

January 27, 2014

The Honorable Lance Kinzer, Chairperson
House Committee on Judiciary
Statehouse, Room 165-W
Topeka, Kansas 66612

Dear Representative Kinzer:

SUBJECT: Fiscal Note for HB 2421 by Representative Hildabrand

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2421 is respectfully submitted to your committee.

HB 2421 would create the Fourth Amendment Preservation and Protection Act of 2014. The bill would prohibit all local and state governments from possessing or attempting to possess information related to an individual or group of individuals that is held by a third party in a system of records. A "system of records" is defined by the bill as any group of records from which information is retrieved by the name of an individual or by some identifying number, symbol or other identifying particular associated with the individual.

The information in a third party system of records would not be subject to discovery, subpoena or other means of legal compulsion or be admissible as evidence in a judicial or administrative hearing. The bill would allow exceptions to these prohibitions for local and state governments and the courts if the individual whose name is being used to access information provides express and informed consent to the search or if the local or state government obtains a warrant, upon probable cause, supported by oath or affirmation. Obtaining cellular location information in an emergency situation would be exempted from the requirements of the Act.

According to the Kansas Department of Revenue, passage of HB 2421 could reduce State General Fund revenues by approximately \$45.0 million annually. Currently, about 25.0 percent of delinquent tax revenues are collected with the assistance of a third party. Delinquent tax collections in FY 2015 are estimated to be about \$180.0 million. In addition, because of the restrictions the bill would place upon the Department's ability to obtain third party data, the bill is expected to have an adverse effect on the day-to-day business operations of the Department leading to a lower level of compliance in customers meeting their tax obligations, and thus, less revenue paid to the state.

According to the Department of Children and Families (DCF), passage of HB 2421 would affect the agency in four areas of its operations: foster care, abuse and neglect investigations, child support, and fraud. The agency states that it would be unlikely to obtain the necessary consent for third party data matching in the foster care and child support programs. Therefore, a significant portion of the federal funds in these programs would be lost. The federal Title IV-E Foster Care Program requires the agency to obtain and verify family incomes to determine which foster care children qualify for federal funding. An external database is used to verify the family income and this verification occurs without parental consent. Terminating the use of the third party database would result in a higher proportion of state funding. The total federal foster care funds at risk are approximately \$22.0 million per year.

The agency indicates that passage of HB 2421 may interfere with joint investigations into abuse and neglect by prohibiting the exchange of information with law enforcement. Child Support Services (CSS) relies extensively on agreements with third party entities for information and data matching. The agency believes that this bill would prevent CSS from obtaining information from a third party, and without the ability to obtain that information, its ability to establish child support orders and collect child support would be hindered. CSS projects are expected to receive approximately \$28.0 million in federal child support funds and \$214.0 million in collections during FY 2015. While the agency states that passage of HB 2421 could cause reductions to those amounts, it is unable to provide an accurate estimate of the amount of those reductions.

The agency also states that the bill would impede its ability to detect and prosecute fraud. The agency often uses third party sources to obtain information on individuals who have not provided their consent. In addition, the agency would not be able to rely on search warrants since they are used primarily in criminal investigations or prosecutions and are not generally available in civil or administrative proceedings. In FY 2013, the agency recovered approximately \$951,000 in fraud collections and estimates that up to half that amount could be lost under the bill's provisions.

The Kansas Highway Patrol states that passage of HB 2421 could have a dramatic fiscal effect on law enforcement agencies. The information that is routinely gathered by law enforcement officers such as identification, proof of insurance, motor carrier documents, medical records, and driving records would require a search warrant. Significant amounts of time spent by law enforcement officers in preparing affidavits and traveling to court to have warrants signed would lead to fewer officers on the road and put an additional burden on other law enforcement officers. This would create a financial hardship for the agency; however, the agency was unable to provide an estimate of the extent of that hardship.

The Office of the Adjutant General indicates that passage of HB 2421 would require the agency to prepare a probable cause affidavit and obtain a court order any time information needed to be obtained from another agency. Because of the language of the bill, the nature or circumstances of the request for information would be irrelevant. While the agency is unable to determine the extent of the additional workload that would result from passage of the bill, it

appears that in order to meet the requirements of the bill and maintain the agency's current levels of operation readiness, additional full-time administrative and legal staff would be required. The agency estimates that more than 2.00 FTE positions would be required and the funding for the positions would come from the State General Fund.

The Office of the Attorney General states that passage of HB 2421 would have a significant, but incalculable, effect on the agency, including, but not limited to the following:

1. Inability to subpoena records by the Medicaid Fraud and Abuse Division would lead to declines in Medicaid fraud recoveries, which totaled \$33.7 million in FY 2013.
2. Inability to subpoena records by the Consumer Protection and Antitrust Division would lead to declines in funds recovered on behalf of Kansas consumers and taxpayers, which totaled \$49.2 million in calendar year 2012, the latest available data.
3. Passage may require that units such as the Concealed Carry License Unit, Private Detective Licensing Unit, Roofing Registration Unit and Division of Crime Victims Compensation modify forms so that people clearly consent to a records search as required by law.
4. Cases in the Criminal Litigation Division would be adversely affected by the inability to subpoena records such as phone records, bank records, medical records, social media (Facebook) records and email records. This could lead to longer court proceedings and increased litigation costs.
5. Discovery of evidence in cases handled by the Civil Litigation Division would be adversely affected, leading to losses in the Tort Claims Fund.
6. Because the term "third party" is not clearly defined by the law, the ability of state agencies to share records with the Abuse, Neglect and Exploitation Unit, required by K.S.A. 75-723, would be limited.
7. Operations of the Batterer Intervention Program would be compromised, as programs would be unable to share information with the unit necessary to obtain certification.
8. Operations of the State Child Death Review Board would be compromised due to the inability to access necessary information, such as medical records, autopsy reports, and law enforcement records.

According to the Kansas Insurance Department, the ramifications to investigative procedures of passage of HB 2421 would be substantial and could affect investigator safety and require additional expense in conducting investigations. The Department states that limiting access to information sources indicating past criminal behavior and motive for the commission of a crime would slow investigative process and potentially expose investigators to harm. It would also affect the investigation triage process. The Department reports that lacking the ability to request key policyholder information from an insurance company subject to financial or market regulation examinations would result in additional expense for subpoenaing the information.

HB 2421 would permit local and state governments to obtain warrants in order to gather information held by a third party in a system of records. The bill would also permit courts to

issue orders requiring discovery or subpoena of the information protected by this act. According to the Office of Judicial Administration, both judges and non-judicial personnel would be required to spend more time reviewing and processing these warrants and orders. However, until the courts have had the opportunity to operate under the provisions of the bill, the fiscal effect cannot be estimated. The bill would have a long-term fiscal effect on the Judicial Branch.

The Kansas Department of Health and Environment states that passage of the bill could result in a number of its systems and processes requiring substantial redesign or abandonment. The fiscal effect on the state for the replacement of systems that it currently relies on for public health reporting or the fiscal effect on the state from the loss of federal funds for programs that rely on access to systems that the agency assumes would be considered third party systems under the bill and that are necessary to satisfy federal grant requirements cannot be estimated at this time, but are expected to be substantial.

The Board of Regents indicates that passage of HB 2421 would have an effect on how the Board and higher education institutions operate with regard to student data which is now gathered from different entities, including the National Clearing House, Departments of Labor in a number of states and the U.S Department of Education. Passage of the bill could potentially have an effect on the ability of the Board and the state universities to share information with collection agency vendors on students who are repaying loans or other debts. The Board is unable to estimate what that fiscal effect would be.

While passage of HB 2421 would not have an immediate, measurable fiscal effect on the Department of Corrections, the agency states that the bill would have a significant effect on its operations. The agency would no longer be able to access federal NCIC, fingerprint or other database without a warrant because those databases are under a third party. The bill would require the Department to obtain a warrant to retrieve even a basic criminal rap sheet from federal law enforcement.

The Kansas Department of Wildlife, Parks and Tourism expects that passage of HB 2421 might cause more legal work by the agency in order to access records held by third parties, but is unable to estimate the costs associated with the additional legal work.

The League of Kansas Municipalities believes that passage of HB 2421 would affect those cities in Kansas that have police departments or other departments that are dependent on information gathered from outside sources. It is expected that additional police officers, department staff, and/or legal staff would be necessary to satisfy the requirements to obtain information that is now readily available. The Kansas Association of Counties states that a local government would have to pursue a criminal charge in order to obtain records if an individual or group did not consent to access, as a warrant upon probable cause indicates a criminal matter. Counties do not issue warrants as a general process; therefore, additional expenses would be incurred with this bill's passage. The Association is unable to estimate the amount of those costs at this time.

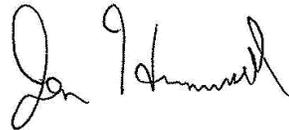
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Information regarding the fiscal effect of passage of HB 2421 was also requested from the Kansas Department of Labor. The agency has not yet responded to this request. The Kansas Commission on Veterans Affairs, the Kansas Department of Commerce, the Governmental Ethics Commission and the Kansas Department of Education do not anticipate additional expenses associated with the passage of this bill. Any fiscal effect associated with HB 2421 is not reflected in *The FY 2015 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Hummell". The signature is written in a cursive style with a large initial "J" and "H".

Jon Hummell,
Interim Director of the Budget

cc: Willie Prescott, Attorney General's Office
Steve Neske, Revenue
Jackie Aubert, DCF
Kim Torrey, KHP
Mary Rinehart, Judiciary