

SESSION OF 2014

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2453**

As Amended by House Committee on Federal  
and State Affairs

**Brief\***

HB 2453, as amended, would create new law to prohibit an individual or religious entity from being required by any governmental entity to do anything with respect to activities identified in the bill, if contrary to an individual's or religious entity's sincerely held religious belief regarding sex or gender. Those activities identified in the bill include:

- Providing services, accommodations, advantages, facilities, goods, privileges, counseling, adoption, foster care, other social services, employment or employment benefits related to any marriage, domestic partnership, civil union, or similar arrangement;
- Solemnizing any marriage, domestic partnership, civil union, or similar arrangement; or
- Treating as valid any marriage, domestic partnership, civil union, or similar arrangement.

Under the bill's provisions, the refusal of an individual or religious entity to engage in the listed activities could not result in a civil claim or cause of action under state or local law or an action by a governmental entity to penalize, withhold benefits from, discriminate against, or otherwise disadvantage an individual or religious entity protected by the bill's provisions.

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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 would allow individuals or religious entities named in such a civil action, administrative action, or other action by a governmental entity to use the provisions of the bill as a defense and move to dismiss the action. Administrative tribunals would be able to transfer jurisdiction of such a motion to dismiss to a district court with proper venue within 15 days of the motion being filed with the administrative tribunal.

The bill would require the district court to decide whether the protections of the law applied within 60 days of the transfer from an administrative tribunal. No additional discovery or fact-finding could be conducted by the district court prior to that court's decision. If the protections of the bill's provisions were found to apply, the bill would allow the individual or religious entity named in the cause of action to recover all reasonable attorney fees, costs, and damages incurred as a result of being named in the action.

If an individual were employed by a governmental entity or non-religious entity, and that individual declined to provide a lawful service otherwise consistent with that entity's duties or policies, then the employer providing such service, in directing the performance of such service, would be required to promptly provide another employee to provide the service or otherwise ensure the service was provided, if it could be done without undue hardship to the employer.

The bill would define "religious entity" as an organization, regardless of its status as non-profit or for-profit and regardless of whether its activities are deemed wholly or partly religious, that is:

- A religious corporation, association, educational institution, or society;
- An entity operated, supervised, or controlled by, or connected with a religious corporation, association, educational institution, or society; or

- A privately-held business operating consistently with its sincerely held religious beliefs, with regard to any activity described in the bill.

The bill also would define “governmental entity” as the executive, legislative, and judicial branches, and any and all agencies, boards, commissions, departments, districts, authorities, or other entities, subdivisions or parts whatsoever of state and local government, as well as any person acting under color of law.

Finally, the bill would state that if any word, phrase, clause, or provision is held invalid, the remaining provisions shall be given effect without the invalid provision. The bill also would specify that none of the provisions shall be construed to allow individuals or entities to perform any marriage prohibited by state law, including, but not limited to, laws relating to plural marriage, incest, consanguinity, and marriageable age.

## **Background**

At the House Committee hearing on the bill, Representative Macheers, along with representatives from the American Religious Freedom Program, the Kansas Family Policy Council, and the Kansas Catholic Conference presented testimony in support of the bill. Representatives from Equality Kansas, ACLU Kansas, the MainStream Coalition, and Americans for Separation of Church and State and four citizens presented opponent testimony. Written testimony in opposition to the bill was provided by the MainStream Coalition; the College Hill United Methodist Church in Wichita, Kansas; the National Organization for Women (NOW); and two citizens.

The House Committee amended two provisions in the bill. One amendment added language specifying if a governmental entity or other non-religious entity employs an individual who refuses to provide lawful service under the

provisions of the bill, the employing entity is required only “in directing the performance of such service” to promptly ensure the performance of such service if it can be done without undue hardship to the employer. The Committee also replaced the definition of “governmental entity” in the bill.

According to the fiscal note on the bill as introduced, the Attorney General’s Office indicated its passage could result in court challenges. If the state were to lose a federal court civil rights action, it likely would be required to pay attorney fees to the prevailing party. The office estimates those associated legal fees could be \$25,000 in FY 2014 and \$25,000 to \$250,000 in FY 2015, all from the State General Fund. The Office of Judicial Administration indicated the bill might create additional work for district courts and the Court of Appeals. Additional court staff might also have to be hired to comply with the increased number of cases and new court deadlines created by the bill. The agency is unable to estimate the precise caseload and budgetary effect prior to being required to operate under the law. Any fiscal effect associated with the bill is not reflected in *The FY 2015 Governor’s Budget Report*.