



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY**

DEPARTMENT OF COMMERCE AND INSURANCE

**INCLUDING
THE PEACE OFFICER STANDARDS AND TRAINING COMMISSION
AND
THE COMMISSION ON FIREFIGHTING PERSONNEL
STANDARDS AND EDUCATION**

Performance Audit Report

December 2018

Justin P. Wilson, Comptroller



Division of State Audit

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December 7, 2018

The Honorable Randy McNally
Speaker of the Senate
The Honorable Beth Harwell
Speaker of the House of Representatives
The Honorable Mike Bell, Chair
Senate Committee on Government Operations
The Honorable Jeremy Faison, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and
The Honorable Julie Mix McPeak, Commissioner
Department of Commerce and Insurance
500 James Robertson Parkway
Davy Crockett Tower
Nashville, Tennessee 37243-0565

Ladies and Gentlemen:

We have conducted a performance audit of selected programs and activities of the Tennessee Department of Commerce and Insurance; the Peace Officer Standards and Training Commission; and the Commission on Firefighting Personnel Standards and Education for the period January 1, 2013, through June 30, 2018. This audit was conducted pursuant to the requirements of the Tennessee Governmental Entity Review Law, Section 4-29-111, *Tennessee Code Annotated*.

Our audit disclosed certain findings, which are detailed in the Audit Conclusions section of this report. Management of the Department of Commerce and Insurance; the Peace Officer Standards and Training Commission; and the Commission on Firefighting Personnel Standards and Education have responded to the audit findings; we have included the responses following each finding. We will follow up the audit to examine the application of the procedures instituted because of the audit findings.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the department and the commissions should be continued, restructured, or terminated.

Sincerely,

A handwritten signature in black ink that reads "Deborah V. Loveless".

Deborah V. Loveless, CPA
Director

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18/026a



Division of State Audit

**Department of Commerce and Insurance
Including the Peace Officer Standards and Training
Commission
and the Commission on Firefighting Personnel
Standards and Education**
Performance Audit
December 2018

Our mission is to make government work better.

AUDIT HIGHLIGHTS

The Department of Commerce and Insurance's mission is serving Tennesseans in the areas of community, safety and service.

We have audited the Department of Commerce and Insurance; the Peace Officer Standards and Training Commission; and the Commission on Firefighting Personnel Standards and Education for the period January 1, 2013, through June 30, 2018. Our audit scope included a review of internal controls and compliance with laws, regulations, policies, procedures, and provisions of contracts or grant agreements in the following areas:

- information systems;
- financial services investigations;
- Consumer Affairs complaint handling;
- manufactured housing and modular buildings;
- captive insurance;
- insurance company rate reviews and examinations;
- the Peace Officer Standards and Training Commission; and
- the Commission on Firefighting Personnel Standards and Education.

KEY CONCLUSIONS

Our review resulted in three findings and eight observations.

FINDINGS

- The Department of Commerce and Insurance did not fully resolve one of the information systems internal control weaknesses identified in the prior audit; and the Department of Finance and Administration – Strategic Technology Solutions staff did not follow policy (page 12).

- The Securities Division's Financial Services Investigative Unit did not always comply with the statutory requirement to complete insurance investigations within two years (page 19).
- The POST Commission lacks a system to collect, track, and analyze complaints received (page 54).

OBSERVATIONS

The following topics are included in this report because of their effect on the Department of Commerce and Insurance; the Peace Officer Standards and Training Commission; the Commission on Firefighting Personnel Standards and Education; and the citizens of Tennessee:

- Consumer Affairs Division management did not adequately supervise Complaint Specialists to ensure adherence to department policies and work outcomes when addressing consumer complaints (page 27).
- The Manufactured Housing and Modular Buildings Section failed to develop and formalize policies and procedures, and the section failed to periodically review the installation inspection database to ensure accuracy of database information (page 37).
- The Captive Insurance Section should maintain records for captive insurance companies in a single location (page 42).
- The department should continue working with the National Association of Insurance Commissioners to improve accessibility of documentation for property and casualty rate requests (page 46).
- Under current regulations, not approving a police academy for operation is the only disciplinary measure available to the POST Commission (page 55).
- The POST Commission has had a vacancy since October 2016 (page 56).
- Fire Commission members should disclose employment with fire departments on the annual conflict-of-interest forms (page 62).
- Thirty percent of the fire departments participating in the Education Incentive Pay program were not audited during calendar years 2012 through 2016 (page 62).

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INTRODUCTION

AUDIT AUTHORITY

This performance audit of the Department of Commerce and Insurance and two of its related entities—the Peace Officer Standards and Training Commission and the Commission on Firefighting Personnel Standards and Education—was conducted pursuant to the Tennessee Governmental Entity Review Law, Title 4, Chapter 29, *Tennessee Code Annotated*. Under Section 4-29-240, the department and these two related entities are scheduled to terminate June 30, 2019. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the agency and to report to the Joint Government Operations Committee of the General Assembly. This audit is intended to aid the committee in determining whether the department and these two entities should be continued, restructured, or terminated.

BACKGROUND

The General Assembly created the Department of Commerce and Insurance pursuant to Chapter 1 of the Public Acts of 1913. The department’s mission statement is “The Department of Commerce and Insurance is committed to serving Tennesseans in the areas of community, safety and service.”

The department is governed by the Office of the Commissioner and three Deputy Commissioners who oversee Legal, Audit, Communications, and the Legislative Team. The department’s Division of Administration handles the internal operational needs and includes the Fiscal Services and Human Resources sections.

The department houses six divisions directly affecting consumers:

- Consumer Affairs – This division protects Tennessee consumers from deceptive business practices, advocates on consumers’ behalf, and educates the public on consumer issues. Consumer Affairs also investigates claims and refers cases to the state Attorney General, who may take action against a person or business for violating the Tennessee Consumer Protection Act.
- Insurance – This division, consisting of seven separate sections, is responsible for enforcing the state’s insurance laws. The Agent Licensing Office regulates both insurance “producers” (the department’s term for insurance companies licensed to do business in Tennessee) and continuing insurance education providers. The Captive Insurance Section oversees and supports corporations and groups underwriting their own insurance to manage risks and gain financial control.

The organizational charts begin on page 5.

The Financial Affairs Section regulates the financial and operational condition of life, accident, and health insurance companies; titles; health maintenance organizations (HMOs); governmental entity pools; and risk retention groups. Also, the section

reviews financial statements; receives required reports and premium taxes; and performs detailed company examinations to enforce financial requirements and compliance with insurance laws, rules, and regulations. Another section, *Insurance Examinations*, examines insurance companies licensed in Tennessee to ensure the companies' financial and operational condition remains in compliance with state laws, rules, and regulations.

The *Consumer Services Section* provides consumer outreach and mediation services to consumers to help resolve insurance-related disputes. In addition, a *Fraud and Special Investigations Unit* investigates and recommends actions against violators of Tennessee insurance statutes. The primary function of the *Policy Analysis Section* is to receive, and review for compliance with Tennessee insurance laws, all rates, rules, and forms that insurance companies authorized to transact business in the state must file with the department. This section is divided into three units based on the lines of insurance business or subject areas:

- *Life and Health Unit* – This unit reviews filings regarding life, annuity, accident, health, credit life, long-term care, disability, Medicare supplement, and legal insurance products. It also receives certifications of compliance from health care utilization review agents and handles grievances against HMOs.
- *Property and Casualty Unit* – This unit reviews filings regarding personal and commercial property and casualty products. Moreover, it reviews and registers vehicle protection (anti-theft) products and warranty programs, and it oversees the Tennessee Automobile Insurance Plan (the assigned risk auto plan).
- *Workers' Compensation Unit* – This unit reviews filings associated with workers' compensation insurance. It additionally oversees the administration of the Tennessee Workers' Compensation Insurance Plan (assigned risk plan) and takes inquiries from persons with complaints against the workers' compensation rating system.
- *Fraud Unit*: This unit investigates fraudulent activity in the insurance industry.
- *Regulatory Boards*¹ – This division licenses and regulates more than 650,000 Tennesseans in their professions and businesses. These boards and commissions are empowered to take disciplinary action including revoking licenses and assigning civil penalties against license-holders found guilty of violating laws governing their professions. Regulatory boards oversee the following professions and businesses: cosmetologists; funeral directors and embalmers; land surveyors; engineers; polygraph examiners and private investigators; real estate agents and brokers; accountants; alarm contractors; interior designers; barbers; general contractors; collection services; home inspectors; real estate appraisers; private protective services; automotive manufacturers, dealers, and salesmen; geologists; auctioneers; locksmiths; architects and landscape architects; scrap metal dealers; beauty pageants; credit services; debt management; court reporting; the athletic commission; and employee leasing. As part

¹ Not all regulatory boards are included in this audit, as many either have separate termination dates or do not terminate.

of this division, the *Private Probation Services Council* regulates private misdemeanor probation services across the state. A separate audit report on the council will be issued.

The department's Commissioner appoints the members of the Cemetery Advisory Board, the Private Protective Services Advisory Committee, the Locksmith Licensing Program, and the Scrap Metal Registration Program. The Governor makes all other appointments.

- Securities² – This division helps protect Tennessee investors by maintaining the integrity of capital markets and enforcing securities laws. The *Broker-Dealer, Agent, Investment Adviser Registration Section* registers broker-dealers (security firms), registered representatives, agents (stockbrokers), and investment advisers to do business in the state and receives notice filings for federally registered investment advisers. The division also has a separate *Securities Registration Section*. Additionally, the *Enforcement Section* is responsible for investigating complaints involving securities violations and enforcing the 1980 Tennessee Securities Act.
- Fire Prevention – The Commissioner of Commerce and Insurance serves as the State Fire Marshal and administers fire prevention programs through this division. The *Administrative Services Section* coordinates public fire education efforts, administers the certification program for fire and building code inspectors, collects statewide fire data, and issues permits and licenses. The *Bomb and Arson Section* works with local, state, and federal law enforcement to investigate incidents of arson and criminal misuse of explosives.

The *Codes Enforcement Section* reviews new construction plans and inspects schools, daycare facilities, residential mental health facilities, facilities for individuals with intellectual disabilities, propane gas dealerships, and fireworks. The *Electrical Inspection Section* performs residential, commercial, and industrial electrical inspections of new and existing structures and assists local officials with large commercial and industrial installations. The *Firefighting Personnel Standards and Education Commission* is responsible for certifying volunteer and paid firefighters in the State of Tennessee and administering the Educational Incentive Pay Program for paid firefighters. The *Fire Services and Codes Enforcement Academy* is designed to train volunteer and career firefighters, codes enforcement personnel, and others involved in the delivery of emergency services throughout Tennessee.

The *Manufactured Housing and Modular Buildings Section* administers portions of the Uniform Standards Code for Manufactured Homes and Recreational Vehicles Act (Section 68-126-2, *Tennessee Code Annotated*) related to U.S. Department of Housing and Urban Development (HUD) Labeled Manufactured Homes and the Tennessee Manufactured Home Installation Act (Section 68-126-4, *Tennessee Code Annotated*). The section acts as HUD's State Administrative Agent and exclusive Production Inspection - Primary Inspection Agency to administer certain aspects of the National Manufactured Housing Construction and Safety Standards Act of 1974.

² According to the department's website, "The term 'security' is defined broadly to include a wide array of investments, such as stocks, bonds, notes, debentures, limited partnership interests, oil and gas interests, and investment contracts."

- TennCare Oversight – This division protects the public health and the integrity of the TennCare program through overseeing, examining, and monitoring TennCare HMOs and Behavioral Health Organizations (BHOs).

Entities Administratively Attached to the Department of Commerce and Insurance

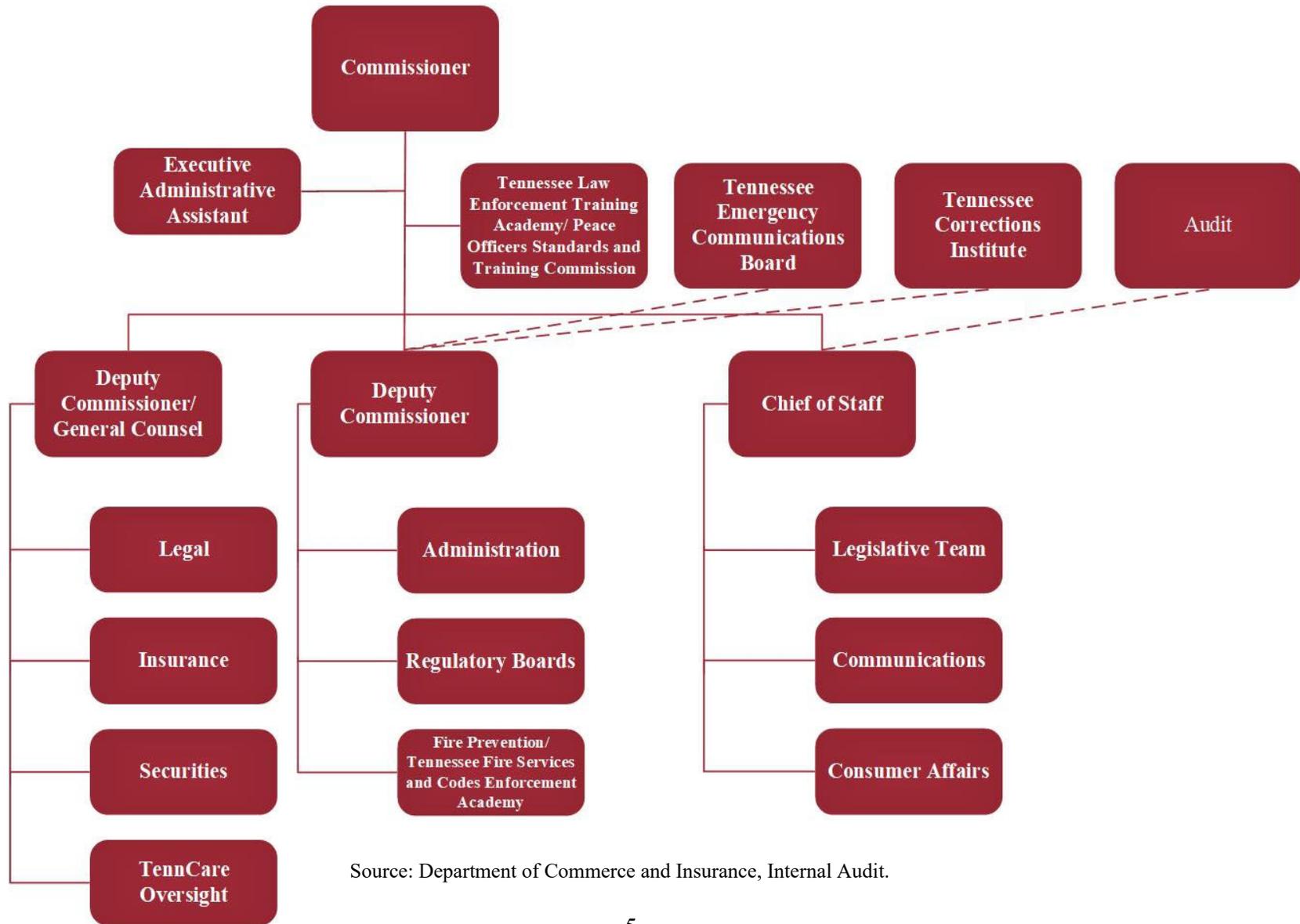
- Tennessee Law Enforcement Training Academy (TLETA) – TLETA strives to provide service to government agencies through police science and administrative education programs for officers at all levels of responsibility; provide timely and relevant information to officers who attend these training programs, which increases their capabilities to better serve their departments and citizens of the State of Tennessee; and be the center of law enforcement training for all law enforcement officers.
- Peace Officer Standards and Training (POST) Commission – The POST Commission, which was covered as part of this audit, serves as the primary regulatory body for Tennessee law enforcement agencies. This commission develops and enforces educational, physical, and proficiency skills standards for law enforcement agencies and officers statewide. In addition to setting standards, the commission certifies law enforcement training, instructors, curricula, academies, specialized schools, officers, staff, and agencies, and it annually provides a salary supplement to certified full-time officers completing the required 40 hours of in-service training.
- Tennessee Emergency Communications Board³ – The board is a self-funded, nine-member agency created for the purpose of assisting emergency communications district boards of directors in the area of management, operations, and accountability, and establishing emergency communications for all citizens of the state. The board is funded through a monthly 911 surcharge of \$1.16 on the sales price for a retail sale of communication service or prepaid communication service. The board works on many fronts to facilitate the technical, financial, and operational advancement of the state’s emergency communication districts.
- Tennessee Corrections Institute⁴ – The institute works to establish minimum standards for adult local jails, lock-ups, workhouses,⁵ and detention facilities in the state; establish the standards to inspect and certify local correctional facilities; educate local correctional staff while providing and monitoring basic certification and annual in-service training for personnel within local adult correctional detention facilities; and provide technical assistance and research in relation to requests from local correctional detention facilities, the Tennessee General Assembly, and other state agencies.

³ Section 4-29-242(23), *Tennessee Code Annotated*, sets the termination date for the Tennessee Emergency Communications Board as June 30, 2021.

⁴ Section 4-29-241(56), *Tennessee Code Annotated*, sets the termination date for the Tennessee Corrections Institute as June 30, 2020.

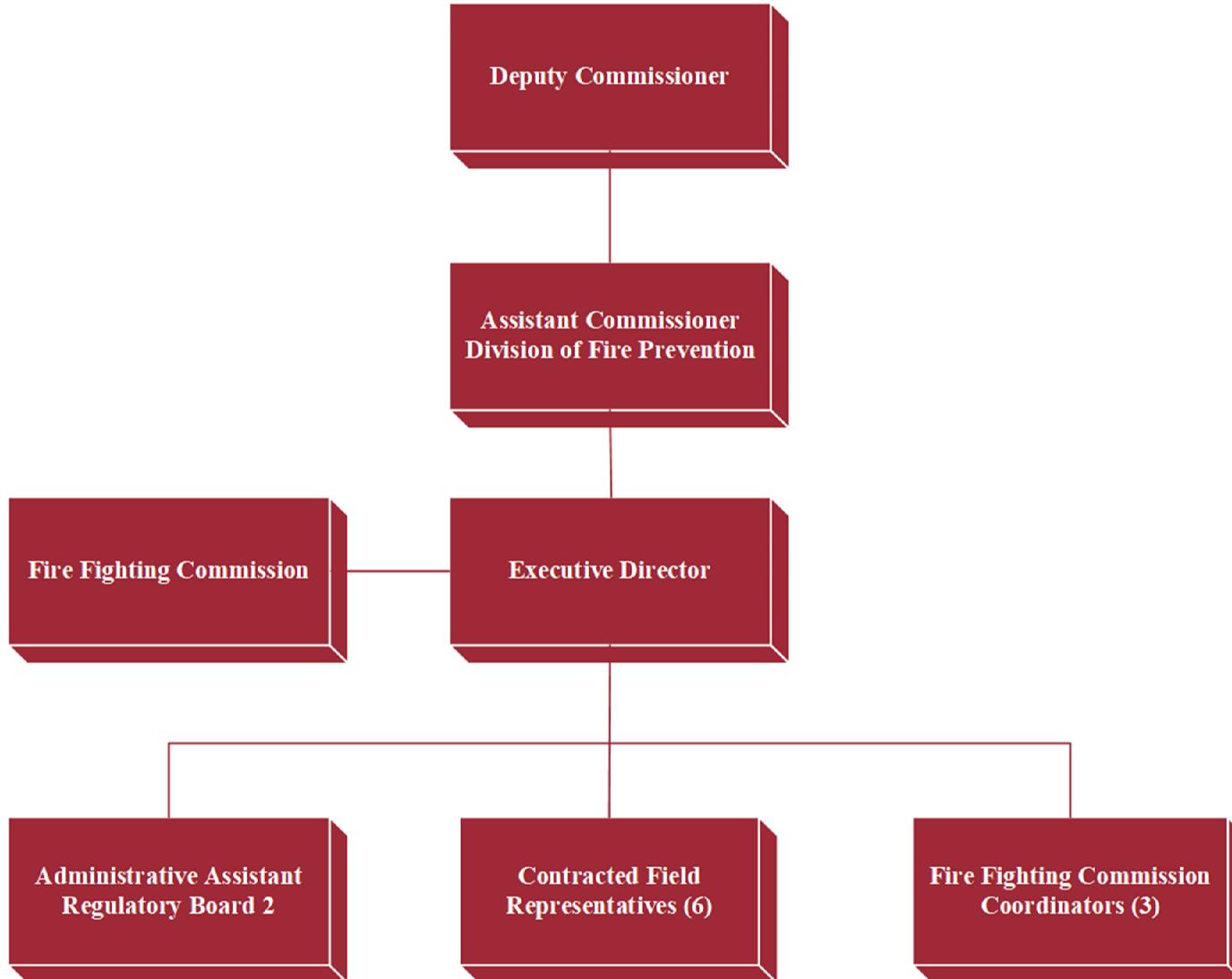
⁵ According to Tennessee Corrections Institute Rule 1400-01.03(75), a workhouse is a “county detention facility operated by or for a county which holds primarily sentenced, minimum security inmates.”

Department of Commerce and Insurance
 Organizational Chart
 July 2018



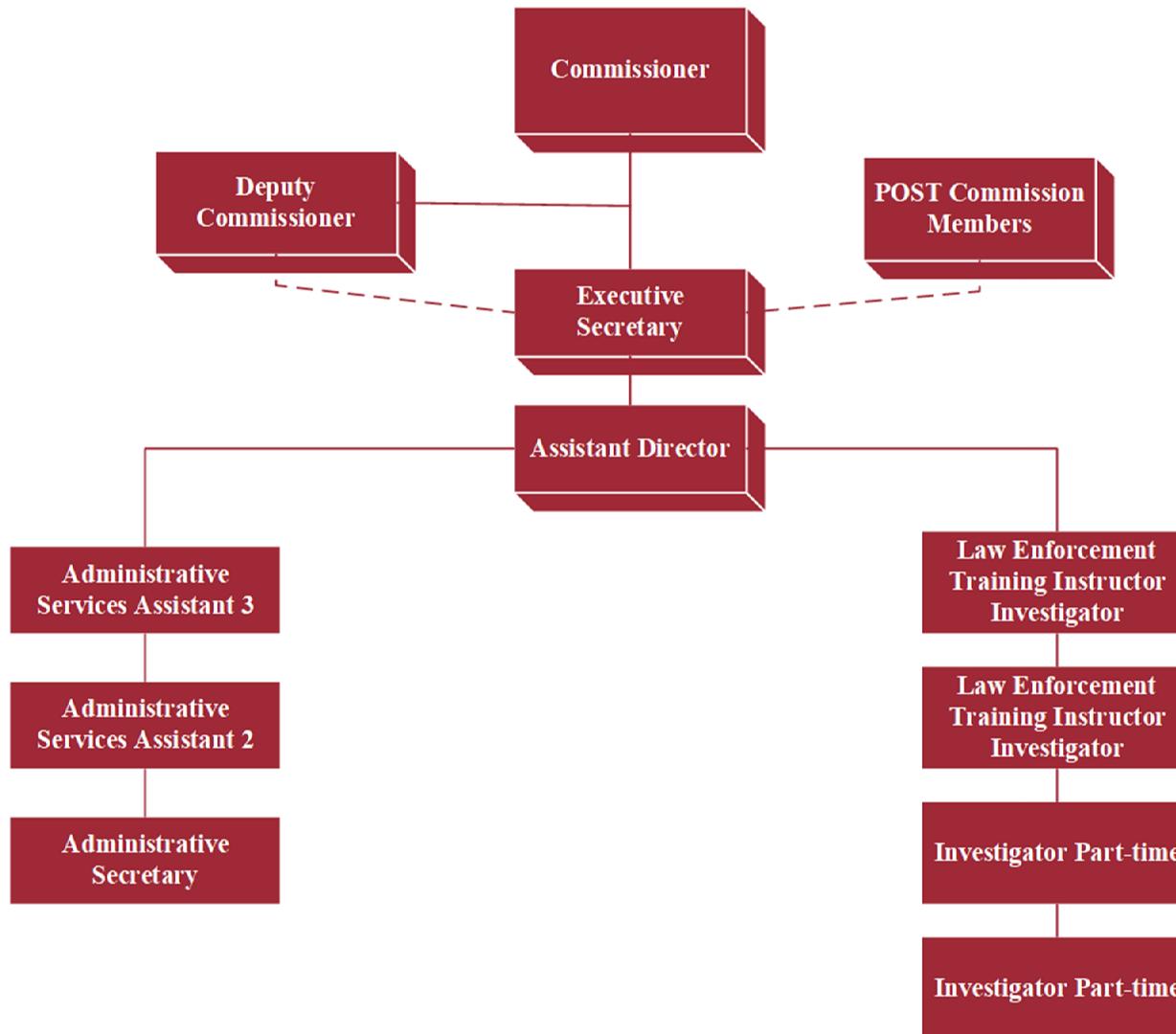
Source: Department of Commerce and Insurance, Internal Audit.

Commission on Firefighting Personnel Standards and Education
Organizational Chart
July 2018



Source: Tennessee Department of Commerce and Insurance, Internal Audit.

Peace Officer Standards and Training Commission
Organizational Chart
July 2018



Source: Tennessee Department of Commerce and Insurance, Internal Audit.

AUDIT SCOPE

We have audited the Department of Commerce and Insurance; the Peace Officer Standards and Training Commission; and the Commission on Firefighting Personnel Standards and Education for January 1, 2013, through June 30, 2018. Our audit scope included a review of internal controls and compliance with laws, regulations, policies, procedures, and provisions of contracts or grant agreements in the following areas:

- information systems;⁶
- financial services investigations;
- Consumer Affairs complaint handling;
- manufactured housing and modular buildings;
- captive insurance;
- insurance company rate reviews and examinations;
- the Peace Officer Standards and Training Commission; and
- the Commission on Firefighting Personnel Standards and Education.

Management of the Department of Commerce and Insurance; the Peace Officer Standards and Training Commission; and the Commission on Firefighting Personnel Standards and Education is responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, policies, procedures, and provisions of contracts and grant agreements.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient appropriate audit evidence to support the conclusions in our report. Although our sample results provide reasonable bases for drawing conclusions, the errors identified in these samples cannot be used to make statistically valid projections to the original populations. We present more detailed information about our methodologies in the individual sections of this report.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁶ On September 4, 2015, the Department of Finance and Administration – Strategic Technology Solutions (STS) assumed the information systems responsibility from the department.

PRIOR AUDIT FINDINGS AND OBSERVATIONS

REPORT OF ACTIONS TAKEN ON PRIOR AUDIT FINDINGS AND OBSERVATIONS

Section 8-4-109, *Tennessee Code Annotated*, requires that each state department, agency, or institution report to the Comptroller of the Treasury the action taken to implement the recommendations in the prior audit report. The prior audit report was dated September 2014 and contained six findings. The Department of Commerce and Insurance filed its report with the Comptroller of the Treasury on March 26, 2015. We conducted a follow-up of the prior audit findings as part of the current audit.

In addition to the findings, the prior report included four observations. We followed up on select observations during our current audit. The component of the prior Commission on Firefighting Personnel Standards and Education observation regarding signed conflict-of-interest disclosures is repeated in the applicable section of this report.

PARTIALLY RESOLVED AUDIT FINDINGS

The current audit found three previous audit findings are partially resolved. The prior audit reported on the following:

- The department did not always maintain proper information systems security controls, increasing the risk of fraudulent activity or loss of data. While four issues in the Limited Official Use finding were resolved, the remaining issue was only partially resolved (see **Finding 1**).
- The prior audit found that the Manufactured Housing and Modular Buildings section was not inspecting manufactured housing installations within 20 business days; was not performing an annual inspection of each licensed installer; and was not performing periodic reviews of the Access database to ensure inspection data is recorded accurately. The current audit found that the section resolved the issues concerning compliance with statutory requirements for inspecting installations and installers. However, the section did not formalize its draft procedures and did not have procedures for administering the permit decals. Additionally, management was not performing periodic reviews of the Access database as previously recommended. This is reported in an observation (see **Observation 2**).
- As noted in the prior audit, the POST Commission's monitoring of law enforcement training academies is still inadequate. The current audit found that the POST Commission lacks a system to collect, track, and analyze complaints received (see **Finding 3**).

RESOLVED AUDIT FINDINGS

The current audit disclosed that the Department of Commerce and Insurance resolved previous audit findings concerning supervisory reviews of securities applications, submitting prospectus for securities applications, and timely depositing of revenue collections.

Audit Conclusions



Information Systems



INFORMATION SYSTEMS

The Department of Commerce and Insurance uses 11 databases that are maintained by the Department of Finance and Administration – Strategic Technology Solutions (STS) staff. These databases include the following:

- Comprehensive Online Regulatory and Enforcement (CORE) system – the system of record for Commerce and Insurance data for regulatory boards and fire prevention.
- Regulatory Board System – a predecessor of the CORE system currently on end-of-life hardware. The department is in the process of migrating the data to a Structured Query Language (SQL) database (see below) for records retention needs.
- Tableau – a business intelligence reporting system.
- Acadis for Tennessee Law Enforcement Training Academy/Tennessee Fire and Codes Academy – the system of record for fire and law officers for their training records and certifications.
- Acadis for Tennessee Corrections Institute (TCI) – the system of record for TCI’s training records.
- Abacus Law for TennCare Oversight – a tool to research legal matters for the TennCare Oversight Division.
- Abacus Law for General Civil Legal – a tool to research legal matters for the General Civil Legal Division.
- Insurance Division Information System (IDIS) – an insurance database of insurers and non-insurers.
- Electrical Permit System (EPS) – Fire Prevention electrical and residential permitting tracking.
- SQL Server – the database server that holds the Commerce and Insurance Request System (CIRS), Codes Enforcement (CodesENF), EPS, FileNet, IDIS, and Integrated Voice Recognition (IVR) for CORE and Residential Building Permits.
- License Verify – STS-shared SQL server that allows a citizen to verify that someone has a valid license with the department.

Audit Results

Audit Objective: Did the department correct the finding from the prior audit concerning information systems security in five specific areas?

Conclusion: The department resolved four of the five issues in the prior finding. One of the issues was partially resolved but remains a risk to the department’s information systems security. We also found the Department of Finance and Administration

– Strategic Technology Solutions did not maintain proper information systems security in one specific area (see **Finding 1**).

Methodology to Achieve Objective

To achieve our objective, we interviewed the department and Strategic Technology Solutions staff to gain an understanding of the information systems security. We also reviewed applicable guidelines and performed testwork related to the security risks. We reviewed management’s internal control activities to assess adherence to the state information systems security policies and information systems industry best practices.

Finding 1 – The Department of Commerce and Insurance did not fully resolve one of the information systems internal control weaknesses identified in the prior audit; and the Department of Finance and Administration – Strategic Technology Solutions staff did not follow policy

Based on our testwork, the Department of Commerce and Insurance did not fully resolve one of the issues noted in the prior audit finding. We also found that the Department of Finance and Administration – Strategic Technology Solutions (STS) staff did not always maintain proper information systems security in one specific area, resulting in an increased risk of fraudulent activity or loss of data. The wording of this finding does not identify specific vulnerabilities that could allow someone to exploit the department’s systems. Disclosing those vulnerabilities could present a potential security risk by providing readers with information that might be confidential pursuant to Section 10-7-504(i), *Tennessee Code Annotated*. We provided department management with detailed information regarding the specific vulnerabilities we identified, as well as our recommendations for improvement.

Recommendation

The Commissioner should ensure that these conditions are remedied through procedures that encompass all aspects of effective information systems controls. Management should ensure that risks associated with this finding are adequately identified and assessed in the department’s documented risk assessment. In addition, the Commissioner should implement effective controls to ensure compliance with applicable requirements; assign staff to be responsible for ongoing monitoring of the risks and mitigating controls; and take action if deficiencies occur.

STS management should ensure that staff follow *Enterprise Information Security Policies*.

Management’s Comment – Department of Commerce and Insurance

We concur. Department management has received from the Comptroller’s audit staff the specific weaknesses and issues identified. Management’s review of the identified weaknesses shows no evidence that those weaknesses were exploited in any way. During the audit, management established compensating controls and procedures to address the issues noted.

Management's Comment – Department of Finance and Administration – Strategic Technology Solutions

We concur. Strategic Technology Solutions is working with the Department of Commerce and Insurance, and other executive branch agencies that fall under the Enterprise IT Transformation, to ensure adherence to revised procedures that will address the identified control weakness.

Financial Services Investigations



FINANCIAL SERVICES INVESTIGATIONS

General Background

Financial Services Investigations Unit

The Securities Division's Financial Services Investigations Unit (FSIU) conducts investigations of insurance and securities⁷ complaints from consumers who feel they are victims of an unfair or deceptive business practice, have witnessed unlicensed activity, or see suspected misconduct or other violations of respective law and rules. For example, consumers might file a complaint with FSIU because they believe that an agent did not invest their money as agreed upon. FSIU can receive complaints through the mail, by phone, or in person.

Furthermore, Section 56-6-117, *Tennessee Code Annotated*, requires insurance companies to refer agent terminations to the Department of Commerce and Insurance so that FSIU can determine if the information provided warrants an investigation.

FSIU initially reviews complaints to determine whether they are within its jurisdiction and meet at least 1 of 15 criteria identified in Section 56-6-112 as related to insurance (see **Table 1**). If complaints are within the statutory jurisdiction and meet the criteria, FSIU assigns them to either an insurance or a securities investigator. Investigations include interviewing victims and witnesses; verifying licenses and criminal history; and obtaining documentation from the potential violator. Information gathered serves as support for litigation if deemed appropriate.

For complaints outside of its jurisdiction, FSIU does not investigate but rather refers those complaints to the appropriate entity.

⁷ Section 48-1-102(20)(A), *Tennessee Code Annotated*, provides a technical definition of security. The department's website provides a simpler version of this definition: "The term 'security' is defined broadly to include a wide array of investments, such as stocks, bonds, notes, debentures, limited partnership interests, oil and gas interests, and investment contracts."

Table 1
Insurance Complaint Jurisdiction Criteria
Section 56-6-112(a), *Tennessee Code Annotated*

1	Providing incorrect, misleading, incomplete or materially untrue information in the license application
2	Violating any law, rule, regulation, subpoena or order of the commissioner or of another state’s commissioner
3	Obtaining or attempting to obtain a license through misrepresentation or fraud
4	Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business
5	Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance
6	Having been convicted of a felony
7	Having admitted or been found to have committed any insurance unfair trade practice or fraud
8	Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere
9	Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory
10	Forging another’s name to an application for insurance or to any document related to an insurance transaction
11	Improperly using notes or any other reference material to complete an examination for an insurance license
12	Knowingly directing any person to submit an application for health care benefits through the TennCare program at a time when the person is covered by a group policy or when the policy is being renewed, and then quoting a rate for a group health insurance policy if the insurance producer knows the person would otherwise have been eligible to participate or continue participation in the group policy
13	Knowingly accepting insurance business from an individual who is not licensed
14	Selling, soliciting or negotiating insurance for a company that is not authorized to transact the business of insurance in this state
15	Violating the unfair trade practices as enumerated in § 56-6-125

According to Section 56-6-120(h), *Tennessee Code Annotated*, the department must complete insurance complaint investigations within two years. The nature of the complaint (consumer/victim or insurance company referral) determines the date the two-year timeframe commences. For victim complaints, the initiation date is the date FSIU receives the complaint, while for company referrals, the initiation date is the date FSIU issues an investigation order.

Securities complaints do not have a statutory requirement for completion. However, for efficiency, FSIU and the Legal Division established an internal goal of meeting the same requirements as insurance complaints. An FSIU official emphasized that while the department has

established this goal, securities complaints are extremely complex, necessitating completion time flexibility. (See **Table 2** for a list of fraudulent acts or devices as defined in statute.)

Table 2
Tennessee Securities Act of 1980
Fraudulent Acts or Devices
Section 48-1-121(a) and (b), *Tennessee Code Annotated*

(a) It is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to:
1. Employ any device, scheme, or artifice to defraud;
2. Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
3. Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
(b) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, in this state, to:
1. Employ any device, scheme, or artifice to defraud the other person;
2. Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or
3. Take or have custody of any securities or funds of any client except as the commissioner may by rule permit or unless the person is licensed as a broker-dealer under this part.

Legal Division

The Legal Division provides legal services to the department. Specifically, FSIU refers completed investigations for either insurance or securities complaints to the Legal Division, which subsequently determines whether to litigate or close the complaint. Currently, the division employs eight attorneys, two of whom litigate the insurance and securities cases. The remaining six provide general policy and program guidance to FSIU, address investigator questions as necessary, and litigate some cases.

Section 56-6-120(h), *Tennessee Code Annotated*, contains an overall requirement for the department to initiate action on insurance complaints within five years (the total combined time FSIU took to complete its investigation and the time the Legal Division took to initiate action on the complaint). Securities complaints do not have a statutory closure requirement.

Audit Results

Audit Objective: Did the Securities Division’s FSIU complete investigations of insurance complaints within the statutory time requirement, and did the division complete investigations of securities complaints timely based on its informal internal goal?

Conclusion: Our testwork disclosed that on multiple occasions, FSIU did not complete insurance investigations within the two years prescribed by state statute. Furthermore, while FSIU technically met the time requirements in other cases, staff completed insurance investigations so close to the deadline that staff would have had little time to expand the scope of the investigation, if necessary, to allow the Legal Division to develop cases for litigation. Additionally, staff did not complete securities investigations timely in one instance (see **Finding 2**).

Methodology to Achieve Objective

To achieve our objective, we interviewed department officials and reviewed laws, rules and regulations, and department policies and procedures. We also performed detailed testwork related to the investigation and the legal processes.

We obtained from FSIU a list of insurance complaint investigations closed during calendar year 2017, totaling 84. We randomly selected a nonstatistical sample of 42 for review to determine whether FSIU met the 2-year statutory time requirement to complete investigations. Furthermore, we reviewed the total population of 6 securities complaint investigations closed in calendar year 2017.

We obtained a list of 63 complaints closed by the Legal Division during calendar year 2017 to assess the statutory requirement for the Legal Division to initiate an action on insurance complaints within 5 years (the total length of time it took FSIU to conduct the investigation and the Legal Division took to complete its work). We randomly selected a nonstatistical sample of 42 cases for our review, selecting an additional 10 complaints in the event that any of the 42 selected were ineligible for review. After our file selection, we determined that 4 of the cases did not originate in FSIU.⁸ Because we were only reviewing complaints originating from FSIU, we replaced these complaints with 4 of 10 extra identified sample items.

To obtain a better picture of the insurance investigation process, we opted to combine the samples for the FSIU evaluation. After removing duplicate complaints (complaints that were randomly selected in both the FSIU and Legal Division samples), we ended with a sample of 66 individual complaints for review as follows:

⁸ Three cases originated from the Securities Registration Section, and one case originated with the Securities Enforcement Section, neither of which has the statutory limits.

Table 3
Insurance Complaint Random Selection Distribution
To Evaluate Two-year and Five-year Statutory Limits for
Complaints Closed in Calendar Year 2017

Randomly Selected Complaints	Coverage
33	FSIU and Legal
31	FSIU only
2	Unable to evaluate ⁹
66 ¹⁰	<i>Total complaints selected</i>

Finding 2 – The Securities Division’s Financial Services Investigations Unit did not always comply with the statutory requirement to complete insurance investigations within two years

In accordance with state statute, the Security Division’s Financial Services Investigations Unit (FSIU) has two years to complete its investigations into complaints, while the FSIU and Legal Division combined have five years to initiate action on the complaints. See **Table 3** for a summary of action taken on complaints not meeting the statutory limit.

During our review, we identified issues with 6 of 66 insurance complaint cases (9%).

For 6 complaints, we found that FSIU did not meet its statutory time requirement. Overdue cases ranged from 4 to 172 days, averaging 94 days beyond the statutory limit. As a result, the consumers’ right to have their concerns receive full consideration and to possibly have a favorable resolution might be diminished. Of these 6 complaints, we determined that only 1 resulted in any action and 1 is still in process. (See **Table 4** for actions taken for overdue cases.)

Table 4
Action Taken on Complaint Investigations Over the Statutory Two-year Limit

Sample	Random Sample Number	Number of Calendar Days Over Statutory Limit	Action Taken
Legal	15	161	No Action
Legal	19	128	No Action
FSIU	25	11	Warning Letter
FSIU	27	172	In Process
FSIU	29	86	No Action
FSIU/Legal	36/38	4	No Action

Source: Information collected during file review.

⁹ After fieldwork ended, it was determined that one case did not originate from FSIU and another was not in FSIU jurisdiction; therefore, they were not reviewed.

¹⁰ Excludes the six securities complaints reviewed.

Because FSIU has an internal goal, as opposed to a statutory investigation limit, for securities cases, we applied the same measurement as we did with the insurance complaints. For our review of the 6 securities complaint investigations, we determined that the average completion time was 424 days, with one complaint taking 1,236 days.¹¹ However, according to FSIU management, the internal goal was implemented after these cases were completed and would not apply.

Factors Affecting Investigation Timeliness

Limited Communication Between FSIU and the Legal Division

Department of Commerce and Insurance attorneys and investigators meet monthly to discuss ongoing cases. Although this provides an opportunity for them to interact, the level of information exchange may be limited by a group forum. Although the group meetings are required according to the department's General Counsel, not all associated staff perceive them to be mandatory. According to division staff, the meetings are voluntary, and individual investigators may decide whether to attend. This confusion may limit the level of exchange of information between attorneys and investigators.

FSIU staff further stated that they do not notify the Legal Division when they begin an investigation. They assert that FSIU staff notify the Legal Division at their discretion, which may be at any point of an investigation, including at completion. According to Legal Division staff, the lack of communication affects the efficiency, effectiveness, and quality of an investigation since it limits feedback between the investigator and legal staff on identifying details in information needed for litigation purposes.

We found that 9 of 66 investigations (14%) were completed within 30 days of the statutory time limit, which might not be enough time for investigators to gather additional information needed for litigation. Although the investigations were completed within the 2-year requirement, the Legal Division may lack needed information to take action on a complaint since investigations cannot be extended beyond the 2-year requirement. For example, as noted in **Table 4** above, only 2 cases over the limit received any action, 1 is still in process, and over half of the complaints identified as nearing the statutory limit resulted in no action being taken. See **Table 5** for a summary of actions noted for complaints identified as nearing the statutory 2-year limit.

¹¹ While we reviewed six securities complaints, we were only able to determine the total timeframe for five because of a lack of documentation.

Table 5
Action Taken on Complaint Investigations Approaching the Statutory Two-year Limit

Sample	Random Sample Number	Number of Calendar Days From the Statutory Limit	Action Taken
Legal	2	23	Warning Letter
Legal	8	15	No Action
Legal	33	6	No Action
Legal	39	2	No Action
FISU	30	6	No Action
FISU	32	0	Two-year Probation and \$1,000 Civil Penalty
FISU	39	2	No Action
FISU	41	0	Revocation and \$100,000 Civil Penalty
FISU	42	1	License Revocation and \$3,000 Civil Penalty

Source: Information collected during file review.

Turnover and Training

According to both FSIU and the Legal Division, there has been high turnover of insurance investigators. Both FSIU and the division assert that high turnover rates may affect FSIU’s ability to complete timely investigations because ongoing cases are reassigned to remaining investigators, thereby increasing their workload. Furthermore, since cases may be reassigned at any point of an investigation, the learning curve for investigators receiving the reassigned cases can be time-consuming. Moreover, training, according to a previous FSIU Director and some staff, consists of one interviewing class and the opportunity to take the Certified Fraud Examiner classes, though not required. Other than these offerings, there is no internal formal training.

To determine the turnover rate for investigators, we analyzed employment data for active employees for calendar years 2015 through 2017. During this period, insurance investigators had a retention rate of less than three years. For insurance investigators, we calculated a 123% turnover rate in 2016 and a 25% turnover rate in 2017. In contrast, the retention rate for securities investigators in the same period was approximately seven years with a turnover rate of 9% for 2016 and 8% for 2017 (see **Table 6**).

Table 6
Securities Division’s Investigator Turnover
Calendar Years 2015 Through 2017

Investigator Type	Turnover			Overall Longevity
	2015	2016	2017	
Insurance	24%	123%	25%	2.5 years
Securities	15%	9%	8%	6.7 years

Source: Auditor calculations based on Edison data.

FSIU has also experienced turnover in its leadership. During the audit, FSIU had two directors, neither of whom still works for the department. One director left after a little over one year, and the subsequent director left in less than three months. Turnover in leadership could result in inconsistent management and could affect FSIU's ability to meet statutory time requirements.

Recommendation

To improve the department's ability to timely investigate consumer insurance complaints, the department should examine its training program for investigators to identify areas of needed improvement. By addressing identified weaknesses, the department could positively affect the quality and timeliness of investigations. The department should also identify causes of turnover to help retain experienced workers, thereby reducing caseload reassignment. Lastly, the department should establish and actively monitor the communication between investigators and attorneys and make any necessary changes to the connection between FSIU and the Legal Division to improve the process from complaint receipt to litigation.

Management's Comment

We concur in part. Management acknowledges that the six cases cited in Table 4 exceeded the statutory limit. However, in no instance does the Department believe that consumers failed to have their concerns properly addressed. The instances where no action was taken is not indicative that the case was not fully investigated nor given proper consideration. There were instances where no action would have been the outcome regardless of the time limit and some cases do not bear evidence of violations after an investigation and the appropriate course of action is to close the case.

It is important to note that Tenn. Code Ann. § 56-6-1 20(h) provides that an action should be initiated within five years of the Commissioner knowing of a cause of action (or reasonably should have known). The initiation of an action is not the same as closing a case. The Department interprets the initiation of an action to mean filing a Notice of Hearing and Charges with the Administrative Procedures Division which initiates a contested case hearing and provides the Respondent with due process under the law. Therefore, a case is not required to be closed within five years but could be closed much later depending on when the action is filed.

Currently, eight attorneys provide support to the Financial Services Investigations Unit (FSIU) through the Legal Division. Two attorneys solely litigate insurance and securities cases. Although the remaining six attorneys also litigate cases, their primary responsibility is to provide general policy and program guidance to the Divisions. Currently, every attorney has some litigation cases as part of his or her caseload. Each attorney addresses investigator questions as necessary. The Legal Division does not personally represent consumers who have filed complaints. Instead, the Legal Division represents the Department and assists in enforcing its statutory authority to regulate the insurance and securities industries.

The Division's internal goal to complete securities investigations within the timeframe provided for insurance cases was instituted in the beginning of 2018. This policy applied only to new investigations as there were already securities investigations over the two-year goal. The

Department would also like to note that the cases reviewed for this audit were cases that were closed in 2017, prior to policy implementation. Further, the FSIU began to address this issue prior to the audit. Internal deadlines in advance of the two-year limit were instituted to ensure that cases were reviewed and feedback provided with enough time for any supplemental investigation. The Divisions do not share a database and have two different types of databases. The Legal Division uses Abacus and currently, the FSIU uses an Access database. However, FSIU is in the process of converting to Abacus, which will provide an opportunity for an automatic case conversion from FSIU to Legal and minimize the opportunity for human error.

All FSIU staff are required to attend all FSIU/Legal meetings. The fact that these meetings are mandatory has been reinforced with the FSIU staff. It is important to note that notification to the Legal Division at the outset of an investigation may not be necessary. The Legal Division has repeatedly encouraged investigators to contact any of the attorneys for help with any potential legal issues involved in the investigation. The Department is taking proactive steps to ensure multiple avenues of communication are available between the Legal Division and FSIU. Further, there are regular monthly meetings between management, attorneys, and investigators. The Legal Division provides lunch and learn training to the FSIU to help highlight important legal issues pertaining to an investigation. There is a bi-weekly standing meeting between the FSIU Director and the Chief Counsel for Insurance and Securities. The Legal Division emails weekly reports containing case updates to the Assistant Commissioner and Director of the FSIU.

The Department disputes the following statements made in the Turnover and Training section:

Moreover, training, according to a previous FSIU Director and some staff, consists of one interviewing class and the opportunity to take the Certified Financial Examiner classes, though not required. Other than these offerings, there is no internal formal training.

Each investigator is encouraged to obtain their Certified Fraud Examiner (CFE) certificate and maintain that CFE status. Some investigators obtain their CFE and then accept higher paying jobs outside of the Department. Pay is a big factor in attracting and retaining quality investigators. The Division sponsors the course, certification, and continuing education for the investigators through the Association of Certified Fraud Examiners. The Division also provides training opportunities through the National Association of Insurance Commissioners, North American Securities Administrators Association, National White Collar Crime Center, and the Reid Technique for Interviewing and Interrogation. In addition, the Legal Division hosts regular lunch and learns on relevant investigative topics for the FSIU.

The Department is actively implementing improvements to address the areas of weakness identified by the audit. In fact, several implementations were already in place at the time of this audit, and the Department continues to improve going forward.

Consumer Affairs Complaint Handling



CONSUMER AFFAIRS COMPLAINT HANDLING

The Consumer Affairs Division (the division) provides assistance to consumers with disputes against Tennessee businesses. According to Section 47-18-5002, *Tennessee Code Annotated*, the division serves as the central coordinating agency and clearinghouse for receiving Tennessee consumers' complaints of illegal, fraudulent, deceptive, or dangerous practices.¹²

When the division receives a complaint, a Consumer Protection Specialist ensures the complaint is entered into the Comprehensive Online Regulatory and Enforcement (CORE) information system and then sends a letter to the consumer within 30 days, per policy, that the complaint has been received and that the division will be attempting to resolve the complaint on the consumer's behalf. The Consumer Protection Specialist simultaneously sends a letter to the business cited in the complaint for its response, along with any supporting documentation it can provide. Once the business has responded to the Consumer Protection Specialist, the response is then forwarded to the consumer for his or her response and any additional information that he or she can provide. Depending on the results of the case, the Consumer Protection Specialist could

- submit the business or individual to the Attorney General's Office for investigation and potential litigation;
- assist the consumer and respondent in reaching a mutually agreed-upon settlement; or
- close the case, assigning the appropriate close code, and inform the consumer that mediation was unsuccessful and that they may seek legal representation regarding the complaint.

The division also provides consumer education through workshops, notices on the Department of Commerce and Insurance's website, and email notifications. **Table 7** shows the total complaints and top 10 complaint categories for calendar years 2015 to 2017.

¹² The Consumer Affairs Division can refer complaints to other entities when the division is not within its jurisdiction. If a complaint is referred, the division notifies the complainant.

Table 7
Complaint Totals and Most Frequent Complaint Categories
Calendar Years 2015 to 2017

2015		2016		2017	
Total Complaints	4,259	Total Complaints	4,432	Total Complaints	3,599
Utilities	383	Home Improvements	413	Home Improvements	412
Home Improvement	327	Utilities	298	Personal/Professional Services	292
Debtor/Creditor	293	Motor Vehicle	265	Utilities	289
Personal/Professional Services	269	Personal/Professional Services	253	Timeshares/Vacation Clubs	274
Health Services and Products	264	Landlord/Tenant	250	Landlord/Tenant	216
Landlord/Tenant	262	Timeshares/Vacation Clubs	235	Motor Vehicle	202
Timeshares/Vacation Clubs	257	Health Services and Products	219	Debtor/Creditor	196
Insurance	213	Motor Vehicle Repair	210	Health Services and Products	191
Motor Vehicle Repair	184	Debtor/Creditor	192	Motor Vehicle Repair	184
Scams	181	Insurance	177	Insurance	172
Top Ten Total	2,663	Top Ten Total	2,512	Top Ten Total	2,428
Percentage of Total	62%	Percentage of Total	57%	Percentage of Total	67%

Source: Consumer Affairs Division's Top Ten Consumer Complaints press releases covering calendar years 2015 to 2017.

Audit Results

1. Audit Objective: Did the Consumer Affairs Division staff send notification acknowledging the receipt of a consumer complaint within 30 days, as required by department policy?

Conclusion: We identified some instances where cases reviewed lacked documentation that the division sent a letter at all and other instances where the division did not send letters within the required timeframe (see **Observation 1**).

2. Audit Objective: Did division staff close cases in a timely manner?

Conclusion: The division did not always close cases reviewed within 30 days either after the expiration of the consumer response deadline or the date of the last notice to the consumer (see **Observation 1**).

3. Audit Objective: Did division staff close cases using the proper close code as defined by department policy?

Conclusion: We noted inconsistencies among close codes used by division staff (see **Observation 1**).

Methodology to Achieve Objectives

To achieve our objectives, we interviewed department staff and also reviewed statutory requirements, department policy, supervision guidelines, and a sample of complaint cases received by the Consumer Affairs Division.

For our review of complaint cases, we received 6,681 complaints submitted to the Consumer Affairs Division and closed between August 2016 and June 2018. We selected a non-statistical, random sample of 60 closed complaint cases for our review. We reviewed the information uploaded to the Comprehensive Online Regulatory and Enforcement System (CORE), which is the official database used by the Consumer Affairs Division, and paper files. Our analysis of the closed complaint cases included the following:

- reviewing notification letters sent by department staff acknowledging the receipt of the consumer's complaint;
- comparing the date of the last letter sent (including any accompanying response deadline) to the consumer and the closure date listed in CORE; and
- determining whether department staff used the appropriate closure code given details of the complaint.

Observation 1 – Consumer Affairs Division management did not adequately supervise Complaint Specialists to ensure adherence to department policies and work outcomes when addressing consumer complaints

Management did not provide adequate supervision to ensure that staff followed Consumer Affairs Complaint Standard Operating Procedure (SOP) and work outcomes regarding notification letters, which acknowledge the consumer complaint, and used appropriate close codes, as defined by the Department of Commerce and Insurance. Consumer Affairs SOP does not specify a case closure timeframe.

Consumer Notification Letters

According to work outcomes, Consumer Protection Specialists should send a letter notifying the consumer that the division received the complaint and that a consumer affairs specialist will be assisting them in attempting to find a resolution to the underlying complaint. The notification letter is to be sent within 30 days of receiving the initial complaint.

Of the 60 closed complaint cases reviewed, we noted issues with 8 cases (13%): in 3 of the cases reviewed, management did not have documentation of the notification letter in the file; in 5 cases, staff sent notification letters after the 30-day requirement.

Failure to notify consumers that the department has received their complaints at all, or not doing so timely, increases the risk that the division may not meet its statutory requirement of protecting Tennessee consumers from those who engage in unfair and deceptive acts or practices.

Complaint Closure

After the Consumer Protection Specialist has attempted to resolve the complaint, the specialist sends a final letter to the consumer to report either

- successful mediation by the division;
- unsuccessful mediation by the division; or
- additional information regarding the complaint or to inquire whether the consumer has reached a resolution with the respondent.

According to department policy, instances where the consumer fails to provide additional information during the timeline provided will result in case closure. After attempts to resolve the complaint, the specialist sends one of the following letters depending on the situation:

- **Mediation Failed** – If the letter informs the consumer that mediation has failed, the letter will also state that the Consumer Protection Specialist is closing the case and the consumer may wish to pursue private litigation.
- **Information Request** – If the letter requests any additional information from the consumer or if the consumer has reached a settlement with the respondent, the letter provides a deadline of 14 or 21 days, respectively, for the consumer to inform the consumer affairs specialist of any updates to the case records.

Because the department does not have a case closure policy or close cases with consistency, we incorporated the same division expectation for notifying consumers upon complaint receipt by the division (30 days). Therefore, for this review, we considered case closure timely if the case was closed within 30 days following the expiration of the last consumer response due date or after final correspondence with the consumer. In final correspondence letters sent to consumers, the division notifies them that they have 21 days to provide the division with additional information regarding the complaint or to notify the division if they reached a settlement on their own. However, even if the division is not notified within the deadline specified, the division considers the case closed. When reviewing case closure dates, to determine timely closure we added an additional 30 days to the unsuccessful mediation letter date or the response deadline provided to the consumer.

Of the 60 closed complaint cases reviewed, the division did not close 12 cases (20%) within 30 days of the deadline listed on the last correspondence letter to the consumer. The days ranged from 30 to 154 days late.

Failure to properly close cases can affect the service provided to consumers and can impact caseload management.

Improper Use of Case Closure Codes

The division created and defined closure codes for Consumer Protection Specialists to use once a case has been resolved or has met certain criteria to end further action on the case. Of the 60 closed cases reviewed, 10 (17%) were closed using an improper close code. The close codes questioned are defined by the department as follows:

Table 8
Close Code Definition

Close Code	Definition
Administrative Closure	The specialist feels there is a specific reason to close the case that is not listed as a current disposition category. This is most often used when a complaint is duplicated, and the second complaint needs to be closed.
Insufficient info to proceed to mediation	The consumer has not provided enough information for the division to process and mediate the complaint.
Mediation Complete	Mediation has finished, and no legitimate settlement compromise could be reached.

Source: Definitions received from the Director of Consumer Affairs, Department of Commerce and Insurance.

Division staff closed 6 of 60 cases reviewed (10%) using the “Administrative Closure” code instead of the proper code, as defined above, given the details of the complaint. Staff closed 2 cases (3%) using “Insufficient info to proceed to mediation” when the “Administrative Closure” code would have been more appropriate. Lastly, 2 cases (3%) were closed using “Mediation Complete” when the “Administrative Closure” code would have been more appropriate. Failure to use the appropriate closure code may impact the accuracy of system-generated reports, mislead report users, and affect management decision making.

Overall, each issue identified in our review should have been identified during proper supervision of Consumer Protection Specialists. Supervisory reviews promote consistency in documentation, provide training opportunities, and ensure that consumer complaints are addressed consistently and timely.

Consumer Affairs Division management should institute supervision policies and procedures to review cases throughout the process. Supervision policies and procedures should ensure that

- staff timely notify Tennessee consumers that the division has received their complaints;
- staff close cases timely to more accurately detail division efforts and effectively manage caseloads; and
- supervisor review closed cases to ensure staff used the appropriate closure code to accurately detail division results.

By instituting required supervision policies and procedures, the Consumer Affairs Division can better meet its statutory obligation of protecting Tennessee consumers from those who engage in unfair and deceptive acts.

Manufactured Housing and Modular Buildings



MANUFACTURED HOUSING AND MODULAR BUILDINGS

The State Fire Marshall's Office – Manufactured Housing and Modular Buildings Section (the section), located in the Fire Prevention Division of the Department of Commerce and Insurance, is responsible for ensuring the safety of manufactured and modular homes and buildings produced (in-state or out-of-state) and installed in Tennessee. The section serves as the U.S. Department of Housing and Urban Development's (HUD) State Administrative Agent and is also responsible for enforcing state statutes concerning the manufactured housing industry (Section 68-126, *Tennessee Code Annotated*).

Private companies build manufactured housing to the requirements of the HUD building code, which preempts all state and local building codes. Section staff inspect manufactured homes at the factory and not at the final homesite. For modular homes and buildings, Construction Inspection Agencies (CIAs)¹³ staff perform inspections at the plant. The plant inspections are performed to meet the requirements of the 2006 International Building Code per Rule and Regulation 0780-02-13-.02. Section 68-126-304, *Tennessee Code Annotated*, permits local governments to charge a fee for inspection; however, no other local standards are applicable to modular building units subject to this part. The statute only provides permission authority to local governments regarding installation, and the section indicated that very few local governments exercise this permissive authority.

Additional section responsibilities include administering the following acts:

- The Federal Manufactured Home Construction and Safety Standards Act of 1974 (Title 24, *Code of Federal Regulations* [CFR], Part 3280) – covers construction and transportation of manufactured homes that are designed to be used as dwelling units (Title 42, *United States Code* [USC] 3535[d] 5403, 54240).
- The Manufactured Home Procedural and Enforcement Regulations (24 CFR 3282) – establishes standards for constructing manufactured housing units and establishes inspection and investigation procedures for private and state manufactured housing agencies.
- Section 68-126-102, *Tennessee Code Annotated* – the section contracts with HUD as the State Administrative Agent and exclusive Production Inspection – Primary Inspection Agency to oversee certain aspects of the National Manufactured Housing Construction and Safety Standards Act of 1974, compiled in 42 USC 5401 et seq. (the Federal Act). Duties include
 - monitoring manufacturers' home construction quality control program;
 - investigating and monitoring consumer complaints under the Federal Act;
 - searching for and, when warranted, initiating class action cases through HUD;
 - performing post-production monitoring of manufactured homes produced in and/or shipped to Tennessee; and

¹³ The Construction Inspection Agencies (CIAs) are third-party vendors who receive approval by the department through a formal process in Rules and Regulations 0780-02-13-.06.

- investigating and taking appropriate action against violators of the Federal Act.
- Section 68-126-201 to 215, *Tennessee Code Annotated* – administers portions of the Uniform Standards Code for Manufactured Homes and Recreational Vehicles Act related to HUD Labeled Manufactured Homes. Under this statute, the section issues licenses to manufacturers and dealers and conducts inspections of manufacturers as part of the National Manufactured Home Construction and Safety Standards Act of 1974 (42 USC 5401 et seq.).
- Section 68-126-301 to 311, *Tennessee Code Annotated* – oversees portions of the Tennessee Modular Building Act, which authorizes the Commissioner to establish standards for the construction and installation of modular building units, as well as inspection of modular building units by an approved inspection agency.
- Section 68-126-401 to 412, *Tennessee Code Annotated* – covers the Tennessee Manufactured Home Installation Act, which includes licensing and certifying installers, establishes rules and regulation standards, issues installation permits, and inspects the installation of manufactured housing units by licensed installers.

HUD Labels and Installation Permit Decals

The section issues two types of labels and one permit decal: HUD Certification Labels for manufactured housing production facilities, Modular Buildings Labels for modular building production facilities, and installation permit decals for retailers and private installers.

HUD Certification Label

As the Primary Inspection Agency, the section is responsible for continuously providing licensed manufacturers of manufactured homes with a supply of HUD Certification Labels. The section obtains the HUD labels from the Institute for Building Technology and Safety, which is a third-party vendor for HUD that enters the HUD labels into its WebLabel¹⁴ database as assigned to the section. When the section receives the HUD labels, the administrative staff enter the sequence of numbers into an Excel spreadsheet that is used to track the labels and into the WebLabel database as labels are issued to the manufacturers. The manufacturers must purchase HUD Certification Labels from the section for \$130, submitting \$100 to HUD and sending the remaining \$30 to the department. HUD permits manufacturers to have a two- to four-week supply based on the manufacturers' production rate. The manufactured housing producers must attach a HUD Certification Label to each single housing unit or to each section of a multi-section housing unit (double-wide unit) certifying that the manufacturer constructed the unit to conform to federal standards for manufactured home construction and safety.

Manufacturers send the section a monthly production report that includes the HUD label numbers, the serial numbers of the manufactured homes to which the HUD labels were affixed,

¹⁴ WebLabel is a HUD-approved database that the Institute for Building Technology and Safety, the section, and manufacturers use to monitor and track HUD Certification Labels.

and the first destination of the manufactured home after leaving the manufacturing plant. The manufacturers then enter this information into the WebLabel database.

The section is responsible for monitoring the HUD labels and must account for all HUD labels through the date on which the manufactured home leaves the manufacturing plant and be able to identify the serial number of the manufactured home to which each label is affixed. The section’s administrative staff perform a HUD label audit on the 15th of each month and print off a HUD label status report for all 10 manufactured home production facilities in Tennessee. There are three label statuses:

- M, which means the HUD label is still with the manufacturer in the label inventory;
- S, which means the label has been affixed to a transportable housing unit and shipped to a retail lot; and
- O, which means that open labels have been affixed to a transportable housing unit that is still on the manufacturer’s production lot.

If the status is Open, then administrative staff will contact the manufacturer to verify that the transportable housing unit is still on the manufacturer lot. See **Table 9** for the number of HUD labels issued and used.

Table 9
HUD Labels Issued and Used
Fiscal Years 2016, 2017, and 2018

Fiscal Year 2016		Fiscal Year 2017		Fiscal Year 2018	
<u>Issued</u>	<u>Used*</u>	<u>Issued</u>	<u>Used*</u>	<u>Issued</u>	<u>Used*</u>
19,735	19,538	20,823	20,546	22,917	22,486
*The used HUD labels include both the S status and O status labels. Source: Manufactured Housing and Modular Building Section.					

Section management indicated that the number of issued labels will not necessarily match the number of used labels during the fiscal year. At the end of each fiscal year, the section receives label orders from manufacturers and the label request is filled prior to the end of the fiscal year. The label usage for these labels will not show up until the next fiscal year. Management explained that the total difference between the reported issued and used labels is 905 labels that were issued but not reported as used. There are 10 manufacturer plants, so the 905 labels average to 90 labels not yet issued per plant over a 3-year period. Management also stated that over the past couple of years, there has been an increase in production, so as a result, plants will order accordingly.

HUD Modular Building Label

The department purchases Modular Building Labels from a third-party vendor that creates the labels according to Rules and Regulations 0780-02-13-11. The department issues the labels to CIAs, who are responsible for monitoring and inspecting the modular units at the manufacturer production facility. The CIAs remit payment to the department of \$50 per label. The labels are considered “Open Labels” until the CIAs issue the labels to the manufacturer. Each month the

manufacturer must submit a Form A, “Monthly Production Report for Tennessee Modular Building Units or Components,” to the department whether or not the manufacturer produced any modular buildings or components. The Form A report includes a list of the label numbers that were attached to modular units, the manufacturer’s ID or serial number, the construction plan number, the name of the Tennessee licensed dealer and license number, and the modular unit destination. This information tracks which modular labels were used and the location of the transported units.

The section’s administrative staff track the modular labels shipped to the CIAs using an Excel spreadsheet. The staff update the label information upon receiving the manufacturer’s monthly report. The section’s director is working with the Department of Finance and Administration’s Strategic Technology Solutions staff to create a modular label tracking system in the department’s Comprehensive Online Regulatory and Enforcement (CORE) data system. See **Table 10** for information on Modular Building Labels issued and used in fiscal years 2016 and 2017.

Table 10
Modular Building Labels
Fiscal Years 2016 and 2017

Fiscal Year 2016		Fiscal Year 2017	
Issued to CIAs	Used by Manufacturer	Issued to CIAs	Used by Manufacturer
2,080	197*	1,200	611*
*The current director stated that there was a gap in employee coverage on the requisition of modular labels. The director and staff are going through paper documents and electronic information to create a spreadsheet to identify what the section does and does not know about the labels that have been issued and used. For more information, see Observation 2 .			
Source: Manufactured Housing and Modular Building Section.			

Installation Permit Decals

Retailers and private installers must obtain an installation permit decal to report the installation of a manufactured housing unit. The section issues the permit decals to county court clerks across the State of Tennessee, and the licensed installer must purchase the permit decal from the county clerk for \$45, of which the clerk keeps \$7 and remits the other \$38 to the section. The clerk offices submit to the section a monthly report listing which permit decals were sold to licensed installers and the dates the permit decals were sold. Section administrative staff then enter data regarding the license numbers, permit decal numbers, the date the weekly installation reports are received, and the date of the installation inspections into the section’s Access database.

Additionally, licensed installers must submit weekly installation reports to the section when a housing unit is installed. The section records the decal information in the Access database and performs an audit on open permit decals¹⁵ twice a year to match all the permit decals issued to county clerks to the ones used for an installation. Section staff contact the retailer and private

¹⁵ Open permit decal audits compare the permit decals that are reported as sold to installers and the permit decals that are reported on the installer weekly reports. The department attempts to determine the status of decals that have not been reported as an installation.

installer to locate permit decals that have been sold but not reported as used for an installation. The section administrative staff also perform a reconciliation of the permit decal inventory quarterly.

The section’s administrative staff notify the field inspectors of reported installations, and the inspectors choose which installations to inspect. If the installation is the first installation by a licensed installer, then the inspector will inspect that installation to make sure each installer is inspected at least once during the calendar year. Inspectors also perform installation inspections based on geography, and an inspector may choose to perform a certain number of inspections that are clustered together in one area. Overall, statute requires a minimum of 5% of the installations to be inspected; however, the section’s goal is to inspect 50% of the installations. In calendar year 2016, there were 4,204 installations, and the section inspected 1,983 installations (47%). In calendar year 2017, there were 4,174 installations, and the section inspected 2,406 (58%). See **Table 11** for information on installation permit decals issued to county court clerks, purchased by licensed installers, and reported used by installers during the installation of manufactured housing units for fiscal years 2016 and 2017.

Table 11
Installation Permit Decals
Permits Issued to County Court Clerks, Permits Purchased by Licensed Installers, and
Permits Reported Used for Installation by Installers
Fiscal Years 2016 and 2017

Fiscal Year 2016			Fiscal Year 2017		
Issued	Purchased by Installers*	Reported Used by Installers**	Issued	Purchased by Installers*	Reported Used by Installers**
4,100	4,348	3,924	4,400	4,605	4,395
*Some of the permit decals purchased were issued to county court clerk offices prior to fiscal years 2016 and 2017, resulting in the numbers showing more permits purchased than issued. **The licensed installer may purchase more permit decals in a fiscal year than the installer will actually use for installations during the fiscal year. Source: Manufactured Housing and Modular Building Section.					

Prior Audit Finding

The previous performance audit released in September 2014 included a finding related to the section not inspecting manufactured housing installations within 20 business days of receiving the licensed installers’ weekly report and not performing an annual inspection of each licensed installer. Also, management was not performing periodic reviews of the Access database to ensure inspection information was recorded accurately and that permit decals were properly accounted for. Management concurred with the finding and stated that

- the section would be improving recordkeeping and the accuracy of information collected by section staff;
- new policies and procedures were expected to be submitted to the Legal Section and Commissioner for approval by September 30, 2014;

- management change for the section’s director occurred because of the repeated failure to meet statutory requirements; and
- by October 31, 2014, the Microsoft Access database in which the installations are collected and processed would be augmented and streamlined to ensure that installations and inspection reports are tracked accurately.

Audit Results

1. Audit Objective: Did the department’s Manufactured Housing and Modular Buildings section correct the finding from the prior audit concerning complying with statutory requirements for inspecting installations, inspecting each installer, and ensuring the accuracy of the Access database?

Conclusion: Based on the testwork performed, the section resolved the issues concerning compliance with statutory requirements for inspecting installations and installers. However, the section did not formalize its draft procedures and did not have procedures for administering the permit decals. Additionally, management was not performing periodic reviews of the Access database as previously recommended (see **Observation 2**).

2. Audit Objective: Did the section fulfill its HUD contract responsibilities as the State Administrative Agency when conducting manufacturer production and process inspections of manufactured housing units?

Conclusion: Based on testwork performed, the section fulfilled contract responsibilities for performing production and process inspections; however, the section did not formalize its draft procedures for administering HUD Certification Label responsibilities and did not have procedures for its HUD Modular Building Labels responsibilities (see **Observation 2**).

Methodology to Achieve Objectives

To achieve our objectives, we interviewed the section director, managers, and administrative staff. We interviewed county court clerks concerning the procedures for issuing installation permit decals to licensed installers. We reviewed state statute, as well as department rules and policies. We analyzed the section’s installation inspection information in an Access database for calendar years 2016 and 2017. The database includes information concerning the installation permit decals issued to county court clerks, the decals the county court clerk sold to licensed installers, the date the decals were used for an installation, and the date section field inspectors inspected the installation. We chose a haphazard sample of 1 Middle Tennessee and 2 East Tennessee manufactured housing production facilities and observed Inspection – Primary Inspection Agency inspectors conducting inspections at the 3 production facilities. The section conducted 872 plant inspections from January 2018 to August 2018.

Observation 2 – The Manufactured Housing and Modular Buildings Section failed to develop and formalize policies and procedures, and the section failed to periodically review the installation inspection database to ensure accuracy of database information

Results of Current Audit Work

Operating Policies and Procedures Were in Draft Form or Incomplete

We found that the Manufactured Housing and Modular Buildings Section (the section) did not have formalized policies and procedures to provide day-to-day operating guidance for its employees. The section has several draft policies—for inspecting and monitoring HUD labels, Modular Building Labels, and installation permit decals—that the prior director did not finalize. The prior director separated from the Department of Commerce and Insurance on March 9, 2018, and the new director began on April 22, 2018. The draft policies were not submitted to the department’s Legal Section for review until May 2018.

In addition, the section’s administrative staff responsible for the installation permit decals, who had begun documenting the procedures, left the department in April 2018, prior to completion of documenting the procedures. There were no policies and procedures for the HUD Modular Building Labels due to a gap in employee coverage as well.

Formal written operating procedures are essential for monitoring and tracking HUD labels and installation permit decals, as well as for training new employees. Not having formal procedures increases the risk of not properly accounting for labels and permits sold and issued and not having inspections that are uniform across the state.

Installation Permit Decal Data Entry Errors

During our analysis of the Access database for calendar years 2016 and 2017, we identified previously reported issues and new data entry issues concerning license numbers, permit decal numbers, weekly installation reports, and installation inspections.

County Court Clerk Monthly Report

We found that even though the county clerks submitted their reports for calendar years 2016 and 2017, the section’s staff did not enter the date, month, or year for the following items:

- For calendar year 2016 – 38 of the 4,204 installation permit decals issued to licensed installers (1%) did not include the month and/or year the installer purchased the decals from the county court clerk’s office.
- For calendar year 2017 – 29 of the 4,174 installation permit decals issued (1%) did not have the month and/or year the permit was purchased.

While the error rate is relatively low in both instances, management could easily identify and correct this information by reviewing monthly data entry summaries each month. When the permit decal purchase date information is not entered into the database accurately from the county

clerk's monthly reports, staff are not able to effectively reconcile when permit decals are purchased and utilized for a manufactured housing unit installation.

Installers' License Numbers

From our review of licensed installers in the Access database, for calendar year 2016, we found that section administrative staff entered 1 out of 150 licensed installers' license numbers (1%) incorrectly. In calendar year 2017, 2 of 139 installer license numbers (1%) were entered incorrectly.

While the error rate is relatively low in both instances, management could easily identify and correct this information by establishing a review process to verify data to valid license numbers periodically. Incorrect installer license numbers make it difficult to match an installation permit decal number to the licensed installer that installed the assigned housing unit, resulting in the section's inability to ensure inspections are performed as required.

Weekly Installation Reports and Inspections

When analyzing the installation and inspection data for calendar years 2016 and 2017, we found there were 4,384 installation inspections, and we found 9 negative numbers (0.2% error rate) for the number of days from receiving the weekly installation report to the date the installation was inspected. This indicates, illogically, that an installation was inspected prior to completion. The negative calculated numbers were caused by administrative staff incorrectly entering the inspection date and entering one of the weekly reports' date received as September 26, 2027, instead of September 26, 2017; and an inspector entering the incorrect decal number on an inspection report. Because management did not periodically review the manufactured housing installation data, management failed to identify obvious data entry errors.

To ensure that the section is compliant with Section 68-126-406(e), *Tennessee Code Annotated*, concerning the inspection of manufactured housing installations, staff must enter accurate information concerning license numbers, permit decal numbers, and dates into the section's database. Incorrectly entered dates make it difficult to track whether the installation inspections occurred within 20 business days of receiving the installation report, as required by statute.

The Commissioner should ensure that the section submits operating policies and procedures for inspections and administering HUD labels, Modular Building Labels, and installation permit decals to the department's Legal Section for review and approval.

The Commissioner should also ensure that management in the section formalize procedures for reviewing information entered into the Access database for accuracy. The review should be conducted periodically, such as monthly or quarterly, to ensure that errors are identified and that the section continues to remain in compliance with state statute concerning manufactured housing installations and inspections.

Captive Insurance



CAPTIVE INSURANCE

The Department of Commerce and Insurance oversees captive insurance companies domiciled within Tennessee, pursuant to Sections 56-13-105, 108, and 109, *Tennessee Code Annotated*, and Chapter 0780-01-41, “Tennessee Captive Insurance Companies,” of the department’s rules. A captive insurance company (captive) is wholly owned and funded by those it insures and provides an option for companies to take financial control and manage risks by underwriting their own insurance rather than paying premiums to third-party insurers (see **Exhibit 1**). Captives offer their owners a reduction in insurance premiums and another potential source of income in the form of dividends paid by the captive; however, department approval is required before a dividend is paid out to the owner(s).

In accordance with Section 56-13-108, *Tennessee Code Annotated*, captives must submit an annual report to the department, which the department uses to calculate premium taxes due from the companies.¹⁶ The department examines captives every three years, but the captives can opt for examination every five years if they are audited annually by a department-approved Certified Public Accountant and provide the department with a copy of the issued audit. Therefore, in essence, the department uses the audited financial statements to determine the examination cycle for the captives.

The department houses a separate Captive Insurance Section within the Insurance Division. In fiscal year 2017, the captive insurance companies underwrote insurance policies resulting in insurance premiums exceeding \$1 billion. The department calculates premium taxes as defined by Section 56-13-114, *Tennessee Code Annotated*, based on the premiums reported.

As of July 31, 2018, Tennessee has 137 active licensed captives and 343 active approved cell companies,¹⁷ all of which must be licensed or approved by the department. The state only had 2 captive insurance companies when the program was created in 2011. An August 29, 2018, department press release states,

Tennessee was recently honored for its growth in the captive insurance marketplace with the Domicile of The Year (Less Than 200 Captives) award at the 2018 U.S. Captive Review Awards. Open to all states with active captive legislation, the awards ceremony highlights captive insurance regulators and service providers who have excelled in the past year.

This award is proof that the work we began in 2011 to modernize Tennessee’s captive insurance regulations was a game-changer that will benefit Tennessee for years to come,” said Tennessee Governor Bill Haslam. “Our captive legislation has led to more companies locating here, the creation of nearly 100 captive insurance-

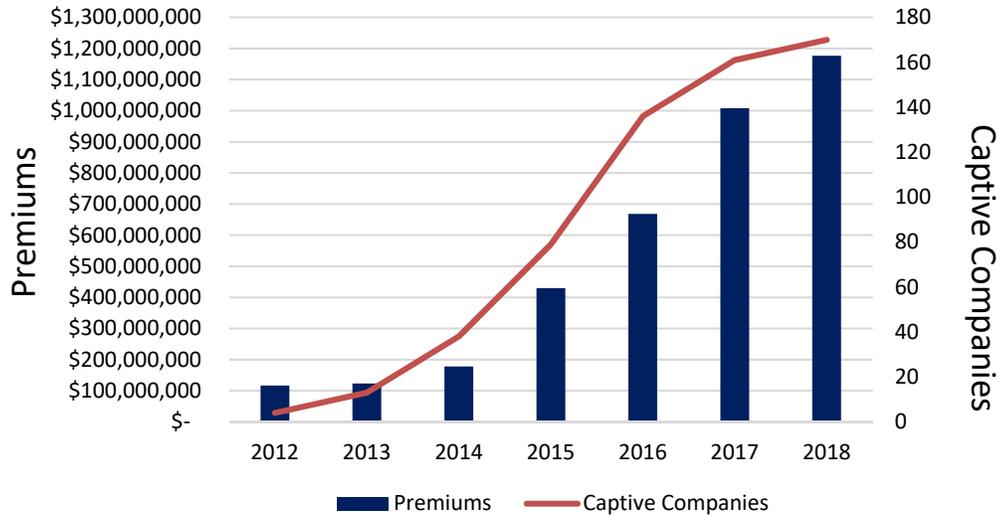
¹⁶ Section 56-13-114, *Tennessee Code Annotated*, stipulates that before or on March 15 of each year, captives should pay the department taxes based on the type of captive (for example, pure captive, risk retention group, or protected cell) with different percentages and premium revenue limits for each.

¹⁷ Cell companies operate under the insurance license of a captive insurance company. Cells allow for assets and liabilities on one captive company to be legally segregated from the assets and liabilities of another captive company participating within the same captive insurance company. See **Exhibit 2**.

related jobs in our state and has resulted in huge growth for Tennessee’s captive insurance market.”

See **Chart 1** for more information about the number of captives and the premium amounts they generated.

Chart 1
Number of Captive Insurance Companies and Amount of Premium Revenues Generated
July 1, 2012, Through April 12, 2018



Source: Provided by the department as of April 12, 2018.

Exhibit 1
Auditor Depiction of Traditional Versus Captive Insurance

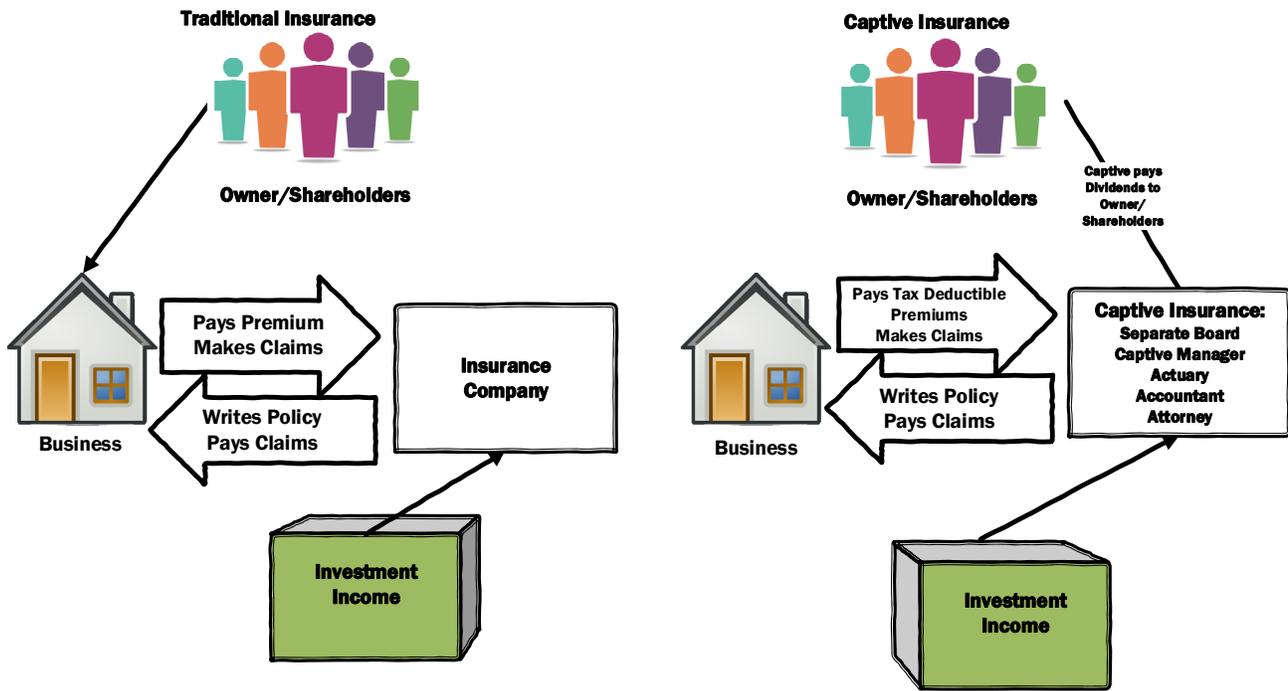
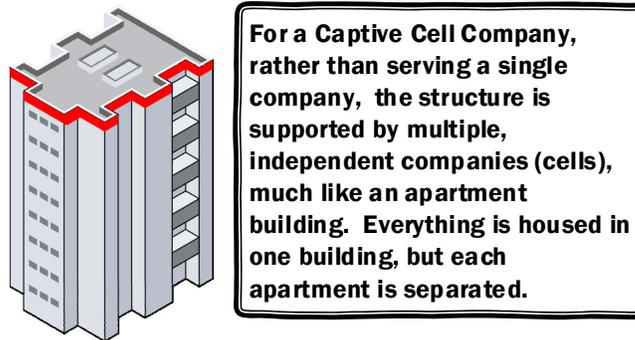


Exhibit 2
Auditor Depiction of Captive Cells
Captive Insurance Cells



Audit Results

Audit Objective: Did the Captive Insurance Section conduct timely examinations of captive insurance companies as required by state statute and department rule?

Conclusion: We found that while the section conducted timely examinations, improvements can be made regarding record maintenance (see **Observation 3**).

Methodology to Achieve Objective

To achieve our objective, we reviewed statutory and departmental requirements, interviewed key staff, and performed testwork on a sample of actively licensed captive insurance companies.

From a population of 142 active licensed captive insurance companies as of May 15, 2018, we selected a nonstatistical, random sample of 60 companies to determine if the companies submitted annual reports (and annual audited financial statements, if appropriate) timely, and if the department examined the companies within the timeframe established by statute.

To determine whether the department received required documentation, we gained access to the department's internal shared drive, reviewed paper files stored in the department's Captive Insurance Section, and obtained documents from staff as needed.

Observation 3 – The Captive Insurance Section should maintain records for captive insurance companies in a single location

Based on our review, the Captive Insurance Section (the section) received annual reports and audited financial statements from captive insurance companies. To locate this information, we had to consult three separate sources:

- the Department of Commerce and Insurance's shared drive (considered the primary source for storing documentation);
- paper files for each captive insurance company; and
- section staff.

Although we did not note missing documentation and only identified immaterial incidences of late filing submissions, the lack of a centralized data storage system makes it more difficult for staff to access captive insurance company information and increases the risk that the section will not effectively monitor compliance with statutory and department regulations. On two separate occasions,¹⁸ staff had not individually date-stamped annual reports upon receipt, so staff instead used the notary date, which occurs before the companies submit the reports to the department and does not reflect the date the department receives the reports.

The section should maintain a single data storage system, implement the necessary policies and procedures to improve accessibility to information, and date-stamp all records received.

¹⁸ We could not readily calculate the total number of reports tested. We reviewed 60 companies, each of which was required to submit an annual report. Most of these companies have been in existence for more than 2 years. Since each company has its own independent approval to operate date, there is not a simple calculation to determine that a certain number of documents was reviewed.

Insurance Company Rate Reviews and Examinations



INSURANCE COMPANY RATE REVIEWS AND EXAMINATIONS

Pursuant to Sections 56-5-104 and 56-1-212, *Tennessee Code Annotated*, and Chapter 0780-01-92¹⁹ of the Department of Commerce and Insurance's rules, insurance companies are required to submit rule and rate changes for property and casualty insurance, as well as accident and health insurance, to the Policy Analysis Section within the department's Insurance Division. Section staff review the insurance companies' rule and rate change requests for compliance with state laws and department rules.

We focused our testwork on rate changes. Basic information required for all rate change requests includes the following:

- claims history,
- initial assumptions,
- prior rate increase history,
- average annual premium,
- average national premium, and
- anticipated loss ratio.²⁰

Insurance companies submit rate requests to the department through the National Association of Insurance Commissioners' (NAIC)²¹ System for Electronic Rate and Form Filing Access (SERFF) system. The system then sends a notification to the department's Policy Analysis Section, where an intake specialist creates a state log number and assigns either an accident and health or property and casualty rate reviewer to the request (to check the filing for completeness). Following their review, Policy Analysis Section staff submit the request to the contracted actuary²² for accident and health insurance or the contracted actuary for property and casualty insurance, as appropriate, to determine compliance with applicable guidelines. The actuaries issue and upload a report to SERFF discussing the rate request, the reasonableness of supporting documentation, and whether they support the request.

Additionally, Policy Analysis Section staff are assigned to review all property and casualty insurance rate change requests, and the department sends the largest company ratings, those that maintain 80% of the state's automobile and homeowner insurance market share (premiums paid), to actuaries for additional review. For example, in 2017, 23 property and casualty insurance companies held 80% of the automobile insurance market share, and 24 property and casualty companies held 80% of the homeowner insurance market share. According to management, although not required by statute, section staff have had a long-standing practice of sending rate

¹⁹ Chapter 0780-01-92 includes the "Rules Related to Form and Rate Filings For Health Insurance Coverage Not Subject to the Authority of the Patient Protection and Affordable Care Act of 2010."

²⁰ This ratio represents the dollar amount the insurance company expects to pay out in claims for the policy in question.

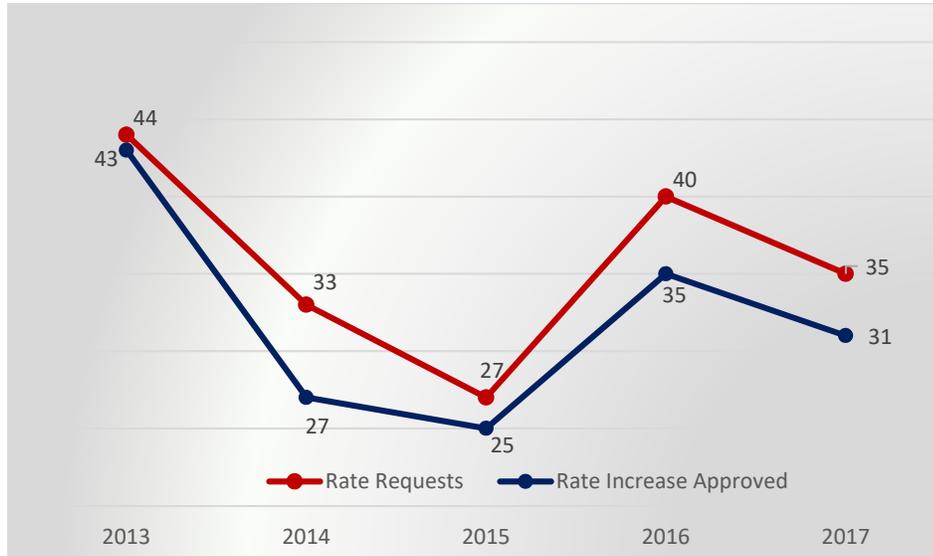
²¹ We describe the NAIC further in the Insurance Company Examinations section of this report.

²² According to <https://en.oxforddictionaries.com/>, an actuary is a "person who compiles and [analyzes] statistics and uses them to calculate insurance premiums and risks."

requests from companies holding 80% market share to the department’s contracted actuarial firm for review and recommendation.

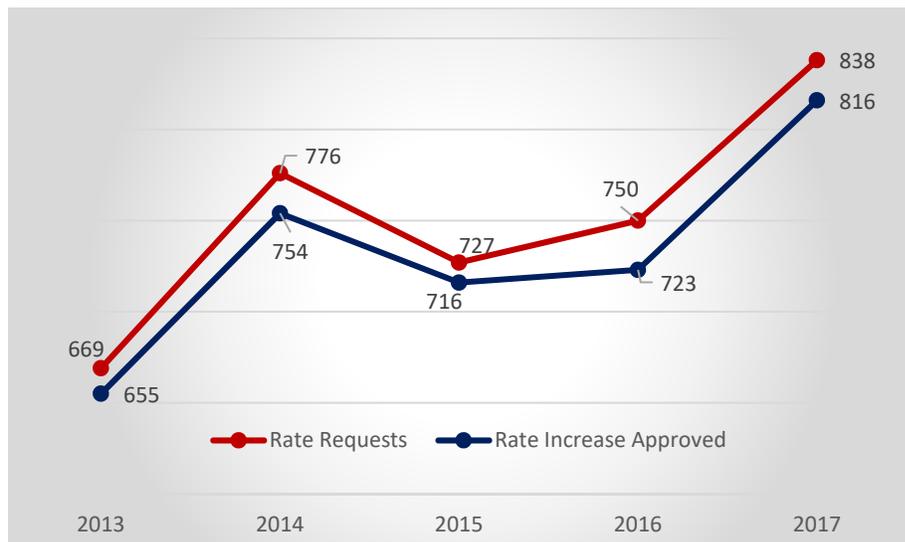
See **Charts 2** and **3** for statistical information on rate requests and approved rate increases.

Chart 2
Property and Casualty Insurance
Rate Requests and Approved Rate Increases
Calendar Years 2013 Through 2017



Source: Department of Commerce and Insurance Policy Analysis Section.

Chart 3
Accident and Health Insurance
Rate Requests and Approved Rate Increases
Calendar Years 2013 Through 2017



Source: Department of Commerce and Insurance Policy Analysis Section.

Citizens can access the SERFF system and view the rate review process, including information uploaded from the insurance companies, questions posed by department staff, and the review and recommendation from the department's contracted actuaries.

Audit Results

1. Audit Objective: Did the Policy Analysis Section obtain complete files, as required by state statute or department rule, when an insurance company filed for a rate change?

Conclusion: Based on testwork performed, the section either initially obtained completed rate requests or requested missing documentation as needed before deciding on the rate change request.

2. Audit Objective: Did the section submit rate filing requests to the contracted actuarial firm for review of supporting documentation to ensure compliance with state statute and department rule?

Conclusion: Our testwork disclosed that the section did obtain an independent actuarial review and opinion on the rate filing request except for five cases where either the filing was for an initial request (results of the first year would then be used for future rate requests) or the rate request was for policies that

- had long historical data;
- did not cover many policyholders (ranging from less than 10 to 93 individuals, nationwide); and
- were being closed out (no longer admitting new customers).

3. Audit Objective: Were the rate filing requests and correspondence between the section, the contracted actuary, and the insurance company publicly viewable on the SERFF database?

Conclusion: We found that while the requests and correspondence were viewable, the department should continue to work with the NAIC to improve accessibility, since obtaining property and casualty rate request documentation is a poorly defined process (see **Observation 4**).

Methodology to Achieve Objectives

To obtain an understanding of the rate review process, we reviewed statutory requirements and department rules, in addition to interviewing key personnel.

For our review of rate change requests, we obtained the list of 180 property and casualty rate requests and 4,916 accident and health rate requests from January 1, 2013, through December 31, 2017. We selected a nonstatistical, random sample of 60 rate requests from both property and

casualty insurance and accident and health insurance rate requests, for a total of 120 rate requests tested. We analyzed documentation provided by the insurance companies to support their rate change request, department correspondence with the insurance companies seeking additional information or clarity on information provided, and the review and recommendation from the department's contracted actuaries.

To determine whether the department received the required documentation, we obtained and reviewed insurance premium rate requests on the NAIC's SERFF database.

Observation 4 – The department should continue working with the National Association of Insurance Commissioners to improve accessibility of documentation for property and casualty rate requests

During audit fieldwork, we did not note any significant issues in the documentation provided by the insurance companies or the process used by the Department of Commerce and Insurance's Policy Analysis Section to review a rate change request; however, we did experience difficulties in locating the contracted actuary's report and recommendation pertaining to property and casualty rate change requests. Specifically, we discovered that it was unclear what steps were required for accessing property and casualty rate request information compared to accessing accident and health rate requests using the same National Association of Insurance Commissioners' (NAIC) website. In fact, when we asked the department, management had to contact the NAIC to determine the specific steps to successfully access this information.

The department's Policy Analysis Section should continue to work with the NAIC to define accessibility of property and casualty rate filing documentation, such as adjusting the navigation to match the accident and health rate requests. In the meantime, the department should provide guidance on its website regarding the steps needed to access public property and casualty records.

INSURANCE COMPANY EXAMINATIONS

Section 56-1-408, *Tennessee Code Annotated*, requires the Department of Commerce and Insurance to perform financial examinations of insurance companies licensed to conduct business within the state for the purpose of

- ensuring the companies can fulfill their obligations (such as paying valid claims); and
- determining whether they have complied with other statutory requirements.

Section 56-1-408 establishes the examination frequency to be “[a]s often as once in five (5) years,” and Section 56-1-409 stipulates that the department may perform exams “whenever the commissioner deems it prudent to do so, or upon the request of five (5) or more of the stockholders or persons pecuniarily [financially] interested in the company” who believe the company is in “an unsound condition.”

In certain situations, the department may forego performing an examination directly. Section 56-1-410(b) permits the department to accept existing financial examinations of insurance companies domiciled²³ outside of the state if the following conditions are met:

- (1) The department of insurance [for the company’s state of domicile] was, at the time of the examination, accredited under the National Association of Insurance Commissioners [NAIC], Financial Regulation Standards and Accreditation Program;²⁴ or
- (2) The examination is performed
 - (A) Under the supervision of a department of insurance so accredited; or
 - (B) With the participation of one (1) or more examiners who are employed by such an accredited state department of insurance and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their department of insurance.

Furthermore, Chapter 0780-01-63, “Credit For Reinsurance,” of the department’s rules provides that examination of reinsurance²⁵ companies domiciled outside the United States is at the will of the Commissioner.

Within the department, the Insurance Division’s Insurance Examinations Section is responsible for the insurance company examinations. For calendar years 2013 through 2017, there were 1,873 licensed active insurance companies operating in Tennessee, 97 of which were domiciled within the state.

National Association of Insurance Commissioners

On a national level, the NAIC provides state regulators with an accreditation program and conducts reviews of each state’s examination process to determine if the regulator is meeting baseline standards of solvency regulation,²⁶ particularly with respect to regulation of multi-state insurers. The NAIC gives accreditation certification to a state regulator once it has demonstrated that it has met and continues to meet an assortment of legal, financial, and other organizational standards as determined by a committee of regulatory peers. As of April 2018, all 50 states, the District of Columbia, and Puerto Rico have been accredited by the NAIC.

²³ According to <https://legal-dictionary.thefreedictionary.com/>, a company’s state of domicile refers to its place of incorporation (initial licensure). Based on review of various *Tennessee Code Annotated* provisions, a company domiciled outside of Tennessee may still apply for and receive a license to operate within the state.

²⁴ We discuss the NAIC accreditation program in more detail later in this report section.

²⁵ Investopedia (<https://www.investopedia.com/>) states, “Reinsurance occurs when multiple insurance companies share risk by purchasing insurance policies from other insurers to limit the total loss the original insurer would experience in case of disaster.”

²⁶ Solvency regulation pertains to state regulators’ efforts to mitigate the risk of loss to business and individuals should an insurer go bankrupt.

The NAIC also provides state insurance regulators the Financial Exam Electronic Tracking System (FEETS) database for use in reporting examinations of multi-state insurance companies. Through the FEETS system, states with multi-state insurance companies that are not domiciled within that state can access the existing examination reports to assess whether the insurance company has sufficient surplus.²⁷

Audit Results

1. Audit Objective: Did the Insurance Examinations Section ensure that financial examinations of Tennessee-licensed insurance companies were conducted as required by *Tennessee Code Annotated*?

Conclusion: Based on testwork performed, the section ensured that the required examination was conducted for the 1 company domiciled in Tennessee. The section also had NAIC evidence that the 57 multi-state companies had been examined within the 5-year requirement. Two companies tested were reinsurers domiciled outside of the United States and did not require an examination.

2. Audit Objective: Did insurance companies provide sufficient surplus as required by state statute?

Conclusion: The examination reports we reviewed demonstrated sufficient surplus. The section did not obtain examination reports for two reinsurers domiciled outside of the United States; however, both companies had created a trust account held within the country. In addition, these companies had provided annual financial reports that documented sufficient surplus.

Methodology to Achieve Objectives

To achieve our objectives, we studied statutory requirements and interviewed department staff. For our review, we obtained monthly reports from calendar years 2013 through 2017 of the licensed active insurance companies operating within Tennessee. We compiled the individual monthly reports into annual spreadsheets and then combined the annual spreadsheets into a master spreadsheet listing 1,873 unique insurance company names.

We reviewed a nonstatistical, random sample of 60 insurance companies to determine whether examinations were conducted at least once every 5 years (either by the Insurance Examinations Section directly or another authorized entity) and whether the companies maintained sufficient surplus for Tennessee claimants. Of the 60 insurance companies reviewed, 57 (95%)

²⁷ Surplus requirements mandate that the insurance companies maintain a certain level of capital in case the company receives substantial claims or ceases operations. In Tennessee, Section 56-2-114, *Tennessee Code Annotated*, establishes the following capital requirements: (a) \$1,000,000 for companies transacting “combinations of kinds of insurance” and (b) \$150,000 for companies solely “reinsuring credit life and credit accident insurance and health insurance.” Section 56-2-115 contains an additional surplus requirement: \$1,000,000 for those companies described in (a) above and \$150,000 for those described in (b). Furthermore, *Tennessee Code Annotated* includes various other capital and surplus requirements for different types of insurers and reinsurers licensed within the state.

were multi-state insurance companies domiciled outside Tennessee but within the United States; 2 companies (3%) were reinsurers located outside of the United States and met statutory reporting requirements as outlined by Section 56-2-208, *Tennessee Code Annotated*; and 1 company (2%) was a Tennessee-domiciled insurance company and examined by the section directly.

Peace Officer
Standards and
Training
Commission



PEACE OFFICER STANDARDS AND TRAINING COMMISSION



Source: Photo taken by auditors.

The 15-member Peace Officer Standards and Training (POST) Commission created pursuant to Section 38-8-102, *Tennessee Code Annotated*, is the primary regulatory body for Tennessee law enforcement officers. POST Commission membership and the respective appointing authorities are detailed in **Exhibit 3**. (For current membership, see **Appendix 2**.)

The POST Commission establishes preemployment standards for all local law enforcement officers in Tennessee, has minimum standards and curriculum requirements for police academies, and approves in-service training. Examples for each can be found in **Exhibit 4**.

Exhibit 3 POST Commission Membership

Commission Members	Appointing Authority
1 police officer below the rank of assistant chief, or equivalent rank	Governor
State Attorney General and Reporter	Attorney General
2 sheriffs and 2 municipal police chiefs	Governor
1 non-supervisory police officer	Governor
1 member of the Senate	Speaker of the Senate
1 member of the House	Speaker of the House
2 citizens not connected with law enforcement	House and Senate resolution*
3 additional members	Governor
Director of the Tennessee Law Enforcement Training— serves as the Executive Secretary of the Commission	Tennessee Law Enforcement Training Academy

*Senate appointee resigned in April 2017, and meeting minutes reviewed show the member had not been in attendance since at least October 2016.

Source: Section 38-8-102, *Tennessee Code Annotated*.

Exhibit 4
Examples of POST Preemployment Standards, Police Academy Standards, and
In-service Training

Standards	Examples
Preemployment	<ul style="list-style-type: none"> • High school graduate. • Not have been convicted or plead guilty to any felony charge. • Have good moral character as determined by a thorough investigation conducted by employing agency and/or POST Commission.
Police Academy	<ul style="list-style-type: none"> • Basic Law Enforcement Course shall include a minimum of 400 hours of instruction and study. • Basic Law Enforcement Course shall be administered by a school certified (approved) by the commission. • Each Academy shall develop a system of testing which relates to training objectives.
In-service Training	<ul style="list-style-type: none"> • All full-time commission certified officers must participate in a POST-approved 40-hour in-service training session each calendar year. • Certified or recognized courses must be at least 40 hours in duration and established by the department or agency. • Each in-service training session must be at least 8 hours in duration and include firearms training requalification with service handgun and any other firearm authorized by department.

Source: POST Commission Rules and Regulations.

Complaints

According to POST Commission staff, they receive approximately 20 to 22 complaints each month through the commission website, email, phone, and mail, as well as in person. Though about 25% of the complaints are not commission-related, staff try to refer those complainants to the proper agency (such as the department where an officer works) and then investigate the remaining complaints. Complaints received can vary from a part-time officer working too many hours, for which the officer could receive a verbal warning; an officer not completing in-service training for a year, which could require a waiver from the commission and losing the salary supplement (\$600 per year) for the year; or a criminal act, which could lead to decertification (no longer able to work as a police officer in the State of Tennessee).

Police Academy Annual Reports and Inspections

POST Commission Rule 1110-07-.06, “Compliance,” requires the 11 police academies across the state to submit an annual report to the commission detailing activities from the previous year, which then prompts the commission to inspect the academy. In the previous two audit reports dated September 2008 and September 2014, we noted that the commission did not adequately

monitor police academies by obtaining all annual reports timely and did not date-stamp other reports, rendering us unable to determine whether the reports were received on time. In addition, the commission did not conduct annual on-site visits at the academies. Management concurred with both prior findings.

Audit Results

1. Audit Objective: Did the POST Commission establish a complaint tracking database?

Conclusion: Our testwork disclosed that the commission did not have a complaint database (see **Finding 3**).

2. Audit Objective: Did the commission resolve the previous audit finding concerning receiving police academy annual reports and conducting police academy inspections as required?

Conclusion: While the commission conducted police academy inspections for calendar years 2017 and 2018, police academies still submitted annual reports late in some instances, and commission staff did not properly document the receipt date for other reports. Furthermore, as a result of our review, we determined that not approving an academy for operation is the only remedy the commission has available when an academy does not comply with commission rules (see **Observation 5**).

3. Audit Objective: Are there any vacancies on the commission? Did commission members meet the attendance requirement? Did members sign conflict-of-interest disclosure forms?

Conclusion: As of October 18, 2018, the commission had two vacancies with one, the citizen member appointed by House resolution, that has been open since October 2016 (see **Observation 6**). Subsequent to fieldwork, a second vacancy occurred when a member resigned after not attending any meetings held in 2018 in violation of Section 38-8-102, *Tennessee Code Annotated*, which requires removal if a member misses over 50% of the scheduled meetings in a calendar year. Currently serving commission members met this requirement for the period reviewed of October 2016 through August 2018. Conflict-of-interest forms were requested and obtained for calendar years 2017 and 2018 from all commission members actively serving. A conflict-of-interest statement, requiring commission members to recuse themselves if they have a conflict of interest, was read during commission meetings and included in meeting minutes.

Methodology to Achieve Objectives

We reviewed statutory requirements, interviewed key personnel, reviewed commission rules and regulations, and observed an on-site academy inspection. We obtained and analyzed

academy annual reports and commission inspection reports for all 11 academies for calendar years 2017 and 2018.

Finding 3 – The POST Commission lacks a system to collect, track, and analyze complaints received

During an observation of an on-site academy inspection and in follow-up communications, we learned that the complaints the POST Commission receives are not logged into a system for review, investigation, and analysis. Instead, during audit fieldwork, individual POST Commission employees assigned to review each complaint maintained the complaint information.

Establishing a centralized system for complaints is a matter of best practice. Management stated that the commission had a complaint repository that became inactive two years ago after changes in personnel through reassignment and attrition, as well as reductions to their budget. Management added that following discussions with us, staff had been reassigned in order to reconstitute the complaint repository.

Without a centralized system for complaints, management oversight is impaired. This increases the risk that the commission will not investigate a complaint or will not note repeat complaints pertaining to the same academy, police department, or officer. This lack of a centralized complaint system inhibits management from analyzing complaint data, impacting decision making.

Recommendation

The POST Commission should reinstitute a complaint repository and should also establish policies and procedures to log complaints when received, assign adequate staff to investigate complaints, monitor investigative progress, enter results, and generate reports as needed.

Management’s Comment

We concur. As of July 2018, a complaint log was re-established on a shared drive that is accessible to all personnel who investigate complaints. Also, a Form Stack complaint system was established on the POST Commission website for the convenience of the public. That form submission is automatically routed to the POST Assistant Director who will assign the case to an investigator, have it reviewed by the commission, route to proper authorities, or simply respond to the complainant. Management of the POST Commission administrative office maintains that despite the lack of an investigative log, all complaints received were acted upon appropriately; the majority of complaints received are outside of the purview of the POST Commission and are dealt with by either referring the matter or the complainant to the proper investigative authority. Anonymous complaints are often received, making response to such complainants impossible.

Observation 5 – Under current regulations, not approving a police academy for operation is the only disciplinary measure available to the POST Commission

Pursuant to Section 38-8-104, *Tennessee Code Annotated*, the POST Commission is required to “approve facilities . . . for the specific purpose of training police recruits and police officers.” Commission rules mandate that police academies submit annual reports for each calendar year by January 31 of the following year. The only remedy the POST Commission has for noncompliant academies is to not approve them for operation.

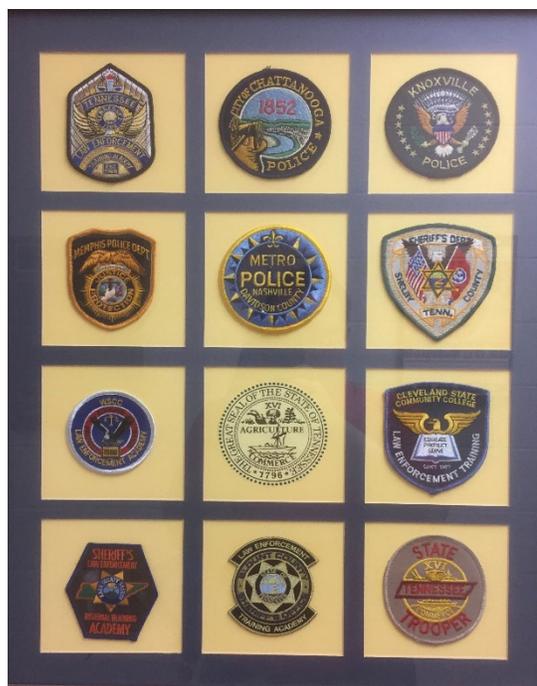
Based on our current testwork, management has resolved the prior issue involving conducting annual on-site visits at the police academies; however, concerns about monitoring the academies’ annual report submissions persist. Of the 22 annual reports due over calendar years 2017 and 2018, we found problems with 17 (77%). Specifically,

- the Shelby County and Knoxville police academies submitted their 2018 annual reports 1 and 9 days late, respectively; and
- commission staff did not date-stamp another 15 annual reports upon receipt, preventing us from determining whether the reports were submitted timely.

According to management, the failure to submit timely annual reports is due to issues such as personnel changes at the respective academies. The Director has delegated documenting receipt of annual reports to the Assistant Directors. To track the timeliness of annual reports going forward, the Director will require his staff to retain the email from where the academy submitted the report or to stamp the date of receipt on the report.

Management further explained that although police academies that are not in compliance may request a waiver from the commission, these actions require time and at least one additional commission meeting. During our testwork, we did not identify any academies that requested waivers.

Moreover, we learned that the commission did not impose disciplinary action against the academies submitting late reports because of the catastrophic effects of not approving them for operation, both on the police departments and the individuals in training. A less severe option would allow potential officers to continue training while the academy works toward full compliance. The commission did not provide us with a reason for not previously implementing alternative disciplinary measures.



Tennessee Law Enforcement Academy Patches.
Source: Photo taken by auditors.

Since annual report submissions trigger commission staff to schedule the on-site police academy inspections, late submissions may impair staff's ability to conduct timely inspections.

To resolve the issues we noted, the POST Commission Director should ensure that staff monitor the policy academy annual reports for timely submission. Staff should either retain the emails accompanying the annual report submissions or date-stamp the reports upon receipt.

Additionally, the POST Commission should amend its rules to establish alternative disciplinary measures, such as a probationary status, for academies not in compliance. Based on our research, the Commissioner has the power to create a probationary status, which is already in use by the licensing boards attached to the Department of Commerce and Insurance. The probationary status should specify a timeline for the academy to correct violations and a method for the commission to handle academies with repeat probationary status.

Observation 6 - The POST Commission has had a vacancy since October 2016

Pursuant to Section 38-8-102, *Tennessee Code Annotated*, the POST Commission is to consist of two members who are not connected to law enforcement. One is to be appointed by House resolution and another is to be appointed by Senate resolution. The commission member appointed by House resolution is no longer serving.

According to POST Commission minutes reviewed from October 2016 through August 2018, the position has been vacant.

Commission on
Firefighting Personnel
Standards and
Education



COMMISSION ON FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

The Commission on Firefighting Personnel Standards and Education (Fire Commission) was created by Section 4-24-101, *Tennessee Code Annotated*, and is attached to the Department of Commerce and Insurance’s Fire Prevention Division, which houses the State Fire Marshal’s Office. The Fire Commission sunset termination date is June 30, 2019 (Section 4-29-240). According to Section 4-24-104(b)(1),

Each appointed member, with the exception of volunteer members, shall be qualified by experience in the area of fire protection and related fields, meet the minimum training requirements of § 4-24-112, be a certified firefighter II or above, and be an active or retired member of a fire department currently participating in the commission's certification training program.

Furthermore, Section 4-24-104(b)(2) stipulates that the appointed volunteer members must be “qualified by experience; extinguish and control fires and fire-related emergencies as a member of a volunteer fire department . . . meet the minimum training requirements . . . ; currently serve or has served as a training officer for a fire department; and must not be considered a full-time employee of the fire department that they are representing.” We outline the composition of Fire Commission members in **Exhibit 5**. (For current members, see **Appendix 3**)

Exhibit 5 Commission on Firefighting Personnel Standards and Education Statutory Membership Breakdown

Commission Members	Appointing Authority
3 members – one must be a volunteer firefighter	Governor selects from candidates submitted collectively by the Tennessee Fire Chief’s Association, Tennessee Fire Safety Inspectors Association, and Tennessee Fireman’s Association
3 members	Governor selects from candidates submitted by the governing body of the Tennessee Professional Firefighters Association
3 members – one must be a career firefighter, one must be a volunteer firefighter	Governor
Executive Director, Fire Service and Codes Enforcement Academy	By virtue of position (non-voting, does not count towards quorum)
Commissioner or designee, Tennessee Department of Commerce and Insurance	By virtue of position (non-voting, does not count towards quorum)



Source: Picture of Fire Commission meeting, provided by management.

The Fire Commission is responsible for certifying volunteer and paid firefighters in the State of Tennessee (see **Exhibit 6**). The certification program is designed to be an incentive to firefighters to develop their skills and further their training and education. Statute requires the commission to

- certify fire training instructors;
- certify training and education programs prescribed by the commission;
- approve all fire services curricula offered through the Tennessee Fire Services and Codes Enforcement Academy, which also falls under the department’s Fire Prevention Division;
- establish classifications based on training and education for full-time and volunteer fire service personnel; and
- administer the supplemental Education Incentive Pay programs (Section 4-24-202, *Tennessee Code Annotated*).

The Education Incentive Pay programs allow qualified full-time firefighters to earn a \$600 supplement for completing a minimum of 40 hours of qualified in-house training or other training approved by the Fire Commission during a calendar year. The fire departments submit the list of firefighters who complete training to the Fire Commission. The commission’s Executive Director then reviews the information to verify eligibility for the supplemental pay, and commission staff

select a random sample of 18 fire departments for which to audit supporting documentation. The fire departments are required to maintain supporting documentation for three years per Chapter 0360-07-01-.08(2), “Education Incentive Pay,” of the Fire Commission’s rules.

Exhibit 6
Commission on Firefighting Personnel Standards and Education Activities
For Calendar Year 2017

Description of Activity	Results
Total written firefighter certification exam applications processed	7,015
Total number of test events*:	
Written exam events**	349
Practical exam events***	164
Total number of exams administered:	
Written exams administered	5,573
Practical exams administered	3,051
Educational Incentive Pay Program	
Fire departments participating in program	105
Fire service professionals receiving Education Incentive pay (\$600 per 6,064 qualified firefighters)	\$3,638,400
Fire departments audited for participation in program	18

***Test events** – scheduled times when individuals may take a test.

****Written exams** – evaluations, administered in written or electronic format, to determine individuals’ knowledge of specific information.

*****Practical exams** – evaluate an individual’s mastery of a specific skill by physically performing the specific activity.

Source: State Fire Marshal’s Office management.

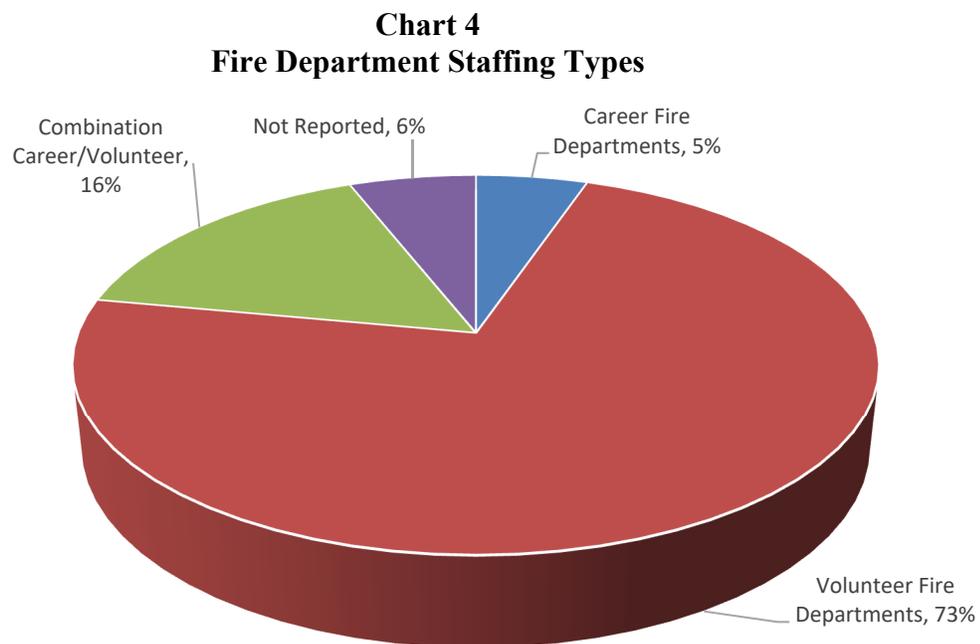


Source: Picture of written certification testing for firefighter recruit class, provided by management.

Calendar Year 2017 – Fire Department and Firefighter Statistics

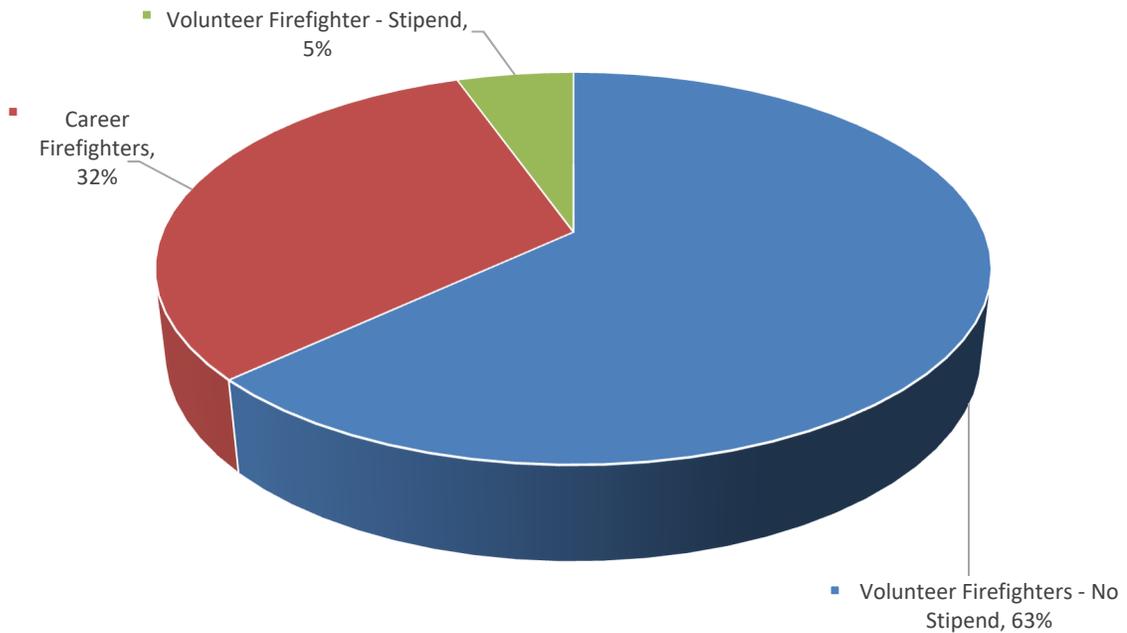
According to the State Fire Marshal’s Office’s annual report to the Governor for calendar year 2017, it recognizes 696 fire departments. Of these, 685 fire departments protect public property with a fire response area designated by the local governing body, while the remaining 11 solely protect private property (such as an industrial or commercial facility); military facilities; or airports. Based on the detailed staffing information from 644 of the 685 fire departments included in the annual report, only 36 (6%) are career fire departments where all firefighters receive financial compensation for their services; 498 (77%) of the public fire departments are staffed entirely by volunteers, and the other 110 (17%) of the public fire departments are staffed by a combination of volunteer and career firefighters (see **Chart 4**).

Most firefighters in Tennessee are volunteers who receive either no compensation or a nominal fee for their services. Active firefighters reported to the State Fire Marshal’s Office totaled 22,469 in calendar year 2017. The fire departments reported 15,381 volunteer firefighters (68%)—1,212 of whom received a small payment or stipend for responding to calls—and 7,088 career firefighters (32%) (see **Chart 5**).



Source: Tennessee Department of Commerce and Insurance – State Fire Marshal’s Office.

**Chart 5
Firefighter Compensation**



Source: Tennessee Department of Commerce and Insurance – State Fire Marshal’s Office.

The previous performance audit of the Fire Commission, released September 2014, included an observation that the commission did not develop clear conflict-of-interest procedures and did not ensure that commission members signed the conflict-of-interest forms annually.

Audit Results

1. Audit Objective: Did the Fire Commission members complete a conflict-of-interest form annually and disclose personal conflicts of interest on the form?

Conclusion: The commission members completed the conflict-of-interest forms annually for calendar years 2017 and 2018, but not all commission members fully disclosed possible conflicts with the fire departments with which they were associated (see **Observation 7**).

2. Audit Objective: Did the commission members monitor the information submitted by the fire departments participating in the supplemental Education Incentive Pay program?

Conclusion: While the commission’s Executive Director has formulated a process to verify the information submitted and the eligibility of firefighters requesting the supplemental pay, we identified one weakness in the fire department audit process (see **Observation 8**).

3. Audit Objective: Did the commission meet statutory requirements concerning the number of members, quorum, and public notification of scheduled meetings?

Conclusion: We found that the commission met the member and quorum requirements and provided public notification of scheduled commission meetings.

Methodology to Achieve Objectives

To achieve our objectives, we interviewed State Fire Marshal's Office staff and reviewed statute; rules; policies; Fire Commission meeting minutes for calendar years 2016 and 2017; and conflict-of-interest forms for all nine members in calendar years 2017 and 2018. We also observed the Fire Commission Executive Director's procedures for reviewing information submitted by fire departments for the supplemental pay and random audits of the participating fire departments.

Observation 7 – Fire Commission members should disclose employment with fire departments on the annual conflict-of-interest forms

In response to the prior audit, the Fire Commission developed a formal conflict-of-interest form that commission members must update and sign annually. Item 4 on the form states that the member will avoid all known conflicts of interest and notify the commission of any conflicts of interests that may occur while a member of the commission. The document also provides space to list all conflicts of interest on the form.

We reviewed the conflict-of-interest forms for the current commission members and noticed that all the commission members are associated with a fire department, but six of the nine members (67%) did not include that information in the comment section of the 2017 form, and seven of the nine individuals (78%) did not include that information in 2018. Individuals interested in the commission's decisions may remain unaware of potential conflicts of interest when commission members do not disclose this information on the conflict-of-interest forms. Fire Commission members should, therefore, disclose on the form if they are associated with a fire department.

Observation 8 – Thirty percent of the fire departments participating in the Education Incentive Pay program were not audited during calendar years 2012 through 2016

Chapter 0360-07-01-.08(2), "Education Incentive Pay," of the Fire Commission's rules requires the commission to audit at least 10% of the fire departments participating in the Education Incentive Pay Program. We determined that while the commission's audits complied with established regulations, the selection methodology was not designed to ensure that all fire departments would be selected for review over a designated period.

The commission's audits include an examination of supporting documentation of the educational event (such as program material and sign-in sheets). The commission's Executive Director randomly selects 18 of the participating fire departments for the audit.

We compared a list of fire departments that participated in the Education Incentive Pay program during calendar years 2012 through 2016 with the list of fire departments randomly selected for audit by the commission during that period. An average of 98 fire departments participated in the program each calendar year. During our 5-year review period, we identified 29 fire departments (30%) that the commission never audited.

We recommend that the Fire Commission amend its rules to require fire departments to maintain education training documents for more than three years. We also recommend that the commission should audit each fire department at least once during a specified period (such as once in five years) or, during a specified period, include fire departments that have not been audited as part of the sample. Additionally, the commission in particular, and the Department of Commerce and Insurance as a whole, should reevaluate the record maintenance period for the remainder of its audit records.

APPENDICES

APPENDIX 1 Most Frequent Consumer Complaint Categories Calendar Years 2015 to 2017

Complaint Category	Description
Debtor/Creditor	Includes matters related to debt collection companies, payday loans, credit repair companies, and check-cashing services. Examples of complaints are collection agencies making harassing phone calls or continuously call individuals who do not owe a debt to the company.
Health Services and Products	Examples of complaints include being misquoted for services, receiving medical bills prior to the bills being sent to the consumer's insurance company, and inaccurate billing. Some complaints may be referred to the Tennessee Department of Health.
Home Improvements	Includes hiring a contractor for services to repair or improve the quality of your home and home warranties. Examples of complaints are quality of work, incomplete work after receiving payment, and structural damage cause by the contractor. Many are referred to the Board for Licensing Contractors, Tennessee Housing Development Agency, and Tennessee Regulatory Authority.
Insurance	Relates to pet insurance, consumer health insurance, and unlicensed insurance companies. Examples of complaints include policy coverage and claims. These will often be referred to TDCI's Insurance Division.
Landlord/Tenant	Relates to consumers leasing rental property in the State of Tennessee. Examples of complaints include security deposits and conditions of the rental property. Most often referred to the Tennessee Housing Development Agency, city and county building codes enforcement, and TDCI's Fire Prevention/State Fire Marshal's Office.
Motor Vehicle	Includes consumer dissatisfaction with the sale of the used vehicle purchased. Examples of complaints are problems with the used vehicle sale and advertising. Consumer Affairs works closely with the Tennessee Motor Vehicle Commission when handling these complaints. Some complaints may be referred to the National Highway Traffic Safety Administration and the Tennessee Department of Revenue.
Motor Vehicle Repair	Refers to companies offering services to repair vehicles. Examples of complaints are vehicles being returned that are not fully repaired. Consumer Affairs works with the Tennessee Motor Vehicle Commission, the National Highway Traffic Safety Administration, and the Tennessee Department of Revenue.
Personal/Professional Services	Relates to services offered by all licensed professionals working in the State of Tennessee, including hair stylists, massage therapists, nail technicians, and others. Examples of complaints include the quality of service, charges for service the consumer did not receive, and problems redeeming gift certificates for services offered. These complaints could be referred to TDCI's Division of Regulatory Boards and Board of Professional Responsibility.
Scams	Includes telephone and imposter scams, all of which are referred to the Federal Trade Commission. Examples of complaints for various types of scams such as tax, sweepstakes, tech support, government grant, credit card, money orders.
Timeshares/Vacation Clubs	Relates to consumers purchasing property under a timesharing agreement and the sale of these agreements. Examples of complaints are high-pressure sales tactics, misrepresentation of the contract, and resale scams. These will often be referred to the Tennessee Real Estate Commission and the Board of Professional Responsibility.
Utilities	Includes gas, water, electricity, landline phone, all mobile phone, internet, and cable services. Examples - problems with maintenance and billing. Often these complaints will be referred to the Tennessee Regulatory Authority or investor-owned utility.

Source: Consumer Affairs' published Top 10 Consumer Complaints for calendar years 2015 to 2017.

APPENDIX 2
Peace Officer Standards and Training Commission Members
As of October 10, 2018

Member	Representation	Term
Captain Rita B. Baker	Metro Nashville Police Department	1/15/15 – 1/19/19
Senator Mike Bell	Senator	1/10/17 – 1/8/19
Senior Counsel Brent Cherry	Attorney General’s Office	1/15/15 – 1/14/19
Chief Glenn Chrisman	Murfreesboro Police Department	1/15/2015 – 1/14/19
William A. Forrester	Memphis Police Department	12/14/16 – 1/13/19
Brian Grisham	Executive Secretary	By virtue of position
Representative Brian Hulse	Representative	5/3/17 – 11/6/18
Carl Jenkins	Governor Appointment - Powell, TN	8/4/15 – 1/19/19
Sheriff Jeff Long	Williamson County Sheriff's Office	1/15/15 – 1/14/19
Lowell Russell	Senate Appointee	12/12/18 – 2/12/20
Pat Swain	Governor Appointment - Oakland, Tn	3/29/18 – 1/19/19
Chief Kim Wallace	Dover Police Department	1/15/15 – 1/14/19
Sheriff Ric Wilson	Wayne County Sheriff's Office	1/15/15 – 1/14/19
<i>Vacant</i>	House of Representatives Appointee	-

Source: <https://www.tn.gov/commerce/post/commission-members>.

APPENDIX 3
Firefighting Personnel Standards and Education Commission Members
As of October 10, 2018

Member	Representation	Term
Brian Biggs	Assistant Chief, Ashland City	7/1/2018 – 7/31/2024
Toran Hedgepath	Driver/Firefighter, Newport Fire Department	7/1/2016 – 7/31/2022
Michael Henry	Franklin Fire Department/ Cross Plains VFD	7/1/2018 – 7/31/2024
Tommy Kelley	Chief of Operations, Collierville Fire Department	8/1/2016 – 7/31/2022
Darryl Kerley	Fire Chief, Oak Ridge Fire Department	8/1/2014 – 7/31/2020
Steven Majchrzak	Director of the Tennessee Fire Service and Codes Enforcement – non-voting	By virtue of position
Julie Mix McPeak	Commissioner of Commerce and Insurance – non-voting	By virtue of position
Jay Moore	Chief, Lawrenceburg Fire Department	8/1/2018 – 7/31/2024
Matthew Sorge	Driver/Firefighter, Kingsport Fire Department	8/1/2014 – 7/31/2020
Stephanie Specht	Captain/Assistant Training Officer, Sevier County Volunteer Fire Department	7/1/2014 – 7/31/2020
David Windrow	Deputy Chief, Brentwood Fire Department	8/1/2016 – 7/31/2022

Source: Executive Director, Fire Prevention Division; and Secretary of State Board information.