

# Questions and Answers about HB 2453 -- The Religious Freedom Act of 2014

## **Q: Does this bill legalize discrimination against gays?**

A: NO. HB 2453 creates no right for anyone to deny general services to, or otherwise discriminate against, anyone based upon sexual orientation or identity. The bill does NOT create a right for businesses to refuse service to someone just because they are gay. The bill does NOT authorize restaurants to not serve gays, or stores to not sell their products to people because of sexual orientation. Assertions to the contrary are utterly false. The Catholic Church would not support such a bill. To the contrary, we condemn unjust discrimination against gays. An especially outrageous claim is that police officers and firefighters would be allowed to deny protection to gays under this bill. This is not only completely wrong but incredibly irresponsible and insulting to the men and women in uniform who risk their lives serving in those capacities.

## **Q: Will be the bill be disruptive for business interests?**

A: No. The bill language dealing with corporate and government employees mirrors what has long been in federal law.

## **Q: What does the bill actually do?**

A: The bill covers a narrow range of conduct such as:

- Upholding the principle that a church that rents out its sanctuary for weddings should not be punished by the state if it declines to host weddings that violate the church's beliefs;
- Upholding the principle that a small business owner, like a Christian wedding photographer, should not be punished by the state if she declines to attend and provide services at a same-sex wedding that is contrary to her beliefs (this happened in New Mexico);
- Upholding the principle that Catholic Charities should not be restricted by the government from helping families with adoption services simply because of the Catholic Church's beliefs regarding marriage.

HB 2453 comprehensively and specifically protects religious Kansans – individuals and the institutions they form – from suffering any legal penalties for their position on same-sex marriage.

**Q: Why is the Religious Freedom Act of 2014 necessary?**

A: Federal courts have struck down the marriage laws of Utah and Oklahoma. By the fall of 2014, the Denver-based U.S. Court of Appeals for the Tenth Circuit will consider the appeal of those cases. Kansas is in the Tenth Circuit, and its marriage amendment could effectively be struck down in the same federal court decision. Legal experts on both sides of the marriage issue concur that the legalization of same-sex marriage creates substantial legal conflicts with religious liberty.

**Q: Are these concerns about litigation real or hypothetical?**

A: These concerns are very real. Catholic Charities in Boston, Illinois, and Washington DC had to close their adoption ministries because their insistence on only placing adoptive children with a married mother and father violated government policy requiring the placement of children with same-sex couples. Across the country, Christian florists (Wash.), bakers (Colo.), and photographers (N.M.) have been investigated and even fined by government agencies for declining to serve same-sex commitment ceremonies and weddings on the basis of their religious beliefs. Officials at a Catholic school in Columbus, Ohio, faced criminal charges and six months of incarceration under a city ordinance for refusing to recognize a teacher's same-sex union. Opponents of religious freedom in other states have proposed that churches be required to open their sanctuaries to same-sex weddings if they open their doors to non-members for community related events.

**Q: Have other states done anything like this?**

A: Every legislature that has passed a law legalizing same-sex marriage has included protections for religious institutions, including schools, hospitals, and adoption agencies. These states include New York, New Hampshire, Connecticut, and Hawaii. These laws were passed under different political circumstances – usually as part of a legislative debate over same-sex marriage – but their legal effect is very similar to some of the protections in the Kansas Religious Freedom Act of 2014.

**Q: I understand the desire to protect truly religious institutions, but isn't it unprecedented to also protect secular businesses?**

A: What is unprecedented is the spate of recent attacks around the country on the religious civil rights and liberties of Americans in the workplace. Is a Christian book store or a kosher deli a "secular business"? Also, like virtually every other state, Kansas already has laws on the books protecting doctors ("secular businesses") from having to participate in abortion. These protections extend to religious medical professionals whether they work in a religious hospital or medical facility or a "secular" one.

**Q: If the federal courts order Kansas to recognize same-sex marriages, doesn't section 1(c) allow the government to simply disregard that court order?**

A: No. It is absurd to suggest that the state can (or would even try) to statutorily exempt itself from a federal court's decision interpreting and applying the U.S. Constitution. Section 1(c) has a different purpose: many Kansas businesses already have policies that "recognize a [same-sex] marriage as valid" even while the State of Kansas doesn't. This section merely extends that principle. If Kansas (likely by court order) recognizes same-sex marriage as valid, religious institutions and religious owners of businesses that provide wedding and similar services can elect to recognize marriages in a way that is not identical to the boundaries of the state's recognition.

**Q: I'm confused by Section 2(d) dealing with employees. Is there any precedent for it?**

A: Yes, in fact most private and public employees in Kansas already have access to these workplace religious accommodation protections under Title VII of the federal Civil Rights Act of 1964. Further, the language of the "undue hardship" standard in the Religious Freedom Act of 2014 is identical to the language in existing federal law. This standard would simply allow employees who already possess these rights under federal law to assert them in a Kansas state court.

**Q: If Section 2(d) is redundant with federal law, why put it in the bill?**

A: The purpose—which has been grossly distorted—is primarily to clarify that religious freedom rights *cannot* override Kansas's duty to comply with any federal court order requiring legal recognition of same-sex marriage based on the Kansas Constitution or the U.S. Constitution. This is the reason for the language that if a service "is otherwise consistent with the entity's *duties* or policies, the individual's employer...*shall* either *promptly* provide another employee to provide such service, or *shall* otherwise ensure that the requested service is provided." The use of words like "duties" and "promptly" and "shall" is intentional. If every clerk in an office objects to issuing a same-sex marriage license, their objection must yield to their employer's legal duty to issue same-sex marriage licenses. The reading of these provisions being promoted by opponents of the Religious Freedom Act requires accepting the bizarre legal theory that Kansas can exempt itself from federal court orders that are based on the U.S. Constitution. It of course cannot do that because the U.S. Constitution makes federal law the supreme law of the land. ("This Constitution, and laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding." U.S. Constitution, Article VI (Supremacy Clause).)

**Q: Doesn't Section 2(d) give private employees who object to same-sex marriage the right to nullify the policies of employers who wish to recognize same-sex marriages?**

A: Not at all. Employees have limited rights to religious workplace accommodation (under federal law) regardless of Section 2(d). In practice, courts have consistently interpreted the "undue hardship" standard as roughly similar to "any inconvenience." Good employers generally try to accommodate their employees' religious civil rights and liberties in a variety of situations. But the Religious Freedom Act does not give employees a right to overrule their employers' policies and practices.

**Q: Does HB 2453 give:**

**A) A fast food restaurant the right to deny a meal to a same-sex couple?**

A: No, because the law's protections are only triggered in situations "related to, or related to the celebration of, a marriage..."

**B) A law enforcement officer a right not to respond to a domestic violence dispute between same-sex partners?**

A: No. No court has ever construed religious freedom to nullify public officials' responsibility to protect citizens against crime. Nothing in this bill would do anything to change that. Suggesting otherwise is unfounded and irresponsibly creates fears that have no basis in fact.

**C) Government employees the rights to deny legal benefits to same-sex couples?**

A: No. In fact, if a legal service related to marriage cannot otherwise be provided "promptly," in such circumstances the law allows religious objections by clerks and judges to be overridden.

**Q: Isn't the Religious Freedom Act unnecessary since Kansas law does not make sexual orientation (or gender identity) a protected class or prohibit differential treatment on the basis of sexual orientation?**

A: The legalization of same-sex marriage has triggered legal conflicts with religious freedom everywhere it has occurred, even in states that have enacted some statutory protections for religious freedom. It is much better to clearly and broadly protect religious civil rights and liberties to avoid these conflicts materializing in Kansas.

**Q: Does the bill only protect those opposed to same-sex marriage?**

A: No. The bill also protects the religious beliefs and actions of those who *support* same-sex marriage. The bill would protect a lesbian who is a professional photographer, and who objects to a Christian Church's teaching on same-sex marriage, from being forced to photograph a wedding at that church. This is true to the extent that some have expressed

concern that this even-handed protection grants too much in a state that has a constitutional amendment protecting marriage as a union between one man and one woman.

**Q: Does this bill somehow immunize those who oppose interracial marriage or those who favor allowing 12-year-olds to marry?**

A: No. Section 1 and Section 4(b) explicitly prohibit this misuse of the law's protections.

**Q: Won't Kansas face an expensive lawsuit to defend this law in court?**

A: The purpose of the law is to head off the sort of lawsuits and legal penalties that religious individuals are already facing. It is beyond dispute that state legislatures have power to enact religious freedom protections that go beyond the constitutional minimum. The situation is similar to the Supreme Court's abortion jurisprudence. *Roe v. Wade* created a right to abortion, but the law should not coerce individuals into facilitating that right by compelling them to participate in abortions, and Kansas law already recognizes that principle. Here too, if the courts create a new constitutional right, it doesn't follow that supporters of same-sex marriage should be authorized by law to coerce others into participating in same-sex ceremonies.

**Q: Isn't it enough that we passed a Preservation of Religious Freedom Act last year?**

A: No, since it was not formulated for the specific purpose of protecting religious freedom in the legal context of court-ordered same-sex marriage. The protections of the 2013 law rely on a general and sometimes unpredictable "balancing test" that is effective only when each court and judge takes religious freedom claims seriously. By contrast, HB 2453 gives religious individuals and institutions clarity and certainty about which acts of religious freedom are protected. Legal clarity and certainty help avoid litigation.

**Q: Why not wait until the courts have ordered Kansas to legalize same-sex marriage?**

A: That would be unwise. Because of courts' narrow interpretation of First Amendment protections for the free exercise of religion, legislatures, not courts, are capable of writing religious freedom protections. Opponents of religious freedom will not relent if the courts order same-sex marriage in Kansas. They are instead likely to get more aggressive. After New Jersey's Supreme Court recently legalized same-sex marriage, activist groups successfully shut down attempts by the legislature to add any religious freedom protections at all.