

SESSION OF 2013

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2203

As Amended by House Committee on Judiciary

Brief*

HB 2203 would enact the Kansas Preservation of Religious Freedom Act. The Act would provide that government shall not substantially burden a person's civil right to exercise 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.

The bill would define key terms, including "compelling governmental interest," and provide that, in determining whether a compelling governmental interest justifies a substantial burden on a person's exercise of religion, only those interests of the highest order and not otherwise served can overbalance the fundamental right to the exercise of religion preserved by the Act. Further, the bill would provide that for the government to meet the standard outlined above, it must demonstrate that the standard is satisfied through application of the asserted violation of this act to the particular claimant whose sincere exercise of religion has been burdened. The bill also would state the religious liberty interest protected by the Act is an independent liberty that occupies a preferred position, and would prohibit encroachments upon this liberty, whether direct or indirect,

*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>

unless required by clear and compelling governmental interests of the highest order.

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, declaratory relief, actual damages, and costs and attorney fees determined by the court. If a court finds a person made a fraudulent claim under the Act, the court would be allowed to enjoin the person from filing further claims under the Act without leave of court.

The bill 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;
- 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 person or 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 correctional facility, 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.

Background

In the House Committee on Judiciary, representatives of the Alliance Defending Freedom, Ethics and Public Policy Center, Kansas Catholic Conference, and Kansas Family Policy Council appeared in support of the bill. Lieutenant Governor Jeff Colyer and a representative of Concerned Women for America offered written proponent testimony. A representative of the Kansas Equality Coalition gave neutral testimony, and the ACLU of Kansas and Western Missouri submitted written testimony opposing the bill.

The House Committee amended the bill to provide that the Act shall not be construed to protect actions or decisions to end the life of any person.

The fiscal note prepared by the Division of the Budget on the bill, as introduced, indicates passage of the bill would likely increase the number of cases filed in district court, but the precise impact cannot be estimated.