

HOUSE BILL No. 2321

By Representatives Garber, Donohoe, French, Helmer, Highland, Huebert, Rahjes
and Rhiley

2-13

1 AN ACT concerning marriage; relating to licenses; creating the optional
2 elevated marriage act; amending K.S.A. 2018 Supp. 23-2505, 23-2511
3 and 23-2516 and repealing the existing sections.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. The provisions of sections 1 through 13, and
7 amendments thereto, shall be known and may be cited as the optional
8 elevated marriage act.

9 New Sec. 2. As used in this act:

10 (a) "Authorized counseling" means marital counseling provided by a
11 priest, minister, rabbi, clerk of the society of Friends, any clergy member
12 of any religious sect or a licensed professional counselor, associate
13 counselor, marriage and family therapist, clinical psychologist or associate
14 marriage and family therapist.

15 (b) "Judicial separation" means a judicial proceeding pursuant to
16 section 9, and amendments thereto, that results in a court determination
17 that the parties of a marriage live separate and apart.

18 (c) "Minor" a person who has not reached the age of consent.

19 (d) "Parody marriage" any form of non-secular marriage that does not
20 involve a secular marriage involving one man and one woman, yet calls
21 itself marriage and is precluded from legal recognition by the state of
22 Kansas pursuant to the establishment clause of the 1st amendment of the
23 constitution of the United States and section 7 of the bill of rights of the
24 constitution of the state of Kansas. Parody marriages are permitted to take
25 place as permitted by the free exercise clause of the 1st amendment of the
26 constitution of the United States and section 7 of the bill of rights of the
27 constitution of the state of Kansas. A parody marriage is a form of non-
28 secular marriage that tends to erode community standards of decency,
29 unlike secular marriage between a man and a woman, who have reached
30 the age of consent.

31 New Sec. 3. (a)(1) An elevated marriage is a secular marriage that
32 the state can recognize without violating the establishment clause of the 1st
33 amendment of the constitution of the United States or section 7 of the bill
34 of rights of the constitution of the state of Kansas that is entered into by
35 one male and one female who understand and agree that the marriage

1 between them is a lifelong covenant relationship and who intentionally
 2 agree to being subjected to higher standards of commitment at the outset
 3 of their marriage as a matter of mutual consent.

4 (2) Parties to a marriage with heightened standards of commitment
 5 shall have received authorized counseling emphasizing the nature,
 6 purposes and responsibilities of marriage.

7 (3) Only when there has been a complete and total breach of the
 8 marital commitment may a party seek a declaration that the marriage is no
 9 longer legally recognized.

10 (b) (1) A man and woman may enter into a marriage with heightened
 11 standards of commitment by declaring their intent to do so on their
 12 application for a marriage license, as otherwise required under this act, and
 13 executing a declaration of intent to enter into an elevated marriage as
 14 provided in section 4, and amendments thereto.

15 (2) The application for a marriage license and the declaration of
 16 intent shall be filed with the official who issues the marriage license.

17 New Sec. 4. (a) A declaration of intent to enter into an elevated
 18 marriage shall contain all of the following:

19 (1) A recitation signed by both parties to the following effect:

20 "AN ELEVATED MARRIAGE

21 We do solemnly declare that marriage is a commitment between a man
 22 and a woman who agree to live together as husband and wife for so long as
 23 they both may live. We have chosen each other carefully and disclosed to
 24 one another everything which could adversely affect the decision to enter
 25 into this marriage. We have received authorized counseling on the nature,
 26 purposes, and responsibilities of marriage. We have read the optional
 27 elevated marriage act, and we understand that a marriage is intended to be
 28 for life, for better or worse, richer or poorer, in sickness and in health.

29 If we experience marital difficulties, we commit ourselves to take all
 30 reasonable efforts to preserve our marriage, including marital counseling.
 31 With full knowledge of what this commitment means, we do hereby
 32 declare that our marriage will be bound by Kansas law on contract
 33 standards of marriage commitment and we promise to love, honor and care
 34 for one another as husband and wife for the rest of our lives."

35 Even if the parties relocate to another state, the parties agree that they
 36 will be subjected to the terms and conditions of a marriage with
 37 heightened standards of commitment as set forth by the optional elevated
 38 marriage act.

39 (2) (A) An affidavit by the parties that they have received authorized
 40 counseling which shall include a discussion of the seriousness of marriage,
 41 communication of the fact that a marriage is a commitment for life
 42 between a man and a woman, a discussion of the obligation to seek marital
 43 counseling in times of marital difficulties and a discussion of the exclusive

1 grounds for legally terminating a marriage by divorce.

2 (B) An attestation, signed by the counselor and attached to or
3 included in the parties' affidavit, confirming that the parties received
4 authorized counseling as to the nature and purpose of the marriage and the
5 grounds for termination thereof and an acknowledgment that the counselor
6 provided to the parties the informational pamphlet developed and
7 promulgated by the office of judicial administration pursuant to this act,
8 which pamphlet provides a full explanation of the terms and conditions of
9 a marriage.

10 (3) The signature of both parties witnessed by a notary.

11 (b) The recitation, affidavit and attestation shall be filed as provided
12 in K.S.A. 23-2505, and amendments thereto.

13 New Sec. 5. The following is the suggested form of the affidavit that
14 may be used by the parties, notary and counselor:

15 State Of Kansas
16 County Of _____

17 BE IT KNOWN THAT on this ____ day of _____, _____,
18 before me the undersigned notary, personally came and appeared:
19 _____ and _____ who
20 after being duly sworn by me, a notary, deposed and stated that:

21 Affiants acknowledge that they have received premarital counseling
22 from a priest, minister, rabbi, clerk of the religious society of Friends, any
23 clergyman of any religious sect, or a professional marriage counselor,
24 which marriage counseling included:

25 A discussion of the seriousness of marriage; communication of the fact
26 that marriage is a commitment for life, for better or worse, for richer or
27 poorer, in sickness and in health; the obligation of a marriage to take
28 reasonable efforts to preserve the marriage commitment, if marital
29 difficulties arise, transcending feelings, and that the affiants both read the
30 pamphlet entitled, "The Optional Elevated Marriage Act" developed and
31 promulgated by the office of judicial administration, that provides a full
32 explanation of a marriage, including the obligation to seek marital
33 counseling in times of marital difficulties and the exclusive grounds for
34 legally terminating a marriage by divorce or divorce after a judgment of
35 separation from bed or board.

36 _____
37 (Name of prospective spouse)

38 _____
39 (Name of prospective spouse)

40 SUBSCRIBED AND SWORN TO BEFORE ME THIS ____ DAY
41 OF _____,

42 _____
43 NOTARY PUBLIC

ATTESTATION

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The undersigned attests that the affiants did receive counseling from me as to the nature and purpose of marriage, which included a discussion of the seriousness of marriage, communication of the fact that a marriage is for life, and the obligation of a marriage to take reasonable efforts to preserve the marriage if marital difficulties arise.

(Counselor)

New Sec. 6. An elevated marriage with mutually agreed upon higher standards of commitment shall be governed by all of the provisions of article 25 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, except as otherwise specifically provided in this act.

New Sec. 7. (a) On or after the effective date of this act, married couples, upon submission of a copy of their marriage certificate, which need not be certified, may execute a declaration of intent to designate their marriage as an elevated marriage to be governed by this act.

(b) This declaration of intent in the form and containing the contents required by subsection (c) must be filed with the officer who issues marriage licenses in the county in which the couple is domiciled.

(c) A declaration of intent to redesignate a marriage as an elevated marriage shall contain all of the following:

(1) A recitation by the parties as set out in section 4, and amendments thereto;

(2) (A) An affidavit by the parties as set out in section 5, and amendments thereto, that they have discussed their intent to designate their marriage as a marriage with heightened standards of commitment with an authorized counselor, which included a discussion of the obligation to seek marital counseling in times of marital difficulties and the exclusive grounds for legally terminating a marriage by divorce.

(B) An attestation, signed by the counselor and attached to the parties' affidavit, acknowledging that the counselor provided to the parties the information pamphlet developed and promulgated by the office of judicial administration pursuant to this act, which pamphlet provides a full explanation of the terms and conditions of an elevated marriage.

(C) The signature of both parties witnessed by a notary.

(d) The recitation, affidavit and attestation shall be filed as provided in K.S.A. 23-2505, and amendments thereto.

New Sec. 8. A court of competent jurisdiction in a divorce or separation proceeding retains the discretion to not recognize elevated marriage agreements in extraordinary circumstances only in cases where the man and woman were married and then elected to enter into an agreement with heightened standards of commitment.

New Sec. 9. (a) Notwithstanding any other law to the contrary and

1 subsequent to the parties obtaining authorized counseling, a spouse to a
2 marriage with heightened standards of commitment may obtain a judgment
3 of divorce only upon proof of any of the following:

- 4 (1) The other spouse has committed adultery;
- 5 (2) the other spouse has committed a felony or other infamous crime;
- 6 (3) the other spouse has physically or sexually abused the spouse
7 seeking the divorce or a child of one of the spouses;
- 8 (4) the spouses have been living separately and apart, continuously,
9 without reconciliation for a period of two years; or

10 (5) (A) the spouses have been living separately and apart,
11 continuously, without reconciliation for a period of two years from the
12 date the judgment of judicial separation was signed; or

13 (B) (i) if there is a minor child or children of the marriage, the
14 spouses have been living separately and apart, continuously, without
15 reconciliation for a period of two years and six months from the date the
16 judgment of judicial separation was signed; or

17 (ii) if abuse of a child of the marriage or a child of one of the spouses
18 is the basis for which the judgment of judicial separation was obtained,
19 then a judgment of divorce may be obtained if the spouses have been
20 living separately and apart, continuously, without reconciliation for a
21 period of one year from the date the judgment of judicial separation was
22 signed.

23 (b) Notwithstanding any other law to the contrary and subsequent to
24 the parties obtaining authorized counseling, a spouse to a marriage with
25 heightened standards of commitment may obtain a judgment of judicial
26 separation only upon proof of any of the following:

- 27 (1) The other spouse has committed adultery;
- 28 (2) the other spouse has committed a felony and has been sentenced
29 to death or imprisonment;
- 30 (3) the other spouse has physically or sexually abused the spouse
31 seeking the legal separation or divorce or a child of one of the spouses;
- 32 (4) the spouses have been living separately and apart, continuously,
33 without reconciliation for a period of two years; or

34 (5) the other spouse has been addicted to habitual drunkenness for
35 one year, has been guilty of such cruel and barbarous treatment as to
36 endanger the life of the other, or has offered such indignities to the person
37 of the other as to render such person's condition intolerable.

38 New Sec. 10. Unless judicially separated, spouses in a contract
39 marriage may sue each other as any spouse can in a marriage that is not
40 subjected to heightened standards of commitment.

41 New Sec. 11. (a) Judicial separation in a marriage with heightened
42 standards of commitment does not dissolve the bond of matrimony, since
43 the separated husband and wife are not at liberty to marry again, but it puts

1 an end to their conjugal cohabitation and to the common concerns that
2 existed between them.

3 (b) Spouses who are judicially separated in a marriage with
4 heightened standards of commitment shall retain that status until either
5 reconciliation or divorce.

6 New Sec. 12. (a) The office of judicial administration shall
7 promulgate an informational pamphlet, entitled, "The Optional Elevated
8 Marriage Act," which shall outline in sufficient detail the consequences of
9 entering into a marriage with mutually agreed upon heightened standards
10 of commitment.

11 (b) The informational pamphlet shall be made available to any
12 counselor who provides authorized counseling as provided for by this act.

13 New Sec. 13. (a) Elevated marriages with heightened standards of
14 commitment are only available to a man and woman who are or over the
15 age of consent. Minors are not eligible to enter an elevated marriage until
16 they reach the age of consent.

17 (b) Because the establishment clause of the 1st amendment of the
18 constitution of the United States and section 7 of the bill of rights of the
19 constitution of the state of Kansas prohibits the state from recognizing,
20 endorsing or respecting any non-secular form of marriage that does not
21 involve a man and a woman, the individuals who enter any form of parody
22 marriage as permitted by the free exercise clause of the 1st amendment of
23 the constitution of the United States and section 7 of the bill of rights of
24 the constitution of the state of Kansas remain ineligible to enter into an
25 elevated marriage.

26 Sec. 14. K.S.A. 2018 Supp. 23-2505 is hereby amended to read as
27 follows: 23-2505. (a) The clerks of the district courts or judges thereof,
28 when applied to for a marriage license by any person who is one of the
29 parties to the proposed marriage and who is legally entitled to a marriage
30 license, shall issue a marriage license in substance as follows:

31 MARRIAGE LICENSE

32 (Name of place where office located, month, day and year.)

33 TO ANY PERSON authorized by law to perform the marriage
34 ceremony,

35 Greeting:

36 You are hereby authorized to join in marriage A B of _____,
37 date of birth _____, and C D of _____, date of birth _____,
38 (and name of parent or guardian consenting), and of this license, duly
39 endorsed, you will make due return to this office immediately after
40 performing the ceremony.

41 E F, (title of person issuing the license).

42 (b) No clerk or judge of the district court shall issue a marriage
43 license before the third calendar day (Sunday, holidays, and days on which

1 the office of the clerk of the court is not accessible included) following the
2 date of the filing of the application therefor in such clerk's or judge's office
3 except that in cases of emergency or extraordinary circumstances, a judge
4 of the district court may upon proper showing being made, permit by order
5 of the court the issuance of such marriage license without waiting three
6 days. Each district court shall keep a record of all marriages resulting from
7 licenses issued by the court, which record shall show the names of the
8 persons who were married and the date of the marriage.

9 (c) No clerk or judge shall issue a license authorizing the marriage of
10 any person:

11 (1) Under the age of 16 years, except that a judge of the district court
12 may, after due investigation, give consent and issue the license authorizing
13 the marriage of a person 15 years of age when the marriage is in the best
14 interest of the person 15 years of age; or

15 (2) who is 16 or 17 years of age without the express consent of such
16 person's father, mother or legal guardian and the consent of the judge
17 unless consent of both the mother and father and any legal guardian or all
18 then living parents and any legal guardian is given in which case the
19 consent of the judge shall not be required. If not given in person at the
20 time of the application, the consent shall be evidenced by a written
21 certificate subscribed thereto and duly attested. Where the applicants or
22 either of them are 16 or 17 years of age and their parents are dead and
23 there is no legal guardian then a judge of the district court may after due
24 investigation give consent and issue the license authorizing the marriage.

25 (d) The judge or clerk may issue a license upon the affidavit of the
26 party personally appearing and applying therefor, to the effect that the
27 parties to whom such license is to be issued are of lawful age, as required
28 by this section, and the judge or clerk is hereby authorized to administer
29 oaths for that purpose.

30 (e) (1) *If the parties intend to enter into an elevated marriage, the*
31 *application for a marriage license shall also include the following*
32 *statement completed by at least one of the two parties: "We (insert name of*
33 *spouse) and (insert name of spouse) declare our intent to enter into an*
34 *elevated marriage and, accordingly, have executed the attached*
35 *declaration of intent.*

36 (2) *The application for a marriage license shall include the*
37 *declaration of intent to enter into an elevated marriage as set forth in*
38 *section 4, and amendments thereto.*

39 ~~(e)~~(f) Every person swearing falsely in such affidavit shall be guilty
40 of a misdemeanor and shall be punished by a fine not exceeding \$500. A
41 clerk or judge of the district court shall state in every license the birth
42 dates of the parties applying for the same, and if either or both are 16 or 17
43 years of age, the name of the father, mother, or guardian consenting to

1 such marriage.

2 ~~(f)~~(g) Every marriage license shall expire at the end of six months
3 from the date of issuance if the marriage for which the license was issued
4 does not take place within the six-month period of time.

5 Sec. 15. K.S.A. 2018 Supp. 23-2511 is hereby amended to read as
6 follows: 23-2511. (a) Every person who performs a marriage ceremony
7 under the provisions of this act shall endorse the person's certificate of the
8 marriage on the license, give the duplicate copy of the license to the
9 parties to the marriage and return the license, within 10 days after the
10 marriage, to the judge or clerk of the district court who issued it. Not later
11 than the third day of the following month, the judge or clerk shall submit
12 the information from the license to the vital statistics integrated
13 information system maintained by the secretary of health and environment,
14 or by other means as designated by the secretary and the judicial
15 administrator.

16 *(b) On the face of the certificate shall appear the certification to the*
17 *fact of marriage, including, if applicable, a designation that the parties*
18 *entered into a marriage with expectations of heightened commitment,*
19 *signed by the parties to the marriage and the witnesses, and the signature*
20 *and title of the officiant.*

21 Sec. 16. K.S.A. 2018 Supp. 23-2516 is hereby amended to read as
22 follows: 23-2516. (a) All marriages solemnized among the society called
23 Friends, or Quakers, in the form previously practiced and in use in their
24 meetings shall be good and valid and shall not be construed as affected by
25 any of the foregoing provisions of this act. All marriages previously
26 solemnized in this state by that society, in accordance with its forms and
27 usage, are hereby declared legal and valid.

28 (b) A local spiritual assembly of the Baha'is or representative
29 members of that assembly, according to the usage of their religious
30 community, as defined in the declaration of trust and bylaws of the
31 national spiritual assembly of the Baha'is of the United States and bylaws
32 of a local spiritual assembly may perform and witness the marriage
33 ceremony in this state and certify on the back of the license the facts of the
34 marriage and its date.

35 *(c) It shall be lawful for religious societies who reject formal*
36 *ceremonies to join together in marriage a man and a woman who are*
37 *members of the society, according to the forms, customs, or rites of the*
38 *society to which they belong, with the exception that if the parties enter*
39 *into a legally recognized marriage with heightened standards of*
40 *commitment, the requirements set forth in the optional elevated marriage*
41 *act, section 1 et seq., and amendments thereto, shall be complied with.*

42 ~~(e)~~(d) Any marriage ceremony performed prior to the effective date
43 of this act and certified by any person who had been issued a certificate of

1 election as justice of the peace and the resulting marriage are hereby
2 declared legal and valid.

3 Sec. 17. K.S.A. 2018 Supp. 23-2505, 23-2511 and 23-2516 are
4 hereby repealed.

5 Sec. 18. This act shall take effect and be in force from and after its
6 publication in the statute book.