

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1472 – SB 1560

April 6, 2016

SUMMARY OF ORIGINAL BILL: Provides an exception to the current requirements for executing wills. Authorizes attesting witnesses to a will to sign a self-proving affidavit contained within the will rather than having to sign the will itself.

Applies to wills executed before the effective date of the bill if the wills have not undergone final settlement without appeal or final settlement after conclusion of appeal.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (014962): Deletes all language after the enacting clause. For wills executed prior to July 1, 2016, considers signatures to an affidavit meeting the requirements of a holographic will as signatures to a will for purposes of the will being properly executed, if the signatures are made at the same time as the testator signs the will and the affidavit contains language meeting all the requirements of an otherwise properly executed will.

Creates a rebuttable presumption that the testator and witnesses signed at the same time if the signatures are made on the same day. Any affidavit used to properly execute the will under the bill as amended cannot also serve as a self-proving affidavit. Any will executed after July 1, 2016, is required to meet all statutory requirements under current law.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- Under Tenn. Code Ann. § 32-1-104, a will, other than a holographic or nuncupative will, must be executed by the signature of the testator and two witnesses. The will itself must be signed by the attesting witnesses.
- The bill as amended would overturn a recent Court of Appeals case, *In re estate of Morris*, 2015 Tenn. App. LEXIS 62 (Tenn. Ct. App. Feb. 9, 2015), in which the court held that a will was not properly executed because the attesting witnesses signed a self-

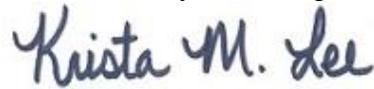
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proving affidavit at the end of the will rather than the will itself. Further, the bill would cure any defective will drafted prior to January 1, 2017, not properly executed under Tenn. Code Ann. § 32-1-104 that meets the requirements of the bill as amended.

- The bill as amended changes a technical requirement for wills, and will only affect cases that meet the specific facts addressed under the bill as amended. It is assumed that the bill as amended will not significantly impact the courts.
- The Administrative Office of the Courts confirms that the legislation will not significantly impact its caseload or operations.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/trm