

SESSION OF 2012

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 142**

As Recommended by House Committee on  
Judiciary

**Brief\***

House Sub. for SB 142 would enact the Kansas Preservation of Religious Freedom Act and provide that government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless the government demonstrates, by clear and convincing evidence, that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. The Act would apply to all government action, including state and local laws, ordinances, rules, regulations, and policies, and to their implementation, whether enacted or adopted before, on, or after the effective date of the Act.

Further, the bill would allow a person whose exercise of religion has been burdened, or is substantially likely to be burdened, in violation of the Act, to assert the violation as a claim or defense in a judicial proceeding. Courts would be allowed to grant appropriate relief as may be necessary, including injunctive relief, protective orders, a writ of mandamus or prohibition, or declaratory relief. If a court finds a person made a fraudulent claim under the Act, it would be allowed to enjoin the person from filing further claims under the Act.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill includes a section that would provide the Act shall not be construed to:

- Impair the fundamental right of parents to control the care and custody of their minor children, as provided by state and federal law, nor create any new right;
- Authorize any relationship, marital or otherwise, that would violate Art. 15, Sec. 16 of the *Kansas Constitution*;
- Authorize the application or enforcement in Kansas courts of any law, rule, code, or legal system other than state and federal law;
- Limit any religious organization from receiving any funding or other assistance from a government, or of any person to receive government funding for a religious activity to the extent permitted by state and federal law; or
- Protect actions or decisions to end the life of any child, born or unborn.

Additionally, the bill would not apply to penological rules and regulations, conditions, or policies established by a jail, correctional institution, juvenile detention facility, or an entity supervising offenders in the community that are reasonably related to the safety and security of incarcerated persons, staff, visitors, supervised offenders, or the public, or to maintenance of good order and discipline in any jail, correctional institution, or juvenile detention facility.

The bill also would define key terms.

## **Background**

SB 142 was introduced in 2011 as a medical apology bill. The 2011 Senate Committee on Judiciary held a joint

hearing on SB 142 and Sub. for HB 2069, which would allow for a facilitated conference with a patient allegedly experiencing an adverse medical care outcome to allow a health care provider or administrator to express benevolence, sorrow, regret, mistake, error, sympathy, apology, commiseration, condolence, compassion, or a general sense of benevolence. Any verbal statements made in the conference or waiver of medical charges would be inadmissible as evidence. As introduced, HB 2069 contained the language requested by the Sisters of Charity and contained in 2010 Sub. for SB 374.

At the Senate Committee hearing, representatives of the Kansas Judicial Council, Kansas Association of Osteopathic Medicine, Kansas Bar Association, Kansas Association for Justice, and Kansas Advocates for Better Care testified in support of SB 142. A representative of the Sisters of Charity testified in opposition to SB 142.

The Senate Committee amended the bill to allow the admission of any apology, other statement, or gesture that “admits” fault. As introduced, the bill would have allowed the admission of any apology, other statement, or gesture that “acknowledges or implies” fault. The Senate Committee also added “waivers of charges for medical care provided” to the list of inadmissible evidence.

The 2012 House Committee on Judiciary recommended a substitute for SB 142 be passed replacing its text with the text of HB 2260.

The fiscal note on SB 142, as introduced, indicated the bill would have no fiscal effect.

### ***HB 2260***

In the 2012 House Committee on Judiciary, Lieutenant Governor Jeff Colyer and representatives of the Kansas Family Policy Council, Kansas Catholic Conference, Alliance

Defense Fund, and Concerned Women for America of Kansas offered testimony in support of the bill. Senator Marci Francisco and representatives of the Kansas Equality Coalition, ACLU of Kansas and Western Missouri, Lawrence City Commission, the Great Plains Chapter of Americans United for Separation of Church and State, and Kansas NOW offered testimony in opposition to the bill. The Committee amended the bill by making technical corrections, modifying the definitions of some key terms, and providing an exception for certain penological rules and regulations, conditions, or policies.

The fiscal note indicates passage of HB 2260, as introduced, could increase litigation; however, the costs could be accommodated within existing resources. The Attorney General's Office estimates passage could require additional time devoted to claim defense and an increase in expenditures by \$100,000, but as the number of claims that will be filed is unknown, the precise fiscal effect cannot be determined. The League of Kansas Municipalities reports passage would subject cities to litigation, but the precise fiscal effect of that litigation cannot be determined.