

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1412 - SB 1437

January 5, 2016

SUMMARY OF BILL: Enacts the *Tennessee Natural Marriage Defense Act* and declares it is the policy of the State to defend natural marriage as recognized by the people of Tennessee in the State Constitution. Further declares marriage in Tennessee remains between one man and one woman and any court decision purporting otherwise is unauthoritative, void, and of no effect in Tennessee.

Directs the Attorney General and Reporter (Attorney General) to defend any state or local government official in any lawsuit resulting from the official recognizing natural marriage as one man and one woman.

Prohibits any state or local agency from giving force or effect to any court order that has the effect of violating Tennessee's laws protecting natural marriage.

Prohibits any state or local agency from levying upon the property or arresting the person of any government official or individual who does not comply with any court order that is in contradiction to natural marriage in Tennessee.

ESTIMATED FISCAL IMPACT:

Decrease State Revenue – Exceeds \$5,700

**Decrease Local Revenue – Exceeds \$1,900/County Privilege Tax
Exceeds \$1,900/Local Option Tax
Exceeds \$3,800/County Clerk Fee**

Other Fiscal Impact – The provisions of the bill could jeopardize federal funding if it is determined the state is noncompliant with federal law. The Bureau of TennCare reports that if someone is denied coverage that would otherwise be eligible by virtue of being in a same-sex marriage, and such action is considered noncompliant with federal law, then the Bureau's federal funding, approximately \$6,510,520,500 in FY15-16, could be in jeopardy. The Department of Human Services reports that the Supplemental Nutrition Assistance Program and Temporary Assistance for Needy Families funds the department receives could also be in jeopardy. These funds total over \$2 billion.

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Assumptions:

- The bill declares that it is the policy of Tennessee to defend “natural marriage” as it is defined in Article XI, § 18 of the Constitution of Tennessee. The bill further declares that any court decision, including a decision by the Supreme Court of the United States, purporting to strike down “natural marriage” is unauthoritative, void, and of no effect in Tennessee.
- The bill will result in marriages of same-sex couples being null and void in Tennessee, whether married in Tennessee or in another state. The bill will also result in same-sex married couples being denied services offered to different-sex married couples.
- The Bureau of TennCare (TennCare) reports that the bill would result in additional administrative costs because TennCare would have to track married persons and determine whether they are in a different-sex or same-sex marriage.
- TennCare would need to make changes to its system to track these individuals. TennCare could not reasonably estimate the extent of the administrative costs.
- It is assumed that TennCare currently budgets for such system changes and that any impact can be accommodated within TennCare’s existing resources.
- TennCare also reports that if someone is denied coverage that would otherwise be eligible by virtue of being in a same-sex marriage, and such action is considered noncompliant with federal law, then TennCare’s federal funding, approximately \$6,510,520,500 in FY15-16, could be in jeopardy.
- The Department of Human Services (DHS) reports that the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) funds received by the department could also be in jeopardy. These funds total over \$2 billion.
- The bill requires the Attorney General to defend any state or local government official in any lawsuit resulting from the official recognizing natural marriage as one man and one woman. The Attorney General cannot reasonably estimate the impact that would result from the bill.
- It is assumed that any lawsuit initiated as a result of the bill can be accommodated within the Attorney General’s existing resources.
- The Administrative Office of the Courts reports that any lawsuits initiated as a result of the bill can be accommodated within the courts’ existing resources.
- The bill will result in fewer marriage licenses being issued in Tennessee. Specifically, marriage licenses issued to same-sex couples.
- Data from the 2010 census show 10,898 same-sex couples in Tennessee in 2010. It is assumed for purposes of this fiscal note that the number of same-sex couples living in Tennessee will remain constant.
- A recent study by the Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy indicates that approximately 45 percent of same-sex couples were married as of October 2015. (Gates, GJ, Brown, TNT. 2015. Marriage and Same-Sex Couples after *Obergefell*. Williams Institute, UCLA School of Law.) It is assumed that at least 30 percent (3,269.4) of same-sex couples in Tennessee are married.
- The bill will result in the remaining 7,629 same-sex couples (10,898 couples – 3,269 couples already married) that are not married being prohibited from being married in Tennessee.

- For each marriage license issued, the state receives a \$15 privilege tax and local governments receive the following:
 - County privilege tax - \$5.00
 - Local option tax - \$5.00
 - County clerk fee - \$10.00
- It is assumed that a minimum of five percent ($7,629 \times 0.05 = 381.45$) of the 7,629 unmarried same-sex couples would have sought a marriage license each year had the bill not prohibited the issuance of the license.
- It is assumed that the bill will result in a decrease in state revenue exceeding \$5,721.75 [$381 \text{ couples} \times \15.00] as well as a decrease in local revenue as follows:
 - A decrease exceeding \$1,905.00 for county privilege taxes ($381 \text{ couples} \times \5.00);
 - A decrease exceeding \$1,905.00 for local option taxes ($381 \text{ couples} \times \5.00); and
 - A decrease exceeding \$3,810.00 for county clerk fees ($381 \text{ couples} \times \10.00).

CERTIFICATION:

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



Krista M. Lee, Executive Director

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