse or partner paying permanent or limited duration alimony as
 7 well as the collecting agency, if any. The court may order such
 8 alimony recipient who fails to comply with the notification
 9 provision of this act to pay any reasonable attorney fees and court
 10 costs incurred by the recipient's former spouse or partner as a result
 11 of such non-compliance.

12 The remarriage or establishment of a new civil union of a former
 13 spouse or partner receiving rehabilitative or reimbursement alimony
 14 shall not be cause for termination of such alimony by the court
 15 unless the court finds that the circumstances upon which the award
 16 was based have not occurred or unless the payer spouse or partner
 17 demonstrates an agreement or good cause to the contrary.

18 Alimony shall terminate upon the death of the payer spouse or
 19 partner, except that any arrearages that have accrued prior to the
 20 date of the payer spouse's or partner's death shall not be vacated or
 21 annulled.

22 Nothing in this act shall be construed to prohibit a court from
 23 ordering either spouse or partner to maintain life insurance for the
 24 protection of the former spouse, partner, or the children of the
 25 marriage or civil union in the event of the payer spouse's or
 26 partner's death.

27 (cf: P.L.1999, c.199, s.2)

28

29 83. N.J.S.2A:34-26 is amended to read as follows:

30 2A:34-26. Attachment of property.

31 When a spouse or civil union partner cannot be found within this
 32 State to be served with process, the spouse's or partner's estate,
 33 property and effects within this State and the rents and profits
 34 thereof may be attached to compel the spouse's or partner's
 35 appearance and performance of any judgment or order which may
 36 be made in the action. Where the proceedings are by process of
 37 attachment and the defendant does not appear, the judgment shall be
 38 enforceable only out of and against the property attached.

39 (cf: P.L.1988,c.153, s.8)

40

41 84. N.J.S.22A:2-10 is amended to read as follows:

42 22A:2-10. Chancery Division of Superior Court; costs awarded.

43 Upon the completion and determination of the following actions
 44 and proceedings in the Chancery Division of the Superior Court, the
 45 costs awarded to a party therein for the drawing of papers, including
 46 orders, writs and judgments, shall be as stated below:

47	Plaintiff's costs, foreclosure	\$50 ₀₀
48	Plaintiff's costs, partition	70 ₀₀
49	Plaintiff's and receiver's costs, receivership	125 ₀₀

1	Plaintiff's costs, receivership	62.50
2	Receiver's costs, receivership	62.50
3	Plaintiff's costs, divorce, <u>dissolution of civil</u>	
4	<u>union</u> , nullity, custody	30.00
5	Plaintiff's costs, causes of action for other relief	65.00
6	Plaintiff's costs, incompetency action	47.50
7	Plaintiff's costs, sale of lands of infant or incompetent	50.00
8	Plaintiff's costs, release of dower or curtesy	50.00
9	Plaintiff's costs, mortgage lands of an infant or incompetent ...	
10	50.00	
11	Plaintiff's costs, interpleader	35.00
12	Plaintiff's costs, appointment of tax receiver	27.50
13	Plaintiff's costs, actions for payment of money	
14	into court; to hold real estate; to limit creditors	22.50
15	Plaintiff's costs, action for appointment of trustee	
16	or substituted trustee	33.50
17	Costs on contempt proceedings	25.00
18	Costs on application to fix dower or curtesy	22.50
19	Costs on application to pay moneys out of court	23.50
20	Costs on application for instructions, or to	
21	approve account	30.00
22	Costs on application for writ of execution	10.00
23	Costs on application for relief from final judgment	
24	or, in a matrimonial cause from judgment	
25	nisi or order..	20.00
26	Costs on application for writ of possession	30.00
27	Costs on application for alimony pendente lite,	
28	attorney fee, suit money	20.00
29	Defendant's costs where final judgment is taken by him ...	30.00
30	Defendant's costs where final judgment is not taken by him .	20.00
31	Costs upon any other litigated or special motion,	
32	subsidiary or interlocutory, not heretofore provided for ...	20.00
33	(cf: N.J.S.22A:2-10)	

34

35 85. N.J.S.22A:2-12 is amended to read as follows:

36 22A:2-12. Payment of fees in Chancery Division of Superior

37 Court upon filing of first paper. Upon the filing of the first paper in

38 any action or proceeding in the Chancery Division of the Superior

39 Court, there shall be paid to the clerk of the court, for the use of the

40 State, the following fees, which, except as hereinafter provided,

41 shall constitute the entire fees to be collected by the clerk for the

42 use of the State, down to the final disposition of the cause:

43 Receivership and partition, \$200.00.

44 All other actions and proceedings except in probate cases and

45 actions and proceedings for divorce or dissolution of a civil union

46 union, \$200.00.

47 Actions and proceedings for divorce or dissolution of civil union,

48 \$250.00, \$25.00 of which shall be forwarded by the Clerk of the

1 Superior Court as provided in section 2 of P.L.1993, c.188
2 (C.52:27D-43.24a).

3 Any person filing a motion in any action or proceeding shall pay
4 to the clerk \$30.00.

5 (cf: P.L.2003, c.117, s.41)

6

7 86. Section 2 of P.L.1993, c.188 (C.52:27D-43.24a) is amended
8 to read as follows:

9 2. Forwarding of filing fee. The Clerk of the Superior Court shall
10 forward \$25.00 of the \$250.00 filing fee for a divorce or a
11 dissolution of a civil union provided for in N.J.S.22A:2-12 on a
12 quarterly basis to the Department of Community Affairs.

13 (cf: P.L.2003, c.117, s.42)

14

15 87. Section 5 of P.L.1945, c.169 (C.10:5-5) is amended to read
16 as follows:

17 5. As used in this act, unless a different meaning clearly
18 appears from the context:

19 a. "Person" includes one or more individuals, partnerships,
20 associations, organizations, labor organizations, corporations, legal
21 representatives, trustees, trustees in bankruptcy, receivers, and
22 fiduciaries.

23 b. "Employment agency" includes any person undertaking to
24 procure employees or opportunities for others to work.

25 c. "Labor organization" includes any organization which exists
26 and is constituted for the purpose, in whole or in part, of collective
27 bargaining, or of dealing with employers concerning grievances,
28 terms or conditions of employment, or of other mutual aid or
29 protection in connection with employment.

30 d. "Unlawful employment practice" and "unlawful
31 discrimination" include only those unlawful practices and acts
32 specified in section 11 of this act.

33 e. "Employer" includes all persons as defined in subsection a.
34 of this section unless otherwise specifically exempt under another
35 section of this act, and includes the State, any political or civil
36 subdivision thereof, and all public officers, agencies, boards or
37 bodies.

38 f. "Employee" does not include any individual employed in the
39 domestic service of any person.

40 g. "Liability for service in the Armed Forces of the United
41 States" means subject to being ordered as an individual or member
42 of an organized unit into active service in the Armed Forces of the
43 United States by reason of membership in the National Guard, naval
44 militia or a reserve component of the Armed Forces of the United
45 States, or subject to being inducted into such armed forces through
46 a system of national selective service.

47 h. "Division" means the "Division on Civil Rights" created by
48 this act.

- 1 i. "Attorney General" means the Attorney General of the State
2 of New Jersey or his representative or designee.
- 3 j. "Commission" means the Commission on Civil Rights
4 created by this act.
- 5 k. "Director" means the Director of the Division on Civil
6 Rights.
- 7 l. "A place of public accommodation" shall include, but not be
8 limited to: any tavern, roadhouse, hotel, motel, trailer camp,
9 summer camp, day camp, or resort camp, whether for entertainment
10 of transient guests or accommodation of those seeking health,
11 recreation or rest; any producer, manufacturer, wholesaler,
12 distributor, retail shop, store, establishment, or concession dealing
13 with goods or services of any kind; any restaurant, eating house, or
14 place where food is sold for consumption on the premises; any
15 place maintained for the sale of ice cream, ice and fruit preparations
16 or their derivatives, soda water or confections, or where any
17 beverages of any kind are retailed for consumption on the premises;
18 any garage, any public conveyance operated on land or water, or in
19 the air, any stations and terminals thereof; any bathhouse,
20 boardwalk, or seashore accommodation; any auditorium, meeting
21 place, or hall; any theatre, motion-picture house, music hall, roof
22 garden, skating rink, swimming pool, amusement and recreation
23 park, fair, bowling alley, gymnasium, shooting gallery, billiard and
24 pool parlor, or other place of amusement; any comfort station; any
25 dispensary, clinic or hospital; any public library; any kindergarten,
26 primary and secondary school, trade or business school, high
27 school, academy, college and university, or any educational
28 institution under the supervision of the State Board of Education, or
29 the Commissioner of Education of the State of New Jersey.
30 Nothing herein contained shall be construed to include or to apply
31 to any institution, bona fide club, or place of accommodation, which
32 is in its nature distinctly private; nor shall anything herein contained
33 apply to any educational facility operated or maintained by a bona
34 fide religious or sectarian institution, and the right of a natural
35 parent or one in loco parentis to direct the education and upbringing
36 of a child under his control is hereby affirmed; nor shall anything
37 herein contained be construed to bar any private secondary or post
38 secondary school from using in good faith criteria other than race,
39 creed, color, national origin, ancestry or affectional or sexual
40 orientation in the admission of students.
- 41 m. "A publicly assisted housing accommodation" shall include
42 all housing built with public funds or public assistance pursuant to
43 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
44 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949,
45 c.184, and all housing financed in whole or in part by a loan,
46 whether or not secured by a mortgage, the repayment of which is
47 guaranteed or insured by the federal government or any agency
48 thereof.

1 n. The term "real property" includes real estate, lands,
2 tenements and hereditaments, corporeal and incorporeal, and
3 leaseholds, provided, however, that, except as to publicly assisted
4 housing accommodations, the provisions of this act shall not apply
5 to the rental: (1) of a single apartment or flat in a two-family
6 dwelling, the other occupancy unit of which is occupied by the
7 owner as a residence; or (2) of a room or rooms to another person or
8 persons by the owner or occupant of a one-family dwelling
9 occupied by the owner or occupant as a residence at the time of
10 such rental. Nothing herein contained shall be construed to bar any
11 religious or denominational institution or organization, or any
12 organization operated for charitable or educational purposes, which
13 is operated, supervised or controlled by or in connection with a
14 religious organization, in the sale, lease or rental of real property,
15 from limiting admission to or giving preference to persons of the
16 same religion or denomination or from making such selection as is
17 calculated by such organization to promote the religious principles
18 for which it is established or maintained. Nor does any provision
19 under this act regarding discrimination on the basis of familial
20 status apply with respect to housing for older persons.

21 o. "Real estate broker" includes a person, firm or corporation
22 who, for a fee, commission or other valuable consideration, or by
23 reason of promise or reasonable expectation thereof, lists for sale,
24 sells, exchanges, buys or rents, or offers or attempts to negotiate a
25 sale, exchange, purchase, or rental of real estate or an interest
26 therein, or collects or offers or attempts to collect rent for the use of
27 real estate, or solicits for prospective purchasers or assists or directs
28 in the procuring of prospects or the negotiation or closing of any
29 transaction which does or is contemplated to result in the sale,
30 exchange, leasing, renting or auctioning of any real estate, or
31 negotiates, or offers or attempts or agrees to negotiate a loan
32 secured or to be secured by mortgage or other encumbrance upon or
33 transfer of any real estate for others; or any person who, for
34 pecuniary gain or expectation of pecuniary gain conducts a public
35 or private competitive sale of lands or any interest in lands. In the
36 sale of lots, the term "real estate broker" shall also include any
37 person, partnership, association or corporation employed by or on
38 behalf of the owner or owners of lots or other parcels of real estate,
39 at a stated salary, or upon a commission, or upon a salary and
40 commission or otherwise, to sell such real estate, or any parts
41 thereof, in lots or other parcels, and who shall sell or exchange, or
42 offer or attempt or agree to negotiate the sale or exchange, of any
43 such lot or parcel of real estate.

44 p. "Real estate salesperson" includes any person who, for
45 compensation, valuable consideration or commission, or other thing
46 of value, or by reason of a promise or reasonable expectation
47 thereof, is employed by and operates under the supervision of a
48 licensed real estate broker to sell or offer to sell, buy or offer to buy
49 or negotiate the purchase, sale or exchange of real estate, or offers

1 or attempts to negotiate a loan secured or to be secured by a
2 mortgage or other encumbrance upon or transfer of real estate, or to
3 lease or rent, or offer to lease or rent any real estate for others, or to
4 collect rents for the use of real estate, or to solicit for prospective
5 purchasers or lessees of real estate, or who is employed by a
6 licensed real estate broker to sell or offer to sell lots or other parcels
7 of real estate, at a stated salary, or upon a commission, or upon a
8 salary and commission, or otherwise to sell real estate, or any parts
9 thereof, in lots or other parcels.

10 q. "Disability" means physical disability, infirmity,
11 malformation or disfigurement which is caused by bodily injury,
12 birth defect or illness including epilepsy and other seizure
13 disorders, and which shall include, but not be limited to, any degree
14 of paralysis, amputation, lack of physical coordination, blindness or
15 visual impediment, deafness or hearing impediment, muteness or
16 speech impediment or physical reliance on a service or guide dog,
17 wheelchair, or other remedial appliance or device, or any mental,
18 psychological or developmental disability resulting from
19 anatomical, psychological, physiological or neurological conditions
20 which prevents the normal exercise of any bodily or mental
21 functions or is demonstrable, medically or psychologically, by
22 accepted clinical or laboratory diagnostic techniques. Disability
23 shall also mean AIDS or HIV infection.

24 r. "Blind person" means any individual whose central visual
25 acuity does not exceed 20/200 in the better eye with correcting lens
26 or whose visual acuity is better than 20/200 if accompanied by a
27 limit to the field of vision in the better eye to such a degree that its
28 widest diameter subtends an angle of no greater than 20 degrees.

29 s. "Guide dog" means a dog used to assist deaf persons or
30 which is fitted with a special harness so as to be suitable as an aid to
31 the mobility of a blind person, and is used by a blind person who
32 has satisfactorily completed a specific course of training in the use
33 of such a dog, and has been trained by an organization generally
34 recognized by agencies involved in the rehabilitation of the blind or
35 deaf as reputable and competent to provide dogs with training of
36 this type.

37 t. "Guide or service dog trainer" means any person who is
38 employed by an organization generally recognized by agencies
39 involved in the rehabilitation of persons with disabilities as
40 reputable and competent to provide dogs with training, and who is
41 actually involved in the training process.

42 u. "Housing accommodation" means any publicly assisted
43 housing accommodation or any real property, or portion thereof,
44 which is used or occupied, or is intended, arranged, or designed to
45 be used or occupied, as the home, residence or sleeping place of one
46 or more persons, but shall not include any single family residence
47 the occupants of which rent, lease, or furnish for compensation not
48 more than one room therein.

- 1 v. "Public facility" means any place of public accommodation
2 and any street, highway, sidewalk, walkway, public building, and
3 any other place or structure to which the general public is regularly,
4 normally or customarily permitted or invited.
- 5 w. "Deaf person" means any person whose hearing is so
6 severely impaired that the person is unable to hear and understand
7 normal conversational speech through the unaided ear alone, and
8 who must depend primarily on a supportive device or visual
9 communication such as writing, lip reading, sign language, and
10 gestures.
- 11 x. "Atypical hereditary cellular or blood trait" means sickle cell
12 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
13 fibrosis trait.
- 14 y. "Sickle cell trait" means the condition wherein the major
15 natural hemoglobin components present in the blood of the
16 individual are hemoglobin A (normal) and hemoglobin S (sickle
17 hemoglobin) as defined by standard chemical and physical analytic
18 techniques, including electrophoresis; and the proportion of
19 hemoglobin A is greater than the proportion of hemoglobin S or one
20 natural parent of the individual is shown to have only normal
21 hemoglobin components (hemoglobin A, hemoglobin A2,
22 hemoglobin F) in the normal proportions by standard chemical and
23 physical analytic tests.
- 24 z. "Hemoglobin C trait" means the condition wherein the major
25 natural hemoglobin components present in the blood of the
26 individual are hemoglobin A (normal) and hemoglobin C as defined
27 by standard chemical and physical analytic techniques, including
28 electrophoresis; and the proportion of hemoglobin A is greater than
29 the proportion of hemoglobin C or one natural parent of the
30 individual is shown to have only normal hemoglobin components
31 (hemoglobin A, hemoglobin A2, hemoglobin F) in normal
32 proportions by standard chemical and physical analytic tests.
- 33 aa. "Thalassemia trait" means the presence of the thalassemia
34 gene which in combination with another similar gene results in the
35 chronic hereditary disease Cooley's anemia.
- 36 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
37 which in combination with another similar gene results in the
38 chronic hereditary disease Tay-Sachs.
- 39 cc. "Cystic fibrosis trait" means the presence of the cystic
40 fibrosis gene which in combination with another similar gene
41 results in the chronic hereditary disease cystic fibrosis.
- 42 dd. "Service dog" means any dog individually trained to the
43 requirements of a person with a disability including, but not limited
44 to minimal protection work, rescue work, pulling a wheelchair or
45 retrieving dropped items. This term shall include a "seizure dog"
46 trained to alert or otherwise assist persons subject to epilepsy or
47 other seizure disorders.
- 48 ee. "Qualified Medicaid applicant" means an individual who is a
49 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

1 ff. "AIDS" means acquired immune deficiency syndrome as
2 defined by the Centers for Disease Control and Prevention of the
3 United States Public Health Service.

4 gg. "HIV infection" means infection with the human
5 immunodeficiency virus or any other related virus identified as a
6 probable causative agent of AIDS.

7 hh. "Affectional or sexual orientation" means male or female
8 heterosexuality, homosexuality or bisexuality by inclination,
9 practice, identity or expression, having a history thereof or being
10 perceived, presumed or identified by others as having such an
11 orientation.

12 ii. "Heterosexuality" means affectional, emotional or physical
13 attraction or behavior which is primarily directed towards persons
14 of the other gender.

15 jj. "Homosexuality" means affectional, emotional or physical
16 attraction or behavior which is primarily directed towards persons
17 of the same gender.

18 kk. "Bisexuality" means affectional, emotional or physical
19 attraction or behavior which is directed towards persons of either
20 gender.

21 ll. "Familial status" means being the natural parent of a child,
22 the adoptive parent of a child, the resource family parent of a child,
23 having a "parent and child relationship" with a child as defined by
24 State law, or having sole or joint legal or physical custody, care,
25 guardianship, or visitation with a child, or any person who is
26 pregnant or is in the process of securing legal custody of any
27 individual who has not attained the age of 18 years.

28 mm. "Housing for older persons" means housing:

29 (1) provided under any State program that the Attorney General
30 determines is specifically designed and operated to assist elderly
31 persons (as defined in the State program); or provided under any
32 federal program that the United States Department of Housing and
33 Urban Development determines is specifically designed and
34 operated to assist elderly persons (as defined in the federal
35 program); or

36 (2) intended for, and solely occupied by persons 62 years of age
37 or older; or

38 (3) intended and operated for occupancy by at least one person
39 55 years of age or older per unit. In determining whether housing
40 qualifies as housing for older persons under this subsection, the
41 Attorney General shall adopt regulations which require at least the
42 following factors:

43 (a) the existence of significant facilities and services
44 specifically designed to meet the physical or social needs of older
45 persons, or if the provision of such facilities and services is not
46 practicable, that such housing is necessary to provide important
47 housing opportunities for older persons; and

48 (b) that at least 80 percent of the units are occupied by at least
49 one person 55 years of age or older per unit; and

1 (c) the publication of, and adherence to, policies and procedures
2 which demonstrate an intent by the owner or manager to provide
3 housing for persons 55 years of age or older.

4 Housing shall not fail to meet the requirements for housing for
5 older persons by reason of: persons residing in such housing as of
6 September 13, 1988 not meeting the age requirements of this
7 subsection, provided that new occupants of such housing meet the
8 age requirements of this subsection; or unoccupied units, provided
9 that such units are reserved for occupancy by persons who meet the
10 age requirements of this subsection.

11 nn. "Genetic characteristic" means any inherited gene or
12 chromosome, or alteration thereof, that is scientifically or medically
13 believed to predispose an individual to a disease, disorder or
14 syndrome, or to be associated with a statistically significant
15 increased risk of development of a disease, disorder or syndrome.

16 oo. "Genetic information" means the information about genes,
17 gene products or inherited characteristics that may derive from an
18 individual or family member.

19 pp. "Genetic test" means a test for determining the presence or
20 absence of an inherited genetic characteristic in an individual,
21 including tests of nucleic acids such as DNA, RNA and
22 mitochondrial DNA, chromosomes or proteins in order to identify a
23 predisposing genetic characteristic.

24 qq. "Domestic partnership" means a domestic partnership
25 established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

26 rr. "Civil Union" means a legally recognized union of two
27 eligible individuals established pursuant to R.S.37:1-1 et seq. and
28 P.L. .c. (C.)(pending before the Legislature as this bill).
29 (cf: P.L.2004, c.130, s.37)
30

31 88. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to
32 read as follows:

33 11. It shall be an unlawful employment practice, or, as the case
34 may be, an unlawful discrimination:

35 a. For an employer, because of the race, creed, color, national
36 origin, ancestry, age, marital status, civil union status, domestic
37 partnership status, affectional or sexual orientation, genetic
38 information, sex, disability or atypical hereditary cellular or blood
39 trait of any individual, or because of the liability for service in the
40 Armed Forces of the United States or the nationality of any
41 individual, or because of the refusal to submit to a genetic test or
42 make available the results of a genetic test to an employer, to refuse
43 to hire or employ or to bar or to discharge or require to retire, unless
44 justified by lawful considerations other than age, from employment
45 such individual or to discriminate against such individual in
46 compensation or in terms, conditions or privileges of employment;
47 provided, however, it shall not be an unlawful employment practice
48 to refuse to accept for employment an applicant who has received a
49 notice of induction or orders to report for active duty in the armed

1 forces; provided further that nothing herein contained shall be
2 construed to bar an employer from refusing to accept for
3 employment any person on the basis of sex in those certain
4 circumstances where sex is a bona fide occupational qualification,
5 reasonably necessary to the normal operation of the particular
6 business or enterprise; provided further that nothing herein
7 contained shall be construed to bar an employer from refusing to
8 accept for employment or to promote any person over 70 years of
9 age; provided further that it shall not be an unlawful employment
10 practice for a club exclusively social or fraternal to use club
11 membership as a uniform qualification for employment, or for a
12 religious association or organization to utilize religious affiliation
13 as a uniform qualification in the employment of clergy, religious
14 teachers or other employees engaged in the religious activities of
15 the association or organization, or in following the tenets of its
16 religion in establishing and utilizing criteria for employment of an
17 employee; provided further, that it shall not be an unlawful
18 employment practice to require the retirement of any employee
19 who, for the two-year period immediately before retirement, is
20 employed in a bona fide executive or a high policy-making position,
21 if that employee is entitled to an immediate non-forfeitable annual
22 retirement benefit from a pension, profit sharing, savings or
23 deferred retirement plan, or any combination of those plans, of the
24 employer of that employee which equals in the aggregate at least
25 \$27,000.00; and provided further that an employer may restrict
26 employment to citizens of the United States where such restriction
27 is required by federal law or is otherwise necessary to protect the
28 national interest.

29 The provisions of subsections a. and b. of section 57 of
30 P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of
31 P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an
32 unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

33 For the purposes of this subsection, a "bona fide executive" is a
34 top level employee who exercises substantial executive authority
35 over a significant number of employees and a large volume of
36 business. A "high policy-making position" is a position in which a
37 person plays a significant role in developing policy and in
38 recommending the implementation thereof.

39 b. For a labor organization, because of the race, creed, color,
40 national origin, ancestry, age, marital status, civil union status,
41 domestic partnership status, affectional or sexual orientation,
42 disability or sex of any individual, or because of the liability for
43 service in the Armed Forces of the United States or nationality of
44 any individual, to exclude or to expel from its membership such
45 individual or to discriminate in any way against any of its members,
46 against any applicant for, or individual included in, any apprentice
47 or other training program or against any employer or any individual
48 employed by an employer; provided, however, that nothing herein
49 contained shall be construed to bar a labor organization from

1 excluding from its apprentice or other training programs any person
2 on the basis of sex in those certain circumstances where sex is a
3 bona fide occupational qualification reasonably necessary to the
4 normal operation of the particular apprentice or other training
5 program.

6 c. For any employer or employment agency to print or circulate
7 or cause to be printed or circulated any statement, advertisement or
8 publication, or to use any form of application for employment, or to
9 make an inquiry in connection with prospective employment, which
10 expresses, directly or indirectly, any limitation, specification or
11 discrimination as to race, creed, color, national origin, ancestry,
12 age, marital status, civil union status, domestic partnership status,
13 affectional or sexual orientation, disability, nationality or sex or
14 liability of any applicant for employment for service in the Armed
15 Forces of the United States, or any intent to make any such
16 limitation, specification or discrimination, unless based upon a bona
17 fide occupational qualification.

18 d. For any person to take reprisals against any person because
19 that person has opposed any practices or acts forbidden under this
20 act or because that person has filed a complaint, testified or assisted
21 in any proceeding under this act or to coerce, intimidate, threaten or
22 interfere with any person in the exercise or enjoyment of, or on
23 account of that person having aided or encouraged any other person
24 in the exercise or enjoyment of, any right granted or protected by
25 this act.

26 e. For any person, whether an employer or an employee or not,
27 to aid, abet, incite, compel or coerce the doing of any of the acts
28 forbidden under this act, or to attempt to do so.

29 f. (1) For any owner, lessee, proprietor, manager, superintendent,
30 agent, or employee of any place of public accommodation directly
31 or indirectly to refuse, withhold from or deny to any person any of
32 the accommodations, advantages, facilities or privileges thereof, or
33 to discriminate against any person in the furnishing thereof, or
34 directly or indirectly to publish, circulate, issue, display, post or
35 mail any written or printed communication, notice, or advertisement
36 to the effect that any of the accommodations, advantages, facilities,
37 or privileges of any such place will be refused, withheld from, or
38 denied to any person on account of the race, creed, color, national
39 origin, ancestry, marital status, civil union status, domestic
40 partnership status, sex, affectional or sexual orientation, disability
41 or nationality of such person, or that the patronage or custom
42 thereat of any person of any particular race, creed, color, national
43 origin, ancestry, marital status, civil union status, domestic
44 partnership status, sex, affectional or sexual orientation, disability
45 or nationality is unwelcome, objectionable or not acceptable,
46 desired or solicited, and the production of any such written or
47 printed communication, notice or advertisement, purporting to
48 relate to any such place and to be made by any owner, lessee,
49 proprietor, superintendent or manager thereof, shall be presumptive

1 evidence in any action that the same was authorized by such person;
2 provided, however, that nothing contained herein shall be construed
3 to bar any place of public accommodation which is in its nature
4 reasonably restricted exclusively to individuals of one sex, and
5 which shall include but not be limited to any summer camp, day
6 camp, or resort camp, bathhouse, dressing room, swimming pool,
7 gymnasium, comfort station, dispensary, clinic or hospital, or
8 school or educational institution which is restricted exclusively to
9 individuals of one sex, from refusing, withholding from or denying
10 to any individual of the opposite sex any of the accommodations,
11 advantages, facilities or privileges thereof on the basis of sex;
12 provided further, that the foregoing limitation shall not apply to any
13 restaurant as defined in R.S.33:1-1 or place where alcoholic
14 beverages are served.

15 (2) Notwithstanding the definition of "public accommodation "
16 as set forth in subsection l. of section 5 of P.L.1945, c.169 (C.10:5-
17 5), for any owner, lessee, proprietor, manager, superintendent,
18 agent, or employee of any private club or association to directly or
19 indirectly refuse, withhold from or deny to any individual who has
20 been accepted as a club member and has contracted for or is
21 otherwise entitled to full club membership any of the
22 accommodations, advantages, facilities or privileges thereof, or to
23 discriminate against any member in the furnishing thereof on
24 account of the race, creed, color, national origin, ancestry, marital
25 status, civil union status, domestic partnership status, sex,
26 affectional or sexual orientation, disability or nationality of such
27 person.

28 In addition to the penalties otherwise provided for a violation of
29 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)
30 of subsection f. of this section is the holder of an alcoholic beverage
31 license issued under the provisions of R.S.33:1-12 for that private
32 club or association, the matter shall be referred to the Director of
33 the Division of Alcoholic Beverage Control who shall impose an
34 appropriate penalty in accordance with the procedures set forth in
35 R.S.33:1-31.

36 g. For any person, including but not limited to, any owner,
37 lessee, sublessee, assignee or managing agent of, or other person
38 having the right of ownership or possession of or the right to sell,
39 rent, lease, assign, or sublease any real property or part or portion
40 thereof, or any agent or employee of any of these:

41 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
42 to deny to or withhold from any person or group of persons any real
43 property or part or portion thereof because of race, creed, color,
44 national origin, ancestry, marital status, civil union status, domestic
45 partnership status, sex, affectional or sexual orientation, familial
46 status, disability, nationality, or source of lawful income used for
47 rental or mortgage payments;

48 (2) To discriminate against any person or group of persons
49 because of race, creed, color, national origin, ancestry, marital

1 status, civil union status, domestic partnership status, sex,
2 affectional or sexual orientation, familial status, disability,
3 nationality or source of lawful income used for rental or mortgage
4 payments in the terms, conditions or privileges of the sale, rental or
5 lease of any real property or part or portion thereof or in the
6 furnishing of facilities or services in connection therewith;

7 (3) To print, publish, circulate, issue, display, post or mail, or
8 cause to be printed, published, circulated, issued, displayed, posted
9 or mailed any statement, advertisement, publication or sign, or to
10 use any form of application for the purchase, rental, lease,
11 assignment or sublease of any real property or part or portion
12 thereof, or to make any record or inquiry in connection with the
13 prospective purchase, rental, lease, assignment, or sublease of any
14 real property, or part or portion thereof which expresses, directly or
15 indirectly, any limitation, specification or discrimination as to race,
16 creed, color, national origin, ancestry, marital status, civil union
17 status, domestic partnership status, sex, affectional or sexual
18 orientation, familial status, disability, nationality, or source of
19 lawful income used for rental or mortgage payments, or any intent
20 to make any such limitation, specification or discrimination, and the
21 production of any such statement, advertisement, publicity, sign,
22 form of application, record, or inquiry purporting to be made by any
23 such person shall be presumptive evidence in any action that the
24 same was authorized by such person; provided, however, that
25 nothing contained in this subsection shall be construed to bar any
26 person from refusing to sell, rent, lease, assign or sublease or from
27 advertising or recording a qualification as to sex for any room,
28 apartment, flat in a dwelling or residential facility which is planned
29 exclusively for and occupied by individuals of one sex to any
30 individual of the exclusively opposite sex on the basis of sex;

31 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
32 to deny to or withhold from any person or group of persons any real
33 property or part or portion thereof because of the source of any
34 lawful income received by the person or the source of any lawful
35 rent payment to be paid for the real property; or

36 (5) To refuse to rent or lease any real property to another person
37 because that person's family includes children under 18 years of
38 age, or to make an agreement, rental or lease of any real property
39 which provides that the agreement, rental or lease shall be rendered
40 null and void upon the birth of a child. This paragraph shall not
41 apply to housing for older persons as defined in subsection mm. of
42 section 5 of P.L.1945, c.169 (C.10:5-5).

43 h. For any person, including but not limited to, any real estate
44 broker, real estate salesperson, or employee or agent thereof:

45 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
46 sale, rental, lease, assignment, or sublease any real property or part
47 or portion thereof to any person or group of persons or to refuse to
48 negotiate for the sale, rental, lease, assignment, or sublease of any
49 real property or part or portion thereof to any person or group of

1 persons because of race, creed, color, national origin, ancestry,
2 marital status, civil union status, domestic partnership status,
3 familial status, sex, affectional or sexual orientation, disability,
4 nationality, or source of lawful income used for rental or mortgage
5 payments, or to represent that any real property or portion thereof is
6 not available for inspection, sale, rental, lease, assignment, or
7 sublease when in fact it is so available, or otherwise to deny or
8 withhold any real property or any part or portion of facilities thereof
9 to or from any person or group of persons because of race, creed,
10 color, national origin, ancestry, marital status, civil union status,
11 domestic partnership status, familial status, sex, affectional or
12 sexual orientation, disability or nationality;

13 (2) To discriminate against any person because of race, creed,
14 color, national origin, ancestry, marital status, civil union status,
15 domestic partnership status, familial status, sex, affectional or
16 sexual orientation, disability, nationality, or source of lawful
17 income used for rental or mortgage payments in the terms,
18 conditions or privileges of the sale, rental, lease, assignment or
19 sublease of any real property or part or portion thereof or in the
20 furnishing of facilities or services in connection therewith;

21 (3) To print, publish, circulate, issue, display, post, or mail, or
22 cause to be printed, published, circulated, issued, displayed, posted
23 or mailed any statement, advertisement, publication or sign, or to
24 use any form of application for the purchase, rental, lease,
25 assignment, or sublease of any real property or part or portion
26 thereof or to make any record or inquiry in connection with the
27 prospective purchase, rental, lease, assignment, or sublease of any
28 real property or part or portion thereof which expresses, directly or
29 indirectly, any limitation, specification or discrimination as to race,
30 creed, color, national origin, ancestry, marital status, civil union
31 status, domestic partnership status, familial status, sex, affectional
32 or sexual orientation, disability, nationality, or source of lawful
33 income used for rental or mortgage payments or any intent to make
34 any such limitation, specification or discrimination, and the
35 production of any such statement, advertisement, publicity, sign,
36 form of application, record, or inquiry purporting to be made by any
37 such person shall be presumptive evidence in any action that the
38 same was authorized by such person; provided, however, that
39 nothing contained in this subsection h., shall be construed to bar
40 any person from refusing to sell, rent, lease, assign or sublease or
41 from advertising or recording a qualification as to sex for any room,
42 apartment, flat in a dwelling or residential facility which is planned
43 exclusively for and occupied exclusively by individuals of one sex
44 to any individual of the opposite sex on the basis of sex;

45 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
46 to deny to or withhold from any person or group of persons any real
47 property or part or portion thereof because of the source of any
48 lawful income received by the person or the source of any lawful
49 rent payment to be paid for the real property; or

1 (5) To refuse to rent or lease any real property to another person
2 because that person's family includes children under 18 years of
3 age, or to make an agreement, rental or lease of any real property
4 which provides that the agreement, rental or lease shall be rendered
5 null and void upon the birth of a child. This paragraph shall not
6 apply to housing for older persons as defined in subsection mm. of
7 section 5 of P.L.1945, c.169 (C.10:5-5).

8 i. For any person, bank, banking organization, mortgage
9 company, insurance company or other financial institution, lender
10 or credit institution involved in the making or purchasing of any
11 loan or extension of credit, for whatever purpose, whether secured
12 by residential real estate or not, including but not limited to
13 financial assistance for the purchase, acquisition, construction,
14 rehabilitation, repair or maintenance of any real property or part or
15 portion thereof or any agent or employee thereof:

16 (1) To discriminate against any person or group of persons
17 because of race, creed, color, national origin, ancestry, marital
18 status, civil union status, domestic partnership status, sex,
19 affectional or sexual orientation, disability, familial status or
20 nationality, in the granting, withholding, extending, modifying,
21 renewing, or purchasing, or in the fixing of the rates, terms,
22 conditions or provisions of any such loan, extension of credit or
23 financial assistance or purchase thereof or in the extension of
24 services in connection therewith;

25 (2) To use any form of application for such loan, extension of
26 credit or financial assistance or to make record or inquiry in
27 connection with applications for any such loan, extension of credit
28 or financial assistance which expresses, directly or indirectly, any
29 limitation, specification or discrimination as to race, creed, color,
30 national origin, ancestry, marital status, civil union status, domestic
31 partnership status, sex, affectional or sexual orientation, disability,
32 familial status or nationality or any intent to make any such
33 limitation, specification or discrimination; unless otherwise
34 required by law or regulation to retain or use such information;

35 (3) (Deleted by amendment, P.L.2003, c.180).

36 (4) To discriminate against any person or group of persons
37 because of the source of any lawful income received by the person
38 or the source of any lawful rent payment to be paid for the real
39 property; or

40 (5) To discriminate against any person or group of persons
41 because that person's family includes children under 18 years of
42 age, or to make an agreement or mortgage which provides that the
43 agreement or mortgage shall be rendered null and void upon the
44 birth of a child. This paragraph shall not apply to housing for older
45 persons as defined in subsection mm. of section 5 of P.L.1945,
46 c.169 (C.10:5-5).

47 j. For any person whose activities are included within the
48 scope of this act to refuse to post or display such notices concerning

1 the rights or responsibilities of persons affected by this act as the
2 Attorney General may by regulation require.

3 k. For any real estate broker, real estate salesperson or
4 employee or agent thereof or any other individual, corporation,
5 partnership, or organization, for the purpose of inducing a
6 transaction for the sale or rental of real property from which
7 transaction such person or any of its members may benefit
8 financially, to represent that a change has occurred or will or may
9 occur in the composition with respect to race, creed, color, national
10 origin, ancestry, marital status, civil union status, domestic
11 partnership status, familial status, sex, affectional or sexual
12 orientation, disability, nationality, or source of lawful income used
13 for rental or mortgage payments of the owners or occupants in the
14 block, neighborhood or area in which the real property is located,
15 and to represent, directly or indirectly, that this change will or may
16 result in undesirable consequences in the block, neighborhood or
17 area in which the real property is located, including, but not limited
18 to the lowering of property values, an increase in criminal or anti-
19 social behavior, or a decline in the quality of schools or other
20 facilities.

21 l. For any person to refuse to buy from, sell to, lease from or
22 to, license, contract with, or trade with, provide goods, services or
23 information to, or otherwise do business with any other person on
24 the basis of the race, creed, color, national origin, ancestry, age,
25 sex, affectional or sexual orientation, marital status, civil union
26 status, domestic partnership status, liability for service in the Armed
27 Forces of the United States, disability, nationality, or source of
28 lawful income used for rental or mortgage payments of such other
29 person or of such other person's spouse, partners, members,
30 stockholders, directors, officers, managers, superintendents, agents,
31 employees, business associates, suppliers, or customers. This
32 subsection shall not prohibit refusals or other actions (1) pertaining
33 to employee-employer collective bargaining, labor disputes, or
34 unfair labor practices, or (2) made or taken in connection with a
35 protest of unlawful discrimination or unlawful employment
36 practices.

37 m. For any person to:

38 (1) Grant or accept any letter of credit or other document which
39 evidences the transfer of funds or credit, or enter into any contract
40 for the exchange of goods or services, where the letter of credit,
41 contract, or other document contains any provisions requiring any
42 person to discriminate against or to certify that he, she or it has not
43 dealt with any other person on the basis of the race, creed, color,
44 national origin, ancestry, age, sex, affectional or sexual orientation,
45 marital status, civil union status, domestic partnership status,
46 disability, liability for service in the Armed Forces of the United
47 States, or nationality of such other person or of such other person's
48 spouse, partners, members, stockholders, directors, officers,

1 managers, superintendents, agents, employees, business associates,
2 suppliers, or customers.

3 (2) Refuse to grant or accept any letter of credit or other
4 document which evidences the transfer of funds or credit, or refuse
5 to enter into any contract for the exchange of goods or services, on
6 the ground that it does not contain such a discriminatory provision
7 or certification.

8 The provisions of this subsection shall not apply to any letter of
9 credit, contract, or other document which contains any provision
10 pertaining to employee-employer collective bargaining, a labor
11 dispute or an unfair labor practice, or made in connection with the
12 protest of unlawful discrimination or an unlawful employment
13 practice, if the other provisions of such letter of credit, contract, or
14 other document do not otherwise violate the provisions of this
15 subsection.

16 n. For any person to aid, abet, incite, compel, coerce, or induce
17 the doing of any act forbidden by subsections l. and m. of section
18 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
19 do so. Such prohibited conduct shall include, but not be limited to:

20 (1) Buying from, selling to, leasing from or to, licensing,
21 contracting with, trading with, providing goods, services, or
22 information to, or otherwise doing business with any person
23 because that person does, or agrees or attempts to do, any such act
24 or any act prohibited by this subsection; or

25 (2) Boycotting, commercially blacklisting or refusing to buy
26 from, sell to, lease from or to, license, contract with, provide goods,
27 services or information to, or otherwise do business with any person
28 because that person has not done or refuses to do any such act or
29 any act prohibited by this subsection; provided that this subsection
30 shall not prohibit refusals or other actions either pertaining to
31 employee-employer collective bargaining, labor disputes, or unfair
32 labor practices, or made or taken in connection with a protest of
33 unlawful discrimination or unlawful employment practices.

34 o. For any multiple listing service, real estate brokers'
35 organization or other service, organization or facility related to the
36 business of selling or renting dwellings to deny any person access
37 to or membership or participation in such organization, or to
38 discriminate against such person in the terms or conditions of such
39 access, membership, or participation, on account of race, creed,
40 color, national origin, ancestry, age, marital status, civil union
41 status, domestic partnership status, familial status, sex, affectional
42 or sexual orientation, disability or nationality.

43 (cf: P.L.2003, c.246, s.12)

44

45 89. Section 3 of P.L.1989, c.261 (C.34:11B-3) is amended to
46 read as follows:

47 3. As used in this act:

48 a. "Child" means a biological, adopted, or resource family
49 child, stepchild, legal ward, or child of a parent who is

- 1 (1) under 18 years of age; or
2 (2) 18 years of age or older but incapable of self-care because of
3 a mental or physical impairment.
- 4 b. "Director" means the Director of the Division on Civil
5 Rights.
- 6 c. "Division" means the Division on Civil Rights in the
7 Department of Law and Public Safety.
- 8 d. "Employ" means to suffer or permit to work for
9 compensation, and includes ongoing, contractual relationships in
10 which the employer retains substantial direct or indirect control
11 over the employee's employment opportunities or terms and
12 conditions of employment.
- 13 e. "Employee" means a person who is employed for at least 12
14 months by an employer, with respect to whom benefits are sought
15 under this act, for not less than 1,000 base hours during the
16 immediately preceding 12-month period.
- 17 f. "Employer" means a person or corporation, partnership,
18 individual proprietorship, joint venture, firm or company or other
19 similar legal entity which engages the services of an employee and
20 which:
- 21 (1) With respect to the period of time from the effective date of
22 this act until the 365th day following the effective date of this act,
23 employs 100 or more employees for each working day during each
24 of 20 or more calendar workweeks in the then current or
25 immediately preceding calendar year;
- 26 (2) With respect to the period of time from the 366th day
27 following the effective date of this act until the 1,095th day
28 following the effective date of this act, employs 75 or more
29 employees for each working day during each of 20 or more calendar
30 workweeks in the then current or immediately preceding calendar
31 year; and
- 32 (3) With respect to any time after the 1,095th day following the
33 effective date of this act, employs 50 or more employees for each
34 working day during each of 20 or more calendar workweeks in the
35 then current or immediately preceding calendar year. "Employer"
36 includes the State, any political subdivision thereof, and all public
37 offices, agencies, boards or bodies.
- 38 g. "Employment benefits" means all benefits and policies
39 provided or made available to employees by an employer, and
40 includes group life insurance, health insurance, disability insurance,
41 sick leave, annual leave, pensions, or other similar benefits.
- 42 h. "Parent" means a person who is the biological parent,
43 adoptive parent, resource family parent, step-parent, parent-in-law
44 or legal guardian, having a "parent-child relationship" with a child
45 as defined by law, or having sole or joint legal or physical custody,
46 care, guardianship, or visitation with a child.
- 47 i. "Family leave" means leave from employment so that the
48 employee may provide care made necessary by reason of:
- 49 (1) the birth of a child of the employee;

1 (2) the placement of a child with the employee in connection
2 with adoption of such child by the employee; or

3 (3) the serious health condition of a family member of the
4 employee.

5 j. "Family member" means a child, parent, ~~[or]~~, spouse, or
6 civil union partner.

7 k. "Reduced leave schedule" means leave scheduled for fewer
8 than an employee's usual number of hours worked per workweek
9 but not for fewer than an employee's usual number of hours worked
10 per workday, unless agreed to by the employee and the employer.

11 l. "Serious health condition" means an illness, injury,
12 impairment, or physical or mental condition which requires:

13 (1) inpatient care in a hospital, hospice, or residential medical
14 care facility; or

15 (2) continuing medical treatment or continuing supervision by a
16 health care provider.

17 (cf: P.L.2004, c.130, s.111).

18

19 90. Section 17 of P.L.1960, c.52 (C.2A:84A-17) is amended to
20 read as follows:

21 2A:84A-17. Privilege of accused

22 (1) Every person has in any criminal action in which he is an
23 accused a right not to be called as a witness and not to testify.

24 (2) The spouse or civil union partner of the accused in a criminal
25 action shall not testify in such action except to prove the fact of
26 marriage or civil union unless (a) such spouse or partner consents,
27 or (b) the accused is charged with an offense against the spouse or
28 partner, a child of the accused or of the spouse or partner, or a child
29 to whom the accused or the spouse or partner stands in the place of
30 a parent, or (c) such spouse or partner is the complainant.

31 (3) An accused in a criminal action has no privilege to refuse
32 when ordered by the judge, to submit his body to examination or to
33 do any act in the presence of the judge or the trier of the fact, except
34 to refuse to testify.

35 (cf: P.L.1992, c.142, s.1)

36

37 91. (New section) On or after the effective date of this act, no
38 domestic partnerships shall be registered under P.L.2003, c. 246
39 (C.26:8A-1 et seq.), except that two persons who are each 62 years
40 of age or older and not of the same sex may establish a domestic
41 partnership pursuant to the provisions of P.L.2003, c.246 (C.26:8A-
42 1 et seq.). This act shall not alter the rights and responsibilities of
43 domestic partnerships existing before the effective date of this act,
44 except that eligible domestic partners shall be given notice and
45 opportunity to enter into a civil union pursuant to the provisions of
46 this act. Entry into a civil union, when joined by both parties to an
47 existing domestic partnership, shall operate to terminate the
48 domestic partnership.

1 92. (New section) Whenever in any law, rule, regulation, judicial
2 or administrative proceeding or otherwise, reference is made to
3 “marriage,” “husband,” “wife,” “spouse,” “family,” “immediate
4 family,” “dependent,” “next of kin,” or another word which in a
5 specific context denotes a marital or spousal relationship, the same
6 shall include a civil union pursuant to the provisions of this act.

7
8 93. The Commissioner of Health and Senior Services in
9 consultation with the Director of the Administrative Office of the
10 Courts, pursuant to the "Administrative Procedure Act," P.L.1968,
11 c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations
12 necessary to effectuate the purposes of this act.

13
14 94. a. There is hereby established the New Jersey Civil Union
15 Review Commission commencing on the effective date of P.L. ,c.
16 (C.)(pending before the Legislature as this bill).

17 b. The commission shall be composed of 13 members to be
18 appointed as follows: the Attorney General or his designee, the
19 Commissioner of the Department of Banking and Insurance or his
20 designee, the Commissioner of Health and Senior Services or his
21 designee, the Commissioner of Human Services or his designee, the
22 Commissioner of the Department of Children and Families or his
23 designee, the Director of the Division of Civil Rights in the
24 Department of Law and Public Safety of his designee, one public
25 member appoint by the President of the Senate, one public member
26 appointed by the Speaker of the General Assembly, and five public
27 members appointed by the Governor, with the advise and consent of
28 the Senate, no more than three who shall be of the same political
29 party.

30 c. It shall be the duty of the commission to study all aspects of
31 P.L. ,c. (C.)(pending before the Legislature as this bill) which
32 authorizes civil unions including, but not limited to:

33 (1) evaluate the implementation, operation and effectiveness of
34 the act;

35 (2) collect information about the act’s effectiveness from
36 members of the public, State agencies and private and public sector
37 businesses and organizations;

38 (3) determine whether additional protections are needed;

39 (4) collect information about the recognition and treatment of
40 civil unions by other states and jurisdictions including the
41 procedures for dissolution; and

42 (5) review the “Domestic Partnership Act,” P.L.2003, c.246
43 (C.26:8A-1 et seq.) and make recommendations whether this act
44 should be repealed.

45 d. The commission shall organize as soon as possible after the
46 appointment of its members. The commission shall be established
47 for a term of three years and the members shall be appointed for the
48 full term of three years. Vacancies in the membership of the
49 commission shall be filled in the same manner as the original

1 appointment. The commission members shall choose a Chair from
2 among its members.

3 e. The members of the commission shall serve without
4 compensation, but may be reimbursed for necessary expenses
5 incurred in the performance of their duties, within the limits of
6 funds appropriated or otherwise made available to the commission
7 for its purposes.

8 f. The commission is entitled to the assistance and service of the
9 employees of any State, county or municipal department, board,
10 bureau, commission or agency as it may require and as may be
11 available to it for its purposes, and to employ stenographic and
12 clerical assistance and to incur traveling or other miscellaneous
13 expenses as may be necessary in order to perform its duties, within
14 the limits of funds appropriated or otherwise made available to it
15 for its purposes.

16 g. The commission shall report annually its findings and
17 recommendations to the Legislature and the Governor.

18 h. The commission shall expire three years from the date of its
19 initial organizational meeting and upon submission of its third and
20 final report.

21

22 95. This act shall take effect on the 30th day after the enactment
23 of this act, but the Commissioner of Health and Senior Services and
24 the Director of the Administrative Office of the Courts may take
25 such anticipatory administrative action in advance as shall be
26 necessary for the implementation of the act.

27

28

29

STATEMENT

30

31 This bill would amend and supplement the marriage statutes to
32 include civil unions. The bill defines a civil union as a legally
33 recognized union of two eligible individuals of the same sex. The
34 purpose of the bill is to provide same-sex couples with the same
35 opportunity as heterosexual couples who choose to marry and to
36 comply with the constitutional mandate set forth by the New Jersey
37 Supreme Court in its recent landmark decision on October 25, 2006
38 of Lewis v. Harris, 188 N.J. 415 (2006).

39 As the findings and declarations section of the bill states, same-
40 sex couples in New Jersey live together in committed relationships
41 without the benefits and rights afforded to heterosexual couples
42 who choose to marry. Promoting such stable and durable
43 relationships as well as eliminating obstacles and hardships these
44 couples may face is necessary and proper and reaffirms this State's
45 obligation to insure equality for all the citizens of New Jersey.

46 New Jersey was one of the first to adopt comprehensive
47 legislation prohibiting discrimination based on affectional or sexual
48 orientation and one of the first to formally recognize domestic
49 partnerships by enacting the "Domestic Partnership Act," P.L.2003,

1 c. 246 (C.26:8A-1 et seq.) on January 12, 2004, thereby
2 guaranteeing in law certain rights and benefits to those individuals
3 who enter into domestic partnerships. Those rights and benefits
4 afforded to same-sex couples under the Domestic Partnership Act
5 should be expanded by the legal recognition of civil unions between
6 same-sex couples.

7 In the Lewis v. Harris decision, the Court held that the State was
8 violating the equal protection guarantee of Article I, paragraph 1 of
9 the State Constitution by denying rights and benefits to committed
10 same-sex couples which were statutorily given to their heterosexual
11 counterparts. The Court stated that, “[T]he State can fulfill that
12 constitutional requirement in one of two ways. It can either amend
13 the marriage statutes to include same-sex couples or enact a parallel
14 statutory structure by another name, in which same-sex couples
15 would not only enjoy the rights and benefits, but also bear the
16 burdens and obligations of civil marriage.” Id. at 463. This bill
17 fulfills this requirement by amending the marriage statute to include
18 civil unions.

19 **General Provisions.** Under the provisions of the bill, a person
20 who wishes to enter a civil union must satisfy all of the following
21 requirements: not be a party to another civil union, domestic
22 partnership or marriage in this State or any other state; be of the
23 same sex and therefore be excluded from the marriage laws in this
24 State; and be at least 18 years of age or older, except if the minor
25 has parental consent to enter into a civil union.

26 The bill provides that parties to a civil union would have all the
27 same benefits, protections and responsibilities under law, whether
28 they derive from statute, administrative or court rule, public policy,
29 common law or any other source of civil law, as are granted to
30 spouses in a marriage. The parties to a civil union may modify the
31 terms, conditions or effects of their civil union in the same manner
32 and to the same extent as married persons who execute an
33 antenuptial agreement or other agreement recognized and
34 enforceable under the law, setting forth particular understandings
35 with respect to their union. The parties to a civil union would be
36 responsible for the support of one another to the same degree and in
37 the same manner as prescribed under law for married persons. The
38 dissolution of civil unions would also follow the same procedures
39 and be subject to the same substantive rights and obligations that
40 are involved in the dissolution of a marriage.

41 The laws of domestic relations, including annulment, premarital
42 agreements, separation, divorce, child custody and support, property
43 division and maintenance, and post relationship spousal support,
44 would apply to the parties to a civil union. Also, the rights of the
45 parties to a civil union, with respect to a child of whom either
46 becomes the natural parent during the term of the civil union, would
47 be the same as those of a married couple, with respect to a child of
48 whom either spouse becomes the natural parent during the marriage.

1 The bill enumerates some legal benefits, protections and
2 responsibilities of spouses which would apply in like manner to the
3 parties to a civil union, however, this list should not be construed to
4 be an exclusive list of such benefits, protections and
5 responsibilities: (1) laws relating to title, tenure, descent and
6 distribution, intestate succession, waiver of will, survivorship, or
7 other incidents of the acquisition, ownership or transfer, inter vivos
8 or at death, of real or personal property, including eligibility to hold
9 real and personal property as tenants by the entirety; (2) causes of
10 action related to or dependent upon spousal status, including an
11 action for wrongful death, emotional distress, loss of consortium, or
12 other torts or actions under contracts reciting, related to, or
13 dependent upon spousal status; (3) probate law and procedure,
14 including nonprobate transfer; (4) adoption law and procedures; (5)
15 laws relating to insurance, health and pension benefits; (6)
16 domestic violence protections and domestic violence programs; (7)
17 prohibitions against discrimination based upon marital status; (8)
18 victim's compensation benefits, including compensation to spouse,
19 children and relatives of homicide victims; (9) workers'
20 compensation benefits pursuant to chapter 15 of Title 34 of the
21 Revised Statutes, including survivors benefits and payment of back
22 wages; (10) laws relating to emergency and nonemergency medical
23 care and treatment, hospital visitation and notification, and any
24 rights guaranteed to a hospital patient or a nursing home resident;
25 (11) advance directives for health care and designation as a health
26 care representative; (12) family leave benefits; (13) public
27 assistance benefits, medical assistance, Supplemental Security
28 Income, pharmaceutical assistance, hearing aid assistance, and
29 utility benefits; (14) laws relating to taxes imposed by the State or a
30 municipality other than estate taxes, including tax deduction based
31 on marital status or exemptions from realty transfer tax based on
32 marital status; (15) laws relating to immunity from compelled
33 testimony and the marital communication privilege; (16) the home
34 ownership rights of a surviving spouse; (17) the right of a spouse to
35 a surname change without petitioning the court; (18) laws relating
36 to the making of, revoking and objecting to anatomical gifts; (19)
37 State pay for military service; (20) application for absentee ballots;
38 (21) legal requirements for assignment of wages; and (22) laws
39 related to tuition assistance for higher education for surviving
40 spouses or children.

41 **Licensing requirements.** This bill amends and supplements Title
42 37 of the Revised Statutes concerning marriage to include civil
43 unions. Under the provisions of the bill, the same requirements and
44 restrictions which currently apply to the issuance of a marriage
45 license would apply to the issuance of a civil union license. For
46 example, the bill provides that before a civil union can be lawfully
47 performed in this State, the persons to the proposed civil union must
48 obtain a civil union license from the licensing officer and deliver it
49 to the person who is to officiate. The bill would also expand the

1 current prohibitions concerning marriage to include civil unions: (1)
2 a man could not enter into a civil union with his brother or the son
3 of his brother or sister or the brother of his father or mother; and (2)
4 a woman could not enter into a civil union with her sister, the
5 daughter of her brother or sister, or the sister of her father or
6 mother.

7 The civil union license would be issued by the licensing officer
8 in the municipality in which either party resides or, if neither party
9 is a resident of the State, in the municipality in which the proposed
10 civil union is to be performed.

11 The civil union license cannot be issued by the local registrar
12 sooner than 72 hours after the application therefore has been made.
13 However, the Superior Court may, by order, waive all or any part of
14 said 72-hour period in cases of emergency, upon satisfactory proof
15 being shown to it. A civil union license would be valid only for 30
16 days after the date of the issuance. A civil union licenses can be
17 issued to a minor provided his parent or guardian consents.

18 The licensing officer before issuing a civil union license would
19 require the parties to appear before him and to subscribe and swear
20 to an oath attesting to the truth of the facts with respect to the civil
21 union. This testimony would be verified by a witness of legal age.
22 Any person who knowingly provides false answers to any of the
23 inquiries would be guilty of perjury. The licensing officer shall be
24 required to set forth: the name, age, birthplace of each party to the
25 civil union, name and birthplace of their parents, the person or the
26 religious society who perform the ceremony and the two witnesses
27 who would be present at the civil union. The civil union license and
28 the original civil union certificate would be transmitted to the local
29 registrar. One copy of the civil union certificate shall be retained
30 by the local registrar and one copy shall be given to each party to a
31 civil union. The remaining copy shall be retained by the person
32 certifying the civil union. Any civil union which has occurred or
33 which may hereafter occur and which is not recorded with the State
34 Registrar may be recorded by filing a delayed report with the State
35 Registrar, documented by a copy of the application for the civil
36 union license.

37 **Fees.** The same \$28.00 fee which is currently required for a
38 marriage license would be required for a civil union: This consists
39 of a \$3.00 fee for the license plus an additional fee of \$25 which is
40 earmarked toward domestic violence shelters.

41 **Officials authorized to perform a civil union.** Those persons
42 who may currently solemnize marriage may also perform a civil
43 union: a judge of the United States Court of Appeals for the Third
44 Circuit, judge of a federal district court, United States magistrate,
45 judge of a municipal court, judge of the Superior Court, judge of a
46 tax court, retired judge of the Superior Court or Tax Court, or judge
47 of the Superior Court or Tax Court, the former County Court, the
48 former County Juvenile and Domestic Relations Court, or the
49 former County District Court who has resigned in good standing,

1 surrogate of any county, county clerk and any mayor or the deputy
2 mayor when authorized by the mayor, or chairman of any township
3 committee or village president of this State, and every minister of
4 every religion.

5 **Premarital and Pre-civil union agreements.** The bill amends
6 the Uniform Premarital Agreement Act, N.J.S.A.37:2-31 et seq. to
7 include pre-civil union agreements.

8 **Vital Statistics provisions.** This bill would also amend various
9 provisions in Title 26 of the Revised Statutes concerning the State
10 Registrar of Vital Statistics and recording, indexing and
11 transmission of marriage certificates and licenses to include civil
12 unions.

13 Under the current law, the State Registrar of Vital Statistics is
14 charged with the general supervision of registration of vital
15 statistics and as such the State registrar is also in charge of
16 maintaining and indexing the records pertaining to marriages, death
17 and births. This bill would expand the duties of the State registrar
18 by also requiring civil union records to be maintained and indexed
19 by the State registrar.

20 The local registrar, under the supervision of the State registrar, is
21 currently charged with the responsibility of coordinating the filing
22 of the proper licenses and certificates pertaining to marriages and
23 transmitting the same to the State registrar. This bill would require
24 the local registrar to also coordinate the filing of civil union
25 licenses. Under the current provisions of the law, marriage licenses
26 may be corrected and amended. This bill would require the same
27 procedures for correcting or amending a civil union license or
28 certificate.

29 **Dissolution of civil unions, equitable distribution and legal**
30 **separation of civil union partners.** The dissolution of a civil union
31 would follow the same procedures and be subject to the same
32 substantive rights and obligations as are involved in the dissolution
33 of marriage, including any residency requirements. The bill
34 provides for the following ground for the dissolution of civil
35 unions: voluntary sexual intercourse between a person who is in a
36 civil union and an individual other than the person's civil union
37 partner; willful and continued desertion for a period of 12 or more
38 consecutive months, which may be established by satisfactory proof
39 that the parties have ceased to cohabit as civil union partners;
40 extreme cruelty; separation for a period of at least 18 or more
41 consecutive months; voluntarily induced addiction or habituation or
42 habitual drunkenness for a period of 12 or more consecutive
43 months; institutionalization for mental illness for a period of 24; or
44 imprisonment of the defendant for 18 or more consecutive months.

45 The bill would also provide for legal separation from a civil
46 union partner. The current equitable distribution statute would be
47 amended to provide for distribution of the property which was
48 legally and beneficially acquired by the civil union partners or
49 either of them during the civil union. In addition, the bill provides

1 for alimony and maintenance upon dissolution of a civil union. The
2 court, upon or after granting a dissolution of the civil union to either
3 partner, may allow either partner to resume any name used by the
4 partner before the civil union, or to assume any surname.

5 The Superior Court would have jurisdiction over dissolution of a
6 civil unions and legal separations from a civil union partner. The
7 filings fees for an action or proceeding for the dissolution of a civil
8 union would be the same as those for filing divorce proceedings or
9 actions

10 **Additional amendatory sections.** This bill would also amend
11 several sections of the statutory law to include civil unions. Here is
12 a brief summary of those sections: (1) the “Law Against
13 Discrimination,” N.J.S.10:5-5 and N.J.S.10:5-12; (2) the definition
14 of family member under the “Family Leave Act,” N.J.S.34:11B-3;
15 and (3) the spousal privilege , N.J.S.A. 2A:84A-17.

16 **Existing domestic partnerships.** The bill provides that on or
17 after the effective date of this act, no domestic partnerships shall be
18 registered under P.L.2003, c. 246 (C.26:8A-1 et seq.), except that
19 two persons who are each 62 years of age or older and not of the
20 same sex may establish a domestic partnership pursuant to the
21 provisions of P.L.2003, c.246 (C.26:8A-1 et seq.). This bill would
22 not alter the rights and responsibilities of domestic partnerships
23 existing on or before the effective date of this act, except that
24 eligible domestic partners shall be given notice and opportunity to
25 enter into a civil union pursuant to the provisions of this act. Entry
26 into a civil union, when joined by both parties to an existing
27 domestic partnership, shall operate to terminate the domestic
28 partnership.

29 **Consistency provision.** In an attempt to insure consistency with
30 regard to all of the provisions in the statutory law concerning
31 marriage and spouses and the rights and benefits thereof, the bill
32 provides that whenever in any law, rule, regulation, judicial or
33 administrative proceeding or otherwise, reference is made to
34 “marriage,” “husband,” “wife,” “spouse,” “family,” “immediate
35 family,” “dependent,” “next of kin,” or another word which in a
36 specific context denotes a marital or spousal relationship, the same
37 shall include a civil union.

38 **Rule making power.** The bill authorizes the Commissioner of
39 Health and Senior Services in consultation with the Director of the
40 Administrative Office of the Courts to adopt rules and regulations
41 necessary to effectuate the purposes of this act.

42 **Establishes Review commission.** The bill would also establish a
43 review commission, the New Jersey Civil Union Review
44 Commission. The commission would be charged with the duty to
45 study all aspects of the bill including, but not limited to: (1)
46 evaluate the implementation, operation and effectiveness of the bill;
47 (2) collect information about the bill’s effectiveness from members
48 of the public, State agencies and private and public sector
49 businesses and organizations; (3) determine whether additional

1 protections are needed; (4) collect information about the recognition
2 and treatment of civil unions by other states and jurisdictions
3 including the procedures for dissolution; and (5) review the
4 “Domestic Partnership Act,” N.J.S.A.26:8A-1 et seq. to determine
5 whether this act should be repealed.

6 The commission would be composed of 13 members which
7 would include: the Attorney General or his designee, the
8 Commissioner of the Department of Banking and Insurance or his
9 designee, the Commissioner of Health and Senior Services or his
10 designee, the Commissioner of Human Services or his designee, the
11 Commissioner of the Department of Children and Families or his
12 designee, the Director of the Division of Civil Rights in the
13 Department of Law and Public Safety of his designee, one public
14 member appoint by the President of the Senate, one public member
15 appointed by the Speaker of the General Assembly, and five public
16 members appointed by the Governor, with the advise and consent of
17 the Senate, no more than two who shall be of the same political
18 party. The commission shall be established for a term of three
19 years.

20 The commission would report annually its findings and
21 recommendations to the Legislature and the Governor.

22 *Effective date.* The bill provides for a delayed effective date of
23 30 days after enactment in order to allow for any anticipatory
24 administrative action which may be necessary for the
25 implementation of the bill.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3787

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 7, 2006

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 3787.

This bill would amend and supplement the marriage statutes to include civil unions. The bill defines a civil union as a legally recognized union of two eligible individuals of the same sex. The purpose of the bill is to provide same-sex couples with the same opportunity as heterosexual couples who choose to marry and to comply with the constitutional mandate set forth by the New Jersey Supreme Court in its recent landmark decision on October 25, 2006 of Lewis v. Harris, 188 N.J. 415 (2006). It is the intent of this committee that this bill clarifies that the citizens of New Jersey including businesses, public and private employers, organizations and institutions, shall treat civil union couples in the same manner as married persons are treated.

As the findings and declarations section of the bill states, same-sex couples in New Jersey live together in committed relationships without the benefits and rights afforded to heterosexual couples who choose to marry. Promoting such stable and durable relationships as well as eliminating obstacles and hardships these couples may face is necessary and proper and reaffirms this State's obligation to insure equality for all the citizens of New Jersey.

New Jersey was one of the first to adopt comprehensive legislation prohibiting discrimination based on affectional or sexual orientation and one of the first to formally recognize domestic partnerships by enacting the "Domestic Partnership Act," P.L.2003, c.246 (C.26:8A-1 et seq.) on January 12, 2004, thereby guaranteeing in law certain rights and benefits to those individuals who enter into domestic partnerships. Those rights and benefits afforded to same-sex couples under the Domestic Partnership Act should be expanded by the legal recognition of civil unions between same-sex couples.

In the Lewis v. Harris decision, the Court held that the State was violating the equal protection guarantee of Article I, paragraph 1 of the State Constitution by denying rights and benefits to committed same-sex couples which were statutorily given to their heterosexual counterparts. The Court stated that, "[T]he State can fulfill that

constitutional requirement in one of two ways. It can either amend the marriage statutes to include same-sex couples or enact a parallel statutory structure by another name, in which same-sex couples would not only enjoy the rights and benefits, but also bear the burdens and obligations of civil marriage.” *Id.* at 463. This bill fulfills this requirement by amending the marriage statute to include civil unions.

General Provisions. As amended by committee, the bill provides that a person who wishes to enter a civil union must satisfy all of the following requirements: not be a party to another civil union, domestic partnership or marriage in this State or any other state; be of the same sex; and be at least 18 years of age or older, except if the minor has parental consent to enter into a civil union.

The bill provides that parties to a civil union would have all the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage. They may modify the terms, conditions or effects of their civil union in the same manner and to the same extent as married persons who execute an antenuptial agreement or other agreement recognized and enforceable under the law, setting forth particular understandings with respect to their union. They would be responsible for the support of one another to the same degree and in the same manner as prescribed under law for married persons. The dissolution of civil unions would also follow the same procedures and be subject to the same substantive rights and obligations that are involved in the dissolution of a marriage.

The laws of domestic relations, including annulment, premarital agreements, separation, divorce, child custody and support, property division and maintenance, and post relationship spousal support, would apply to civil union couples. Also, the rights of the couples, with respect to a child of whom either becomes the natural parent during the term of the civil union, would be the same as those of a married couple, with respect to a child of whom either spouse becomes the natural parent during the marriage.

The bill enumerates some legal benefits, protections and responsibilities of spouses which would apply in like manner to civil union couples, however, this list should not be construed to be an exclusive list of such benefits, protections and responsibilities: (1) laws relating to title, tenure, descent and distribution, intestate succession, survivorship, or other incidents of the acquisition, ownership or transfer, inter vivos or at death, of real or personal property, including eligibility to hold real and personal property as tenants by the entirety; (2) causes of action related to or dependent upon spousal status, including an action for wrongful death, emotional distress, loss of consortium, or other torts or actions under contracts reciting, related to, or dependent upon spousal status; (3) probate law and procedure, including nonprobate transfer; (4) adoption law and procedures; (5) laws relating to insurance, health and pension

benefits; (6) domestic violence protections and domestic violence programs; (7) prohibitions against discrimination based upon marital status; (8) victim's compensation benefits, including compensation to spouse, children and relatives of homicide victims; (9) workers' compensation benefits pursuant to chapter 15 of Title 34 of the Revised Statutes, including survivors benefits and payment of back wages; (10) laws relating to emergency and nonemergency medical care and treatment, hospital visitation and notification, and any rights guaranteed to a hospital patient or a nursing home resident; (11) advance directives for health care and designation as a health care representative; (12) family leave benefits; (13) public assistance benefits, medical assistance, Supplemental Security Income, pharmaceutical assistance, hearing aid assistance, and utility benefits; (14) laws relating to taxes imposed by the State or a municipality, including tax deduction based on marital status or exemptions from realty transfer tax based on marital status; (15) laws relating to immunity from compelled testimony and the marital communication privilege; (16) the home ownership rights of a surviving spouse; (17) the right of a spouse to a surname change without petitioning the court; (18) laws relating to the making of, revoking and objecting to anatomical gifts; (19) State pay for military service; (20) application for absentee ballots; (21) legal requirements for assignment of wages; and (22) laws related to tuition assistance for higher education for surviving spouses or children.

Licensing requirements. This bill amends and supplements Title 37 of the Revised Statutes concerning marriage to include civil unions. Under the provisions of the bill, the same requirements and restrictions which currently apply to the issuance of a marriage license would apply to the issuance of a civil union license. For example, the bill provides that before a civil union can be lawfully performed in this State, the persons to the proposed civil union must obtain a civil union license from the licensing officer and deliver it to the person who is to officiate. The bill would also expand the current prohibitions concerning marriage to include civil unions: (1) a man could not enter into a civil union with his brother or the son of his brother or sister or the brother of his father or mother; and (2) a woman could not enter into a civil union with her sister, the daughter of her brother or sister, or the sister of her father or mother.

The civil union license would be issued by the licensing officer in the municipality in which either partner resides or, if neither is a resident of the State, in the municipality in which the proposed civil union is to be performed.

The civil union license cannot be issued by the local registrar sooner than 72 hours after the application therefore has been made. However, 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. A civil union license would be valid only for 30

days after the date of the issuance. A civil union licenses can be issued to a minor provided his parent or guardian consents.

The licensing officer before issuing a civil union license would require the partners to appear before him and to subscribe and swear to an oath attesting to the truth of the facts with respect to the civil union. This testimony would be verified by a witness of legal age. Any person who knowingly provides false answers to any of the inquiries would be guilty of perjury. The licensing officer shall be required to set forth: the name, age, birthplace of each party to the civil union, name and birthplace of their parents, the person or the religious society who perform the ceremony and the two witnesses who would be present at the civil union. The civil union license and the original civil union certificate would be transmitted to the local registrar. One copy of the civil union certificate shall be retained by the local registrar and one copy shall be given to each person in the civil union. The remaining copy shall be retained by the person certifying the civil union. Any civil union which has occurred or which may hereafter occur and which is not recorded with the State Registrar may be recorded by filing a delayed report with the State Registrar, documented by a copy of the application for the civil union license.

Fees. The same \$28.00 fee which is currently required for a marriage license would be required for a civil union: This consists of a \$3.00 fee for the license plus an additional fee of \$25 which is earmarked toward domestic violence shelters.

Officials authorized to perform a civil union. Those persons who may currently solemnize marriage may also perform a civil union: a judge of the United States Court of Appeals for the Third Circuit, 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 minister of every religion.

Premarital and Pre-civil union agreements. The bill amends the Uniform Premarital Agreement Act, N.J.S.A.37:2-31 et seq. to include pre-civil union agreements.

Vital Statistics provisions. This bill would also amend various provisions in Title 26 of the Revised Statutes concerning the State Registrar of Vital Statistics and recording, indexing and transmission of marriage certificates and licenses to include civil unions.

Under the current law, the State Registrar is charged with the general supervision of registration of vital statistics and as such the State registrar is also in charge of maintaining and indexing the records pertaining to marriages, death and births. This bill would expand the duties of the State Registrar by also requiring civil union

records to be maintained and indexed by the State Registrar.

The local registrar, under the supervision of the State Registrar, is currently charged with the responsibility of coordinating the filing of the proper licenses and certificates pertaining to marriages and transmitting the same to the State Registrar. This bill would require the local registrar to also coordinate the filing of civil union licenses. Under the current provisions of the law, marriage licenses may be corrected and amended. This bill would require the same procedures for correcting or amending a civil union license or certificate.

Dissolution of civil unions, equitable distribution and legal separation of civil union partners. The dissolution of a civil union would follow the same procedures and be subject to the same substantive rights and obligations as are involved in the dissolution of marriage, including any residency requirements. The bill provides for the following ground for the dissolution of civil unions: voluntary sexual intercourse between a person who is in a civil union and an individual other than the person's partner; willful and continued desertion for a period of 12 or more consecutive months, which may be established by satisfactory proof that the partners have ceased to cohabit as a couple; extreme cruelty; separation for a period of at least 18 or more consecutive months; voluntarily induced addiction or habituation or habitual drunkenness for a period of 12 or more consecutive months; institutionalization for mental illness for a period of 24; or imprisonment of the defendant for 18 or more consecutive months.

The bill would also provide for legal separation for a civil union couple. The current equitable distribution statute would be amended to provide for distribution of the property which was legally and beneficially acquired by the civil union couple or either of them during the civil union. In addition, the bill provides for alimony and maintenance upon dissolution of a civil union. The court, upon or after granting a dissolution of the civil union to either person, may allow either person to resume any name used by the partner before the civil union, or to assume any surname.

The Superior Court would have jurisdiction over dissolution of a civil unions and legal separations from a civil union partner. The filings fees for an action or proceeding for the dissolution of a civil union would be the same as those for filing divorce proceedings or actions

Additional amendatory sections. This bill would also amend several sections of the statutory law to include civil unions. Here is a brief summary of those sections: (1) the "Law Against Discrimination," N.J.S.10:5-5 and N.J.S.10:5-12; (2) the definition of family member under the "Family Leave Act," N.J.S.34:11B-3; and (3) the spousal privilege , N.J.S.A. 2A:84A-17.

Existing domestic partnerships. As amended, the bill provides that on or after the effective date of the act, no domestic partnerships shall be registered under P.L.2003, c. 246 (C.26:8A-1 et seq.), except that

two persons who are each 62 years of age or older may establish a domestic partnership pursuant to the provisions of P.L.2003, c.246 (C.26:8A-1 et seq.). This bill would not alter the rights and responsibilities of domestic partnerships existing on or before the effective date of this act, except that eligible domestic partners shall be given notice and opportunity to enter into a civil union pursuant to the provisions of this act. Entry into a civil union, when joined by both parties to an existing domestic partnership, shall operate to terminate the domestic partnership.

Consistency provision. In an attempt to insure consistency with regard to all of the provisions in the statutory law concerning marriage and spouses and the rights and benefits thereof, the bill provides that whenever in any law, rule, regulation, judicial or administrative proceeding or otherwise, reference is made to “marriage,” “husband,” “wife,” “spouse,” “family,” “immediate family,” “dependent,” “next of kin,” “widow,” “widower,” “widowed” or another word which in a specific context denotes a marital or spousal relationship, the same shall include a civil union.

Rule making power. As amended the bill authorizes the Commissioner of Health and Senior Services in consultation with the Director of the Administrative Office of the Courts to adopt rules and regulations necessary to effectuate the purposes of this act. These rules and regulations shall address the issue of how partners in a civil union couple may legally answer questions on forms, governmental and private, concerning their status as partners in a civil union. It is the intent of the Committee that the Commissioner promulgate regulations that mandate one check off for married/civil unions on all governmental and private forms, or specify that civil union couples may check off “married” on forms. The intent of this is to ensure that individuals retain their privacy interests concerning their sexual orientation.

Establishes Review commission. This bill would also establish a review commission, the New Jersey Civil Union Review Commission. The commission would be charged with the duty to study all aspects of the bill including, but not limited to: (1) evaluate the implementation, operation and effectiveness of the bill; (2) collect information about the bill’s effectiveness from members of the public, State agencies and private and public sector businesses and organizations; (3) determine whether additional protections are needed; (4) collect information about the recognition and treatment of civil unions by other states and jurisdictions including the procedures for dissolution; evaluate the effect on same-sex couples, their children and other family members of being provided civil unions rather than marriage; (6) evaluate the financial impact on the State of New Jersey of same-sex couples being provided civil unions rather than marriage; and (7) review the “Domestic Partnership Act,” N.J.S.A.26:8A-1 et seq. to determine whether this act should be repealed.

The commission would be composed of 13 members which would include: the Attorney General or his designee, the Commissioner of the Department of Banking and Insurance or his designee, the Commissioner of Health and Senior Services or his designee, the Commissioner of Human Services or his designee, the Commissioner of the Department of Children and Families or his designee, the Director of the Division of Civil Rights in the Department of Law and Public Safety or his designee, one public member appointed by the President of the Senate, one public member appointed by the Speaker of the General Assembly, and five public members appointed by the Governor, with the advise and consent of the Senate, no more than two who shall be of the same political party. The commission shall be established for a term of three years.

The commission would report semi-annually its findings and recommendations to the Legislature and the Governor.

As amended, the bill provides that a civil union relationship entered into outside of this State, which is valid under the laws of the jurisdiction under which the partnership was created, shall be valid in this State.

Effective date. The bill provides for a delayed effective date of 30 days after enactment in order to allow for any anticipatory administrative action which may be necessary for the implementation of the bill.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3787

with Assembly Floor Amendments
(Proposed By Assemblyman CARABALLO)

ADOPTED: DECEMBER 11, 2006

This floor amendment increases the effective date from 30 to 60 days after the date of enactment.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 3787

STATE OF NEW JERSEY 212th LEGISLATURE

DATED: JANUARY 5, 2007

SUMMARY

- Synopsis:** Revises the marriage laws; establishes civil unions; establishes the “New Jersey Civil Union Review Commission
- Type of Impact:** The amount of Marriage License/Civil Union Fee revenues collected to be used for domestic violence programs will probably increase by some unknown amount.
- Agencies Affected:** Department of Health and Senior Services; all municipalities that issue civil union licenses; the Department of Children and Families; the Administrative Office of the Courts.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1-3</u>
State Cost	Minimal as similar functions are currently being undertaken.
State Revenue	Unable to determine, but would be minimal.
Local Cost	Minimal as similar functions are currently being undertaken.
Local Revenue	Unable to determine, but would be minimal.

- The fee for a marriage or civil union license is \$25. Thus, for every 1,000 civil union licenses issued, \$25,000 in new fee revenues would be generated. (Cities of the first class are entitled to an additional \$3 fee.) The fees generated by a marriage/civil union license are used by the State for various domestic violence programs, and such fees may be used to offset existing State appropriations for domestic violence programs or supplement existing State appropriations for such programs.
- The fee for dissolution of a civil union is \$30. As such, for every 1,000 civil unions that are dissolved, \$30,000 in fee revenue would be raised.
- Administrative costs associated with the New Jersey Civil Union Review Commission cannot be determined.

BILL DESCRIPTION

Assembly Bill No. 3787 (2R) of 2006 would amend and supplement the marriage statutes to include civil unions, and defines a civil union as a legally recognized union of two eligible individuals of the same sex. The purpose of the legislation is to provide same-sex couples with the same opportunity as heterosexual couples who choose to marry and to comply with the constitutional mandate set forth by the New Jersey Supreme Court's October 25, 2006 decision, Lewis v. Harris, 188 N.J. 415. In addition to the numerous technical changes incorporated into the legislation, a 13 member New Jersey Civil Union Review Commission would be established to study all aspects of the legislation including its implementation and whether the act should be repealed.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

Administrative costs associated with issuing a civil union license and costs associated with dissolution of civil unions cannot be determined, but such costs should be minimal as various State and local agencies already provide similar services with respect to marriages and divorces. At present, various State and local government agencies process over 50,000 marriage licenses, over 5,600 domestic partnership licenses and over 26,000 divorce applications annually.

Various State agencies currently obtain fees for issuing a marriage license or for the dissolution of a marriage, and such fees, \$25 and \$30, respectively, will be extended to civil unions. As the number of civil union licenses and dissolutions that may be issued are not known, the amount of additional revenues the State agencies may realize as a result of these fees cannot be determined; however, for every 1,000 civil union licenses issued and civil unions that are dissolved, the State would realize \$25,000 and \$30,000, respectively. In addition, cities of the first class are entitled to an additional \$3.00 fee for every marriage or civil union license issued in its jurisdiction.

It is noted that the \$25 fee for every civil union license issued will be made available to the Department of Children and Families for establishing and maintaining shelters for the victims of domestic violence and for related domestic violence programs (as is currently the case with marriage licenses). It is not known whether such revenues will be used to offset existing State appropriations for domestic violence programs or will be used to supplement existing State appropriations for such programs.

Finally, it is noted that there may be administrative costs associated with the establishment and operation of the New Jersey Civil Union Review Commission, but these costs cannot be determined.

Section: Human Services

*Analyst: Jay A. Hershberg
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67.

SENATE, No. 2407

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED DECEMBER 4, 2006

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator RICHARD J. CODEY

District 27 (Essex)

SYNOPSIS

Revises the marriage laws; establishes civil unions; establishes the “New Jersey Civil Union Review Commission.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning marriage and civil unions, establishing a
2 commission and revising and supplementing various parts of the
3 statutory law.

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 that:

9 a. Same-sex couples in New Jersey live together in committed
10 relationships without the benefits and rights afforded to
11 heterosexual couples who choose to marry;

12 b. Promoting such stable and durable relationships as well as
13 eliminating obstacles and hardships these couples may face is
14 necessary and proper and reaffirms this State's obligation to insure
15 equality for all the citizens of New Jersey;

16 c. New Jersey was one of the first states to adopt
17 comprehensive legislation prohibiting discrimination based on
18 affectional or sexual orientation and one of the first states to
19 formally recognize domestic partnerships by enacting the
20 "Domestic Partnership Act," P.L. 2003, c. 246 (C.26:8A-1 et seq.)
21 on January 12, 2004 thereby guaranteeing in law certain rights and
22 benefits to those individuals who enter into domestic partnerships;

23 d. Those rights and benefits afforded to same-sex couples
24 under the "Domestic Partnership Act" should be expanded by the
25 legal recognition of civil unions between same-sex couples in order
26 to provide these couples with all the rights and benefits that married
27 heterosexual couples enjoy;

28 e. It is the intent of the Legislature to comply with the
29 constitutional mandate set forth by the New Jersey Supreme Court
30 in the recent landmark decision of Lewis v. Harris, 188 N.J. 415,
31 (October 25, 2006) wherein the Court held that the equal protection
32 guarantee of Article I, paragraph 1 of the State Constitution was
33 violated by denying rights and benefits to committed same-sex
34 couples which were statutorily given to their heterosexual
35 counterparts. The Court stated that the "State can fulfill that
36 constitutional requirement in one of two ways. It can either amend
37 the marriage statutes to include same-sex couples or enact a parallel
38 statutory structure by another name, in which same-sex couples
39 would not only enjoy the rights and benefits, but also bear the
40 burdens and obligations of civil marriage." Id. at 463.

41 f. The Legislature has chosen to establish civil unions by
42 amending the current marriage statute to include same-sex couples.
43 In doing so, the Legislature is continuing its longstanding history of
44 insuring equality under the laws for all New Jersey citizens by

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 providing same-sex couples with the same rights and benefits as
2 heterosexual couples who choose to marry.

3

4 2. (New section) As used in this act :

5 “Civil union license or civil union certificate” means a document
6 that certifies that the persons named on the license or certificate
7 have established a civil union in this State in compliance with this
8 act.

9 “Civil union” means the legally recognized union of two eligible
10 individuals of the same sex established pursuant to this act. Parties
11 to a civil union shall receive the same benefits and protections and
12 be subject to the same responsibilities as spouses in a marriage.

13 “Commissioner” means the Commissioner of Health and Senior
14 Services.

15 “Civil union partner” means a person who has established a civil
16 union pursuant to the provisions of this act.

17 “Party to a civil union” means a person who has established a
18 civil union pursuant to the provisions of this act.

19

20 3. (New section) For two persons to establish a civil union in
21 this State, it shall be necessary that they satisfy all of the following
22 criteria:

23 a. Not be a party to another civil union, domestic partnership or
24 marriage in this State;

25 b. Be of the same sex and therefore be excluded from the
26 marriage laws of this State or any other state;

27 c. Be at least 18 years of age, except as provided in section 10
28 of this act.

29

30 4. (New section) a. Parties to a civil union shall have all of the
31 same benefits, protections and responsibilities under law, whether
32 they derive from statute, administrative or court rule, public policy,
33 common law or any other source of civil law, as are granted to
34 spouses in a marriage.

35 b. The dissolution of civil unions shall follow the same
36 procedures and be subject to the same substantive rights and
37 obligations that are involved in the dissolution of marriage.

38 c. The laws of domestic relations, including annulment,
39 premarital agreements, separation, divorce, child custody and
40 support, property division and maintenance, and post-relationship
41 spousal support, shall apply to the parties to a civil union.

42 d. The parties to a civil union may modify the terms, conditions
43 or effects of their civil union in the same manner and to the same
44 extent as married person who execute an antenuptial agreement or
45 other agreement recognized and enforceable under the law, setting
46 forth particular understandings with respect to their union.

47 e. The rights of the parties to a civil union with respect to a
48 child of whom either becomes the parent during the term of the civil

1 union, shall be the same as those of a married couple with respect to
2 a child of whom either spouse becomes the parent during the
3 marriage.

4 f. All contracts made between persons in contemplation of a
5 civil union shall remain in full force after such civil union takes
6 place.

7 g. A copy of the record of the civil union received from the
8 local or State registrar shall be presumptive evidence of the civil
9 union in all courts.

10

11 5. (New section) The following list of legal benefits,
12 protections and responsibilities of spouses shall apply in like
13 manner to the parties to a civil union, but shall not be construed to
14 be an exclusive list of such benefits, protections and
15 responsibilities:

16 a. laws relating to title, tenure, descent and distribution,
17 intestate succession, waiver of will, survivorship, or other incidents
18 of the acquisition, ownership or transfer, inter vivos or at death, of
19 real or personal property, including but not limited to eligibility to
20 hold real and personal property as tenants by the entirety;

21 b. causes of action related to or dependent upon spousal status,
22 including an action for wrongful death, emotional distress, loss of
23 consortium, or other torts or actions under contracts reciting, related
24 to, or dependent upon spousal status;

25 c. probate law and procedure, including nonprobate transfer;

26 d. adoption law and procedures;

27 e. laws relating to insurance, health and pension benefits;

28 f. domestic violence protections pursuant to the "Prevention of
29 Domestic Violence Act of 1991," P.L.1991, c.261 (2C:25-17 et
30 seq.) and domestic violence programs;

31 g. prohibitions against discrimination based upon marital
32 status;

33 h. victim's compensation benefits, including but not limited to
34 compensation to spouse, children and relatives of homicide victims;

35 i. workers' compensation benefits pursuant to chapter 15 of
36 Title 34 of the Revised Statutes, including but not limited to
37 survivors' benefits and payment of back wages;

38 j. laws relating to emergency and nonemergency medical care
39 and treatment, hospital visitation and notification, and any rights
40 guaranteed to a hospital patient pursuant to P.L.1989, c.170
41 (C.26:2H-12.7 et seq.) or a nursing home resident pursuant to
42 P.L.1976, c.120 (C.30:13-1 et seq.);

43 k. advance directives for health care and designation as a health
44 care representative pursuant to P.L.1991, c.201 (C.26:2H-53 et
45 seq.);

46 l. family leave benefits pursuant to P.L.1989, c.261 (C.34:11B-
47 1 et seq.);

48 m. public assistance benefits under State law, including, but not

1 limited to: Work First New Jersey benefits pursuant to P.L.1997,
2 c.38 (C.44:10-55 et seq.); medical assistance pursuant to P.L.1968,
3 c.413 (C.30:4D-1 et seq.); Supplemental Security Income pursuant
4 to P.L.1973, c.256 (C.44:7-85 et seq.); pharmaceutical assistance
5 pursuant to P.L.1975, c.194 (C.30:4D-20 et seq.) and P.L.2001, c.96
6 (C.30:4D-43 et seq.); hearing aid assistance pursuant to P.L.1987,
7 c.298 (C.30:4D-36 et seq.); and utility benefits pursuant to
8 P.L.1979, c.197 (C.48:2-29.15 et seq.) and P.L.1981, c.210 (C.48:2-
9 29.30 et seq.);

10 n. laws relating to taxes imposed by the State or a municipality
11 other than estate taxes, including but not limited to homestead
12 rebate tax allowances, tax deductions based on marital status or
13 exemptions from realty transfer tax based on marital status;

14 o. laws relating to immunity from compelled testimony and the
15 marital communication privilege;

16 p. the home ownership rights of a surviving spouse;

17 q. the right of a spouse to a surname change without petitioning
18 the court;

19 r. laws relating to the making of, revoking and objecting to
20 anatomical gifts pursuant to P.L.1969, c.161 (C.26:6-57 et seq.);

21 s. State pay for military service;

22 t. application for absentee ballots;

23 u. legal requirements for assignment of wages; and

24 v. laws related to tuition assistance for higher education for
25 surviving spouses or children.

26

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

28 37:1-1. Certain marriages or civil unions prohibited.

29 a. A man shall not marry or enter into a civil union with any of
30 his ancestors or descendants, or his sister or brother, or the daughter
31 or son of his brother or sister, or the sister or brother of his father or
32 mother, whether such collateral kindred be of the whole or half
33 blood.

34 b. A woman shall not marry or enter into a civil union with any
35 of her ancestors or descendants, or her sister or brother, or the
36 daughter or son of her brother or sister, or the sister or brother of
37 her father or mother, whether such collateral kindred be of the
38 whole or half blood.

39 c. A marriage or civil union in violation of any of the foregoing
40 provisions shall be absolutely void.

41 (cf: R.S.37:1-1)

42

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

44 37:1-2. Necessity of marriage or civil union license; "licensing
45 officer" defined.

46 Before a marriage or a civil union can be lawfully performed in
47 this [state] State, the persons intending to be married or to enter
48 into a civil union shall obtain a marriage or civil union license from

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6

1 the licensing officer and deliver it to the person who is to officiate,
2 but if the marriage or civil union is to be performed by or before
3 any religious society, institution or organization, the license shall be
4 delivered to such religious society, institution or organization, or
5 any officer thereof.

6 As used in this chapter, "licensing officer" means, as to cities of
7 the first class, the city clerk; as to other municipalities, the registrar
8 of vital statistics; or the deputy of any said official designated by
9 him to issue licenses during his absence.

10 (cf: R.S.37:1-2)

11

12 8. R.S.37:1-3 is amended to read as follows:

13 37:1-3. Where marriage or civil union license to be obtained.

14 The **【licensing officer shall issue the】** marriage or civil union
15 license **【which】** shall be **【obtained】**:

16 a. In the municipality of this state in which the female party to
17 the proposed marriage resides; or

18 b. In the municipality in which the male party resides, if the
19 female party is a nonresident of this state; or

20 c. In the municipality in which the proposed marriage is to be
21 performed, if both parties are nonresidents of this state **】** issued by
22 the licensing officer in the municipality in which either party
23 resides or, if neither party is a resident of the State, in the
24 municipality in which the proposed marriage or civil union is to be
25 performed.

26 (cf: R.S.37:1-3)

27

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

29 37:1-4. Issuance of marriage or civil union license, emergencies,
30 validity.

31 Except as provided in **【sections 37:1-5 and】** R.S.37:1-6 **【of this**
32 **Title】**, the marriage or civil union license shall not be issued by a
33 licensing officer sooner than 72 hours after the application therefor
34 has been made; provided, however, that the Superior Court may, by
35 order, waive all or any part of said 72-hour period in cases of
36 emergency, upon satisfactory proof being shown to it. Said order
37 shall be filed with the licensing officer and attached to the
38 application for the license.

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

42 (cf: P.L.1991, c.91, s.366)

43

44 10. R.S.37:1-6 is amended to read as follows:

45 37:1-6. A marriage or civil union license shall not be issued to a
46 minor under the age of 18 years, unless the parents or guardian of
47 the minor, if there be any, first certify under their hands and seals,
48 in the presence of two reputable witnesses, their consent thereto,

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7

1 which consent shall be delivered to the licensing officer issuing the
2 license. If the parents, or either of them, or guardian of any such
3 minor shall be of unsound mind, the consent of such parent or
4 guardian to the proposed marriage or civil union shall not be
5 required.

6 When a minor is under the age of 16 years, the consent required
7 by this section must be approved in writing by any judge of the
8 Superior Court, Chancery Division, Family Part. Said approval shall
9 be filed with the licensing officer.

10 The licensing officer shall transmit to the State Bureau of Vital
11 Statistics all such consents, orders, and approvals so received by
12 him in the same manner and subject to the same penalty as in the
13 case of certificates of marriage or civil union and marriage or civil
14 union licenses.

15 **【If any such male applicant for a license to marry shall be a**
16 **minor under the age of 18 years, and shall have been arrested on the**
17 **charge of sexual intercourse with a single, widowed or divorced**
18 **female of good repute for chastity who has thereby become**
19 **pregnant, a license to marry the female may be immediately issued**
20 **by any licensing officer to the minor upon his application therefor,**
21 **without the consent or approval required by this section.】**

22 (cf: P.L.1991, c.91, s.367)

23

24 11. R.S.37:1-7 is amended to read as follows:

25 37:1-7. Issuing of license; remarriage or reaffirming a civil
26 union.

27 The licensing officer is hereby empowered to issue marriage or
28 civil union licenses to the contracting parties who apply therefor
29 and are entitled under the laws of this State to contract matrimony
30 or establish a civil union , authorizing the marriage or civil union
31 of such parties, which license shall be substantially in the following
32 form:

33 "State of New Jersey. County of _____ city, town or township of

34 This is to certify that any person, religious society, institution or
35 organization authorized by law to perform marriage or civil union
36 ceremonies within the State of New Jersey to whom this may come,
37 he or they not knowing any lawful impediment thereto, is hereby
38 authorized and empowered to solemnize the rites of matrimony or
39 the civil union between

40 A B of in the county of _____ and State of and
41 C D of , in the county of _____ and State of _____ , and to
42 certify the same to be the said parties, or either of them, under his
43 hand and seal in his ministerial or official capacity.

44 In testimony whereof, I have hereunto set my hand and affixed
45 the seal of said town, township or city at _____ this _____ day

46 of **【one thousand nine hundred】** two thousand and

47 _____ , (Name and official title)"

1 If the contracting parties desire both a civil and a religious
2 marriage or civil union ceremony, the licensing officer shall issue a
3 license in duplicate, marking one as "issued for civil marriage or
4 civil union ceremony" and one as "issued for religious marriage or
5 civil union ceremony."

6 Nothing in this section shall be construed to prevent the
7 remarriage of a couple already married to each other or to prevent a
8 couple who has entered into a civil union to reaffirm their
9 commitment to one another; provided, a new license is obtained and
10 the marriage or civil union properly reported. Such license shall be
11 plainly marked "Issued for remarriage--originally married to same
12 mate at (state place) on (state date) or Issued for reaffirmation of a
13 civil union—originally entered into a civil union to same mate at
14 (state place) on (state date)." Such a license shall be issued without
15 compliance with the provisions of **[section] R.S. 37:1-4 [of the**
16 **Revised Statutes]** and if applicable of the provisions of "An act
17 concerning marriages" approved May third, one thousand nine
18 hundred and thirty-eight (P.L.1938, c. 126). When such marriage or
19 civil union report is received by the State registrar he shall, if an
20 original marriage or civil union certificate is recorded, make a
21 notation thereon of the remarriage or reaffirmation and its date and
22 place.

23 (cf: P.L.1941, c.354, s.1)

24

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

26 37:1-8. Testimony under oath by applicants as to legality of
27 proposed marriage or civil union; witnesses; perjury

28 A licensing officer shall, before issuing a marriage or civil union
29 license, require the contracting parties to appear before him and
30 subscribe and swear to an oath attesting the truth of the facts
31 respecting the legality of the proposed marriage or civil union as set
32 forth in the form supplied by the State Bureau of Vital Statistics.
33 Said testimony shall be verified by a witness of legal age. A
34 licensing officer shall issue a license only if it is thus made to
35 appear before him that no legal impediment to the marriage or civil
36 union exists. Every licensing officer may administer oaths to the
37 contracting parties and their identifying witness.

38 Any identifying witness or applicant applying for a marriage or
39 civil union license who shall knowingly make false answers to any
40 of the inquiries asked by the licensing officer shall be guilty of
41 perjury.

42 (cf: P.L.1946, c.185, s.4)

43

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

45 37:1-11. Illegal issuance of license a **[misdemeanor]** disorderly
46 persons offense.

47 Any licensing officer who issues a marriage or civil union
48 license except as provided in this chapter shall be guilty of a

1 **【misdemeanor】** disorderly persons offense.

2 (cf: R.S.37:1-11)

3

4 14. R.S.37:1-12 is amended to read as follows:

5 37:1-12. Fees; disposition in cities of first class.

6 For issuing a marriage or civil union license, the licensing officer
7 shall be entitled to receive from the applicants the sum of three
8 dollars (\$3.00). **【All fees so received by the city clerk in cities of**
9 **the first class shall be paid into the treasury of such city to be used**
10 **for the relief of its poor.】**

11 (cf: P.L.1948, c.285, s.3)

12

13 15. Section 1 of P.L. 1981, c. 382 (C.37:1-12.1) is amended to
14 read as follows:

15 1. In addition to the fee for issuing a marriage or civil union
16 license authorized pursuant to R.S.37:1-12, each licensing officer
17 shall collect a fee of \$25 from the marriage license or civil union
18 license applicants which shall be forwarded on a quarterly basis to
19 the Department of Human Services.

20 (cf: P.L.1992, c.136, s.1)

21

22 16. Section 2 of P.L.1981, c.382 (C.37:1-12.2) is amended to
23 read as follows:

24 2. The Department of Human Services shall establish a trust
25 fund for the deposit of the fees received pursuant to section 1 of
26 **【this act】** of P.L.1981, c. 382 (C.37:1-12.1). The moneys from the
27 trust fund shall be used for the specific purpose of establishing and
28 maintaining shelters for the victims of domestic violence, or a. for
29 providing grants-in-aid to such shelters established by local
30 governments or private nonprofit organizations; or b. for providing
31 grants-in-aid to non-residential agencies whose primary purpose is
32 to serve victims of domestic violence in those counties which do not
33 have emergency residential shelters for victims; or c. for providing
34 grants-in-aid to any nonprofit, Statewide coalition whose
35 membership includes a majority of the programs for battered
36 women in New Jersey and whose board membership includes a
37 majority of representatives of these programs and whose purpose is
38 to provide services, community education, and technical assistance
39 to these programs to establish and maintain shelter and related
40 services for victims of domestic violence and their children.

41 (cf: P.L.1992, c.136, s.2).

42

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

44 37:1-13 Authorization to solemnize marriages and civil unions.

45 Each judge of the United States Court of Appeals for the Third
46 Circuit, each judge of a federal district court, United States
47 magistrate, judge of a municipal court, judge of the Superior Court,
48 judge of a tax court, retired judge of the Superior Court or Tax

1 Court, or judge of the Superior Court or Tax Court, the former
2 County Court, the former County Juvenile and Domestic Relations
3 Court, or the former County District Court who has resigned in
4 good standing, surrogate of any county, county clerk and any mayor
5 or the deputy mayor when authorized by the mayor, or chairman of
6 any township committee or village president of this State, and every
7 minister of every religion, are hereby authorized to solemnize
8 marriage or civil union between such persons as may lawfully enter
9 into the matrimonial relation or civil union; and every religious
10 society, institution or organization in this State may join together in
11 marriage or civil union such persons according to the rules and
12 customs of the society, institution or organization.
13 (cf: P.L.2001, c.143, s.1)

14

15 18. R.S.37:1-15 is amended to read as follows:

16 37:1-15. Solemnizing without presentation of license;
17 **【misdemeanor】** disorderly persons offense .

18 Any person, not authorized by **【section】**R.S.37:1-13 **【of the**
19 **Revised Statutes】** to solemnize marriages or civil unions, who
20 solemnizes a marriage or civil union or any person or religious
21 society, institution or organization, authorized to solemnize
22 marriages or civil unions, who solemnizes a marriage or civil union
23 without the presentation of a license therefor, obtained in
24 accordance with the provisions of article two of this chapter (s.
25 37:1-2 et seq.), shall be guilty of a **【misdemeanor】** disorderly
26 persons offense, and punished by a fine not exceeding five hundred
27 dollars (\$500.00), or imprisonment not exceeding six months, or
28 both.

29 (cf: P.L.1948, c.127, s.1).

30

31 19. R.S. 37:1-16 is amended to read as follows:

32 37:1-16. Interrogation of applicants under oath; perjury.

33 Any person authorized to solemnize marriages or civil unions
34 may administer oaths to the parties applying to be married or to
35 enter into a civil union, and may require them, or either of them, to
36 make true answers to any inquiries made by him in order to
37 ascertain whether, in his judgment, any legal impediment to the
38 proposed marriage or civil union exists.

39 Any person who willfully makes false answers to any such
40 inquiries shall, if the answers are reduced to writing, signed by the
41 party making the same and attached to the certificate of marriage or
42 civil union, be deemed guilty of perjury pursuant to N.J.S.2C:28-1.

43 (cf: R.S.37:1-16)

44

45 20. R.S.37:1-17 is amended to read as follows:

46 37:1-17. Marriage or civil union license; information provided.

47 On the marriage or civil union license shall be the form for the
48 certificate of marriage or civil union in quadruplicate, to which the

1 licensing officer shall have set forth particularly therein the name,
2 age, parentage, birthplace, residence, Social Security number and
3 **【condition (whether single, widowed or divorced) of each of the**
4 **married persons,】** domestic status of each party, whether single,
5 widowed, divorced, or a former party to a civil union or domestic
6 partnership and the names and county of birth of their parents. The
7 Social Security number shall be kept confidential and may only be
8 released for child support enforcement purposes, and shall not be
9 considered a public record pursuant to P.L.1963, c.73 (C.47:1A-1 et
10 seq.). The person by whom or the religious society, institution, or
11 organization by or before which, the marriage or civil union was
12 solemnized, shall personally or by legally authorized agent
13 subscribe where indicated on the form the date and place of the
14 marriage or civil union. Each certificate of marriage or civil union
15 shall also contain the signature and residence of at least two
16 witnesses who were present at the marriage or civil union
17 ceremony.

18 (cf: P.L.2002, c.88, s.3)

19

20 21. Section 2 of P.L.1980, c.128 (C.37:1-17.1) is amended to
21 read as follows:

22 2. License and certificate of marriage or civil union; transmittal
23 The license and the original certificate shall be transmitted
24 pursuant to R.S. 26:8-41. One copy of the certificate shall be
25 retained by the local registrar and one copy shall be given to the
26 persons contracting the marriage or civil union. The remaining copy
27 shall be retained by the person solemnizing the marriage or civil
28 union.

29 (cf: P.L.1980, c.128, s.2)

30

31 22. Section 3 of P.L.1980, c.128 (C.37:1-17.2) is amended to
32 read as follows:

33 37:1-17.2. Delayed reports; filing; contents; affidavits; evidence.

34 Any marriage or civil union which has occurred or which may
35 hereafter occur and which is not recorded with the State Registrar
36 as required by this chapter, may be recorded by filing a delayed
37 report with the State Registrar, documented by a copy of the
38 application for the license. The delayed report shall contain an
39 affidavit of the person performing the marriage or civil union or if
40 he is deceased or not available, of one or both witnesses to the
41 marriage or civil union ceremony confirming that the ceremony was
42 performed and the date and place of the marriage or civil union.

43 When it is impossible to secure the affidavit of the officiant or
44 either of the witnesses, the affidavit may be made by a person who
45 was present at the marriage or civil union ceremony, or the
46 contracting parties, provided additional documentary evidence is
47 presented.

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1 The State Registrar may require evidence of the correctness of
2 the information in a delayed report and may refuse to accept a
3 delayed report if the evidence is not submitted.

4 (cf: P.L.1980, c.128, s.3)

5

6 23. R.S.37:1-18 is amended to read as follows:

7 37:1-18. Penalty for false certificate.

8 Any person, religious society, institution or organization
9 authorized to solemnize marriages or civil unions, who makes any
10 false certificate of marriage or civil union, shall be liable to a
11 penalty of **one hundred dollars** \$100.00.

12 (cf: R.S.37:1-18)

13

14 24. R.S.37:1-19 is amended to read as follows:

15 37:1-19. Penalty; how recovered.

16 Any penalty incurred under any of the provisions of this article
17 may be recovered with costs, in an action at law by and in the name
18 of the local board of health of the municipality where the marriage
19 or civil union occurred, or by and in the name of the **state**
20 **department of health** Department of Health and Senior Services.

21 (cf: R.S.37:1-19)

22

23 25. Section 1 of P.L.1977, c.282 (C.37:1-27) is amended to read
24 as follows:

25 37:1-27. Tests; information; distribution by issuer of marriage or
26 civil union licenses.

27 A licensing officer or other person issuing marriage or civil
28 union licenses shall make information available to applicants
29 concerning places where such applicants may be tested for genetic
30 diseases including, but not limited to Cooley's Anemia, Sickle Cell
31 Anemia, and Tay-Sachs Disease. Literature containing such
32 information which has been prepared and provided by private
33 organizations may be distributed to applicants by a licensing officer
34 or other person issuing marriage or civil union licenses.

35 (cf: P.L.1977, c. 282, s.1)

36

37 26. R.S.37:2-31 is amended to read as follows to read as
38 follows:

39 37. 2-31. This article shall be known and may be cited as the
40 "Uniform Premarital and Pre-Civil Union Agreement Act." Source:
41 New.

42 (cf: P.L.1988, c.99, s.1).

43

44 27. R.S.37:2-32 is amended to read as follows to read as
45 follows:

46 37:2-32. As used in this article:

47 a. "Premarital or pre-civil union agreement" means an
48 agreement between prospective spouses or partners made in

1 contemplation of marriage or a civil union and to be effective upon
2 marriage or upon the parties establishing a civil union;

3 b. "Property" means an interest, present or future, legal or
4 equitable, vested or contingent, in real or personal property,
5 including income and earnings;

6 c. "Unconscionable premarital or pre-civil union agreement"
7 means an agreement, either due to a lack of property or
8 unemployability:

9 (1) Which would render a spouse or partner without a means of
10 reasonable support;

11 (2) Which would make a spouse or partner a public charge; or

12 (3) Which would provide a standard of living far below that
13 which was enjoyed before the marriage or civil union.

14 (cf: P. L.1988, c.99, s.1)

15

16 28. R.S.37:2-33 is amended to read as follows:

17 37:2-33. Formalities; consideration.

18 A premarital or pre-civil union agreement shall be in writing,
19 with a statement of assets annexed thereto, signed by both parties,
20 and it is enforceable without consideration.

21 (cf: P.L.1988, c.99, s.1)

22

23 29. R.S.37:2-34 is amended to read as follows:

24 37:2-34. Contents of premarital or pre-civil union agreement. .

25 Parties to a premarital or pre-civil union agreement may contract
26 with respect to:

27 a. The rights and obligations of each of the parties in any of the
28 property of either or both of them whenever and wherever acquired
29 or located;

30 b. The right to buy, sell, use, transfer, exchange, abandon,
31 lease, consume, expend, assign, create a security interest in,
32 mortgage, encumber, dispose of, or otherwise manage and control
33 property;

34 c. The disposition of property upon separation, marital
35 dissolution, dissolution of a civil union, death, or the occurrence or
36 nonoccurrence of any other event;

37 d. The modification or elimination of spousal or civil union
38 partner support;

39 e. The making of a will, trust, or other arrangement to carry out
40 the provisions of the agreement;

41 f. The ownership rights in and disposition of the death benefit
42 from a life insurance policy;

43 g. The choice of law governing the construction of the
44 agreement; and

45 h. Any other matter, including their personal rights and
46 obligations, not in violation of public policy.

47 (cf: P.L.1988, c.99, s.1)

1 30. R.S.37:2-35 is amended to read as follows:

2 37:2-35. Premarital or pre-civil union agreement not to adversely
3 affect right of child support .

4 A premarital or pre-civil union agreement shall not adversely
5 affect the right of a child to support.

6 (cf: P.L.1988, c.99, s.1)

7

8 31. R.S.37:2-36 is amended to read as follows:

9 37:2-35. When premarital or pre-civil union agreement becomes
10 effective,

11 A premarital or pre-civil union agreement becomes effective
12 upon marriage of the parties or upon the parties establishing a civil
13 union.

14 (cf: P.L.1988, c.99, s.1)

15

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

17 37:2-37. Amendment or revocation of premarital or pre-civil
18 union agreement .

19 After marriage of the parties or the parties establishing a civil
20 union, a premarital or pre-civil union agreement may be amended or
21 revoked only by a written agreement signed by the parties, and
22 the amended agreement or revocation is enforceable without
23 consideration.

24 (cf: P.L.1988, c.99, s.1)

25

26 33. R.S.37:2-38 is amended to read as follows:

27 37:2-38. Enforcement of premarital or pre-civil union agreement;
28 generally.

29 The burden of proof to set aside a premarital or pre-civil union
30 agreement shall be upon the party alleging the agreement to be
31 unenforceable. A premarital or pre-civil union agreement shall not
32 be enforceable if the party seeking to set aside the agreement
33 proves, by clear and convincing evidence, that:

34 a. The party executed the agreement involuntarily; or

35 b. The agreement was unconscionable at the time enforcement
36 was sought; or

37 c. That party, before execution of the agreement:

38 (1) Was not provided full and fair disclosure of the earnings,
39 property and financial obligations of the other party;

40 (2) Did not voluntarily and expressly waive, in writing, any right
41 to disclosure of the property or financial obligations of the other
42 party beyond the disclosure provided;

43 (3) Did not have, or reasonably could not have had, an adequate
44 knowledge of the property or financial obligations of the other
45 party; or

46 (4) Did not consult with independent legal counsel and did not
47 voluntarily and expressly waive, in writing, the opportunity to
48 consult with independent legal counsel.

1 d. The issue of unconscionability of a premarital or pre-civil
2 union agreement shall be determined by the court as a matter of
3 law.

4 (cf: P.L.1988, c.99, s.1)

5
6 34. R.S. 37:2-39 is amended to read as follows:

7 37:2-39. Enforcement of premarital or pre-civil union agreement;
8 marriage or civil union determined void

9 If a marriage or civil union is determined to be void, an
10 agreement that would otherwise have been a premarital or pre-civil
11 union agreement is enforceable only to the extent necessary to
12 avoid an inequitable result.

13 (cf: P.L.1988, c.99, s.1).

14
15 35. R.S. 37:2-40 is amended to read as follows:

16 37:2-40. Construction of article.

17 This article shall be construed to effectuate its general purpose to
18 make uniform the law with respect to the subject of the article
19 among states enacting the "Uniform Premarital or Pre-Civil Union
20 Agreement Act."

21 (cf: P.L.1988, c.99, s.1)

22
23 36. R.S.37:2-41 is amended to read as follows:

24 37:2-41. Application of article.

25 This article shall apply to premarital agreements executed on and
26 after its effective date.

27 This article as amended by P.L. ,c. (C.)(pending before
28 the Legislature as this bill) shall apply to pre-civil union agreements
29 executed on and after the effective date of P.L. ,c. (C.)
30 (pending before the Legislature as this bill).

31 (cf: P.L.1988, c.99, s.1)

32
33 37. R.S. 26:8-1 is amended to read as follows:

34 26:8-1. As used in this chapter:

35 "Vital statistics" means statistics concerning births, deaths, fetal
36 deaths, marriages, civil unions and domestic partnerships
37 established pursuant to P.L.2003, c.246 (C.26:8A-1 et al.).

38 "Vital records" means the birth, death, fetal death, marriage, civil
39 union and domestic partnership records from which vital statistics
40 are produced.

41 "State registrar" means the State registrar of vital statistics;
42 "Local registrar" or "registrar" means the local registrar of vital
43 statistics of any district; and "registration district" or "district"
44 means a registration district as constituted by this article.

45 "Live birth" or "birth" means the complete expulsion or
46 extraction from its mother of a product of conception, irrespective
47 of the duration of pregnancy, which, after such separation, breathes
48 or shows any other evidence of life such as beating of the heart,

1 pulsation of the umbilical cord, or definite movement of voluntary
2 muscles, whether or not the umbilical cord has been cut or the
3 placenta attached.

4 "Authentication" means the entry by the State Medical Examiner
5 or a county medical examiner, funeral director or physician into the
6 New Jersey Electronic Death Registration System of a personal
7 identification code, digital signature or other identifier unique to
8 that user, by which the information entered into the system by the
9 user is authenticated by the user who assumes responsibility for its
10 accuracy. "Authentication" also means the process by which the
11 State registrar or a local registrar, deputy registrar, alternate deputy
12 registrar or subregistrar indicates that person's review and approval
13 of information entered into the system by the State Medical
14 Examiner or a county medical examiner, funeral director or
15 physician.

16 "Electronic registration system" means any electronic method,
17 including, but not limited to, one based on Internet technology, of
18 collecting, transmitting, recording and authenticating information
19 from one or more responsible parties, which is necessary to
20 complete a vital record, and is designed to replace a manual, paper-
21 based data collection, recordation and signature system.

22 "New Jersey Electronic Death Registration System" or "NJ-
23 EDRS" is an electronic registration system for completing a
24 certification of death or fetal death record that is authorized,
25 designed and maintained by the State registrar.
26 (cf: P.L.2003, c.246, s.14).

27

28 38. R.S.26:8-4 is amended to read as follows:

29 26:8-4. Duty to furnish information relative to birth, death,
30 marriage, civil union, domestic partnership. Upon demand of the
31 State registrar in person, by mail, by means of the NJ-EDRS, or
32 through the local registrar, every physician, midwife, informant,
33 funeral director, or other person having knowledge of the facts
34 relative to any birth, death, fetal death, marriage, civil union or
35 domestic partnership, shall supply such information as he may
36 possess, upon a form provided by the State registrar, or through the
37 NJ-EDRS, or upon the original birth, death, fetal death, marriage,
38 civil union or domestic partnership certificate or its electronic
39 facsimile or digitized form thereof.

40 (cf: P.L.2003, c.246, s.16).

41

42 39. R.S.26:8-17 is amended to read as follows:

43 26:8-17. The local registrar, immediately upon acceptance of the
44 appointment, shall appoint a deputy to assist in the normal, day-to-
45 day operation of the office and whose duty shall be to act in the
46 registrar's stead in case of absence, disability or death of the
47 registrar. In case of death of the local registrar the deputy shall act

1 as local registrar until a new local registrar has been appointed and
2 qualified.

3 In addition to a deputy registrar, the local registrar may appoint
4 one or two alternate deputy registrars if the local registrar deems
5 such an appointment to be necessary for the office to function
6 efficiently and to provide quality service to the public. The deputy
7 registrar and alternate deputy registrar shall have the authority to
8 receive birth certificates and death certificates; to issue burial
9 permits, and copies of birth, death, marriage, civil union and
10 domestic partnership certificates; to take the oath on marriage and
11 civil union license applications; and to issue marriage and civil
12 union licenses and register domestic partnerships. The deputy
13 registrar and alternate deputy registrar shall receive instructions
14 from and perform their duties under the direct supervision of the
15 registrar, who shall be the final authority with the responsibility of
16 fulfilling the duties of the local registrar outlined in R.S.26:8-25.
17 The deputy registrar and any alternate deputy registrar shall serve at
18 the pleasure of the local registrar.

19 (cf: P.L.2003, c.246, s.16).

20

21 40. R.S.26:8-23 is amended to read as follows:

22 26:8-23. The Department of Health and Senior Services shall
23 have charge of the registration of births, deaths, fetal deaths,
24 marriages, civil unions and domestic partnerships and shall procure
25 the prompt and accurate registration of the same in each registration
26 district and in the department. The department may promulgate any
27 rule or regulation which it deems necessary for the uniform and
28 thorough enforcement of this section.

29 The department may decline permission to examine any record
30 except in the presence of an officer or employee of the department.

31 (cf: P.L.2003, c.246, s.17).

32

33 41. R.S.26:8-24 is amended to read as follows:

34 26:8-24. The State registrar shall:

35 a. Have general supervision throughout the State of the
36 registration of vital records;

37 b. Have supervisory power over local registrars, deputy local
38 registrars, alternate deputy local registrars, and subregistrars, in the
39 enforcement of the law relative to the disposal of dead bodies and
40 the registration of vital records;

41 c. Prepare, print, and supply to all registrars, upon request
42 therefor, all blanks and forms used in registering the records
43 required by said law, and provide for and prescribe the use of the
44 NJ-EDRS. No other blanks or methods of registration shall be used
45 than those supplied or approved by the State registrar;

46 d. Carefully examine the certificates or electronic files received
47 periodically from the local registrars or originating from their
48 jurisdiction; and, if any are incomplete or unsatisfactory, require

- 1 such further information to be supplied as may be necessary to
2 make the record complete and satisfactory;
- 3 e. Arrange or bind, and permanently preserve the certificates of
4 vital records, or the information comprising those records, in a
5 systematic manner and in a form that is deemed most consistent
6 with contemporary and developing standards of vital statistical
7 archival record keeping;
- 8 f. Prepare and maintain a comprehensive and continuous index
9 of all vital records registered, the index to be arranged
10 alphabetically;
- 11 1. In the case of deaths, by the name of the decedent;
- 12 2. In the case of births, by the name of child, if given, and if
13 not, then by the name of father or mother;
- 14 3. In the case of marriages, by the surname of the husband and
15 also by the maiden name of the wife;
- 16 4. In the case of civil union, by the surname of each of the
17 parties to the civil union;
- 18 5. In the case of domestic partnerships, by the surname of each
19 of the partners; and
- 20 g. Mark the birth certificate of a missing child when notified by
21 the Missing Persons Unit in the Department of Law and Public
22 Safety pursuant to section 3 of P.L.1995, c.395 (C.52:17B-9.8c);
23 and
- 24 h. Develop and provide to local registrars an education and
25 training program, which the State registrar may require each local
26 registrar to complete as a condition of retaining that position, and
27 which may be offered to deputy local registrars, alternate deputy
28 local registrars and subregistrars at the discretion of the State
29 registrar, that includes material designed to implement the NJ-
30 EDRS and to familiarize local registrars with the statutory
31 requirements applicable to their duties and any rules and regulations
32 adopted pursuant thereto, as deemed appropriate by the State
33 registrar.
34 (cf: P.L.2003, c.246, s.18)
- 35
- 36 42. R.S.26:8-25 is amended to read as follows:
- 37 26:8-25. The local registrar, under the supervision and direction
38 of the State registrar, shall:
- 39 a. Strictly and thoroughly enforce the law relative to the
40 disposal of dead bodies and the registration of vital records in his
41 registration district;
- 42 b. Supply blank forms of certificates to such persons as require
43 them;
- 44 c. Supply to every physician, midwife, and funeral director a
45 copy of the law relative to the registration of vital records and the
46 disposal of dead bodies, together with such rules and regulations as
47 may be prepared by the State registrar relative to their enforcement;

- 1 d. Sign his name and insert the date of filing on each certificate
2 of birth, marriage, civil union, domestic partnership and death or
3 otherwise authenticate the local registrar's identity through the NJ-
4 EDRS as prescribed by the State registrar;
- 5 e. Examine each certificate of birth, marriage, civil union,
6 domestic partnership or death when presented for record in order to
7 ascertain whether or not it has been made in accordance with law
8 and the instructions of the State registrar; and if incomplete and
9 unsatisfactory, have the same corrected;
- 10 f. At the expense of the municipality make a complete and
11 accurate copy of each birth, marriage, civil union, domestic
12 partnership and death certificate registered by him on a form or in a
13 manner prescribed by the State registrar, to be preserved in his
14 office as the local record or in the NJ-EDRS as prescribed by the
15 State registrar;
- 16 g. On the tenth day of each month or sooner if requested by the
17 department, transmit to the State registrar all original birth,
18 marriage, civil union, domestic partnership and death certificates
19 received by him for the preceding month, except that a record
20 created on the NJ-EDRS as prescribed by the State registrar shall be
21 deemed to have been transmitted. If no births, marriages, civil
22 union, domestic partnerships or deaths occurred in any month, he
23 shall, on or before the tenth day of the following month, report that
24 fact to the State registrar on a card provided for such purpose;
- 25 h. Make an immediate report to the State registrar of any
26 violation of R.S.26:6-1 et seq., R.S.26:8-1 et seq., or R.S.37:1-1 et
27 seq. or P.L. , c. (C.)(pending before the Legislature as this
28 amendatory and supplementary bill) coming to his knowledge;
- 29 i. In the case of any birth in his registration district to parents
30 who are residents of another registration district or of the marriage
31 or civil union in his registration district of any couple who obtained
32 the marriage or civil union license in another registration district, or
33 of the death in his registration district of any person who at the time
34 of death was a resident of another registration district notify the
35 registrar of the other registration district, within five days of the
36 birth, marriage, civil union, or death, on forms prescribed by the
37 State registrar. All entries relating to cause of death on the original
38 certificate shall be entered on the death form sent to the registrar of
39 the other registration district. A record created on the NJ-EDRS as
40 prescribed by the State registrar shall be deemed to have been
41 transmitted to the registrar of the other registration district;
- 42 j. Mark the birth certificate of a missing child born in his
43 registration district when notified by the State registrar pursuant to
44 section 3 of P.L.1995, c.395 (C.52:17B-9.8c); and
- 45 k. Make computer facilities with access to the NJ-EDRS
46 available to funeral directors and physicians registered with the NJ-
47 EDRS, within the regular established business hours of the local

1 registrar, for the purpose of providing information necessary to
2 complete a death record.

3 (cf:P.L. 2003, c.246, s.19).

4

5 43. R.S.26:8-27 is amended to read as follows:

6 26:8-27. Inquiries to applicants for marriage or civil union
7 license. The department shall issue to each local registrar and to
8 city clerks of cities of the first class, the form and substance of the
9 several inquiries to be made of applicants for a marriage license or a
10 civil union license and their witnesses for the purpose of
11 ascertaining whether any legal impediment to any proposed
12 marriage or civil union exists.

13 The form shall not contain any inquiries or information which
14 concerns the race of an applicant for a marriage or civil union
15 license.

16 (cf: P.L.2002, c.88, c.1)

17

18 44. R.S.26:8-41 is amended to read as follows:

19 26:8-41. Transmission of marriage and civil union licenses and
20 certificates.

21 Every person or religious society, institution or organization
22 solemnizing a marriage or performing a civil union shall, within 5
23 days thereafter, transmit the certificate of marriage or civil union
24 and the marriage or civil union license to the local registrar of the
25 registration district in which the marriage or civil union occurs or to
26 the clerk of the county board of health.

27 The local registrar or clerk of the county board of health shall
28 stamp every certificate of marriage or civil union so received with
29 the date of its receipt and the name of the registration district in
30 which it is filed.

31 (cf: P.L.1965, c.78, s.59)

32

33 45. R.S.26:8-42 is amended to read as follows:

34 26:8-42. The local registrar who receives the certificate of a
35 marriage or the certificate of a civil union within the district under
36 his jurisdiction, the license for which was issued in another
37 registration district, shall, within 5 days after receipt of the marriage
38 or civil union certificate, copy the names of the persons married or
39 the parties to a civil union; the date of marriage or civil union; the
40 place of marriage or the civil union and the marriage or civil union
41 license number upon a form provided by the State registrar and
42 transmit it by mail to the officer legally designated to receive
43 certificates of marriage or civil union in the registration district in
44 which the license was issued.

45 (cf: P.L.1965, c.78, s.60)

46

47 46. R.S.26:8-43 is amended to read as follows:

48 26:8-43. Transmission of marriage and civil union certificates

1 and licenses to state registrar.

2 Each local registrar and the clerk of the county board of health
3 shall, on or before the tenth of each calendar month, or sooner if
4 requested by the department, transmit by mail, express or
5 messenger to the State registrar in an envelope or package marked
6 "vital statistics" all the certificates of marriages and civil unions,
7 marriage and civil union licenses and consents to the marriage or
8 civil union of minors received by them.

9 (cf: P.L.1965, c.78, s.61)

10

11 47. R.S.26:8-44 is amended to read as follows:

12 26:8-44. The State registrar shall cause all certificates of
13 marriages and civil unions and marriage and civil union licenses
14 received to be alphabetically indexed and shall cause to be
15 transcribed or otherwise recorded from the certificates such of the
16 vital facts appearing thereon as the department may deem necessary
17 or useful.

18 The certificates of marriage and civil union shall be so tabulated
19 as to present in separate and distinct classes the record of each
20 county or registration district of over 5,000 inhabitants, which
21 record shall be preserved as a public record and the original
22 certificates shall be preserved in the archives of the department.

23 (cf: P.L.1965, c.78, s.62)

24

25 48. R.S.26:8-45 is amended to read as follows:

26 26:8-45. Cancellation of records of marriages and civil unions
27 declared void.

28 If a marriage or a civil union has been declared void by the
29 Superior Court in an action instituted for that purpose and the court
30 is satisfied by the proof taken before the final judgment or by
31 affidavit or otherwise after the final judgment that a record of the
32 marriage or civil union is filed with the State registrar, it may order
33 the record to be canceled.

34 It shall not be necessary to make the custodian of the record a
35 party to the cause.

36 The order need only recite that there was a ceremony of marriage
37 or civil union between parties to the cause (naming them),
38 performed on (date) by (naming the officer) and that by a final
39 judgment entered on (date), the marriage or civil union was
40 declared void and may then direct that the said record be canceled.

41 (cf: P.L.1965, c.78, s.63)

42

43 49. R.S.26:8-46 is amended to read as follows:

44 26:8-46. Upon presenting a certified copy of said order to the
45 State Registrar, he shall indorse on the return of the marriage or
46 civil union the following words: "This marriage or civil union

1 declared void by the Superior Court. See order hereto annexed" and
2 shall annex the certified copy to the return.

3 (cf: P.L.1953, c.26, p.483, s.59)

4

5 50. R.S.26:8-47 is amended to read as follows:

6 26:8-47. Preparation of forms for marriage and civil union
7 licenses, certificates.

8 The department shall cause to be prepared blank forms of
9 certificates of marriages or civil unions and marriage or civil union
10 licenses corresponding to the requirements of R.S.37:1-7 and
11 R.S.37:1-17. The forms, together with such sections of the laws
12 concerning marriages or civil unions and such instructions and
13 explanations thereof as the department may deem useful to persons
14 having duties to perform under such laws shall be printed and
15 supplied upon request therefor to the local registrars and to the city
16 clerks of cities of the first class.

17 All certificates of marriages or civil unions and marriage or civil
18 union licenses shall be written upon the said blanks or blanks
19 approved by the department and shall not contain any inquiries or
20 information which concerns the race of an applicant for a marriage
21 or civil union license.

22 (cf: P.L.2002, c.88, s.2)

23

24 51. R.S.26:8-48 is amended to read as follows:

25 26:8-48. A certificate of birth, fetal death, marriage, civil union,
26 domestic partnership or death heretofore or hereafter filed with the
27 State registrar shall not be altered or changed otherwise than by
28 amendments properly signed, dated and witnessed, or as otherwise
29 recorded and authenticated on the NJ-EDRS as prescribed by the
30 State registrar.

31 (cf: P.L.2003, c.246, s.20).

32

33 52. R.S.26:8-50 is amended to read as follows:

34 26:8-50. Correcting marriage or civil union licenses

35 Correction to marriage or civil union licenses shall be signed by
36 the person who issued the license or his successor in office.

37 (cf: R.S.26:8-50)

38

39 53. R.S.26:8-51 is amended to read as follows:

40 26:8-51. Corrections to marriage, civil union, domestic
41 partnership certificates. Corrections to marriage, civil union or
42 domestic partnership certificates shall be signed by the person who
43 signed the certificate or by any other person having personal
44 knowledge of the matters sought to be corrected which other person
45 shall state such matters on his oath.

46 (cf: P.L.2003, c.246, s.21)

47

48 54. R.S.26:8-55 is amended to read as follows:

1 26:8-55. Any person knowingly submitting a certificate pursuant
2 to this article containing incorrect particulars relating to any birth,
3 marriage, civil union, domestic partnership or death shall be subject
4 to a penalty of not more than \$500, which shall be recovered with
5 costs in a summary proceeding in the name of the department.

6 (cf: P.L.2003, c.246, s.22)

7
8 55. R.S.26:8-60 is amended to read as follows:

9 26:8-60. Each local registrar shall be entitled to receive from the
10 proper disbursing officer of the municipality or county the sum of
11 \$1 for each marriage, civil union or domestic partnership certificate
12 properly transmitted to the State Registrar.

13 In any registration district, the body appointing local registrars
14 may, in lieu of fees, provide that officers performing the above
15 service shall receive a fixed compensation to be determined by such
16 body.

17 (cf: P.L. 2003, c.246, s.23)

18
19 56. R.S.26:8-61 is amended to read as follows:

20 26:8-61. Fee for cancellation of marriage or civil union record.

21 The person procuring the cancellation of a marriage or civil
22 union record pursuant to ~~sections~~ **R.S.** 26:8-45 and **R.S.**26:8-46
23 **[of this Title]** shall first pay to the State Registrar the sum of \$2.00
24 and the State Registrar shall pay the same over to the State
25 Treasurer. Such fee may be included in the taxable costs in the
26 annulment suit.

27 (cf: P.L.1983, c.275, s.16)

28
29 57. R.S.26:8-62 is amended to read as follows:

30 26:8-62. a. The State registrar or local registrar shall, upon
31 request, supply to a person who establishes himself as one of the
32 following: the subject of the record of a birth, death, fetal death,
33 certificate of birth resulting in stillbirth, domestic partnership, civil
34 union or marriage, as applicable; the subject's parent, legal guardian
35 or other legal representative; the subject's spouse, civil union
36 partner, child, grandchild or sibling, if of legal age, or the subject's
37 legal representative; an agency of State or federal government for
38 official purposes; a person possessing an order of a court of
39 competent jurisdiction; or a person who is authorized under other
40 emergent circumstances as determined by the commissioner, a
41 certified copy, or release of the data and information of that record
42 registered under the provisions of R.S.26:8-1 et seq., or P.L.____,
43 c. (C.____) (pending before the Legislature as this bill) or any
44 domestic partnership registered under the provisions of P.L.2003,
45 c.246 (C.26:8A-1 et al.), for any of which, except as provided by
46 R.S.26:8-63, the State registrar shall be entitled to a search fee, if
47 any, as provided by R.S.26:8-64, to be paid by the person. A
48 certification may be issued in other circumstances and shall state

1 that it is for informational purposes only, and is not to be used for
2 identification purposes. The registrar shall authenticate the identity
3 of the requestor and the requestor's relationship with the subject of
4 the vital record. For the purposes of this subsection, any employee
5 of a mortuary registered pursuant to P.L.1952, c.340 (C.45:7-32 et
6 seq.), or a funeral director licensed pursuant to that act who is
7 affiliated with a registered mortuary, if the mortuary was recorded
8 on the original certificate of death, shall be construed to be the
9 subject's legal representative and entitled to obtain full and
10 complete copies of death certificates or certifications thereof.

11 b. The State registrar shall, upon request, supply to any
12 applicant a certified transcript of any entry contained in the records
13 of the New Jersey State census for which, except as provided by
14 R.S.26:8-63, he shall be entitled to a search fee as provided by
15 R.S.26:8-64, to be paid by the applicant.

16 c. For each death registration initiated on the NJ-EDRS on or
17 after the first day of the first month following the date of enactment
18 of P.L.2003, c.221 but before the first day of the thirty-seventh
19 month following the date of enactment of P.L.2003, c.221, the State
20 registrar shall be paid a recording fee for each record filed, whether
21 by means of the current paper process or electronically, in an
22 amount to be determined by the State registrar but not exceeding
23 \$10, from the account of the funeral home, which may include this
24 amount in the funeral expenses charged to the estate or person
25 accepting responsibility for the disposition of the deceased's human
26 remains and the costs associated therewith; provided however, this
27 fee shall not apply to the death registration of a person who died
28 while in the military or naval or maritime or merchant marine
29 service of the United States whose death is recorded pursuant to
30 section 1 of P.L.1950, c.299 (C.26:6-5.2). The State registrar shall
31 deposit the proceeds from the recording fee into the New Jersey
32 Electronic Death Registration Support Fund established pursuant to
33 section 17 of P.L.2003, c.221 (C.26:8-24.2).

34 d. Notwithstanding any other provision of this section to the
35 contrary, the Commissioner of Health and Senior Services shall
36 designate specifications for uniform forms for the issuance of all
37 vital records, which shall be used by registrars beginning on a date
38 established by the commissioner. The form designated for certified
39 copies of vital records shall contain safety features for
40 authentication purposes and to deter forgery, and shall be readily
41 distinguishable from the form designated for certifications of vital
42 records. Local registrars may include in the fee for a certified copy
43 the additional cost of the form containing such safety features.

44 The commissioner may issue and enforce orders to implement
45 the provisions of this subsection.

46 (cf: P.L.2005, c.222, s.32)

47

48 58. R.S.26:8-63 is amended to read as follows:

1 26:8-63. The State registrar shall:

2 a. Furnish a certification or certified copy of a birth, marriage,
3 civil union, domestic partnership, fetal death or death certificate
4 without fee in the prosecution of any claim for public pension or for
5 military or naval enlistment purposes; and

6 b. Furnish the United States Public Health Service without
7 expense to the State, microfilm or photocopy images of birth,
8 marriage, civil union, domestic partnership, fetal death and death
9 certificates without payment of the fees prescribed in this article;
10 and

11 c. Furnish a certified transcript of any entry in the records of
12 the New Jersey State census without fee for certification in the
13 prosecution of any claim for public pension, for military or naval
14 enlistment purposes; and

15 d. Furnish without fee upon request for administrative use by
16 any city, State or Federal agency a certified transcript of any New
17 Jersey State census entry, or a certification or certified copy of a
18 birth, death, fetal death, marriage, civil union or domestic
19 partnership certificate.

20 (cf: P.L.2003, c.246, s.25).

21

22 59. R.S.26:8-64 is amended to read as follows:

23 26:8-64. a. For any search of the files and records of births,
24 deaths, marriages, civil unions or domestic partnerships when the
25 correct year only is supplied by the applicant, whether or not a
26 certification or a certified copy is made, the State Registrar shall be
27 entitled to a minimum fee of \$4, plus a fee of \$1 for each additional
28 year searched, which fee shall be paid by the applicant, except as
29 provided by R.S.26:8-63. The fee for each additional copy shall be
30 \$2.

31 b. For all searches of the New Jersey State census records,
32 except as otherwise provided herein, the State Registrar shall be
33 entitled to a fee of \$2 for each address searched in any census year.

34 c. Conduct without fee upon request for administrative use by
35 any city, state, or federal agency, a search for any New Jersey State
36 census entry.

37 (cf: P.L.2003, c.246, s.26)

38

39 60. R.S.26:8-66 is amended to read as follows:

40 26:8-66. The State registrar either personally or by accredited
41 representative, may investigate any case of irregularity or violation
42 of [this chapter, or chapter 6 of this Title (s. 26:6-1 et seq.), as well
43 as chapter 1 of Title 37 of the Revised Statutes] R.S.26:6-1 et seq.,
44 R.S.8-1 et seq., R.S.37:1-1 et seq., or P.L. , c. (C.) (pending
45 before the Legislature as this bill, and every local registrar shall aid
46 him in such investigation.

47 (cf: P.L.1965, c.78, s.75)

1 61. R.S. 26:8-67 is amended to read as follows:

2 26:8-67. Duty of ~~prosecutor of the pleas~~ county prosecutor.

3 When the State registrar shall deem it necessary, he shall report
4 any violation of any provision of ~~this chapter or chapter 6 of this~~
5 Title (s.26:6-1 et seq.), as well as chapter 1 of Title 37 of the
6 Revised Statutes] R.S.26:6-1 et seq., R.S.26:8-1 et seq., R.S.37:1-1
7 et seq. or P.L. , c. (C.)(pending before the Legislature as
8 this bill), to the county prosecutor ~~of the pleas of the proper~~
9 county], with a statement of the facts and circumstances. Upon
10 such report, the county prosecutor ~~of the pleas~~ shall forthwith
11 institute and prosecute the necessary proceedings for such alleged
12 violation.

13 (cf: P.L.1965, c.78, s.76)

14

15 62. R.S.26:8-68 is amended to read as follows:

16 26:8-68. Upon request of the State registrar, the Attorney
17 General shall assist in the enforcement of the provisions of ~~this~~
18 chapter and chapter 6 of this Title (s. 26:6-1 et seq.), as well as
19 chapter 1 of Title 37 of the Revised Statutes] R.S.26:6-1 et seq.,
20 R.S.26:8-1 et seq., R.S.37:1-1 et seq. or P.L. , c. (C.)
21 (pending before the Legislature as this bill), or the State registrar
22 may direct that local registrars institute proceedings or civil actions
23 in the name of the State department. Such a proceeding or action
24 may be instituted in any court of competent jurisdiction.

25 (cf: P.L.1965, c.78, s.77)

26

27 63. N.J.S. 2A:34-1 is amended to read as follows:

28 2A:34-1. Causes for judgments of nullity.

29 (1) Judgments of nullity of marriage may be rendered in all
30 cases, when:

31 a. Either of the parties has another wife or husband living at
32 the time of a second or other marriage;

33 b. The parties are within the degrees prohibited by law. If any
34 such marriage shall not have been annulled during the lifetime of
35 the parties the validity thereof shall not be inquired into after the
36 death of either party.

37 c. The parties, or either of them, were at the time of marriage
38 physically and incurably impotent, provided the party making the
39 application shall have been ignorant of such impotency or
40 incapability at the time of the marriage, and has not subsequently
41 ratified the marriage.

42 d. The parties, or either of them, lacked capacity to marry due
43 to want of understanding because of mental condition, or the
44 influence of intoxicants, drugs, or similar agents; or where there
45 was a lack of mutual assent to the marital relationship; duress; or
46 fraud as to the essentials of marriage; and has not subsequently
47 ratified the marriage.

1 e. The demand for such a judgment is by the wife or husband
2 who was under the age of 18 years at the time of the marriage,
3 unless such marriage be confirmed by her or him after arriving at
4 such age.

5 f. Allowable under the general equity jurisdiction of the
6 Superior Court.

7 (2) Judgments of nullity of a civil union may be rendered in all
8 cases, when:

9 a. Either of the parties has another wife, husband, civil union
10 partner or domestic partner living at the time of establishing the
11 new civil union or;

12 b. The parties are within the degrees prohibited by the law
13 from entering into a marriage or establishing a civil union or
14 domestic partnership. If any such civil union shall not have been
15 annulled during the lifetime of the parties the validity thereof shall
16 not be inquired into after the death of either party.

17 c. The parties, or either of them, lacked capacity to enter into a
18 civil union due to want of understanding because of mental
19 condition, or the influence of intoxicants, drugs, or similar agents;
20 or where there was a lack of mutual assent to the civil union;
21 duress; or fraud as to the essentials of a civil union; and has not
22 subsequently ratified the civil union.

23 d. The demand for such a judgment is by the party who was
24 under the age of 18 years at the time of the civil union, unless such
25 civil union be confirmed by him after arriving at such age.

26 e. Allowable under the general equity jurisdiction of the
27 Superior Court.

28 (cf: P.L.1971, c.212, s.1)

29

30 64. (New section). The dissolution of a civil union may be
31 adjudged for the following causes:

32 a. voluntary sexual intercourse between a person who is in a
33 civil union and an individual other than the person's civil union
34 partner;

35 b. willful and continued desertion for a period of 12 or more
36 consecutive months, which may be established by satisfactory proof
37 that the parties have ceased to cohabit as civil union partners;

38 c. extreme cruelty, which is defined as including any physical
39 or mental cruelty that endangers the safety or health of the plaintiff
40 or makes it improper or unreasonable to expect the plaintiff to
41 continue to cohabit with the defendant; except that no complaint for
42 termination shall be filed until after three months from the date of
43 the last act of cruelty complained of in the complaint, but this
44 provision shall not be held to apply to any counterclaim;

45 d. separation, provided that the civil union partners have lived
46 separate and apart in different habitations for a period of at least 18
47 or more consecutive months and there is no reasonable prospect of
48 reconciliation; and provided further that, after the 18-month period,

1 there shall be a presumption that there is no reasonable prospect of
2 reconciliation;

3 e. voluntarily induced addiction or habituation to any
4 narcotic drug, as defined in the "New Jersey Controlled
5 Dangerous Substances Act," P.L.1970, c.226 (C.24:21-2) or the
6 "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al.,
7 or habitual drunkenness for a period of 12 or more consecutive
8 months subsequent to establishment of the civil union and next
9 preceding the filing of the complaint;

10 f. institutionalization for mental illness for a period of 24 or
11 more consecutive months subsequent to establishment of the civil
12 union and next preceding the filing of the complaint; or

13 g. imprisonment of the defendant for 18 or more consecutive
14 months after establishment of the civil union, provided that where
15 the action is not commenced until after the defendant's release, the
16 parties have not resumed cohabitation following the imprisonment.

17

18 65. N.J.S.2A:34-3 is amended to read as follows:

19 2A:34-3. Causes for divorce from bed and board or legal
20 separation from civil union partner.

21 a. Divorce from bed and board may be adjudged for the same
22 causes as divorce from the bonds of matrimony whenever both
23 parties petition or join in requesting such relief and they or either of
24 them present sufficient proof of such cause or causes to warrant the
25 entry of a judgment of divorce from the bonds of matrimony,
26 provided further that in the case of a reconciliation thereafter the
27 parties may apply for a revocation or suspension of the judgment,
28 and provided further that the granting of a bed and board divorce
29 shall in no way prejudice either party from thereafter applying to
30 the court for a conversion of said divorce to a divorce from the
31 bonds of matrimony, which application shall be granted as a matter
32 of right.

33 b. Legal separation from a civil union partner may be adjudged
34 for the same causes as dissolution of a civil union whenever both
35 parties petition or join in requesting such relief and they or either of
36 them present sufficient proof of such cause or causes to warrant the
37 entry of a judgment of dissolution of a civil union, provided further
38 that in the case of a reconciliation thereafter the parties may apply
39 for a revocation or suspension of the judgment, and provided further
40 that the granting of a legal separation from a civil union partner
41 shall in no way prejudice either party from thereafter applying to
42 the court for a conversion of said legal separation from a civil union
43 partner to a dissolution of a civil union, which application shall be
44 granted as a matter of right.

45 (cf: P.L.1971, c.212, s.3)

46

47 66. N.J.S.2A:34-6 is amended to read as follows:

1 2A:34-6. Divorce from bed and board or legal separation from a
2 civil union; property rights

3 For and during the time that any judgment for divorce from bed
4 and board or legal separation from a civil union partner shall remain
5 in force and effect all property rights of the parties shall be as
6 though a judgment of absolute divorce or dissolution had been
7 entered.

8 In any property transaction **[had]** by either of the parties in such
9 status the fact of the existence of such judgment shall be distinctly
10 recited and reference to the public record thereof shall be clearly set
11 forth.

12 (cf: N.J.S.2A:34-6).

13

14 67. N.J.S.2A:34-7 is amended to read as follows:

15 2A:34-7. Certain defenses abolished.

16 Recrimination, condonation and the clean hands doctrine are
17 hereby abolished as defenses to divorce from the bonds of
18 matrimony **[or from]** , dissolution of a civil union, divorce from
19 bed and board or legal separation from a civil union partner, and if
20 both parties make out grounds for a divorce, dissolution or legal
21 separation a decree may be granted to each; provided that nothing
22 herein shall preclude or abrogate the responsibility of a party for the
23 penalty provided by law for perjury or the subornation of perjury.

24 (cf: P.L.1971, c.212, s.4)

25

26 68. N.J.S.2A:34-8 is amended to read as follows:

27 2A:34-8. Jurisdiction stated.

28 The Superior Court shall have jurisdiction of all causes of
29 divorce, dissolution of a civil union, bed and board divorce, legal
30 separation from a civil union partner or nullity when either party is
31 a bona fide resident of this State. The Superior Court shall have
32 jurisdiction of an action for alimony and maintenance when the
33 defendant is subject to the personal jurisdiction of the court, is a
34 resident of this State, or has tangible or intangible real or personal
35 property within the jurisdiction of the court. The Superior Court
36 may afford incidental relief as in other cases of an equitable nature
37 and by rule of court may determine the venue of matrimonial and
38 civil union actions.

39 (cf: P.L.1971, c.212, s.5).

40

41 69. N.J.S.2A:34-9 is amended to read as follows:

42 2A:34-9. Jurisdiction in nullity proceedings or dissolution
43 proceedings; residence requirements; service of process

44 Jurisdiction in actions for nullity of marriage or dissolution of a
45 civil union may be acquired when:

46 a. Either party is a bona fide resident of this **[state]** State at the
47 time of the commencement of the action; and

1 b. Process is served upon the defendant as prescribed by the
2 rules of the [supreme court] Supreme Court.

3 (cf: N.J.S.2A:34-9)

4
5 70. N.J.S.2A:34-10 is amended to read as follows:

6 2A:34-10. Jurisdiction in divorce proceedings, dissolution of a
7 civil union, legal separation from a civil union partner; service of
8 process; residence requirements

9 Jurisdiction in actions for divorce, either absolute or from bed
10 and board, and in actions for dissolution of a civil union or legal
11 separation from a civil union partner may be acquired when process
12 is served upon the defendant as prescribed by the rules of the
13 Supreme Court, and

14 1. When, at the time the cause of action arose, either party was
15 a bona fide resident of this State, and has continued so to be down
16 to the time of the commencement of the action; except that no
17 action for absolute divorce or dissolution of a civil union shall be
18 commenced for any cause other than adultery, unless one of the
19 parties has been for the 1 year next preceding the commencement of
20 the action a bona fide resident of this State; or

21 2. When, since the cause of action arose, either party has
22 become, and for at least 1 year next preceding the commencement
23 of the action has continued to be, a bona fide resident of this State.

24 (cf: P.L.1971, c.212, s.6).

25
26 71. N.J.S.2A:34-11 is amended to read as follows:

27 2A:34-11. Jurisdiction by acknowledgment of service of process,
28 appearance, etc.

29 In divorce, dissolution and nullity actions, the jurisdiction of the
30 court over the defendant's person for all purposes of the action shall
31 be fully established by the filing of an acknowledgment of service
32 of process, or of an appearance, or of an answer by the defendant
33 pro se, or on his behalf by a duly authorized attorney, in such
34 manner as may be prescribed by rules of the [supreme court]
35 Supreme Court.

36 (cf: N.J.S.2A:34-11)

37
38 72. N.J.S. 2A:34-12 is amended to read as follows:

39 2A:34-12. Counterclaims.

40 Whenever the court shall have acquired jurisdiction of any action
41 under the provisions of this chapter or P.L. .c. (C.)(pending
42 before the Legislature as this bill), the defendant therein may, by
43 counterclaim, state any cause of action under this chapter or P.L. ,
44 c. (C.) (pending before the Legislature as this bill) which
45 exists at the time of the service of the counterclaim.

46 (cf: N.J.S.2A:34-12)

47
48 73. N.J.S.2A:34-13 is amended to read as follows:

1 2A:34-13. Matrimonial or civil union action.

2 A person who has attained the age of 16 years may prosecute or
3 defend any matrimonial or civil union action in person or by
4 attorney.

5 (cf: P.L.1988, c.153, s.1)

6

7 74. N.J.S.2A:34-14 is amended to read as follows:

8 2A:34-14. Parent or guardian may prosecute or defend.

9 A parent or guardian shall not be precluded by the provisions of
10 this chapter from prosecuting or defending any action respecting the
11 marriage or civil union status or relation of his minor child or ward.

12 (cf: N.J.S. 2A:34-14)

13

14 75. N.J.S.2A:34-15 is amended to read as follows:

15 2A:34-15. Co-respondent in adultery or dissolution of a civil
16 union actions

17 Where a person is named as co-respondent in a charge of
18 adultery or in a charge giving rise to a cause of action for
19 dissolution of a civil union pursuant to subsection a. of section 53
20 of P.L. , c. (C.) (pending before the Legislature as this bill),
21 the party making the charge shall give the co-respondent written
22 notice of the charge within the time and in the manner prescribed by
23 the rules of the ~~supreme court~~ Supreme Court.

24 Any such co-respondent shall be entitled to intervene in the
25 action on ~~the~~ this particular issue ~~of adultery~~.

26 (cf: N.J.S.2A:34-15)

27

28 76. N.J.S.2A:34-18 is amended to read as follows:

29 2A:34-18. Final judgment; appeal

30 If after the hearing of any cause the court shall determine that the
31 plaintiff or counterclaimant is entitled to a judgment of nullity of
32 marriage or nullity of a civil union or a judgment for divorce from
33 the bonds of matrimony or judgment for dissolution of a civil union,
34 a final judgment shall be entered.

35 Appeals shall be taken only from the final judgment.

36 (cf: P.L.1969, c.82, s.1)

37

38 77. N.J.S.2A:34-21 is amended to read as follows:

39 2A:34-21. Surname.

40 The court, upon or after granting a divorce from the bonds of
41 matrimony to either spouse or dissolution of a civil union to either
42 partner, may allow either spouse or partner to resume any name
43 used by the spouse or partner before the marriage or civil union, or
44 to assume any surname.

45 (cf: P.L.1988, c.153, s.2)

46

47 78. N.J.S.2A:34-23 is amended to read as follows:

48 2A:34-23 Alimony, maintenance.

1 Pending any matrimonial action or action for dissolution of a
2 civil union brought in this State or elsewhere, or after judgment of
3 divorce or dissolution or maintenance, whether obtained in this
4 State or elsewhere, the court may make such order as to the alimony
5 or maintenance of the parties, and also as to the care, custody,
6 education and maintenance of the children, or any of them, as the
7 circumstances of the parties and the nature of the case shall render
8 fit, reasonable and just, and require reasonable security for the due
9 observance of such orders, including, but not limited to, the creation
10 of trusts or other security devices, to assure payment of reasonably
11 foreseeable medical and educational expenses. Upon neglect or
12 refusal to give such reasonable security, as shall be required, or
13 upon default in complying with any such order, the court may
14 award and issue process for the immediate sequestration of the
15 personal estate, and the rents and profits of the real estate of the
16 party so charged, and appoint a receiver thereof, and cause such
17 personal estate and the rents and profits of such real estate, or so
18 much thereof as shall be necessary, to be applied toward such
19 alimony and maintenance as to the said court shall from time to
20 time seem reasonable and just; or the performance of the said orders
21 may be enforced by other ways according to the practice of the
22 court. Orders so made may be revised and altered by the court from
23 time to time as circumstances may require.

24 The court may order one party to pay a retainer on behalf of the
25 other for expert and legal services when the respective financial
26 circumstances of the parties make the award reasonable and just. In
27 considering an application, the court shall review the financial
28 capacity of each party to conduct the litigation and the criteria for
29 award of counsel fees that are then pertinent as set forth by court
30 rule. Whenever any other application is made to a court which
31 includes an application for pendente lite or final award of counsel
32 fees, the court shall determine the appropriate award for counsel
33 fees, if any, at the same time that a decision is rendered on the other
34 issue then before the court and shall consider the factors set forth in
35 the court rule on counsel fees, the financial circumstances of the
36 parties, and the good or bad faith of either party.

37 a. In determining the amount to be paid by a parent for support
38 of the child and the period during which the duty of support is
39 owed, the court in those cases not governed by court rule shall
40 consider, but not be limited to, the following factors:

- 41 (1) Needs of the child;
- 42 (2) Standard of living and economic circumstances of each
43 parent;
- 44 (3) All sources of income and assets of each parent;
- 45 (4) Earning ability of each parent, including educational
46 background, training, employment skills, work experience,
47 custodial responsibility for children including the cost of providing

- 1 child care and the length of time and cost of each parent to obtain
2 training or experience for appropriate employment;
- 3 (5) Need and capacity of the child for education, including
4 higher education;
- 5 (6) Age and health of the child and each parent;
- 6 (7) Income, assets and earning ability of the child;
- 7 (8) Responsibility of the parents for the court-ordered support of
8 others;
- 9 (9) Reasonable debts and liabilities of each child and parent; and
10 (10) Any other factors the court may deem relevant.

11 The obligation to pay support for a child who has not been
12 emancipated by the court shall not terminate solely on the basis of
13 the child's age if the child suffers from a severe mental or physical
14 incapacity that causes the child to be financially dependent on a
15 parent. The obligation to pay support for that child shall continue
16 until the court finds that the child is relieved of the incapacity or is
17 no longer financially dependent on the parent. However, in
18 assessing the financial obligation of the parent, the court shall
19 consider, in addition to the factors enumerated in this section, the
20 child's eligibility for public benefits and services for people with
21 disabilities and may make such orders, including an order involving
22 the creation of a trust, as are necessary to promote the well-being of
23 the child.

24 As used in this section "severe mental or physical incapacity"
25 shall not include a child's abuse of, or addiction to, alcohol or
26 controlled substances.

27 b. In all actions brought for divorce, dissolution of a civil
28 union, divorce from bed and board, legal separation from a civil
29 union partner or nullity the court may award one or more of the
30 following types of alimony: permanent alimony; rehabilitative
31 alimony; limited duration alimony or reimbursement alimony to
32 either party. In so doing the court shall consider, but not be limited
33 to, the following factors:

- 34 (1) The actual need and ability of the parties to pay;
- 35 (2) The duration of the marriage or civil union;
- 36 (3) The age, physical and emotional health of the parties;
- 37 (4) The standard of living established in the marriage or civil
38 union and the likelihood that each party can maintain a reasonably
39 comparable standard of living;
- 40 (5) The earning capacities, educational levels, vocational skills,
41 and employability of the parties;
- 42 (6) The length of absence from the job market of the party
43 seeking maintenance;
- 44 (7) The parental responsibilities for the children;
- 45 (8) The time and expense necessary to acquire sufficient
46 education or training to enable the party seeking maintenance to
47 find appropriate employment, the availability of the training and

1 employment, and the opportunity for future acquisitions of capital
2 assets and income;

3 (9) The history of the financial or non-financial contributions to
4 the marriage or civil union by each party including contributions to
5 the care and education of the children and interruption of personal
6 careers or educational opportunities;

7 (10) The equitable distribution of property ordered and any
8 payouts on equitable distribution, directly or indirectly, out of
9 current income, to the extent this consideration is reasonable, just
10 and fair;

11 (11) The income available to either party through investment of
12 any assets held by that party;

13 (12) The tax treatment and consequences to both parties of any
14 alimony award, including the designation of all or a portion of the
15 payment as a non-taxable payment; and

16 (13) Any other factors which the court may deem relevant.

17 When a share of a retirement benefit is treated as an asset for
18 purposes of equitable distribution, the court shall not consider
19 income generated thereafter by that share for purposes of
20 determining alimony.

21 c. In any case in which there is a request for an award of
22 permanent alimony, the court shall consider and make specific
23 findings on the evidence about the above factors. If the court
24 determines that an award of permanent alimony is not warranted,
25 the court shall make specific findings on the evidence setting out
26 the reasons therefor. The court shall then consider whether alimony
27 is appropriate for any or all of the following: (1) limited duration;
28 (2) rehabilitative; (3) reimbursement. In so doing, the court shall
29 consider and make specific findings on the evidence about factors
30 set forth above. The court shall not award limited duration alimony
31 as a substitute for permanent alimony in those cases where
32 permanent alimony would otherwise be awarded.

33 An award of alimony for a limited duration may be modified
34 based either upon changed circumstances, or upon the
35 nonoccurrence of circumstances that the court found would occur at
36 the time of the award. The court may modify the amount of such an
37 award, but shall not modify the length of the term except in unusual
38 circumstances.

39 In determining the length of the term, the court shall consider the
40 length of time it would reasonably take for the recipient to improve
41 his or her earning capacity to a level where limited duration
42 alimony is no longer appropriate.

43 d. Rehabilitative alimony shall be awarded based upon a plan
44 in which the payee shows the scope of rehabilitation, the steps to be
45 taken, and the time frame, including a period of employment during
46 which rehabilitation will occur. An award of rehabilitative alimony
47 may be modified based either upon changed circumstances, or upon

1 the nonoccurrence of circumstances that the court found would
2 occur at the time of the rehabilitative award.

3 This section is not intended to preclude a court from modifying
4 permanent alimony awards based upon the law.

5 e. Reimbursement alimony may be awarded under
6 circumstances in which one party supported the other through an
7 advanced education, anticipating participation in the fruits of the
8 earning capacity generated by that education.

9 f. Nothing in this section shall be construed to limit the court's
10 authority to award permanent alimony, limited duration alimony,
11 rehabilitative alimony or reimbursement alimony, separately or in
12 any combination, as warranted by the circumstances of the parties
13 and the nature of the case.

14 g. In all actions for divorce or dissolution other than those
15 where judgment is granted solely on the ground of separation the
16 court may consider also the proofs made in establishing such
17 ground in determining an amount of alimony or maintenance that is
18 fit, reasonable and just. In all actions for divorce **[or]** dissolution
19 of civil union, divorce from bed and board, legal separation from a
20 civil union partner where judgment is granted on the ground of
21 institutionalization for mental illness the court may consider the
22 possible burden upon the taxpayers of the State as well as the ability
23 of the party to pay in determining an amount of maintenance to be
24 awarded.

25 h. In all actions where a judgment of divorce **[or]** dissolution
26 of civil union, divorce from bed and board or legal separation from
27 a civil union partner is entered the court may make such award or
28 awards to the parties, in addition to alimony and maintenance, to
29 effectuate an equitable distribution of the property, both real and
30 personal, which was legally and beneficially acquired by them or
31 either of them during the marriage or civil union. However, all such
32 property, real, personal or otherwise, legally or beneficially
33 acquired during the marriage or civil union by either party by way
34 of gift, devise, or intestate succession shall not be subject to
35 equitable distribution, except that interspousal gifts or gifts between
36 parties to a civil union shall be subject to equitable distribution.

37 (cf: P.L.2005, c.171, s.1)

38

39 79. Section 1 of P.L.1997,c.405 (C.2A:34-23d) is amended to
40 read as follows:

41 1. Maintenance of certain insurance coverage in action for
42 divorce or dissolution.

43 a. Upon filing of a complaint for an action for divorce,
44 dissolution, nullity or separate maintenance, where the custody,
45 visitation or support of a minor child is an issue, the party who has
46 maintained all existing insurance coverage or coverage traditionally
47 maintained during the marriage or civil union, including but not
48 limited to, all health, disability, home or life insurance, shall

1 continue to maintain or continue to share in the cost of maintaining
2 the coverage.

3 b. If a party who has maintained the existing insurance
4 coverage or has shared in the cost of maintaining the coverage has
5 had a voluntary or involuntary change in employment status, which
6 may cause the existing insurance coverage to terminate, then that
7 party shall notify the other party that it may be necessary to
8 reallocate the financial responsibilities of maintaining the coverage.

9 c. Upon receipt of this notice, the party may petition the court
10 to reallocate financial responsibilities.

11 d. The court may take any action it deems appropriate to
12 reallocate financial responsibilities including but not limited to
13 ordering a party to obtain comparable coverage or releasing a party
14 from the obligation or any other order.

15 (cf: P.L.1997, c.405, s.1)

16

17 80. N.J.S. 2A:34-23.1 is amended to read as follows:

18 2A:34-23.1 Equitable distribution criteria.

19 4. In making an equitable distribution of property, the court
20 shall consider, but not be limited to, the following factors:

21 a. The duration of the marriage or civil union;

22 b. The age and physical and emotional health of the parties;

23 c. The income or property brought to the marriage or civil
24 union by each party;

25 d. The standard of living established during the marriage or
26 civil union;

27 e. Any written agreement made by the parties before or during
28 the marriage or civil union concerning an arrangement of property
29 distribution;

30 f. The economic circumstances of each party at the time the
31 division of property becomes effective;

32 g. The income and earning capacity of each party, including
33 educational background, training, employment skills, work
34 experience, length of absence from the job market, custodial
35 responsibilities for children, and the time and expense necessary to
36 acquire sufficient education or training to enable the party to
37 become self-supporting at a standard of living reasonably
38 comparable to that enjoyed during the marriage or civil union;

39 h. The contribution by each party to the education, training or
40 earning power of the other;

41 i. The contribution of each party to the acquisition, dissipation,
42 preservation, depreciation or appreciation in the amount or value of
43 the marital property, or the property acquired during the civil union
44 as well as the contribution of a party as a homemaker;

45 j. The tax consequences of the proposed distribution to each
46 party;

47 k. The present value of the property;

- 1 l. The need of a parent who has physical custody of a child to
2 own or occupy the marital residence or residence shared by the
3 parties to a civil union and to use or own the household effects;
4 m. The debts and liabilities of the parties;
5 n. The need for creation, now or in the future, of a trust fund to
6 secure reasonably foreseeable medical or educational costs for a
7 spouse, partner or children;
8 o. The extent to which a party deferred achieving their career
9 goals; and
10 p. Any other factors which the court may deem relevant.

11 In every case, the court shall make specific findings of fact on
12 the evidence relevant to all issues pertaining to asset eligibility or
13 ineligibility, asset valuation, and equitable distribution, including
14 specifically, but not limited to, the factors set forth in this section.

15 It shall be a rebuttable presumption that each party made a
16 substantial financial or nonfinancial contribution to the acquisition
17 of income and property while the party was married.

18 (cf: P.L.1997, c.407, s.1).

19

20 81. Section 1 of P.L. 1954, c. 187 (C.2A:34-24.1) is amended to
21 read as follows:

22 1. Court-ordered support, maintenance.

23 When a spouse or civil union partner has secured a judgment or
24 decree of divorce, whether absolute or from bed and board,
25 dissolution of a civil union, legal separation from a civil union
26 partner, or of nullity or annulment of marriage or civil union, in an
27 action whether brought in this State or elsewhere, wherein
28 jurisdiction over the person of the other spouse or the other civil
29 union partner was not obtained, the court may make the same orders
30 and judgments touching the suitable support and maintenance to be
31 paid and provided by the spouse or civil union partner, or to be
32 made out of the spouse's or partner's property, for the other spouse
33 or partner and their children, or any of them, by their marriage or
34 civil union and for such time, as the nature of the case and
35 circumstances of the parties render suitable and proper, pursuant to
36 the provisions of chapter 34 of Title 2A of the New Jersey Statutes
37 notwithstanding the securing of such judgment or decree.

38 (cf: P.L.1988, c.153, s.6)

39

40 82. N.J.S.2A:34-25. Termination of alimony.

41 2A:34-25. If after the judgment of divorce or dissolution a
42 former spouse shall remarry or a former partner shall enter into a
43 new civil union, permanent and limited duration alimony shall
44 terminate as of the date of remarriage or new civil union except that
45 any arrearages that have accrued prior to the date of remarriage or
46 new civil union shall not be vacated or annulled. A former spouse
47 or civil union partner who remarries shall promptly so inform the
48 spouse or partner paying permanent or limited duration alimony as

1 well as the collecting agency, if any. The court may order such
2 alimony recipient who fails to comply with the notification
3 provision of this act to pay any reasonable attorney fees and court
4 costs incurred by the recipient's former spouse or partner as a result
5 of such non-compliance.

6 The remarriage or establishment of a new civil union of a former
7 spouse or partner receiving rehabilitative or reimbursement alimony
8 shall not be cause for termination of such alimony by the court
9 unless the court finds that the circumstances upon which the award
10 was based have not occurred or unless the payer spouse or partner
11 demonstrates an agreement or good cause to the contrary.

12 Alimony shall terminate upon the death of the payer spouse or
13 partner, except that any arrearages that have accrued prior to the
14 date of the payer spouse's or partner's death shall not be vacated or
15 annulled.

16 Nothing in this act shall be construed to prohibit a court from
17 ordering either spouse or partner to maintain life insurance for the
18 protection of the former spouse, partner, or the children of the
19 marriage or civil union in the event of the payer spouse's or
20 partner's death.

21 (cf: P.L.1999, c.199, s.2)

22

23 83. N.J.S.2A:34-26 is amended to read as follows:

24 2A:34-26. Attachment of property.

25 When a spouse or civil union partner cannot be found within this
26 State to be served with process, the spouse's or partner's estate,
27 property and effects within this State and the rents and profits
28 thereof may be attached to compel the spouse's or partner's
29 appearance and performance of any judgment or order which may
30 be made in the action. Where the proceedings are by process of
31 attachment and the defendant does not appear, the judgment shall be
32 enforceable only out of and against the property attached.

33 (cf: P.L.1988, c.153, s.8)

34

35 84. N.J.S.22A:2-10 is amended to read as follows:

36 22A:2-10. Chancery Division of Superior Court; costs awarded.

37 Upon the completion and determination of the following actions
38 and proceedings in the Chancery Division of the Superior Court, the
39 costs awarded to a party therein for the drawing of papers, including
40 orders, writs and judgments, shall be as stated below:

41	Plaintiff's costs, foreclosure	\$50 ₀₀
42	Plaintiff's costs, partition	70 ₀₀
43	Plaintiff's and receiver's costs, receivership	125 ₀₀
44	Plaintiff's costs, receivership	62 ₅₀
45	Receiver's costs, receivership	62 ₅₀
46	Plaintiff's costs, divorce, <u>dissolution of civil</u>	
47	<u>union</u> , nullity, custody	30 ₀₀
48	Plaintiff's costs, causes of action for other relief	65 ₀₀

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1	Plaintiff's costs, incompetency action	47.50
2	Plaintiff's costs, sale of lands of infant or incompetent	50.00
3	Plaintiff's costs, release of dower or curtesy	50.00
4	Plaintiff's costs, mortgage lands of an infant or incompetent ...	
5	50.00	
6	Plaintiff's costs, interpleader	35.00
7	Plaintiff's costs, appointment of tax receiver	27.50
8	Plaintiff's costs, actions for payment of money	
9	into court; to hold real estate; to limit creditors	22.50
10	Plaintiff's costs, action for appointment of trustee	
11	or substituted trustee	33.50
12	Costs on contempt proceedings	25.00
13	Costs on application to fix dower or curtesy	22.50
14	Costs on application to pay moneys out of court	23.50
15	Costs on application for instructions, or to	
16	approve account	30.00
17	Costs on application for writ of execution	10.00
18	Costs on application for relief from final judgment	
19	or, in a matrimonial cause from judgment	
20	nisi or order..	20.00
21	Costs on application for writ of possession	30.00
22	Costs on application for alimony pendente lite,	
23	attorney fee, suit money	20.00
24	Defendant's costs where final judgment is taken by him ...	30.00
25	Defendant's costs where final judgment is not taken by him	20.00
26	Costs upon any other litigated or special motion,	
27	subsidiary or interlocutory, not heretofore provided for ...	20.00
28	(cf: N.J.S.22A:2-10)	
29		
30	85. N.J.S.22A:2-12 is amended to read as follows:	
31	22A:2-12. Payment of fees in Chancery Division of Superior	
32	Court upon filing of first paper. Upon the filing of the first paper in	
33	any action or proceeding in the Chancery Division of the Superior	
34	Court, there shall be paid to the clerk of the court, for the use of the	
35	State, the following fees, which, except as hereinafter provided,	
36	shall constitute the entire fees to be collected by the clerk for the	
37	use of the State, down to the final disposition of the cause:	
38	Receivership and partition, \$200.00.	
39	All other actions and proceedings except in probate cases and	
40	actions and proceedings for divorce <u>or dissolution of a civil union</u>	
41	<u>union</u> , \$200.00.	
42	Actions and proceedings for divorce <u>or dissolution of civil union</u> ,	
43	\$250.00, \$25.00 of which shall be forwarded by the Clerk of the	
44	Superior Court as provided in section 2 of P.L.1993, c.188	
45	(C.52:27D-43.24a).	
46	Any person filing a motion in any action or proceeding shall pay	
47	to the clerk \$30.00.	
48	(cf: P.L.2003, c.117, s.41)	

1 86. Section 2 of P.L.1993, c.188 (C.52:27D-43.24a) is amended
2 to read as follows:

3 2. Forwarding of filing fee.The Clerk of the Superior Court
4 shall forward \$25.00 of the \$250.00 filing fee for a divorce or a
5 dissolution of a civil union provided for in N.J.S.22A:2-12 on a
6 quarterly basis to the Department of Community Affairs.
7 (cf: P.L. 2003, c.117, s.42)

8
9 87. Section 5 of P.L.1945, c.169 (C.10:5-5) is amended to read
10 as follows:

11 5. As used in this act, unless a different meaning clearly
12 appears from the context:

13 a. "Person" includes one or more individuals, partnerships,
14 associations, organizations, labor organizations, corporations, legal
15 representatives, trustees, trustees in bankruptcy, receivers, and
16 fiduciaries.

17 b. "Employment agency" includes any person undertaking to
18 procure employees or opportunities for others to work.

19 c. "Labor organization" includes any organization which exists
20 and is constituted for the purpose, in whole or in part, of collective
21 bargaining, or of dealing with employers concerning grievances,
22 terms or conditions of employment, or of other mutual aid or
23 protection in connection with employment.

24 d. "Unlawful employment practice" and "unlawful
25 discrimination" include only those unlawful practices and acts
26 specified in section 11 of this act.

27 e. "Employer" includes all persons as defined in subsection a.
28 of this section unless otherwise specifically exempt under another
29 section of this act, and includes the State, any political or civil
30 subdivision thereof, and all public officers, agencies, boards or
31 bodies.

32 f. "Employee" does not include any individual employed in the
33 domestic service of any person.

34 g. "Liability for service in the Armed Forces of the United
35 States" means subject to being ordered as an individual or member
36 of an organized unit into active service in the Armed Forces of the
37 United States by reason of membership in the National Guard, naval
38 militia or a reserve component of the Armed Forces of the United
39 States, or subject to being inducted into such armed forces through
40 a system of national selective service.

41 h. "Division" means the "Division on Civil Rights" created by
42 this act.

43 i. "Attorney General" means the Attorney General of the State
44 of New Jersey or his representative or designee.

45 j. "Commission" means the Commission on Civil Rights
46 created by this act.

47 k. "Director" means the Director of the Division on Civil
48 Rights.

1 l. "A place of public accommodation" shall include, but not be
2 limited to: any tavern, roadhouse, hotel, motel, trailer camp,
3 summer camp, day camp, or resort camp, whether for entertainment
4 of transient guests or accommodation of those seeking health,
5 recreation or rest; any producer, manufacturer, wholesaler,
6 distributor, retail shop, store, establishment, or concession dealing
7 with goods or services of any kind; any restaurant, eating house, or
8 place where food is sold for consumption on the premises; any
9 place maintained for the sale of ice cream, ice and fruit preparations
10 or their derivatives, soda water or confections, or where any
11 beverages of any kind are retailed for consumption on the premises;
12 any garage, any public conveyance operated on land or water, or in
13 the air, any stations and terminals thereof; any bathhouse,
14 boardwalk, or seashore accommodation; any auditorium, meeting
15 place, or hall; any theatre, motion-picture house, music hall, roof
16 garden, skating rink, swimming pool, amusement and recreation
17 park, fair, bowling alley, gymnasium, shooting gallery, billiard and
18 pool parlor, or other place of amusement; any comfort station; any
19 dispensary, clinic or hospital; any public library; any kindergarten,
20 primary and secondary school, trade or business school, high
21 school, academy, college and university, or any educational
22 institution under the supervision of the State Board of Education, or
23 the Commissioner of Education of the State of New Jersey.
24 Nothing herein contained shall be construed to include or to apply
25 to any institution, bona fide club, or place of accommodation, which
26 is in its nature distinctly private; nor shall anything herein contained
27 apply to any educational facility operated or maintained by a bona
28 fide religious or sectarian institution, and the right of a natural
29 parent or one in loco parentis to direct the education and upbringing
30 of a child under his control is hereby affirmed; nor shall anything
31 herein contained be construed to bar any private secondary or post
32 secondary school from using in good faith criteria other than race,
33 creed, color, national origin, ancestry or affectional or sexual
34 orientation in the admission of students.

35 m. "A publicly assisted housing accommodation" shall include
36 all housing built with public funds or public assistance pursuant to
37 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
38 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949,
39 c.184, and all housing financed in whole or in part by a loan,
40 whether or not secured by a mortgage, the repayment of which is
41 guaranteed or insured by the federal government or any agency
42 thereof.

43 n. The term "real property" includes real estate, lands,
44 tenements and hereditaments, corporeal and incorporeal, and
45 leaseholds, provided, however, that, except as to publicly assisted
46 housing accommodations, the provisions of this act shall not apply
47 to the rental: (1) of a single apartment or flat in a two-family
48 dwelling, the other occupancy unit of which is occupied by the

1 owner as a residence; or (2) of a room or rooms to another person or
2 persons by the owner or occupant of a one-family dwelling
3 occupied by the owner or occupant as a residence at the time of
4 such rental. Nothing herein contained shall be construed to bar any
5 religious or denominational institution or organization, or any
6 organization operated for charitable or educational purposes, which
7 is operated, supervised or controlled by or in connection with a
8 religious organization, in the sale, lease or rental of real property,
9 from limiting admission to or giving preference to persons of the
10 same religion or denomination or from making such selection as is
11 calculated by such organization to promote the religious principles
12 for which it is established or maintained. Nor does any provision
13 under this act regarding discrimination on the basis of familial
14 status apply with respect to housing for older persons.

15 o. "Real estate broker" includes a person, firm or corporation
16 who, for a fee, commission or other valuable consideration, or by
17 reason of promise or reasonable expectation thereof, lists for sale,
18 sells, exchanges, buys or rents, or offers or attempts to negotiate a
19 sale, exchange, purchase, or rental of real estate or an interest
20 therein, or collects or offers or attempts to collect rent for the use of
21 real estate, or solicits for prospective purchasers or assists or directs
22 in the procuring of prospects or the negotiation or closing of any
23 transaction which does or is contemplated to result in the sale,
24 exchange, leasing, renting or auctioning of any real estate, or
25 negotiates, or offers or attempts or agrees to negotiate a loan
26 secured or to be secured by mortgage or other encumbrance upon or
27 transfer of any real estate for others; or any person who, for
28 pecuniary gain or expectation of pecuniary gain conducts a public
29 or private competitive sale of lands or any interest in lands. In the
30 sale of lots, the term "real estate broker" shall also include any
31 person, partnership, association or corporation employed by or on
32 behalf of the owner or owners of lots or other parcels of real estate,
33 at a stated salary, or upon a commission, or upon a salary and
34 commission or otherwise, to sell such real estate, or any parts
35 thereof, in lots or other parcels, and who shall sell or exchange, or
36 offer or attempt or agree to negotiate the sale or exchange, of any
37 such lot or parcel of real estate.

38 p. "Real estate salesperson" includes any person who, for
39 compensation, valuable consideration or commission, or other thing
40 of value, or by reason of a promise or reasonable expectation
41 thereof, is employed by and operates under the supervision of a
42 licensed real estate broker to sell or offer to sell, buy or offer to buy
43 or negotiate the purchase, sale or exchange of real estate, or offers
44 or attempts to negotiate a loan secured or to be secured by a
45 mortgage or other encumbrance upon or transfer of real estate, or to
46 lease or rent, or offer to lease or rent any real estate for others, or to
47 collect rents for the use of real estate, or to solicit for prospective
48 purchasers or lessees of real estate, or who is employed by a

1 licensed real estate broker to sell or offer to sell lots or other parcels
2 of real estate, at a stated salary, or upon a commission, or upon a
3 salary and commission, or otherwise to sell real estate, or any parts
4 thereof, in lots or other parcels.

5 q. "Disability" means physical disability, infirmity,
6 malformation or disfigurement which is caused by bodily injury,
7 birth defect or illness including epilepsy and other seizure
8 disorders, and which shall include, but not be limited to, any degree
9 of paralysis, amputation, lack of physical coordination, blindness or
10 visual impediment, deafness or hearing impediment, muteness or
11 speech impediment or physical reliance on a service or guide dog,
12 wheelchair, or other remedial appliance or device, or any mental,
13 psychological or developmental disability resulting from
14 anatomical, psychological, physiological or neurological conditions
15 which prevents the normal exercise of any bodily or mental
16 functions or is demonstrable, medically or psychologically, by
17 accepted clinical or laboratory diagnostic techniques. Disability
18 shall also mean AIDS or HIV infection.

19 r. "Blind person" means any individual whose central visual
20 acuity does not exceed 20/200 in the better eye with correcting lens
21 or whose visual acuity is better than 20/200 if accompanied by a
22 limit to the field of vision in the better eye to such a degree that its
23 widest diameter subtends an angle of no greater than 20 degrees.

24 s. "Guide dog" means a dog used to assist deaf persons or
25 which is fitted with a special harness so as to be suitable as an aid to
26 the mobility of a blind person, and is used by a blind person who
27 has satisfactorily completed a specific course of training in the use
28 of such a dog, and has been trained by an organization generally
29 recognized by agencies involved in the rehabilitation of the blind or
30 deaf as reputable and competent to provide dogs with training of
31 this type.

32 t. "Guide or service dog trainer" means any person who is
33 employed by an organization generally recognized by agencies
34 involved in the rehabilitation of persons with disabilities as
35 reputable and competent to provide dogs with training, and who is
36 actually involved in the training process.

37 u. "Housing accommodation" means any publicly assisted
38 housing accommodation or any real property, or portion thereof,
39 which is used or occupied, or is intended, arranged, or designed to
40 be used or occupied, as the home, residence or sleeping place of one
41 or more persons, but shall not include any single family residence
42 the occupants of which rent, lease, or furnish for compensation not
43 more than one room therein.

44 v. "Public facility" means any place of public accommodation
45 and any street, highway, sidewalk, walkway, public building, and
46 any other place or structure to which the general public is regularly,
47 normally or customarily permitted or invited.

- 1 w. "Deaf person" means any person whose hearing is so
2 severely impaired that the person is unable to hear and understand
3 normal conversational speech through the unaided ear alone, and
4 who must depend primarily on a supportive device or visual
5 communication such as writing, lip reading, sign language, and
6 gestures.
- 7 x. "Atypical hereditary cellular or blood trait" means sickle cell
8 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
9 fibrosis trait.
- 10 y. "Sickle cell trait" means the condition wherein the major
11 natural hemoglobin components present in the blood of the
12 individual are hemoglobin A (normal) and hemoglobin S (sickle
13 hemoglobin) as defined by standard chemical and physical analytic
14 techniques, including electrophoresis; and the proportion of
15 hemoglobin A is greater than the proportion of hemoglobin S or one
16 natural parent of the individual is shown to have only normal
17 hemoglobin components (hemoglobin A, hemoglobin A2,
18 hemoglobin F) in the normal proportions by standard chemical and
19 physical analytic tests.
- 20 z. "Hemoglobin C trait" means the condition wherein the major
21 natural hemoglobin components present in the blood of the
22 individual are hemoglobin A (normal) and hemoglobin C as defined
23 by standard chemical and physical analytic techniques, including
24 electrophoresis; and the proportion of hemoglobin A is greater than
25 the proportion of hemoglobin C or one natural parent of the
26 individual is shown to have only normal hemoglobin components
27 (hemoglobin A, hemoglobin A2, hemoglobin F) in normal
28 proportions by standard chemical and physical analytic tests.
- 29 aa. "Thalassemia trait" means the presence of the thalassemia
30 gene which in combination with another similar gene results in the
31 chronic hereditary disease Cooley's anemia.
- 32 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
33 which in combination with another similar gene results in the
34 chronic hereditary disease Tay-Sachs.
- 35 cc. "Cystic fibrosis trait" means the presence of the cystic
36 fibrosis gene which in combination with another similar gene
37 results in the chronic hereditary disease cystic fibrosis.
- 38 dd. "Service dog" means any dog individually trained to the
39 requirements of a person with a disability including, but not limited
40 to minimal protection work, rescue work, pulling a wheelchair or
41 retrieving dropped items. This term shall include a "seizure dog"
42 trained to alert or otherwise assist persons subject to epilepsy or
43 other seizure disorders.
- 44 ee. "Qualified Medicaid applicant" means an individual who is a
45 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).
- 46 ff. "AIDS" means acquired immune deficiency syndrome as
47 defined by the Centers for Disease Control and Prevention of the
48 United States Public Health Service.

- 1 gg. "HIV infection" means infection with the human
2 immunodeficiency virus or any other related virus identified as a
3 probable causative agent of AIDS.
- 4 hh. "Affectional or sexual orientation" means male or female
5 heterosexuality, homosexuality or bisexuality by inclination,
6 practice, identity or expression, having a history thereof or being
7 perceived, presumed or identified by others as having such an
8 orientation.
- 9 ii. "Heterosexuality" means affectional, emotional or physical
10 attraction or behavior which is primarily directed towards persons
11 of the other gender.
- 12 jj. "Homosexuality" means affectional, emotional or physical
13 attraction or behavior which is primarily directed towards persons
14 of the same gender.
- 15 kk. "Bisexuality" means affectional, emotional or physical
16 attraction or behavior which is directed towards persons of either
17 gender.
- 18 ll. "Familial status" means being the natural parent of a child,
19 the adoptive parent of a child, the resource family parent of a child,
20 having a "parent and child relationship" with a child as defined by
21 State law, or having sole or joint legal or physical custody, care,
22 guardianship, or visitation with a child, or any person who is
23 pregnant or is in the process of securing legal custody of any
24 individual who has not attained the age of 18 years.
- 25 mm. "Housing for older persons" means housing:
- 26 (1) provided under any State program that the Attorney General
27 determines is specifically designed and operated to assist elderly
28 persons (as defined in the State program); or provided under any
29 federal program that the United States Department of Housing and
30 Urban Development determines is specifically designed and
31 operated to assist elderly persons (as defined in the federal
32 program); or
- 33 (2) intended for, and solely occupied by persons 62 years of age
34 or older; or
- 35 (3) intended and operated for occupancy by at least one person
36 55 years of age or older per unit. In determining whether housing
37 qualifies as housing for older persons under this subsection, the
38 Attorney General shall adopt regulations which require at least the
39 following factors:
- 40 (a) the existence of significant facilities and services
41 specifically designed to meet the physical or social needs of older
42 persons, or if the provision of such facilities and services is not
43 practicable, that such housing is necessary to provide important
44 housing opportunities for older persons; and
- 45 (b) that at least 80 percent of the units are occupied by at least
46 one person 55 years of age or older per unit; and

1 (c) the publication of, and adherence to, policies and procedures
2 which demonstrate an intent by the owner or manager to provide
3 housing for persons 55 years of age or older.

4 Housing shall not fail to meet the requirements for housing for
5 older persons by reason of: persons residing in such housing as of
6 September 13, 1988 not meeting the age requirements of this
7 subsection, provided that new occupants of such housing meet the
8 age requirements of this subsection; or unoccupied units, provided
9 that such units are reserved for occupancy by persons who meet the
10 age requirements of this subsection.

11 nn. "Genetic characteristic" means any inherited gene or
12 chromosome, or alteration thereof, that is scientifically or medically
13 believed to predispose an individual to a disease, disorder or
14 syndrome, or to be associated with a statistically significant
15 increased risk of development of a disease, disorder or syndrome.

16 oo. "Genetic information" means the information about genes,
17 gene products or inherited characteristics that may derive from an
18 individual or family member.

19 pp. "Genetic test" means a test for determining the presence or
20 absence of an inherited genetic characteristic in an individual,
21 including tests of nucleic acids such as DNA, RNA and
22 mitochondrial DNA, chromosomes or proteins in order to identify a
23 predisposing genetic characteristic.

24 qq. "Domestic partnership" means a domestic partnership
25 established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

26 rr. "Civil Union" means a legally recognized union of
27 two eligible individuals established pursuant to R.S.37:1-1 et seq.
28 and P.L. ,c. (C.) (pending before the Legislature as this bill).
29 (cf: P.L. 2004, c.130, s.37)

30
31 88. Section 11 of P.L. 1945, c.169 (C.10:5-12) is amended to
32 read as follows:

33 11. It shall be an unlawful employment practice, or, as the case
34 may be, an unlawful discrimination:

35 a. For an employer, because of the race, creed, color, national
36 origin, ancestry, age, marital status, civil union status, domestic
37 partnership status, affectional or sexual orientation, genetic
38 information, sex, disability or atypical hereditary cellular or blood
39 trait of any individual, or because of the liability for service in the
40 Armed Forces of the United States or the nationality of any
41 individual, or because of the refusal to submit to a genetic test or
42 make available the results of a genetic test to an employer, to refuse
43 to hire or employ or to bar or to discharge or require to retire, unless
44 justified by lawful considerations other than age, from employment
45 such individual or to discriminate against such individual in
46 compensation or in terms, conditions or privileges of employment;
47 provided, however, it shall not be an unlawful employment practice
48 to refuse to accept for employment an applicant who has received a

1 notice of induction or orders to report for active duty in the armed
2 forces; provided further that nothing herein contained shall be
3 construed to bar an employer from refusing to accept for
4 employment any person on the basis of sex in those certain
5 circumstances where sex is a bona fide occupational qualification,
6 reasonably necessary to the normal operation of the particular
7 business or enterprise; provided further that nothing herein
8 contained shall be construed to bar an employer from refusing to
9 accept for employment or to promote any person over 70 years of
10 age; provided further that it shall not be an unlawful employment
11 practice for a club exclusively social or fraternal to use club
12 membership as a uniform qualification for employment, or for a
13 religious association or organization to utilize religious affiliation
14 as a uniform qualification in the employment of clergy, religious
15 teachers or other employees engaged in the religious activities of
16 the association or organization, or in following the tenets of its
17 religion in establishing and utilizing criteria for employment of an
18 employee; provided further, that it shall not be an unlawful
19 employment practice to require the retirement of any employee
20 who, for the two-year period immediately before retirement, is
21 employed in a bona fide executive or a high policy-making position,
22 if that employee is entitled to an immediate non-forfeitable annual
23 retirement benefit from a pension, profit sharing, savings or
24 deferred retirement plan, or any combination of those plans, of the
25 employer of that employee which equals in the aggregate at least
26 \$27,000.00; and provided further that an employer may restrict
27 employment to citizens of the United States where such restriction
28 is required by federal law or is otherwise necessary to protect the
29 national interest.

30 The provisions of subsections a. and b. of section 57 of
31 P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of
32 P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an
33 unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

34 For the purposes of this subsection, a "bona fide executive" is a
35 top level employee who exercises substantial executive authority
36 over a significant number of employees and a large volume of
37 business. A "high policy-making position" is a position in which a
38 person plays a significant role in developing policy and in
39 recommending the implementation thereof.

40 b. For a labor organization, because of the race, creed, color,
41 national origin, ancestry, age, marital status, civil union status,
42 domestic partnership status, affectional or sexual orientation,
43 disability or sex of any individual, or because of the liability for
44 service in the Armed Forces of the United States or nationality of
45 any individual, to exclude or to expel from its membership such
46 individual or to discriminate in any way against any of its members,
47 against any applicant for, or individual included in, any apprentice
48 or other training program or against any employer or any individual

1 employed by an employer; provided, however, that nothing herein
2 contained shall be construed to bar a labor organization from
3 excluding from its apprentice or other training programs any person
4 on the basis of sex in those certain circumstances where sex is a
5 bona fide occupational qualification reasonably necessary to the
6 normal operation of the particular apprentice or other training
7 program.

8 c. For any employer or employment agency to print or circulate
9 or cause to be printed or circulated any statement, advertisement or
10 publication, or to use any form of application for employment, or to
11 make an inquiry in connection with prospective employment, which
12 expresses, directly or indirectly, any limitation, specification or
13 discrimination as to race, creed, color, national origin, ancestry,
14 age, marital status, civil union status, domestic partnership status,
15 affectional or sexual orientation, disability, nationality or sex or
16 liability of any applicant for employment for service in the Armed
17 Forces of the United States, or any intent to make any such
18 limitation, specification or discrimination, unless based upon a bona
19 fide occupational qualification.

20 d. For any person to take reprisals against any person because
21 that person has opposed any practices or acts forbidden under this
22 act or because that person has filed a complaint, testified or assisted
23 in any proceeding under this act or to coerce, intimidate, threaten or
24 interfere with any person in the exercise or enjoyment of, or on
25 account of that person having aided or encouraged any other person
26 in the exercise or enjoyment of, any right granted or protected by
27 this act.

28 e. For any person, whether an employer or an employee or not,
29 to aid, abet, incite, compel or coerce the doing of any of the acts
30 forbidden under this act, or to attempt to do so.

31 f. (1) For any owner, lessee, proprietor, manager,
32 superintendent, agent, or employee of any place of public
33 accommodation directly or indirectly to refuse, withhold from or
34 deny to any person any of the accommodations, advantages,
35 facilities or privileges thereof, or to discriminate against any person
36 in the furnishing thereof, or directly or indirectly to publish,
37 circulate, issue, display, post or mail any written or printed
38 communication, notice, or advertisement to the effect that any of
39 the accommodations, advantages, facilities, or privileges of any
40 such place will be refused, withheld from, or denied to any person
41 on account of the race, creed, color, national origin, ancestry,
42 marital status, civil union status, domestic partnership status, sex,
43 affectional or sexual orientation, disability or nationality of such
44 person, or that the patronage or custom thereof of any person of any
45 particular race, creed, color, national origin, ancestry, marital status,
46 civil union status, domestic partnership status, sex, affectional or
47 sexual orientation, disability or nationality is unwelcome,
48 objectionable or not acceptable, desired or solicited, and the

1 production of any such written or printed communication, notice or
2 advertisement, purporting to relate to any such place and to be made
3 by any owner, lessee, proprietor, superintendent or manager thereof,
4 shall be presumptive evidence in any action that the same was
5 authorized by such person; provided, however, that nothing
6 contained herein shall be construed to bar any place of public
7 accommodation which is in its nature reasonably restricted
8 exclusively to individuals of one sex, and which shall include but
9 not be limited to any summer camp, day camp, or resort camp,
10 bathhouse, dressing room, swimming pool, gymnasium, comfort
11 station, dispensary, clinic or hospital, or school or educational
12 institution which is restricted exclusively to individuals of one sex,
13 from refusing, withholding from or denying to any individual of the
14 opposite sex any of the accommodations, advantages, facilities or
15 privileges thereof on the basis of sex; provided further, that the
16 foregoing limitation shall not apply to any restaurant as defined in
17 R.S.33:1-1 or place where alcoholic beverages are served.

18 (2) Notwithstanding the definition of "public accommodation "
19 as set forth in subsection l. of section 5 of P.L.1945, c.169 (C.10:5-
20 5), for any owner, lessee, proprietor, manager, superintendent,
21 agent, or employee of any private club or association to directly or
22 indirectly refuse, withhold from or deny to any individual who has
23 been accepted as a club member and has contracted for or is
24 otherwise entitled to full club membership any of the
25 accommodations, advantages, facilities or privileges thereof, or to
26 discriminate against any member in the furnishing thereof on
27 account of the race, creed, color, national origin, ancestry, marital
28 status, civil union status, domestic partnership status, sex,
29 affectional or sexual orientation, disability or nationality of such
30 person.

31 In addition to the penalties otherwise provided for a violation of
32 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)
33 of subsection f. of this section is the holder of an alcoholic beverage
34 license issued under the provisions of R.S.33:1-12 for that private
35 club or association, the matter shall be referred to the Director of
36 the Division of Alcoholic Beverage Control who shall impose an
37 appropriate penalty in accordance with the procedures set forth in
38 R.S.33:1-31.

39 g. For any person, including but not limited to, any owner,
40 lessee, sublessee, assignee or managing agent of, or other person
41 having the right of ownership or possession of or the right to sell,
42 rent, lease, assign, or sublease any real property or part or portion
43 thereof, or any agent or employee of any of these:

44 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
45 to deny to or withhold from any person or group of persons any real
46 property or part or portion thereof because of race, creed, color,
47 national origin, ancestry, marital status, civil union status, domestic
48 partnership status, sex, affectional or sexual orientation, familial

1 status, disability, nationality, or source of lawful income used for
2 rental or mortgage payments;

3 (2) To discriminate against any person or group of persons
4 because of race, creed, color, national origin, ancestry, marital
5 status, civil union status, domestic partnership status, sex,
6 affectional or sexual orientation, familial status, disability,
7 nationality or source of lawful income used for rental or mortgage
8 payments in the terms, conditions or privileges of the sale, rental or
9 lease of any real property or part or portion thereof or in the
10 furnishing of facilities or services in connection therewith;

11 (3) To print, publish, circulate, issue, display, post or mail, or
12 cause to be printed, published, circulated, issued, displayed, posted
13 or mailed any statement, advertisement, publication or sign, or to
14 use any form of application for the purchase, rental, lease,
15 assignment or sublease of any real property or part or portion
16 thereof, or to make any record or inquiry in connection with the
17 prospective purchase, rental, lease, assignment, or sublease of any
18 real property, or part or portion thereof which expresses, directly or
19 indirectly, any limitation, specification or discrimination as to race,
20 creed, color, national origin, ancestry, marital status, civil union
21 status, domestic partnership status, sex, affectional or sexual
22 orientation, familial status, disability, nationality, or source of
23 lawful income used for rental or mortgage payments, or any intent
24 to make any such limitation, specification or discrimination, and the
25 production of any such statement, advertisement, publicity, sign,
26 form of application, record, or inquiry purporting to be made by any
27 such person shall be presumptive evidence in any action that the
28 same was authorized by such person; provided, however, that
29 nothing contained in this subsection shall be construed to bar any
30 person from refusing to sell, rent, lease, assign or sublease or from
31 advertising or recording a qualification as to sex for any room,
32 apartment, flat in a dwelling or residential facility which is planned
33 exclusively for and occupied by individuals of one sex to any
34 individual of the exclusively opposite sex on the basis of sex;

35 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
36 to deny to or withhold from any person or group of persons any real
37 property or part or portion thereof because of the source of any
38 lawful income received by the person or the source of any lawful
39 rent payment to be paid for the real property; or

40 (5) To refuse to rent or lease any real property to another person
41 because that person's family includes children under 18 years of
42 age, or to make an agreement, rental or lease of any real property
43 which provides that the agreement, rental or lease shall be rendered
44 null and void upon the birth of a child. This paragraph shall not
45 apply to housing for older persons as defined in subsection mm. of
46 section 5 of P.L.1945, c.169 (C.10:5-5).

47 h. For any person, including but not limited to, any real estate
48 broker, real estate salesperson, or employee or agent thereof:

1 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
2 sale, rental, lease, assignment, or sublease any real property or part
3 or portion thereof to any person or group of persons or to refuse to
4 negotiate for the sale, rental, lease, assignment, or sublease of any
5 real property or part or portion thereof to any person or group of
6 persons because of race, creed, color, national origin, ancestry,
7 marital status, civil union status, domestic partnership status,
8 familial status, sex, affectional or sexual orientation, disability,
9 nationality, or source of lawful income used for rental or mortgage
10 payments, or to represent that any real property or portion thereof is
11 not available for inspection, sale, rental, lease, assignment, or
12 sublease when in fact it is so available, or otherwise to deny or
13 withhold any real property or any part or portion of facilities thereof
14 to or from any person or group of persons because of race, creed,
15 color, national origin, ancestry, marital status, civil union status,
16 domestic partnership status, familial status, sex, affectional or
17 sexual orientation, disability or nationality;

18 (2) To discriminate against any person because of race, creed,
19 color, national origin, ancestry, marital status, civil union status,
20 domestic partnership status, familial status, sex, affectional or
21 sexual orientation, disability, nationality, or source of lawful
22 income used for rental or mortgage payments in the terms,
23 conditions or privileges of the sale, rental, lease, assignment or
24 sublease of any real property or part or portion thereof or in the
25 furnishing of facilities or services in connection therewith;

26 (3) To print, publish, circulate, issue, display, post, or mail, or
27 cause to be printed, published, circulated, issued, displayed, posted
28 or mailed any statement, advertisement, publication or sign, or to
29 use any form of application for the purchase, rental, lease,
30 assignment, or sublease of any real property or part or portion
31 thereof or to make any record or inquiry in connection with the
32 prospective purchase, rental, lease, assignment, or sublease of any
33 real property or part or portion thereof which expresses, directly or
34 indirectly, any limitation, specification or discrimination as to race,
35 creed, color, national origin, ancestry, marital status, civil union
36 status, domestic partnership status, familial status, sex, affectional
37 or sexual orientation, disability, nationality, or source of lawful
38 income used for rental or mortgage payments or any intent to make
39 any such limitation, specification or discrimination, and the
40 production of any such statement, advertisement, publicity, sign,
41 form of application, record, or inquiry purporting to be made by any
42 such person shall be presumptive evidence in any action that the
43 same was authorized by such person; provided, however, that
44 nothing contained in this subsection h., shall be construed to bar
45 any person from refusing to sell, rent, lease, assign or sublease or
46 from advertising or recording a qualification as to sex for any room,
47 apartment, flat in a dwelling or residential facility which is planned

1 exclusively for and occupied exclusively by individuals of one sex
2 to any individual of the opposite sex on the basis of sex;

3 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
4 to deny to or withhold from any person or group of persons any real
5 property or part or portion thereof because of the source of any
6 lawful income received by the person or the source of any lawful
7 rent payment to be paid for the real property; or

8 (5) To refuse to rent or lease any real property to another person
9 because that person's family includes children under 18 years of
10 age, or to make an agreement, rental or lease of any real property
11 which provides that the agreement, rental or lease shall be rendered
12 null and void upon the birth of a child. This paragraph shall not
13 apply to housing for older persons as defined in subsection mm. of
14 section 5 of P.L.1945, c.169 (C.10:5-5).

15 i. For any person, bank, banking organization, mortgage
16 company, insurance company or other financial institution, lender
17 or credit institution involved in the making or purchasing of any
18 loan or extension of credit, for whatever purpose, whether secured
19 by residential real estate or not, including but not limited to
20 financial assistance for the purchase, acquisition, construction,
21 rehabilitation, repair or maintenance of any real property or part or
22 portion thereof or any agent or employee thereof:

23 (1) To discriminate against any person or group of persons
24 because of race, creed, color, national origin, ancestry, marital
25 status, civil union status, domestic partnership status, sex,
26 affectional or sexual orientation, disability, familial status or
27 nationality, in the granting, withholding, extending, modifying,
28 renewing, or purchasing, or in the fixing of the rates, terms,
29 conditions or provisions of any such loan, extension of credit or
30 financial assistance or purchase thereof or in the extension of
31 services in connection therewith;

32 (2) To use any form of application for such loan, extension of
33 credit or financial assistance or to make record or inquiry in
34 connection with applications for any such loan, extension of credit
35 or financial assistance which expresses, directly or indirectly, any
36 limitation, specification or discrimination as to race, creed, color,
37 national origin, ancestry, marital status, civil union status, domestic
38 partnership status, sex, affectional or sexual orientation, disability,
39 familial status or nationality or any intent to make any such
40 limitation, specification or discrimination; unless otherwise
41 required by law or regulation to retain or use such information;

42 (3) (Deleted by amendment, P.L.2003, c.180).

43 (4) To discriminate against any person or group of persons
44 because of the source of any lawful income received by the person
45 or the source of any lawful rent payment to be paid for the real
46 property; or

47 (5) To discriminate against any person or group of persons
48 because that person's family includes children under 18 years of

1 age, or to make an agreement or mortgage which provides that the
2 agreement or mortgage shall be rendered null and void upon the
3 birth of a child. This paragraph shall not apply to housing for older
4 persons as defined in subsection mm. of section 5 of P.L.1945,
5 c.169 (C.10:5-5).

6 j. For any person whose activities are included within the
7 scope of this act to refuse to post or display such notices concerning
8 the rights or responsibilities of persons affected by this act as the
9 Attorney General may by regulation require.

10 k. For any real estate broker, real estate salesperson or
11 employee or agent thereof or any other individual, corporation,
12 partnership, or organization, for the purpose of inducing a
13 transaction for the sale or rental of real property from which
14 transaction such person or any of its members may benefit
15 financially, to represent that a change has occurred or will or may
16 occur in the composition with respect to race, creed, color, national
17 origin, ancestry, marital status, civil union status, domestic
18 partnership status, familial status, sex, affectional or sexual
19 orientation, disability, nationality, or source of lawful income used
20 for rental or mortgage payments of the owners or occupants in the
21 block, neighborhood or area in which the real property is located,
22 and to represent, directly or indirectly, that this change will or may
23 result in undesirable consequences in the block, neighborhood or
24 area in which the real property is located, including, but not limited
25 to the lowering of property values, an increase in criminal or anti-
26 social behavior, or a decline in the quality of schools or other
27 facilities.

28 l. For any person to refuse to buy from, sell to, lease from or
29 to, license, contract with, or trade with, provide goods, services or
30 information to, or otherwise do business with any other person on
31 the basis of the race, creed, color, national origin, ancestry, age,
32 sex, affectional or sexual orientation, marital status, civil union
33 status, domestic partnership status, liability for service in the Armed
34 Forces of the United States, disability, nationality, or source of
35 lawful income used for rental or mortgage payments of such other
36 person or of such other person's spouse, partners, members,
37 stockholders, directors, officers, managers, superintendents, agents,
38 employees, business associates, suppliers, or customers. This
39 subsection shall not prohibit refusals or other actions (1) pertaining
40 to employee-employer collective bargaining, labor disputes, or
41 unfair labor practices, or (2) made or taken in connection with a
42 protest of unlawful discrimination or unlawful employment
43 practices.

44 m. For any person to:

45 (1) Grant or accept any letter of credit or other document which
46 evidences the transfer of funds or credit, or enter into any contract
47 for the exchange of goods or services, where the letter of credit,
48 contract, or other document contains any provisions requiring any

1 person to discriminate against or to certify that he, she or it has not
2 dealt with any other person on the basis of the race, creed, color,
3 national origin, ancestry, age, sex, affectional or sexual orientation,
4 marital status, civil union status, domestic partnership status,
5 disability, liability for service in the Armed Forces of the United
6 States, or nationality of such other person or of such other person's
7 spouse, partners, members, stockholders, directors, officers,
8 managers, superintendents, agents, employees, business associates,
9 suppliers, or customers.

10 (2) Refuse to grant or accept any letter of credit or other
11 document which evidences the transfer of funds or credit, or refuse
12 to enter into any contract for the exchange of goods or services, on
13 the ground that it does not contain such a discriminatory provision
14 or certification.

15 The provisions of this subsection shall not apply to any letter of
16 credit, contract, or other document which contains any provision
17 pertaining to employee-employer collective bargaining, a labor
18 dispute or an unfair labor practice, or made in connection with the
19 protest of unlawful discrimination or an unlawful employment
20 practice, if the other provisions of such letter of credit, contract, or
21 other document do not otherwise violate the provisions of this
22 subsection.

23 n. For any person to aid, abet, incite, compel, coerce, or induce
24 the doing of any act forbidden by subsections l. and m. of section
25 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
26 do so. Such prohibited conduct shall include, but not be limited to:

27 (1) Buying from, selling to, leasing from or to, licensing,
28 contracting with, trading with, providing goods, services, or
29 information to, or otherwise doing business with any person
30 because that person does, or agrees or attempts to do, any such act
31 or any act prohibited by this subsection; or

32 (2) Boycotting, commercially blacklisting or refusing to buy
33 from, sell to, lease from or to, license, contract with, provide goods,
34 services or information to, or otherwise do business with any person
35 because that person has not done or refuses to do any such act or
36 any act prohibited by this subsection; provided that this subsection
37 shall not prohibit refusals or other actions either pertaining to
38 employee-employer collective bargaining, labor disputes, or unfair
39 labor practices, or made or taken in connection with a protest of
40 unlawful discrimination or unlawful employment practices.

41 o. For any multiple listing service, real estate brokers'
42 organization or other service, organization or facility related to the
43 business of selling or renting dwellings to deny any person access
44 to or membership or participation in such organization, or to
45 discriminate against such person in the terms or conditions of such
46 access, membership, or participation, on account of race, creed,
47 color, national origin, ancestry, age, marital status, civil union

1 status, domestic partnership status, familial status, sex, affectional
2 or sexual orientation, disability or nationality.

3 (cf: P.L. 2003, c.246, s.12)

4

5 89. Section 3 of P.L.1989, c.261 (C.34:11B-3) is amended to
6 read as follows:

7 3. As used in this act:

8 a. "Child" means a biological, adopted, or resource family
9 child, stepchild, legal ward, or child of a parent who is

10 (1) under 18 years of age; or

11 (2) 18 years of age or older but incapable of self-care because of
12 a mental or physical impairment.

13 b. "Director" means the Director of the Division on Civil
14 Rights.

15 c. "Division" means the Division on Civil Rights in the
16 Department of Law and Public Safety.

17 d. "Employ" means to suffer or permit to work for
18 compensation, and includes ongoing, contractual relationships in
19 which the employer retains substantial direct or indirect control
20 over the employee's employment opportunities or terms and
21 conditions of employment.

22 e. "Employee" means a person who is employed for at least 12
23 months by an employer, with respect to whom benefits are sought
24 under this act, for not less than 1,000 base hours during the
25 immediately preceding 12-month period.

26 f. "Employer" means a person or corporation, partnership,
27 individual proprietorship, joint venture, firm or company or other
28 similar legal entity which engages the services of an employee and
29 which:

30 (1) With respect to the period of time from the effective date of
31 this act until the 365th day following the effective date of this act,
32 employs 100 or more employees for each working day during each
33 of 20 or more calendar workweeks in the then current or
34 immediately preceding calendar year;

35 (2) With respect to the period of time from the 366th day
36 following the effective date of this act until the 1,095th day
37 following the effective date of this act, employs 75 or more
38 employees for each working day during each of 20 or more calendar
39 workweeks in the then current or immediately preceding calendar
40 year; and

41 (3) With respect to any time after the 1,095th day following the
42 effective date of this act, employs 50 or more employees for each
43 working day during each of 20 or more calendar workweeks in the
44 then current or immediately preceding calendar year. "Employer"
45 includes the State, any political subdivision thereof, and all public
46 offices, agencies, boards or bodies.

47 g. "Employment benefits" means all benefits and policies
48 provided or made available to employees by an employer, and

1 includes group life insurance, health insurance, disability insurance,
2 sick leave, annual leave, pensions, or other similar benefits.

3 h. "Parent" means a person who is the biological parent,
4 adoptive parent, resource family parent, step-parent, parent-in-law
5 or legal guardian, having a "parent-child relationship" with a child
6 as defined by law, or having sole or joint legal or physical custody,
7 care, guardianship, or visitation with a child.

8 i. "Family leave" means leave from employment so that the
9 employee may provide care made necessary by reason of:

10 (1) the birth of a child of the employee;

11 (2) the placement of a child with the employee in connection
12 with adoption of such child by the employee; or

13 (3) the serious health condition of a family member of the
14 employee.

15 j. "Family member" means a child, parent, **[or]**, spouse, or
16 civil union partner.

17 k. "Reduced leave schedule" means leave scheduled for fewer
18 than an employee's usual number of hours worked per workweek
19 but not for fewer than an employee's usual number of hours worked
20 per workday, unless agreed to by the employee and the employer.

21 l. "Serious health condition" means an illness, injury,
22 impairment, or physical or mental condition which requires:

23 (1) inpatient care in a hospital, hospice, or residential medical
24 care facility; or

25 (2) continuing medical treatment or continuing supervision by a
26 health care provider.

27 (cf: P.L.2004, c.130, s.111).

28

29 90. Section 17 of P.L.1960, c.52 (C.2A:84A-17) is amended to
30 read as follows:

31 2A:84A-17. Privilege of accused

32 (1) Every person has in any criminal action in which he is an
33 accused a right not to be called as a witness and not to testify.

34 (2) The spouse or civil union partner of the accused in a
35 criminal action shall not testify in such action except to prove the
36 fact of marriage or civil union unless (a) such spouse or partner
37 consents, or (b) the accused is charged with an offense against the
38 spouse or partner, a child of the accused or of the spouse or partner,
39 or a child to whom the accused or the spouse or partner stands in
40 the place of a parent, or (c) such spouse or partner is the
41 complainant.

42 (3) An accused in a criminal action has no privilege to refuse
43 when ordered by the judge, to submit his body to examination or to
44 do any act in the presence of the judge or the trier of the fact, except
45 to refuse to testify.

46 (cf: P.L.1992, c.142, s.1)

1 91. (New section) On or after the effective date of this act, no
2 domestic partnerships shall be registered under P.L.2003, c. 246
3 (C.26:8A-1 et seq.), except that two persons who are each 62 years
4 of age or older and not of the same sex may establish a domestic
5 partnership pursuant to the provisions of P.L.2003, c.246 (C.26:8A-
6 1 et seq.). This act shall not alter the rights and responsibilities of
7 domestic partnerships existing before the effective date of this act,
8 except that eligible domestic partners shall be given notice and
9 opportunity to enter into a civil union pursuant to the provisions of
10 this act. Entry into a civil union, when joined by both parties to an
11 existing domestic partnership, shall operate to terminate the
12 domestic partnership.

13

14 92. (New section) Whenever in any law, rule, regulation,
15 judicial or administrative proceeding or otherwise, reference is
16 made to “marriage,” “husband,” “wife,” “spouse,” “family,”
17 “immediate family,” “dependent,” “next of kin,” or another word
18 which in a specific context denotes a marital or spousal
19 relationship, the same shall include a civil union pursuant to the
20 provisions of this act.

21

22 93. The Commissioner of Health and Senior Services in
23 consultation with the Director of the Administrative Office of the
24 Courts, pursuant to the "Administrative Procedure Act," P.L.1968,
25 c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations
26 necessary to effectuate the purposes of this act.

27

28 94. a. There is hereby established the New Jersey Civil Union
29 Review Commission commencing on the effective date of P.L. ,
30 c. (C.) (pending before the Legislature as this bill).

31 b. The commission shall be composed of 13 members to be
32 appointed as follows: the Attorney General or his designee, the
33 Commissioner of the Department of Banking and Insurance or his
34 designee, the Commissioner of Health and Senior Services or his
35 designee, the Commissioner of Human Services or his designee, the
36 Commissioner of the Department of Children and Families or his
37 designee, the Director of the Division of Civil Rights in the
38 Department of Law and Public Safety or his designee, one public
39 member appointed by the President of the Senate, one public member
40 appointed by the Speaker of the General Assembly, and five public
41 members appointed by the Governor, with the advise and consent of
42 the Senate, no more than three who shall be of the same political
43 party.

44 c. It shall be the duty of the commission to study all aspects of
45 P.L. , c. (C.) (pending before the Legislature as this bill)
46 which authorizes civil unions including, but not limited to:

47 (1) evaluate the implementation, operation and effectiveness of
48 the act;

- 1 (2) collect information about the act's effectiveness from
2 members of the public, State agencies and private and public sector
3 businesses and organizations;
- 4 (3) determine whether additional protections are needed;
- 5 (4) collect information about the recognition and treatment of
6 civil unions by other states and jurisdictions including the
7 procedures for dissolution; and
- 8 (5) review the "Domestic Partnership Act," P.L. 2003, c. 246
9 (C.26:8A-1 et seq.) and make recommendations whether this act
10 should be repealed.
- 11 d. The commission shall organize as soon as possible after the
12 appointment of its members. The commission shall be established
13 for a term of three years and the members shall be appointed for the
14 full term of three years. Vacancies in the membership of the
15 commission shall be filled in the same manner as the original
16 appointment. The commission members shall choose a Chair from
17 among its members.
- 18 e. The members of the commission shall serve without
19 compensation, but may be reimbursed for necessary expenses
20 incurred in the performance of their duties, within the limits of
21 funds appropriated or otherwise made available to the commission
22 for its purposes.
- 23 f. The commission is entitled to the assistance and service of
24 the employees of any State, county or municipal department, board,
25 bureau, commission or agency as it may require and as may be
26 available to it for its purposes, and to employ stenographic and
27 clerical assistance and to incur traveling or other miscellaneous
28 expenses as may be necessary in order to perform its duties, within
29 the limits of funds appropriated or otherwise made available to it
30 for its purposes.
- 31 g. The commission shall report annually its findings and
32 recommendations to the Legislature and the Governor.
- 33 h. The commission shall expire three years from the date of its
34 initial organizational meeting and upon submission of its third and
35 final report.

36
37 95. This act shall take effect on the 30th day after the enactment
38 of this act, but the Commissioner of Health and Senior Services and
39 the Director of the Administrative Office of the Courts may take
40 such anticipatory administrative action in advance as shall be
41 necessary for the implementation of the act.

42
43
44

STATEMENT

45
46 This bill would amend and supplement the marriage statutes to
47 include civil unions. The bill defines a civil union as a legally
48 recognized union of two eligible individuals of the same sex. The

1 purpose of the bill is to provide same-sex couples with the same
2 opportunity as heterosexual couples who choose to marry and to
3 comply with the constitutional mandate set forth by the New Jersey
4 Supreme Court in its recent landmark decision on October 25, 2006
5 of Lewis v. Harris, 188 N.J. 415 (2006).

6 As the findings and declarations section of the bill states, same-
7 sex couples in New Jersey live together in committed relationships
8 without the benefits and rights afforded to heterosexual couples
9 who choose to marry. Promoting such stable and durable
10 relationships as well as eliminating obstacles and hardships these
11 couples may face is necessary and proper and reaffirms this State's
12 obligation to insure equality for all the citizens of New Jersey.

13 New Jersey was one of the first to adopt comprehensive
14 legislation prohibiting discrimination based on affectional or sexual
15 orientation and one of the first to formally recognize domestic
16 partnerships by enacting the "Domestic Partnership Act," P.L. 2003,
17 c. 246 (C.26:8A-1 et seq.) on January 12, 2004, thereby
18 guaranteeing in law certain rights and benefits to those individuals
19 who enter into domestic partnerships. Those rights and benefits
20 afforded to same-sex couples under the Domestic Partnership Act
21 should be expanded by the legal recognition of civil unions between
22 same-sex couples.

23 In the Lewis v. Harris decision, the Court held that the State was
24 violating the equal protection guarantee of Article I, paragraph 1 of
25 the State Constitution by denying rights and benefits to committed
26 same-sex couples which were statutorily given to their heterosexual
27 counterparts. The Court stated that, "[T]he State can fulfill that
28 constitutional requirement in one of two ways. It can either amend
29 the marriage statutes to include same-sex couples or enact a parallel
30 statutory structure by another name, in which same-sex couples
31 would not only enjoy the rights and benefits, but also bear the
32 burdens and obligations of civil marriage." Id. at 463. This bill
33 fulfills this requirement by amending the marriage statute to include
34 civil unions.

35 **General Provisions.** Under the provisions of the bill, a person
36 who wishes to enter a civil union must satisfy all of the following
37 requirements: not be a party to another civil union, domestic
38 partnership or marriage in this State or any other state; be of the
39 same sex and therefore be excluded from the marriage laws in this
40 State; and be at least 18 years of age or older, except if the minor
41 has parental consent to enter into a civil union.

42 The bill provides that parties to a civil union would have all the
43 same benefits, protections and responsibilities under law, whether
44 they derive from statute, administrative or court rule, public policy,
45 common law or any other source of civil law, as are granted to
46 spouses in a marriage. The parties to a civil union may modify the
47 terms, conditions or effects of their civil union in the same manner
48 and to the same extent as married persons who execute an

1 antenuptial agreement or other agreement recognized and
2 enforceable under the law, setting forth particular understandings
3 with respect to their union. The parties to a civil union would be
4 responsible for the support of one another to the same degree and in
5 the same manner as prescribed under law for married persons. The
6 dissolution of civil unions would also follow the same procedures
7 and be subject to the same substantive rights and obligations that
8 are involved in the dissolution of a marriage.

9 The laws of domestic relations, including annulment, premarital
10 agreements, separation, divorce, child custody and support, property
11 division and maintenance, and post relationship spousal support,
12 would apply to the parties to a civil union. Also, the rights of the
13 parties to a civil union, with respect to a child of whom either
14 becomes the natural parent during the term of the civil union, would
15 be the same as those of a married couple, with respect to a child of
16 whom either spouse becomes the natural parent during the marriage.

17 The bill enumerates some legal benefits, protections and
18 responsibilities of spouses which would apply in like manner to the
19 parties to a civil union, however, this list should not be construed to
20 be an exclusive list of such benefits, protections and
21 responsibilities: (1) laws relating to title, tenure, descent and
22 distribution, intestate succession, waiver of will, survivorship, or
23 other incidents of the acquisition, ownership or transfer, inter vivos
24 or at death, of real or personal property, including eligibility to hold
25 real and personal property as tenants by the entirety; (2) causes of
26 action related to or dependent upon spousal status, including an
27 action for wrongful death, emotional distress, loss of consortium, or
28 other torts or actions under contracts reciting, related to,
29 or dependent upon spousal status; (3) probate law and procedure,
30 including nonprobate transfer; (4) adoption law and procedures;
31 (5) laws relating to insurance, health and pension benefits;
32 (6) domestic violence protections and domestic violence programs;
33 (7) prohibitions against discrimination based upon marital status;
34 (8) victim's compensation benefits, including compensation to
35 spouse, children and relatives of homicide victims; (9) workers'
36 compensation benefits pursuant to chapter 15 of Title 34 of the
37 Revised Statutes, including survivors benefits and payment of back
38 wages; (10) laws relating to emergency and nonemergency medical
39 care and treatment, hospital visitation and notification, and any
40 rights guaranteed to a hospital patient or a nursing home resident;
41 (11) advance directives for health care and designation as a health
42 care representative; (12) family leave benefits; (13) public
43 assistance benefits, medical assistance, Supplemental Security
44 Income, pharmaceutical assistance, hearing aid assistance, and
45 utility benefits; (14) laws relating to taxes imposed by the State or a
46 municipality other than estate taxes, including tax deduction based
47 on marital status or exemptions from realty transfer tax based on
48 marital status; (15) laws relating to immunity from compelled

1 testimony and the marital communication privilege; (16) the home
2 ownership rights of a surviving spouse; (17) the right of a spouse to
3 a surname change without petitioning the court; (18) laws relating
4 to the making of, revoking and objecting to anatomical gifts;
5 (19) State pay for military service; (20) application for absentee
6 ballots; (21) legal requirements for assignment of wages; and (22)
7 laws related to tuition assistance for higher education for surviving
8 spouses or children.

9 **Licensing requirements.** This bill amends and supplements Title
10 37 of the Revised Statutes concerning marriage to include civil
11 unions. Under the provisions of the bill, the same requirements and
12 restrictions which currently apply to the issuance of a marriage
13 license would apply to the issuance of a civil union license. For
14 example, the bill provides that before a civil union can be lawfully
15 performed in this State, the persons to the proposed civil union must
16 obtain a civil union license from the licensing officer and deliver it
17 to the person who is to officiate. The bill would also expand the
18 current prohibitions concerning marriage to include civil unions: (1)
19 a man could not enter into a civil union with his brother or the son
20 of his brother or sister or the brother of his father or mother; and (2)
21 a woman could not enter into a civil union with her sister, the
22 daughter of her brother or sister, or the sister of her father or
23 mother.

24 The civil union license would be issued by the licensing officer
25 in the municipality in which either party resides or, if neither party
26 is a resident of the State, in the municipality in which the proposed
27 civil union is to be performed.

28 The civil union license cannot be issued by the local registrar
29 sooner than 72 hours after the application therefore has been made.
30 However, the Superior Court may, by order, waive all or any part of
31 said 72-hour period in cases of emergency, upon satisfactory proof
32 being shown to it. A civil union license would be valid only for 30
33 days after the date of the issuance. A civil union licenses can be
34 issued to a minor provided his parent or guardian consents.

35 The licensing officer before issuing a civil union license would
36 require the parties to appear before him and to subscribe and swear
37 to an oath attesting to the truth of the facts with respect to the civil
38 union. This testimony would be verified by a witness of legal age.
39 Any person who knowingly provides false answers to any of the
40 inquiries would be guilty of perjury. The licensing officer shall be
41 required to set forth: the name, age, birthplace of each party to the
42 civil union, name and birthplace of their parents, the person or the
43 religious society who perform the ceremony and the two witnesses
44 who would be present at the civil union. The civil union license and
45 the original civil union certificate would be transmitted to the local
46 registrar. One copy of the civil union certificate shall be retained
47 by the local registrar and one copy shall be given to each party to a
48 civil union. The remaining copy shall be retained by the person

1 certifying the civil union. Any civil union which has occurred or
2 which may hereafter occur and which is not recorded with the State
3 Registrar may be recorded by filing a delayed report with the State
4 Registrar, documented by a copy of the application for the civil
5 union license.

6 **Fees.** The same \$28.00 fee which is currently required for a
7 marriage license would be required for a civil union: This consists
8 of a \$3.00 fee for the license plus an additional fee of \$25 which is
9 earmarked toward domestic violence shelters.

10 **Officials authorized to perform a civil union.** Those persons
11 who may currently solemnize marriage may also perform a civil
12 union: a judge of the United States Court of Appeals for the Third
13 Circuit, judge of a federal district court, United States magistrate,
14 judge of a municipal court, judge of the Superior Court, judge of a
15 tax court, retired judge of the Superior Court or Tax Court, or judge
16 of the Superior Court or Tax Court, the former County Court, the
17 former County Juvenile and Domestic Relations Court, or the
18 former County District Court who has resigned in good standing,
19 surrogate of any county, county clerk and any mayor or the deputy
20 mayor when authorized by the mayor, or chairman of any township
21 committee or village president of this State, and every minister of
22 every religion.

23 **Premarital and Pre-civil union agreements.** The bill amends
24 the Uniform Premarital Agreement Act, N.J.S.A.37:2-31 et seq. to
25 include pre-civil union agreements.

26 **Vital Statistics provisions.** This bill would also amend various
27 provisions in Title 26 of the Revised Statutes concerning the State
28 Registrar of Vital Statistics and recording, indexing and
29 transmission of marriage certificates and licenses to include civil
30 unions.

31 Under the current law, the State Registrar of Vital Statistics is
32 charged with the general supervision of registration of vital
33 statistics and as such the State registrar is also in charge of
34 maintaining and indexing the records pertaining to marriages, death
35 and births. This bill would expand the duties of the State registrar
36 by also requiring civil union records to be maintained and indexed
37 by the State registrar.

38 The local registrar, under the supervision of the State registrar, is
39 currently charged with the responsibility of coordinating the filing
40 of the proper licenses and certificates pertaining to marriages and
41 transmitting the same to the State registrar. This bill would require
42 the local registrar to also coordinate the filing of civil union
43 licenses. Under the current provisions of the law, marriage licenses
44 may be corrected and amended. This bill would require the same
45 procedures for correcting or amending a civil union license or
46 certificate.

47 **Dissolution of civil unions, equitable distribution and legal**
48 **separation of civil union partners.** The dissolution of a civil union

1 would follow the same procedures and be subject to the same
2 substantive rights and obligations as are involved in the dissolution
3 of marriage, including any residency requirements. The bill
4 provides for the following ground for the dissolution of civil
5 unions: voluntary sexual intercourse between a person who is in a
6 civil union and an individual other than the person's civil union
7 partner; willful and continued desertion for a period of 12 or more
8 consecutive months, which may be established by satisfactory proof
9 that the parties have ceased to cohabit as civil union partners;
10 extreme cruelty; separation for a period of at least 18 or more
11 consecutive months; voluntarily induced addiction or habituation or
12 habitual drunkenness for a period of 12 or more consecutive
13 months; institutionalization for mental illness for a period of 24; or
14 imprisonment of the defendant for 18 or more consecutive months.

15 The bill would also provide for legal separation from a civil
16 union partner. The current equitable distribution statute would be
17 amended to provide for distribution of the property which was
18 legally and beneficially acquired by the civil union partners or
19 either of them during the civil union. In addition, the bill provides
20 for alimony and maintenance upon dissolution of a civil union. The
21 court, upon or after granting a dissolution of the civil union to either
22 partner, may allow either partner to resume any name used by the
23 partner before the civil union, or to assume any surname.

24 The Superior Court would have jurisdiction over dissolution of a
25 civil unions and legal separations from a civil union partner. The
26 filings fees for an action or proceeding for the dissolution of a civil
27 union would be the same as those for filing divorce proceedings or
28 actions

29 **Additional amendatory sections.** This bill would also amend
30 several sections of the statutory law to include civil unions. Here is
31 a brief summary of those sections: (1) the “Law Against
32 Discrimination,” N.J.S.10:5-5 and N.J.S.10:5-12; (2) the definition
33 of family member under the “Family Leave Act,” N.J.S. 34:11B-3;
34 and (3) the spousal privilege , N.J.S.A. 2A:84A-17.

35 **Existing domestic partnerships.** The bill provides that on or
36 after the effective date of this act, no domestic partnerships shall be
37 registered under P.L.2003, c. 246 (C.26:8A-1 et seq.), except that
38 two persons who are each 62 years of age or older and not of the
39 same sex may establish a domestic partnership pursuant to the
40 provisions of P.L.2003, c.246 (C.26:8A-1 et seq.). This bill would
41 not alter the rights and responsibilities of domestic partnerships
42 existing on or before the effective date of this act, except that
43 eligible domestic partners shall be given notice and opportunity to
44 enter into a civil union pursuant to the provisions of this act. Entry
45 into a civil union, when joined by both parties to an existing
46 domestic partnership, shall operate to terminate the domestic
47 partnership.

1 **Consistency provision.** In an attempt to insure consistency with
2 regard to all of the provisions in the statutory law concerning
3 marriage and spouses and the rights and benefits thereof, the bill
4 provides that whenever in any law, rule, regulation, judicial or
5 administrative proceeding or otherwise, reference is made to
6 “marriage,” “husband,” “wife,” “spouse,” “family,” “immediate
7 family,” “dependent,” “next of kin,” or another word which in a
8 specific context denotes a marital or spousal relationship, the same
9 shall include a civil union.

10 **Rule making power.** The bill authorizes the Commissioner of
11 Health and Senior Services in consultation with the Director of the
12 Administrative Office of the Courts to adopt rules and regulations
13 necessary to effectuate the purposes of this act.

14 **Establishes Review commission.** The bill would also establish a
15 review commission, the New Jersey Civil Union Review
16 Commission. The commission would be charged with the duty to
17 study all aspects of the bill including, but not limited to: (1)
18 evaluate the implementation, operation and effectiveness of the bill;
19 (2) collect information about the bill’s effectiveness from members
20 of the public, State agencies and private and public sector
21 businesses and organizations; (3) determine whether additional
22 protections are needed; (4) collect information about the recognition
23 and treatment of civil unions by other states and jurisdictions
24 including the procedures for dissolution; and (5) review the
25 “Domestic Partnership Act,” N.J.S.A.26:8A-1 et seq. to determine
26 whether this act should be repealed.

27 The commission would be composed of 13 members which
28 would include: the Attorney General or his designee, the
29 Commissioner of the Department of Banking and Insurance or his
30 designee, the Commissioner of Health and Senior Services or his
31 designee, the Commissioner of Human Services or his designee, the
32 Commissioner of the Department of Children and Families or his
33 designee, the Director of the Division of Civil Rights in the
34 Department of Law and Public Safety or his designee, one public
35 member appointed by the President of the Senate, one public member
36 appointed by the Speaker of the General Assembly, and five public
37 members appointed by the Governor, with the advise and consent of
38 the Senate, no more than two who shall be of the same political
39 party. The commission shall be established for a term of three
40 years.

41 The commission would report annually its findings and
42 recommendations to the Legislature and the Governor.

43 **Effective date.** The bill provides for a delayed effective date of
44 30 days after enactment in order to allow for any anticipatory
45 administrative action which may be necessary for the
46 implementation of the bill.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2407

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2006

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2407.

This bill would amend and supplement the marriage statutes to include civil unions. The bill defines a civil union as a legally recognized union of two eligible individuals of the same sex. The purpose of the bill is to provide same-sex couples with the same opportunity as heterosexual couples who choose to marry and to comply with the constitutional mandate set forth by the New Jersey Supreme Court in its recent landmark decision on October 25, 2006 of Lewis v. Harris, 188 N.J. 415 (2006). It is the intent of this committee that this bill clarifies that the citizens of New Jersey including businesses, public and private employers, organizations and institutions, shall treat civil union couples in the same manner as married persons are treated.

As the findings and declarations section of the bill states, same-sex couples in New Jersey live together in committed relationships without the benefits and rights afforded to heterosexual couples who choose to marry. Promoting such stable and durable relationships as well as eliminating obstacles and hardships these couples may face is necessary and proper and reaffirms this State's obligation to insure equality for all the citizens of New Jersey.

New Jersey was one of the first to adopt comprehensive legislation prohibiting discrimination based on affectional or sexual orientation and one of the first to formally recognize domestic partnerships by enacting the "Domestic Partnership Act," P.L.2003, c. 246 (C.26:8A-1 et seq.) on January 12, 2004, thereby guaranteeing in law certain rights and benefits to those individuals who enter into domestic partnerships. Those rights and benefits afforded to same-sex couples under the Domestic Partnership Act should be expanded by the legal recognition of civil unions between same-sex couples.

In the Lewis v. Harris decision, the Court held that the State was violating the equal protection guarantee of Article I, paragraph 1 of the State Constitution by denying rights and benefits to committed same-sex couples which were statutorily given to their heterosexual counterparts. The Court stated that, "[T]he State can fulfill that

constitutional requirement in one of two ways. It can either amend the marriage statutes to include same-sex couples or enact a parallel statutory structure by another name, in which same-sex couples would not only enjoy the rights and benefits, but also bear the burdens and obligations of civil marriage.” *Id.* at 463. This bill fulfills this requirement by amending the marriage statute to include civil unions.

General Provisions. As amended by committee, the bill provides that a person who wishes to enter a civil union must satisfy all of the following requirements: not be a party to another civil union, domestic partnership or marriage in this State or any other state; be of the same sex; and be at least 18 years of age or older, except if the minor has parental consent to enter into a civil union.

The bill provides that parties to a civil union would have all the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage. They may modify the terms, conditions or effects of their civil union in the same manner and to the same extent as married persons who execute an antenuptial agreement or other agreement recognized and enforceable under the law, setting forth particular understandings with respect to their union. They would be responsible for the support of one another to the same degree and in the same manner as prescribed under law for married persons. The dissolution of civil unions would also follow the same procedures and be subject to the same substantive rights and obligations that are involved in the dissolution of a marriage.

The laws of domestic relations, including annulment, premarital agreements, separation, divorce, child custody and support, property division and maintenance, and post relationship spousal support, would apply to civil union couples. Also, the rights of the couples, with respect to a child of whom either becomes the natural parent during the term of the civil union, would be the same as those of a married couple, with respect to a child of whom either spouse becomes the natural parent during the marriage.

The bill enumerates some legal benefits, protections and responsibilities of spouses which would apply in like manner to civil union couples, however, this list should not be construed to be an exclusive list of such benefits, protections and responsibilities: (1) laws relating to title, tenure, descent and distribution, intestate succession, survivorship, or other incidents of the acquisition, ownership or transfer, inter vivos or at death, of real or personal property, including eligibility to hold real and personal property as tenants by the entirety; (2) causes of action related to or dependent upon spousal status, including an action for wrongful death, emotional distress, loss of consortium, or other torts or actions under contracts reciting, related to, or dependent upon spousal status; (3) probate law and procedure, including nonprobate transfer; (4) adoption law and procedures; (5) laws relating to insurance, health and pension

benefits; (6) domestic violence protections and domestic violence programs; (7) prohibitions against discrimination based upon marital status; (8) victim's compensation benefits, including compensation to spouse, children and relatives of homicide victims; (9) workers' compensation benefits pursuant to chapter 15 of Title 34 of the Revised Statutes, including survivors benefits and payment of back wages; (10) laws relating to emergency and nonemergency medical care and treatment, hospital visitation and notification, and any rights guaranteed to a hospital patient or a nursing home resident; (11) advance directives for health care and designation as a health care representative; (12) family leave benefits; (13) public assistance benefits, medical assistance, Supplemental Security Income, pharmaceutical assistance, hearing aid assistance, and utility benefits; (14) laws relating to taxes imposed by the State or a municipality, including tax deduction based on marital status or exemptions from realty transfer tax based on marital status; (15) laws relating to immunity from compelled testimony and the marital communication privilege; (16) the home ownership rights of a surviving spouse; (17) the right of a spouse to a surname change without petitioning the court; (18) laws relating to the making of, revoking and objecting to anatomical gifts; (19) State pay for military service; (20) application for absentee ballots; (21) legal requirements for assignment of wages; and (22) laws related to tuition assistance for higher education for surviving spouses or children.

Licensing requirements. This bill amends and supplements Title 37 of the Revised Statutes concerning marriage to include civil unions. Under the provisions of the bill, the same requirements and restrictions which currently apply to the issuance of a marriage license would apply to the issuance of a civil union license. For example, the bill provides that before a civil union can be lawfully performed in this State, the persons to the proposed civil union must obtain a civil union license from the licensing officer and deliver it to the person who is to officiate. The bill would also expand the current prohibitions concerning marriage to include civil unions: (1) a man could not enter into a civil union with his brother or the son of his brother or sister or the brother of his father or mother; and (2) a woman could not enter into a civil union with her sister, the daughter of her brother or sister, or the sister of her father or mother.

The civil union license would be issued by the licensing officer in the municipality in which either partner resides or, if neither is a resident of the State, in the municipality in which the proposed civil union is to be performed.

The civil union license cannot be issued by the local registrar sooner than 72 hours after the application therefore has been made. However, 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. A civil union license would be valid only for 30

days after the date of the issuance. A civil union licenses can be issued to a minor provided his parent or guardian consents.

The licensing officer before issuing a civil union license would require the partners to appear before him and to subscribe and swear to an oath attesting to the truth of the facts with respect to the civil union. This testimony would be verified by a witness of legal age. Any person who knowingly provides false answers to any of the inquiries would be guilty of perjury. The licensing officer shall be required to set forth: the name, age, birthplace of each party to the civil union, name and birthplace of their parents, the person or the religious society who perform the ceremony and the two witnesses who would be present at the civil union. The civil union license and the original civil union certificate would be transmitted to the local registrar. One copy of the civil union certificate shall be retained by the local registrar and one copy shall be given to each person in the civil union. The remaining copy shall be retained by the person certifying the civil union. Any civil union which has occurred or which may hereafter occur and which is not recorded with the State Registrar may be recorded by filing a delayed report with the State Registrar, documented by a copy of the application for the civil union license.

Fees. The same \$28.00 fee which is currently required for a marriage license would be required for a civil union: This consists of a \$3.00 fee for the license plus an additional fee of \$25 which is earmarked toward domestic violence shelters.

Officials authorized to perform a civil union. Those persons who may currently solemnize marriage may also perform a civil union: a judge of the United States Court of Appeals for the Third Circuit, 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 minister of every religion.

Premarital and Pre-civil union agreements. The bill amends the Uniform Premarital Agreement Act, N.J.S.A.37:2-31 et seq. to include pre-civil union agreements.

Vital Statistics provisions. This bill would also amend various provisions in Title 26 of the Revised Statutes concerning the State Registrar of Vital Statistics and recording, indexing and transmission of marriage certificates and licenses to include civil unions.

Under the current law, the State Registrar is charged with the general supervision of registration of vital statistics and as such the State registrar is also in charge of maintaining and indexing the records pertaining to marriages, death and births. This bill would expand the duties of the State Registrar by also requiring civil union

records to be maintained and indexed by the State Registrar.

The local registrar, under the supervision of the State Registrar, is currently charged with the responsibility of coordinating the filing of the proper licenses and certificates pertaining to marriages and transmitting the same to the State Registrar. This bill would require the local registrar to also coordinate the filing of civil union licenses. Under the current provisions of the law, marriage licenses may be corrected and amended. This bill would require the same procedures for correcting or amending a civil union license or certificate.

Dissolution of civil unions, equitable distribution and legal separation of civil union partners. The dissolution of a civil union would follow the same procedures and be subject to the same substantive rights and obligations as are involved in the dissolution of marriage, including any residency requirements. The bill provides for the following ground for the dissolution of civil unions: voluntary sexual intercourse between a person who is in a civil union and an individual other than the person's partner; willful and continued desertion for a period of 12 or more consecutive months, which may be established by satisfactory proof that the partners have ceased to cohabit as a couple; extreme cruelty; separation for a period of at least 18 or more consecutive months; voluntarily induced addiction or habituation or habitual drunkenness for a period of 12 or more consecutive months; institutionalization for mental illness for a period of 24; or imprisonment of the defendant for 18 or more consecutive months.

The bill would also provide for legal separation for a civil union couple. The current equitable distribution statute would be amended to provide for distribution of the property which was legally and beneficially acquired by the civil union couple or either of them during the civil union. In addition, the bill provides for alimony and maintenance upon dissolution of a civil union. The court, upon or after granting a dissolution of the civil union to either person, may allow either person to resume any name used by the partner before the civil union, or to assume any surname.

The Superior Court would have jurisdiction over dissolution of a civil unions and legal separations from a civil union partner. The filings fees for an action or proceeding for the dissolution of a civil union would be the same as those for filing divorce proceedings or actions

Additional amendatory sections. This bill would also amend several sections of the statutory law to include civil unions. Here is a brief summary of those sections: (1) the "Law Against Discrimination," N.J.S.10:5-5 and N.J.S.10:5-12; (2) the definition of family member under the "Family Leave Act," N.J.S.34:11B-3; and (3) the spousal privilege , N.J.S.A. 2A:84A-17.

Existing domestic partnerships. As amended, the bill provides that on or after the effective date of the act, no domestic partnerships shall be registered under P.L.2003, c. 246 (C.26:8A-1 et seq.), except that

two persons who are each 62 years of age or older may establish a domestic partnership pursuant to the provisions of P.L.2003, c.246 (C.26:8A-1 et seq.). This bill would not alter the rights and responsibilities of domestic partnerships existing on or before the effective date of this act, except that eligible domestic partners shall be given notice and opportunity to enter into a civil union pursuant to the provisions of this act. Entry into a civil union, when joined by both parties to an existing domestic partnership, shall operate to terminate the domestic partnership.

Consistency provision. In an attempt to insure consistency with regard to all of the provisions in the statutory law concerning marriage and spouses and the rights and benefits thereof, the bill provides that whenever in any law, rule, regulation, judicial or administrative proceeding or otherwise, reference is made to “marriage,” “husband,” “wife,” “spouse,” “family,” “immediate family,” “dependent,” “next of kin,” “widow,” “widower,” “widowed” or another word which in a specific context denotes a marital or spousal relationship, the same shall include a civil union.

Rule making power. As amended the bill authorizes the Commissioner of Health and Senior Services in consultation with the Director of the Administrative Office of the Courts to adopt rules and regulations necessary to effectuate the purposes of this act. These rules and regulations shall address the issue of how partners in a civil union couple may legally answer questions on forms, governmental and private, concerning their status as partners in a civil union. It is the intent of the Committee that the Commissioner promulgate regulations that mandate one check off for married/civil unions on all governmental and private forms, or specify that civil union couples may check off “married” on forms. The intent of this is to ensure that individuals retain their privacy interests concerning their sexual orientation.

Establishes Review commission. This bill would also establish a review commission, the New Jersey Civil Union Review Commission. The commission would be charged with the duty to study all aspects of the bill including, but not limited to: (1) evaluate the implementation, operation and effectiveness of the bill; (2) collect information about the bill’s effectiveness from members of the public, State agencies and private and public sector businesses and organizations; (3) determine whether additional protections are needed; (4) collect information about the recognition and treatment of civil unions by other states and jurisdictions including the procedures for dissolution; evaluate the effect on same-sex couples, their children and other family members of being provided civil unions rather than marriage; (6) evaluate the financial impact on the State of New Jersey of same-sex couples being provided civil unions rather than marriage; and (7) review the “Domestic Partnership Act,” N.J.S.A.26:8A-1 et seq. to determine whether this act should be repealed.

The commission would be composed of 13 members which would include: the Attorney General or his designee, the Commissioner of the Department of Banking and Insurance or his designee, the Commissioner of Health and Senior Services or his designee, the Commissioner of Human Services or his designee, the Commissioner of the Department of Children and Families or his designee, the Director of the Division of Civil Rights in the Department of Law and Public Safety or his designee, one public member appointed by the President of the Senate, one public member appointed by the Speaker of the General Assembly, and five public members appointed by the Governor, with the advise and consent of the Senate, no more than two who shall be of the same political party. The commission shall be established for a term of three years.

The commission would report semi-annually its findings and recommendations to the Legislature and the Governor.

As amended, the bill provides in new section 95 that a civil union relationship entered into outside of this State, which is valid under the laws of the jurisdiction under which the partnership was created, shall be valid in this State.

Effective date. The bill as amended provides for a delayed effective date of 60 days after enactment in order to allow for any anticipatory administrative action which may be necessary for the implementation of the bill.

This bill as amended is identical to Assembly No. 3787 (2R).

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2407

STATE OF NEW JERSEY 212th LEGISLATURE

DATED: JANUARY 5, 2007

SUMMARY

- Synopsis:** Revises the marriage laws; establishes civil unions; establishes the “New Jersey Civil Union Review Commission
- Type of Impact:** The amount of Marriage License/Civil Union Fee revenues collected to be used for domestic violence programs will probably increase by some unknown amount.
- Agencies Affected:** Department of Health and Senior Services; all municipalities that issue civil union licenses; the Department of Children and Families; the Administrative Office of the Courts.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1-3</u>
State Cost	Minimal as similar functions are currently being undertaken.
State Revenue	Unable to determine, but would be minimal.
Local Cost	Minimal as similar functions are currently being undertaken.
Local Revenue	Unable to determine, but would be minimal.

- The fee for a marriage or civil union license is \$25. Thus, for every 1,000 civil union licenses issued, \$25,000 in new fee revenues would be generated. (Cities of the first class are entitled to an additional \$3 fee.) The fees generated by a marriage/civil union license are used by the State for various domestic violence programs, and such fees may be used to offset existing State appropriations for domestic violence programs or supplement existing State appropriations for such programs.
- The fee for dissolution of a civil union is \$30. As such, for every 1,000 civil unions that are dissolved, \$30,000 in fee revenue would be raised.
- Administrative costs associated with the New Jersey Civil Union Review Commission cannot be determined.

BILL DESCRIPTION

Senate Bill No. 2407 (1R) of 2006 would amend and supplement the marriage statutes to include civil unions, and defines a civil union as a legally recognized union of two eligible individuals of the same sex. The purpose of the legislation is to provide same-sex couples with the same opportunity as heterosexual couples who choose to marry and to comply with the constitutional mandate set forth by the New Jersey Supreme Court's October 25, 2006 decision, Lewis v. Harris, 188 N.J. 415. In addition to the numerous technical changes incorporated into the legislation, a 13 member New Jersey Civil Union Review Commission would be established to study all aspects of the legislation including its implementation and whether the act should be repealed.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

Administrative costs associated with issuing a civil union license and costs associated with dissolution of civil unions cannot be determined, but such costs should be minimal as various State and local agencies already provide similar services with respect to marriages and divorces. At present, various State and local government agencies process over 50,000 marriage licenses, over 5,600 domestic partnership licenses and over 26,000 divorce applications annually.

Various State agencies currently obtain fees for issuing a marriage license or for the dissolution of a marriage, and such fees, \$25 and \$30, respectively, will be extended to civil unions. As the number of civil union licenses and dissolutions that may be issued are not known, the amount of additional revenues the State agencies may realize as a result of these fees cannot be determined; however, for every 1,000 civil union licenses issued and civil unions that are dissolved, the State would realize \$25,000 and \$30,000, respectively. In addition, cities of the first class are entitled to an additional \$3.00 fee for every marriage or civil union license issued in its jurisdiction.

It is noted that the \$25 fee for every civil union license issued will be made available to the Department of Children and Families for establishing and maintaining shelters for the victims of domestic violence and for related domestic violence programs (as is currently the case with marriage licenses). It is not known whether such revenues will be used to offset existing State appropriations for domestic violence programs or will be used to supplement existing State appropriations for such programs.

Finally, it is noted that there may be administrative costs associated with the establishment and operation of the New Jersey Civil Union Review Commission, but these costs cannot be determined.

Section: Human Services

*Analyst: Jay A. Hershberg
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67.

Dec-21-06 Governor Corzine Signs Civil Union Bill

FOR IMMEDIATE RELEASE

DATE: December 21, 2006

CONTACT: Anthony Coley
Brendan Gilfillan

PHONE: 609-777-2600

GOVERNOR CORZINE SIGNS CIVIL UNION BILL

TRENTON – Governor Jon S. Corzine today signed legislation giving same-sex couples the right to enter into civil unions, ensuring them equal treatment under the law and providing them the same protections, benefits and responsibilities as individuals in a marriage.

“We must recognize that many gay and lesbian couples in New Jersey are in committed relationships and deserve the same benefits and rights as every other family in this state,” Governor Corzine said. “I believe very fundamentally in equal protection under the law and this legislation is about meeting that basic responsibility and honoring the commitments that individuals have made to each other.”

The legislation, passed in response to the New Jersey Supreme Court’s Lewis vs. Harris ruling in October of this year, also creates the New Jersey Civil Union Review Commission to evaluate the implementation of the law and report back to the Governor and the Legislature.

The bill gives individuals in civil unions all of the rights granted to married couples, including the rights of hospital visitation, the ability to collect survivor benefits, and eligibility for tax deductions. Businesses, public and private employers, organizations and institutions will be required to treat civil union couples in the same manner as married persons are treated.

Licenses for civil unions will be issued with the same requirements and restrictions which apply to marriage licenses, and those officials currently empowered to perform marriages will be able to conduct civil unions as well.

“The new year will undoubtedly be remembered as one in which same sex couples took a huge step in the march towards equality. I’m grateful to

Governor Corzine and my colleagues in the Legislature for their support of this monumental legislation," said Senate President Richard J. Codey (D-Essex), one of the Senate sponsors of the legislation.

"Same-sex couples have cause to celebrate today as they move forward on their long and difficult journey to equality," said Senator Loretta Weinberg (D-Bergen) who also sponsored the legislation in the Senate.

"The civil union law reaffirms New Jersey's standing as a national leader in the area of providing equal rights for its citizens," said Assembly Speaker Joseph J. Roberts, Jr. (D-Camden), who sponsored the legislation in the Assembly. "It establishes a progressive legal mechanism for same-sex couples that clearly enjoys the widest support among the state's residents."

"Finally, same-sex couples who have made a commitment to spend their lives together will be able to bask in the same rights, privileges, and benefits that married couples have enjoyed for generations," said Assemblyman Wilfredo Caraballo (D-Essex), another Assembly sponsor. "Today, we proclaim the dignity of all relationships and reaffirm that all couples – straight and gay – deserve equal protection under the law."

The bill was also sponsored in the Assembly by Bonnie Watson Coleman, John. F. McKeon, John J. Burzichelli, Mims Hackett, Valerie Vainieri Huttie and Douglas H. Fisher.

Original MSWord Version

This case can also be found at *CITE_PENDING*.

SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

Mark Lewis and Dennis Winslow, et al. v. Gwendolyn L. Harris, etc., et al. (A-68-05)

Argued February 15, 2006 -- Decided October 25, 2006

ALBIN, J., writing for a majority of the Court.

Plaintiffs are seven same-sex couples who have been in permanent committed relationships for more than ten years. Each seeks to marry his or her partner and to enjoy the legal, financial, and social benefits that marriage affords. After being denied marriage licenses in their respective municipalities, plaintiffs sued challenging the constitutionality of the State's marriage statutes.

In a complaint filed in the Superior Court, Law Division, plaintiffs sought a declaration that laws denying same-sex marriage violated the liberty and equal protection guarantees of Article I, Paragraph 1 of the New Jersey Constitution. They also sought injunctive relief compelling the defendant State officials to grant them marriage licenses. (The named defendants are Gwendolyn L. Harris, former Commissioner of the Department of Human Services, Clifton R. Lacy, former Commissioner of the Department of Health and Senior Services, and Joseph Komosinski, former Acting State Registrar of Vital Statistics. For the purpose of this decision, they are being referred to collectively as the "State.")

Both parties moved for summary judgment. The trial court, Superior Court Judge Linda Feinberg, entered summary judgment in the State's favor and dismissed the complaint. Plaintiffs appealed. In a split decision, the Appellate Division affirmed. Judge Stephen Skillman wrote the majority opinion in which he concluded that New Jersey's marriage statutes do not contravene the substantive due process and equal protection guarantees of Article I, Paragraph 1 of the State Constitution. He determined that only the Legislature could authorize same-sex marriages.

Appellate Division Judge Anthony Parrillo filed a concurring opinion. Although joining Judge Skillman's opinion, Judge Parrillo added his view of the twofold nature of the relief sought by

plaintiffs -- the right to marry and the rights of marriage. He submitted that it was the Legislature's role to weigh the benefits and costs flowing from a profound change in the meaning of marriage.

Appellate Division Judge Donald Collester, Jr., dissented. He concluded that the substantive due process and equal protection guarantees of Article I, Paragraph 1 obligate the State to afford same-sex couples the right to marry on terms equal to those afforded opposite-sex couples.

The matter came before the Court as an appeal as of right by virtue of the dissent in the Appellate Division.

HELD: Denying committed same-sex couples the financial and social benefits and privileges given to their married heterosexual counterparts bears no substantial relationship to a legitimate governmental purpose. The Court holds that under the equal protection guarantee of Article I, Paragraph 1 of the New Jersey Constitution, committed same-sex couples must be afforded on equal terms the same rights and benefits enjoyed by opposite-sex couples under the civil marriage statutes. The name to be given to the statutory scheme that provides full rights and benefits to same-sex couples, whether marriage or some other term, is a matter left to the democratic process.

1. As this case presents no factual dispute, the Court addresses solely questions of law. The Court perceives plaintiffs' equal protection claim to have two components: whether committed same-sex couples have a constitutional right to the benefits and privileges afforded to married heterosexual couples, and, if so, whether they have a constitutional right to have their relationship recognized by the name of marriage. (pp. 19-21)
2. In attempting to discern the substantive rights that are "fundamental" under Article I, Paragraph 1, of the State Constitution, the Court has followed the general standard adopted by the United States Supreme Court in construing the Due Process Clause of the [Fourteenth Amendment](#). First, the asserted fundamental liberty interest must be clearly identified. In this case, the identified right is the right of same-sex couples to marry. Second, the liberty interest in same-sex marriage must be objectively and deeply rooted in the traditions, history, and conscience of the people of this State. (pp. 21-25)
3. New Jersey's marriage laws, which were first enacted in 1912, limit marriage to heterosexual couples. The recently enacted Domestic Partnership Act explicitly acknowledges that same-sex couples cannot marry. Although today there is a national debate over whether same-sex marriages should be authorized by the states, the framers of the 1947 New Jersey Constitution could not have imagined that the liberty right protected by Article I, Paragraph 1 embraced same-sex marriage. (pp. 25-28)

4. Times and attitudes have changed. There has been a developing understanding that discrimination against gays and lesbians is no longer acceptable in this State. On the federal level, the United States Supreme Court has struck down laws that have unconstitutionally targeted gays and lesbians for disparate treatment. Although plaintiffs rely on the federal cases to support the argument that they have a fundamental right to marry under our State Constitution, those cases fall far short of establishing a fundamental right to same-sex marriage "deeply rooted in the traditions, history, and conscience of the people of this State." Despite the rich diversity of this State, the tolerance and goodness of its people, and the many recent advances made by gays and lesbians toward achieving social acceptance and equality under the law, the Court cannot find that the right to same-sex marriage is a fundamental right under our constitution. (pp. 28-33)
5. The Court has construed the expansive language of Article I, Paragraph 1 to embrace the fundamental guarantee of equal protection, thereby requiring the Court to determine whether the State's marriage laws permissibly distinguish between same-sex and heterosexual couples. The test the Court has applied to equal protection claims is a flexible one that includes three factors: the nature of the right at stake, the extent to which the challenged statutory scheme restricts that right, and the public need for the statutory restriction. (pp. 34-36)
6. In conducting its equal protection analysis, the Court discerns two distinct issues. The first is whether same-sex couples have the right to the statutory benefits and privileges conferred on heterosexual married couples. Assuming that right, the next issue is whether committed same-sex partners have a constitutional right to define their relationship by the name of marriage. (p. 37)
7. New Jersey's courts and its Legislature have been at the forefront of combating sexual orientation discrimination and advancing equality of treatment toward gays and lesbians. In 1992, through an amendment to the Law Against Discrimination (LAD), New Jersey became the fifth state to prohibit discrimination on the basis of "affectional or sexual orientation." In making sexual orientation a protected category, the Legislature committed New Jersey to the goal of eradicating discrimination against gays and lesbians. In 2004, the Legislature added "domestic partnership status" to the categories protected by the LAD. (pp. 37-40)
8. Discrimination on the basis of sexual orientation is also outlawed in our criminal law and public contracts law. The Legislature, moreover, created the New Jersey Human Relations Council to promote educational programs aimed at reducing bias and bias-related acts, identifying sexual orientation as a protected category. In 2004, the Legislature passed the Domestic Partnership Act, which confers certain benefits and rights on same-sex partners who enter into a partnership under the Act. (pp. 40-42)
9. The Domestic Partnership Act has failed to bridge the inequality gap between committed same-sex couples and married opposite-sex couples. Significantly, the economic and financial

inequities that are borne by same-sex domestic partners are also borne by their children. Further, even though same-sex couples are provided fewer benefits and rights by the Act, they are subject to more stringent requirements to enter into a domestic partnership than opposite-sex couples entering a marriage. (pp. 43-48)

10. At this point, the Court does not consider whether committed same-sex couples should be allowed to marry, but only whether those couples are entitled to the same rights and benefits afforded to married heterosexual couples. Cast in that light, the issue is not about the transformation of the traditional definition of marriage, but about the unequal dispensation of benefits and privileges to one of two similarly situated classes of people. (p. 48)

11. The State does not argue that limiting marriage to the union of a man and a woman is needed to encourage procreation or to create the optimal living environment for children. Other than sustaining the traditional definition of marriage, which is not implicated in this discussion, the State has not articulated any legitimate public need for depriving committed same-sex couples of the host of benefits and privileges that are afforded to married heterosexual couples. There is, on the one hand, no rational basis for giving gays and lesbians full civil rights as individuals while, on the other hand, giving them an incomplete set of rights when they enter into committed same-sex relationships. To the extent that families are strengthened by encouraging monogamous relationships, whether heterosexual or homosexual, the Court cannot discern a public need that would justify the legal disabilities that now afflict same-sex domestic partnerships. (pp. 48-51)

12. In arguing to uphold the system of disparate treatment that disfavors same-sex couples, the State offers as a justification the interest in uniformity with other states' laws. Our current laws concerning same-sex couples are more in line with those of Vermont, Massachusetts, and Connecticut than the majority of other states. Equality of treatment is a dominant theme of our laws and a central guarantee of our State Constitution. This is fitting for a state with so diverse a population. Article I, Paragraph 1 protects not only the rights of the majority but also the rights of the disfavored and the disadvantaged; they too are promised a fair opportunity for "pursuing and obtaining safety and happiness." (pp. 51-56)

13. The equal protection requirement of Article I, Paragraph 1 leaves the Legislature with two apparent options. The Legislature could simply amend the marriage statutes to include same-sex couples, or it could create a separate statutory structure, such as a civil union. Because this State has no experience with a civil union construct, the Court will not speculate that identical schemes offering equal rights and benefits would create a distinction that would offend Article I, Paragraph 1, and will not presume that a difference in name is of constitutional magnitude. New language is developing to describe new social and familial relationships, and in time will find a place in our common vocabulary. However the Legislature may act, same-sex couples will be free to call their relationships by the name they choose and to sanctify their relationships in religious ceremonies in houses of worship. (pp. 57-63)

14. In the last two centuries, the institution of marriage has reflected society's changing social mores and values. Legislatures, along with courts, have played a major role in ushering marriage into the modern era of equality of partners. The great engine for social change in this country has always been the democratic process. Although courts can ensure equal treatment, they cannot guarantee social acceptance, which must come through the evolving ethos of a maturing society. Plaintiffs' quest does not end here. They must now appeal to their fellow citizens whose voices are heard through their popularly elected representatives. (pp. 63-64)

15. To bring the State into compliance with Article I, Paragraph 1 so that plaintiffs can exercise their full constitutional rights, the Legislature must either amend the marriage statutes or enact an appropriate statutory structure within 180 days of the date of this decision. (p. 65)

The judgment of the Appellate Division is MODIFIED and, as MODIFIED, is AFFIRMED.

CHIEF JUSTICE PORITZ has filed a separate **CONCURRING and DISSENTING** opinion, in which **JUSTICES LONG** and **ZAZZALI** join. She concurs in the finding of the majority that denying the 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. She dissents from the majority's distinguishing those rights and benefits from the right to the title of marriage. She also dissents from the majority's conclusion that there is no fundamental due process right to same-sex marriage encompassed within the concept of "liberty" guaranteed by Article I, Paragraph 1. She is of the view that persons who exercise their autonomous liberty interest to choose same-sex partners have a fundamental right to participate in a state-sanctioned civil marriage.

JUSTICES LaVECCHIA, WALLACE, and RIVERA-SOTO join in JUSTICE ALBIN's opinion. CHIEF JUSTICE PORITZ filed a separate concurring and dissenting opinion in which JUSTICES LONG and ZAZZALI join.

SUPREME COURT OF NEW JERSEY
A- 68 September Term 2005

MARK LEWIS and DENNIS WINSLOW; SAUNDRA HEATH and CLARITA ALICIA TOBY; CRAIG HUTCHISON and CHRIS LODEWYKS; MAUREEN KILIAN and CINDY MENEHIN; SARAH and SUYIN LAEL; MARILYN MANEELY and DIANE MARINI; and KAREN and MARCYE NICHOLSON-MCFADDEN,

Plaintiffs-Appellants,

v.

GWENDOLYN L. HARRIS, in her official capacity as Commissioner of the New Jersey Department of Human Services; CLIFTON R. LACY, in his official capacity as the Commissioner of the New Jersey Department of Health and Senior Services; and JOSEPH KOMOSINSKI, in his official capacity as Acting State Registrar of Vital Statistics of the New Jersey State Department of Health and Senior Services,

Defendants-Respondents.

Argued February 15, 2006 – Decided October 25, 2006

On appeal from the Superior Court, Appellate Division, whose opinions are reported at [378 N. J. Super. 168](#) (2005).

David S. Buckel, a member of the New York bar, argued the cause for appellants (Gibbons, Del Deo, Dolan, Griffinger & Vecchione, attorneys; Mr. Buckel, Susan L. Sommer, a member of the New York bar, Lawrence S. Lustberg and Megan Lewis, on the briefs).

Patrick DeAlmeida, Assistant Attorney General argued the cause for respondents (Anne Milgram, Acting Attorney General of New Jersey, attorney; Mr. DeAlmeida and Mary Beth Wood, on the briefs).

David R. Oakley submitted a brief on behalf of amicus curiae Alliance for Marriage, Inc. (Anderl & Oakley, attorneys).

Edward L. Barocas, Legal Director, submitted a brief on behalf of amici curiae American Civil Liberties Union of New Jersey, American-Arab Anti-Discrimination Committee, Asian American Legal Defense and Education Fund, Hispanic Bar Association of New Jersey, and The National Organization for Women of New Jersey.

Howard M. Nashel submitted a brief on behalf of amici curiae American Psychological Association and New Jersey Psychological Association (Nashel, Kates, Nussman, Rapone & Ellis, attorneys).

Franklyn C. Steinberg, III, submitted a brief on behalf of amicus curiae The Anscombe Society at Princeton University.

Douglas S. Eakeley submitted a brief on behalf of amicus curiae City of Asbury Park (Lowenstein Sandler, attorneys).

Kevin H. Marino and John A. Boyle submitted a brief on behalf of amici curiae Asian Equality, Equality Federation, People for the American Way Foundation and Vermont Freedom to Marry Task Force (Marino & Associates, attorneys; Paul A. Saso, of counsel).

Mark L. Hopkins submitted a brief on behalf of amicus curiae Clergy of New Jersey.

Richard F. Collier, Jr., submitted a brief on behalf of amicus curiae Family Leader Foundation (Collier & Basil, attorneys).

Dennis M. Caufield submitted a brief on behalf of amicus curiae Family Research Council.

Leslie A. Farber and Thomas H. Prol submitted a brief on behalf of amici curiae Garden State Equality Education Fund, Inc. and Garden State Equality, LLC, a Continuing Political Committee (Leslie A. Farber, attorneys; Mr. Prol, of counsel).

Alan E. Kraus submitted a brief on behalf of amici curiae Human Rights Campaign, Human Rights Campaign Foundation, Children of Lesbians and Gays Everywhere (COLAGE), Family Pride Coalition, Freedom to Marry, Gay & Lesbian Advocates & Defenders (GLAD), National Center for Lesbian Rights, National Gay and Lesbian Task Force, New Jersey Lesbian and Gay Coalition (NJLGC), and Parents, Families and Friends of Lesbians and Gays (PFLAG) (Latham & Watkins, attorneys).

Kevin Costello submitted a brief on behalf of amicus curiae Legal Momentum (Levow & Costello, attorneys).

Cliona A. Levy submitted a brief on behalf of amicus curiae Madeline Marzano-Lesnevich (Sonnenschein Nath & Rosenthal, attorneys).

Demetrios K. Stratis submitted a brief on behalf of amici curiae Monmouth Rubber & Plastics, Corp. and John M. Bonforte, Sr., (Demetrios K. Stratis, attorneys; Mr. Stratis and Vincent P. McCarthy, on the brief).

Stephen M. Orlofsky and Jordana Cooper submitted a brief on behalf of amici curiae National Association of Social Workers and National Association of Social Workers New Jersey Chapter (Blank Rome, attorneys).

Steven G. Sanders submitted a brief on behalf of amicus curiae National Black Justice Coalition (Arseneault, Fassett & Mariano, attorneys).

Robert R. Fuggi, Jr., submitted a brief on behalf of amicus curiae National Legal Foundation

(Fuggi & Fuggi, attorneys).

Michael Behrens submitted a brief on behalf of amici curiae The New Jersey Coalition to Preserve and Protect Marriage, The New Jersey Family Policy Council and The New Jersey Catholic Conference (Messina & Laffey, attorneys).

Debra E. Guston and Trayton M. Davis, a member of the New York bar, submitted a brief on behalf of amici curiae New Jersey Religious Leaders and National and Regional Religious Organizations in Support of Marriage (Guston & Guston, attorneys).

Stuart A. Hoberman, President, submitted a brief on behalf of amicus curiae New Jersey State Bar Association (Mr. Hoberman, attorney; Felice T. Londa, Andrew J. DeMaio, Gail Oxfeld Kanef, Robert A Knee, Scott A. Laterra and Thomas J. Snyder, on the brief).

R. William Potter submitted a brief on behalf of amici curiae Princeton Justice Project and Undergraduate Student Government of Princeton University (Potter and Dickson, attorneys; Mr. Potter and Linda A. Colligan, on the brief).

Michael P. Laffey submitted a brief on behalf of amicus curiae Professors of Psychology and Psychiatry.

Adam N. Saravay submitted a brief on behalf of amicus curiae Professors of the History of Marriage, Families, and the Law (McCarter & English, attorneys; Mr. Saravay and Sydney E. Dickey, on the brief).

Donald D. Campbell submitted a letter in lieu of brief on behalf of amici curiae United Families International and United Families-New Jersey (Campbell & Campbell, attorneys).

Ralph Charles Coti submitted a brief on behalf of amici curiae James Q. Wilson, Douglas Allen, Ph.D., David Blankenhorn, Lloyd R. Cohen, J.D., Ph.D., John Coverdale, J.D., Nicholas Eberstadt, Ph.D., Robert P. George, J.D., Harold James, Ph.D., Leon R. Kass, M.D., Ph.D., Douglas W. Kmiec and Katherine Shaw Spaht (Coti & Segrue, attorneys).

JUSTICE ALBIN delivered the opinion of the Court.

The statutory and decisional laws of this State protect individuals from discrimination based on sexual orientation. When those individuals are gays and lesbians who follow the inclination of their sexual orientation and enter into a committed relationship with someone of the same sex, our laws treat them, as couples, differently than heterosexual couples. As committed same-sex partners, they are not permitted to marry or to enjoy the multitude of social and financial benefits and privileges conferred on opposite-sex married couples.

In this case, we must decide whether persons of the same sex have a fundamental right to

marry that is encompassed within the concept of liberty guaranteed by Article I, Paragraph 1 of the New Jersey Constitution. Alternatively, we must decide whether Article I, Paragraph 1's equal protection guarantee requires that committed same-sex couples be given on equal terms the legal benefits and privileges awarded to married heterosexual couples and, if so, whether that guarantee also requires that the title of marriage, as opposed to some other term, define the committed same-sex legal relationship.

Only rights that are deeply rooted in the traditions, history, and conscience of the people are deemed to be fundamental. Although we cannot find that a fundamental right to same-sex marriage exists in this State, the unequal dispensation of rights and benefits to committed same-sex partners can no longer be tolerated under our State Constitution. With this State's legislative and judicial commitment to eradicating sexual orientation discrimination as our backdrop, we now hold 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. To comply with this constitutional mandate, the Legislature must either amend the marriage statutes to include same-sex couples or create a parallel statutory structure, which will provide for, on equal terms, the rights and benefits enjoyed and burdens and obligations borne by married couples. We will not presume that a separate statutory scheme, which uses a title other than marriage, contravenes equal protection principles, so long as the rights and benefits of civil marriage are made equally available to same-sex couples. The name to be given to the statutory scheme that provides full rights and benefits to same-sex couples, whether marriage or some other term, is a matter left to the democratic process.

I.

A.

Plaintiffs are seven same-sex couples who claim that New Jersey's laws, which restrict civil marriage to the union of a man and a woman, violate the liberty and equal protection guarantees of the New Jersey Constitution. Each plaintiff has been in a "permanent committed relationship" for more than ten years and each seeks to marry his or her partner and to enjoy the legal, financial, and social benefits that are afforded by marriage. When the seven couples applied for marriage licenses in the municipalities in which they live, the appropriate licensing officials told them that the law did not permit same-sex couples to marry. Plaintiffs then filed a complaint in the Superior Court, Law Division, challenging the constitutionality of the State's marriage statutes.

In terms of the value they place on family, career, and community service, plaintiffs lead lives that are remarkably similar to those of opposite-sex couples. [See footnote 1](#) Alicia Toby and Sandra Heath, who reside in Newark, have lived together for seventeen years and have children and grandchildren. Alicia is an ordained minister in a church where her pastoral duties include coordinating her church's HIV prevention program. Sandra works as a dispatcher for Federal Express.

Mark Lewis and Dennis Winslow reside in Union City and have been together for fourteen years. They both are pastors in the Episcopal Church. In their ministerial capacities, they have

officiated at numerous weddings and signed marriage certificates, though their own relationship cannot be similarly sanctified under New Jersey law. When Dennis's father was suffering from a serious long-term illness, Mark helped care for him in their home as would a devoted son-in-law.

Diane Marini and Marilyn Maneely were committed partners for fourteen years until Marilyn's death in 2005. [See footnote 2](#) The couple lived in Haddonfield, where Diane helped raise, as though they were her own, Marilyn's five children from an earlier marriage. Diane's mother considered Marilyn her daughter-in-law and Marilyn's children her grandchildren. The daily routine of their lives mirrored those of "other suburban married couples [their] age." Marilyn was a registered nurse. Diane is a businesswoman who serves on the planning board in Haddonfield, where she is otherwise active in community affairs.

Karen and Marcye Nicholson-McFadden have been committed partners for seventeen years, living together for most of that time in Aberdeen. There, they are raising two young children conceived through artificial insemination, Karen having given birth to their daughter and Marcye to their son. They own an executive search firm where Marcye works full-time and Karen at night and on weekends. Karen otherwise devotes herself to daytime parenting responsibilities. Both are generally active in their community, with Karen serving on the township zoning board.

Suyin and Sarah Lael have resided together in Franklin Park for most of the sixteen years of their familial partnership. Suyin is employed as an administrator for a non-profit corporation, and Sarah is a speech therapist. They live with their nine-year-old adopted daughter and two other children who they are in the process of adopting. They legally changed their surname and that of their daughter to reflect their status as one family. Like many other couples, Suyin and Sarah share holidays with their extended families.

Cindy Meneghin and Maureen Kilian first met in high school and have been in a committed relationship for thirty-two years. They have lived together for twenty-three years in Butler where they are raising a fourteen-year-old son and a twelve-year-old daughter. Through artificial insemination, Cindy conceived their son and Maureen their daughter. Cindy is a director of web services at Montclair State University, and Maureen is a church administrator. They are deeply involved in their children's education, attending after-school activities and PTA meetings. They also play active roles in their church, serving with their children in the soup kitchen to help the needy.

Chris Lodewyks and Craig Hutchison have been in a committed relationship with each other since their college days thirty-five years ago. They have lived together in Pompton Lakes for the last twenty-three years. Craig works in Summit, where he is an investment asset manager and president of the Summit Downtown Association. He also serves as the vice-chairman of the board of trustees of a YMCA camp for children. Chris, who is retired, helps Craig's elderly mother with daily chores, such as getting to the eye doctor.

The seeming ordinariness of plaintiffs' lives is belied by the social indignities and economic difficulties that they daily face due to the inferior legal standing of their relationships compared to that of married couples. Without the benefits of marriage, some plaintiffs have had to endure the expensive and time-consuming process of cross-adopting each other's children and effectuating legal surname changes. Other plaintiffs have had to contend with

economic disadvantages, such as paying excessive health insurance premiums because employers did not have to provide coverage to domestic partners, not having a right to “family leave” time, and suffering adverse inheritance tax consequences.

When some plaintiffs have been hospitalized, medical facilities have denied privileges to their partners customarily extended to family members. For example, when Cindy Meneghin contracted meningitis, the hospital’s medical staff at first ignored her pleas to allow her partner Maureen to accompany her to the emergency room. After Marcye Nicholson-McFadden gave birth to a son, a hospital nurse challenged the right of her partner Karen to be present in the newborn nursery to view their child. When Diane Marini received treatment for breast cancer, medical staff withheld information from her partner Marilyn “that would never be withheld from a spouse or even a more distant relative.” Finally, plaintiffs recount the indignities, embarrassment, and anguish that they as well as their children have suffered in attempting to explain their family status. [See footnote 3](#)

B.

In a complaint filed in the Superior Court, plaintiffs sought both a declaration that the laws denying same-sex marriage violated the liberty and equal protection guarantees of Article I, Paragraph 1 of the New Jersey Constitution and injunctive relief compelling defendants to grant them marriage licenses. [See footnote 4](#) The defendants named in the complaint are Gwendolyn L. Harris, the then Commissioner of the New Jersey Department of Human Services responsible for implementing the State’s marriage statutes; Clifton R. Lacy, the then Commissioner of the New Jersey Department of Health and Senior Services responsible for the operation of the State Registrar of Vital Statistics; and Joseph Komosinski, the then Acting State Registrar of Vital Statistics of the Department of Health and Senior Services responsible for supervising local registration of marriage records. [See footnote 5](#) The departments run by those officials have oversight duties relating to the issuance of marriage licenses.

The complaint detailed a number of statutory benefits and privileges available to opposite-sex couples through New Jersey’s civil marriage laws but denied to committed same-sex couples. Additionally, in their affidavits, plaintiffs asserted that the laws prohibiting same-sex couples to marry caused harm to their dignity and social standing, and inflicted psychic injuries on them, their children, and their extended families.

The State moved to dismiss the complaint for failure to state a claim upon which relief could be granted, see R. 4:6-2(e), and later both parties moved for summary judgment, see R. 4:46-2(c). The trial court entered summary judgment in favor of the State and dismissed the complaint.

In an unpublished opinion, the trial court first concluded that marriage is restricted to the union of a man and a woman under New Jersey law. The court maintained that the notion of “same-sex marriage was so foreign” to the legislators who in 1912 passed the marriage statute that “a ban [on same-sex marriage] hardly needed mention.” The court next rejected plaintiffs’ argument that same-sex couples possess a fundamental right to marriage protected by the State Constitution, finding that such a right was not so rooted in the collective conscience and traditions of the people of this State as to be deemed fundamental. Last, the

court held that the marriage laws did not violate the State Constitution's equal protection guarantee. The court determined that "limiting marriage to mixed-gender couples is a valid and reasonable exercise of government authority" and that the rights of gays and lesbians could "be protected in ways other than alteration of the traditional understanding of marriage." Plaintiffs were attempting "not to lift a barrier to marriage," according to the court, but rather "to change its very essence." To accomplish that end, the court suggested that plaintiffs would have to seek relief from the Legislature, which at the time was considering the passage of a domestic partnership act.

C.

A divided three-judge panel of the Appellate Division affirmed. Lewis v. Harris, [378 N.J. Super. 168](#), 194 (App. Div. 2005). Writing for the majority, Judge Skillman determined that New Jersey's marriage statutes do not contravene the substantive due process and equal protection guarantees of Article I, Paragraph 1 of the State Constitution. Id. at 188-89. In analyzing the substantive due process claim, Judge Skillman concluded that "[m]arriage between members of the same sex is clearly not a fundamental right." Id. at 183 (internal quotation marks omitted). He reached that conclusion because he could find no support for such a proposition in the text of the State Constitution, this State's history and traditions, or contemporary social standards. Id. at 183-84. He noted that "[o]ur leading religions view marriage as a union of men and women recognized by God" and that "our society considers marriage between a man and woman to play a vital role in propagating the species and in providing the ideal environment for raising children." Id. at 185. [See footnote 6](#)

In rebuffing plaintiffs' equal protection claim, Judge Skillman looked to the balancing test that governs such claims -- a consideration of "the nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction." Id. at 189 (quoting Greenberg v. Kimmelman, [99 N.J. 552](#), 567 (1985)). Starting with the premise that there is no fundamental right to same-sex marriage, Judge Skillman reasoned that plaintiffs could not demonstrate the existence of an "affected" or "claimed" right. Id. at 189-90 (internal quotation marks omitted). From that viewpoint, the State was not required to show that a public need for limiting marriage to opposite-sex couples outweighed a non-existent affected right to same-sex marriage. Id. at 190.

Judge Skillman chronicled the legislative progress made by same-sex couples through such enactments as the Domestic Partnership Act and expressed his view of the constricted role of judges in setting social policy: "A constitution is not simply an empty receptacle into which judges may pour their own conceptions of evolving social mores." Id. at 176-79. In the absence of a constitutional mandate, he concluded that only the Legislature could authorize marriage between members of the same sex. Id. at 194. Judge Skillman, however, emphasized that same-sex couples "may assert claims that the due process and equal protection guarantees of [the State Constitution] entitle them to additional legal benefits provided by marriage." Ibid.

In a separate opinion, Judge Parrillo fully concurred with Judge Skillman's reasoning, but added his view of the twofold nature of the relief sought by plaintiffs -- "the right to marry and

the rights of marriage.” *Id.* at 194-95 (Parrillo, J., concurring). Judge Parrillo observed that the right to marry necessarily includes significant “economic, legal and regulatory benefits,” the so-called rights of marriage. *Id.* at 195. With regard to those “publicly-conferred tangible [and] intangible benefits” incident to marriage that are denied to same-sex couples, Judge Parrillo asserted plaintiffs are free to challenge “on an ad-hoc basis” any “particular statutory exclusion resulting in disparate or unfair treatment.” *Ibid.* He concluded, however, that courts had no constitutional authority to alter “a core feature of marriage,” namely “its binary, opposite-sex nature.” *Id.* at 199-200. He maintained that “[p]rocreative heterosexual intercourse is and has been historically through all times and cultures an important feature of that privileged status, and that characteristic is a fundamental, originating reason why the State privileges marriage.” *Id.* at 197. He submitted that it was the Legislature’s role “to weigh the societal costs against the societal benefits flowing from a profound change in the public meaning of marriage.” *Id.* at 200.

In dissenting, Judge Collester concluded that the substantive due process and equal protection guarantees of Article I, Paragraph 1 obligate the State to afford same-sex couples the right to marry on terms equal to those afforded to opposite-sex couples. *Id.* at 218-20 (Collester, J., dissenting). He charted the evolving nature of the institution of marriage and of the rights and protections afforded to same-sex couples, and reasoned that outdated conceptions of marriage “cannot justify contemporary violations of constitutional guarantees.” *Id.* at 206-10. He described the majority’s argument as circular: Plaintiffs have no constitutional right to marry because this State’s laws by definition do not permit same-sex couples to marry. *Id.* at 204. That paradigm, Judge Collester believed, unfairly insulated the State’s marriage laws from plaintiffs’ constitutional claims and denied “plaintiffs the right to enter into lawful marriage in this State with the person of their choice.” *Id.* at 204, 211. Judge Collester dismissed the notion that “procreation or the ability to procreate is central to marriage” today and pointed out that four plaintiffs in this case gave birth to children after artificial insemination. *Id.* at 211-12. He further asserted that if marriage indeed is “the optimal environment for child rearing,” then denying plaintiffs the right to marry their committed partners is fundamentally unfair to their children. *Id.* at 212-13 (internal quotation marks omitted). Because the current marriage laws prohibit “a central life choice to some and not others based on sexual orientation” and because he could find no rational basis for limiting the right of marriage to opposite-sex couples, Judge Collester determined that the State had deprived plaintiffs of their right to substantive due process and equal protection of the laws. *Id.* at 216-20.

We review this case as of right based on the dissent in the Appellate Division. *See* R. 2:2-1 (a)(2). We granted the motions of a number of individuals and organizations to participate as amici curiae.

II.

This appeal comes before us from a grant of summary judgment in favor of the State. *See* R. 4:46-2(c). As this case raises no factual disputes, we address solely questions of law, and thus are not bound to defer to the legal conclusions of the lower courts. *See* Balsamides v.

Protameen Chems., Inc., [160 N.J. 352](#), 372 (1999) (stating that “matters of law are subject to a *de novo* review”).

Plaintiffs contend that the State’s laws barring members of the same sex from marrying their chosen partners violate the New Jersey Constitution. They make no claim that those laws contravene the Federal Constitution. Plaintiffs present a twofold argument. They first assert that same-sex couples have a fundamental right to marry that is protected by the liberty guarantee of Article I, Paragraph 1 of the State Constitution. They next assert that denying same-sex couples the right to marriage afforded to opposite-sex couples violates the equal protection guarantee of that constitutional provision.

In defending the constitutionality of its marriage laws, the State submits that same-sex marriage has no historical roots in the traditions or collective conscience of the people of New Jersey to give it the ranking of a fundamental right, and that limiting marriage to opposite-sex couples is a rational exercise of social policy by the Legislature. The State concedes that state law and policy do not support the argument that limiting marriage to heterosexual couples is necessary for either procreative purposes or providing the optimal environment for raising children. [See footnote 7](#) Indeed, the State not only recognizes the right of gay and lesbian parents to raise their own children, but also places foster children in same-sex parent homes through the Division of Youth and Family Services.

The State rests its case on age-old traditions, beliefs, and laws, which have defined the essential nature of marriage to be the union of a man and a woman. The long-held historical view of marriage, according to the State, provides a sufficient basis to uphold the constitutionality of the marriage statutes. Any change to the bedrock principle that limits marriage to persons of the opposite sex, the State argues, must come from the democratic process.

The legal battle in this case has been waged over one overarching issue -- the right to marry. A civil marriage license entitles those wedded to a vast array of economic and social benefits and privileges -- the rights of marriage. Plaintiffs have pursued the singular goal of obtaining the right to marry, knowing that, if successful, the rights of marriage automatically follow. We do not have to take that all-or-nothing approach. We perceive plaintiffs’ equal protection claim to have two components: whether committed same-sex couples have a constitutional right to the benefits and privileges afforded to married heterosexual couples, and, if so, whether they have the constitutional right to have their “permanent committed relationship” recognized by the name of marriage. After we address plaintiffs’ fundamental right argument, we will examine those equal protection issues in turn.

III.

Plaintiffs contend that the right to marry a person of the same sex is a fundamental right secured by the liberty guarantee of Article I, Paragraph 1 of the New Jersey Constitution. Plaintiffs maintain that the liberty interest at stake is “the right of every adult to choose whom to marry without intervention of government.” Plaintiffs do not profess a desire to overthrow all state regulation of marriage, such as the prohibition on polygamy and restrictions based on consanguinity and age. [See footnote 8](#) They therefore accept some limitations on “the exercise of

personal choice in marriage.” They do claim, however, that the State cannot regulate marriage by defining it as the union between a man and a woman without offending our State Constitution. In assessing their liberty claim, we must determine whether the right of a person to marry someone of the same sex is so deeply rooted in the traditions and collective conscience of our people that it must be deemed fundamental under Article I, Paragraph 1. We thus begin with the text of Article I, Paragraph 1, which provides:

All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

[N.J. Const. art. I, ¶ 1.]

The origins of Article I, Paragraph 1 date back to New Jersey’s 1844 Constitution. [See footnote 9](#) That first paragraph of our Constitution is, in part, “a general recognition of those absolute rights of the citizen which were a part of the common law.” [King v. S. Jersey Nat’l Bank](#), [66 N.J. 161](#), 178 (1974) (quoting [Ransom v. Black](#), [54 N.J.L. 446](#), 448 (Sup. Ct. 1892), *aff’d per curiam*, [65 N.J.L. 688](#) (E. & A. 1893)). In attempting to discern those substantive rights that are fundamental under Article I, Paragraph 1, we have adopted the general standard followed by the United States Supreme Court in construing the Due Process Clause of the [Fourteenth Amendment](#) of the Federal Constitution. We “look to ‘the traditions and [collective] conscience of our people to determine whether a principle is so rooted [there] . . . as to be ranked as fundamental.’” [Ibid.](#) (internal quotation marks omitted) (alterations in original) (quoting [Griswold v. Connecticut](#), [381 U.S. 479](#), 493, [85 S. Ct. 1678](#), 1686, [14 L. Ed.2d 510](#), 520 (1965) (Goldberg, J., concurring)); [see also](#) [Watkins v. Nelson](#), [163 N.J. 235](#), 245 (2000); [Doe v. Poritz](#), [142 N.J. 1](#), 120 (1995); [State v. Parker](#), [124 N.J. 628](#), 648 (1991), *cert. denied*, [503 U.S. 939](#), [112 S. Ct. 1483](#), [117 L. Ed.2d 625](#) (1992).

Under Article I, Paragraph 1, as under the [Fourteenth Amendment](#)’s substantive due process analysis, determining whether a fundamental right exists involves a two-step inquiry. First, the asserted fundamental liberty interest must be clearly identified. [See](#) [Washington v. Glucksberg](#), [521 U.S. 702](#), 721, [117 S. Ct. 2258](#), 2268, [138 L. Ed.2d 772](#), 788 (1997). Second, that liberty interest must be objectively and deeply rooted in the traditions, history, and conscience of the people of this State. [See](#) [King](#), *supra*, [66 N.J.](#) at 178; [see also](#) [Glucksberg](#), *supra*, [521 U.S.](#) at 720-21, [117 S. Ct.](#) at 2268, [138 L. Ed. 2d](#) at 787-88 (stating that liberty interest must be “objectively, deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty” (internal quotation marks omitted)).

How the right is defined may dictate whether it is deemed fundamental. One such example is [Glucksberg](#), *supra*, a case involving a challenge to Washington’s law prohibiting and criminalizing assisted suicide. [521 U.S.](#) at 705-06, [117 S. Ct.](#) at 2261, [138 L. Ed. 2d](#) at 779. In that case, the Supreme Court stated that the liberty interest at issue was not the “liberty to choose how to die,” but rather the “right to commit suicide with another’s assistance.” [Id.](#) at 722-24, [117 S. Ct.](#) at 2269, [138 L. Ed 2d](#) at 789-90. Having framed the issue that way, the Court concluded that the right to assisted suicide was not deeply rooted in the nation’s history

and traditions and therefore not a fundamental liberty interest under substantive due process. Id. at 723, 728, 117 S. Ct. at 2269, 2271, [138 L. Ed 2d](#) at 789, 792.

The right to marriage is recognized as fundamental by both our Federal and State Constitutions. See, e.g., Zablocki v. Redhail, [434 U.S. 374](#), 383-84, [98 S. Ct. 673](#), 679-80, [54 L. Ed.2d 618](#), 628-29 (1978); J.B. v. M.B., [170 N.J. 9](#), 23-24 (2001). That broadly stated right, however, is "subject to reasonable state regulation." Greenberg, supra, 99 N.J. at 572. Although the fundamental right to marriage extends even to those imprisoned, Turner v. Safley, [482 U.S. 78](#), 95-96, [107 S. Ct. 2254](#), 2265, [96 L. Ed.2d 64](#), 83 (1987), and those in noncompliance with their child support obligations, Zablocki, supra, 434 U.S. at 387-91, 98 S. Ct. at 681-83, 54 L. Ed. 2d at 631-33, it does not extend to polygamous, incestuous, and adolescent marriages, [N.J.S.A. 2C:24-1](#); [N.J.S.A. 37:1-1](#), -6. In this case, the liberty interest at stake is not some undifferentiated, abstract right to marriage, but rather the right of people of the same sex to marry. Thus, we are concerned only with the question of whether the right to same-sex marriage is deeply rooted in this State's history and its people's collective conscience. [See footnote 10](#)

In answering that question, we are not bound by the nation's experience or the precedents of other states, although they may provide guideposts and persuasive authority. See Doe v. Poritz, supra, 142 N.J. at 119-20 (stating that although practice "followed by a large number of states is not conclusive[,] . . . it is plainly worth considering in determining whether the practice offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental" (internal quotation marks omitted)). Our starting point is the State's marriage laws.

Plaintiffs do not dispute that New Jersey's civil marriage statutes, [N.J.S.A. 37:1-1](#) to 37:2-41, which were first enacted in 1912, limit marriage to heterosexual couples. That limitation is clear from the use of gender-specific language in the text of various statutes. See, e.g., N.J.S.A. 37:1-1 (describing prohibited marriages in terms of opposite-sex relatives); [N.J.S.A. 37:2-10](#) (providing that "husband" is not liable for debts of "wife" incurred before or after marriage); [N.J.S.A. 37:2-18.1](#) (providing release rights of curtesy and dower for "husband" and "wife").

More recently, in passing the Domestic Partnership Act to ameliorate some of the economic and social disparities between committed same-sex couples and married heterosexual couples, the Legislature explicitly acknowledged that same-sex couples cannot marry. See N.J.S.A. 26:8A-2(e).

Three decades ago, Justice (then Judge) Handler wrote that "[d]espite winds of change," there was almost a universal recognition that "a lawful marriage requires the performance of a ceremonial marriage of two persons of the opposite sex, a male and a female." M.T. v. J.T., [140 N.J. Super. 77](#), 83-84 (App. Div.), certif. denied, [71 N.J. 345](#) (1976). With the exception of Massachusetts, every state's law, explicitly or implicitly, defines marriage to mean the union of a man and a woman. [See footnote 11](#)

Although today there is a nationwide public debate raging over whether same-sex marriage should be authorized under the laws or constitutions of the various states, the framers of the 1947 New Jersey Constitution, much less the drafters of our marriage statutes, could not have

imagined that the liberty right protected by Article I, Paragraph 1 embraced the right of a person to marry someone of his or her own sex. See, e.g., Baker v. Nelson, [191 N.W.2d 185](#), 186 (Minn. 1971) ("The institution of marriage as a union of man and woman . . . is as old as the book of Genesis."), appeal dismissed, [409 U.S. 810](#), [93 S. Ct. 37](#), [34 L. Ed.2d 65](#) (1972); Nancy F. Cott, Public Vows: A History of Marriage and the Nation 2-3 (2000) (describing particular model of marriage "deeply implanted" in United States history to be "lifelong, faithful monogamy, formed by the mutual consent of a man and a woman"); see also [1 U.S.C.A. §7](#) (defining under Federal Defense of Marriage Act "the word 'marriage' [to] mean[] only a legal union between one man and one woman as husband and wife").

Times and attitudes have changed, and there has been a developing understanding that discrimination against gays and lesbians is no longer acceptable in this State, as is evidenced by various laws and judicial decisions prohibiting differential treatment based on sexual orientation. See, e.g., N.J.S.A. 10:5-4 (prohibiting discrimination on basis of sexual orientation); [N.J.S.A. 26:8A-1](#) to -13 (affording various rights to same-sex couples under Domestic Partnership Act); In re Adoption of a Child by J.M.G., [267 N.J. Super. 622](#), 623, 625 (Ch. Div. 1993) (determining that lesbian partner was entitled to adopt biological child of partner). See generally Joshua Kaplan, Unmasking the Federal Marriage Amendment: The Status of Sexuality, 6 Geo. J. Gender & L. 105, 123-24 (2005) (noting that "1969 is widely recognized as the beginning of the gay rights movement," which is considered "relatively new to the national agenda"). On the federal level, moreover, the United States Supreme Court has struck down laws that have unconstitutionally targeted gays and lesbians for disparate treatment.

In Romer v. Evans, Colorado passed an amendment to its constitution that prohibited all legislative, executive, or judicial action designed to afford homosexuals protection from discrimination based on sexual orientation. [517 U.S. 620](#), 623-24, [116 S. Ct. 1620](#), 1623, [134 L. Ed.2d 855](#), 860-61 (1996). The Supreme Court declared that Colorado's constitutional provision violated the Fourteenth Amendment's Equal Protection Clause because it "impos[ed] a broad and undifferentiated disability on a single named group" and appeared to be motivated by an "animus toward" gays and lesbians. Id. at 632, [116 S. Ct.](#) at 1627, 1628, [134 L. Ed. 2d](#) at 865-66. The Court concluded that a state could not make "a class of persons a stranger to its laws." Id. at 635, [116 S. Ct.](#) at 1629, [134 L. Ed. 2d](#) at 868.

More recently, in Lawrence v. Texas, the Court invalidated on Fourteenth Amendment due process grounds Texas's sodomy statute, which made it a crime for homosexuals "to engage in certain intimate sexual conduct." [539 U.S. 558](#), 562, 578, [123 S. Ct. 2472](#), 2475, 2484, [156 L. Ed.2d 508](#), 515, 525-26 (2003). The Court held that the "liberty" protected by the Due Process Clause prevented Texas from controlling the destiny of homosexuals "by making their private sexual conduct a crime." Id. at 578, [123 S. Ct.](#) at 2484, [156 L. Ed 2d](#) at 525. The Lawrence Court, however, pointedly noted that the case did "not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter." Ibid. In a concurring opinion, Justice O'Connor concluded that the Texas law, as applied to the private, consensual conduct of homosexuals, violated the Equal Protection

Clause, but strongly suggested that a state's legitimate interest in "preserving the traditional institution of marriage" would allow for distinguishing between heterosexuals and homosexuals without offending equal protection principles. *Id.* at 585, 123 *S. Ct.* at 2487-88, 156 *L. Ed. 2d* at 530 (O'Connor, J., concurring).

Plaintiffs rely on the *Romer* and *Lawrence* cases to argue that they have a fundamental right to marry under the New Jersey Constitution, not that they have such a right under the Federal Constitution. Although those recent cases openly advance the civil rights of gays and lesbians, they fall far short of establishing a right to same-sex marriage deeply rooted in the traditions, history, and conscience of the people of this State.

Plaintiffs also rely on *Loving v. Virginia*, [388 U.S. 1](#), [87 S. Ct. 1817](#), [18 L. Ed.2d 1010](#) (1967), to support their claim that the right to same-sex marriage is fundamental. In *Loving*, the United States Supreme Court held that Virginia's antimiscegenation statutes, which prohibited and criminalized interracial marriages, violated the Equal Protection and Due Process Clauses of the [Fourteenth Amendment](#). *Id.* at 2, 87 *S. Ct.* at 1818, 18 *L. Ed. 2d* at 1012. Although the Court reaffirmed the fundamental right of marriage, the heart of the case was invidious discrimination based on race, the very evil that motivated passage of the [Fourteenth Amendment](#). *Id.* at 10-12, 87 *S. Ct.* at 1823-24, [18 L. Ed. 2d](#) at 1017-18. The Court stated that "[t]he clear and central purpose of the [Fourteenth Amendment](#) was to eliminate all official state sources of invidious racial discrimination in the States." *Id.* at 10, 87 *S. Ct.* at 1823, 18 *L. Ed. 2d* at 1017. For that reason, the Court concluded that "restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause." *Id.* at 12, 87 *S. Ct.* at 1823, 18 *L. Ed. 2d* at 1018. From the fact-specific background of that case, which dealt with intolerable racial distinctions that patently violated the [Fourteenth Amendment](#), we cannot find support for plaintiffs claim that there is a fundamental right to same-sex marriage under our State Constitution. We add that all of the United States Supreme Court cases cited by plaintiffs, *Loving*, *Turner*, and *Zablocki*, involved heterosexual couples seeking access to the right to marriage and did not implicate directly the primary question to be answered in this case.

Within the concept of liberty protected by Article I, Paragraph 1 of the New Jersey Constitution are core rights of such overriding value that we consider them to be fundamental. Determining whether a particular claimed right is fundamental is a task that requires both caution and foresight. When engaging in a substantive due process analysis under the [Fourteenth Amendment](#), the United States Supreme Court has instructed that it must "exercise the utmost care" before finding new rights, which place important social issues beyond public debate, "lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of [the] Court." *Glucksberg*, *supra*, [521 U.S.](#) at 720, 117 *S. Ct.* at 2267-68, 138 *L. Ed. 2d* at 787 (internal quotation marks omitted). In searching for the meaning of "liberty" under Article I, Paragraph 1, we must resist the temptation of seeing in the majesty of that word only a mirror image of our own strongly felt opinions and beliefs. Under the guise of newly found rights, we must be careful not to impose our personal value system on eight-and-one-half million people, thus bypassing the democratic process as the primary means of effecting social change in this State. That being said, this Court will never

abandon its responsibility to protect the fundamental rights of all of our citizens, even the most alienated and disfavored, no matter how strong the winds of popular opinion may blow. Despite the rich diversity of this State, the tolerance and goodness of its people, and the many recent advances made by gays and lesbians toward achieving social acceptance and equality under the law, we cannot find that a right to same-sex marriage is so deeply rooted in the traditions, history, and conscience of the people of this State that it ranks as a fundamental right. When looking for the source of our rights under the New Jersey Constitution, we need not look beyond our borders. Nevertheless, we do take note that no jurisdiction, not even Massachusetts, has declared that there is a fundamental right to same-sex marriage under the federal or its own constitution. [See footnote 12](#)

Having decided that there is no fundamental right to same-sex marriage does not end our inquiry. See WHS Realty Co. v. Town of Morristown, [323 N.J. Super. 553](#), 562-63 (App. Div.) (recognizing that although provision of municipal service is not fundamental right, inequitable provision of that service is subject to equal protection analysis), certif. denied, [162 N.J. 489](#) (1999). We now must examine whether those laws that deny to committed same-sex couples both the right to and the rights of marriage afforded to heterosexual couples offend the equal protection principles of our State Constitution.

IV.

Article I, Paragraph 1 of the New Jersey Constitution sets forth the first principles of our governmental charter -- that every person possesses the "unalienable rights" to enjoy life, liberty, and property, and to pursue happiness. Although our State Constitution nowhere expressly states that every person shall be entitled to the equal protection of the laws, we have construed the expansive language of Article I, Paragraph 1 to embrace that fundamental guarantee. Sojourner A. v. N.J. Dep't of Human Servs., [177 N.J. 318](#), 332 (2003); Greenberg, supra, [99 N.J. at 568](#). Quite simply, that first paragraph to our State Constitution "protect[s] against injustice and against the unequal treatment of those who should be treated alike." Greenberg, supra, [99 N.J. at 568](#).

Plaintiffs claim that the State's marriage laws have relegated them to "second-class citizenship" by denying them the "tangible and intangible" benefits available to heterosexual couples through marriage. Depriving same-sex partners access to civil marriage and its benefits, plaintiffs contend, violates Article I, Paragraph 1's equal protection guarantee. We must determine whether the State's marriage laws permissibly distinguish between same-sex and heterosexual couples.

When a statute is challenged on the ground that it does not apply evenhandedly to similarly situated people, our equal protection jurisprudence requires that the legislation, in distinguishing between two classes of people, bear a substantial relationship to a legitimate governmental purpose. Caviglia v. Royal Tours of Am., [178 N.J. 460](#), 472-73 (2004); Barone v. Dep't of Human Servs., [107 N.J. 355](#), 368 (1987). The test that we have applied to such equal protection claims involves the weighing of three factors: the nature of the right at stake, the extent to which the challenged statutory scheme restricts that right, and the public need for

the statutory restriction. Greenberg, supra, 99 N.J. at 567; Robinson v. Cahill, [62 N.J. 473](#), 491-92, cert. denied, [414 U.S. 976](#), [94 S. Ct. 292](#), [38 L. Ed.2d 219](#) (1973). The test is a flexible one, measuring the importance of the right against the need for the governmental restriction. [See footnote 13](#) See Sojourner A., supra, 177 N.J. at 333. Under that approach, each claim is examined “on a continuum that reflects the nature of the burdened right and the importance of the governmental restriction.” Ibid. Accordingly, “the more personal the right, the greater the public need must be to justify governmental interference with the exercise of that right.” George Harms Constr. Co. v. N.J. Tpk. Auth., [137 N.J. 8](#), 29 (1994); see also Taxpayers Ass’n of Weymouth Twp. v. Weymouth Twp., [80 N.J. 6](#), 43 (1976), cert. denied, [430 U.S. 977](#), [97 S. Ct. 1672](#), [52 L. Ed.2d 373](#) (1977). Unless the public need justifies statutorily limiting the exercise of a claimed right, the State’s action is deemed arbitrary. See Robinson, supra, 62 N.J. at 491-92.

A.

In conducting this equal protection analysis, we discern two distinct issues. The first is whether committed same-sex couples have the right to the statutory benefits and privileges conferred on heterosexual married couples. Next, assuming a right to equal benefits and privileges, the issue is whether committed same-sex partners have a constitutional right to define their relationship by the name of marriage, the word that historically has characterized the union of a man and a woman. In addressing plaintiffs’ claimed interest in equality of treatment, we begin with a retrospective look at the evolving expansion of rights to gays and lesbians in this State.

Today, in New Jersey, it is just as unlawful to discriminate against individuals on the basis of sexual orientation as it is to discriminate against them on the basis of race, national origin, age, or sex. See N.J.S.A. 10:5-4. Over the last three decades, through judicial decisions and comprehensive legislative enactments, this State, step by step, has protected gay and lesbian individuals from discrimination on account of their sexual orientation.

In 1974, a New Jersey court held that the parental visitation rights of a divorced homosexual father could not be denied or restricted based on his sexual orientation. In re J.S. & C., [129 N.J. Super. 486](#), 489 (Ch. Div. 1974), aff’d per curiam, [142 N.J. Super. 499](#) (App. Div. 1976). Five years later, the Appellate Division stated that the custodial rights of a mother could not be denied or impaired because she was a lesbian. M.P. v. S.P., [169 N.J. Super. 425](#), 427 (App. Div. 1979). This State was one of the first in the nation to judicially recognize the right of an individual to adopt a same-sex partner’s biological child. [See footnote 14](#) J.M.G., supra, [267 N.J. Super.](#) at 625, 626, 631 (recognizing “importance of the emotional benefit of formal recognition of the relationship between [the non-biological mother] and the child” and that there is not one correct family paradigm for creating “supportive, loving environment” for children); see also In re Adoption of Two Children by H.N.R., [285 N.J. Super. 1](#), 3 (App. Div. 1995) (finding that “best interests” of children supported adoption by same-sex partner of biological mother). Additionally, this Court has acknowledged that a woman can be the “psychological parent” of children born to her former same-sex partner during their committed

relationship, entitling the woman to visitation with the children. V.C. v. M.J.B., [163 N.J. 200](#), 206-07, 230, cert. denied, [531 U.S. 926](#), [121 S. Ct. 302](#), [148 L. Ed.2d 243](#) (2000); see also id. at 232 (Long, J., concurring) (noting that no one “particular model of family life” has monopoly on “family values” and that “[t]hose qualities of family life on which society places a premium . . . are unrelated to the particular form a family takes”). Recently, our Appellate Division held that under New Jersey’s change of name statute an individual could assume the surname of a same-sex partner. In re Application for Change of Name by Bacharach, [344 N.J. Super. 126](#), 130-31, 136 (App. Div. 2001).

Perhaps more significantly, New Jersey’s Legislature has been at the forefront of combating sexual orientation discrimination and advancing equality of treatment toward gays and lesbians. In 1992, through an amendment to the Law Against Discrimination (LAD), L. 1991, c. 519, New Jersey became the fifth state [See footnote 15](#) in the nation to prohibit discrimination on the basis of “affectional or sexual orientation.” [See footnote 16](#) See N.J.S.A. 10:5-4. In making sexual orientation a protected category, the Legislature committed New Jersey to the goal of eradicating discrimination against gays and lesbians. See also Fuchilla v. Layman, [109 N.J. 319](#), 334 (“[T]he overarching goal of the [LAD] is nothing less than the eradication of the cancer of discrimination.” (internal quotation marks omitted)), cert. denied, [488 U.S. 826](#), [109 S. Ct. 75](#), [102 L. Ed.2d 51](#) (1988). In 2004, the Legislature added “domestic partnership status” to the categories protected by the LAD. L. 2003, c. 246.

The LAD guarantees that gays and lesbians, as well as same-sex domestic partners, will not be subject to discrimination in pursuing employment opportunities, gaining access to public accommodations, obtaining housing and real property, seeking credit and loans from financial institutions, and engaging in business transactions. N.J.S.A. 10:5-12. The LAD declares that access to those opportunities and basic needs of modern life is a civil right. N.J.S.A. 10:5-4.

Additionally, discrimination on the basis of sexual orientation is outlawed in various other statutes. For example, the Legislature has made it a bias crime for a person to commit certain offenses with the purpose to intimidate an individual on account of sexual orientation, N.J.S.A. 2C:16-1(a)(1), and has provided a civil cause of action against the offender, N.J.S.A. 2A:53A-21. It is a crime for a public official to deny a person any “right, privilege, power or immunity” on the basis of sexual orientation. N.J.S.A. 2C:30-6(a). It is also unlawful to discriminate against gays and lesbians under the Local Public Contracts Law and the Public Schools Contracts Law. N.J.S.A. 40A:11-13; N.J.S.A. 18A:18A-15. The Legislature, moreover, formed the New Jersey Human Relations Council to promote educational programs aimed at reducing bias and bias-related acts, identifying sexual orientation as a protected category, N.J.S.A. 52:9DD-8, and required school districts to adopt anti-bullying and anti-intimidation policies to protect, among others, gays and lesbians, N.J.S.A. 18A:37-14, -15(a).

In 2004, the Legislature passed the Domestic Partnership Act, L. 2003, c. 246, making available to committed same-sex couples “certain rights and benefits that are accorded to married couples under the laws of New Jersey.” [See footnote 17](#) N.J.S.A. 26:8A-2(d). With same-sex partners in mind, the Legislature declared that “[t]here are a significant number of

individuals in this State who choose to live together in important personal, emotional and economic committed relationships," [N.J.S.A. 26:8A-2\(a\)](#), and that those "mutually supportive relationships should be formally recognized by statute," [N.J.S.A. 26:8A-2\(c\)](#). The Legislature also acknowledged that such relationships "assist the State by their establishment of a private network of support for the financial, physical and emotional health of their participants." [N.J.S.A. 26:8A-2\(b\)](#).

For those same-sex couples who enter into a domestic partnership, the Act provides a limited number of rights and benefits possessed by married couples, including "statutory protection against various forms of discrimination against domestic partners; certain visitation and decision-making rights in a health care setting; certain tax-related benefits; and, in some cases, health and pension benefits that are provided in the same manner as for spouses." [N.J.S.A. 26:8A-2\(c\)](#). Later amendments to other statutes have provided domestic partners with additional rights pertaining to funeral arrangements and disposition of the remains of a deceased partner, [L. 2005, c. 331](#), inheritance privileges when the deceased partner dies without a will, [L. 2005, c. 331](#), and guardianship rights in the event of a partner's incapacitation, [L. 2005, c. 304](#).

In passing the Act, the Legislature expressed its clear understanding of the human dimension that propelled it to provide relief to same-sex couples. It emphasized that the need for committed same-sex partners "to have access to these rights and benefits is paramount in view of their essential relationship to any reasonable conception of basic human dignity and autonomy, and the extent to which they will play an integral role in enabling these persons to enjoy their familial relationships as domestic partners." [N.J.S.A. 26:8A-2\(d\)](#).

Aside from federal decisions such as *Romer, supra*, and *Lawrence, supra*, this State's decisional law and sweeping legislative enactments, which protect gays and lesbians from sexual orientation discrimination in all its virulent forms, provide committed same-sex couples with a strong interest in equality of treatment relative to comparable heterosexual couples.

B.

We next examine the extent to which New Jersey's laws continue to restrict committed same-sex couples from enjoying the full benefits and privileges available through marriage. Although under the Domestic Partnership Act same-sex couples are provided with a number of important rights, they still are denied many benefits and privileges accorded to their similarly situated heterosexual counterparts. Thus, the Act has failed to bridge the inequality gap between committed same-sex couples and married opposite-sex couples. Among the rights afforded to married couples but denied to committed same-sex couples are the right to (1) a surname change without petitioning the court, see *Bacharach, supra*, 344 [N.J. Super.](#) at 135-36;

(2) ownership of property as tenants by the entirety, [N.J.S.A. 46:3-17.2](#), which would allow for both automatic transfer of ownership on death, [N.J.S.A. 46:3-17.5](#), and protection against severance and alienation, [N.J.S.A. 46:3-17.4](#);

- (3) survivor benefits under New Jersey's Workers' Compensation Act, [N.J.S.A. 34:15-13](#);
- (4) back wages owed to a deceased spouse, [N.J.S.A. 34:11-4.5](#);
- (5) compensation available to spouses, children, and other relatives of homicide victims under the Criminal Injuries Compensation Act, [N.J.S.A. 52:4B-10\(c\)](#), -2;
- (6) free tuition at any public institution of higher education for surviving spouses and children of certain members of the New Jersey National Guard, [N.J.S.A. 18A:62-25](#);
- (7) tuition assistance for higher education for spouses and children of volunteer firefighters and first-aid responders, [N.J.S.A. 18A:71-78.1](#);
- (8) tax deductions for spousal medical expenses, [N.J.S.A. 54A:3-3\(a\)](#);
- (9) an exemption from the realty transfer fee for transfers between spouses, [N.J.S.A. 46:15-10\(j\)](#), -6.1; and
- (10) the testimonial privilege given to the spouse of an accused in a criminal action, [N.J.S.A. 2A:84A-17\(2\)](#).

In addition, same-sex couples certified as domestic partners receive fewer workplace protections than married couples. For example, an employer is not required to provide health insurance coverage for an employee's domestic partner. [N.J.S.A. 34:11A-20\(b\)](#). Because the New Jersey Family Leave Act does not include domestic partners within the definition of family member, [N.J.S.A. 34:11B-3\(j\)](#), gay and lesbian employees are not entitled to statutory leave for the purpose of caring for an ill domestic partner, see [N.J.S.A. 34:11B-4\(a\)](#). The disparity of rights and remedies also extends to the laws governing wills. For instance, a bequest in a will by one domestic partner to another is not automatically revoked after termination of the partnership, as it would be for a divorced couple, [N.J.S.A. 3B:3-14](#). For that reason, the failure to revise a will prior to death may result in an estranged domestic partner receiving a bequest that a divorced spouse would not. There is also no statutory provision permitting the payment of an allowance for the support and maintenance of a surviving domestic partner when a will contest is pending. See [N.J.S.A. 3B:3-30](#) (stating that support and maintenance may be paid out of decedent's estate to surviving spouse pending will contest). The Domestic Partnership Act, notably, does not provide to committed same-sex couples the family law protections available to married couples. The Act provides no comparable presumption of dual parentage to the non-biological parent of a child born to a domestic partner, [N.J.S.A. 9:17-43](#), -44. [See footnote 18](#) As a result, domestic partners must rely on costly and time-consuming second-parent adoption procedures. [See footnote 19](#) The Act also is silent

on critical issues relating to custody, visitation, and partner and child support in the event a domestic partnership terminates. See, e.g., N.J.S.A. 9:2-4 (providing custody rights to divorced spouses). See footnote 20 For example, the Act does not place any support obligation on the non-biological partner-parent who does not adopt a child born during a committed relationship. Additionally, there is no statutory mechanism for post-relationship support of a domestic partner. See N.J.S.A. 2A:34-23 (providing for spousal support following filing of matrimonial complaint). Contrary to the law that applies to divorcing spouses, see N.J.S.A. 2A:34-23, -23.1, the Act states that a court shall not be required to equitably distribute property acquired by one or both partners during the domestic partnership on termination of the partnership. N.J.S.A. 26:8A-10(a)(3).

Significantly, the economic and financial inequities that are borne by same-sex domestic partners are borne by their children too. With fewer financial benefits and protections available, those children are disadvantaged in a way that children in married households are not. Children have the same universal needs and wants, whether they are raised in a same-sex or opposite-sex family, yet under the current system they are treated differently.

Last, even though they are provided fewer benefits and rights, same-sex couples are subject to more stringent requirements to enter into a domestic partnership than opposite-sex couples entering into marriage. The Act requires that those seeking a domestic partnership share "a common residence;" prove that they have assumed joint responsibility "for each other's common welfare as evidenced by joint financial arrangements or joint ownership of real or personal property;" "agree to be jointly responsible for each other's basic living expenses during the domestic partnership;" and show that they "have chosen to share each other's lives in a committed relationship of mutual caring." N.J.S.A. 26:8A-4(b)(1), (2), (6). Opposite-sex couples do not have to clear those hurdles to obtain a marriage license. See N.J.S.A. 37:1-1 to -12.3.

Thus, under our current laws, committed same-sex couples and their children are not afforded the benefits and protections available to similar heterosexual households.

C.

We now must assess the public need for denying the full benefits and privileges that flow from marriage to committed same-sex partners. At this point, we do not consider whether committed same-sex couples should be allowed to marry, but only whether those couples are entitled to the same rights and benefits afforded to married heterosexual couples. Cast in that light, the issue is not about the transformation of the traditional definition of marriage, but about the unequal dispensation of benefits and privileges to one of two similarly situated classes of people. We therefore must determine whether there is a public need to deny committed same-sex partners the benefits and privileges available to heterosexual couples. The State does not argue that limiting marriage to the union of a man and a woman is needed to encourage procreation or to create the optimal living environment for children. Other than sustaining the traditional definition of marriage, which is not implicated in this discussion, the State has not articulated any legitimate public need for depriving same-sex couples of the host

of benefits and privileges catalogued in Section IV.B. Perhaps that is because the public policy of this State is to eliminate sexual orientation discrimination and support legally sanctioned domestic partnerships. The Legislature has designated sexual orientation, along with race, national origin, and sex, as a protected category in the Law Against Discrimination. [N.J.S.A. 10:5-4](#), -12. Access to employment, housing, credit, and business opportunities is a civil right possessed by gays and lesbians. *See* *ibid.* Unequal treatment on account of sexual orientation is forbidden by a number of statutes in addition to the Law Against Discrimination.

The Legislature has recognized that the "rights and benefits" provided in the Domestic Partnership Act are directly related "to any reasonable conception of basic human dignity and autonomy." [N.J.S.A. 26:8A-2\(d\)](#). It is difficult to understand how withholding the remaining "rights and benefits" from committed same-sex couples is compatible with a "reasonable conception of basic human dignity and autonomy." There is no rational basis for, on the one hand, giving gays and lesbians full civil rights in their status as individuals, and, on the other, giving them an incomplete set of rights when they follow the inclination of their sexual orientation and enter into committed same-sex relationships.

Disparate treatment of committed same-sex couples, moreover, directly disadvantages their children. We fail to see any legitimate governmental purpose in disallowing the child of a deceased same-sex parent survivor benefits under the Workers' Compensation Act or Criminal Injuries Compensation Act when children of married parents would be entitled to such benefits. Nor do we see the governmental purpose in not affording the child of a same-sex parent, who is a volunteer firefighter or first-aid responder, tuition assistance when the children of married parents receive such assistance. There is something distinctly unfair about the State recognizing the right of same-sex couples to raise natural and adopted children and placing foster children with those couples, and yet denying those children the financial and social benefits and privileges available to children in heterosexual households. Five of the seven plaintiff couples are raising or have raised children. There is no rational basis for visiting on those children a flawed and unfair scheme directed at their parents. To the extent that families are strengthened by encouraging monogamous relationships, whether heterosexual or homosexual, we cannot discern any public need that would justify the legal disabilities that now afflict same-sex domestic partnerships.

There are more than 16,000 same-sex couples living in committed relationships in towns and cities across this State. Ruth Padawer, [Gay Couples, At Long Last, Feel Acknowledged, The Rec.](#), Aug. 15, 2001, at 104. Gays and lesbians work in every profession, business, and trade. They are educators, architects, police officers, fire officials, doctors, lawyers, electricians, and construction workers. They serve on township boards, in civic organizations, and in church groups that minister to the needy. They are mothers and fathers. They are our neighbors, our co-workers, and our friends. In light of the policies reflected in the statutory and decisional laws of this State, we cannot find a legitimate public need for an unequal legal scheme of benefits and privileges that disadvantages committed same-sex couples.

D.

In arguing to uphold the system of disparate treatment that disfavors same-sex couples, the

State offers as a justification the interest in uniformity with other states' laws. Unlike other states, however, New Jersey forbids sexual orientation discrimination, and not only allows same-sex couples to adopt children, but also places foster children in their households. Unlike New Jersey, other states have expressed open hostility toward legally recognizing committed same-sex relationships. [See footnote 21](#) See Symposium, State Marriage Amendments: Developments, Precedents, and Significance, 7 Fla. Coastal L. Rev. 403, 403 (2005) (noting that "[s]ince November 1998, nineteen states have passed state marriage amendments . . . defining marriage as the union of a man and a woman" and "[v]oters in thirteen states ratified [those amendments] in the summer and fall of 2004 alone and by overwhelming margins").

Today, only Connecticut and Vermont, through civil union, and Massachusetts, through marriage, extend to committed same-sex couples the full rights and benefits offered to married heterosexual couples. See Conn. Gen. Stat. §§ 46b-38aa to -38pp; Vt. Stat. Ann. tit. 15, §§ 1201-1207; Goodridge v. Dep't of Pub. Health, [798 N.E.2d 941](#), 969 (Mass. 2003). A few jurisdictions, such as New Jersey, offer some but not all of those rights under domestic partnership schemes. [See footnote 22](#)

The high courts of Vermont and Massachusetts have found that the denial of the full benefits and protections of marriage to committed same-sex couples violated their respective state constitutions. [See footnote 23](#) In Baker v. State, the Vermont Supreme Court held that same-sex couples are entitled "to obtain the same benefits and protections afforded by Vermont law to married opposite-sex couples" under the Common Benefits Clause of the Vermont Constitution, "its counterpart [to] the Equal Protection Clause of the [Fourteenth Amendment](#)." [744 A.2d 864](#), 870, 886 (Vt. 1999). To remedy the constitutional violation, the Vermont Supreme Court referred the matter to the state legislature. Id. at 886. Afterwards, the Vermont Legislature enacted the nation's first civil union law. See Vt. Stat. Ann. tit. 15, §§ 1201-1207; see also Mark Strasser, Equal Protection at the Crossroads: On Baker, Common Benefits, and Facial Neutrality, 42 Ariz. L. Rev. 935, 936 n.8 (2000).

In Goodridge, supra, the Supreme Judicial Court of Massachusetts declared that Massachusetts, consistent with its own constitution, could not "deny the protections, benefits, and obligations conferred by civil marriage to two individuals of the same sex who wish to marry." [798 N.E. 2d](#) at 948. Finding that the State's ban on same-sex marriage did "not meet the rational basis test for either due process or equal protection" under the Massachusetts Constitution, the high court redefined civil marriage to allow two persons of the same sex to marry. Id. at 961, 969. Massachusetts is the only state in the nation to legally recognize same-sex marriage. [See footnote 24](#) In contrast to Vermont and Massachusetts, Connecticut did not act pursuant to a court decree when it passed a civil union statute.

Vermont, Massachusetts, and Connecticut represent a distinct minority view. Nevertheless, our current laws concerning same-sex couples are more in line with the legal constructs in those states than the majority of other states. In protecting the rights of citizens of this State, we have never slavishly followed the popular trends in other jurisdictions, particularly when the majority approach is incompatible with the unique interests, values, customs, and concerns of

our people. See New State Ice Co. v. Liebmann, [285 U.S. 262](#), 311, [52 S. Ct. 371](#), 386-87, [76 L. Ed. 747](#), 771 (1932) (Brandeis, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”). Equality of treatment is a dominant theme of our laws and a central guarantee of our State Constitution, and fitting for a State with so diverse a population. The New Jersey Constitution not only stands apart from other state constitutions, but also “may be a source of ‘individual liberties more expansive than those conferred by the Federal Constitution.’” State v. Novembrino, [105 N.J. 95](#), 144-45 (1987) (quoting Pruneyard Shopping Ctr. v. Robins, [447 U.S. 74](#), 81, [100 S. Ct. 2035](#), 2040, [64 L. Ed.2d 741](#), 752 (1980)). Indeed, we have not hesitated to find that our State Constitution provides our citizens with greater rights to privacy, free speech, and equal protection than those available under the United States Constitution. See, e.g., State v. McAllister, [184 N.J. 17](#), 26, 32-33 (2005) (concluding that New Jersey Constitution recognizes interest in privacy of bank records, unlike Federal Constitution); N.J. Coal. Against War in the Middle East v. J.M.B. Realty Corp., [138 N.J. 326](#), 332, 349, 374 (1994) (holding that free speech protection of New Jersey Constitution requires, subject to reasonable restrictions, privately-owned shopping centers to permit speech on political and societal issues on premises, unlike First Amendment of Federal Constitution), cert. denied, [516 U.S. 812](#), [116 S. Ct. 62](#), [133 L. Ed.2d 25](#) (1995); Right to Choose v. Byrne, [91 N.J. 287](#), 298, 310 (1982) (holding that restriction of Medicaid funding to those abortions that are “necessary to save the life of the mother” violates equal protection guarantee of New Jersey Constitution although same restriction does not violate United States Constitution).

Article I, Paragraph 1 protects not just the rights of the majority, but also the rights of the disfavored and the disadvantaged; they too are promised a fair opportunity “of pursuing and obtaining safety and happiness.” N.J. Const. art. I, ¶ 1. Ultimately, we have the responsibility of ensuring that every New Jersey citizen receives the full protection of our State Constitution. In light of plaintiffs’ strong interest in rights and benefits comparable to those of married couples, the State has failed to show a public need for disparate treatment. We conclude that denying to committed same-sex couples the financial and social benefits and privileges given to their married heterosexual counterparts bears no substantial relationship to a legitimate governmental purpose. We now hold that under the equal protection guarantee of Article I, Paragraph 1 of the New Jersey Constitution, committed same-sex couples must be afforded on equal terms the same rights and benefits enjoyed by married opposite-sex couples.

V.

The equal protection requirement of Article I, Paragraph 1 leaves the Legislature with two apparent options. The Legislature could simply amend the marriage statutes to include same-sex couples, or it could create a separate statutory structure, such as a civil union, as Connecticut and Vermont have done. See Conn. Gen. Stat. §§ 46b-38aa to -38pp; Vt. Stat. Ann. tit. 15, §§ 1201-1207.

Plaintiffs argue that even equal social and financial benefits would not make them whole

unless they are allowed to call their committed relationships by the name of marriage. They maintain that a parallel legal structure, called by a name other than marriage, which provides the social and financial benefits they have sought, would be a separate-but-equal classification that offends Article I, Paragraph 1. From plaintiffs' standpoint, the title of marriage is an intangible right, without which they are consigned to second-class citizenship. Plaintiffs seek not just legal standing, but also social acceptance, which in their view is the last step toward true equality. Conversely, the State asserts that it has a substantial interest in preserving the historically and almost universally accepted definition of marriage as the union of a man and a woman. For the State, if the age-old definition of marriage is to be discarded, such change must come from the crucible of the democratic process. The State submits that plaintiffs seek by judicial decree "a fundamental change in the meaning of marriage itself," when "the power to define marriage rests with the Legislature, the branch of government best equipped to express the judgment of the people on controversial social questions."

Raised here is the perplexing question -- "what's in a name?" -- and is a name itself of constitutional magnitude after the State is required to provide full statutory rights and benefits to same-sex couples? We are mindful that in the cultural clash over same-sex marriage, the word marriage itself -- independent of the rights and benefits of marriage -- has an evocative and important meaning to both parties. Under our equal protection jurisprudence, however, plaintiffs' claimed right to the name of marriage is surely not the same now that equal rights and benefits must be conferred on committed same-sex couples.

We do not know how the Legislature will proceed to remedy the equal protection disparities that currently exist in our statutory scheme. The Legislature is free to break from the historical traditions that have limited the definition of marriage to heterosexual couples or to frame a civil union style structure, as Vermont and Connecticut have done. Whatever path the Legislature takes, our starting point must be to presume the constitutionality of legislation. Caviglia, supra, 178 N.J. at 477 ("A legislative enactment is presumed to be constitutional and the burden is on those challenging the legislation to show that it lacks a rational basis."). We will give, as we must, deference to any legislative enactment unless it is unmistakably shown to run afoul of the Constitution. Hamilton Amusement Ctr. v. Verniero, 156 N.J. 254, 285 (1998) (stating that presumption of statute's validity "can be rebutted only upon a showing that the statute's repugnancy to the Constitution is clear beyond a reasonable doubt" (internal quotation marks omitted)), cert. denied, 527 U.S. 1021, 119 S. Ct. 2365, 144 L. Ed.2d 770 (1999). Because this State has no experience with a civil union construct that provides equal rights and benefits to same-sex couples, we will not speculate that identical schemes called by different names would create a distinction that would offend Article I, Paragraph 1. We will not presume that a difference in name alone is of constitutional magnitude.

"A legislature must have substantial latitude to establish classifications," and therefore determining "what is 'different' and what is 'the same'" ordinarily is a matter of legislative discretion. Plyler v. Doe, 457 U.S. 202, 216, 102 S. Ct. 2382, 2394, 72 L. Ed.2d 786, 798-99 (1982); see also Greenberg, supra, 99 N.J. at 577 ("Proper classification for equal protection purposes is not a precise science. . . . As long as the classifications do not discriminate arbitrarily between persons who are similarly situated, the matter is one of legislative

prerogative.”). [See footnote 25](#) If the Legislature creates a separate statutory structure for same-sex couples by a name other than marriage, it probably will state its purpose and reasons for enacting such legislation. To be clear, it is not our role to suggest whether the Legislature should either amend the marriage statutes to include same-sex couples or enact a civil union scheme. Our role here is limited to constitutional adjudication, and therefore we must steer clear of the swift and treacherous currents of social policy when we have no constitutional compass with which to navigate.

Despite the extraordinary remedy crafted in this opinion extending equal rights to same-sex couples, our dissenting colleagues are willing to part ways from traditional principles of judicial restraint to reach a constitutional issue that is not before us. Before the Legislature has been given the opportunity to act, the dissenters are willing to substitute their judicial definition of marriage for the statutory definition, for the definition that has reigned for centuries, for the definition that is accepted in forty-nine states and in the vast majority of countries in the world. Although we do not know whether the Legislature will choose the option of a civil union statute, the dissenters presume in advance that our legislators cannot give any reason to justify retaining the definition of marriage solely for opposite sex couples. A proper respect for a coordinate branch of government counsels that we defer until it has spoken. Unlike our colleagues who are prepared immediately to overthrow the long established definition of marriage, we believe that our democratically elected representatives should be given a chance to address the issue under the constitutional mandate set forth in this opinion.

We cannot escape the reality that the shared societal meaning of marriage -- passed down through the common law into our statutory law -- has always been the union of a man and a woman. To alter that meaning would render a profound change in the public consciousness of a social institution of ancient origin. When such change is not compelled by a constitutional imperative, it must come about through civil dialogue and reasoned discourse, and the considered judgment of the people in whom we place ultimate trust in our republican form of government. Whether an issue with such far-reaching social implications as how to define marriage falls within the judicial or the democratic realm, to many, is debatable. Some may think that this Court should settle the matter, insulating it from public discussion and the political process. Nevertheless, a court must discern not only the limits of its own authority, but also when to exercise forbearance, recognizing that the legitimacy of its decisions rests on reason, not power. We will not short-circuit the democratic process from running its course. New language is developing to describe new social and familial relationships, and in time will find its place in our common vocabulary. Through a better understanding of those new relationships and acceptance forged in the democratic process, rather than by judicial fiat, the proper labels will take hold. However the Legislature may act, same-sex couples will be free to call their relationships by the name they choose and to sanctify their relationships in religious ceremonies in houses of worship. [See *Bacharach*, supra, 344 N.J. Super. at 135](#) (noting that state laws and policies are not offended if same-sex couples choose to “exchange rings, proclaim devotion in a public or private ceremony, [or] call their relationship a marriage”); [Lynn D. Wardle, *Is Marriage Obsolete?*, 10 *Mich. J. Gender & L.* 189, 191-92](#) (“What is deemed a ‘marriage’ for purposes of law may not be exactly the same as what is deemed marriage for other purposes and in other settings [such as] religious doctrines . . .”).

The institution of marriage reflects society's changing social mores and values. In the last two centuries, that institution has undergone a great transformation, much of it through legislative action. The Legislature broke the grip of the dead hand of the past and repealed the common law decisions that denied a married woman a legal identity separate from that of her husband. [See footnote 26](#) Through the passage of statutory laws, the Legislature gave women the freedom to own property, to contract, to incur debt, and to sue. [See footnote 27](#) The Legislature has played a major role, along with the courts, in ushering marriage into the modern era. See, e. g., Reva B. Siegal, Symposium, *The Modernization of Marital Status Law: Adjudicating Wives' Rights to Earnings 1860-1930*, 82 *Geo. L.J.* 2127, 2148-49 (1994) (discussing courts' role in reformulation of married women's rights).

Our decision today significantly advances the civil rights of gays and lesbians. We have decided that our State Constitution guarantees that every statutory right and benefit conferred to heterosexual couples through civil marriage must be made available to committed same-sex couples. Now the Legislature must determine whether to alter the long accepted definition of marriage. The great engine for social change in this country has always been the democratic process. Although courts can ensure equal treatment, they cannot guarantee social acceptance, which must come through the evolving ethos of a maturing society. Plaintiffs' quest does not end here. Their next appeal must be to their fellow citizens whose voices are heard through their popularly elected representatives.

VI.

To comply with the equal protection guarantee of Article I, Paragraph 1 of the New Jersey Constitution, the State must provide to committed same-sex couples, on equal terms, the full rights and benefits enjoyed by heterosexual married couples. The State can fulfill that constitutional requirement in one of two ways. It can either amend the marriage statutes to include same-sex couples or enact a parallel statutory structure by another name, in which same-sex couples would not only enjoy the rights and benefits, but also bear the burdens and obligations of civil marriage. If the State proceeds with a parallel scheme, it cannot make entry into a same-sex civil union any more difficult than it is for heterosexual couples to enter the state of marriage. [See footnote 28](#) It may, however, regulate that scheme similarly to marriage and, for instance, restrict civil unions based on age and consanguinity and prohibit polygamous relationships.

The constitutional relief that we give to plaintiffs cannot be effectuated immediately or by this Court alone. The implementation of this constitutional mandate will require the cooperation of the Legislature. To bring the State into compliance with Article I, Paragraph 1 so that plaintiffs can exercise their full constitutional rights, the Legislature must either amend the marriage statutes or enact an appropriate statutory structure within 180 days of the date of this decision.

For the reasons explained, we affirm in part and modify in part the judgment of the Appellate Division.

JUSTICES LaVECCHIA, WALLACE, and RIVERA-SOTO join in JUSTICE ALBIN's opinion. CHIEF JUSTICE PORITZ filed a separate opinion concurring in part and dissenting in part in which JUSTICES LONG and ZAZZALI join.

SUPREME COURT OF NEW JERSEY

A- 68 September Term 2005

MARK LEWIS and DENNIS WINSLOW; SAUNDRA HEATH and CLARITA ALICIA TOBY; CRAIG HUTCHISON and CHRIS LODEWYKS; MAUREEN KILIAN and CINDY MENEGHIN; SARAH and SUYIN LAEL; MARILYN MANEELY and DIANE MARINI; and KAREN and MARCYE NICHOLSON-MCFADDEN,

Plaintiffs-Appellants,

v.

GWENDOLYN L. HARRIS, in her official capacity as Commissioner of the New Jersey Department of Human Services; CLIFTON R. LACY, in his official capacity as the Commissioner of the New Jersey Department of Health and Senior Services; and JOSEPH KOMOSINSKI, in his official capacity as Acting State Registrar of Vital Statistics of the New Jersey State Department of Health and Senior Services,

Defendants-Respondents.

CHIEF JUSTICE PORITZ, concurring and dissenting.

I concur with the determination of the majority that "denying the 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. [See footnote 29](#) Ante at ___ (slip op. at 6). I can find no principled basis, however, on which to distinguish those rights and benefits from the right to the title of marriage, and therefore dissent from the majority's opinion insofar as it declines to recognize that right among all of the other rights and benefits that will be available to same-sex couples in the future.

I dissent also from the majority's conclusion that there is no fundamental due process right to same-sex marriage "encompassed within the concept of liberty guaranteed by Article I, Paragraph 1." Ante at ___ (slip op. at 5-6). The majority acknowledges, as it must, that there is a universally accepted fundamental right to marriage "deeply rooted" in the "traditions, history, and conscience of the people." Ante at ___ (slip op. at 6). Yet, by asking whether there is a right to same-sex marriage, the Court avoids the more difficult questions of personal

dignity and autonomy raised by this case. Under the majority opinion, it appears that persons who exercise their individual liberty interest to choose same-sex partners can be denied the fundamental right to participate in a state-sanctioned civil marriage. I would hold that plaintiffs' due process rights are violated when the State so burdens their liberty interests.

I.

The majority has provided the procedural and factual context for the issues the Court decides today. I will not repeat that information except as it is directly relevant to the analytical framework that supports this dissent. In that vein, then, some initial observations are appropriate. Plaintiffs have not sought relief in the form provided by the Court -- they have asked, simply, to be married. To be sure, they have claimed the specific rights and benefits that are available to all married couples, and in support of their claim, they have explained in some detail how the withholding of those benefits has measurably affected them and their children. As the majority points out, same-sex couples have been forced to cross-adopt their partners' children, have paid higher health insurance premiums than those paid by heterosexual married couples, and have been denied family leave-time even though, like heterosexual couples, they have children who need care. Ante at ___ (slip op. at 11). Further, those burdens represent only a few of the many imposed on same-sex couples because of their status, because they are unable to be civilly married. The majority addresses those specific concerns in its opinion.

But there is another dimension to the relief plaintiffs' seek. In their presentation to the Court, they speak of the deep and symbolic significance to them of the institution of marriage. They ask to participate, not simply in the tangible benefits that civil marriage provides -- although certainly those benefits are of enormous importance -- but in the intangible benefits that flow from being civilly married. Chief Justice Marshall, writing for the Massachusetts Supreme Judicial Court, has conveyed some sense of what that means:

Marriage also bestows enormous private and social advantages on those who choose to marry. Civil marriage is at once a deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family. "It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects." Griswold v. Connecticut, [381 U.S. 479](#), 486, [85 S. Ct. 1678](#), [14 L. Ed.2d 510](#) (1965). Because it fulfills yearnings for security, safe haven, and connection that express our common humanity, civil marriage is an esteemed institution, and the decision whether and whom to marry is among life's momentous acts of self-definition.

[Goodridge v. Dep't. of Pub. Health, [798 N.E.2d 941](#), 954-55 (Mass. 2003).]

Plaintiffs are no less eloquent. They have presented their sense of the meaning of marriage in affidavits submitted to the Court:

In our relationship, Sandra and I have the same level of love and commitment as our married friends. But being able to proudly say that we are married is important to us. Marriage is the ultimate expression of love, commitment, and honor that you can give to another human being.

* * * *

Alicia and I live our life together as if it were a marriage. I am proud that Alicia and I have the courage and the values to take on the responsibility to love and cherish and provide for each other. When I am asked about my relationship, I want my words to match my life, so I want to say I am married and know that my relationship with Alicia is immediately understood, and after that nothing more needs be explained.

* * * *

I've seen that there is a significant respect that comes with the declaration "[w]e're married." Society endows the institution of marriage with not only a host of rights and responsibilities, but with a significant respect for the relationship of the married couple. When you say that you are married, others know immediately that you have taken steps to create something special. . . . The word "married" gives you automatic membership in a vast club of people whose values are clarified by their choice of marriage. With a marriage, everyone can instantly relate to you and your relationship. They don't have to wonder what kind of relationship it is or how to refer to it or how much to respect it.

* * * *

My parents long to talk about their three married children, all with spouses, because they are proud and happy that we are all in committed relationships. They want to be able to use the common language of marriage to describe each of their children's lives. Instead they have to use a different language, which discounts and cheapens their family as well as mine[, because I have a same-sex partner and cannot be married].

By those individual and personal statements, plaintiffs express a deep yearning for inclusion, for participation, for the right to marry in the deepest sense of that word. When we say that the Legislature cannot deny the tangible benefits of marriage to same-sex couples, but then suggest that "a separate statutory scheme, which uses a title other than marriage," is presumptively constitutional, ante at ___ (slip op. at 7), we demean plaintiffs' claim. What we "name" things matters, language matters.

In her book Making all the Difference: Inclusion, Exclusion, and American Law, Martha Minnow discusses "labels" and the way they are used:

Human beings use labels to describe and sort their perceptions of the world. The particular labels often chosen in American culture can carry social and moral consequences while burying the choices and responsibility for those consequences.

. . . .

Language and labels play a special role in the perpetuation of prejudice about differences.

[Martha Minnow, Making all the Difference: Inclusion, Exclusion, and American Law 4, 6 (1990).]

We must not underestimate the power of language. Labels set people apart as surely as physical separation on a bus or in school facilities. Labels are used to perpetuate prejudice about differences that, in this case, are embedded in the law. By excluding same-sex couples from civil marriage, the State declares that it is legitimate to differentiate between their commitments and the commitments of heterosexual couples. Ultimately, the message is that what same-sex couples have is not as important or as significant as “real” marriage, that such lesser relationships cannot have the name of marriage. [See footnote 30](#)

II.

A.

Beginning with Robinson v. Cahill, this Court has repeatedly rejected a “mechanical” framework for due process and equal protection analyses under Article I, Paragraph 1 of our State Constitution. [62 N.J. 473](#), 491-92 (1973). *See* Right to Choose v. Byrne, [91 N.J. 287](#), 308-09 (1982); Greenberg v. Kimmelman [99 N.J. 552](#), 567-68 (1985); Planned Parenthood v. Farmer, [165 N.J. 609](#), 629-30 (2000); Sojourner A. v. N.J. Dept. of Human Serv., [177 N.J. 318](#), 332-33 (2003). Chief Justice Weintraub described the process by which the courts should conduct an Article I review:

[A] court must weigh the nature of the restraint or the denial against the apparent public justification, and decide whether the State action is arbitrary. In that process, if the circumstances sensibly so require, the court may call upon the State to demonstrate the existence of a sufficient public need for the restraint or the denial.

[Robinson, *supra*, [62 N.J.](#) at 492 (citation omitted).]

Later, the Court “reaffirmed that approach [because] it provided a . . . flexible analytical framework for the evaluation of equal protection and due process claims.” Sojourner A., *supra*, [177 N.J.](#) at 333. There, we restated the nature of the weighing process:

In keeping with Chief Justice Weintraub's direction, we "consider the nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction." [In so doing] we are able to examine each claim on a continuum that reflects the nature of the burdened right and the importance of the governmental restriction.

[*Ibid.* (quoting *Planned Parenthood*, *supra*, 165 N.J. at 630).]

The majority begins its discussion, as it should, with the first prong of the test, the nature of the affected right. *Ante* at ___ (slip op. at 37). The inquiry is grounded in substantive due process concerns that include whether the affected right is so basic to the liberty interests found in Article I, Paragraph 1, that it is "fundamental." [See footnote 31](#). When we ask the question whether there is a fundamental right to same-sex marriage "rooted in the traditions, and collective conscience of our people," *ante* at ___ (slip op. at 22), we suggest the answer, and it is "no". [See footnote 32](#). That is because the liberty interest has been framed "so narrowly as to make inevitable the conclusion that the claimed right could not be fundamental because historically it has been denied to those who now seek to exercise it." *Hernandez v. Robles*, Nos. 86-89, 2 [006 N.Y. LEXIS 1836](#), at *56-57, 2 [006 N.Y. slip op. 5239](#), at *14 (Kaye, C.J., dissenting from majority decision upholding law limiting marriage to heterosexual couples). When we ask, however, whether there is a fundamental right to marriage rooted in the traditions, history and conscience of our people, there is universal agreement that the answer is "yes." *See Loving v. Virginia*, [388 U.S. 1](#), [87 S. Ct. 1817](#), [18 L. Ed.2d 1010](#) (1967); *Turner v. Safley*; [482 U.S. 78](#), [107 S. Ct. 2254](#), [96 L. Ed.2d 64](#) (1987); *Zablocki v. Redhail*, [434 U.S. 374](#), [98 S. Ct. 673](#), [54 L. Ed.2d 618](#) (1977); *see also J.B. v. M.B.*, [170 N.J. 9](#), 23-24 (2001) (noting that the right to marry is a fundamental right protected by both the federal and state constitutions); *In re Baby M.*, [109 N.J. 396](#), 447 (1988) (same); *Greenberg v. Kimmelman*, [99 N.J. 552](#), 571 (1985) (same). What same-sex couples seek is admission to that most valuable institution, what they seek is the liberty to choose, as a matter of personal autonomy, to commit to another person, a same-sex person, in a civil marriage. Of course there is no history or tradition including same-sex couples; if there were, there would have been no need to bring this case to the courts. As Judge Collester points out in his dissent below, "[t]he argument is circular: plaintiffs cannot marry because by definition they cannot marry." *Lewis v. Harris*, [378 N.J. Super. 168](#), 204 (App. Div. 2005) (Collester, J., dissenting); *see Hernandez v. Robles*, Nos. 86-89, 2 [006 N.Y. LEXIS 1836](#) at *63-64, 2 [006 N.Y. slip op. 5239](#), at *23-24 (Kaye, C.J., dissenting) ("It is no answer that same-sex couples can be excluded from marriage because 'marriage,' by definition, does not include them. In the end, 'an argument that marriage is heterosexual because it 'just is' amounts to

circular reasoning.” (quoting Halpern v. Attorney Gen. of Can., [65 O.R.3d 161](#), 181 (2003)).

I also agree with Judge Collester that Loving should have put to rest the notion that fundamental rights can be found only in the historical traditions and conscience of the people. See id. at 205. Had the United States Supreme Court followed the traditions of the people of Virginia, the Court would have sustained the law that barred marriage between members of racial minorities and caucasians. The Court nevertheless found that the Lovings, an interracial couple, could not be deprived of “the freedom to marry [that] has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.” Loving, supra, 388 U.S. at 12, 87 S. Ct. at 1824, 18 L. Ed. at 1018. Most telling, the Court did not frame the issue as a right to interracial marriage but, simply, as a right to marry sought by individuals who had traditionally been denied that right. Loving teaches that the fundamental right to marry no more can be limited to same-race couples than it can be limited to those who choose a committed relationship with persons of the opposite sex. By imposing that limitation on same-sex couples, the majority denies them access to one of our most cherished institutions simply because they are homosexuals.

Lawrence v. Texas, [539 U.S. 558](#), [123 S. Ct. 2472](#), [156 L. Ed. 2d 508](#) (2003), in overruling Bowers v. Hardwick, [478 U.S. 186](#), [106 S. Ct. 2841](#), [92 L. Ed.2d 140](#) (1986), made a different but equally powerful point. In Bowers, the Court had sustained a Georgia statute that made sodomy a crime. 478 U.S. at 189, 106 S. Ct. at 2843, 93 L. Ed. 2d at 145. When it rejected the Bowers holding seventeen years later, the Court stated bluntly that “Bowers was not correct when it was decided, and it is not correct today.” Lawrence, supra, 539 U.S. at 578, 123 S. Ct. at 2484, 156 L. Ed. 2d at 525. Justice Kennedy explained further that “times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.” Id. at 579, 123 S. Ct. at 2484, 156 L. Ed. 2d at 526.

We are told that when the Justices who decided Brown v. Board of Education, [347 U.S. 483](#), [74 S. Ct. 686](#), [98 L. Ed. 873](#) (1954), finally rejected legal segregation in public schools, they were deeply conflicted over the issue. Michael J. Klarman, Brown and Lawrence (and Goodridge), 104 Mich. L. Rev. 431, 433 (2005). “The sources of constitutional interpretation to which they ordinarily looked for guidance -- text, original understanding, precedent, and custom -- indicated that school segregation was permissible. By contrast, most of the Justices privately condemned segregation, which Justice Hugo Black called ‘Hitler’s creed.’ Their quandary was how to reconcile their legal and moral views.” Ibid. (footnote omitted). Today, it is difficult to believe that “Brown was a hard case for the Justices.” Ibid.

Without analysis, our Court turns to history and tradition and finds that marriage has never been available to same-sex couples. That may be so -- but the Court has not asked whether the limitation in our marriage laws, “once thought necessary and proper in fact serve[s] only to oppress.” I would hold that plaintiffs have a liberty interest in civil marriage that cannot be withheld by the State. Framed differently, the right that is burdened under the first prong of the Court’s equal protection/due process test is a right of constitutional dimension.

B.

Although the majority rejects the argument I find compelling, it does grant a form of relief to plaintiffs on equal protection grounds, finding a source for plaintiffs' interest outside of the Constitution. Ante at ____ (slip op. at 43, 58-59). Having previously separated the right to the tangible "benefits and privileges" of marriage from the right to the "name of marriage," and having dismissed the right to the name of marriage for same-sex couples because it is not part of our history or traditions, the majority finds the right to the tangible benefits of marriage in enactments and decisions of the legislative, executive, and judicial branches protecting gays and lesbians from discrimination, allowing adoption by same-sex partners, and conferring some of the benefits of marriage on domestic partners. Ante at ____ (slip op. at 28-29, 37-43, 49).

The enactments and decisions relied on by the majority as a source of same-sex couples' interest in equality of treatment are belied by the very law at issue in this case that confines the right to marry to heterosexual couples. Moreover, as the majority painstakingly demonstrates, the Domestic Partnership Act, [N.J.S.A. 26:8A-1](#) to -13, does not provide many of the tangible benefits that accrue automatically when heterosexual couples marry. Ante at ____ (slip op. at 43-48). New Jersey's statutes reflect both abhorrence of sexual orientation discrimination and a desire to prevent same-sex couples from having access to one of society's most cherished institutions, the institution of marriage. Plaintiffs' interests arise out of constitutional principles that are integral to the liberty of a free people and not out of the legislative provisions described by the majority. In any case, it is clear that civil marriage and all of the benefits it represents is absolutely denied same-sex couples, and, therefore, that same-sex couples' fundamental rights are not simply burdened but are denied altogether (the second prong of the Court's test).

Finally, the majority turns to the third prong -- whether there is a public need to deprive same-sex couples of the tangible benefits and privileges available to heterosexual couples. Ante at ____ (slip op. at 48). Because the State has argued only that historically marriage has been limited to opposite-sex couples, and because the majority has accepted the State's position and declined to find that same-sex couples have a liberty interest in the choice to marry, the majority is able to conclude that no interest has been advanced by the State to support denying the rights and benefits of marriage to same-sex couples. Ante at ____ (slip op. at 48-49, 51). Without any state interest to justify the denial of tangible benefits, the Court finds that the Legislature must provide those benefits to same-sex couples. Ante at ____ (slip op. at 48-51). I certainly agree with that conclusion but would take a different route to get there.

Although the State has not made the argument, I note that the Appellate Division, and various amici curiae, have claimed the "promotion of procreation and creating the optimal environment for raising children as justifications for the limitation of marriage to members of the opposite sex." Lewis, supra, 378 N.J. Super. at 185 n.2. That claim retains little viability today. Recent social science studies inform us that "same-sex couples increasingly form the core of families in which children are conceived, born, and raised." Gregory N. Herek, Legal Recognition of Same-Sex Relationships in the United States: A Social Science Perspective, [61](#)

[Am. Psychol. 607](#), 611 (2006). It is not surprising, given that data, that the State does not advance a “promotion of procreation” position to support limiting marriage to heterosexuals. Further, “[e]mpirical studies comparing children raised by sexual minority parents with those raised by otherwise comparable heterosexual parents have not found reliable disparities in mental health or social adjustment,” *id.* at 613, suggesting that the “optimal environment” position is equally weak. Without such arguments, the State is left with the “but that is the way it has always been” circular reasoning discussed *supra* at ____ (slip op. at 11-12).

C.

Perhaps the political branches will right the wrong presented in this case by amending the marriage statutes to recognize fully the fundamental right of same-sex couples to marry. That possibility does not relieve this Court of its responsibility to decide constitutional questions, no matter how difficult. Deference to the Legislature is a cardinal principle of our law except in those cases requiring the Court to claim for the people the values found in our Constitution. Alexander Hamilton, in his essay, Judges as Guardians of the Constitution, The Federalist No. 78, (Benjamin Fletcher Wright ed., 1961) spoke of the role of the courts and of judicial independence. He argued that “the courts of justice are . . . the bulwarks of a limited Constitution against legislative encroachments” because he believed that the judicial branch was the only branch capable of opposing “oppressions [by the elected branches] of the minor party in the community.” *Id.* at 494. Our role is to stand as a bulwark of a constitution that limits the power of government to oppress minorities.

The question of access to civil marriage by same-sex couples “is not a matter of social policy but of constitutional interpretation.” Opinions of the Justices to the Senate, [802 N.E.2d 565](#), 569 (Mass. 2004). It is a question for this Court to decide.

III.

In his essay Three Questions for America, Professor Ronald Dworkin talks about the alternative of recognizing “a special ‘civil union’ status” that is not “marriage but nevertheless provides many of the legal and material benefits of marriage.” N.Y. Rev. Books, Sept. 21, 2006 at 24, 30. He explains:

Such a step reduces the discrimination, but falls far short of eliminating it. The institution of marriage is unique: it is a distinct mode of association and commitment with long traditions of historical, social, and personal meaning. It means something slightly different to each couple, no doubt. For some it is primarily a union that sanctifies sex, for others a social status, for still others a confirmation of the most profound possible commitment. But each of these meanings depends on associations that have been attached to the institution by centuries of experience. We can no more now create an alternate mode of commitment carrying a parallel intensity of meaning than we can now create a substitute for poetry or for love. The status of marriage is therefore a social resource of irreplaceable value to those to whom it is offered: it enables two people together to create value in their lives that they could not create if that institution had never existed. We know that people of the same sex often love one another with the same

passion as people of different sexes do and that they want as much as heterosexuals to have the benefits and experience of the married state. If we allow a heterosexual couple access to that wonderful resource but deny it to a homosexual couple, we make it possible for one pair but not the other to realize what they both believe to be an important value in their lives.

[Ibid.]

On this day, the majority parses plaintiffs' rights to hold that plaintiffs must have access to the tangible benefits of state-sanctioned heterosexual marriage. I would extend the Court's mandate to require that same-sex couples have access to the "status" of marriage and all that the status of marriage entails.

Justices Long and Zazzali join in this opinion.

SUPREME COURT OF NEW JERSEY

NO. A-68 SEPTEMBER TERM 2005
ON APPEAL FROM Appellate Division, Superior Court

MARK LEWIS and DENNIS
WINSLOW; et al.,

Plaintiffs-Appellants,

v.

GWENDOLYN L. HARRIS, in her
official capacity as
Commissioner of the New
Jersey Department of Human
Services; et al.,

Defendants-Respondents.

DECIDED October 25, 2006
Chief Justice Poritz PRESIDING
OPINION BY Justice Albin
CONCURRING/DISSENTING OPINION BY Chief Justice Poritz
DISSENTING OPINION BY

CHECKLIST	AFFIRM IN PART/ MODIFY IN PART	CONCUR IN PART/DISSENT IN PART	
CHIEF JUSTICE PORITZ		X	
JUSTICE LONG		X	
JUSTICE LaVECCHIA	X		
JUSTICE ZAZZALI		X	
JUSTICE ALBIN	X		
JUSTICE WALLACE	X		
JUSTICE RIVERA-SOTO	X		
TOTALS	4	3	

Footnote: 1 _____ The
*following sketches of
plaintiffs' lives come
from affidavits
submitted to the trial
court in 2003 and from
factual assertions in
the complaint. We
assume that their
familial relationships
remain unchanged.*

Footnote: 2 _____ As a
*result of Marilyn
passing, Diane, who
remains a party to this
action, seeks only
declaratory relief.*

Footnote: 3 _____ While
*plaintiffs' appeal was
pending before the
Appellate Division, the*

Legislature enacted the Domestic Partnership Act, L. _____ 2003, c. _____ 246, affording certain rights and benefits to same-sex couples who enter into domestic partnerships. With the passage of the Act and subsequent amendments, some of the inequities plaintiffs listed in their complaint and affidavits have been remedied. See _____ discussion infra _____ Part IV.A-B. For example, under the Domestic Partnership Act, same-sex domestic partners now have certain hospital visitation and medical decision-making rights.

N.J.S.A. 26:8A-2(c).

Footnote: 4 The initial complaint in this case was filed on June 26, 2002. That complaint was replaced by the " amended complaint before us. All references in this opinion are to the amended complaint.

Footnote: 5 Each defendant was sued in his or her official capacity and therefore stands as an alter ego of the State. For the sake of simplicity, we

refer to defendants as
" the State.

"

Footnote: 6

It should

be noted that the
" Attorney General
disclaim[ed] reliance
upon promotion of
procreation and creating
the optimal environment
for raising children as
justifications for the
limitation of marriage
to members of the
opposite sex.
185 n.2.

"

Id. at

Footnote: 7

Unlike the

Appellate Division, we
will not rely on policy
justifications disavowed
by the State, even
though vigorously
advanced by amici
curiae.

Footnote: 8

Plaintiffs

concede that the State
can insist on the
binary nature of
marriage, limiting
marriage to one per
person at any given
time. As Judge Skillman
pointed out, polygamists
undoubtedly would insist
that the essential
nature of marriage is
the coupling of people
of the opposite sex
while defending multiple
marriages on religious
principles.

Lewis,

supra _____, 378
at 187-88.

N.J. Super. _____

Footnote: 9

The text of

Article I, Paragraph 1
of the 1947 New Jersey
Constitution largely
parallels the language
of the 1844
Constitution.

Compare _____ *N.* _____

J. Const. _____ art. I, ¶ 1,

with _____ *N.J. Const. of* _____
1844 _____ *art. I, ¶ 1.*

Footnote: 10

The

*dissent posits that we
have defined the right
too narrowly and that
the fundamental right
to marry involves
nothing less than
liberty to choose, as a
matter of personal
autonomy.*

" the

" *Post* _____ at

*(slip op. at 11). That
expansively stated
formulation, however,
would eviscerate any
logic behind the
State ' s authority to
forbid incestuous and
polygamous marriages.
For example, under the
dissent ' s approach, the
State would have no
legitimate interest in
preventing a sister and
brother or father and
daughter (assuming child
bearing is not
involved) from
exercising their*

" personal autonomy
 " liberty to choose
 marry.

" and
 " to

Footnote: 11

Alaska

Const. art. I, § 25;

Ark. Const. amend. 83,

§ 1; Ga. Const. art.

I, § IV, ¶ 1;

Haw.

Const. art. I, § 23;

Kan. Const. art. XV, §

16; Ky. Const. §

233a; La. Const. art.

XII, § 15;

Mich. Const.

art. I, § 25;

Miss.

Const. art. 14, §

263A; Mo. Const. art.

I, § 33;

Mont. Const.

art. XIII, § 7;

Neb.

Const. art. I, § 29;

Nev. Const. art. I, §

21; N.D. Const. art.

XI, § 28;

Ohio Const.

art. XV, § 11;

Okla.

Const. art. II, § 35;

Or. Const. art. XV, §

5a; Tex. Const. art.

I, § 32;

Utah Const.

art. I, § 29;

Ala.

Code § 30-1-19;

Ariz.

Rev. Stat. § 25-101;

Cal. Fam. Code §

308.5;

Colo. Rev.

Stat. § 14-2-104;

Conn. Gen. Stat. § 45a-

727a;

Del. Code Ann.

tit. 13, § 101;

Fla.

Stat. § 741.212;

Idaho Code Ann. § 32-

201;

750 Ill. Comp.

Stat. 5 /201, 5/212;

Ind. Code § 31-11-1-

1; Iowa Code § 595.2;

Me. Rev. Stat. Ann.
tit. 19-A, §§ 650,
701; Md. Code Ann.,
Fam. Law § 2-201;
Minn. Stat. §§
517.01, 517.03; N.H.
Rev. Stat. Ann. §§
457:1, 457:2; N.J.S.
A. 37:1-1, -3; N.M.
Stat. § 40-1-18; N.Y.
Dom. Rel. Law §§ 12,
50; N.C. Gen. Stat. §§
51-1, 51-1.2; 23 Pa.
Cons. Stat. §§ 1102,
1704; R.I. Gen. Laws
§§ 15-1-1, 15-1-2,
15-2-1; S.C. Code
Ann. § 20-1-15; S.D.
Codified Laws § 25-1-
1; Tenn. Code Ann. §
36-3-113; Vt. Stat.
Ann. tit. 15, § 8;
Va. Code Ann. §§ 20-
45.2, 20-45.3; Wash.
Rev. Code § 26.04.020
(1)(c); W. Va. Code §
48-2-104(c); Wis.
Stat. §§ 765.001(2),
765.01; Wyo. Stat.
Ann. § 20-1-101.

Footnote: 12 See Dean
v. District of Columbia,
653 A.2d 307, 331 (D.
C. 1995); Standhardt
v. Superior Court of
Ariz., 77 P.3d 451,
459-60 (Ariz. Ct.
App. 2003); Baehr v.
Lewin, 852 P.2d 44,
57 (Haw. 1993);
Morrison v. Sadler,

821 N.E.2d 15, 34

(Ind. Ct. App. 2005);

Baker, *supra*, 191 N.W.

2 d at 186; Hernandez

v. Robles, Nos. 86-89,

2 006 N.Y. LEXIS 1836,

at *14-15 (N.Y. July

6, 2006) (plurality

opinion);

Andersen v.

State, 2

006 Wash.

LEXIS 598, at *38-43,

*68 (Wash. July 26,

2006) (plurality

opinion);

see also

Goodridge v. Dep

' t of

Pub. Health,

798 N.

E.2d 941, 961 (Mass.

2003) (stating that it was not necessary to reach fundamental right issue in light of finding that no rational basis existed for denying same-sex couples right to marry under state constitution).

Footnote: 13

Our state

equal protection analysis differs from the more rigid, three-tiered federal equal protection methodology.

When a statute is challenged under the

Fourteenth Amendment

' s

Equal Protection

Clause, one of three

tiers of review applies

-- strict scrutiny,

intermediate scrutiny,

or rational basis --
depending on whether a
fundamental right,
protected class, or
some other protected
interest is in
question.

Jeter, 486 U.S. 456,
461, 108 S. Ct.,
1910, 1914, 100 L.
Ed.2d 465, 471

(1988). All
classifications must at
a minimum survive
rational basis review,
the lowest tier.

Ibid.

Footnote: 14 Unlike New

Jersey, a number of
states prohibit
adoption by same-sex
couples.

See Kari E.

Hong, Parens
Patriarchy: Adoption,
Eugenics, and Same-Sex

Couples, 40 Cal. W. L.
Rev. 1, 2-3 (2003)

(detailing states that
have enacted measures
to restrict adoption by
same-sex couples).

Footnote: 15 At the

time of New Jersey
amendment, only four
other states,
Wisconsin,
Massachusetts,
Connecticut, and
Hawaii, had adopted
similar anti-
discrimination
provisions.

' s

See L.

1981, c. 112 (codified at Wis. Stat. §§ 111.31 to 111.39 (1982)); St. 1989, c. 516 (codified at Mass. Gen. Laws ch. 151B, §§ 1 to 10 (1989)); Public Act No. 91-58 (codified at Conn. Gen. Stat. §§ 46a-81a to -81r (1991)); L. 1991, c. 2 (codified at Rev. Stat. §§ 378-1 to - 6 (1991)); L. 1991, c. 519 (codified at N.J.S.A. 10:5-1 to -42 (1992)).

Footnote: 16

" Affectional or sexual orientation to mean heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, having a history thereof or being perceived, presumed or identified by others as having such an orientation. " is defined " male or female " N.J.S. A. 10:5-5(hh).

Footnote: 17

The rights and benefits provided by the Domestic Partnership Act extend to two classes of people -- persons who are of the same sex and therefore unable to enter into a

marriage with each other
that is recognized by
New Jersey law
persons
62 years of age or
older and not of the
same sex.
26:8A-4(b)(5).

” and
” who are each
” N.J.S.A.

Footnote: 18 Every

statutory provision
applicable to opposite-
sex couples might not
be symmetrically
applicable to same-sex
couples. The presumption
of parentage would apply
differently for same-sex
partners inasmuch as
both partners could not
be the biological
parents of the child.
It appears that the
presumption in such
circumstances would be
that the non-biological
partner consented to
the other partner
either conceiving or
giving birth to a
child.

Footnote: 19 But see

In re Parentage of
Child of Robinson

383

N.J. Super. 165, 176

(Ch. Div. 2005)
(declaring that same-
sex partner was
entitled to statutory
presumption of
parenthood afforded to
husbands).

Footnote: 20

To obtain

custody or visitation rights, the non-biological parent must petition the courts to be recognized as a psychological parent.

See _____ V.C. _____, _____ *supra* _____, 163 N. _____ J. _____ at 206, 230

(declaring former lesbian partner of biological mother of twins _____ " psychological parent, _____ " and awarding regular visitation).

Footnote: 21

A number

of states declare that they will not recognize domestic relationships other than the union of a man and a woman, and specifically prohibit any marriage, civil union, domestic partnership, or other state sanctioned arrangement between persons of the same sex.

See, e.g. _____, _____ Ga. _____ Const. _____ art. I, § IV, ¶ 1

(b); _____ Kan. Const. _____ art. XV, § 16(b); _____ Ky. _____

Const. _____ § 233a; _____ La. _____ Const. _____ art. XII, § 15;

Mich. Const. _____ art. I, § 25; _____ Neb. Const. _____ art.

I, § 29; _____ N.D. Const. _____ art. XI, § 28; _____ Ohio _____

Const. _____ art. XV, § 11; _____ Utah Const. _____ art. I, §

29; _____ Alaska Stat. _____ §

25.05.013; Okla.
 Stat. tit. 51, § 255
 (A)(2); Tex. Fam. Code
 Ann. § 6.204(b); Va.
 Code Ann. § 20-45.3.

Footnote: 22 See Cal.
Fam. Code §§ 297-
299.6; Haw. Rev.
Stat. §§ 572C-1 to -
7; Me. Rev. Stat. Ann.
tit. 22, § 2710; N.J.
S.A. 26:8A-1 to -13;
D.C. Code §§ 32-701 to
-710.

Footnote: 23 The Hawaii

Supreme Court was the first state high court to rule that sexual orientation discrimination possibly violated the equal protection rights of same-sex couples under a state constitution.

See Encyclopedia of
Everyday Law, Gay
Couples, http://law.

enotes.com/everyday-law-encyclopedia/gay-couples
 (last visited Oct. 10, 2006). In

supra, Baehr,
the Hawaii
 Supreme Court concluded that the marriage statute

" discriminates based on sex against the applicant couples in the exercise of the civil right of marriage, thereby implicating the equal protection clause

of article I, section 5
of the Hawaii
Constitution
remanded for an
evidentiary hearing on
whether there was a
compelling government
interest furthered by
the sex-based
classification. 852
2d at 57, 59. After
the remand but before
the Hawaii Supreme
Court had a chance to
address the
constitutionality of
the statute, Hawaii
passed a constitutional
amendment stating that
" [t]he legislature
shall have the power to
reserve marriage to
opposite-sex couples.

" and

P. _____

Haw. Const. art. I, §

23. The Hawaii
Legislature enacted a
statute conferring
certain rights and
benefits on same-sex
couples through a
reciprocal beneficiary
relationship.
Stat. §§ 572C-1 to -7.

"

Haw. Rev. _____

Footnote: 24 After

rendering its decision,
the Massachusetts
Supreme Judicial Court
issued an opinion
advising the state
legislature that a
proposed bill
prohibiting same-sex

couples from entering into marriage but allowing them to form civil unions would violate the equal protection and due process requirements of the Massachusetts Constitution and Declaration of Rights. Opinions of the Justices to the Senate

802 N.

E.2d 565, 566, 572

(Mass. 2004). The court later upheld the validity of an initiative petition, which if successful would amend the Massachusetts Constitution to define " marriage only as the union of one man and one woman.

"

Schulman

v. Attorney General

850 N.E.2d 505, 506-

07 (Mass. 2006).

Footnote: 25

We note

that what we have done and whatever the Legislature may do will not alter federal law, which only confers marriage rights and privileges to opposite-sex married couples.

See

1 U.S.C.A. § 7

(defining marriage, under Federal Defense of Marriage Act, as union between one man and one woman

" legal

").

Footnote: 26

v. Chase, 254, 260 n.4 (1976)

(noting that prior to Married Women Act of 1852 prevailing rule entitled husband the possession and enjoyment of his wife real estate during their joint lives

Nancy F. Cott, *Vows: A History of Marriage and the Nation*

12 (2000) (explaining that marriage resulted in husband becoming

one full citizen in the household "); Hendrick Hartog, *Man and Wife in*

America: A History

(2000) (stating that " merger " of wife

identity led to wife loss of control over property and over her contractual capacity).

See Newman

70 N.J.

' s Property

" the then

"

" to

' s

");

Public

" the

99

' s

' s

Footnote: 27

g., L. 1906, (May 17, 1906)

(affording married women right to sue);

1852, c. 171 (Mar.

25, 1852) (providing married women property rights).

See, e.

c. 248

L.

Footnote: 28

for example, that the Domestic Partnership Act

We note,

requires, as a condition to the establishment of a domestic partnership, that the partners have " a common residence " and be " otherwise jointly responsible for each other ' s common welfare. "

N.J.S.A. 26:8A-4(b)

(1). Such a condition

is not placed on heterosexual couples who marry and thus could not be imposed on same-sex couples who enter into a civil union.

Footnote: 29 Article I,

Paragraph 1, states:

All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

[N.J. Const. art. I, ¶ 1.]

This language constitutes our State equivalent of the Due Process and Equal

*Protection Clauses of
the Federal
Constitution.*

Footnote: 30

*Professor Michael Wald,
in Same-Sex Couple
Marriage: A Family
Policy Perspective*

*similarly states that
" if a State passed a
civil union statute for
same-sex couples that
paralleled marriage, it
would be sending a
message that these
unions were in some way
second class units
unworthy of the term
'marriage'[,] . . .
that these are less
important family
relationships.*

" 9 Va.

*J. Soc. Pol'y. & L.
291, 338 (2001).*

Footnote: 31

*Professor Laurence Tribe
has described in
metaphoric terms, the
relationship between
due process and equal
protection analyses.*

Lawrence v. Texas: The

" Fundamental Right

" That

Dare Not Speak Its

Name _____, 117

Harv. L.

Rev. _____ 1893, 1897-98.

*His understanding is
especially apt in
respect of New Jersey's
test. He finds in*

judges " conclusions " a

" narrative in which due process and equal protection, far from having separate missions and entailing different inquiries, are profoundly interlocked in a legal double helix . . . [representing] a single, unfolding tale of equal liberty and increasingly universal dignity.

" Ibid. This case is a paradigm for the interlocking concepts that support both the due process and the equal protection inquiry.

Footnote: 32

The majority understands that " [h]ow the right is defined may dictate whether it is deemed fundamental. " Ante at ___ (slip op. at 24). By claiming that the broad right to marriage is " undifferentiated and " abstract, " and by " focusing on the narrow question of the right to same-sex marriage, the Court thereby removes the right from the traditional concept of marriage. Ante at ___ (slip op. at 24-25).

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