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Kansas Senate leaders likely to dramatically alter language in religious freedom bill should it come to floor

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Kansas Senate leaders promised Friday to dramatically change the controversial House religious freedom bill if it ever moves forward. Two major provisions are likely to be removed entirely.

They have said they would strike government employees from the bill, which now would allow private and public employees to decline to serve people based on religious views of marriage.

Kansas Chamber of Commerce president Mike O'Neal has called for employees of private businesses – included as “nonreligious” entities in the bill’s language – to be removed as well.

What would be left if those sections were to be taken out? And how would the altered bill’s substance differ from religious protections already available under state and federal law?

Federal and state law already protect a Catholic parish from having to perform a gay wedding, even if same-sex marriage were legalized in Kansas, said Thomas Witt of Equality Kansas. Additionally, a business owner can already choose to not serve a gay customer, because sexual orientation is not included in the state’s anti-discrimination statutes, he said.

One passage likely to be scrutinized is Section 1, which exempts “individuals” and “religious entities” from having to provide service based on their religious beliefs about marriage.

Ronald Nelson, a spokesman for the Kansas Bar Association, highlighted this passage as particularly troubling. It includes “employment” and “employment benefits” among the list of services that a religious entity can refuse to offer.

The term “religious entity” can apply to more than churches, Nelson said.

Tim Schultz, state legislative director of the American Religious Freedom Program, the organization that drafted the legislation, confirmed that the bill’s current definition of religious entity would include private businesses, such as Chick-Fil-A or Hobby Lobby, whose owners have used religious principles to form company policies.

Although proponents of the bill have said that it is focused on services related to the marriage ceremony, Nelson said all of the items listed in Section 1(a), including employment benefits, can be refused by religious entities.

“It would say just ‘celebration’ if that’s what it meant. That’s basic English,” Nelson said.

In other words, unless lawmakers remove employment and employment benefits from the list, business owners could refuse an employee and a same-sex partner benefits even if their marriage becomes legal, he said.

“If I don’t like your relationship or your marriage or who you love or who you are living with, I don’t really have to do anything for you and the government can’t stop me from doing that,” Nelson said, speaking hypothetically.

Schultz said this issue deserves discussion but that it does not necessarily constitute a problem with the legislation.

“I wouldn’t go that far,” Schultz said. “I would say that is one of the issues that I know has been raised and that the legislators are working through and trying to clarify. And I think they are doing so in good faith.”

“That’s certainly an issue of controversy. There’s no doubt about that,” Schultz said.

Rep. Lance Kinzer, R-Olathe, who brought the legislation to the Statehouse, said that he would support a passage in

the bill that clearly states that the bill cannot be used to exclude someone based on sexual orientation or gender identity.

One question facing the Senate Judiciary Committee is whether refusing to serve couples on the basis of their same-sex marriage is any different from refusing to serve an individual for his or her same-sex attraction.

Equality Kansas, Wichita Pride and other LGBT-rights organizations have said that there is no substantial difference between refusing to serve a gay person and a gay couple.

Comments from House Republicans last week suggested that they saw a distinction on this point.

Senate Vice President Jeff King, R-Independence, said the Judiciary Committee, which he chairs, will carefully consider this and other questions.

“The people of Kansas can trust that the actions of their Kansas Senate will protect religious liberties and will continue to fight against discrimination in any form,” he said.

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