

February 20, 2019

The Honorable Russell Jennings, Chairperson
House Committee on Corrections and Juvenile Justice
Statehouse, Room 151-S
Topeka, Kansas 66612

Dear Representative Jennings:

SUBJECT: Fiscal Note for HB 2319 by Representative Garber, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2319 is respectfully submitted to your committee.

HB 2319 would require all distributors who manufacture, sell, offer for sale, lease or distribute products that make content accessible on the internet to install blocking features that prevent consumers from accessing obscene content. The bill would also require distributors to maintain a website or telephone line for consumers to report obscene material that is not blocked by the distributor's blocking features or material that is not obscene that is erroneously blocked. The bill would require a consumer who wants the distributor to deactivate the blocking features to contact the distributor, present identification verifying that they are at least 18 years of age, acknowledge a written warning about accessing obscene materials and pay a one-time \$20 fee. The fees would be remitted by the distributor to the Office of the Attorney General and deposited into the Human Trafficking and Child Exploitation Prevention Grants Fund, which would be administered by the agency. The bill would specify that any products or services manufactured or sold prior to July 1, 2019, are exempt from the provisions of the bill.

The Office of the Attorney General indicates that enactment of the HB 2319 could result in a constitutional challenge on several grounds, including infringement of free speech, infringement of the right to privacy, violation of the Interstate Commerce Clause and possibly others. The agency indicates that litigation would likely ensue in federal court and depending on the workload of the agency's civil litigation attorneys, there could be a need to retain outside counsel. The agency states that the cost to hire outside counsel would be dependent upon the number of cases, which outside counsel is selected and the duration of those cases. In addition, the agency indicates that if the state was unsuccessful in defending the law, it may be ordered to pay the attorney fees and costs of successful challengers to the bill, which could total \$200,000 for

one case, especially if there was an appeal from the district court to the tenth Circuit Court of Appeals. The agency further states that the costs could total \$500,000 or more if the state is subject to multiple law suits, including cases from internet service providers, electronic device manufacturers, and public interests organizations. The agency estimates that if litigation commenced shortly before or at the enactment of the bill, any attorney fees judgments would likely not be made until FY 2021 and after.

The Office of the Attorney General indicates that the revenue from enactment of the bill cannot be estimated because the number of consumers that would pay the \$20 obscene materials access fee is unknown. The agency indicates that violations of the bill would be violations of the Kansas Consumer Protection Act, which could result in additional enforcement actions. However, this fiscal effect cannot be estimated because the number of additional enforcement actions is unknown.

The Kansas Bureau of Investigation indicates that enactment of the bill would have no fiscal effect. Any fiscal effect associated with HB 2319 is not reflected in *The FY 2020 Governor's Budget Report*.

Sincerely,

A handwritten signature in cursive script that reads "L. L. Campbell".

Larry L. Campbell
Director of the budget

cc: Willie Prescott, Office of the Attorney General
Paul Weisgerber, KBI