



FISCAL MEMORANDUM

HB 233 - SB 562

March 28, 2022

SUMMARY OF BILL AS AMENDED (013226, 016651): Establishes common law marriage in the state between one man and one woman. Creates a "Record of Marital Contract at Common Law" (RMCCCL) to be filed with the county clerk. Prescribes the information the record must contain, including each party's Social Security number. Specifies that failure to record an RMCCCL not determinative of whether a marital contract at common law exists and the existence and validity of a marital contract at common law is not dependent upon the act of submitting notice or of the state receiving and recording the notice.

Requires the Office of Vital Records (OVR) to:

- Develop an RMCCCL form and post it on its website for use by the general public;
- Distribute copies of the form to each county clerk's office in the state; and
- Provide a certified copy of the record upon request by one of the parties to the RMCCCL, which the OVR may charge a fee to cover any administrative costs.

Authorizes a county clerk to record an RMCCCL and requires a county clerk to forward any RMCCCL to OVR, on or before the tenth day of each calendar month, to be filed and registered. Imposes a \$15 tax and authorizes a \$5 privilege tax on each RMCCCL filed. Provides that an RMCCCL executed outside Tennessee will be recognized by the state if one of the parties was a resident of Tennessee. Prohibits a cause of action for civil or criminal liability from being brought against a county clerk who in good faith complies with the proposed legislation.

Prohibits certain persons from entering into a valid marital contract at common law. Requires the party's parents, guardian, next of kin, other person having custody of the party, or duly authorized representative to join in the contract by personal appearance or by submitting a sworn and notarized affidavit to the county clerk or deputy county clerk stating the party is 17 years of age and that the party has such person's consent to marry. Authorizes emancipated individuals to enter into a valid marital contract at common law without parental consent. Establishes that a party who is under 18 years of age is emancipated after entering into marriage. Requires the Administrative Office of the Courts (AOC) to develop a fact sheet on the rights and responsibilities of parties to a marriage and of emancipated minors, to be provided to a minor upon recording a marital contract at common law.

Establishes that certain records maintained or stored by the OVR are considered public record and verified information from such documents may be provided upon request. Includes RMCCCLs to the documents that a county public records commission has the right to authorize lamination of in order to be permanently preserved.

Authorizes a person to contest the recording of an RMCCCL in the county where the RMCCCL was filed. The petition of contest must be accompanied by a cost bond of at least \$50 and all court costs must be adjudged against the losing party.

Specifies that an RMCCCL is not conclusive proof of a marital contract.

FISCAL IMPACT OF BILL AS AMENDED:

Increase State Revenue –

\$4,000/FY22-23 and Subsequent Years/Department of Health

\$40,290/FY22-23 and Subsequent Years/General Fund

Increase State Expenditures – \$30,000/FY22-23/General Fund

Increase Local Revenue – \$13,400/FY22-23 and Subsequent Years

Assumptions for the bill as amended:

- Common law marriage is legal in the following states: Colorado, Iowa, Kansas, Montana, New Hampshire (only posthumously, for inheritance purposes), Oklahoma (couples must get a marriage license but case law has upheld common law marriages in the state), Texas, and Utah.
- States that recognize common law marriage, but no longer allow it, include: Pennsylvania, Ohio, Indiana, Georgia, Florida, Alabama, and South Carolina.
- As common law marriage does not usually require documentation, it is difficult to estimate the number of common law marriages in each state.
- According to the Department of Health, from 2017 to 2019 there were 161,174 marriage certificates filed for an average of 53,725 (161,174 / 3) annually. This figure is estimated to remain relatively constant.
- It is assumed that the proposed legislation will not result in a significant increase of couples foregoing a marriage license and, therefore, will not impact the number of marriage certificates filed annually.
- The proposed legislation:
 - Prohibits a party from entering into a marital contract at common law if:
 - Either of the parties is under 17 years of age; or
 - One of the contracting parties is 17 years of age and the other contracting party is at least four years older;
 - Requires parental or guardian consent for a party who is 17 years of age to enter into a marital contract at common law;
 - Authorizes emancipated individuals to enter into a marital contract at common law without parental consent;
 - Establishes that a party who is under 18 years of age is emancipated after entering into marriage; and
 - Requires the AOC to develop a fact sheet on the rights and responsibilities of parties to a marriage and of emancipated minors.

- Establishing minimum age requirements for parties entering into a marital contract at common law, requiring parental consent for certain persons, authorizing emancipated persons to enter into marriage without parental consent, and establishing that a party who is under 18 years of age is emancipated after entering into marriage is consistent with Tenn. Code Ann. §§ 36-3-105 and 36-3-106 regarding applicants for marriage licenses and will not result in any significant fiscal impact to state or local government.
- Pursuant to Tenn. Code Ann. § 36-3-106(f), the AOC is required to develop a fact sheet for minors emancipated by marriage; requiring the AOC to develop such a fact sheet for minors emancipated by a recording of a marital contract at common law will not have any significant fiscal impact to the AOC.
- For the purpose of this analysis, it is estimated that the proposed legislation will increase the number of filed marriage records by five percent, or 2,686 (5% x 53,725).
- The proposed legislation would require the OVR to develop an RMCCCL form and provide certified copies of the record, upon request.
- Based on information provided by the Department of Health,
 - There will be an increase to state expenditures of \$30,000 for development of the RMCCCL form within the Tennessee Vital Records Information System Management in FY22-23.
 - The OVR will charge \$15 for certified copies, which is the amount charged for copies of other vital records.
 - It can reasonably be assumed that a certified copy will be requested for ten percent, or 269 (10% x 2,686) of RMCCCLs.
 - There will be an increase of state revenue to the Department of Health of \$4,035 (\$15 x 269) in FY22-23 and subsequent years.
- Pursuant to § 67-4-411(a), the county clerk is required to collect and forward to the Department of Revenue (DOR) to be deposited to the General Fund a tax of \$15 for each marriage license issued. The proposed legislation extends this tax to RMCCCLs.
- There will be an increase in state revenue to the General Fund of \$40,290 (\$15 x 2,686) in FY22-23 and subsequent years.
- Locals are authorized to charge a \$5 privilege tax on marriage licenses, per Tenn. Code Ann. § 67-4-505, to be used for schools. The proposed legislation extends this authorization to RMCCCLs.
- There will be a recurring increase to local revenue of \$13,430 (\$5 x 2,686), beginning in FY 22-23.
- Based on information provided by the Administrative Office of the Courts, any increase in caseload to the trial courts as a result of the proposed legislation can be absorbed within existing resources; therefore, any impact to the court system is estimated to be not significant.
- Any petition of request will occur between private parties and, therefore, will not have any significant impact to state or local government.
- Based on information provided by the Department of Finance and Administration, any impact resulting from the proposed legislation to the State Insurance Group Program is estimated to be negligible and, therefore, not significant.
- According to TennCare, TennCare accepts self-attestation of marital relationships and, as stated in policy, the concept of a holding out relationship (i.e., common law marriage) does not apply to TennCare's programs, so there is no impact to TennCare.

- Authorizing a county public records commission to authorize lamination of RMCCLs for preservation will not result in any significant impact to local government expenditures.
- It is estimated that the proposed legislation will result in an increase of duties by five percent to county clerks. It is assumed that these additional duties can be absorbed utilizing existing staff and resources, and therefore, any increase to local expenditures is considered not significant.

CERTIFICATION:

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

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

Krista Lee Carsner, Executive Director

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