



SPONSOR: Rep. Baumbach & Rep. Morrison & Sen. S. McBride  
Reps. Kowalko, Wilson-Anton; Sens. Pinkney, Sokola

HOUSE OF REPRESENTATIVES  
151st GENERAL ASSEMBLY

HOUSE BILL NO. 107

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE FIRST AMENDMENT RIGHTS  
OF PUBLIC SCHOOL STUDENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4105, Title 14 of the Delaware Code by making deletions as shown by strike through and  
insertions as shown by underline as follows:

§ 4105. Salute to flag and pledge of allegiance.

~~(a) In the opening exercises of every free public school each morning, the teachers and pupils assembled shall~~  
Every public school shall provide an opportunity every day for students to salute and pledge allegiance to the American flag  
as follows:

“I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one  
Nation, under God, indivisible, with liberty and justice for all.”

(b) Students who do not participate in the salute and recitation of the pledge of allegiance may silently stand or  
remain seated.

(c) No school district, charter school, school administrator, teacher, or other school employee shall exclude,  
include, or otherwise discriminate for or against any student on the basis of whether or not a student salutes or pledges  
allegiance to the American flag because of the student's political, philosophical, or religious beliefs.

Section 2. Amend § 4101A, Title 14 of the Delaware Code by making deletions as shown by strike through and  
insertions as shown by underline as follows:

§ 4101A. Use of schools for First Amendment purposes.

(c) Notwithstanding any other provision ~~or provisions~~ of the Code, on public school property or other public  
property, student-delivered, voluntary messages may be permitted by schools during graduation or commencement  
ceremonies where appropriate in the context of the event. The content of any message authorized by this section shall be  
determined by the student delivering the message. No school district, charter school, school administrator, ~~teacher~~ teacher,  
or other school employee shall exclude, ~~include~~ include, or otherwise discriminate for or against any student on the basis of

the political, philosophical, ~~religious~~ religious, or other content of the message that the student intends to deliver or does deliver.

Section 3. Amend § 4106, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4106. ~~Failure to require salute and pledge; penalty.~~ [Reserved.]

~~When the Department of Education has procured and distributed American flags in each free public school, any principal or teacher of such free public school who fails to require the salute and pledge as set out in § 4105 of this title shall be fined not more than \$50 or imprisoned not more than 10 days.~~

Section 4. Amend § 4102, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4102. ~~Penalties for violation of § 4101 of this title.~~ [Reserved.]

~~Any teacher or principal who refuses to comply with § 4101 of this title shall be subject to a penalty of \$5 for the first violation and \$25 for any violation thereafter.~~

#### SYNOPSIS

In the 1943 decision *West Virginia State Board of Education v. Barnette*, 63 S. Ct. 1178, the U.S. Supreme Court held that a public school requirement that students salute the flag or face punishment violated the First Amendment of the Constitution because it compelled students to declare a belief. Under *Barnette* and similar decisions, current Delaware law, which requires teachers and students to salute and pledge allegiance to the American flag every morning is unconstitutional because it is coercive. State law requires teachers and students to “salute and pledge allegiance to the American flag” every day and imposes a criminal penalty on a principal or teacher who fails to require students to participate in the salute and pledge of allegiance.

A New Hampshire law requiring that time be provided during the school day to recite the pledge of allegiance and which specifically provides that students not participating in the recitation of the pledge of allegiance may silently stand or remain seated while respecting the rights of students participating was found constitutional.

This Act preserves the requirement that students have the opportunity to salute and pledge allegiance to the American flag each school day but revises the Code so that the requirement complies with the First Amendment of the Constitution. Specifically, this Act does all of the following:

Section 1 revises § 4105 of Title 14 to comply with the First Amendment of the U.S. Constitution by requiring schools to provide an opportunity for students to salute the flag and pledge allegiance to the American flag every day.

Section 2 adds charter schools to § 4101A of Title 14 to be consistent with the revisions in Section 1 of this Act and makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Section 3 repeals the penalties imposed on a principal or teacher for failure to comply with § 4105 of Title 14.

Section 4 repeals the penalties imposed on a principal or teacher for failure to comply with § 4101 of Title 14.