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

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

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

New Sec. 2. As used in this act:
   (a) "Authorized counseling" means marital counseling provided by a priest, minister, rabbi, clerk of the society of Friends, any clergy member of any religious sect or a licensed professional counselor, associate counselor, marriage and family therapist, clinical psychologist or associate marriage and family therapist.
   (b) "Judicial separation" means a judicial proceeding pursuant to section 9, and amendments thereto, that results in a court determination that the parties of a marriage live separate and apart.
   (c) "Minor" a person who has not reached the age of consent.
   (d) "Parody marriage" any form of non-secular marriage that does not involve a secular marriage involving one man and one woman, yet calls itself marriage and is precluded from legal recognition by the state of Kansas pursuant to the establishment clause of the 1st amendment of the constitution of the United States and section 7 of the bill of rights of the constitution of the state of Kansas. Parody marriages are permitted to take place as permitted by the free exercise clause of the 1st amendment of the constitution of the United States and section 7 of the bill of rights of the constitution of the state of Kansas. A parody marriage is a form of non-secular marriage that tends to erode community standards of decency, unlike secular marriage between a man and a woman, who have reached the age of consent.

New Sec. 3. (a)(1) An elevated marriage is a secular marriage that the state can recognize without violating the establishment clause of the 1st amendment of the constitution of the United States or section 7 of the bill of rights of the constitution of the state of Kansas 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.
(2) Parties to a marriage with heightened standards of commitment
shall have received authorized counseling emphasizing the nature,
purposes and responsibilities of marriage.
(3) Only when there has been a complete and total breach of the
marital commitment may a party seek a declaration that the marriage is no
longer legally recognized.
(b) (1) A man and woman may enter into a marriage with heightened
standards of commitment by declaring their intent to do so on their
application for a marriage license, as otherwise required under this act, and
executing a declaration of intent to enter into an elevated marriage as
provided in section 4, and amendments thereto.
(2) The application for a marriage license and the declaration of
intent shall be filed with the official who issues the marriage license.
New Sec. 4. (a) A declaration of intent to enter into an elevated
marriage shall contain all of the following:
(1) A recitation signed by both parties to the following effect:
"AN ELEVATED MARRIAGE
We do solemnly declare that marriage is a commitment between a man
and a woman who agree to live together as husband and wife for so long as
they both may live. We have chosen each other carefully and disclosed to
one another everything which could adversely affect the decision to enter
into this marriage. We have received authorized counseling on the nature,
purposes, and responsibilities of marriage. We have read the optional
elevated marriage act, and we understand that a marriage is intended to be
for life, for better or worse, richer or poorer, in sickness and in health.
If we experience marital difficulties, we commit ourselves to take all
reasonable efforts to preserve our marriage, including marital counseling.
With full knowledge of what this commitment means, we do hereby
declare that our marriage will be bound by Kansas law on contract
standards of marriage commitment and we promise to love, honor and care
for one another as husband and wife for the rest of our lives."
Even if the parties relocate to another state, the parties agree that they
will be subjected to the terms and conditions of a marriage with
heightened standards of commitment as set forth by the optional elevated
marriage act.
(2) (A) An affidavit by the parties that they have received authorized
counseling which shall include a discussion of the seriousness of marriage,
communication of the fact that a marriage is a commitment for life
between a man and a woman, a discussion of the obligation to seek marital
counseling in times of marital difficulties and a discussion of the exclusive
grounds for legally terminating a marriage by divorce.

(B) An attestation, signed by the counselor and attached to or included in the parties' affidavit, confirming that the parties received authorized counseling as to the nature and purpose of the marriage and the grounds for termination thereof and an acknowledgment that the counselor provided to the parties the informational 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 a marriage.

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

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

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

State Of Kansas
County Of_________

BE IT KNOWN THAT on this _____ day of ______________, _____, before me the undersigned notary, personally came and appeared:
_______________________ and ___________________________ who after being duly sworn by me, a notary, deposed and stated that:

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

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

______________________________
(Name of prospective spouse)

______________________________
(Name of prospective spouse)

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____DAY OF ______________, ____________

______________________________
NOTARY PUBLIC
ATTESTATION

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
subsequent to the parties obtaining authorized counseling, a spouse to a
marriage with heightened standards of commitment may obtain a judgment
of divorce only upon proof of any of the following:
(1) The other spouse has committed adultery;
(2) the other spouse has committed a felony or other infamous crime;
(3) the other spouse has physically or sexually abused the spouse
seeking the divorce or a child of one of the spouses;
(4) the spouses have been living separately and apart, continuously,
without reconciliation for a period of two years; or
(5) (A) the spouses have been living separately and apart,
continuously, without reconciliation for a period of two years from the
date the judgment of judicial separation was signed; or
(B) (i) if there is a minor child or children of the marriage, the
spouses have been living separately and apart, continuously, without
reconciliation for a period of two years and six months from the date the
judgment of judicial separation was signed; or
(ii) if abuse of a child of the marriage or a child of one of the spouses
is the basis for which the judgment of judicial separation was obtained,
then a judgment of divorce may be obtained if the spouses have been
living separately and apart, continuously, without reconciliation for a
period of one year from the date the judgment of judicial separation was
signed.
(b) Notwithstanding any other law to the contrary and subsequent to
the parties obtaining authorized counseling, a spouse to a marriage with
heightened standards of commitment may obtain a judgment of judicial
separation only upon proof of any of the following:
(1) The other spouse has committed adultery;
(2) the other spouse has committed a felony and has been sentenced
to death or imprisonment;
(3) the other spouse has physically or sexually abused the spouse
seeking the legal separation or divorce or a child of one of the spouses;
(4) the spouses have been living separately and apart, continuously,
without reconciliation for a period of two years; or
(5) the other spouse has been addicted to habitual drunkenness for
one year, has been guilty of such cruel and barbarous treatment as to
danger the life of the other, or has offered such indignities to the person
of the other as to render such person's condition intolerable.
New Sec. 10. Unless judicially separated, spouses in a contract
marriage may sue each other as any spouse can in a marriage that is not
subjected to heightened standards of commitment.
New Sec. 11. (a) Judicial separation in a marriage with heightened
standards of commitment does not dissolve the bond of matrimony, since
the separated husband and wife are not at liberty to marry again, but it puts
an end to their conjugal cohabitation and to the common concerns that existed between them.

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

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

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

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

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

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

MARRIAGE LICENSE

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

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

Greeting:

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

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

(b) No clerk or judge of the district court shall issue a marriage license before the third calendar day (Sunday, holidays, and days on which
the office of the clerk of the court is not accessible included) following the
date of the filing of the application therefor in such clerk's or judge's office
except that in cases of emergency or extraordinary circumstances, a judge
of the district court may upon proper showing being made, permit by order
of the court the issuance of such marriage license without waiting three
days. Each district court shall keep a record of all marriages resulting from
licenses issued by the court, which record shall show the names of the
persons who were married and the date of the marriage.
(c) No clerk or judge shall issue a license authorizing the marriage of
any person:
(1) Under the age of 16 years, except that a judge of the district court
may, after due investigation, give consent and issue the license authorizing
the marriage of a person 15 years of age when the marriage is in the best
interest of the person 15 years of age; or
(2) who is 16 or 17 years of age without the express consent of such
person's father, mother or legal guardian and the consent of the judge
unless consent of both the mother and father and any legal guardian or all
then living parents and any legal guardian is given in which case the
consent of the judge shall not be required. If not given in person at the
time of the application, the consent shall be evidenced by a written
certificate subscribed thereto and duly attested. Where the applicants or
either of them are 16 or 17 years of age and their parents are dead and
there is no legal guardian then a judge of the district court may after due
investigation give consent and issue the license authorizing the marriage.
(d) The judge or clerk may issue a license upon the affidavit of the
party personally appearing and applying therefor, to the effect that the
parties to whom such license is to be issued are of lawful age, as required
by this section, and the judge or clerk is hereby authorized to administer
oaths for that purpose.
(e)(1) If the parties intend to enter into an elevated marriage, the
application for a marriage license shall also include the following
statement completed by at least one of the two parties: "We (insert name of
spouse) and (insert name of spouse) declare our intent to enter into an
elevated marriage and, accordingly, have executed the attached
declaration of intent.
(2) The application for a marriage license shall include the
declaration of intent to enter into an elevated marriage as set forth in
section 4, and amendments thereto.
(e)(f) Every person swearing falsely in such affidavit shall be guilty
of a misdemeanor and shall be punished by a fine not exceeding $500. A
clerk or judge of the district court shall state in every license the birth
dates of the parties applying for the same, and if either or both are 16 or 17
years of age, the name of the father, mother, or guardian consenting to
such marriage.

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

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

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

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

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

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

(d) Any marriage ceremony performed prior to the effective date of this act and certified by any person who had been issued a certificate of
election as justice of the peace and the resulting marriage are hereby declared legal and valid.

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

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