



SPONSOR: Sen. Huxtable & Sen. Lockman & Sen. Townsend &
Rep. Snyder-Hall
Sens. Cruce, Hansen, Hoffner, Paradee, Pinkney, Poore,
Seigfried, Sokola, Sturgeon; Reps. Burns, Bush, Gorman,
Harris, Heffernan, Lambert, Phillips, Romer, Ross Levin

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 2
FOR
SENATE BILL NO. 100

AN ACT PROPOSING AN AMENDMENT TO ARTICLE I OF THE DELAWARE CONSTITUTION RELATING TO
THE RIGHT TO MARRY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members
elected to each house thereof concurring therein):

Section 1. Amend Article I of the Delaware Constitution by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 23. Right to Marry.

(a) The right to marry is a fundamental right that may not be denied or abridged on account of any basis protected
under § 21 of this Article or on the basis of gender.

(b)(1) All marriages that are legally valid under the laws of this State must be treated equally under the laws of this
State.

(2) All laws of this State that are applicable to marriage, married spouses, or the children of married spouses
apply equally to all marriages that are legally valid under the laws of this State.

(c) The right to marry under this section does not modify or infringe upon the right to freedom of religion under §
1 of this Article.

SYNOPSIS

This Act is the first leg of an amendment to the Delaware Constitution establishing that the right to marry is a
fundamental right that may not be denied or abridged on the basis of gender or any basis protected under Art. 1, § 21 of the
Delaware Constitution, which provides equal protection under the law on account of race, color, national origin, and sex.

Under this Act, all marriages that are legally valid under the laws of this State must be treated equally, including
under all laws that are applicable to marriage, married spouses, or the children of married spouses. This Act also clarifies
that the right to marry does not infringe upon the right to freedom of religion under Art. 1, § 1 of the Delaware Constitution.

Like Senate Substitute No. 1 for Senate Bill No. 100, Senate Substitute No. 2 for Senate Bill No. 100 differs from
Senate Bill No. 100 by explicitly connecting the right to marry with the equality of rights provided under Art. 1, § 21 of the
Delaware Constitution on the basis of race, color, national origin, or sex.

In addition, Senate Substitute No. 2 for Senate Bill No. 100 differs from Senate Bill No. 100 as follows:

- Clarifies that the right to marry applies to marriages that are legally valid under the laws of this State.
- Clarifies that treating all legally valid marriages equally means that all laws of this State that are applicable to marriage, married spouses, or the children of married spouses apply equally to marriages that are legally valid under the laws of this State.
- Removes the need for gender-specific provisions by including gender in the first sentence.
- Revises the language clarifying that the right to marry does not infringe on the right to freedom of religion under Art. 1, § 1 of the Delaware Constitution to apply to the entire section and to remove the example.

Amending the Delaware Constitution requires not only the passing of the changes in this Act but also passage of the same changes after the next general election by the next General Assembly.

This Act requires a greater than majority vote for passage because § 1 of Article XVI of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend the Delaware Constitution.

Author: Senator Huxtable