

March 21, 2019

The Honorable Fred Patton, Chairperson
House Committee on Judiciary
Statehouse, Room 519-N
Topeka, Kansas 66612

Dear Representative Patton:

SUBJECT: Fiscal Note for HB 2321 by Representative Garber, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2321 is respectfully submitted to your committee.

HB 2321 would create the Optional Elevated Marriage Act. The bill would define an elevated marriage as a secular marriage that the state could recognize without violating the establishment clause of the First Amendment of the *United States Constitution* or Section 7 of the Bill of Rights of the *Kansas Constitution* that is entered into by one male and one female who understand and agree that the marriage between them is a lifelong covenant relationship and who intentionally agree to being subjected to higher standards of commitment at the outset of their marriage as a matter of mutual consent. Parties to a marriage with heightened standards of commitment would be required to receive authorized counseling emphasizing the nature, purposes and responsibilities of marriage. A man and a woman would be able to enter into a marriage with heightened standards of commitment by declaring intent to do so on the application for a marriage license. The bill includes the language that would be required on a marriage license and marriage certificate to reflect the declaration of an elevated marriage. A court of competent jurisdiction would retain the discretion to not recognize elevated marriage agreements in extraordinary circumstances.

Only when there has been a complete and total breach of the marital commitment could a party seek a declaration that the marriage is no longer legally recognized. HB 2321 would list the circumstances under which a party to an elevated marriage would be able to obtain a divorce. The bill provides that it would be lawful for religious societies to reject formal marriage ceremonies for its members with the exception that if the parties enter into a legally recognized marriage with heightened standards of commitment, as set forth in the Act. The bill would require the Office of Judicial Administration (OJA) to develop and promulgate the Act, including an informational

pamphlet that provides a full explanation of the terms and conditions of an elevated marriage as well as the obligation to seek marital counseling in times of marital difficulties and the exclusive grounds for legally terminating a marriage by divorce. The bill would include definitions for judicial separation, minor, and parody marriage. HB 2321 would take effect from and after its publication in the statute book.

OJA indicates that the provisions of HB 2321 could extend certain marital cases, increasing the time spent by judicial personnel researching and hearing cases. OJA indicates the bill would also increase its costs for time spent by nonjudicial personnel developing and distributing an informational pamphlet regarding elevated marriages. However, a fiscal effect of expenditures by the Judicial Branch cannot be estimated. The Kansas Association of Counties indicates HB 2321 could have a fiscal effect on counties if a different type of marriage license would be required; however, the cost of maintaining two different forms or changing the existing form cannot be estimated. The League of Kansas Municipalities indicates that HB 2321 would have no fiscal effect on cities. The Office of the Attorney General (OAG) indicates that HB 2321 would increase its expenditures by requiring it to hire outside counsel to assist its civil litigation attorneys in defending constitutional legal challenges to the provisions of the bill. Should any challenge prevail, the OAG indicates monetary judgments and attorney fees would be required from the state. A fiscal effect cannot be estimated; however, the OAG indicates any expenditures for outside counsel, monetary judgments and legal fees would be paid out of the Tort Claims Fund. Any fiscal effect associated with HB 2321 is not reflected in *The FY 2020 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "L. L. Campbell". The signature is fluid and cursive, with a large initial "L" and "C".

Larry L. Campbell
Director of the Budget

cc: Janie Harris, Judiciary
Chardae Caine, League of Municipalities
Jay Hall, Association of Counties
Willie Prescott, Office of the Attorney General