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Kan. Senate president: Bill that allows service refusal to same-sex couples on religious grounds unlikely to pass

By Bryan Lowry
Eagle Topeka bureau

A controversial bill that supporters say would protect religious freedom and critics say would sanction discrimination against same-sex couples is unlikely to pass the Senate in its current form, Senate President Susan Wagle said Thursday.

House Bill 2453 passed the House 72-49 on Wednesday.

Since then, phones at the Capitol have been ringing from callers urging senators to stop the bill and lambasting representatives for passing it.

"After an initial review, I've grown concerned about the practical impact of the bill," Wagle, R-Wichita, said in an e-mailed statement.

The bill was taken up in response to federal court rulings that overturned same-sex marriage bans in Utah and Oklahoma, would allow public and private employees to refuse service based on religious views of marriage.

"A strong majority of my members support laws that define traditional marriage, protect religious institutions, and protect individuals from being forced to violate their personal moral values," Wagle said.

"However, my members also don't condone discrimination. If we cannot find ample common ground to ease legitimate concerns, I believe a majority of my caucus will not support the bill."

Earlier in the day, Sen. Michael O'Donnell, R-Wichita, was more frank about his reluctance to support the bill. "It's too broadly defined, and personally I don't believe it's necessary when we already have traditional marriage defined in the state constitution," he said.

All eight Senate Democrats oppose the bill, Senate Minority Leader Anthony Hensley, D-Topeka, said.

The scope of the bill has been hotly debated.

Rep. Charles Macheers, R-Shawnee, who introduced the bill, has repeatedly said it applies only to wedding celebrations. The bill would allow employees of a wedding-related business, such as a catering company, to refuse to work at a same-sex wedding if it is against their religious beliefs.

Opponents, however, say the bill is broadly defined and allows for discrimination in other areas.

The bill would extend to public employees such as county clerks. Opponents say that would legalize discrimination by government employees.

Government agencies still would be required to offer the service through another employee. Private businesses would do the same unless it was unduly burdensome.

The bill has received national attention. A Facebook group titled "STOP Kansas House Bill 2453" had 44,969 likes as of 10 p.m. Thursday.

Bill's origin

Macheers has defended the bill in face of an onslaught of criticism.

"This type of bill or variants of it are all over the country, especially in states that have already enacted same-sex

marriage. It strikes a balance," he said Thursday. "The bill is neutral on the marriage issue. It just gives a measure of protection for both sides of the marriage issue."

The ACLU has said that while other states provide protections for religious institutions and clergy, the Kansas bill goes far beyond by extending that shield to government employees.

Macheers did not write the bill and said he did not know its origin. It was crafted by the American Religious Freedom Program, an organization based in Washington D.C. Similar bills are being considered in Tennessee and South Dakota.

Tim Schultz, the organization's state legislative policy director, testified at an initial bill hearing. He did not respond to a request for comment Thursday.

Rep. Lance Kinzer, R-Olathe, brought the model legislation to the attention of Macheers. Kinzer, who chairs the House Judiciary Committee, was one of the most vocal proponents of the bill when the House debated it earlier this week but was absent throughout the hearing process.

"I chair a committee, and I've got a lot of other things to do, and the bottom line is I saw the model, thought it was interesting and passed it along. And that's it," Kinzer said.

Macheers has criticized some reporting about the bill as inaccurate.

"I don't know if they (the Associated Press) just misunderstand the bill or if they are intentionally misrepresenting it," he said in an interview with WIBW in Topeka, referring to reporting that the bill would bar government sanctions against individuals, businesses and groups that refuse services, goods, accommodations and employment benefits to same-sex married couples on religious grounds.

But Macheers might be the one who misunderstands the bill, said Ronald Nelson, an attorney with 30 years of experience who serves as the legislative liaison for the Kansas Bar Association on family law matters.

Nelson pointed to Section 1 (a) of the bill, which exempts individuals and religious entities from the obligation to provide "any services, accommodations, advantages, facilities, goods, or privileges; provide counseling, adoption, foster care and other social services; or provide employment or employment benefits, related to, or related to the celebration of, any marriage, domestic partnership, civil union or similar arrangement."

"The problem with the language in that provision is No. 1, it is kind of gobbledygook. It isn't well-drafted," Nelson said.

The problem hinges on the repetition of the phrase "related to" and the comma that precedes the phrase "any marriage." Nelson said this means the bill would apply to both celebrations and marriages themselves.

"That makes it extremely broad, because it's open to very wide interpretation. It doesn't say you don't have to celebrate marriages, it just says you don't have to provide services," Nelson.

The phrase "religious entity" as defined in the bill would also extend to businesses like Chik-Fil-A or Hobby Lobby, whose owners have expressed religious principles as company policy, Nelson said. By the bill's wording, these entities could theoretically deny employment benefits to gay couples even if same-sex marriage were legalized, he said.

Macheers, who is also an attorney, disputed this reading of the bill in an interview with The Wichita Eagle and the Kansas City Star at his office Thursday.

"We disagree on that. That is not what the bill says," Macheers said.

Kinzer said this was not the bill's intent and that he would support language that makes prevention of discrimination more explicit. But supporters may not get that chance.

Before Wagle issued her statement, she assigned the bill to the Senate Judiciary Committee, citing concern about the bill's legal impact.

Senate Vice President Jeff King, R-Independence, chairman of the committee, said that because of the committee's schedule, the bill would not be scheduled for a hearing in the immediate future.

Legal troubles

Holly Weatherford, spokeswoman for the Kansas Chapter of the ACLU, said the bill has a variety of troubling legal problems.

The bill requires that a district court determine whether a person's invocation of religious beliefs is valid but it prohibits "any additional discovery or fact-finding" prior to a judge making a decision. That means the court could not inquire if someone who refuses service to a gay couple based on their Christianity actually attends church regularly, Weatherford said.

The bill avoids directly mentioning homosexuality. Instead it refers to religious views on marriage "regarding sex or gender."

Weatherford said this meant a business owner or employee with traditionalist religious beliefs about gender roles could by the bill's wording refuse to serve a couple if the woman works for a living.

Macheers pushed back against claims that the language of the bill is unclear.

"The bill is designed to limit the amount of litigation. It brings specificity and clarifies issues that are narrowly tailored to be relevant to the marriage ceremony." He said there was no possibility that the bill could be misapplied.

In voicing concern about the bill, Wagle won the admiration of LGBT activists who blasted House Minority Leader Paul Davis, D-Lawrence, earlier in the week for failing to address their concerns of potential discrimination.

"We are glad Senate President Wagle agrees that certain provisions of HB2483 promote discrimination," Thomas Witt, spokesman for Equality Kansas said in an e-mail.

Witt said if the Senate chooses to amend the bill in the future, "we (Equality Kansas) look forward to working with them (Senators) to draft language that will protect the religious liberties of all Kansans, while at the same time ensuring the dignity of gay and lesbian couples across the state."

Reach Bryan Lowry at 785-296-3006 or blowry@wichitaeagle.com. Follow him on Twitter: [@BryanLowry3](https://twitter.com/BryanLowry3).

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