



SPONSOR: Rep. Lynn & Rep. Longhurst & Rep. Griffith &
Sen. Sturgeon
Reps. Baumbach, Bentz, Heffernan

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 460

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

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

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

3 § 22. Right of individual privacy.

4 The right of individual privacy is essential to the well-being of a free society and may not be infringed without a
5 showing of a compelling state interest.

SYNOPSIS

This Act is the first leg of an amendment to the Delaware Constitution to make clear that the right of individual
privacy is essential to the well-being of a free society and may not be infringed without a showing of a compelling state
interest.

The U.S. Supreme Court has long interpreted the Fourteenth Amendment's prohibition against the State depriving
a person of life, liberty, or property without due process of law to prevent arbitrary or unreasonable action by the State.
Specifically, in 1923, the Court, in *Meyer v. Nebraska*, 262 U.S. 390 stated:

"While this Court has not attempted to define with exactness [of] the liberty thus guaranteed [under the Fourteenth
Amendment], the term has received much consideration and some of the included things have been definitely stated.
Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage
in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to
worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at
common law as essential to the orderly pursuit of happiness by free men."

Additionally, in *Lawrence v. Texas*, 539 U.S. 558 (2003), the Court stated that "our laws and tradition afford
constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child
rearing, and education." In explaining the respect the Constitution demands for the autonomy of the person in making these
choices, the *Lawrence* Court noted that the Court previous held that "[t]hese matters, involving the most intimate and
personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the
liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence,
of meaning, of the universe, and of the mystery of human life."

In reaching its ruling, the *Lawrence* Court held that the petitioners were "entitled to respect for their private lives.
The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right
to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the
government. 'It is a promise of the Constitution that there is a realm of personal liberty which the government may not
enter.'"

The General Assembly proposes the enactment of this constitutional amendment creating a right of individual privacy to secure for Delawareans the rights the U.S. Supreme Court has previously found emanate from the federal constitution in the face of concerns regarding the continued effect of these U.S. Supreme Court precedents.

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.