**1-2-114. Reenactment of supplemental and replacement volume material into code.**

(a) **Reenactment of the Acts of the 2018 Session of the General Assembly.**

(1) This compilation of laws together with the supplemental reenactments set out in subdivision (b)(1) shall be deemed amendatory.

(2) This compilation shall be deemed a reenactment of the general acts of a permanent nature enacted at the 2018 regular session of the general assembly to the extent codified by the codification act. The sections so reenacted shall be construed as continuations of the previous laws so reenacted, and pending litigation, criminal prosecutions and statutes of limitations shall not be affected by such reenactments.

(3) Each section of this reenactment bearing the same number as a section appearing in the Tennessee Code as enacted in 1955 or in supplemental reenactments of the code is deemed to be in substitution for such section. Statutory references in any title, chapter, or section of the Tennessee Code shall be deemed to be references to the applicable provisions of law, and any change or rearrangements in numbering, division, or placement of the actual title, chapter, or section referred to shall not affect the validity of such references. Where only a portion of a section appears in this reenactment, such portion is deemed to be either in substitution of the same portion appearing in the Tennessee Code or supplemental reenactment or an addition to such section. Where section numbers of the Tennessee Code or supplemental reenactments are followed by "Repealed" or "Superseded", they are deemed repealed unless limiting or restricting language follows the word "Repealed" or "Superseded", in which latter event such repeal or supersession shall be limited or restricted in accordance with such language. Where section numbers of the Tennessee Code or supplemental reenactments are followed by "Unconstitutional" or are noted as having been found unconstitutional, this is reflective of a definitive court decision on the constitutionality of that section. Clauses, preambles, captions, statements of legislative intent, severability or reverse-severability clauses omitted from codification pursuant to § 1-1-108, remain valid in construing legislative intent of the codified portions of the act notwithstanding that the omitted portions of the act were not codified.

(4) All public acts of a general and permanent nature passed at the 2018 session of the general assembly, to the extent codified in the code, are repealed except those laws excepted by § 1-2-105 of the Tennessee Code.

(5) The enrolled draft of this reenactment shall, upon approval of this statute by the governor, be deposited in the office of the secretary of state, and shall be carefully preserved by that officer as an official reenactment of supplemental material to the Tennessee Code.

(6) All provisions of the Tennessee Code as enacted by chapter 6 of the Public Acts of 1955 and the supplemental reenactments set out in subdivision (b)(1) referring generally to such code, including the provisions of chapter 3 of this title, shall be likewise applicable to the sections of this reenactment and to prior supplemental reenactments.

(7) In case of any conflict between the acts of the 2019 session of the general assembly, or any extraordinary session occurring after the 2018 session of the general assembly, and this reenactment, the former shall be

controlling regardless of the respective dates of passage or approval.

(8) All references and amendments in the acts of the 2019 session of the general assembly to code sections included in this reenactment shall be deemed to be references or amendments to provisions of law as stated in this reenactment.

(b) **Reenactment of the Acts of the 1955 Through 2018 Session of the General Assembly.**

(1)(A) The supplemental material enacted by chapter 1 of the Public Acts of 1959, chapter 1 of the Public Acts of 1961, chapter 1 of the Public Acts of 1963, chapter 1 of the Public Acts of 1965, chapter 1 of the Public Acts of 1967, chapter 1 of the Public Acts of 1969, chapter 354 of the Public Acts of 1970, chapter 1 of the Public Acts of 1971, chapter 441 of the Public Acts of 1972, chapter 1 of the Public Acts of 1973, chapter 414 of the Public Acts of 1974, chapter 1 of the Public Acts of 1975, chapter 382 of the Public Acts of 1976, chapter 1 of the Public Acts of 1977, chapter 496 of the Public Acts of 1978, chapters 1 and 145 of the Public Acts of 1979, chapter 444 of the Public Acts of 1980, chapter 1 of the Public Acts of 1981, chapter 543 of the Public Acts of 1982, chapter 1 of the Public Acts of 1983, chapter 483 of the Public Acts of 1984, chapter 2 of the Public Acts of 1985, chapters 523 and 786 of the Public Acts of 1986, chapter 4 of the Public Acts of 1987, chapter 458 of the Public Acts of 1988, chapter 5 of the Public Acts of 1989, chapter 668 of the Public Acts of 1990, chapter 28 of the Public Acts of 1991, chapter 528 of the Public Acts of 1992, chapter 1 of the Public Acts of 1993, chapter 543 of the Public Acts of 1994, chapter 1 of the Public Acts of 1995, chapter 554 of the Public Acts of 1996, chapter 1 of the Public Acts of 1997, chapter 574 of the Public Acts of 1998, chapter 235 of the Public Acts of 1999, chapter 574 of the Public Acts of 2000, chapter 52 of the Public Acts of 2001, chapter 491 of the Public Acts of 2002, chapter 1 of the Public Acts of 2003, chapter 437 of the Public Acts of 2004, chapter 1 of the Public Acts of 2005, chapter 507 of the Public Acts of 2006, chapter 1 of the Public Acts of 2007, chapter 607 of the Public Acts of 2008, chapter 2 of the Public Acts of 2009, chapter 624 of the Public Acts of 2010, chapter 41 of the Public Acts of 2011, chapter 582 of the Public Acts of 2012, chapter 1 of the Public Acts of 2013, chapter 530 of the Public Acts of 2014, chapter 27 of the Public Acts of 2015, chapter 569 of the Public Acts of 2016, chapter 30 of the Public Acts of 2017 and chapter 536 of the Public Acts of 2018 shall be deemed amendatory of, supplemental to and become part of the Tennessee Code enacted as chapter 6 of the Public Acts of 1955.

(B) The supplemental material reenacted by chapters 450 and 802 of the Public Acts of 1980, by chapters 5 through 13 of the Public Acts of 1981, by chapters 2, 3, 6, and 7 of the Public Acts of 1983, by chapters 487 and 488 of the Public Acts of 1984, by chapters 4 through 6 of the Public Acts of 1985, by chapters 1 through 3 of the Public Acts of 2006, and chapters 1 through 4 of the Public Acts of 2010 shall be deemed amendatory of, supplemental to and become part of the Tennessee Code enacted as chapter 6 of the Public Acts of 1955.

(C) The material contained in replacement volumes 9A (1983 edition), 12A (1983 edition), 6 (1984 edition), 2 (1985 edition), 2A (1985 edition), 2B (1985 edition), 11 (1986 edition), 3A (1987 edition), 12A (1987

edition), 12B (1987 edition), 8 (1987 edition), 8B (1988 edition), 3 (1988 edition), 10 (1988 edition), 10A (1989 edition), 10B (1989 edition), 12 (1989 edition), 9 (1990 edition), 10C (1990 edition), 11 (1990 edition), 7A (1990 edition), 6A (1991 edition), 7 (1991 edition), 2A (1991 edition), 9A (1991 edition), 12A (1992 edition), 3A (1992 edition), 2B (1992 edition), 8A (1992 edition), 11A (1993 edition), 10 (1993 edition), 3 (1993 edition), 8 (1993 edition), 4 (1994 edition), 10A (1994 edition), 2 (1994 edition), 12 (1994 edition), 8B (1995 edition), 12B (1995 edition), 6A (1996 edition), 8A (1996 edition), 9 (1996 edition), 12A (1996 edition), 7 (1997 edition), 7A (1997 edition), 10C (1997 edition), 11 (1997 edition), 2A (1998 edition), 2B (1998 edition), 10 (1998 edition), 12 (1998 edition), 3A (1999 edition), 3B (1999 edition), 9A (1999 edition), 4A (2000 edition), 5 (2000 edition), 8 (2000 edition), 10A (2000 edition), 6 (2001 edition), 6A (2001 edition), 8A (2001 edition), 8B (2001 edition), 12A (2001 edition), 3 (2002 edition), 8C (2002 edition), 9 (2002 edition), 10B (2002 edition), 2 (2003 edition), 7 (2003 edition), 7A (2003 edition), 12 (2003 edition), 10 (2004 edition), 11 (2004 edition), 11A (2004 edition), 12B (2004 edition), 2A (2005 edition), 2B (2005 edition), 6A (2005 edition) 9A (2005 edition), 7 (2006 edition), 7A (2006 edition), 7B (2006 edition), 12 (2006 edition), 12A (2006 edition), 1 (2007 edition), 1A (2007 edition), 6 (2007 edition), 8 (2007 edition), 8A (2007 edition), 9A (2008 edition), 9B (2008 edition), 9C (2008 edition), 10 (2008 edition), 10A (2008 edition), 4 (2009 edition), 9 (2009 edition), 10C (2009 edition), 13 (2009 edition), 6A (2010 edition), 7 (2010 edition), 7B (2010 edition), 11 (2010 edition), 2A (2011 edition) 2B (2011 edition), 3 (2011 edition), 3B (2011 edition), 12 (2011 edition), 12A (2011 edition), 3A (2012 edition), 5 (2012 edition), 7A (2012 edition), 8D (2012 edition), 9C (2012 edition), 12B (2012 edition), 8C (2013 edition), 9 (2013 edition), 10B (2013 edition), 11B (2013 edition), 11C (2013 edition), 12 (2013 edition) 12A (2013 edition), 2 (2014 edition), 6A (2014 edition), 6B (2014 edition), 7 (2014 edition), 7B (2014 edition), 9A (2014 edition), 2A (2015 edition), 2B (2015 edition), 2C (2015 edition), 6 (2015 edition), 11A (2015 edition), 3 (2016 edition), 9 (2016 edition), 9A (2016 edition), 10 (2016 edition), 10A (2016 edition), 1A (2017 edition), 4A (2017 edition), 6A (2017 edition), 9D (2017 edition), 11 (2017 edition), 7 (2018 edition), 7A (2018 edition), 7B (2018 edition), 10B (2018 edition) and 11C (2018 edition) shall be deemed amendatory of, supplemental to and become part of the Tennessee Code enacted as chapter 6 of the Public Acts of 1955, as though such material were specifically reenacted in its entirety.

(2) The supplemental reenactments set out in subdivision (b)(1) shall be deemed reenactments of the general acts of a permanent nature enacted at the sessions of the general assembly held in the years 1955 through 2018 which were codified therein. The sections so reenacted shall be construed as continuations of the previous laws so reenacted, and pending litigation, criminal prosecutions and statutes of limitations shall not be affected by such reenactments.

(3) Each section of the supplemental reenactments bearing the same number as a section appearing in the Tennessee Code as enacted in 1955 or in prior supplemental reenactments of the code is deemed to be in substitution for such section. Where only a portion of a section appears, such portion is deemed to be either in substitution of the same portion

appearing in the Tennessee Code or prior supplemental reenactments or an addition to such section. Where section numbers of the Tennessee Code or supplemental reenactments are followed by "Repealed" or "Superseded", they are deemed repealed unless limiting or restricting language follows the word "Repealed" or "Superseded", in which latter event such repeal or supersession shall be limited or restricted in accordance with such language. Where section numbers of the Tennessee Code or supplemental reenactments are followed by "Unconstitutional" or are noted as having been found unconstitutional, this is reflective of a definitive court decision on the constitutionality of that section. Clauses, preambles, captions, statements of legislative intent, severability or reverse-severability clauses omitted from codification pursuant to § 1-1-108, remain valid in construing legislative intent of the codified portions of the act notwithstanding that the omitted portions of the act were not codified.

(4) All public acts of a general and permanent nature, to the extent codified in this act and the supplemental reenactments set out in subdivision (b)(1), which were passed prior to the 2018 session of the general assembly and after the 1953 session are repealed, except chapters 6 and 121 of the Public Acts of 1955, all of the supplemental reenactments set out in subdivision (b)(1), and those laws excepted by § 1-2-105 of the Tennessee Code.

(5) The enrolled draft of each supplemental reenactment shall, upon approval of the statute by the governor, be deposited in the office of the secretary of state, and shall be carefully preserved by that officer as an official enactment of supplemental material to the Tennessee Code.

(6) Title 47 of the Tennessee Code as enacted by chapter 6 of the Public Acts of 1955, as amended and supplemented by chapter 1 of the Public Acts of 1961 and chapter 1 of the Public Acts of 1963, is repealed in its entirety except as provided in § 47-1-110 [repealed]; provided, that the sections appearing in title 47, chapters 11-15 in the reenactment by chapter 1 of the Public Acts of 1965 shall be construed as continuations of the similar sections appearing in the former title 47, and pending litigation, criminal prosecutions and statutes of limitation shall not be affected by such repeal and reenactment.

(7) In case any act or portion of an act codified and reenacted as provided in subdivision (b)(1) is thereafter deleted from this code for reasons other than repeal, supersession, or unconstitutionality, the original act or portion of an act so removed from the code shall be revived and continued in the same force and effect it had as a separate act prior to codification, notwithstanding any action occurring under the provisions of subsection (a).

(8) Legislative intent or effect which is dependent on the proposed placement of an act in the Tennessee Code shall not be affected by the actual codification of such material, and the general repealer contained in subdivision (a)(4) shall not affect such presumed intent.

**1-3-116. Population figures.**

(a) Except as provided in subsection (b), references in this code to the federal censuses of population or brackets based on such censuses shall be deemed references to or based on the population figures contained in Volume 13 of this

code, or its replacement volume which are reproduced from publications of the United States bureau of the census as specified below, and shall not be affected by revisions, corrections, or alterations to such population figures by the United States bureau of the census subsequent to the publication of these publications:

(1) Census of 1900 and Census of 1910: Bureau of the census. Thirteenth Census of the United States. Taken in the Year 1910. Volume 1. Population. General Report and Analysis, pp. 118, 119;

(2) Census of 1920 and Census of 1930: Bureau of the census. Fifteenth Census of the United States: 1930. Volume 1. Population. Distribution of Inhabitants, pp. 1033, 1034;

(3) Census of 1940 and Census of 1950: Bureau of the census. A Report of the Seventeenth Decennial Census of the United States. Census of Population: 1950. Volume 1. Number of Inhabitants, pp. 42-10, 42-11;

(4) Census of 1960 and Census of 1970: U.S. bureau of the census. U.S. Census of Population: 1970. Number of Inhabitants. Final Report of PC(1)-A44 Tennessee, pp. 44-15, 44-16;

(5) Census of 1980: U.S. Bureau of the Census. 1980 Census of Population and Housing: Tennessee, PHC80-V-44. April 1, 1980;

(6) Census of 1990: U.S. Bureau of the Census. 1990 Census of Population: Tennessee, 1990 CP-1-44;

(7) Census of 2000: U.S. Bureau of the Census. 2000 Census of Population and Housing: Tennessee, 2000 PHC-1-44; and

(8) Census of 2010: U.S. Bureau of the Census. 2010 Census of Population and Housing: Tennessee, 2010 CPH-1-44.

(b) Subsection (a) does not apply to the provisions of title 3, chapter 1, relative to legislative reapportionment; § 8-24-101, relative to the classification of counties for the purpose of determining the compensation of county officers and clerks of court; §§ 16-15-204 [repealed] and 16-15-5001, relative to the classification of counties for the purpose of determining the compensation of judges; to any provision of the code in which a population figure may be adjusted by a local or state conducted supplemental census; or to any instance where an intent contrary to this section is evidenced.

**1-3-121. Cause of action under chapter.**

Notwithstanding any law to the contrary, a cause of action shall exist under this chapter for any affected person who seeks declaratory or injunctive relief in any action brought regarding the legality or constitutionality of a governmental action. A cause of action shall not exist under this chapter to seek damages.

**2-2-111. Supplemental registrations generally.**

(a) The commission in any county may hold such supplemental registrations as it deems necessary before any election in locations other than the commission office.

(b) In addition to any supplemental voter registration otherwise required by this chapter, the county election commission, or its designee, in each county shall conduct at least one (1) supplemental voter registration each year at every public and private high school in the county, for the purpose of registration of those persons who will be eligible to vote in the next election. The publication requirements of § 2-2-114 shall not apply to the registration

required by this subsection (b).

(c) As used in this section, "designees" does not include representatives of a nationally recognized political party or representatives of an organization which actively seeks to influence the outcome of an election.

(d) In addition to any supplemental voter registration otherwise required by this chapter, the county election commission, or its designee, shall conduct a supplemental voter registration when a planned and scheduled group naturalization ceremony is held within the county. The county election commission shall attend the supplemental voter registration in person or shall send one (1) or more assistant registrars or other designees in their stead to register such new citizens. The publication requirements of § 2-2-114 shall not apply to the registration required by this subsection (d).

**2-2-115. Registration by mail — Forms. [Effective until March 1, 2019. See version effective on March 1, 2019.]**

(a) Qualified voters may register by mail by use of postal card forms in such a manner as provided for in this section.

(b)(1) The coordinator of elections shall prepare voter registration forms in accordance with the provisions of this section and shall provide for the printing of an ample quantity of such registration forms to be distributed under the provisions of this section.

(2) Printed registration forms shall be designed to provide a simple method of registering by mail to vote. Registration forms shall include such matter as the coordinator of elections requires to ascertain the qualifications of an individual applying to register under this section and to prevent fraudulent registration.

(3) Registration notification forms advising the applicant of the acceptance or rejection of the applicant's registration shall be completed and mailed by the county election commission to the applicant. If any registration notification form is undeliverable, it shall not be forwarded to another address but shall be returned to the county election commission mailing the form. If any registration notification form is returned as undeliverable and indicates an acceptance of a voter's registration, the administrator of elections shall mail a forwardable confirmation notice to the registrant at the address of registration with a postage prepaid, pre-addressed return form on which the voter may verify or correct the address information. Upon the mailing of the confirmation notice, the administrator of elections shall place the registration in inactive status pursuant to § 2-2-106(d).

(4) The coordinator of elections or any county election commission is authorized to enter into agreements with the postal service and with departments and agencies of the federal government or appropriate state or local agencies, for the distribution of the registration forms, or to arrange for the distribution of such forms so as to effectuate the purpose of this section.

(5) Whenever a state or county official has reason to believe that individuals who are not qualified voters are attempting to register to vote under this chapter, such official shall notify the coordinator of elections and request the assistance of the coordinator of elections to prevent the fraudulent registration. The coordinator of elections shall give such reasonable and expeditious assistance as the coordinator deems appropriate in such cases.

(6) If a state or county official determines that there is a pattern of fraudulent registration, or any activities on the part of any individuals to

vote who are not qualified voters, the coordinator of elections shall request the district attorney general within whose district these actions may occur, to bring action under this section. The district attorney general shall bring civil action in any appropriate court in Tennessee to secure an order to prevent fraudulent registration.

(7) Each person who registers by mail shall appear in person to vote in the first election the person votes in after such registration becomes effective; before voting at the appropriate polling place or election commission office, such person shall present satisfactory proof of identity. This subdivision (b)(7) does not apply to a person who is on the permanent absentee voting register.

**2-2-115. Registration by mail — Forms. [Effective on March 1, 2019. See version effective until March 1, 2019.]**

*(a) Qualified voters may register by mail by use of postal card forms in such a manner as provided for in this section.*

*(b)(1) The coordinator of elections shall prepare voter registration forms in accordance with the provisions of this section and shall provide for the printing of an ample quantity of such registration forms to be distributed under the provisions of this section.*

*(2) Printed registration forms shall be designed to provide a simple method of registering by mail to vote. Registration forms shall include such matter as the coordinator of elections requires to ascertain the qualifications of an individual applying to register under this section and to prevent fraudulent registration.*

*(3) Registration notification forms advising the applicant of the acceptance or rejection of the applicant's registration shall be completed and mailed by the county election commission to the applicant. If any registration notification form is undeliverable, it shall not be forwarded to another address but shall be returned to the county election commission mailing the form. If any registration notification form is returned as undeliverable and indicates an acceptance of a voter's registration, the administrator of elections shall mail a forwardable confirmation notice to the registrant at the address of registration with a postage prepaid, pre-addressed return form on which the voter may verify or correct the address information. Upon the mailing of the confirmation notice, the administrator of elections shall place the registration in inactive status pursuant to § 2-2-106(d).*

*(4) The coordinator of elections or any county election commission is authorized to enter into agreements with the postal service and with departments and agencies of the federal government or appropriate state or local agencies, for the distribution of the registration forms, or to arrange for the distribution of such forms so as to effectuate the purpose of this section.*

*(5) Whenever a state or county official has reason to believe that individuals who are not qualified voters are attempting to register to vote under this chapter, such official shall notify the coordinator of elections and request the assistance of the coordinator of elections to prevent the fraudulent registration. The coordinator of elections shall give such reasonable and expeditious assistance as the coordinator deems appropriate in such cases.*

*(6) If a state or county official determines that there is a pattern of fraudulent registration, or any activities on the part of any individuals to vote*

*who are not qualified voters, the coordinator of elections shall request the district attorney general within whose district these actions may occur, to bring action under this section. The district attorney general shall bring civil action in any appropriate court in Tennessee to secure an order to prevent fraudulent registration.*

*(7)(A) Each person who registers by mail shall appear in person to vote in the first election the person votes in after such registration becomes effective. Before voting at the appropriate polling place or election commission office, such person shall present satisfactory proof of identity.*

*(B) The requirement to appear in person to vote in the first election shall not apply to:*

*(i) A person who is on the permanent absentee voting register; or*

*(ii) A person who is in the address confidentiality program under title 40, chapter 38, part 6.*

**2-3-102. Precincts — Establishment, consolidation, or change of boundaries.**

(a) No voting precinct shall be established, created, consolidated, divided, or the boundaries otherwise altered unless ordered by a court of competent jurisdiction, by reason of an annexation or other change in the boundary of a county or municipality, or in accordance with subsection (b). Any precinct boundary that is altered in accordance with this subsection (a) shall coincide with a census block as designated by the United States census bureau in the latest federal decennial census.

(b) The county election commission may establish, consolidate, or change the boundaries of precincts whenever the public convenience or law requires it; provided, that if any precinct boundary is altered pursuant to this subsection (b) then all of the following conditions must be met:

(1) Any precinct boundary that is altered shall coincide with a census block as designated by the United States census bureau in the latest federal decennial census; and

(2) After December 31, 2018, all precinct boundaries within the jurisdiction of the county election commission that do not coincide with a census block as designated by the United States census bureau in the latest federal decennial census shall be altered so that the precinct boundaries do coincide with a census block as designated by the United States census bureau in the latest federal decennial census.

(c) Any county election commission that alters the boundaries of any voting precinct in accordance with this section shall send a map, or geographic information systems file, to the office of local government which clearly delineates the new boundaries of the voting precinct.

**2-3-107. Polling places — Physical requirements — Use of public buildings — Rentals for private buildings. [Effective until January 1, 2019. See the version effective on January 1, 2019.]**

(a) The county election commission shall designate as polling places only rooms which have adequate heat, light, space and other facilities, including a sufficient number of electrical outlets where voting machines are used, for the comfortable and orderly conduct of elections.

(b)(1) The commission shall, insofar as practicable, arrange for the use of public schools and other public buildings for polling places on election day and during the early voting period.

(2) Upon application of the commission, the authority which has the control of any building or grounds supported by taxation under the laws of this state shall make available the necessary space for the purpose of holding elections and adequate space for the storage of voting machines without charge. A reasonable sum may be paid for necessary extra janitor service. If a state park is to be used as a voting location, the park must establish the site for the polling place at least one (1) year prior to the date of the election, and the location of the polling site within the park may not change without the consent of the county election committee.

(c) When polling places are established in private buildings, the commission may pay a reasonable rental.

**2-3-107. Polling places — Physical requirements — Use of public buildings — Rentals for private buildings. [Effective on January 1, 2019. See the version effective until January 1, 2019.]**

*(a) The county election commission shall designate as polling places only rooms which have adequate heat, light, space and other facilities, including a sufficient number of electrical outlets where voting machines are used, for the comfortable and orderly conduct of elections.*

*(b)(1)(A) The commission shall, insofar as practicable, arrange for the use of public schools and other public buildings for polling places on election day and during the early voting period.*

*(B)(i) If the county election commission has arranged for the use of a public school or a public charter school as a polling place for a regular November election, as defined in § 2-1-104, then the LEA or the public charter school, respectively, shall be closed for instruction on the election day. The LEA or the public charter school may use the day as an in-service day for school personnel.*

*(ii) An LEA or public charter school may choose to be open or closed for instruction on election days other than days on which a regular November election occurs. If an LEA or public charter school chooses to close on an election day, then the LEA or public charter school may use the day as an in-service day for school personnel.*

*(iii) Before adopting a calendar for a school year, each LEA and public charter school shall consult with the county election commission as to the elections that are scheduled to be conducted during the school year for which the calendar is to be adopted.*

*(2) Upon application of the commission, the authority which has the control of any building or grounds supported by taxation under the laws of this state shall make available the necessary space for the purpose of holding elections and adequate space for the storage of voting machines without charge. A reasonable sum may be paid for necessary extra janitor service. If a state park is to be used as a voting location, the park must establish the site for the polling place at least one (1) year prior to the date of the election, and the location of the polling site within the park may not change without the*

*consent of the county election committee.*

*(c) When polling places are established in private buildings, the commission may pay a reasonable rental.*

**2-4-107. Notice of appointment — Form.**

The secretary of the county election commission or the administrator of elections shall notify each official of such official's appointment by mail or email in substantially the following form:

To _____
You have been appointed by the County Election Commission as a _____ (state in what capacity — judge, etc.) to hold the election at precinct ____, on the day of _____, between the hours of ____ a.m. and ____ p.m. If you cannot serve, notify the administrator of elections immediately.
Date _____

_____
Secretary, County Election Commission/Administrator of Elections

**2-5-102. Nominating petitions — Form — Requirements. [Effective until January 1, 2019. See version effective on January 1, 2019.]**

(a) Nominating petitions shall be in substantially the following form:

We the undersigned registered voters of the city of _____, (for municipal elections) in the county of _____, State of Tennessee, (and members of the (for primaries) _____ Party), hereby nominate.

(for municipal elections)

_____ _____,
(name) (address)
_____ County as a candidate (for nomination) for the office of (for primaries)
_____, _____
(office) (division, part or district number)
to be voted in the election to be held on the ____ day of _____, ____. We request that such candidate's name be printed on the official ballot.
This petition was issued by
_____,
(signature of administrator of elections, deputy or election commissioner)
_____
(date)

TO BE COMPLETED BY CANDIDATE

I hereby direct that my name appear on the official ballot as follows:

_____
PRINT NAME

_____ _____ _____
(residential address of candidate) (zip) (telephone)

_____ _____ _____
(business address of candidate) (zip) (telephone)

FOR CANDIDATES REQUIRED TO BE AN ATTORNEY:

By my signature, I hereby certify that I am licensed to practice law in this state. _____
(signature of candidate)

SUPREME COURT REGISTRATION No. _____

NOMINATING SIGNATURES

(Must be registered voters who are eligible to vote to fill this office)

| Signature of Voter | Address of Residence as Shown on Voter Registration |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

(b)(1) All nominating petitions required for nomination and election to all congressional, state, county, municipal and political party executive committee offices shall be furnished only by the county election commission office. At the time of issuance of the nominating petitions, the administrator of elections, deputy or a county election commissioner shall type or handwrite in ink at the top of the cover page and each succeeding page of the form the name of the candidate, the office sought by the candidate, including any division, part, district or other identifying number for the office sought, and shall sign and date the form. Additional pages to be attached to a nominating petition may be obtained at a later date; provided, that each additional page must also have the name of the candidate, the office being sought and any identifying number for the office typed or handwritten at the top by the administrator, deputy or election commissioner along with the candidate's signature and the date.

(2) Nominating petitions for offices listed in § 2-13-202 may also be obtained from the office of the coordinator of elections. An employee of the coordinator's office has the same responsibilities as the administrator, deputy and election commissioners in subdivision (b)(1).

(3) The items to be completed under subdivisions (b)(1) and (2) may not be altered, and a petition on which any of these items has been altered may not be accepted in the office in which it is required to be filed in this state. Neither shall any original nominating petition be accepted on which any of the items required to be completed under subdivisions (b)(1) and (2) have been photocopied.

(4) If a county election commission finds it necessary to photocopy the nominating petition, the county election commission shall indicate in the upper right hand corner of each page that the document was photocopied by the county election commission prior to distributing the form to a candidate. Such information shall be typed, stamped or otherwise permanently affixed to the form.

(5) Nominating petitions shall not be issued by any administrator, deputy, county election commissioner or employee of the coordinator's office more than ninety (90) days before the qualifying deadline for the office for which the petition is issued. In any year where reapportionment must occur, the

coordinator of elections shall determine the earliest date on which petitions may be issued.

**2-5-102. Nominating petitions — Form — Requirements. [Effective on January 1, 2019. See version effective until January 1, 2019.]**

*(a) Nominating petitions shall be in substantially the following form:*

*We the undersigned registered voters of the city of* _____,
(for municipal elections)
*in the county of* _____, State of Tennessee, (and members of the (for primaries) _____ Party), hereby nominate.
(for municipal elections)
_____ _____,
*(name)* (address)
_____ County as a candidate (for nomination) for the office of
(for primaries)
_____, _____
*(office)* (division, part or district number)
*to be voted in the election to be held on the* ____ day of _____, ____. We request that such candidate's name be printed on the official ballot.
*This petition was issued by*
_____,
*(signature of administrator of elections, deputy or election commissioner)*
_____
*(date)*

TO BE COMPLETED BY CANDIDATE

*I hereby direct that my name appear on the official ballot as follows:*

_____
PRINT NAME

_____ _____ _____
*(residential address of candidate)* *(zip)* *(telephone)*
_____ _____ _____
*(business address of candidate)* *(zip)* *(telephone)*
*FOR CANDIDATES REQUIRED TO BE AN ATTORNEY:*
*By my signature, I hereby certify that I am licensed to practice law in this state.* _____
(signature of candidate)
*SUPREME COURT REGISTRATION No.* _____

NOMINATING SIGNATURES

*(Must be registered voters who are eligible to vote to fill this office)*

| *Signature of Voter* | Address of Residence as Shown on Voter Registration |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

*(b)(1) All nominating petitions required for nomination and election to all congressional, state, county, municipal and political party executive committee offices shall be furnished only by the county election commission office. At the time of issuance of the nominating petitions, the administrator of elections, deputy or a county election commissioner shall type or handwrite in ink at the top of the cover page and each succeeding page of the form the name of the candidate, the office sought by the candidate, including any division, part, district or other identifying number for the office sought, and shall sign and date the form. Additional pages to be attached to a nominating petition may be obtained at a later date; provided, that each additional page must also have the name of the candidate, the office being sought and any identifying number for the office typed or handwritten at the top by the administrator, deputy or election commissioner along with the candidate's signature and the date.*

*(2) Nominating petitions for offices listed in § 2-13-202 may also be obtained from the office of the coordinator of elections. An employee of the coordinator's office has the same responsibilities as the administrator, deputy and election commissioners in subdivision (b)(1).*

*(3) The items to be completed under subdivisions (b)(1) and (2) may not be altered, and a petition on which any of these items has been altered may not be accepted in the office in which it is required to be filed in this state. Neither shall any original nominating petition be accepted on which any of the items required to be completed under subdivisions (b)(1) and (2) have been photocopied.*

*(4) If a county election commission finds it necessary to photocopy the nominating petition, the county election commission shall indicate in the upper right hand corner of each page that the document was photocopied by the county election commission prior to distributing the form to a candidate. Such information shall be typed, stamped or otherwise permanently affixed to the form.*

*(5) Nominating petitions must not be issued by any administrator, deputy, county election commissioner, or employee of the coordinator's office more than sixty (60) days before the qualifying deadline for the office for which the petition is issued; provided, that nominating petitions for the offices of President of the United States and delegates to the national conventions of all statewide political parties may be issued only by an employee of the coordinator's office and must not be issued more than ninety (90) days before the applicable qualifying deadline for the respective office. During any year in which reapportionment must occur, the coordinator of elections shall determine the earliest date on which petitions may be issued.*

**2-6-102. Early voting applications — Ballots — Time for voting.**

(a)(1) A voter who desires to vote early shall go to the county election commission office or another polling place appropriately designated by the county election commission within the posted hours not more than twenty (20) days nor less than five (5) days before the day of the election. A voter desiring to vote in the early voting period shall sign an application for a ballot.

(2) The state coordinator shall supply or approve the form of the application for a ballot.

(b)(1) Except as provided in subdivision (b)(2), in the case of a regular or special general election not held in conjunction with the regular August or November general elections, or held in conjunction with the May primary called pursuant to § 2-13-203 or the presidential preference primary, if there is no opposition for any of the offices involved, including any write-in candidate that has filed the appropriate notice pursuant to § 2-7-133(i), there shall not be an early voting period. In the case of a May primary called pursuant to § 2-13-203 or a special primary for state or federal offices, if there is no opposition on either primary ballot for any of the offices involved, including any write-in candidate that has filed the appropriate notice pursuant to § 2-8-113(c), there shall not be an early voting period.

(2) Subdivision (b)(1) shall not apply to municipal elections held in the largest municipality located in a county having a metropolitan form of government which has a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census.

(c) Notwithstanding subdivision (a)(1), when a presidential preference primary is held or an election is held at the same time as a presidential preference primary, a voter who desires to vote early for such elections shall go to the county election commission office within the posted hours not more than twenty (20) days nor less than seven (7) days before the day of the election. This subsection (c) shall not apply to voting pursuant to § 2-6-601.

(d) [Deleted by 2018 amendment.]

**2-6-206. Absentee ballots for person participating in address confidentiality program. [Effective on March 1, 2019.]**

*The following shall apply to registered voters who are participants in the address confidentiality program in accordance with title 40, chapter 38, part 6:*

*(1) Following certification as a program participant by the secretary of state, and without any further request, the administrator of elections shall send to each person participating in the address confidentiality program an application for an absentee ballot for each election in which the person may vote. A voter may submit an application to vote by mail, facsimile transmission, or email with an attached document that includes a scanned signature;*

*(2) The application shall contain the following information:*

*(A) The voter's address confidentiality program participant identification number;*

*(B) The election the voter wishes to participate in;*

*(C) A statement confirming that the voter's residence address on file with the address confidentiality program has not changed; and*

*(D) The voter's signature; and*

*(3) Without any further request, the administrator of elections shall compare the signature of the voter with the signature on the voter's registration record in whatever form. If the signatures are the same and if the required information is provided, the administrator shall mail the voter a ballot to the address the voter requested. If no address is requested then the absentee ballot shall be mailed to the substitute address listed with the secretary of state. If the signatures are not the same, the administrator shall reject the application or request. If the required information is not provided, the administrator shall send the voter by mail or facsimile an application for a ballot.*

**2-6-301. Duplicate registration form filed in binder — Computerized reports — List posted.**

(a) In all counties, the attesting official shall update the voter's computerized voter history by making the appropriate data entry. Upon issuance of an absentee ballot, the voter shall not thereafter vote in the election except by absentee ballot, or pursuant to § 2-7-112(a)(3)(A); provided, however, that if the ballot is issued pursuant to § 2-6-502 this subsection (a) does not apply.

(b) All absentee voting applications shall be filed alphabetically by election day in a binder and kept in the county election commission office as a public record through election day. As an alternative, a county election commission may maintain, on a daily basis, absentee voting applications as part of a computer-generated report. Such report is a public record.

(c) The county election commission shall furnish each polling place with a certified copy of a complete alphabetical list of its absentee voters for each election, and the copy shall be displayed at the polling place throughout the voting hours on election day.

**2-7-112. Procedure for voting.**

(a)(1) A voter shall complete and sign an application for ballot, indicate the primary in which the voter desires to vote, if any, and present it to a precinct registrar. In addition, the voter shall present to the precinct registrar one (1) form of identification that bears the name and photograph of the voter. The requirement to present one (1) form of identification that bears the name and photograph of the voter shall apply to persons voting pursuant to § 2-6-109; provided, however, that a person voting in accordance with § 2-6-401(a) and (b) or § 2-6-601 shall not be required to show an identification with a photograph of the voter. The application for ballot shall include a space for the address of the voter's current residence, and the voter shall write or print such address on the application when the voter signs the application for ballot.

(A) Using the computerized voter signature list or the electronic poll book, the registrar shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. If the voter has changed residence, or the voter's registration is inactive, the registrar shall follow the procedures for voting pursuant to §§ 2-7-140 and 2-7-141.

(B) To verify the voter's identification, the voter shall supply evidence of identification specified in subsection (c).

(C) If, upon verification of evidence of identification, it is found that the applicant is entitled to vote, the registrar shall initial the application, note the date of the election, the number on the voter's ballot application, and the primary or general election in which the voter applies to vote.

(D) If the applicant's signature is illegible, the registrar shall print the name on the application.

(2) The county election commission shall use either a computerized voter signature list or an electronic poll book that has been approved for use by the coordinator of elections. A computerized voter signature list shall include the voter's name, current address of residence, social security number or voter identification number, birth date and a space for the voter's signature, elections voted, application or ballot stub number, or both, and precinct registrar's initials. The electronic poll book shall contain the same information as on the computerized voter signature list in an electronic format and provide a place on its screen for the precinct registrar to record elections voted, application or ballot stub number, or both, the precinct registrar's initials and a place for the voter's signature.

(A) For those counties using the computerized voter signature list, the following procedures shall be followed:

(i) After completing the application for ballot, the voter shall sign the computerized voter signature list, and the registrar shall compare the voter's signature and information on the signature list with the information on the application for ballot; and

(ii) If, upon comparison of the information, the registrar determines that the voter is entitled to vote, the registrar shall initial the computerized voter signature list and shall give the voter the ballot application, which is the voter's authorization to vote.

(B) For those counties using the electronic poll book, the following procedure shall be followed: After completing the application for ballot which shall include the voter's signature, if, upon comparison of the information, the registrar determines that the voter is entitled to vote, the registrar shall initial the application for ballot and shall give the voter the ballot application, which is the voter's authorization to vote.

(3)(A) A person shall be entitled to vote a provisional ballot under the procedures of this section if the voter claims to be properly registered in the county and eligible to vote at the precinct in the election, but whose eligibility cannot be determined by the computer signature list or by examination of the permanent registration records on file with the county election commission; an election official asserts the individual is not registered to vote; or the voter has requested a ballot pursuant to § 2-6-202. If a voter is unable to present evidence of identification, the voter shall be entitled to vote a provisional ballot pursuant to subsection (e) unless the voter is eligible to vote pursuant to subsection (f).

(i) If the election official cannot determine that the voter's name should have been placed on the precinct's computer signature list, then the voter shall complete an original voter registration application. At the time of registration and pursuant to subsection (d), the voter shall present verification of the residential address under which the person desires to vote.

(ii) After the voter has completed the voter registration application and supplied verification of the voter's residential address, the voter

shall complete an application for ballot pursuant to this section.

(iii) Upon completion of the application for ballot, the voter shall be given a provisional ballot and provisional ballot envelope. The provisional ballot envelope shall be of a different color from absentee ballot envelopes and shall bear a detachable slip that contains the provisional ballot affidavit. The provisional ballot affidavit shall contain the voter's printed name, social security number, date of birth, signature and any other identifying information deemed necessary by the coordinator of elections to satisfy the requirements of this section and to prevent fraudulent registration and voting.

(iv) Both the voter registration application and the application for ballot shall be deposited in the provisional ballot box. Nothing in this section shall be construed to allow election day voter registration.

(v) Pursuant to § 2-7-114(b) and (c), the voter shall vote the provisional ballot. Any county utilizing punchcard or optiscan technology shall process their ballots pursuant to rules promulgated by the state coordinator of elections. The provisions of § 2-7-116 shall govern any voter needing assistance.

(vi) Along with the voter registration applications and the applications for ballot completed by provisional voters, all provisional ballots that have been cast shall remain sealed and locked in the absentee ballot box for return to the county election commission at the close of polls.

(B)(i) All provisional ballots shall be counted at the county election commission office by a separate central absentee ballot counting board that has been appointed in like manner to the central absentee ballot counting board established under § 2-6-302 and known as the central provisional ballot counting board. Upon completion of the counting of the absentee ballots, the county election commission may designate the central absentee ballot counting board established under § 2-6-302 as the central provisional ballot counting board. If the county election commission determines that there are fewer than one hundred (100) provisional ballots to be counted, the county election commission may act as the central provisional ballot counting board without additional compensation. When provisional ballots have been cast utilizing punchcard or optiscan technology, the counting of the provisional ballots shall be pursuant to rules promulgated by the state coordinator of elections.

(ii) After the delivery of the absentee ballot boxes containing provisional ballots to the county election commission, the central provisional ballot counting board shall unlock and open each absentee ballot box from the polling places in the presence of a majority of the judges.

(iii) The central provisional ballot counting board shall examine the records of the county election commission and the records of the Tennessee departments of health, human services, mental health and substance abuse services, intellectual and developmental disabilities, safety and veterans services with respect to all provisional ballots. The central provisional ballot counting board shall then determine if the person voting that ballot was entitled to vote and met the statutory requirements for registration at the precinct where the person cast a vote in the election. The central provisional ballot counting board shall also determine that the person has not already cast a ballot in the

election.

(iv) If the central provisional ballot counting board determines that the person should have been registered to vote and met the statutory requirements for registration in the precinct where the voter cast the ballot and the voter has not cast a ballot in the election in a different precinct, then the central provisional ballot counting board shall remove the provision ballot affidavit from the provisional ballot envelope and place the sealed ballot with all other provisional ballots that have been determined to be countable.

(v) If the central provisional ballot counting board determines that the person should not have been registered to vote in the precinct where the voter cast the ballot or that the voter has previously cast a ballot in the election in a different precinct, the provisional ballot envelope shall not be opened nor its provisional ballot affidavit removed, but it shall be marked "Rejected" across its face with the reason for rejection written on it and signed by at least two (2) members of the central provisional ballot counting board. It shall then be placed in the container of rejected absentee ballots. A list shall be made of such rejected ballots, and the administrator shall notify the voters by mail of the rejection and the reason for such rejection.

(C)(i) The counting of all provisional ballots must be completed within four (4) business days of the close of polls on election day. If the county election commission determines that the counting of provisional ballots cannot be completed by the designated time, the state coordinator of elections may grant the county an extension of time and designate a time that shall be no later than the third Monday after the election.

(ii) If the county election commission determines that the counting of provisional ballots cannot be completed during the night of election day and upon the close of each counting session, the absentee ballot boxes containing the provisional ballots must be locked and sealed in the same manner established in § 2-6-311. The ballot boxes may not be unlocked except when the central provisional ballot counting board is performing its duties in compliance with this section.

(b) If a voter is disabled so as to be unable to write a signature or make a mark, the registrar shall write the voter's name where needed and shall indicate that this has been done by putting the registrar's initials immediately after the name.

(c) For purposes of verifying the person's identification on the application for ballot, "evidence of identification" shall be:

(1) A Tennessee driver license;

(2)(A) Except as provided in subdivision (c)(2)(B), a valid identification card issued by the state of Tennessee, or the United States where authorized by law to issue personal identification; provided, that such identification card contains a photograph of the voter;

(B) An identification card issued to a student by an institution of higher education containing a photograph of a student shall not be evidence of identification for purposes of verifying the person's identification on the application for ballot;

(3) A valid identification card issued pursuant to § 55-50-336;

(4) A valid United States passport;

(5) A valid employee identification card issued by the state of Tennessee, or the United States where authorized by law to issue employee identification; provided, that such identification card contains a photograph of the voter;

(6) A valid United States military identification card; provided, that such identification card contains a photograph of the voter; or

(7) An employee identification card for retired state employees authorized pursuant to § 8-50-118.

(d) For purposes of registering a person to vote pursuant to subdivision (a)(3), "verification of residential address" shall include, but is not limited to, a Tennessee driver license, a residential lease agreement, a utility bill or other document bearing the applicant's residential address. Such verification may be on the same or different document from those listed in subsection (c).

(e) A person whose name appears on the computerized voter signature list or the electronic poll book and is unable to present valid evidence of identification specified in subsection (c) shall be entitled to vote a provisional ballot under the procedures of this subsection (e) unless such person is eligible to vote pursuant to subsection (f).

(1) The voter shall complete an application for ballot pursuant to this section, and if the voter has changed residence, or the voter's registration is inactive, the voter shall complete a fail safe affidavit. The voter must vote in the precinct in which the person is a resident. The voter shall also be given a written statement that specifies the voter has until the second business day after the election to provide evidence of identification. The voter shall sign such statement and return it along with the application of ballot.

(2) Upon completion of the application for ballot and if applicable, the presentation of a fail safe affidavit in the voter's correct polling location, the voter shall be given a provisional ballot and provisional ballot envelope. The provisional ballot envelope shall be a different color from the absentee ballot envelopes and shall bear a detachable slip that contains the provisional ballot affidavit. The provisional ballot affidavit shall contain the voter's printed name, social security number, date of birth, signature and any other identifying information deemed necessary by the coordinator of elections to satisfy the requirements of this section and to prevent fraudulent voting. The application for ballot shall be deposited in the provisional ballot box.

(3) Pursuant to § 2-7-114(b) and (c), the voter shall vote the provisional ballot. Any county utilizing optical scan technology shall process their ballots pursuant to rules promulgated by the state coordinator of elections. Section 2-7-116 shall govern any voter needing assistance.

(4) Along with the applications for ballot completed by provisional voters, all provisional ballots that have been cast shall remain sealed and locked in the provisional ballot box for return to the county election commission at the close of polls.

(5) Provisional ballots cast pursuant to this subsection (e) shall only be counted if the voter provides evidence of identification specified in subsection (c) to the administrator of elections or the administrator's designee by the close of business on the second business day after the election. Evidence of identification must be presented at the voter's county election commission office or another location designated by the county election commission.

(6) Upon the voter presenting valid evidence of identification, set forth in subsection (c), to the administrator of elections or the administrator's

designee, the voter shall sign an affidavit, prescribed by the coordinator of elections, containing the voter's name, signature and any other information deemed necessary by the coordinator of elections to satisfy the requirements of this section and to prevent fraudulent voting. The affidavit shall also contain a statement affirming under the penalty of perjury that the voter is the same individual that cast the provisional ballot. A photocopy of the evidence of identification shall be attached to the affidavit.

(7) The central provisional ballot counting board shall compare the information on the provisional affidavit envelope to the information set forth in subdivision (e)(6). If it is determined that the person provided proper evidence of identification, then the central provisional counting board shall remove the provisional ballot affidavit from the provisional ballot envelope and place the sealed ballot with all provisional ballots to be counted.

(8) If the voter does not provide valid evidence of identification in a timely manner, the provisional ballot envelope shall not be opened nor its provisional ballot affidavit removed, but shall be marked "Rejected" across its face with the reason for rejection written on it and signed by at least two (2) members of the central provisional ballot counting board. The board members signing the provisional ballot affidavit may not be of the same political party. It shall then be placed in the container of rejected ballots. The administrator shall notify the voters by mail of the rejection and the reason for such rejection.

(9) The central provisional ballot counting board shall have until the close of business on the fourth business day after the election to count any provisional ballot cast pursuant to this subsection (e). If the county election commission determines that the counting of provisional ballots cannot be completed by the designated time, the state coordinator of elections may grant the county an extension of time and designate a time that shall be no later than the second Monday after the election.

(f) A voter who is indigent and unable to obtain proof of identification without payment of a fee or who has a religious objection to being photographed shall be required to execute an affidavit of identity on a form provided by the county election commission and then shall be allowed to vote. The affidavit shall state that:

(1) The person executing the affidavit is the same individual who is casting the ballot; and

(2) The affiant is indigent and unable to obtain proof of identification without paying a fee or has a religious objection to being photographed.

(g) An identification card issued by a county or municipality or entity thereof, including a public library, containing a photograph shall not be evidence of identification for purposes of verifying the person's identification on the application for ballot.

**2-7-114. Voting by paper ballots.**

(a) When the voter is to vote by paper ballot, the voter shall then present the ballot application to the judge who is in charge of paper ballots. The judge shall write the ballot number of each ballot the voter is entitled to on the ballot application, give the ballot or ballots to the voter, and give the ballot application to the judge who is assigned to deposit ballots in the ballot box. The judge shall, upon demand of any voter at the time the voter receives the ballot,

tell the voter the order of the offices on the ballot.

(b)(1) The voter shall then go to a place where the voter may mark the ballot in complete secrecy and privacy and shall prepare the ballot by making in the appropriate place a cross (X) or other mark opposite the name of the candidate of the voter's choice for each office to be filled, or by filling in the name of the candidate of the voter's choice in the blank space provided, and by making a cross (X) or other mark opposite the answer the voter desires to give on each question. Before leaving the place of secrecy and privacy, the voter shall fold the ballot so that the votes cannot be seen but so that the information printed on the back of the ballot and the numbered stub are plainly visible.

(2) Any voter who fills in or writes in the name of a candidate whose name is not printed on the ballot shall not be required to make a cross (X) or other mark next to such person's name in order for the vote to be counted.

(c)(1) The voter shall state the voter's name and present the folded ballot to the judge assigned to receive and deposit the ballots. The judge shall compare the ballot number on the stub with the ballot number on the voter's ballot application. If the ballot numbers are the same, the judge shall tear off the stub, attach the ballot stub to the voter's application for ballot and direct the voter to deposit the ballot in the ballot box, unless the voter is successfully challenged. The judge shall file all ballot applications and ballot stubs in the order in which they are received. Notwithstanding any other law, the procedure described herein shall govern the voting process in counties using the optical scan voting system.

(2) In counties using a ballot marking device, or any other electronic ballot marking system, after the voter completes the application for ballot and the election official records the ballot stub number on the application for ballot, the election official shall attach the ballot stub to the voter's application for ballot. The election official shall file all ballot applications and ballot stubs in the order in which they are received.

(3) If the voter is voting a provisional ballot pursuant to § 2-7-112(a)(3) and (e), the voter shall state the voter's name and present the folded ballot to the judge assigned to receive and deposit the provisional ballots. The judge shall compare the provisional ballot number on the stub with the provisional ballot number on the voter's ballot application. If the provisional ballot numbers are the same, the judge shall tear off the stub and attach the ballot stub to the voter's application for ballot. The judge shall file all ballot applications and ballot stubs in the order in which they are received. Unless the voter is successfully challenged, the judge shall direct the voter to deposit the provisional ballot into the provisional ballot envelope that contains the provisional ballot affidavit. The judge shall ensure that the provisional ballot affidavit has been completed and signed by the voter and direct the voter to deposit the provisional ballot, in its envelope, in an absentee ballot box that satisfies the requirements for absentee ballot boxes and that has been locked pursuant to § 2-6-311.

**2-13-104. Party membership requirements for candidates.**

All candidates for state executive committee membership and for membership in the general assembly shall be bona fide members of the political party whose election they seek. Except as provided in § 2-13-115, a party may

require by rule that candidates for its nominations be bona fide members of the party.

**2-13-115. Exemption for honorably discharged veterans running for political office.**

A person who is an honorably discharged veteran of the United States armed forces, a member of the Tennessee national guard, a member of the Tennessee air national guard, or an inactive reservist of any of the United States uniformed military services in good standing must not be disqualified as a candidate for any office if, for service-related reasons, that person was unable to comply with a statewide political party's or recognized minor party's rules for candidacy for nomination for such party, and such service-related reasons are the sole reason the person is unable to qualify.

## CHAPTER 5

## TENNESSEE CIVIL RIGHTS CRIMES INFORMATION, RECONCILIATION, AND RESEARCH CENTERCIVIL RIGHTS CRIMES INFO, RECONCILIATION, & RESEARCH CTR

**3-5-101. Creation — Purpose — Staff — Duties.**

(a) On May 15, 2018, there is created the "Tennessee civil rights crimes information, reconciliation, and research center" within the office of minority affairs created by Senate Joint Resolution No. 61 of the Public Acts of 1981.

(b) The Tennessee civil rights crimes information, reconciliation, and research center shall serve as a civil rights crimes remembrance and reconciliation repository, function as an informational clearinghouse on unsolved civil rights crimes and cold cases in this state, and coordinate volunteer activities throughout the state pertinent to the mission and duties of the center.

(c) The staff of the office of minority affairs shall also serve as staff for the Tennessee civil rights crimes information, reconciliation, and research center. The duties of the center shall include:

(1)(A) Conducting a statewide survey of civil rights crimes in Tennessee, both solved and unsolved, by utilizing available volunteer resources. In designating volunteers and volunteer coordinators to conduct the survey, the director shall utilize the services of public and private sector institutions, including, but not limited to, the various Tennessee schools of law, universities and colleges, including the historically black universities and colleges such as Lemoyne-Owen, Lane, Fisk, Meharry, and Tennessee State, as well as private sector groups such as Tennesseans for Historical Justice;

(B) The director shall have the authority to design and distribute the survey to the volunteer coordinators to ensure to the extent possible that the results will be uniform from county to county, designate volunteers and volunteer coordinators in participating geographic areas, act as a central coordinator to prevent duplicative and inconsistent results, catalogue and compile the results of the survey, and transmit the results of the survey in the report required by subdivision (c)(9);

(2) Determining if any information submitted in the survey described in subdivision (c)(1), or by any other method the director acquires information,

may still be subject to possible criminal prosecution and transferring any such information to the appropriate state and local law enforcement agencies, district attorneys general, and federal United States attorneys general with jurisdiction for the locations involved;

(3) Communicating, discussing, and meeting with the department of justice as suggested by Congress in the Emmett Till Unsolved Civil Rights Crimes Reauthorization Act of 2016 to coordinate activities surrounding unsolved civil rights crimes and cold cases believed to have occurred in this state;

(4) Collecting and maintaining, within the center, pertinent information on pending conferences, workshops, public hearings, remembrance and reconciliation events, information on the ten (10) Tennessee stops on the new Civil Rights Trail, information on the activities surrounding the fiftieth anniversary of the Dr. Martin Luther King assassination, and other meetings concerning unsolved civil rights crimes and cold cases occurring in this state;

(5) Coordinating with the state archivist to determine if any material, information, report, or other document received by the Tennessee civil rights crimes information, reconciliation, and research center is of historical significance and possesses the indicia of authenticity necessary to consider its transfer to the state library and archives for permanent display and storage;

(6) Assisting the public and federal, state, and local government entities with inquiries regarding information on unsolved civil rights crimes and cold cases in this state;

(7) Initiating and participating in any reconciliation actions, meetings, ceremonies, services, and other similar activities on behalf of the state of Tennessee;

(8) Researching, seeking, and applying for any available funding or grants from the federal government or the private sector awarded for any of the purposes of the Tennessee civil rights crimes information, reconciliation, and research center; and

(9) Submitting a report by January 30, 2019, and each January 30th thereafter, to the speaker of the senate and the speaker of the house of representatives, the senate judiciary committee, and the house of representatives criminal justice committee of the general assembly detailing the activities of the Tennessee civil rights crimes information, reconciliation, and research center since May 15, 2018.

**3-5-102. Website and toll-free telephone line for receipt of information related to unsolved civil right crimes and cold cases.**

(a) The Tennessee civil rights crimes information, reconciliation, and research center shall obtain and operate a website and a toll-free telephone line for the express purpose of receiving information related to unsolved civil right crimes and cold cases in this state.

(b) The center shall regularly undertake appropriate activities to inform and remind the citizens of this state of the services provided by the center and of the availability of the website and toll-free telephone line. Such promotional activities shall regularly include, but not necessarily be limited to, press releases, posters, speeches, and public service announcements on radio and

television. The center shall undertake special activities to improve public awareness of the center within those counties and areas of the state with the highest numbers of unsolved civil rights crimes and cold cases based upon available information.

**3-6-309. Registration of person in default on student loans. [Effective until January 1, 2019. See the version effective on January 1, 2019.]**

(a) As used in this section, unless the context otherwise requires:

(1) "Commission" means the Tennessee ethics commission or other governmental body authorized by statute to register lobbyists;

(2) "Guarantee agency" means a guarantor of student loans that has an agreement with the United States secretary of education; and

(3) "TSAC" means the Tennessee student assistance corporation.

(b) Upon receiving a copy of a final order as provided in subsection (c) from TSAC or a guarantee agency, the commission shall suspend, deny or revoke the registration of any individual lobbyist who has defaulted on a repayment or service obligation under any federal family education loan program, the federal Higher Education Act of 1965, compiled in 20 U.S.C. § 1001 et seq., a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.

(c)(1) The commission shall accept any determination of default from TSAC or a guarantee agency, after TSAC or the guarantee agency has afforded a debtor an opportunity to be heard in accordance with subdivision (c)(2); and the commission shall rescind any disciplinary action and restore any registration upon receiving notice from TSAC or the guarantee agency that the individual has agreed to serve the individual's obligation or is in compliance with an approved repayment plan.

(2)(A) Unless a debtor has made satisfactory arrangements according to the lender, TSAC or the guarantee agency, which may include administrative wage garnishment, voluntary payment arrangements, deferment or forbearance, then the debtor shall be regarded as delinquent or in default. If a debtor is delinquent or in default on a repayment or service obligation under a guaranteed student loan identified in subsection (b), or the debtor has failed to enter into a payment plan, agree to a service obligation or comply with a payment plan previously approved by TSAC or the guarantee agency, then TSAC or the guarantee agency shall issue to the debtor a notice of intent to file an order with the appropriate licensing authority to seek to suspend, deny or revoke the debtor's registration. The notice shall:

(i) Be served upon the debtor personally or by certified mail with return receipt requested; and

(ii) State that the debtor's registration shall be suspended, denied or revoked ninety (90) days after service unless within that time the debtor:

*(a)* Pays the entire debt stated in the notice;

*(b)* Enters into a payment plan, service obligation or complies with a payment plan previously entered into and approved by TSAC or the guarantee agency;

*(c)* Requests and qualifies for deferment, forbearance or other

satisfactory compliance; or

*(d)* Requests a hearing before TSAC or the guarantee agency.

(B) The hearing request by the debtor shall be made in writing and must be received by TSAC or the guarantee agency within twenty (20) days of the date the notice is served.

(C) TSAC or the guarantee agency, upon receipt of a request for a hearing from the debtor, shall schedule a hearing to determine whether a determination of delinquency or default which could result in suspension, denial or revocation of the debtor's registration is appropriate. The debtor's registration may not be suspended, denied or revoked until a determination is reached following the hearing. The issues that may be determined in the hearing are:

(i) The amount of the debt, if any;

(ii) Whether the debtor is delinquent or in default; and

(iii) Whether the debtor:

*(a)* Has entered into a payment plan or service obligation approved by TSAC or the guarantee agency;

*(b)* Is willing to enter into a payment plan or service obligation approved by TSAC or the guarantee agency;

*(c)* Is willing to comply with a payment plan or service obligation previously entered into and approved by TSAC or the guarantee agency; or

(iv) Whether the debtor is eligible for deferment, forbearance or other satisfactory compliance.

(D) If a debtor, without good cause, fails to respond to the notice of intent, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the debtor's defenses, objections, or request for a payment plan or compliance with a payment plan may be determined to be without merit; and TSAC or the guarantee agency shall enter a final decision and order, requesting suspension, denial or revocation of the debtor's registration, and further requesting the commission to order the debtor to refrain from engaging in lobbying. TSAC or the guarantee agency shall send a copy of the order to the commission and the debtor.

(E) The administrative hearings shall be conducted in accordance with rules and regulations adopted under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(F)(i) When TSAC or the guarantee agency determines that the debt is paid in full or the debtor has entered into a payment plan, entered into a service obligation, is otherwise in satisfactory compliance or complied with a payment plan previously approved by TSAC or the guarantee agency, TSAC or the guarantee agency shall enter an order requesting that the commission terminate the order suspending, denying or revoking the registration. TSAC or the guarantee agency shall send a copy of the order to the commission and the debtor. Notwithstanding any other law, rule or regulation to the contrary, when the registration is reinstated, the commission shall not impose a reinstatement fee that exceeds fifty dollars ($50.00).

(ii) Entry of an order seeking to terminate suspension, denial or revocation of a registration does not limit the ability of TSAC or the guarantee agency to issue a new order which seeks to suspend, deny or revoke the registration of the same debtor in the event of another

delinquency or default.

(G) TSAC is authorized to promulgate necessary rules and regulations to effectuate the purposes of this subsection (c). All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act.

(d) The commission is authorized to promulgate rules and regulations to effectuate the purposes of this section. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act.

**3-6-309. Registration of person in default on student loans. [Effective on January 1, 2019. See the version effective until January 1, 2019.]**

*(a) As used in this section, unless the context otherwise requires:*

*(1) "Commission" means the Tennessee ethics commission or other governmental body authorized by statute to register lobbyists;*

*(2) "Guarantee agency" means a guarantor of student loans that has an agreement with the United States secretary of education; and*

*(3) "TSAC" means the Tennessee student assistance corporation.*

*(b)(1) Upon receiving a copy of a final order as provided in subsection (c) from TSAC or a guarantee agency, the commission shall suspend, deny or revoke the registration of any individual lobbyist who has defaulted on a repayment or service obligation under any federal family education loan program, the federal Higher Education Act of 1965, compiled in 20 U.S.C. § 1001 et seq., a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.*

*(2) Notwithstanding subdivision (b)(1), the commission may elect not to suspend, deny, or revoke the registration of a lobbyist if the commission determines that the default or delinquency is the result of a medical hardship that prevented the person from working in the person's licensed field and the medical hardship significantly contributed to the default or delinquency.*

*(c)(1) The commission shall accept any determination of default from TSAC or a guarantee agency, after TSAC or the guarantee agency has afforded a debtor an opportunity to be heard in accordance with subdivision (c)(2); and the commission shall rescind any disciplinary action and restore any registration upon receiving notice from TSAC or the guarantee agency that the individual has agreed to serve the individual's obligation or is in compliance with an approved repayment plan.*

*(2)(A) Unless a debtor has made satisfactory arrangements according to the lender, TSAC or the guarantee agency, which may include administrative wage garnishment, voluntary payment arrangements, deferment or forbearance, then the debtor shall be regarded as delinquent or in default. If a debtor is delinquent or in default on a repayment or service obligation under a guaranteed student loan identified in subsection (b), or the debtor has failed to enter into a payment plan, agree to a service obligation or comply with a payment plan previously approved by TSAC or the guarantee agency, then TSAC or the guarantee agency shall issue to the debtor a notice of intent to file an order with the appropriate licensing authority to seek to suspend, deny or revoke the debtor's registration. The notice shall:*

*(i) Be served upon the debtor personally or by certified mail with return receipt requested; and*

*(ii) State that the debtor's registration shall be suspended, denied or revoked ninety (90) days after service unless within that time the debtor:*

***(a)** Pays the entire debt stated in the notice;*

***(b)** Enters into a payment plan, service obligation or complies with a payment plan previously entered into and approved by TSAC or the guarantee agency;*

***(c)** Requests and qualifies for deferment, forbearance or other satisfactory compliance; or*

***(d)** Requests a hearing before TSAC or the guarantee agency.*

*(B) The hearing request by the debtor shall be made in writing and must be received by TSAC or the guarantee agency within twenty (20) days of the date the notice is served.*

*(C) TSAC or the guarantee agency, upon receipt of a request for a hearing from the debtor, shall schedule a hearing to determine whether a determination of delinquency or default which could result in suspension, denial or revocation of the debtor's registration is appropriate. The debtor's registration may not be suspended, denied or revoked until a determination is reached following the hearing. The issues that may be determined in the hearing are:*

*(i) The amount of the debt, if any;*

*(ii) Whether the debtor is delinquent or in default; and*

*(iii) Whether the debtor:*

***(a)** Has entered into a payment plan or service obligation approved by TSAC or the guarantee agency;*

***(b)** Is willing to enter into a payment plan or service obligation approved by TSAC or the guarantee agency;*

***(c)** Is willing to comply with a payment plan or service obligation previously entered into and approved by TSAC or the guarantee agency;*

*(iv) Whether the debtor is eligible for deferment, forbearance or other satisfactory compliance; or*

*(v) Whether the debtor's default or delinquency is the result of a medical hardship that prevented the debtor from working in the person's licensed field and the medical hardship significantly contributed to the default or delinquency.*

*(D) If a debtor, without good cause, fails to respond to the notice of intent, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the debtor's defenses, objections, or request for a payment plan or compliance with a payment plan may be determined to be without merit; and TSAC or the guarantee agency shall enter a final decision and order, requesting suspension, denial or revocation of the debtor's registration, and further requesting the commission to order the debtor to refrain from engaging in lobbying. TSAC or the guarantee agency shall send a copy of the order to the commission and the debtor.*

*(E) The administrative hearings shall be conducted in accordance with rules and regulations adopted under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

*(F)(i) When TSAC or the guarantee agency determines that the debt is paid in full or the debtor has entered into a payment plan, entered into a service obligation, is otherwise in satisfactory compliance or complied with a payment plan previously approved by TSAC or the guarantee*

*agency, TSAC or the guarantee agency shall enter an order requesting that the commission terminate the order suspending, denying or revoking the registration. TSAC or the guarantee agency shall send a copy of the order to the commission and the debtor. Notwithstanding any other law, rule or regulation to the contrary, when the registration is reinstated, the commission shall not impose a reinstatement fee that exceeds fifty dollars ($50.00).*

*(ii) Entry of an order seeking to terminate suspension, denial or revocation of a registration does not limit the ability of TSAC or the guarantee agency to issue a new order which seeks to suspend, deny or revoke the registration of the same debtor in the event of another delinquency or default.*

*(G) TSAC is authorized to promulgate necessary rules and regulations to effectuate the purposes of this subsection (c). All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act.*

*(d) The commission is authorized to promulgate rules and regulations to effectuate the purposes of this section. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act.*

**3-17-103. Annual events — Application — Organizational requirements and restrictions — Proceeds — Omnibus list of qualifying applicants — Submission of financial accounting.**

(a)(1)(A)(i) A nonprofit organization seeking to operate an annual event for the benefit of that organization located in this state shall submit an annual event application to the secretary by January 31 each year for the annual event period beginning July 1 of that calendar year and ending June 30 of the subsequent calendar year.

(ii) In addition to the submission deadline described in subdivision (a)(1)(A)(i), a 501 (c)(3) organization seeking to operate an annual event for the benefit of that organization located in this state may submit an annual event application to the secretary within three (3) calendar days after April 14, 2015, for the annual event period beginning July 1, 2015, and ending June 30, 2016.

(iii) In addition to the submission deadline described in subdivision (a)(1)(A)(i), a nonprofit organization seeking to operate an annual event for the benefit of that organization located in this state may submit an annual event application to the secretary within five (5) calendar days after March 20, 2018, for the annual event period beginning July 1, 2017, and ending June 30, 2018.

(B) For purposes of the submission deadline, the postmark date on the annual event application is deemed to be the date of submission; provided, that, for the purposes of the submission deadline pursuant to subdivisions (a)(1)(A)(ii) and (iii), an annual event application is not deemed to be submitted to the secretary until in the physical possession of the secretary as evidenced by the secretary's date and time endorsement on such documentation.

(2) The organization shall be a nonprofit organization as defined in § 3-17-102.

(3)(A) A nonprofit organization, including chapters or affiliates operating under the same tax exemption, shall not operate more than one (1) annual event within any twelve-month period beginning July 1 and ending June 30.

(B)(i) An annual event shall be operated at a single location within a county in Tennessee where the nonprofit organization has a physical presence or in a county that is contiguous to a county where the organization maintains a physical presence, as disclosed pursuant to § 3-17-104(e)(1), or a nonprofit organization may operate an annual event on the same day in one (1) county where it has a physical presence in each grand division of the state as described in §§ 4-1-201 — 4-1-204. Such location, or locations, shall be listed as the location of the annual event in the annual event application pursuant to § 3-17-104(e)(4).

(ii) Nothing in this subdivision (a)(3)(B) shall be construed to limit the ability of an organization to sell tickets, shares, chances or similar records for an authorized annual event in any political subdivision of this state.

(iii) No more than two (2) annual events per calendar month shall be held at the same location in each county during any annual event period. For the purpose of this subdivision (a)(3)(B), "location" means a single physical site in a county identified by an address or unique descriptive feature.

(C) Notwithstanding any provision of this chapter to the contrary, a nonprofit organization authorized to conduct an annual event may change the location of the annual event if the location listed on the annual event application is subsequently unavailable during the time in which the annual event was to be conducted and if the following conditions are satisfied:

(i) Written notice is given to the secretary of state, Tennessee bureau of investigation and district attorney general for the judicial district in which the annual event is to be conducted, stating that the listed location is unavailable, the reason for unavailability, and the new location;

(ii) Sufficient public notice is given by means of posting notice on the organization's web site, if any, and by publication in a newspaper of general circulation in the county in which the annual event will be conducted; and

(iii) The new location complies with subdivision (a)(3)(B)(iii).

(4)(A) A nonprofit organization may operate an annual event in conjunction with one (1) or more nonprofit organizations under the following circumstances:

(i) Each nonprofit organization files an independent annual event application including, but not limited to, the appropriate application fee, in accordance with this chapter;

(ii) Each nonprofit organization submits, with the annual event application, a joint statement of authorization indicating the intention to conduct a joint annual event and listing all organizations participating in such joint event; and

(iii) Each nonprofit organization applicant is in compliance with this chapter and is eligible for inclusion on the omnibus list.

(B) If one (1) or more nonprofit organizations are not eligible for inclusion on the omnibus list, or fail to timely file an annual event

application, all applicants for a joint annual event shall be excluded from the omnibus list. No provision of this subdivision (a)(4) shall be construed as authorizing a nonprofit organization participating in a joint event to operate, participate or conduct, jointly or otherwise, more than one (1) annual event within any twelve-month period beginning July 1 and ending June 30.

(5)(A)(i) Except as otherwise provided in this subdivision (a)(5), a nonprofit organization authorized to conduct an annual event pursuant to this chapter shall not employ, contract with, or otherwise utilize the services of any person including, but not limited to, any management company, consultant or other entity, to manage, conduct or operate any aspect of an annual event. An authorized annual event shall be managed, conducted and operated only by bona fide directors, officers or employees of a nonprofit organization who:

*(a)* Manage, conduct or operate only one (1) such annual event in any twelve-month period beginning on July 1 and ending on June 30 each year for any nonprofit organization; and

*(b)* Receive no compensation for duties associated with the annual event from the proceeds of the annual event except compensation otherwise due to such person in the normal course of business. In no event shall such person's normal compensation, or any other form of compensation or benefit including, but not limited to, any bonus payment or any other form of supplemental payment, be based upon or determined by reference to a percentage of the proceeds derived from the operation of the annual event, the number of people participating in the annual event or any other factor related to the annual event.

(ii) Unpaid volunteer personnel, including members of a nonprofit organization, may be utilized by a nonprofit organization to manage, conduct or operate an annual event.

(B)(i) Nothing in this subdivision (a)(5) or § 39-17-654(b) shall be construed as prohibiting a nonprofit organization from purchasing, leasing or accepting donations of prizes, facilities, locations, advertising services, printing services, telephone services and any records, devices or other supplies necessary to conduct an authorized annual event; provided, that the compensation paid for such purchases or leases shall not be at a price greater than fair market value and shall not be based on a percentage of the proceeds of an annual event or by any other contingency agreement based on the proceeds of an annual event.

(ii) No nonprofit organization shall purchase or lease prizes, facilities, locations, advertising services, printing services, telephone services and any records, devices or other supplies necessary to conduct an authorized annual event from any director, officer or employee of the nonprofit organization.

(6)(A) Except as provided in subdivision (a)(6)(B), a nonprofit organization authorized to conduct an annual event pursuant to this chapter shall return all of the gross proceeds, less any amount expended pursuant to subdivision (a)(5)(B), to the organization for the purposes or programs described in § 3-17-104(e)(6), but in any event, a nonprofit organization shall return at least twenty-five percent (25%) of gross proceeds to the organization for the purposes or programs described in § 3-17-104(e)(6).

(B) A nonprofit organization that fails to return at least twenty-five percent (25%) of gross proceeds from the annual event to the purposes or programs described in § 3-17-104(e)(6) in any year shall file notice with the secretary on a form prescribed by the secretary. If, in the sound discretion of the secretary, the organization was not at fault in failing to return the required percentage, the organization shall be allowed to file an annual event application for the next annual event period; provided, that if an organization fails to return the required percentage in two (2) consecutive annual event periods, the organization shall be disqualified from filing annual event applications for a period of five (5) years. If an organization is not permitted by the secretary to file an event application pursuant to this subdivision (a)(6)(B), the organization may request a review pursuant to the procedure set forth in § 3-17-105(g).

(C) As used in this subdivision (a)(6), gross proceeds shall not include revenue disclosed as the fair market value of any donated prizes, goods and services.

(7) A nonprofit organization seeking authorization to conduct an annual event pursuant to this chapter shall be in compliance with the registration requirements for charitable organizations set forth in title 48, chapter 101, part 5, or be exempt from annual registration pursuant to § 48-101-502.

(b)(1) The secretary shall review all annual event applications timely submitted and shall transmit an omnibus list of qualifying applicants to the clerk of the senate and the clerk of the house of representatives in an electronic format, as is required by the respective clerks, on or before March 1 of each year. The omnibus list shall include, at a minimum, the name of the nonprofit organization, the name of the event, the type of lottery game, the event date for the event and the location or locations of the event. The omnibus list shall list nonprofit organizations alphabetically by county in which the annual event is proposed to be operated.

(2) In addition to the omnibus lists transferred to the clerk of the senate and the clerk of the house of representatives pursuant to subdivision (b)(1), the secretary shall transfer an additional omnibus listing of any organizations approved pursuant to subdivision (a)(1)(A)(ii) for the annual event period beginning July 1, 2015, and ending June 30, 2016. The list shall be transferred in a manner consistent with subdivision (b)(1) by twelve o'clock (12:00) noon central daylight time (CDT) within five (5) calendar days after April 14, 2015.

(3) In addition to the omnibus lists transferred to the clerk of the senate and the clerk of the house of representatives pursuant to subdivision (b)(1), the secretary shall transfer an additional omnibus listing of any organizations approved pursuant to subdivision (a)(1)(A)(iii) for the annual event period beginning July 1, 2017, and ending June 30, 2018. The list must be transferred in a manner consistent with subdivision (b)(1) by twelve o'clock (12:00) noon central daylight time (CDT) within seven (7) calendar days after March 20, 2018.

(c) Upon authorization by the general assembly, the clerk of the house last approving such authorization shall transmit a copy of such authorization to the secretary and to each district attorney general. The secretary shall transmit such authorization to each authorized nonprofit organization at the mailing address listed in such organization's annual event application; provided, that in the case of an organization with multiple chapters, branches or

affiliates in Tennessee, such authorization shall be transmitted only to the primary mailing address of the applicant. Such authorization shall be posted on the web site of the secretary with such additional information as the secretary deems appropriate. At a minimum, the secretary shall post the name of the nonprofit organization, the name of the event, the type of lottery game, the event date for the event and the location, or locations, of the event.

(d)(1)(A) An authorized annual event shall be held within twenty-eight (28) calendar days of the event date listed in the annual event application; provided, that nothing in this subdivision (d)(1) shall be construed as allowing two (2) annual events in any one-year period or as allowing a nonprofit organization to operate an annual event at authorized multiple locations on separate days.

(B) A nonprofit organization shall give notice to each chief law enforcement officer of the county or municipality in which the annual event shall be conducted one hundred thirty (130) days prior to the event date listed in the annual event application; provided, that if the event date is within one hundred thirty (130) days from notification of authorization to conduct an annual event, the nonprofit organization shall immediately, upon receipt of such notification and prior to the commencement of selling any tickets, shares, chances or similar records, give notice to the chief law enforcement officer of each county or municipality in which the annual event shall be conducted. In accordance with subdivision (d)(1)(A), if the actual event date is different than the event date listed in the annual event application, a nonprofit organization shall give an additional notice to each chief law enforcement officer of the county or municipality in which the annual event shall be conducted prior to conducting the annual event. For the purposes of this subdivision (d)(1)(B), "notice" means a letter sent by certified mail, or by actual physical delivery of a letter to the chief law enforcement officer or such officer's designee, containing, at a minimum, the following information:

(i) The name of the nonprofit organization;

(ii) The name of the event;

(iii) The location of the event, including the physical address where the annual event will be conducted;

(iv) The type of lottery game to be conducted;

(v) The event date for the event listed in the annual event application;

(vi) If applicable, the actual event date for the annual event if different than the event date listed in the annual event application;

(vii) If applicable, additional locations of the event, including the physical address where the annual event will be conducted, if such event will be operated at authorized multiple locations;

(viii) The name, address and telephone number of the nonprofit organization's chair, president or chief administrative officer; and

(ix) If applicable, the name, address and telephone number of the person responsible for the operation of the annual event for the nonprofit organization, if different than the organization's chair, president or chief administrative officer.

(2) Except as provided in subdivision (d)(3), upon receipt of authorization from the secretary pursuant to subsection (c), a nonprofit organization may conduct all necessary activities for such event including, but not limited to,

planning, advertising, promoting, printing of materials and tickets, shares, chances or similar records and the transportation of such records and other devices.

(3) A nonprofit organization, or any person authorized pursuant to subdivision (a)(5)(A) on behalf of the nonprofit organization, may sell tickets, shares, chances or similar records on the actual date of the annual event and for one hundred twenty (120) days immediately preceding the event date listed in the application and for any period after the event date listed in the annual event application but prior to the actual date of the annual event if such actual date is after the event date in accordance with subdivision (d)(1). No person shall sell tickets, shares, chances or similar records outside of the period authorized by this subdivision (d)(3). Notwithstanding any provision of this chapter to the contrary, the secretary shall establish rules and regulations concerning modification of the actual dollar amounts at which a ticket, share, chance or other similar record shall be sold by a nonprofit organization authorized to conduct an annual event; provided, that only one (1) such modification shall be made prior to the sale of any ticket, share, chance or other similar record and only in amounts within fifty dollars ($50.00) of the actual dollar amounts disclosed pursuant to § 3-17-104(e)(5). Tickets, shares, chances or other similar records may be sold at a single price or at different value levels or tiers. If tickets, shares, chances or other similar records are sold at different value levels or tiers, then the organization shall keep a written or electronic record of each sale, which shall include the name, the amount paid, the mailing address, and the contact information of the purchaser for the purpose of issuing refunds if a cancellation of the annual event occurs.

(e)(1) Within ninety (90) days following the event date listed in the annual event application, a financial accounting as required pursuant to § 3-17-106 shall be submitted by the organization to the secretary.

(2) For purposes of this chapter, the postmark date on the financial accounting shall be considered the date of submission.

(3) The secretary shall post such accounting, or a synopsis of such accounting, on the web page of the secretary.

(f) [Deleted by 2014 amendment, effective July 1, 2014.]

(g)(1) Notwithstanding any provision of this chapter to the contrary, for the annual event period beginning July 1, 2015, and ending June 30, 2016, a nonprofit organization described in § 501 (c)(19) of the Internal Revenue Code (26 U.S. C. § 501 (c)(19) seeking to operate an annual event for the benefit of that organization located in this state may submit an annual event application to the secretary within three (3) calendar days after April 14, 2015. For purposes of this submission deadline, an annual event application shall not be considered submitted to the secretary until in the physical possession of the secretary as evidenced by the secretary's date and time endorsement on such documentation.

(2) In addition to the omnibus list transferred to the clerk of the senate and the clerk of the house of representatives by March 1, 2015, the secretary shall transfer an additional omnibus list listing any organizations approved pursuant to subdivision (g)(1) for the annual event period beginning July 1, 2015, and ending June 30, 2016. This list shall be transferred in a manner consistent with subsection (b) by twelve o'clock noon central daylight time (CDT) within five (5) calendar days after April 14, 2015.

**3-17-104. Annual event application — Requirements.**

(a) Except as otherwise provided in § 3-17-103(a)(1), all annual event applications shall be submitted to the secretary from July 1 to January 31 for the annual event period beginning July 1 following the close of the application period and ending June 30 of the subsequent calendar year.

(b) The secretary shall develop a uniform application form for annual event applications. The secretary is encouraged to utilize, to every extent possible, web-based forms and procedures for annual event applications.

(c)(1) An initial application fee of fifty dollars ($50.00) must be paid at the time of submission of an annual event application. An annual event application must not be accepted by the secretary unless accompanied by the initial application fee.

(2) The secretary shall collect a reasonable fee for annual event applications. The secretary may establish a fee schedule for annual event applications based on the gross revenue of the annual event. No fee shall exceed seven hundred dollars ($700). Funds collected under this chapter shall be used by the secretary and the Tennessee bureau of investigation to defray the cost of administering this chapter, including, but not limited to, the cost of investigations pursuant to § 3-17-113.

(3) Annual event application fees are nonrefundable.

(d) All annual event applications shall be signed by the nonprofit organization's chair, president or chief administrative officer and the preparer of the application. Such persons shall certify under oath and subject to criminal penalties, including perjury, that the information contained in the annual event application is true and accurate.

(e) A nonprofit organization filing an annual event application shall submit, on a form prescribed by the secretary, the following information:

(1) The name, mailing address and physical address of the nonprofit organization. If the organization has multiple chapters or affiliates in Tennessee operating under the same tax exemption, the organization shall submit the physical addresses and mailing addresses of such multiple locations; provided that, for the purposes of this chapter, a post office box, or similar address at a mail or package delivery service, shall not be considered a physical address. If the principal office of the nonprofit organization is outside Tennessee, the organization shall submit the physical address and mailing address of such principal location;

(2) The name of the event;

(3) The date of the event;

(4) The location of the event;

(5) A description of the type of lottery game to be conducted. Such description shall include the estimated number of tickets, shares, chances or other similar records to be offered and the actual dollar amount at which a ticket, share, chance or other similar record shall be sold; provided that, if tickets, shares, chances or other similar records are to be sold at different value levels or tiers, then the actual dollar amounts and structure of such value levels or tiers;

(6) A description of the charitable use of the proceeds from the event;

(7) The name and telephone number of a contact person for the event;

(8) A copy of the organization's determination letter from the internal revenue service showing that the organization is exempt from federal income taxation under § 501(a) of the Internal Revenue Code as an organization

described in § 501(c)(3) or § 501(c)(19) of the Internal Revenue Code;

(9)(A) A copy of the nonprofit organization's last annual report, Form 990, filed with the internal revenue service and any attached schedules for the organization's tax year ending immediately preceding the annual event application;

(B) If the organization has not filed an annual report with the internal revenue service for the organization's tax year ending immediately preceding the annual event application, the organization shall submit an affidavit from the nonprofit organization's chair, president or administrative officer affirming that the organization has not filed an annual report and shall begin to file annual reports as required by the provisions of this chapter; provided, that the organization may submit such affidavit only one (1) time;

(C) An organization shall not be required to comply with this subdivision (e)(9) if it is not required to file a Form 990 with the internal revenue service; provided, that the organization submits proof of such determination by the internal revenue service;

(10) The names and addresses of any officers, directors, trustees, and the principal salaried executive staff officer of the nonprofit organization;

(11) A sworn statement that the organization has been in continuous and active existence as a nonprofit organization located in Tennessee as defined by § 3-17-102;

(12) A sworn statement that no officer, director, trustee, or the principal salaried executive staff officer of the nonprofit organization has been convicted of a violation of § 39-14-103, § 39-14-104, § 39-14-105, § 39-16-702, § 39-16-703, title 39, chapter 17, parts 5 or 6, or a similar offense in another jurisdiction; and

(13) A sworn statement that the board, or functional equivalent, of the nonprofit organization has approved the filing of an annual event application and intends to operate an annual event if authorized by the general assembly.

**3-17-106. Financial accounting — Requirements.**

(a)(1) An organization authorized by the general assembly to operate an annual event shall file, within ninety (90) calendar days following the actual event date, a financial accounting with the secretary in accordance with this section. An organization shall remit to the secretary the full application fee specified pursuant to § 3-17-104(c)(2), less the initial application fee paid pursuant to § 3-17-104(c)(1) with the submission of the financial accounting. A financial accounting must not be accepted by the secretary unless accompanied by the fees required pursuant to § 3-17-104(c).

(2) An organization that fails to file its financial accounting in accordance with this section may be assessed a late fee of twenty-five dollars ($25.00) for each month, or portion thereof, that the accounting is late. The late filing fee shall accompany every late-filed financial accounting. If an organization fails to timely file the required financial accounting in any two (2) of three (3) consecutive annual event periods, the organization may, in the discretion of the secretary, be disqualified from filing future annual event applications, which decision is subject to the review and appeal procedures provided in

§ 3-17-105(g) and (h).

(b) For events grossing fifty thousand dollars ($50,000) or less, the organization shall file a financial accounting, on a form prescribed by the secretary, showing the following:

(1) The gross amount of money received from the annual event;

(2) The amount of money expended by the organization including, for amounts exceeding one hundred dollars ($100), the name and address of the payee, the category of expense, and the amount expended;

(3) The amount of money disbursed, or to be disbursed, to the charitable programs or purposes of the nonprofit organization including, but not limited to, sufficient documentation indicating that all of the gross proceeds, less any amount expended pursuant to § 3-17-103(a)(5)(B), have been used, or have been earmarked, for the purposes or programs described in § 3-17-104(e)(6); and

(4) A list of all prize winners, including their names and addresses, of cash, goods or services valued at more than fifty dollars ($50.00) and the prize received.

(c) For events grossing more than fifty thousand dollars ($50,000), the organization shall file an audited financial statement prepared by an independent certified public accountant or an independent public accountant, on a form prescribed by the secretary, showing the following:

(1) The gross amount of money received from the proceeds of the annual event;

(2) The amount of money disbursed, or to be disbursed, to the charitable programs or purposes of the nonprofit organization including, but not limited to, sufficient documentation indicating that all of the gross proceeds, less any amount expended pursuant to § 3-17-103(a)(5)(B), have been used, or have been earmarked, for the purposes or programs described in § 3-17-104(e)(6);

(3) An itemized list, including the name and address of the payee, of the amounts spent for all expenses; provided, that individual expenses of one hundred dollars ($100) or less may be listed as miscellaneous expenses, by category, so long as the aggregate sum of all miscellaneous expenses is less than five thousand dollars ($5,000); and

(4) A list of all prize winners, including their names and addresses, of cash, goods or services valued at more than fifty dollars ($50.00) and the prize received.

(d) In the case of an annual event held jointly by two (2) or more nonprofit organizations as provided in § 3-17-103(a)(4), the financial accounting filed pursuant to this section shall be based on the gross amount of money jointly received and shall, in addition to the applicable requirements of subsection (b) or (c), show the amount disbursed, or to be disbursed, to each participating nonprofit organization. Such organizations may file the same financial accounting; provided, that the signature requirements of subsection (e) are satisfied.

(e) For events grossing fifty thousand dollars ($50,000) or less, all financial accountings required by this section shall be signed by the chair, president or chief administrative officer of the nonprofit organization and the preparer of the report, or, if the chair, president or chief administrative officer is the preparer of the report, by such person and by one additional officer of the nonprofit organization. For events grossing more than fifty thousand dollars

($50,000), all financial accountings required by this section shall be signed by the chair, president or chief administrative officer of the nonprofit organization and the preparer of the report. Such persons shall certify under oath and subject to criminal penalties, including perjury, that the information contained in the report is a true and accurate accounting of the funds received and expended during operation of the annual event.

(f)(1) A nonprofit organization that has received authorization to conduct an annual event, or conduct an annual event at multiple locations, may, at the discretion of the organization, cancel an annual event, or, if authorized at multiple locations, cancel a location of the annual event; provided, that:

(A) An affidavit from the nonprofit organization's chair, president or chief administrative officer is filed with the secretary and the chief law enforcement officer of the county or municipality stating that the annual event, or a location of a multiple location annual event, is cancelled, and the nature of the cancellation, within ten (10) calendar days of the decision to cancel the event or location. Such cancellation shall be posted on the web site of the secretary. Notwithstanding any provision of this chapter to the contrary, if a single location annual event is cancelled, no other notice to the chief law enforcement officer of the county or municipality or a financial accounting shall be required, except as provided in subdivision (f)(1)(B); if a location of a multiple location annual event is cancelled, no other notice to the chief law enforcement officer of the county or municipality of the cancelled location is required; and

(B) If cancellation occurs after the commencement of the sale of tickets, shares, chances or similar records, a full refund is offered for at least ninety (90) days following cancellation; provided, that if a location of a multiple location annual event is cancelled, only tickets, shares, chances or similar records for the cancelled location shall be required to be offered for at least ninety (90) days following cancellation. If a different value level or tiered pricing annual event is cancelled, any refund shall be for either the actual amount received by the organization as evinced by the record of each sale or, if such record is lost or destroyed, the highest value level or tiered price charged on a per ticket, share, chance or other similar record basis. A nonprofit organization shall give reasonable public notice of cancellation in the area in which tickets, shares, chances or similar records were sold, including the terms of the refund offered. Such terms shall be included in the affidavit required pursuant to subdivision (f)(1)(A), including a mailing or physical address to submit a refund claim; and, within ninety (90) days of cancellation of an annual event, or a location of a multiple location annual event, the organization shall file an accounting of tickets sold, refunds made and ticket proceeds remaining with the secretary and the chief law enforcement officer of the county or municipality. Any remaining ticket proceeds shall be used in furtherance of the charitable purposes or programs described in § 3-17-104(e)(6) of the organization's annual event application.

(2) No annual event cancelled pursuant to this subsection (f) may be conducted during the annual event period. No multiple location annual event for which a location is cancelled pursuant to this subsection (f) may be conducted at such cancelled location during the annual event period.

(g)(1) Notwithstanding any other provision of this section to the contrary, for authorized annual events whose gross revenue does not actually exceed five thousand dollars ($5,000), the organization shall file a financial account-

ing, on a form prescribed by the secretary, including the following:

(A) The gross amount of money received from the annual event;

(B) The amount expended for prizes and administrative costs; and

(C) The amount of money disbursed, or to be disbursed, to the charitable programs or purposes of the nonprofit organization.

(2) [Deleted by 2018 amendment.]

**3-17-109. Restrictions on purchase of tickets, shares, chances, or similar records — Restrictions on prizes and awards.**

(a) No ticket, share, chance or similar record shall be purchased by and no prize or award shall be paid to:

(1) Any member of the board of directors of a nonprofit organization authorized by the general assembly to operate an annual event for such organization;

(2) Any officer or employee of a nonprofit organization authorized by the general assembly to operate an annual event for such organization;

(3) Any member of the immediate family of any person described in subdivisions (a)(1) or (a)(2) residing as a member of the same household in the principal place of residence of any such person;

(4) Any member of the general assembly during such member's term of office as a member of the general assembly; or

(5) The secretary or any employee of the secretary during the secretary's term of office and such employee's term of employment with the secretary.

(b) No ticket, share, chance or similar record for any specific authorized annual event shall be purchased by, and no prize or award shall be paid to:

(1) Any person providing printing services, telephone services and any records, devices or other gaming related supplies to conduct such specific authorized annual event;

(2) Any officer, employee, agent or subcontractor of any person described in subdivision (b)(1); or

(3) Any member of the immediate family of any person described in subdivisions (b)(1) or (b)(2) residing as a member of the same household in the principal place of residence of any such person.

(c) For the purposes of this section, "immediate family" means a spouse, child, step-child, brother, sister, son-in-law, daughter-in-law, parent or grandparent.

(d) No ticket, share, chance or similar record for any specific authorized annual event shall be purchased by, and no prize or award shall be paid to, any individual providing prizes or any member of the immediate family of any individual providing prizes residing as a member of the same household in the principal place of residence of such individual.

(e) If an ineligible person is selected to win a prize or award, the organization shall not disburse the prize or award to the ineligible person but shall select a different person to whom the prize or award shall be paid. Notwithstanding any provision of this chapter to the contrary, the organization shall select a new winner within thirty (30) calendar days of the date on which the organization received notice of the ineligible winner.

**3-18-107. Qualifications for appointment as delegate or alternate delegate.**

(a) An individual must satisfy the following requirements to be appointed as

a delegate or as an alternate delegate to an Article V convention:

(1) The individual shall be a resident of Tennessee for at least one (1) full year immediately prior to the appointment;

(2) The individual shall be a registered voter in Tennessee;

(3) The individual shall be at least eighteen (18) years of age; and

(4) The individual shall not be registered or required to be registered as a lobbyist under chapter 6, part 3 of this title or under 2 U.S.C. § 1603, or rules or regulations adopted under such laws.

(b) An individual may not be appointed as a delegate or as an alternate delegate if the individual holds a federal elected or appointed office. The general assembly shall appoint delegates and alternate delegates so that, as near as practicable, the three grand divisions of the state are equally represented.

**4-1-341. Here's the Beef Festival.**

The Here's the Beef Festival in Giles County is designated as the official state beef festival.

**4-1-407. Preservation of religious freedom.**

(a) As used in this section, unless the context otherwise requires:

(1) "Demonstrates" means meets the burdens of going forward with the evidence and of persuasion under the standard of clear and convincing evidence;

(2) "Exercise of religion" means the exercise of religion under article I, § 3 of the Constitution of Tennessee and the first amendment to the United States Constitution;

(3) "Fraudulent claim" means a claim that is dishonest in fact or that is made principally for a patently improper purpose, such as to harass the opposing party;

(4) "Frivolous claim" means a claim that completely lacks merit under existing law and cannot be supported by a good faith argument for the extension, modification or reversal of existing law or the establishment of new law;

(5) "Government entity" means any branch, department, agency, commission or instrumentality of state government, any official or other person acting under color of state law or any political subdivision of the state;

(6) "Prevails" means to obtain "prevailing party" status as defined by courts construing the federal Civil Rights Attorney's Fees Awards Act of 1976 (42 U.S.C. § 1988); and

(7) "Substantially burden" means to inhibit or curtail religiously motivated practice.

(b) Except as provided in subsection (c), no government entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability.

(c) No government entity shall substantially burden a person's free exercise of religion unless it demonstrates that application of the burden to the person is:

(1) Essential to further a compelling governmental interest; and

(2) The least restrictive means of furthering that compelling governmental interest.

(d)(1) Nothing in this section shall be construed to:

(A) Authorize any government entity to burden any religious belief; or

(B) Affect, interpret or in any way address those portions of article I, § 3 of the Constitution of Tennessee and the first amendment to the United States Constitution that prohibit laws respecting the establishment of religion.

(2) Nothing in this section shall create or preclude a right of any religious organization to receive funding or other assistance from a government or of any person to receive government funding for a religious activity.

(e) A person whose religious exercise has been burdened by government in violation of this section may assert that violation as a claim or defense in any judicial or administrative proceeding and may obtain such declaratory relief, monetary damages as may properly be awarded by a court of competent jurisdiction, or both declaratory relief and monetary damages. A person who prevails in any proceeding to enforce this section against a government entity may recover the person's reasonable costs and attorney's fees. Standing to assert a claim or defense under this section shall be governed by general rules of law that establish standing. This subsection (e) relating to attorney's fees shall not apply to criminal prosecutions.

(f) Any person found by a court with jurisdiction over the action to have abused the protections of this section by filing a frivolous or fraudulent claim may be assessed the government entity's court costs, if any, and may be enjoined from filing further claims under this section without leave of court.

(g) A government entity, excluding courts, shall not subpoena a clergy member's sermon, including notes used to prepare a sermon or an audio or video recording of a sermon, or subpoena a clergy member's attendance to testify regarding a sermon, for use in a civil or administrative action.

**4-1-412. Tennessee heritage protection.**

(a) For purposes of this section:

(1) "Commission" means the Tennessee historical commission;

(2) "Historic conflict" means any war, battle, or military conflict in which citizens of the United States or any state or territory of the United States have participated in, including, but not limited to, the French and Indian War, American Revolution, War of 1812, United States-Mexican War, the War Between the States, Spanish American War, the Mexican border period, World War I, World War II, the Korean War, the Vietnam War, Operation Urgent Fury (Grenada), Operation El Dorado Canyon (Libya), Operation Just Cause (Panama), Operation Desert Shield/Desert Storm (Persian Gulf War I), Operation Enduring Freedom (Afghanistan), and Operation Iraqi Freedom (Persian Gulf War II);

(3) "Historic entity" means any entity recognized as having state, national, military, or historical significance;

(4) "Historic event" means any event recognized as having state, national, military, or historical significance;

(5) "Historic figure" means any individual who has been recognized as having served in any historic conflict, historic event, historic entity, public office, or in public service;

(6) "Historic organization" means any entity that has as one (1) or more of its material missions as the recognition or preservation of any historic

conflict, historic entity, historic event, or historic figure;

(7) "Memorial" means:

(A) Any public real property or park, preserve, or reserve located on public property that has been named or dedicated in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization; or

(B) Any statue, monument, memorial, bust, nameplate, historical marker, plaque, artwork, flag, historic display, school, street, bridge, or building that has been erected for, named, or dedicated on public property in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization; and

(8) "Public property" means all property owned, leased, rented, managed, or maintained by or under the authority of this state, any county, municipality, metropolitan government, or any other public entity that is created by act of the general assembly to perform any public function.

(b)(1) Except as otherwise provided in this section, no memorial regarding a historic conflict, historic entity, historic event, historic figure, or historic organization that is, or is located on, public property, may be removed, renamed, relocated, altered, rededicated, or otherwise disturbed or altered.

(2) No memorial or public property that contains a memorial may be sold, transferred, or otherwise disposed of by a county, metropolitan government, municipality, or other political subdivision of this state.

(3)(A) Notwithstanding subdivision (b)(1), a public entity having responsibility for maintaining a memorial, or a nonprofit entity acting with permission of the public entity, shall have the authority to take proper and appropriate measures, and exercise proper and appropriate means, for the care, preservation, protection, repair, restoration, and renovation of the memorial.

(B) This subdivision (b)(3) shall not be construed to authorize:

(i) Permanent removal or concealment of a memorial; or

(ii) Temporary removal or concealment of a memorial for a period exceeding forty-five (45) calendar days in any twelve-month period.

(c)(1) A public entity exercising control of a memorial may petition the commission for a waiver of subdivision (b)(1) or (b)(2), or both, if applicable. A public entity shall petition the commission for a waiver prior to undertaking any action or transaction, including any action or transaction involving a nonprofit entity or private party, that could foreseeably violate the restrictions imposed by this section.

(2) The petition for waiver shall be in writing and shall state the basis upon which the waiver is sought. The petition shall be supported by one (1) or more reports showing that there is a material or substantial need for a waiver based on historical or other compelling public interest. The petition shall also identify by name and address any private entities, groups, or individuals, including, but not limited to, descendants, that may have an interest in receiving notice of the petition. The petition for waiver shall be filed with the commission with proof of public notice as required by subdivision (c)(3).

(3) Prior to filing the petition for waiver, the public entity seeking a waiver shall publish notice of the petition for waiver on the web site of the public entity, if any, and in at least one (1) newspaper of general circulation serving the area of the memorial and one (1) in Davidson County. The notice

shall state the basis on which the waiver is sought and shall provide that a copy of the petition and all supporting reports will be provided to any interested party at no cost upon written request submitted to the public entity filing or intending to file the petition for waiver.

(4) An initial hearing before the commission on a petition for waiver shall be scheduled at any regular commission meeting no sooner than sixty (60) calendar days after a petition is filed. At the initial hearing, the commission shall determine which interested entities, groups, or individuals should be given written notice by the public entity, including copies of the petition and supporting reports. The public entity may be directed to provide supplemental notice by publication if deemed necessary by the commission. If an amendment to the petition is filed, the public entity shall provide supplemental notice. If supplemental notice is required either by the commission or as a result of an amendment, notice shall be given in the same manner as notice required pursuant to subdivision (c)(3).

(5) A final hearing before the commission on a petition for waiver shall be scheduled at any regular commission meeting no sooner than one hundred eighty (180) calendar days after a petition is filed; provided, that if an amendment to the petition is filed, then no final hearing shall be scheduled until at least one hundred eighty (180) calendar days have elapsed from the date of the filing of the amendment.

(6) An interested entity, group, or individual shall be afforded an opportunity to offer public comments regarding a petition for waiver at any commission hearing on a petition. An interested entity, group, or individual may file a memorandum, report, study, letter, or other document related to the petition for consideration by the commission. In addition, an interested entity, group, or individual may intervene in any petition for waiver by filing written notice with the commission not less than forty-five (45) calendar days prior to the final hearing. Upon filing notice, the interested entity, group, or individual shall be a party in all proceedings on the petition for waiver, shall receive copies of all filings, and may present relevant testimony and evidence at any hearing on the petition. Once notice is filed with the commission, the status of the interested entity, group, or individual as a party to the petition for waiver, and any subsequent or concurrent administrative or judicial proceedings, may only be waived in writing by the interested entity, group, or individual.

(7) All hearings regarding a petition for waiver shall be recorded. Copies of the record and all exhibits shall be available to any interested entity, group, or individual at the cost of the public entity seeking the waiver.

(8)(A) In order for a waiver to be granted, the public entity seeking the waiver shall demonstrate by clear and convincing evidence that a material or substantial need for a waiver based on historical or other compelling public interest exists; provided, that if a memorial is designated as a national historic landmark or listed on the national register of historic places, there shall be a presumption in favor of preservation of the memorial.

(B) At the final hearing, the commission may grant a petition for waiver, in whole or in part, by a two-thirds (2/3) vote of the entire membership of the commission by roll call vote. The commission may include reasonable conditions and instructions to ensure that a memorial is preserved and remains publicly accessible to the greatest extent

possible. Any petition for waiver that fails to receive a two-thirds (2/3) vote shall be denied. Within thirty (30) calendar days from the final hearing, the final determination of the commission shall be reduced to writing and shall state the commission's findings and the grounds on which the relief is granted or denied. The effective date of the determination shall be not less than one hundred twenty (120) calendar days after notice of the commission's determination is posted on the web site of the commission. Copies of the final determination shall be sent to the public entity seeking the waiver and to each interested entity, group, or individual who testified or submitted evidence at the final hearing.

(9) A public entity seeking a waiver or interested entity, group, or individual who intervened in accordance with subdivision (c)(6) who is aggrieved by the final determination of the commission on the petition for a waiver may file a petition for review in the chancery court of Davidson County or, alternatively, in the county in which the memorial is located or, in the case of a memorial that is located in multiple counties, the county in which the memorial is predominantly located. A petition for review shall be filed within sixty (60) calendar days after notice of the commission's determination is posted on the web site of the commission. The court shall conduct a de novo review on the record of the issues. The review shall be conducted without a presumption that the determinations and findings of the commission are correct. Additional evidence may be introduced and considered by the court.

(d) Any entity, group, or individual who can demonstrate a real interest in a memorial through aesthetic, architectural, cultural, economic, environmental, or historic injury, through petition for declaratory order, or through administrative involvement in either the waiver or complaint process, has standing to seek injunctive or other relief in chancery court of Davidson County to enforce this section. To the extent necessary to preserve the status of any memorial prior to a final determination on a waiver or complaint by the commission, administrative law judge, or chancery court, the court shall issue a restraining order or injunction to preserve the memorial and any related public property pending a final ruling on any request for injunctive relief. No bond or other security shall be required for any restraining order or other injunctive relief issued.

(e)(1) This section shall apply to any memorial in existence prior to January 1, 1970, and those lawfully created, erected, named, or dedicated on or after January 1, 1970.

(2) This section shall not apply to any memorial located on public property under the control of, or acquired by, the department of transportation which may interfere with the construction, maintenance, or operation of the public transportation system. The department shall strive to ensure that any memorial is preserved to the greatest extent possible.

(3) This section shall not apply to a memorial that has reached the end of its useful life and is approved for demolition by the state building commission in accordance with § 4-15-102; provided, that, prior to any decision to demolish a memorial designated as a national historic landmark or listed on the register of historic places, the historical commission shall make comments to the state building commission in accordance with § 4-11-111.

(4) This section shall not apply to a memorial under the control of an accredited museum when:

(A) Housed within the interior of the museum, or museum storage facility, located on public property; or

(B) Exhibited or displayed on public property as part of a traveling or temporary exhibition, display, or loan.

(5) This section shall not apply to a memorial under the control of a public library or public archive when:

(A) Housed within the interior of the library or archive, or library or archive storage facility, located on public property; or

(B) Exhibited or displayed on public property as part of a traveling or temporary exhibition, display, or loan.

(f)(1) The commission has authority to receive and consider complaints alleging violations of subdivision (b)(1), (b)(2), or (b)(3)(B).

(2) Complaints may be filed by any entity, group, or individual. All complaints must be in writing on a uniform complaint form to be posted on the website of the commission. Complaints must be filed within one hundred twenty (120) calendar days of the alleged violation.

(3) A hearing on a complaint must be set within one hundred twenty (120) calendar days after the complaint is filed. Multiple complaints alleging the same violation must be joined. The complainant and public entity shall be given at least thirty (30) calendar days' notice of the date of the hearing. The complainant and the public entity shall be afforded the opportunity to present evidence at the hearing. At the hearing, the commission may determine that a violation has occurred by a majority vote of the entire membership of the commission; provided, that if the complainant is a member of the commission, the member shall not participate in the commission's deliberations or vote on the complaint. If a violation has occurred, the commission shall prepare a written violation determination. The complaint shall be deemed dismissed if a violation is not determined to have occurred at the hearing. Once acted upon, no complaint alleging the same, or substantially the same, violation by the same public entity during the same episode shall be received and considered by the commission unless initiated by the commission.

(4) The commission shall transmit a copy of a violation determination to the public entity and to the department of economic and community development.

(5) A public entity that violates any provision of this section shall be precluded from entering into grant contracts administered by the commission and the department of economic and community development for a period of five (5) years from the date upon which a violation determination is made.

(g) The commission, at its discretion, may assist any public entity or historic organization with preservation of a memorial through consultation, best practices, or other available resources.

(h) Notwithstanding any provision of this section, in lieu of a waiver, a historic organization may petition the commission to transfer ownership of, relocate, or both transfer ownership of and relocate, a memorial to the historic organization with the consent of the public entity exercising control over the memorial. The petition must be filed with a copy of a resolution, ordinance, or order from the governing body of the public entity consenting to the transfer, relocation, or both transfer and relocation. The petition must include an assessment of costs associated with the transfer, relocation, or both transfer

and relocation, and identify who will be responsible for the costs. If the petition includes relocation, a description or map of the proposed location must be submitted with the petition. A memorial may be relocated only to an accessible and suitable location within this state as determined by the commission. The commission may approve a petition upon a majority vote of the entire membership of the commission.

(i) The Uniform Administrative Procedures Act, compiled in chapter 5 of this title, shall apply to this section except to the extent that the provisions of this section conflict, in which case this section shall control.

**4-3-720. Short title — Purpose — Contributions made by governmental entity pursuant to master development plan.**

(a) This section shall be known, and may be cited as, the "Master Development Plan Recognition Act."

(b) The purpose of this section is to define those actions taken by a governmental entity that constitute contributions made by the governmental entity pursuant to a master development plan approved by the governmental entity for purposes of Section 118 of the Internal Revenue Code of 1986 (26 U.S.C. § 118), as amended by Pub. L. No. 115-97, § 13312.

(c) Contributions made by a governmental entity pursuant to a master development plan approved by the governmental entity within the meaning of Section 118 of the Internal Revenue Code of 1986 (26 U.S.C. § 118), as amended by Pub. L. No. 115-97, § 13312, include, but are not limited to, the following:

(1) Grants approved by the commissioner of economic and community development, including grants authorized or otherwise referenced in this part, regardless of whether the grants are also approved by any other agency, board, or other office of state government, and regardless when the funding in connection with the grant is authorized or paid, or both;

(2) Grants approved by an authorized representative of any county or municipality within the state of Tennessee or any agency of, or entity created by, the county or municipality, whether the funding for the grants originates in whole or in part with the state of Tennessee or with the county or municipality, including, but not limited to, grants that are authorized by, or referenced in, this part, and regardless of when the funding in connection with the grant is authorized or paid, or both;

(3) Tax increment financing applications for which a letter, or final, preliminary, or conditional approval, has been issued by an appropriate representative of state, county, or municipal government, and regardless of when the funding in connection with the tax increment financing application is authorized or paid, or both; and

(4) Any other development plan, redevelopment plan, revitalization plan, or similar plan approved by an appropriate representative of state, county, or municipal government, and regardless of when the funding in connection with the plan is authorized or paid, or both.

**4-3-721. Report relating to disaster resilience.**

The commissioner of economic and community development is directed to report to the local government committee of the house of representatives and the state and local government committee of the senate each year on or before

January 15 concerning the department of economic and community development's financial and program monitoring of the use of federal community development block grant funding to counties and municipalities from the United States department of housing and community development for disaster resilience purposes. The reports to the legislative committees shall continue annually until the commissioner certifies that no funds remain to be expended for disaster resilience from the federal community development block grant funding.

**4-3-722. Tennessee Rural Hospital Transformation Act of 2018. [Effective until July 1, 2021.]**

(a) This section shall be known and may be cited as the "Tennessee Rural Hospital Transformation Act of 2018."

(b) As used in this section:

(1) "Advisory committee" means a committee convened as often as necessary by the department that is composed of one (1) or more representatives from each of the following: department of health, department of labor and workforce development, bureau of TennCare, board of regents, and other public and private stakeholders as deemed appropriate by the department;

(2) "Contractor" means individual consultants or professional firms, preferably with rural healthcare experience and expertise;

(3) "Department" means the department of economic and community development;

(4) "Rural hospital" means a hospital located outside of a major urban or suburban area; provided, that the hospital may be located within a metropolitan statistical area;

(5) "Rural hospital transformation program" refers to a program administered by the department to support rural hospitals in assessing viability and identifying new delivery models, strategic partnerships, and operational changes that enable the continuation of needed healthcare services in rural communities;

(6) "Target hospital" means a rural hospital determined to be eligible by the state for the rural hospital transformation program; and

(7) "Transformation plan" means a strategic plan developed by one (1) or more contractors in close collaboration with target hospitals and community stakeholders to provide recommendations and actionable steps for preserving healthcare services in the target hospital community.

(c)(1) The department, in consultation with the advisory committee, shall establish and manage the rural hospital transformation program.

(2) The department, in consultation with the advisory committee, shall identify one (1) or more contractors to provide consultations to target hospitals for the creation of transformation plans, which shall include:

(A) Focused strategies for transitioning the hospital into a sustainable business model in order to avoid or prevent closure;

(B) Recommendations for utilizing transformation funding to offset transition costs;

(C) Recommendations for funding remaining transitions costs with hospital or community resources;

(D) Recommendations for ensuring that appropriate and viable services are provided in the target hospital community, serving the best interests

of the patients and caregivers;

(E) Recommendations for strategic partnerships and alliances where practical; and

(F) Where partnerships are not practical, recommendations for coordination with the surrounding healthcare community including safety-net providers and tertiary hospitals.

(3) Target hospitals may submit applications to the department for review and approval to receive consultation from identified contractors for the development of a transition plan. The content of applications shall be directed by the department in consultation with the advisory committee.

(d) Transformation plans shall be developed through collaboration between the contractor, target hospital, target hospital community stakeholders, and other appropriate stakeholders.

(e) Finalized transformation plans shall include a timeline for implementation and must be submitted to the department.

(f) The department shall receive periodic updates on the implementation of the transformation plans and monitor the progress of target hospitals.

(g) The department's expenditures pursuant to this section shall not exceed one million dollars ($1,000,000) per fiscal year.

(h) This section is terminated on July 1, 2021.

**4-3-723 — 4-3-726. [Reserved.]**

**4-3-1007. Accounting powers.**

The department of finance and administration has the power and is required to:

(1) Maintain a system of general accounts embracing all the financial transactions of state government;

(2) Examine and approve all contracts, requisitions, orders, payrolls and other documents, the purpose of which is to incur financial obligations against state government, and ascertain that moneys have been duly appropriated and allotted to meet such obligations and will be available when such obligations will become due and payable;

(3) Audit and approve all bills, invoices, accounts, payrolls and other evidences of claims, demands or charges against state government, and determine the regularity, legality and correctness of such claims, demands or charges;

(4) Inquire concerning articles and materials furnished or work and labor performed, for the purpose of ascertaining that the prices, quality and amount of such articles or materials are fair, just and reasonable, and that all the requirements expressed and implied pertaining thereto have been complied with, and reject or disallow any excess;

(5) Make monthly reports on all receipts and expenditures of the state government to the governor and the department of audit, and make monthly reports on appropriations, allotments, encumbrances and authorized payments to the governor, to the department of audit, and to the head of the department, office or agency directly concerned;

(6) Prescribe by means of written procedures the forms of receipts, vouchers, bills or claims to be used by and the responsibilities and duties required of each fiscal officer of any and all departments, institutions, offices

and agencies of the state government. All such written procedures shall become effective upon approval by the commissioner of finance and administration and the comptroller of the treasury;

(7) Prescribe such subsidiary accounts, including cost accounts, for the various departments, institutions, offices and agencies as may be desirable for purposes of administration, supervision and financial control;

(8) Examine at any time the accounts of every department, institution, office or agency, receiving appropriations from the state;

(9) Report to the attorney general and reporter for such action, civil or criminal, as the attorney general and reporter may deem necessary, and to the comptroller of the treasury, all facts showing illegality in the expenditure of public moneys, or in the collection of public revenues, or the misappropriation of public properties;

(10) Exercise the rights, powers and duties, except the power to collect taxes, conferred by law upon the comptroller of the treasury under title 8, chapter 4, and the rights, powers and duties conferred by § 9-2-107, insofar as these provisions relate to financial administration and general accounting control of the state government, involving the keeping of general accounts, the auditing before payment of all bills, or vouchers and the authorization of all claims against the state for which appropriations have been made;

(11) In consultation with the comptroller of the treasury, establish guidelines for the evaluation by agencies of their systems of internal accounting and administrative control as provided in title 9, chapter 18;

(12) Establish and prescribe guidelines for systems of internal accounting for railroad authorities as provided in title 64, chapter 2;

(13) Record the transfer of equipment to or between the several state departments; and

(14) Supervise and regulate the making of an inventory of all removable equipment and other movable property belonging to the state government or any of its departments, institutions or agencies, with the exception of those institutions expressly exempted from the operation of title 12, chapter 3, and keep the inventory current. This subdivision (14) shall not apply to the various collections of articles, specimens and relics placed under the charge of the state museum executive director.

### 4-3-1010. Posting of report of travel and expense reimbursements on state web site.

(a) In addition to their other powers and duties, the department of finance and administration and its commissioner are vested with all the authority, powers and duties given them by title 12, chapter 2 and by § 67-5-2505 [repealed].

(b) [Deleted by 2016 amendment.]

(c) The commissioner of finance and administration shall cause to be posted on the official website of the state a report that contains all out-of-state travel expenditures and any expense reimbursements made for the expenditures to the governor, any member of the governor's cabinet, and cabinet level staff in accordance with the comprehensive travel regulations of the state or any policy of the governor; provided, however, that information shall not be posted if the out-of-state travel occurred for the purpose of recruiting industry or economic development in the state and the information, in the judgment of the

commissioner, has the potential to harm contract negotiations or otherwise place the state at a competitive disadvantage in seeking industrial or economic development opportunities. For the purposes of this subsection (c), "out-of-state travel expenditures" includes: expenses for which corresponding reimbursements are made; and direct travel expenditures, including airfare, travel, hotel, and any other expenses paid for directly by using a state-approved vendor or with the use of a state-issued payment card. The report shall include the purpose of the expenditures and any reimbursements made, and shall be reported by the person making the expenditures. The initial report shall be filed no later than fifteen (15) days following the last day of April 2006 and shall include all payments made from the first day of January 2006, until the last day of March 2006. Thereafter, the report shall be updated quarterly, no later than fifteen (15) days following the end of the quarter. The reports shall remain on the web site until one (1) month following the end of the governor's term of office. The last quarter reported in each such term shall include the period of time from the last quarter reported until the regular November election at which the next governor will be elected, and the first report in each governor's term shall include the period of time from the regular November election until the end of the first quarter.

**4-3-1016. Restrictions on carry forwards and transfers of funds to the state general fund. [See contingent amendment to subdivision (d)(14) and Compiler's Notes.]**

(a) Notwithstanding any law to the contrary, subject to the specific provisions of an appropriation act, the commissioner of finance and administration is authorized to deny carry forwards for, and to transfer funds from, the funds, reserve accounts or programs identified in this section to the state general fund for the purpose of meeting the requirements of funding the operations of state government for the fiscal year ending June 30, 2006, and subsequent fiscal years. The authorization provided for in this subsection (a) shall not apply to allow the transfer of any fund balances that are mandated by federal law to be retained in such fund. This authority shall only apply to transfers and carry forwards necessary to fund the expenditures for the state for the fiscal year ending June 30, 2006, and subsequent fiscal years.

(b) No funds shall be transferred unless specifically appropriated in an appropriations act and such funds shall only be expended in accordance with such act.

(c) Notwithstanding any provision of this section to the contrary, no transfers are authorized from department of transportation funds, reserve accounts and programs in the highway fund or other funds created or referenced in titles 54, 55, 57, 65 and 67, except as authorized by § 47-18-1311.

(d) In the fiscal years ending June 30, 2008, June 30, 2009, June 30, 2010, June 30, 2011 and June 30, 2014, transfers are authorized from the following funds, reserve accounts and programs:

(1) Department of finance and administration, for the department of revenue, computerized titling and registration system accumulated fees, created or referenced in title 55, chapter 4, part 1;

(2) Department of finance and administration, domestic violence community education fund, created or referenced in title 36, chapter 3, part 6;

(3) Department of finance and administration, electronic fingerprint

imaging systems fund, created or referenced in title 67, chapter 4, part 6;

(4) Department of finance and administration, family violence shelter reserve, created or referenced in title 36, chapter 6, part 4;

(5) Department of finance and administration, drug courts reserve, created or referenced in title 16, chapter 22;

(6) Department of finance and administration, state health planning reserve, created or referenced in title 68, chapter 11, part 16;

(7) Department of finance and administration, sexual assault program, created or referenced in title 40, chapter 24;

(8) Department of finance and administration, domestic assault defendant fines program, created or referenced in title 39, chapter 13, part 1;

(9) Department of correction, community correction program grants, created or referenced in title 40, chapter 36, part 3;

(10) Department of correction, supervision and rehabilitation accumulated fees, created or referenced in title 40, chapter 28, part 2;

(11) Department of correction, GPS offender tracking fees, created or referenced in title 40, chapter 28, part 2;

(12) Department of agriculture, agricultural resources conservation fund, created or referenced in title 67, chapter 4, part 4;

(13) Department of agriculture, agricultural regulatory fund, created or referenced in title 43, chapter 1, part 7;

(14) **[Current version. See second version for contingent amendment and Compiler's Notes.]** Department of environment and conservation, Tennessee board of water quality, oil and gas reclamation fund, created or referenced in title 60, chapter 1, part 4;

(14) **[Contingent amendment. See the Compiler's Notes.]** Department of environment and conservation, Tennessee board of energy and natural resources reclamation fund, created or referenced in title 60, chapter 1, part 4;

(15) Department of environment and conservation, solid waste management fund, created or referenced in title 68, chapter 211, part 8;

(16) Department of environment and conservation, used oil collection fund, created or referenced in title 68, chapter 211, part 10;

(17) Department of environment and conservation, hazardous waste remedial action fund, created or referenced in title 68, chapter 212, part 2;

(18) Department of environment and conservation, drycleaner environmental response fund, created or referenced in title 68, chapter 217;

(19) Department of environment and conservation, environmental protection fund, created or referenced in title 68, chapter 203;

(20) Department of environment and conservation, heritage conservation trust fund, created or referenced in title 11, chapter 7;

(21) Department of environment and conservation, lead based paint abatement fund, created or referenced in title 68, chapter 131, part 4;

(22) Department of environment and conservation, voluntary cleanup oversight and assistance fund, created or referenced in title 68, chapter 212, part 2;

(23) Department of environment and conservation, abandoned land program, created or referenced in title 59, chapter 8, part 2;

(24) Department of environment and conservation, underground storage tank fund, created or referenced in title 68, chapter 215, part 1;

(25) Department of environment and conservation, surface mine reclama-

tion fund, created or referenced in title 59, chapter 8, part 2;

(26) Department of environment and conservation, local parks land acquisition fund, created or referenced in title 67, chapter 4, part 4;

(27) Department of environment and conservation, state lands acquisition fund, created or referenced in title 67, chapter 4, part 4;

(28) Tennessee wildlife resources agency, wetland acquisitions fund, created or referenced in title 67, chapter 4, part 4;

(29) Department of correction, sex offender treatment fund, created or referenced in title 39, chapter 13, part 7;

(30) Department of correction, work release supervision and rehabilitation accumulated fees, created or referenced in title 40, chapter 28, part 2;

(31) Department of economic and community development, FastTrack fund, created or referenced in chapter 3, part 7 of this title;

(32) Department of economic and community development, film and television incentive grants fund, created or referenced in chapter 3, part 49 of this title;

(33) Department of economic and community development, job skills fund, created or referenced in title 50, chapter 7, part 4;

(34) Education trust fund, created or referenced in title 49, chapter 3, part 3;

(35) Department of education, driver education fund, created or referenced in title 67, chapter 4, part 6;

(36) Department of education, safe schools program, created or referenced in title 49, chapter 6, part 43;

(37) Department of education, special schools, created or referenced in title 49, chapter 50, part 10;

(38) Department of education, Alvin C. York Institute operational reserve, created or referenced in title 49, chapter 50, part 10;

(39) Department of education, Tennessee school for the blind operational reserve, created or referenced in title 49, chapter 50, part 10;

(40) Department of education, Tennessee school for the deaf operational reserve, created or referenced in title 49, chapter 50, part 10;

(41) Department of education, West Tennessee school for the deaf operational reserve, created or referenced in title 49, chapter 50, part 10;

(42) Department of education, boys and girls clubs reserve, created or referenced in title 36, chapter 6, part 4;

(43) Department of financial institutions, bank fees, created or referenced in title 45, chapter 1, part 1, and any other law and such funds in a deferred revenue account;

(44) Department of commerce and insurance fees, created or referenced in Acts 2001, ch. 333, and title 56, chapter 2, part 5; title 56, chapter 4, part 1; title 56, chapter 6, part 1; title 56, chapter 14; title 56, chapter 32; title 56, chapter 35, part 1; and title 55, chapter 18;

(45) Department of commerce and insurance, emergency communications funds, created or referenced in title 7, chapter 86, part 1;

(46) Department of commerce and insurance, state board of accountancy fund, created or referenced in title 62, chapter 1, part 1;

(47) Department of commerce and insurance, division of regulatory boards fund, created or referenced in title 56, chapter 1, part 3;

(48) Department of commerce and insurance, real estate education and recovery education fund, created or referenced in title 62, chapter 13, part 2;

(49) Department of commerce and insurance, real estate education and recovery claims fund, created or referenced in title 62, chapter 13, part 2;

(50) Department of commerce and insurance, auctioneer education and recovery account, created or referenced in title 62, chapter 19;

(51) Department of commerce and insurance, manufactured housing fund, created or referenced in title 68, chapter 126, part 4;

(52) Department of labor and workforce development, employment security special administrative fund, created or referenced in title 50, chapter 7, part 5;

(53) Department of labor and workforce development, Tennessee Occupational Safety and Health Act fund, created or referenced in title 50, chapter 6, part 4;

(54) Department of labor and workforce development, uninsured employers fund, created or referenced in title 50, chapter 6, part 8;

(55) Department of mental health and substance abuse services or the department of health, alcohol and drug addiction treatment fund, created or referenced in title 40, chapter 33, part 2;

(56) Department of health, health access incentive account, created or referenced in title 66, chapter 29, part 1;

(57) Department of health, child safety fund, created or referenced in title 55, chapter 9, part 6;

(58) Department of health, nursing home residents fund, created or referenced in title 68, chapter 11, part 8;

(59) Department of health, traumatic brain injury fund, created or referenced in title 68, chapter 55, part 4;

(60) Department of health, health-related boards fund, created or referenced in title 63, chapter 1, part 1;

(61) Department of revenue, C.I.D. anti-theft fund, created or referenced in title 55, chapter 3, part 2;

(62) Tennessee bureau of investigation, fingerprint criminal history database accumulated fees, created or referenced in title 39, chapter 17, part 13;

(63) Tennessee bureau of investigation, expunged criminal offender pretrial diversion database accumulated fees, created or referenced in title 38, chapter 6, part 1 and title 40, chapter 32;

(64) Tennessee bureau of investigation, intoxicant testing fund, created or referenced in title 55, chapter 10, part 4;

(65) Tennessee bureau of investigation, handgun permit reserve, created or referenced in title 39, chapter 17, part 13;

(66) Department of safety, driver education fund, created or referenced in title 67, chapter 4, part 6;

(67) Department of safety, motorcycle rider safety fund, created or referenced in title 55, chapter 51;

(68) Department of safety, handgun permit reserve, created or referenced in title 39, chapter 17, part 13;

(69) Department of children's services, child abuse prevention reserve, created or referenced in title 36, chapter 6, part 4;

(70) Court system Tennessee judicial information system fund, created or referenced in title 16, chapter 3, part 8;

(71) Court system divorcing parents mediation fund, created or referenced in title 36, chapter 6, part 4;

(72) Court system court automation hardware replacement revolving loan

fund, created or referenced in title 16, chapter 3, part 10;

(73) Court system municipal court clerks training and education program, created or referenced in title 16, chapter 18, part 3;

(74) Secretary of state voting machines loan fund, created or referenced in title 2, chapter 9;

(75) Secretary of state, voting machine reserve fund, created or referenced in title 2, chapter 9;

(76) Secretary of state, Blue Book reserve, created or referenced in title 8, chapter 3, part 1;

(77) Ethics commission reserve, created or referenced in title 3, chapter 6, part 1;

(78) State treasurer, small and minority-owned business assistance program, created or referenced in title 65, chapter 5, part 1;

(79) Health services and development agency fund, created or referenced in title 68, chapter 11, part 16;

(80) Tennessee public utility commission, deferred revenue account, created or referenced in title 65, chapter 1, part 1 and any other reserve fund maintained by the Tennessee public utility commission;

(81) Tennessee public utility commission, Tennessee relay services/telecommunications devices access program, created or referenced in title 65, chapter 21, part 1; and

(82) Tennessee advisory commission on intergovernmental relations, accumulated balances or carry-over funds, created or referenced in chapter 10 of this title.

(e) In the fiscal years ending June 30, 2009, June 30, 2010, and June 30, 2011, in addition to the transfers authorized in subsection (d), transfers are authorized from the following additional funds, reserve accounts and programs:

(1) Department of correction, confiscated cash fund, created or referenced in chapter 6, part 1 of this title;

(2) Department of economic and community development, biofuels manufacturers incentive fund, created or referenced in title 67, chapter 3, part 4;

(3) Department of health, diabetes prevention and health improvement account, created or referenced in former chapter 40, part 4 of this title [repealed]; and

(4) Department of environment and conservation, natural resources trust fund, created or referenced in title 11, chapter 14, part 3.

(f) In the fiscal years ending June 30, 2009, June 30, 2011 and June 30, 2014, transfers shall not be made from the following funds, reserve accounts or programs:

(1) Department of transportation funds, reserve accounts and programs in the highway fund or other funds created or referenced in titles 54, 55, 57, 65 and 67, except as otherwise provided by law;

(2) Department of commerce and insurance, state board of accountancy fund, created or referenced in title 62, chapter 1, part 1;

(3) Department of commerce and insurance, division of regulatory boards fund, created or referenced in title 56, chapter 1, part 3; and

(4) Department of health, health-related boards fund, created or referenced in title 63, chapter 1, part 1.

(g) Notwithstanding Acts 2001, ch. 333, § 9 and any other law to the contrary, transfers are authorized from the department of commerce and

insurance fees increased by Acts 2001, ch. 333.

(h) Other law to the contrary notwithstanding, in the year ending June 30, 2009, reserves of the Tennessee public utility commission, including the deferred revenue account created or referenced in title 65, chapter 1, part 1, the assistive telecommunication device distribution program reserve created or referenced in title 65, chapter 21, part 1, and any other reserve fund maintained by the commission are available to the commission for its operational costs; and such reserves may be transferred between operational accounts of the commission.

(i) In the fiscal year ending June 30, 2018, transfers are authorized from the department of safety, handgun permit reserve, created or referenced in title 39, chapter 17, part 13.

**4-3-1107. Display of vehicle abuse hotline decal on vehicles managed by department of general services. [Effective on January 1, 2019.]**

*(a) The department of general services shall ensure that all vehicles purchased or leased with funds appropriated by the state and managed by the department of general services for the use of any department, office, or agency of the state display a vehicle abuse hotline decal. This subsection (a) shall apply only to vehicles displaying a governmental service registration plate of distinctive design issued under § 55-4-219; provided, that this subsection (a) shall not apply to vehicles used by state law enforcement agencies or the department of military.*

*(b) The decal shall contain a telephone number or website information through which complaints regarding potential misuse of a state vehicle, including speeding, texting and driving, or reckless driving, can be submitted.*

*(c) The department shall establish and maintain a vehicle abuse hotline and website through which complaints regarding potential misuse of a state vehicle can be submitted. The department shall also establish procedures for notifying departments, offices, and agencies of the state regarding any complaints received and for responding as necessary to those persons submitting complaints.*

*(d) The cost of implementation of this section shall be provided from within existing resources of the department.*

**4-3-2312. Power of commissioner to enter into contracts for the purpose of stabilizing expenses for purchase of gasoline, diesel, or other fuels. [Effective until June 30, 2016.]**

(a) Notwithstanding any other law to the contrary, the commissioner of transportation may enter into a negotiated contract or contracts with a bank, investment bank or other similar financial institution for the purpose of stabilizing the net expense of the department of transportation in the purchase of gasoline, diesel, or other fuels for the department's own use.

(b) The contracts entered into under this section may include, without limitation, financial instruments commonly referred to as hedges, futures, options, swap transactions, or any similar financial instrument for cost stabilization. The contracts authorized herein shall not be deemed contracts for services subject to former § 12-4-109 [See the Compiler's Notes].

(c) Notwithstanding any other law to the contrary, the contracts authorized

in this section may be procured in such manner pursuant to policy and executed in such form, all as approved by the state chief procurement officer, with the approval of the state funding board. Such policy shall provide, at a minimum, that the initial selection of financial institutions for the purpose of entering into such contracts shall be conducted by a public solicitation and request for qualifications, including credit worthiness and other factors as determined by the state chief procurement officer, with the approval of the state funding board.

(d) When entering into any contract authorized under this section, the written contract shall provide that the rights and remedies of the parties thereto shall be governed by the laws of this state or the laws of such other state or nation as may bear a reasonable relationship to the transaction; provided, however, that any suit, action, or proceeding at law or in equity against this state shall be brought solely in any court of competent jurisdiction in Davidson County, Tennessee.

(e) [Deleted by 2018 amendment.]

(f) The authority granted under this section is in addition to, and supplemental to, any existing authority granted under any other law but shall expire on June 30, 2016.

**4-3-4901. Short title — Purpose.**

This part shall be known and may be cited as the "Tennessee Visual Content Modernization Act of 2018" and is enacted for the purpose of providing incentive grants that encourage the production of films, movies, television pilots and programs, computer-generated imagery and interactive digital media, and stand-alone post-production scoring and editing in this state.

**4-3-4902. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Commission" means the Tennessee film, entertainment and music commission;

(2) "Commissioner" means the commissioner of economic and community development;

(3) "Department" means the department of economic and community development;

(4) "Executive director" means the director of the commission;

(5) "Film/TV fund" means the Tennessee film/television incentive fund;

(6) "Minority participant" means an individual who is impeded from normal entry into the economic mainstream because of race, religion, sex or national origin;

(7) "Production activities" means activities related to the production of entertainment properties;

(8) "Production company" means any person or entity that produces a film, movie, pilot, or show in this state; develops computer-generated imagery or interactive digital media, including audiovisual streaming services, in this state; or produces stand-alone post-production scoring and editing in this state;

(9) "State-certified production" means a film, movie, pilot, or show; computer-generated imagery or interactive digital media, including audiovisual streaming services; or stand-alone post-production scoring and editing, that meets the criteria established by the commission to receive an

incentive grant; and

(10) "Tennessee motion picture and television incentive grant" or "incentive grant" means a grant for a state-certified production that is approved by the department to receive a grant based upon the recommendation of the executive director.

**4-3-4903. Tennessee film/TV incentive fund.**

(a) The film/TV fund is established as a separate account in the general fund and shall be administered by the department.

(b) The film/TV fund is composed of:

(1) Funds appropriated by the general assembly for the film/TV fund; and

(2) Gifts, grants and other donations received by the department or the commission for the film/TV fund.

(c)(1) Moneys in the film/TV fund shall be appropriated and expended to provide incentive grants to production companies for use in producing state-certified productions and may be used by the department to defray the expenses of administering this section, including marketing expenses; provided, however, that the expenses shall not exceed five percent (5%) of the total amount appropriated for the program in any fiscal year.

(2) The amount of each grant awarded pursuant to this section shall not exceed twenty-five percent (25%) of the total expenses incurred by a production company for a project; except, however, the department may award grants in excess of this amount if deemed appropriate by the department. It is the legislative intent that funding be appropriated each year in the general appropriations act for awarding grants. It is further the legislative intent that the department strive to award the maximum amount of incentive grants authorized by this section due to the amendments to § 67-4-2109(j) provided in chapter 1026, § 10 of the Public Acts of 2012, which added § 67-4-2109(j)(6).

(d) Moneys in the film/TV fund shall be invested by the state treasurer pursuant to title 9, chapter 4, part 6, for the sole benefit of the film/TV fund, and interest accruing on investments and deposits of the fund shall be returned to the fund and remain part of the film/TV fund.

(e) Subject to the availability of revenue at the end of each fiscal year, the commissioner of finance and administration is authorized to carry forward any amounts remaining in the film/TV fund or transfer any part of the fund to the revenue fluctuation reserve.

(f) It is the intent of the general assembly that, to the extent practicable, moneys from the film/TV fund shall be used to provide incentive grants to production projects in all areas of the state.

(g) It is the intent of the general assembly that the commission shall actively encourage independent producers and minority participants to apply for incentive grants.

(h) Incentive grants from the film/TV fund shall not exceed the amount available in the fund at any time. No less frequently than biannually, the executive director shall report to the commissioner of finance and administration on the status of the incentive grant program, such report to include at least the following information: the amount of each grant awarded since the previous report and the name of the production company receiving the benefit of each grant, the total amount of outstanding grants and the total unobligated

amount in the film/TV fund. A copy of each report shall be transmitted to the speaker of the house of representatives and the speaker of the senate, the chairs of the finance, ways and means committees of the senate and the house of representatives, the state treasurer, the comptroller of the treasury and the office of legislative budget analysis.

(i) The department shall promulgate rules and regulations as the department may deem necessary to effectuate the purposes of this part. All rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

**4-3-5002. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Entertainment properties" means motion pictures, television programs, computer-generated imagery, interactive digital media, stand-alone post-production scoring and editing, sound recordings, and other audio, video, or audiovisual programs produced for distribution to the public;

(2) "Local government" means any county, municipality, city or other political subdivision of this state;

(3) "Production activities" mean activities related to the production of entertainment properties; and

(4) "Production facilities" mean streets, roads, highways, buildings, real or personal property or personal services.

**4-3-5403. Board membership — Term of office — Meetings.**

(a) The Tennessee sports hall of fame board of directors shall be composed of twenty-five (25) Tennessee citizens. Eight (8) members of the board shall be appointed by the governor, eight (8) members shall be appointed by the lieutenant governor, and eight (8) members shall be appointed by the speaker of the house of representatives. The commissioner of tourist development, or the commissioner's designee, shall serve as an ex officio voting member of the board of directors. No more than eight (8) of the appointed members shall reside in a grand division. The department of tourist development shall provide oversight to the hall of fame.

(b) The term of office for a director shall be for six (6) years and a director may be reappointed. The term for the initial board of directors shall be staggered so as one-half (½) of the appointees serve a three-year initial term and thereafter a six-year term. Each director shall serve until the director's successor is appointed, and if a vacancy occurs on the board of directors, it shall be filled by the official who made the original appointment.

(c) The board of directors shall designate one (1) director to serve as president. The board shall also elect a vice president, a secretary, and such other officers as it deems necessary to perform the business of the entity. Such officers and the commissioner, or the commissioner's designee, shall comprise the executive committee. The board may also appoint advisory boards to report to the executive committee as deemed necessary.

(d) The board of directors shall hold an annual meeting in the last quarter of the fiscal year, and may meet as often thereafter as the duties of the hall of fame require.

(e) The directors shall receive no compensation for their services.

(f) The board of directors of the hall of fame may appoint no more than five

(5) ex officio, voting members of the board to advise it in its activities relative to the promotion, operation and marketing of activities for the hall of fame.

**4-5-102. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Administrative judge" means an agency member, agency employee or employee or official of the office of the secretary of state, licensed to practice law and authorized by law to conduct contested case proceedings pursuant to § 4-5-301;

(2) "Agency" means each state board, commission, committee, department, officer, or any other unit of state government authorized or required by any statute or constitutional provision to make rules or to determine contested cases;

(3) "Contested case" means a proceeding, including a declaratory proceeding, in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing. Such proceeding may include rate making; price fixing; granting of certificates of convenience and necessity; the making, review or equalization of tax assessments; the granting or denial of licenses, permits or franchises where the licensing board is not required to grant the licenses, permits or franchises upon the payment of a fee or the finding of certain clearly defined criteria; and suspensions of, revocations of, and refusals to renew licenses. An agency may commence a contested case at any time with respect to a matter within the agency's jurisdiction;

(4) "Hearing officer" means an agency member, agency employee or employee or official of the office of the secretary of state, not licensed to practice law, and authorized by law to conduct a contested case proceeding pursuant to § 4-5-301;

(5) "License" includes the whole or part of any agency, permit, certificate, approval, registration, charter or similar form of permission required by law;

(6) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, withdrawal or amendment of a license;

(7) "Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interests of a specific person or persons;

(8) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party;

(9) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character, including another agency;

(10) "Policy" means any statement, document, or guideline prepared or issued by any agency pursuant to its delegated authority that merely defines or explains the meaning of a statute or a rule. "Policy" also means any statement, document, or guideline concerning only the internal management of state government that does not affect private rights, privileges, or procedures available to the public. For purposes of this subdivision (10), "internal management" means the administration of an agency's internal operations for the purpose of facilitating operational effectiveness and efficiency;

(11) "Publication" means a posting of materials on the appropriate web site by the secretary of state that have been submitted in accordance with this chapter or any other information for which the secretary of state is responsible;

(12) "Rule" means any agency regulation, standard, statement, or document of general applicability that is not a policy as defined in subdivision (10) that:

(A) Describes the procedure or practice requirements of an agency; or

(B) Implements, prescribes, or interprets an enactment of the general assembly or congress or a regulation adopted by a federal agency. "Rule" includes the establishment of a fee and the amendment or repeal of a prior rule. "Rule" does not include:

(i) Declaratory orders issued pursuant to § 4-5-223;

(ii) Intra-agency memoranda;

(iii) General policy statements that are substantially repetitious of existing law;

(iv) Agency statements that:

*(a)* Relate to the use of the highways and are made known to the public by means of signs or signals; or

*(b)* Relate to the curriculum of individual state-supported institutions of postsecondary education or to the admission or graduation of students of such individual institutions but not to the discipline or housing of students;

(v) Rate filings pursuant to title 56, chapters 5 and 6; or

(vi) Statements concerning inmates of a correctional or detention facility, or statements concerning offenders who are serving a sentence under probation or parole in the community; and

(13) "Small business" means a business entity, including its affiliates, that employs fifty (50) or fewer full-time employees.

**4-5-203. Notice of hearing.**

(a) Whenever an agency is required by law to hold a public hearing as part of its rulemaking process, the agency shall:

(1)(A) Transmit written notice of the hearings to the secretary of state for publication in the notice section of the administrative register web site and, if a statute applicable to the specific agency or a specific rule or class of rules under consideration requires some other form of publication, publish notice as required by that statute in addition to publication in the notice section of the administrative register web site. Such notice of a hearing shall remain on the web site until the date of such hearing;

(B) Whenever an agency is required by law to hold a public hearing as part of its rulemaking process, the agency shall make copies of the rule available in redline form to persons in attendance at the hearing. As used in this subsection (a), "redline form" has the same meaning as defined in § 4-5-226(i)(2)(B);

(2) Take such other steps as it deems necessary to convey effective notice to persons who are likely to have an interest in the proposed rulemaking.

(b) Except as otherwise permitted by § 4-5-204(e), notice through publication on the administrative register web site shall be given at least forty-five (45) days prior to the date set for the hearing and shall be deemed to have been given seven (7) days from the date notice was transmitted to the secretary of

state for such publication.

(c) The notice required under subdivision (a)(1)(A) shall include:

(1) A statement of the time and place at which the hearing is to be held;

(2)(A) The express terms of the rule being proposed; provided, that an informative summary reasonably calculated to give notice to interested parties may be substituted for the express terms of the proposed rule if:

(i) The express terms of the rule being proposed are filed with the secretary of state;

(ii) The secretary of state determines that publication of the entire text of the proposed rule would be impractical; and

(iii) The complete text of the express terms of the proposed rule is made available by the secretary of state or the agency for public inspection and copying;

(B) Nothing in this section shall be construed to preclude an agency from making changes in the rule being proposed after the public hearing, so long as the changes are within the scope of the rulemaking notice filed with the secretary of state;

(3) Insofar as practicable, a reference to the statutory authority pursuant to which the agency proposed to adopt the rule; and

(4) Any additional matter that may be prescribed by statute applicable to the specific rule or class of rules under consideration.

(d) Failure of any person to receive notice of a hearing on proposed rulemaking is not grounds for invalidating the resulting rule if notice of the hearing was published as provided in subdivision (a)(1).

(e) The secretary of state shall prescribe rules governing the manner and form in which written notice of hearings shall be transmitted by the agencies to the secretary of state for publication in the notice section of the administrative register web site. The secretary of state may require the online submission of notices of hearing and related filings pursuant to this part. The secretary of state may refuse to accept for publication any notice of hearing transmitted that does not conform to such requirements, in which case transmission of notice shall be deemed not to have been satisfied under subdivision (a)(1) and subsection (b).

(f)(1) Except as provided in subdivision (f)(2), a hearing shall be conducted prior to the adoption of a permanent rule if such rule was filed previously as an emergency rule pursuant to § 4-5-208.

(2) A hearing shall not be required if the emergency rule was required by an agency of the federal government and adoption of the rule through ordinary rulemaking procedures might jeopardize the loss of a federal program or funds.

**4-5-230. Submission of list of adopted policies.**

(a)(1) On July 1 of every year, each agency that is subject to review under chapter 29 of this title shall submit a list of all policies that have been adopted by the agencies in the past year to the chair of the government operations committee of the senate and the chair of the government operations committee of the house of representatives.

(2) The information submitted under subdivision (a)(1) shall include a summary of the policy and the agency's justification for adopting a policy on the subject instead of promulgating a rule.

(b) The following information shall not be required to be submitted to the

chairs of the committees under subdivision (a)(2):

(1) Records or other information deemed to be confidential under title 10, chapter 7, part 5 or otherwise not required to be disclosed or made available under § 10-7-503(a);

(2) Records or other information that are required by an agency of the federal government for the purposes of securing federal funds, complying with federal law, maintaining national security, or qualifying for or maintaining required accreditation, the failure of which could jeopardize the loss of a federal program, funds, or accreditation; and

(3) Statements, documents, or published materials, such as frequently asked questions, that are prepared and used in the course of general correspondence with persons or entities.

(c) This section shall apply to all policies that are proposed or developed by agencies on or after July 1, 2018.

**4-5-231. Rules or policies that infringe on agency member's free speech prohibited — Power to remove member.**

(a) No agency created by statute and subject to review under chapter 29 of this title shall promulgate rules or implement policies that infringe on an agency member's freedom of speech in violation of the Constitution of Tennessee, Article I, § 19, or the First Amendment of the United States Constitution.

(b) An agency's appointing authority shall have sole power to remove a member from a board, commission, council, committee, authority, task force, or other similar multi-member agency created by statute and subject to review under chapter 29 of this title. This subsection (b) shall not impair the ability of the general assembly to reconstitute, restructure, or reestablish such agency.

**4-5-322. Judicial review.**

(a)(1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review. A preliminary, procedural or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2) A state agency is considered to be an aggrieved person for the purpose of judicial review when the order is from a board, commission or other entity independent of the aggrieved agency. In such instances, judicial review under this chapter is permitted upon the request of the agency head and the approval of the attorney general and reporter.

(b)(1)(A)(i) Proceedings for review are instituted by filing a petition for review in chancery court.

(ii) Except as provided in subdivisions (b)(1)(B), venue for appeals of contested case hearings shall be in the chancery court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the chancery court of Davidson County.

(iii) Venue for appeals of contested case hearings involving TennCare determinations shall be in the chancery court of Davidson County.

(iv) Petitions seeking judicial review shall be filed within sixty (60) days after the entry of the agency's final order thereon.

(B)(i) A person who is aggrieved by a final decision of the department of human services or the department of children's services in a contested case may file a petition for review in the chancery court located either in the county of the official residence of the appropriate commissioner or in the county in which any one (1) or more of the petitioners reside.

(ii) A person who is aggrieved by the final determination of a hearing officer or local board of education in a special education hearing conducted pursuant to § 49-10-601 may file a petition for review in the chancery court of Davidson County or, alternatively, in the county in which the petitioner resides.

(iii) A person who is aggrieved by any final decision of the Tennessee public utility commission, or by a final decision of the state board of equalization in a contested case involving centrally assessed utility property assessed in accordance with title 67, chapter 5, part 13, shall file any petition for review with the middle division of the court of appeals.

(2) In a case in which a petition for judicial review is submitted within the sixty-day period but is filed with an inappropriate court, the case shall be transferred to the appropriate court. The time for filing a petition for review in a court as provided in this chapter shall not be extended because of the period of time allotted for filing with the agency a petition for reconsideration. Copies of the petition shall be served upon the agency and all parties of record, including the attorney general and reporter, in accordance with the provisions of the Tennessee Rules of Civil Procedure pertaining to service of process.

(c) The filing of the petition for review does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, but if it is shown to the satisfaction of the reviewing court, in a hearing that shall be held within ten (10) days of a request for hearing by either party, that any party or the public at large may suffer injury by reason of the granting of a stay, then no stay shall be granted until a good and sufficient bond, in an amount fixed and approved by the court, shall be given by the petitioner conditioned to indemnify the other persons who might be so injured and if no bond amount is sufficient, the stay shall be denied. The reviewing court shall not consider a stay unless notice has been given to the attorney general and reporter; nor shall the reviewing court consider a stay unless the petitioner has previously sought a stay from the agency or demonstrates that an agency ruling on a stay application cannot be obtained within a reasonable time.

(d) Within forty-five (45) days after service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all the parties of the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions

determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(f) The procedure ordinarily followed in the reviewing court will be followed in the review of contested cases decided by the agency, except as otherwise provided in this chapter. The agency that issued the decision to be reviewed is not required to file a responsive pleading.

(g) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court.

(h) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the agency;

(3) Made upon unlawful procedure;

(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(5)(A) Unsupported by evidence that is both substantial and material in the light of the entire record.

(B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

(i) No agency decision pursuant to a hearing in a contested case shall be reversed, remanded or modified by the reviewing court unless for errors that affect the merits of such decision.

(j) The reviewing court shall reduce its findings of fact and conclusions of law to writing and make them parts of the record.

**4-5-324. Training program for administrative judges or hearing officers.**

(a) Each person employed to serve as an administrative judge or hearing officer within the executive branch shall, within the six-month period following the date of such employment, participate in a program of training for administrative judges and hearing officers conducted by the department of human resources, division of training. The department shall issue a certificate of participation to each judge or officer whose attendance is satisfactory.

(b) An administrative judge or hearing officer who hears contested cases referred to the office of the secretary of state by a public institution of postsecondary or higher education involving allegations of sexual assault, dating violence, domestic violence, or stalking shall annually participate in training that satisfies the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. § 1092(f)), and the federal regulations implementing those statutes, as amended.

**4-8-305. Monument to unborn children.**

(a) The general assembly calls for a monument to be erected on the capitol campus as a reminder of unborn children. The monument shall be in memory

of the victims of abortion, babies, women, and men.

(b) One (1) member of the senate and one (1) member of the house of representatives, each appointed by their respective speaker, shall work with the state capitol commission to design and place the monument commissioned pursuant to subsection (a) at a suitable location on the capitol campus.

(c) No state funds shall be spent on the construction or placement of the monument, and the monument must be erected using private funds. The members appointed pursuant to subsection (b) shall perform their duties when in Nashville for other official business.

(d)(1) There is created a separate account within the state general fund to be known as the Tennessee Monument to Unborn Children fund.

(2) The fund must be funded by gifts, grants, and other donations received by the state for the fund from non-state sources.

(3) Money in the fund may be used for the design, construction, and installation of the monument.

(4) At the end of each fiscal year, the commissioner of finance and administration shall carry forward any amounts remaining in the fund.

(5) Moneys in the fund must be invested by the state treasurer pursuant to title 9, chapter 4, part 6, for the sole benefit of the fund, and interest accruing on investments of and deposits into such fund must be returned to such fund and remain part of the fund.

(6) After the completion of the monument, any moneys remaining in the fund must remain in the fund and be expended for the upkeep and maintenance of the monument until all monies in the fund are exhausted.

(e) Upon completion of the monument, the state capitol commission shall name the monument the "Tennessee Monument to Unborn Children, In Memory of the Victims of Abortion: Babies, Women, and Men."

**4-8-403. Consultation with state capitol commission — Approval of design.**

(a) The commission shall consult with the state capitol commission relative to all aspects of the monument or statue honoring David Crockett, and the state capitol commission must give final approval of the design of such monument or statue prior to its erection.

(b) The commission is administratively attached to the department of finance and administration.

**4-8-404. David Crockett commission fund — Exhaustion of private funds before use of state funds.**

(a) The monument or statue of David Crockett may be erected using a combination of state and private funds. However, it is the general assembly's intent that any available private funding is used to the full extent possible and that no state funds shall be used for such project until all private funding is exhausted.

(b)(1) There is created a separate account within the state treasury to be known as the David Crockett commission fund.

(2) The David Crockett commission fund is composed of:

(A) Funds appropriated by the general assembly for the David Crockett commission fund; and

(B) Gifts, grants, and other donations received by the commission for

the David Crockett commission fund from non-state sources.

(3) Money in the David Crockett commission fund may be used by the commission for the purposes for which the commission was created.

(4) At the end of each fiscal year, the commissioner of finance and administration shall carry forward any amounts remaining in the David Crockett commission fund.

(5) Moneys in the David Crockett commission fund must be invested by the state treasurer pursuant to title 9, chapter 4, part 6, for the sole benefit of the David Crockett commission fund, and interest accruing on investments and deposits of such fund must be returned to such fund and remain part of the David Crockett commission fund.

(6) After the termination of the commission pursuant to § 4-8-405, any moneys remaining in the David Crockett commission fund must remain in the fund and be expended for the upkeep and maintenance of the monument or statue until all funds in the account are exhausted.

**4-10-114. Tax credits for shippers — Definitions — Study — Report.**

(a) As used in this section:

(1) "Accessorial services":

(A) Means any service that is incidental to transportation services; and

(B) Includes storage, packing, unpacking, hoisting or lowering, waiting time, overtime loading and unloading, and reweighing;

(2) "Best interests of the state" means a determination by the commissioner, with approval by the commissioner of economic and community development, that the qualified transportation expenditures are a result of the credit described in this section;

(3) "Freight motor vehicle" means a motor vehicle that is designed and used primarily to transport goods for hire or for commercial purposes;

(4) "Goods" means personal property that is treated as movable for the purposes of a contract for transportation services;

(5) "Line haul services" means the movement of goods over the public highways from the point of origination to the final destination;

(6) "Motor carrier" means a person who operates or causes to be operated a freight motor vehicle on a public highway for the purpose of performing transportation services;

(7) "Person" means every individual, firm, association, joint-stock company, syndicate, partnership, corporation, or other business entity;

(8) "Qualified transportation expenditures" means the total charges incurred by a shipper for line haul services, transportation services, and accessorial services performed by a motor carrier for shipments picked up at points of origination within this state or delivered to final destinations within this state;

(9) "Shipper" means any person that enters into a contract for transportation services with a motor carrier;

(10) "Transportation services" means the pickup or delivery, or both, of goods at the point of origination or final destination; and

(11) "Turn-around policy" means the uniform and internal policy established by a shipper that meets the requirements of subdivision (c)(2).

(b) The Tennessee advisory commission on intergovernmental relations (TACIR) is directed to perform a study of the potential, overall effects of

creating a franchise and excise tax credit for shippers with pickups or deliveries originating in, or destined to, any county having a population over nine hundred thousand (900,000), according to the 2010 federal census or any subsequent federal census.

(c) In conducting the study under subsection (b), TACIR shall consider a franchise and excise tax credit that meets the following criteria:

(1) The credit would be allowed to any shipper that establishes and implements a turn-around policy pursuant to subdivision (c)(2) against the sum total of the franchise and excise taxes owed by the shipper, equal to two percent (2%) of qualified transportation expenditures;

(2) To qualify for the credit described in this section, the shipper would establish and implement a uniform and internal turn-around policy for assuring that pickups and deliveries are performed during the period of time agreed upon by a motor carrier and a shipper and for preventing delays in the timely transportation of goods over the public highways. The policy must include the following minimum requirements:

(A) That pickups and deliveries shall be accomplished on the date scheduled for pickup or delivery, that pickups must be completed within the period of time agreed to by the shipper and the motor carrier, which period shall not exceed two (2) hours, and that deliveries must be completed within the period of time agreed to by the shipper and the motor carrier, which period shall not exceed two (2) hours; and

(B) That for each shipment of goods for which transportation services of the motor carrier is requested by a shipper, the shipper shall provide the motor carrier with contact information for:

(i) Any person who may authorize pickup or delivery of any goods to be transported if the shipper designates such a person;

(ii) The shipper and any person receiving the pickup or delivery, if different from the shipper; and

(iii) Any person to whom notification of delays or that goods are available for pickup or delivery, shall be given;

(3) The credit would only be available upon a determination by the commissioner of revenue, with approval by the commissioner of economic and community development, that the qualified transportation expenditures and the credit are in the best interests of the state;

(4) The credit would apply only in the tax year in which the shipper implements a turn-around policy meeting the criteria in subdivision (c)(2), incurs qualified transportation expenditures, and otherwise meets the requirements of this section; and

(5) The total credit claimed for any taxable year, including the amount of any carryforward credit claimed, would not exceed fifty percent (50%) of the combined franchise and excise tax liability shown by the return before any credit is taken. Any unused credit could be carried forward in any tax period until the credit is taken; provided, however, that the credit could not be carried forward for more than fifteen (15) years.

(d) All appropriate state agencies and departments shall provide assistance to TACIR upon the request of its executive director.

(e) TACIR shall submit a report disclosing the findings of the study and recommendations, including any proposed legislation or interim reports, to the general assembly no later than February 1, 2020.

**4-11-106. Commission — Advisory boards or committees.**

(a)(1) The commission may also establish and appoint one (1) or more advisory boards or advisory committees to assist the commission in the performance of its duties.

(2) The commission shall establish a historic cemetery advisory committee composed of seven (7) members. The committee may include up to three (3) members of the commission and must include at least one (1) non-commission member with expertise in each of the following areas: archeology, cemetery or land law, and historic preservation. The commission shall strive to ensure that the membership of the committee appropriately reflects the racial and geographic diversity of the state. The committee shall study protections and preservation efforts for cemeteries of historical importance and the need, if any, to enhance protections and preservation efforts. By December 1, 2020, and every five (5) years thereafter, the committee shall issue a report, including any recommendations for legislative action, to the commission. The commission may adopt the report or return the report to the committee for further consideration. If adopted by the commission, the report shall be posted on the website of the commission.

(b) The commission is authorized, out of any funds appropriated to the commission, to pay the actual expenses of such board or committee members incurred while on official business.

(c) All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

**4-12-102. Executive director and other employees.**

(a) The Douglas Henry state museum commission shall employ a museum executive director, and delegates its authority to the museum executive director to hire and manage experts and other employees as may be needed to properly care for and maintain the museum and to impart its educational value to the visiting public.

(b) The museum executive director has the authority to assume charge of all collections and articles acquired, and to coordinate and display such articles in such manner as the museum executive director deems to the best interest of the general public.

(c)(1) The museum executive director also has the power to solicit and accept gifts and contributions on behalf of the state museum upon such terms and conditions and for such uses and purposes as may be consistent with state law.

(2) The museum executive director shall install and maintain suitable containers for the collection of small cash donations to the state museum. The funds so collected shall be receipted and deposited as departmental revenue of the museum with the same budgetary and accounting controls as other funds of the museum. Expenditure of funds so collected shall be for the furtherance of the objectives of the museum's programs and shall be made under the same restrictions and controls as other expenditures of the museum.

**4-12-103. Compensation of staff.**

(a) The museum executive director's compensation shall be determined by the Douglas Henry state museum commission in a manner consistent with the department of human resources' policies and standards.

(b) Experts and such other assistants as may be employed under this chapter shall have their compensation determined by the museum executive director in a manner consistent with the department of human resources' policies and standards.

**4-12-104. Location — When open.**

The museum shall occupy space in Nashville at the James K. Polk State Office Building and Cultural Complex, on the ground floor of the south wing of the War Memorial Building, and at 1000 Rosa L. Parks Boulevard. All three (3) facilities shall be open on days and during hours as determined by the Douglas Henry state museum commission.

**4-12-108. Sales facilities authorized.**

(a) The state museum is hereby authorized to operate sales facilities in the state museum.

(b) Nothing in this chapter shall prevent the operation of sales facilities in the state museum by any nonprofit corporation that has as its chief purpose the support of the programs of the state museum.

**4-12-109. Items to be sold.**

The facility authorized by § 4-12-108 shall sell Tennessee produced items or items appropriate to the museum's programs, as approved by the museum executive director.

**4-12-110. Use of profits — Earned revenue reserve fund established — Administration — Expenditures.**

(a) Any profits derived from sales facilities authorized by § 4-12-108 shall be used in the programs of the state museum.

(b) There is established within the general fund a special agency account to be known as the earned revenue reserve fund for the purpose of assuring sufficient funding for the administration and programs of the state museum. All sales facilities revenue and other program fees collected shall be deposited into the fund. No part of the fund shall revert to the general fund, but shall be carried forward until expended in accordance with this chapter.

(c) The fund shall be administered by the museum executive director.

(d) For each fiscal year, there is allocated a sum sufficient from the fund to provide for the administrative and program costs of the state museum.

(e) Prior to the start of each fiscal year, and to the extent necessary during the fiscal year, certifications shall be made and delivered to the commissioner of finance and administration who has final authority regarding the actual expenditures of the fund.

**4-12-111. Fees or admission — Facilities for nonprofit groups.**

(a)(1) The state museum is authorized to impose a fee or charge admission for special events or programs.

(2) The amount of the fee or charge shall be determined by the Douglas Henry state museum commission, and proceeds from the fees or charges shall only be used by the commission to offset the cost of the special events or programs or other educational programs of the state museum.

(3) [Deleted by 2018 amendment.]

(4) [Deleted by 2018 amendment.]

(b) The state museum is authorized by this subsection (b) to have reduced fees or admission charges for any person who may have a disability, be an honorably discharged veteran of the United States armed forces, sixty-five (65) years of age or older, or a student in any school, grades kindergarten through twelve (K-12), for the special events or programs.

(c) The state museum, in the discretion of the museum executive director, is further authorized to provide facilities, assistance and space to any nonprofit corporation that has as its principal purpose the support of the programs of the state museum and whose net proceeds are directed to benefit the programs or operation of the state museum. This cooperation and assistance may be provided regardless of whether the corporation charges a fee or imposes an admission charge to its programs.

**4-12-112. Black history.**

(a) The state museum commission, acting upon the recommendation of the museum executive director, is hereby authorized to contract with the Beck Cultural Exchange Center, Knoxville, for either the appropriate deposit, display, examination, or preservation, or any of these, at the center of such items or collections of articles, specimens and relics owned by the state and administered by the commission, as may be deemed by the commission and by the center to be of special interest to the black citizens of this state.

(b) The terms of any such contract shall ensure that adequate steps are undertaken to protect and preserve all such items for the benefit of future Tennesseans.

**4-12-113. Confidentiality of information relating to candidates for position of museum executive director.**

(a) Except as provided in subsections (b) and (c), notwithstanding any law to the contrary, an application for a position of museum executive director, materials submitted with an application, letters of recommendation or references concerning an applicant, and any other records or information relating to or arising out of the process of searching for and selecting an individual for the position of museum executive director shall be treated as confidential and shall not be open for public inspection, if the records could be used to identify a candidate for the position.

(b) After a search committee has selected candidates as finalists for the position of museum executive director, the committee shall publicly announce the finalists. The announcement must occur no later than fifteen (15) calendar days before the final vote of the Douglas Henry state museum commission to appoint or elect a person to fill the position of museum executive director. Records relating exclusively to the candidates selected as finalists are not confidential and shall be open for public inspection, except for a record otherwise confidential under state or federal law.

(c) This section shall not apply to information relating to a candidate who

did not expressly request that the candidate's information be kept confidential.

(d) Meetings or portions of meetings devoted to discussing information deemed confidential pursuant to this section are exempt from title 8, chapter 44, part 1.

(e) For the purposes of this section, "finalists" means those candidates selected by a search committee as the group to be recommended to the commission from which one (1) shall be appointed or elected museum executive director.

**4-12-203. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Tennessee state museum" means the facility operated as the military branch of the Tennessee state museum in the War Memorial Building, the facility in the James K. Polk Building, and the Tennessee state museum located at 1000 Rosa L. Parks Boulevard; and

(2) "The various collections of articles, specimens and relics placed under the charge of the state museum executive director" means those collections owned and acquired by the state, the Tennessee Historical Society, Inc., or other entities.

**4-12-302. Tennessee state museum — Defined.**

As used in this part, unless the context otherwise requires, "Tennessee state museum" means the facility operated as the military branch of the Tennessee state museum in the War Memorial Building, the facility located in the James K. Polk Building, and the Tennessee state museum located at 1000 Rosa L. Parks Boulevard.

**4-12-303. Powers of executive director.**

It is the intention and purpose of the general assembly that the museum executive director be empowered to accept donations of funds and objects for the benefit of the Tennessee state museum.

**4-14-301. Corporation established.**

There is hereby established, to carry out the purposes of this chapter, a private not-for-profit corporation to be known as the "Tennessee technology development corporation dba Launch Tennessee" and, in this part, as "the corporation".

**4-14-304. Contents of articles and bylaws.**

The articles and bylaws shall provide that:

(1) The purpose of the corporation is to strengthen the economy of the state through the development of an entrepreneurial ecosystem that can support potential high-growth businesses, with a particular focus on technology-enabled small businesses;

(2) The corporation may receive money from any source, may borrow money, may enter into contracts, and may expend money for any activities appropriate to its purpose;

(3) The corporation may appoint staff and do all other things necessary or incidental to carrying out the functions listed in § 4-14-305;

(4) Any changes in the articles of incorporation or bylaws shall be approved by the general assembly;

(5) The corporation shall submit an annual report to the governor and to the general assembly, such report is due on November 1 of each year and shall include detailed information on the structure, operation, and financial status of the corporation. The corporation shall conduct an annual public hearing to receive comments from interested parties regarding the report. Notice of such hearing shall be given at least thirty (30) days before the hearing; and

(6) The corporation is subject to an annual audit by the comptroller of the treasury, and that the corporation shall bear the full costs of this audit.

**4-14-305. Functions of corporation.**

The corporation, after being certified by the secretary of state, shall:

(1) Support entrepreneur centers or small business support groups committed to providing business and technical assistance to current and aspiring entrepreneurs across the state;

(2) Promote or direct activities aimed at driving innovation and entrepreneurship in pursuit of economic growth in the state's key business sectors;

(3) Identify, develop, and administer funding or services crucial for early-stage business growth and development, including public or private funding or services, grants, loans, or equity;

(4) Develop and administer capital programs that will strengthen the state's investing climate;

(5) Lead or support efforts to increase the amount of early-stage capital available for investment in small businesses;

(6) Foster cooperative and collaborative associations between universities, research organizations, corporations, and individuals that will enhance technology transfer opportunities and lead to the creation of new products, services, and jobs in Tennessee; and

(7) Promote entrepreneurship in Tennessee by building awareness of activities, programs, and small business outcomes with media across the state, region, and country.

**4-14-308. Confidentiality of records.**

Any documentary materials or data made or received by any member or employee of the corporation to the extent that such material or data consists of trade secrets or commercial or financial information regarding the operation of any business conducted by an applicant for, or recipient of, any form of assistance that the corporation is empowered to render, or regarding the competitive position of such applicant in a particular field of endeavor, shall not be deemed public records and shall not be subject to title 10, chapter 7; provided, that if the corporation purchases a qualified security from such applicant, the commercial and financial information, excluding trade secrets, shall be deemed to be a public record of the corporation and subject to title 10, chapter 7, after the expiration of seven (7) years from the date of purchase of such qualified security, or, in the case of such information being made or received by any member or employee of the corporation after the purchase of such qualified security, seven (7) years from the date such information was made or received. Any discussion or consideration of such trade secrets or

commercial or financial information may be held by the board, or any subcommittee of the board, in executive sessions closed to the public. All applications (except the identity of the applicants) and supporting documentary materials or data, including personal financial records, trade secrets, commercial or financial information and proprietary information of applicants, and all executive sessions or portions thereof conducted by the board, or any subcommittee of the board, for the purpose of reviewing applications for assistance shall be confidential and exempt from title 8, chapter 44.

**4-20-301. Creation — Members.**

(a) There is created and established a state commission to be known as the Douglas Henry state museum commission, referred to as "the commission" in this part, to consist of thirteen (13) voting members.

(b)(1) Two (2) members of the commission shall be appointed by the speaker of the house of representatives. These members shall serve four-year terms.

(2) Two (2) members of the commission shall be appointed by the speaker of the senate. These members shall serve four-year terms.

(c) Six (6) members of the commission shall be appointed by the governor, with two (2) members to be appointed from each grand division of the state. These members shall serve three-year terms and shall not serve for more than two (2) consecutive terms. The successor of any of these members shall be appointed from their grand division.

(d) One (1) member of the commission shall be appointed jointly by the speaker of the senate and the speaker of the house of representatives as an at-large member. This member shall serve a three-year term and shall not serve more than two (2) consecutive terms.

(e) One (1) member of the commission shall be the chair of the senate finance, ways and means committee or the chair's designee. One (1) member of the commission shall be the chair of the house of representatives finance, ways and means committee or the chair's designee.

(f) The commission shall include, as an ex officio, nonvoting member, the museum executive director, whose term shall be for so long as the person remains the museum executive director.

(g) The commission shall include, as an ex officio, nonvoting member, the chair of the Tennessee arts commission as of January 1, 2009, who shall serve only one (1) two-year term beginning on July 1, 2009. This member shall serve as a resource to the state museum commission. Notwithstanding § 55-4-301 or § 55-4-216 or any other law to the contrary, this member shall facilitate transition grants awarded from revenue granted from the sale of new specialty earmarked and cultural plates to the state museum commission from the arts commission, with the grant money to be used at the discretion of the museum commission for operating expenses. The commission shall be eligible to receive these transition grants pursuant to the authority granted to the member in this subsection (g) for the period beginning July 1, 2009, and ending June 30, 2011. Nothing in this subsection (g) shall prohibit the commission from receiving transition grants pursuant to any other authority.

(h) The commission shall include as an ex officio, nonvoting member, the president of the Tennessee historical society or the president's designee, whose term shall begin on July 1, 2015.

(i) In making appointments to the state museum commission, the governor

shall strive to ensure that at least one (1) person serving on the commission is sixty (60) years of age or older and that at least one (1) person serving on the commission is a member of a racial minority.

(j) A commission member shall continue to serve until a successor is appointed by the appropriate appointing authority. All vacancies shall be filled for the balance of the unexpired term in the same manner as original appointments.

(k) A quorum shall be six (6) voting members of the commission.

**4-20-304. Powers and authority — Assistance and data from other state entities — Sole governing authority of museum.**

(a) The commission is authorized and empowered to:

(1) Oversee the operation of the state museum;

(2) Employ a museum executive director;

(3) Promulgate rules and regulations for its own governance and for the operation and administration of the museum, with the rules and regulations being promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title;

(4) Identify the necessary controls to ensure expenditures in accordance with the law of such public funds as may be appropriated to the commission;

(5) Make regular reports to the general assembly as required; and

(6) Adopt policies designed to fulfill the duties and to attain the objectives of the commission as established by law.

(b) The commission may request and shall receive from any department, division, board, bureau, commission or agency of this state any assistance and data as will enable it properly to carry out its powers and duties under this part.

(c) The commission shall be the sole governing authority of the state museum.

**4-27-103. Duties of board.**

It is the duty of the board to:

(1) Adopt rules governing its proceedings;

(2) Elect a chair and secretary;

(3) Keep permanent and accurate records of its proceedings;

(4) Establish criteria for making awards;

(5) Adopt rules and regulations to carry out this chapter;

(6) Approve each award made; and

(7) Meet at least quarterly to evaluate suggestions made by employees.

**4-27-105. Cash awards — Maximum.**

(a)(1) The cash award shall be:

(A) Equal to fifteen percent (15%) of the annual savings realized in a fiscal year, with a maximum award of one hundred thousand dollars ($100,000);

(B) Paid within ninety (90) days of the end of each fiscal year in which the savings have been realized; and

(C) Limited to the first fiscal year following the fiscal year in which the suggestion was made.

(2) If the cash award is over fifty thousand dollars ($50,000) the award must be spread over three (3) years following the fiscal year in which the suggestion was made in equal amounts; however, if the employee who is entitled to the award leaves state service the employee forfeits the remaining award appropriation item or items of the state agency to which actual savings apply.

(b)(1) The board shall promulgate rules to develop criteria for making awards pursuant to this section, including, but not limited to, the development and implementation of an electronic mail notification to transmit to all state government employees information on the employee suggestion award program. The electronic mail notification shall be made annually by the board and shall include, but not be limited to, the provisions of this section.

(2) In promulgating rules, the board shall consider the following factors:

(A) Severity of the present problem;

(B) Effectiveness of the suggestion offered;

(C) The need to encourage improvement in state operations; and

(D) Ingenuity of the suggestion.

**4-29-123. Infringement of an entity member's freedom of speech prohibited.**

(a) No board, commission, council, committee, authority, task force, or other similar multi-member governmental entity created by statute and subject to review under this part shall promulgate rules, issue statements concerning only the internal management of state government, or issue intra-agency memoranda as described in § 4-5-102(12), that infringe on an entity member's freedom of speech in violation of the Constitution of Tennessee, Article 1, § 19 or the First Amendment of the United States Constitution. As used in this subsection (a), "freedom of speech" includes, but is not limited to, a governmental entity member's freedom to express an opinion concerning any matter relating to that governmental entity, excluding matters deemed to be confidential under § 10-7-504.

(b) Upon a determination by a joint evaluation committee created under § 4-29-103 that reasonable cause exists to believe a governmental entity has infringed on a member's freedom of speech as described in subsection (a), that entity shall be reviewed by that evaluation committee during the next legislative session following the determination. The evaluation committee may make recommendations for legislation to the general assembly concerning the entity's sunset status and rulemaking authority, and the termination of state funding to the entity.

**4-29-238. Governmental entities terminated on June 30, 2017.**

(a) The following governmental entities terminate on June 30, 2017:

(1) [Deleted by 2017 amendment; transferred to § 4-29-241.]

(2) [Deleted by 2017 amendment; transferred to § 4-29-242.]

(3) [Deleted by 2017 amendment; transferred to § 4-29-242.]

(4) [Deleted by 2017 amendment; transferred to § 4-29-242.]

(5) [Deleted by 2017 amendment; transferred to § 4-29-242.]

(6) [Deleted by 2017 amendment; transferred to § 4-29-242.]

(7) [Deleted by 2017 amendment; transferred to § 4-29-242.]

(8) [Deleted by 2017 amendment; transferred to § 4-29-242.]

(9) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(10) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(11) [Deleted by 2017 amendment; transferred to § 4-29-241.]
(12) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(13) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(14) [Deleted by 2017 amendment; transferred to § 4-29-246.]
(15) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(16) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(17) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(18) [Deleted by 2017 amendment; transferred to § 4-29-241.]
(19) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(20) [Deleted by 2017 amendment; transferred to § 4-29-241.]
(21) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(22) [Deleted by 2017 amendment; transferred to § 4-29-241.]
(23) [Deleted by 2017 amendment; transferred to § 4-29-239.]
(24) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(25) [Deleted by 2017 amendment; transferred to § 4-29-246.]
(26) [Deleted by 2017 amendment; transferred to § 4-29-246.]
(27) [Deleted by 2017 amendment; transferred to § 4-29-241.]
(28) [Deleted by 2017 amendment; transferred to § 4-29-243.]
(29) [Deleted by 2017 amendment; transferred to § 4-29-241.]
(30) [Deleted by 2017 amendment; transferred to § 4-29-240.]
(31) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(32) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(33) [Deleted by 2017 amendment; transferred to § 4-29-241.]
(34) [Deleted by 2017 amendment; transferred to § 4-29-241.]
(35) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(36) [Deleted by 2017 amendment; transferred to § 4-29-241.]
(37) [Deleted by 2017 amendment; transferred to § 4-29-241.]
(38) [Deleted by 2017 amendment; transferred to § 4-29-241.]
(39) [Deleted by 2017 amendment; transferred to § 4-29-240.]
(40) [Deleted by 2017 amendment.]
(41) [Deleted by 2017 amendment; transferred to § 4-29-239.]
(42) [Deleted by 2017 amendment; transferred to § 4-29-243.]
(43) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(44) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(45) [Deleted by 2017 amendment; transferred to § 4-29-243.]
(46) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(47) [Deleted by 2017 amendment; transferred to § 4-29-246.]
(48) [Deleted by 2017 amendment; transferred to § 4-29-246.]
(49) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(50) [Deleted by 2017 amendment; transferred to § 4-29-241.]
(51) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(52) [Deleted by 2018 amendment, committee terminated.]
(53) [Deleted by 2017 amendment; transferred to § 4-29-244.]
(54) [Deleted by 2017 amendment; transferred to § 4-29-243.]
(55) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(56) [Deleted by 2017 amendment; transferred to § 4-29-243.]
(57) [Deleted by 2017 amendment; transferred to § 4-29-242.]
(58) [Deleted by 2017 amendment; transferred to § 4-29-240.]
(59) [Deleted by 2017 amendment; transferred to § 4-29-240.]

(b) Each department, commission, board, agency, or council of state govern-

ment created during calendar year 2015 terminates on June 30, 2017.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

**4-29-239. Governmental entities terminated on June 30, 2018.**

(a) The following governmental entities shall terminate on June 30, 2018:

(1) [Deleted by 2018 amendment; transferred to § 4-29-245.]
(2) [Deleted by 2018 amendment; transferred to § 4-29-242.]
(3) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(4) [Deleted by 2018 amendment; transferred to § 4-29-244.]
(5) [Deleted by 2018 amendment; transferred to § 4-29-245.]
(6) [Deleted by 2018 amendment; transferred to § 4-29-247.]
(7) [Deleted by 2018 amendment; transferred to § 4-29-245.]
(8) [Deleted by 2018 amendment; transferred to § 4-29-245.]
(9) [Deleted by 2018 amendment; transferred to § 4-29-245.]
(10) [Deleted by 2018 amendment; transferred to § 4-29-244.]
(11) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(12) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(13) [Deleted by 2018 amendment; transferred to § 4-29-241.]
(14) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(15) [Deleted by 2018 amendment; transferred to § 4-29-241.]
(16) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(17) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(18) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(19) [Deleted by 2018 amendment; transferred to § 4-29-241.]
(20) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(21) [Deleted by 2018 amendment; transferred to § 4-29-241.]
(22) [Deleted by 2018 amendment; transferred to § 4-29-242.]
(23) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(24) [Deleted by 2018 amendment; transferred to § 4-29-247.]
(25) [Deleted by 2018 amendment; transferred to § 4-29-247.]
(26) [Deleted by 2018 amendment; transferred to § 4-29-245.]
(27) [Deleted by 2018 amendment; transferred to § 4-29-241.]
(28) [Deleted by 2018 amendment.]
(29) [Deleted by 2018 amendment; transferred to § 4-29-245.]
(30) [Deleted by 2018 amendment; transferred to § 4-29-245.]
(31) [Deleted by 2018 amendment; transferred to § 4-29-247.]
(32) [Deleted by 2018 amendment; transferred to § 4-29-245.]
(33) [Deleted by 2018 amendment; transferred to § 4-29-245.]
(34) [Deleted by 2018 amendment; transferred to § 4-29-241.]
(35) [Deleted by 2018 amendment; transferred to § 4-29-241.]
(36) [Deleted by 2018 amendment; transferred to § 4-29-247.]
(37) [Deleted by 2018 amendment; transferred to § 4-29-241.]
(38) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(39) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(40) [Deleted by 2018 amendment; transferred to § 4-29-242.]
(41) [Deleted by 2018 amendment; transferred to § 4-29-245.]
(42) [Deleted by 2018 amendment; transferred to § 4-29-245.]
(43) Tennessee board of judicial conduct, created by § 17-5-201;

(44) [Deleted by 2018 amendment; transferred to § 4-29-244.]
(45) [Deleted by 2018 amendment; transferred to § 4-29-242.]
(46) [Deleted by 2018 amendment; transferred to § 4-29-245.]
(47) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(48) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(49) [Deleted by 2018 amendment; transferred to § 4-29-244.]
(50) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(51) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(52) [Deleted by 2018 amendment; transferred to § 4-29-243.]
(53) [Deleted by 2018 amendment; transferred to § 4-29-244.]
(54) [Deleted by 2018 amendment; transferred to § 4-29-241.]

(b) Each department, commission, board, agency or council of state government created during calendar year 2016 terminates on June 30, 2018.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

**4-29-240. Governmental entities terminated on June 30, 2019.**

(a) The following governmental entities shall terminate on June 30, 2019:

(1) Advisory committee for children's special services, created by § 68-12-106;

(2) Air pollution control board, created by § 68-201-104;

(3) Board for professional counselors, marital and family therapists, and clinical pastoral therapists, created by § 63-22-101;

(4) Board of alcohol and drug abuse counselors, created by § 68-24-601;

(5) Board of appeals for the department of human resources, created by § 8-30-108;

(6) Board of boiler rules, created by § 68-122-101;

(7) Board of claims, created by § 9-8-101;

(8) Board of ground water management, created by § 69-10-107;

(9) Board of occupational therapy, created by § 63-13-216;

(10) Board of osteopathic examination, created by § 63-9-101;

(11) Board of physical therapy, created by § 63-13-318;

(12) Board of trustees of the college savings trust fund program, created by § 49-7-804;

(13) Bureau of TennCare within the department of finance and administration, pursuant to Executive Order No. 23 on October 19, 1999;

(14) Child care advisory council, created by § 49-1-302;

(15) Child care agency licensing board of review, created by § 71-3-510;

(16) Commission on firefighting personnel standards and education, created by § 4-24-101;

(17) Department of commerce and insurance, created by §§ 4-3-101 and 4-3-1301;

(18) Department of education, created by §§ 4-3-101 and 4-3-801;

(19) Department of environment and conservation, created by §§ 4-3-101 and 4-3-501;

(20) Department of health, created by §§ 4-3-101 and 4-3-1801;

(21) Department of human resources, created by §§ 4-3-101 and 4-3-1701;

(22) Department of labor and workforce development, created by §§ 4-3-101 and 4-3-1403;

(23) Elevator and amusement device safety board, created by § 68-121-102.

(24) Employee suggestion award board, created by § 4-27-102;

(25) Energy efficient schools council, created by § 49-17-103;

(26) Genetic advisory committee, created by § 68-5-503;

(27) Historical commission, created by § 4-11-102;

(28) Industrial development division, building finance committee, created by § 4-14-109;

(29) Information systems council, created by § 4-3-5501;

(30) Local governing boards of trustees of the board of regents state universities, created by §§ 49-8-101 and 49-8-201;

(31) Ocoee River recreation and economic development fund board, created by § 11-8-104;

(32) Perinatal advisory committee, created by § 68-1-803;

(33) Prevailing wage commission, created by § 12-4-404;

(34) Private probation services council, created by § 16-3-901;

(35) Sam Davis memorial association, board of trustees, created by § 4-13-301;

(36) Southern states energy board, created by § 68-202-601;

(37) Southern States Nuclear Compact, created by § 68-202-601;

(38) Standards committee, department of children's services, created by § 37-5-516;

(39) Standards committee, department of human services, created by § 71-3-511;

(40) State board of education, created by § 49-1-301;

(41) State energy policy council, created by § 68-204-101;

(42) [Deleted by 2018 amendment; transferred to § 4-29-241.]

(43) State unemployment compensation advisory council, created by § 50-7-606;

(44) Tennessee agricultural hall of fame board, created by § 43-1-601;

(45) Tennessee claims commission, created by § 9-8-301;

(46) Tennessee consolidated retirement system, board of trustees, created by § 8-34-301;

(47) Tennessee council on autism spectrum disorder, created by § 4-3-2711;

(48) Tennessee medical examiner advisory council, created by § 38-7-201;

(49) Tennessee peace officers standards and training commission, created by § 38-8-102;

(50) Tennessee public television council, created by § 49-50-905;

(51) Tennessee state veterans' homes board, created by § 58-7-102;

(52) Tennessee wars commission, created by § 4-11-301;

(53) Traumatic brain injury advisory council, created by § 68-55-102;

(54) Trial court vacancy commission, created by § 17-4-301;

(55) Underground utility damage enforcement board, created by § 65-31-114;

(56) Viticulture advisory board, created by § 43-30-102; and

(57) Wastewater financing board, created by § 68-221-1008.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2017 terminates on June 30, 2019.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished or restructured in accordance with this chapter.

**4-29-241. Governmental entities terminated on June 30, 2020.**

(a) The following governmental entities shall terminate on June 30, 2020:

(1) Advisory council for the education of students with disabilities, created by § 49-10-105;

(2) Advisory council on state procurement, created by § 4-56-106;

(3) Advisory council on workers' compensation, created by § 50-6-121;

(4) Beech River watershed development authority, board of directors, created by § 64-1-101;

(5) Board for licensing healthcare facilities, created by § 68-11-203;

(6) Board of examiners for architects and engineers, created by § 62-2-201;

(7) Board of law examiners, created by § 23-1-101;

(8) Board of medical examiners, created by § 63-6-101;

(9) Board of social work licensure, created by § 63-23-101;

(10) Carroll County watershed authority, created by § 64-1-801;

(11) Chickasaw basin authority, created by § 64-1-201;

(12) Civil Defense and Disaster Compact, created by § 58-2-402;

(13) Commission on children and youth, created by § 37-3-102;

(14) Committee for clinical perfusionists, created by § 63-28-112;

(15) Department of correction, created by §§ 4-3-101 and 4-3-601;

(16) Department of finance and administration, created by §§ 4-3-101 and 4-3-1001;

(17) Department of general services, created by §§ 4-3-101 and 4-3-1101;

(18) Department of intellectual and developmental disabilities, created by §§ 4-3-101 and 4-3-2701;

(19) Department of safety, created by §§ 4-3-101 and 4-3-2001;

(20) Department of transportation, created by §§ 4-3-101 and 4-3-2301;

(21) Doe Mountain recreation authority, created by § 11-25-103;

(22) Dyslexia advisory council, created by § 49-1-229;

(23) Douglas Henry state museum commission, created by § 4-20-301;

(24) Emergency Management Assistance Compact, created by § 58-2-403;

(25) Human rights commission, created by § 4-21-201;

(26) Integrated criminal justice steering committee, created by § 16-3-815;

(27) Interstate Earthquake Compact of 1988, created by § 58-2-701;

(28) Interstate Nurse Licensure Compact, created by § 63-7-401;

(29) Local education insurance committee, created by § 8-27-301;

(30) Local government insurance committee, created by § 8-27-701;

(31) Local government planning advisory committee, created by § 4-3-727;

(32) Office of business enterprise, created by § 4-26-101;

(33) Pest control board, created by § 62-21-104;

(34) Physical therapy licensure compact, created by § 63-13-401;

(35) Polysomnography professional standards committee, created by § 63-31-103;

(36) Rail service authorities, created by § 7-56-201;

(37) Real estate commission, created by § 62-13-201;

(38) Regional transportation authority of Middle Tennessee, created by § 64-8-101;

(39) Sequatchie Valley planning and development agency, created by

§§ 64-1-501 and 64-1-502;

(40) Soil scientist advisory committee, created by § 62-18-210;

(41) South Central Tennessee railroad authority, created by § 64-2-201;

(42) Southern Regional Education Compact, created by § 49-12-101;

(43) State board for licensing alarm systems contractors, created by § 62-32-306;

(44) State board for licensing contractors, created by § 62-6-104;

(45) State board of accountancy, created by § 62-1-104;

(46) State building commission, created by § 4-15-101;

(47) State capitol commission, created by § 4-8-301;

(48) State insurance committee, created by § 8-27-201;

(49) State procurement commission, created by § 4-56-102;

(50) State protest committee, created by § 4-56-103;

(51) State TennCare pharmacy advisory committee, created by § 71-5-2401;

(52) State textbook and instructional materials quality commission, created by § 49-6-2201;

(53) [Deleted by 2016 amendment, commission terminated.]

(54) Tellico Reservoir development agency, created by § 64-1-701;

(55) Tennessee commission on aging and disability, created by § 71-2-104;

(56) Tennessee corrections institute, board of control, created by § 41-7-105;

(57) Tennessee council for the deaf, deaf-blind, and hard of hearing, created by § 71-4-2102;

(58) Tennessee Duck River development agency, created by §§ 64-1-601 and 64-1-602;

(59) Tennessee emergency management agency, created by § 58-2-103;

(60) Tennessee motor vehicle commission, created by § 55-17-103;

(61) Tri-county railroad authority, created by § 64-2-301;

(62) University of Tennessee, board of trustees, created by § 49-9-202;

(63) Utility management review board, created by § 7-82-701;

(64) West Fork Drakes Creek dam and reservoir interstate authority, created by § 64-1-901; and

(65) West Tennessee River basin authority, created by § 64-1-1101.

(b) Each department, commission, board, agency or council of state government created during calendar year 2018 terminates on June 30, 2020.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished or restructured in accordance with this chapter.

**4-29-242. Governmental entities terminated on June 30, 2021.**

(a) The following governmental entities terminate on June 30, 2021:

(1) Alcoholic beverage commission, created by § 57-1-102;

(2) Beef promotion board, created by § 43-29-118;

(3) Board of chiropractic examiners, created by § 63-4-102;

(4) Board of communication disorders and sciences, created by § 63-17-104;

(5) Board of dentistry, created by § 63-5-101;

(6) Board of dispensing opticians, created by § 63-14-101;

(7) Board of examiners in psychology, created by § 63-11-101;

(8) Board of medical examiners' committee on physician assistants, created by § 63-19-103;

(9) Board of nursing, created by § 63-7-201;

(10) Board of optometry, created by § 63-8-103;

(11) Board of podiatric medical examiners, created by § 63-3-103;

(12) Board of veterinary medical examiners, created by § 63-12-104;

(13) Bureau of ethics and campaign finance, created by § 4-55-101;

(14) Committee for purchase from the blind and other severely disabled, created by § 71-4-703;

(15) Consumer advocate division in the office of the attorney general and reporter, created by § 65-4-118;

(16) Delta human resource agency, created by § 13-26-102;

(17) Department of children's services, created by §§ 4-3-101 and 37-5-101;

(18) Department of economic and community development, created by §§ 4-3-101 and 4-3-701;

(19) Department of financial institutions, created by §§ 4-3-101 and 4-3-401;

(20) Department of mental health and substance abuse services, created by §§ 4-3-101 and 4-3-1601;

(21) East Tennessee human resource agency, created by § 13-26-102;

(22) Egg promotion board, created by § 43-29-120;

(23) Emergency communications board, created by § 7-86-302;

(24) First Tennessee human resource agency, created by § 13-26-102;

(25) Health services and development agency, created by § 68-11-1604;

(26) [Deleted by 2018 amendment; transferred to § 4-29-241.]

(27) James K. Polk memorial association, created by § 4-13-201;

(28) Mid-Cumberland human resource agency, created by § 13-26-102;

(29) Northwest Tennessee human resource agency, created by § 13-26-102;

(30) Occupational safety and health review commission, created by § 50-3-801;

(31) Pork promotion board, created by § 43-29-119;

(32) Second look commission, created by § 37-3-803;

(33) South Central Tennessee human resource agency, created by § 13-26-102;

(34) Southeast Tennessee human resource agency, created by § 13-26-102;

(35) Southeastern Interstate Forest Fire Protection Compact, created by § 11-4-501;

(36) Southwest Tennessee human resource agency, created by § 13-26-102;

(37) State board of equalization, created by § 4-3-5101;

(38) State board of examiners for land surveyors, created by § 62-18-103;

(39) State forestry commission, created by § 11-4-201;

(40) Statewide community services agency, created by § 37-5-305;

(41) Statewide planning and policy council for the department of mental health and substance abuse services, created by § 33-1-401;

(42) Tennessee advisory commission on intergovernmental relations, created by § 4-10-102;

(43) Tennessee aeronautics commission, created by § 42-2-301;

(44) Tennessee athletic commission, created by § 68-115-103;

(45) Tennessee bureau of investigation, created by § 38-6-101;

(46) Tennessee council for career and technical education, created by § 49-11-201;

(47) Tennessee dairy promotion committee, created by § 44-19-114;

(48) Tennessee financial literacy commission, created by § 49-6-1702;

(49) Tennessee public utility commission, created by § 65-1-101;

(50) Tennessee soybean promotion board, created by § 43-20-102;

(51) Tennessee technology development corporation, created by § 4-14-301; and

(52) Upper Cumberland human resource agency, created by § 13-26-102.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2019 shall terminate on June 30, 2021.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

**4-29-243. Governmental entities terminated on June 30, 2022.**

(a) The following governmental entities shall terminate on June 30, 2022:

(1) Advisory board for rehabilitation centers, created by § 49-11-704;

(2) Applied behavior analyst licensing committee of the board of examiners in psychology, created by § 63-11-303;

(3) Archaeological advisory council, created by § 11-6-103;

(4) Board of athletic trainers, created by § 63-24-102;

(5) Board of dietitian/nutritionist examiners, created by § 63-25-106;

(6) Board of examiners for nursing home administrators, created by § 63-16-102;

(7) Board of parole, created by § 40-28-103;

(8) Board of respiratory care, created by § 63-27-103;

(9) Council for licensing hearing instrument specialists, created by § 63-17-202;

(10) Council of certified professional midwifery, created by § 63-29-103;

(11) Council on children's mental health care, created by § 37-3-111;

(12) Department of agriculture, created by §§ 4-3-101 and 4-3-201;

(13) Department of human services, created by §§ 4-3-101 and 4-3-1201;

(14) Department of revenue, created by §§ 4-3-101 and 4-3-1901;

(15) Department of tourist development, created by §§ 4-3-101 and 4-3-2201;

(16) Department of veterans services, created by §§ 4-3-101 and 4-3-2501;

(17) Domestic violence state coordinating council, created by § 38-12-101;

(18) Great Smoky Mountains Park commission, created by § 11-19-101;

(19) Housing development agency, board of directors, created by § 13-23-104;

(20) Interstate Compact on Mental Health, created by § 33-9-201;

(21) Interstate Compact on the Placement of Children, created by § 37-4-201;

(22) Interstate Insurance Product Regulation Compact of 2007, created by § 56-58-101;

(23) Memphis regional megasite authority, created pursuant to

§ 64-6-101;

(24) School bond authority, created by § 49-3-1204;

(25) Southeast Interstate Low-Level Radioactive Waste Compact, created by § 68-202-701;

(26) State board of cosmetology and barber examiners, created by §§ 62-3-101 and 62-4-103;

(27) State family support council, created by § 33-5-208;

(28) State soil conservation committee, created by § 43-14-203;

(29) State university and community college system, board of regents, created by § 49-8-201;

(30) Statewide planning and policy council for the department of intellectual and developmental disabilities, created by § 33-5-601;

(31) Tennessee advisory committee for acupuncture, created by § 63-6-1003;

(32) Tennessee arts commission, created by § 4-20-101;

(33) Tennessee center for earthquake research and information, created by § 49-8-602;

(34) Tennessee emergency medical services board, created by § 68-140-303;

(35) Tennessee film, entertainment and music commission, created by § 4-3-5003;

(36) Tennessee fish and wildlife commission, created by § 70-1-201;

(37) Tennessee higher education commission, created by § 49-7-201;

(38) Tennessee life and health insurance guaranty association, created by § 56-12-205;

(39) Tennessee massage licensure board, created by § 63-18-103;

(40) Tennessee medical laboratory board, created by § 68-29-109;

(41) Tennessee rehabilitative initiative in correction board, created by § 41-22-404;

(42) Tennessee residence commission, created by § 4-23-202;

(43) Tennessee sports hall of fame, created by § 4-3-5402;

(44) Tennessee student assistance corporation, board of directors, created by § 49-4-202;

(45) Water and wastewater operators, board of certification, created by § 68-221-905.

(b) Each department, commission, board, agency or council of state government created during calendar year 2020 terminates on June 30, 2022.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

**4-29-244. Governmental entities terminated on June 30, 2023. [See contingent amendment to subdivision (a)(5) and Compiler's Notes.]**

(a) The following governmental entities shall terminate on June 30, 2023:

(1) Board of pharmacy, created by § 63-10-301;

(2) Controlled substance database advisory committee, created by § 53-10-303;

(3) Selection panel for TennCare reviewers, created by § 56-32-126;

(4) State palliative care and quality of life council, created by § 71-2-116;

(5) **[Current version. See second version for contingent amend-**

**ment and Compiler's Notes.]** Tennessee board of water quality, oil, and gas, created by § 69-3-104;

(5) **[Contingent amendment. See the Compiler's Notes.]** Tennessee board of energy and natural resources, created by § 69-3-104;

(6) Tennessee heritage conservation trust fund board of trustees, created by § 11-7-104;

(7) Tennessee interagency cash flow committee, created by § 9-4-610;

(8) Underground storage tanks and solid waste disposal control board, created by § 68-211-111;

(b) Each department, commission, board, agency, or council of state government created during calendar year 2021 terminates on June 30, 2023.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

**4-29-245. Governmental entities terminated on June 30, 2024.**

(a) The following governmental entities shall terminate on June 30, 2024:

(1) Board of funeral directors and embalmers, created by § 62-5-201;

(2) Bureau of workers' compensation, created by § 4-3-1408;

(3) Collection service board, created by § 62-20-104;

(4) Commission for uniform legislation, created by § 4-9-101;

(5) Compact for Education, created by § 49-12-201;

(6) Interstate Mining Compact, created by § 59-10-101;

(7) Medical advisory committee, created by § 50-6-135;

(8) Medical payment committee, created by § 50-6-125;

(9) Private investigation and polygraph commission, created by § 62-26-301;

(10) Public records commission, created by § 10-7-302;

(11) Real estate appraiser commission, created by § 62-39-201;

(12) State election commission, created by § 2-11-101;

(13) State funding board, created by § 9-9-101;

(14) Tennessee auctioneer commission, created by § 62-19-104;

(15) Tennessee board of court reporting, created by § 20-9-604;

(16) Tennessee central economic authority, created by § 64-5-101;

(17) Tennessee-Tombigbee waterway development authority, created by § 69-8-101.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2022 terminates on June 30, 2024.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

**4-29-247. Governmental entities terminated on June 30, 2026.**

(a) The following governmental entities shall terminate on June 30, 2026:

(1) Collateral pool board, created by § 9-4-506;

(2) Interstate Compact for Juveniles, created by § 37-4-101;

(3) Interstate Compact for Supervision of Adult Offenders, created by § 40-28-401;

(4) Post-conviction defender oversight commission, created by § 40-30-203;

(5) Sex offender treatment board, created by § 39-13-704;

(b) Each department, commission, board, agency, or council of state government created during calendar year 2024 terminates on June 30, 2026.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

**4-41-105. Go Build Account created. [Effective until July 1, 2024.]**

(a) To fund the program, there is created within the state board for licensing contractors a Go Build Account, referred to in this chapter as "the account." Amounts remaining in the account at the end of each fiscal year shall not revert to the general fund. Money in the account shall be invested by the state treasurer pursuant to title 9, chapter 4, part 6, for the sole benefit of the account.

(b) A minimum of fifty percent (50%) of the total fiscal year fund balance resulting from contractor licensing revenue collected pursuant to title 62, chapter 6, part 1, after expenditures, shall be transferred by the board to the account, to be allocated to the corporation solely for the implementation, administration, and management of the program. This transfer shall occur on an annual basis in accordance with § 4-41-107.

(c) The board, in consultation with the corporation, may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, for disbursing the funds for the program, as necessary, pursuant to subsection (b).

(d) There shall be participation and inclusion of the commissioner of labor and workforce development or the commissioner's designee in the board's administration and implementation of this chapter, including the provision of input from the commissioner or the commissioner's designee related to labor market information, safety and health, and the development of performance metrics consistent with industry growth indicators.

**4-41-107. Transfer of revenue from account to corporation. [Effective until July 1, 2024.]**

Beginning in the first full quarter of fiscal year 2015-2016 and in the first quarter of every subsequent fiscal year, the board shall transfer revenue from the account to the corporation to be allocated in the manner set forth in § 4-41-105(b).

**4-41-111. Repealer. [Effective until July 1, 2024.]**

This chapter is hereby repealed on July 1, 2024.

**4-42-101. Compliance with federal immigration laws. [Effective on January 1, 2019.]**

*The general assembly finds, determines, and declares that:*

*(1) Because the matters contained in this chapter have important statewide ramifications for compliance with and enforcement of federal immigration laws and for the welfare of all citizens in this state, these matters are of statewide concern;*

*(2) Allowing illegal immigrants to reside within this state undermines*

*federal immigration laws and state laws allocating available resources; and*

*(3) The attorney general and reporter and all appropriate state law enforcement agencies are to vigorously pursue all federal moneys to which the state may be entitled for the reimbursement of moneys spent to comply with federal immigration laws.*

**4-42-102. Chapter definitions. [Effective on January 1, 2019.]**

*As used in this chapter:*

*(1) "Law enforcement agency":*

*(A) Means an agency in this state charged with enforcement of state or federal laws, or with managing custody of detained persons in this state, and includes, but is not limited to, state police, campus police, and the department of safety; and*

*(B) Includes officials, representatives, agents, and employees of an agency described in subdivision (1)(A);*

*(2) "Official" means an agent, employee, member, or representative of a state governmental entity, but does not mean the attorney general and reporter;*

*(3) "Sanctuary policy" means any directive, order, ordinance, resolution, practice, or policy, whether formally enacted, informally adopted, or otherwise effectuated, that:*

*(A) Limits or prohibits any state governmental entity or official from communicating or cooperating with federal agencies or officials to verify or report the immigration status of any alien;*

*(B) Grants to aliens unlawfully present in the United States the right to lawful presence within the boundaries of this state in violation of federal law;*

*(C) Violates 8 U.S.C. § 1373;*

*(D) Restricts in any way, or imposes any conditions on, a state or local governmental entity's cooperation or compliance with detainers from the United States department of homeland security, or other successor agency, to maintain custody of any alien or to transfer any alien to the custody of the United States department of homeland security, or other successor agency;*

*(E) Requires the United States department of homeland security, or other successor agency, to obtain a warrant or demonstrate probable cause before complying with detainers from the department to maintain custody of any alien or to transfer any alien to its custody; or*

*(F) Prevents law enforcement agencies from inquiring as to the citizenship or immigration status of any person; and*

*(4) "State governmental entity" means any state agency, bureau, commission, council, department, law enforcement agency, or unit thereof, but does not mean the office of the attorney general and reporter.*

**4-42-103. Enactment of sanctuary policy prohibited. [Effective on January 1, 2019.]**

*No state governmental entity or official shall adopt or enact a sanctuary policy. A state governmental entity that adopts or enacts a sanctuary policy is ineligible to enter into any grant contract with the department of economic and community development until the sanctuary policy is repealed, rescinded, or otherwise no longer in effect.*

**4-42-104. Complaint — Injunction — Time for compliance — Violation. [Effective on January 1, 2019.]**

*(a) A person residing in a municipality or county who believes a state governmental entity or official has violated § 4-42-103 may file a complaint in chancery court in that person's county of residence.*

*(b) The person filing the complaint has the burden of proving by a preponderance of the evidence that a violation of § 4-42-103 has occurred.*

*(c) If the court finds the state governmental entity or official is in violation of § 4-42-103, the court shall issue a writ of mandamus against the entity or official ordering the entity or official to comply with § 4-42-103, enjoin the entity or official from further interference, and take other action to ensure compliance as is within the jurisdiction of the court.*

*(d) A state governmental entity or official has no less than one hundred twenty (120) days from the date of the court's order to comply with the order. If, after one hundred twenty (120) days, the entity or official has not complied with the court's order, the court may take whatever action necessary to enforce compliance.*

*(e) Upon a finding by the court that a state governmental entity or official has adopted or enacted a sanctuary policy, the state governmental entity, or the entity to which the official belongs, becomes ineligible to enter into any grant contract with the department of economic and community development. Ineligibility commences on the date the court finds that the state governmental entity or official is in violation of § 4-42-103 and continues until such time that the court certifies that the sanctuary policy is repealed, rescinded, or otherwise no longer in effect.*

**4-51-137. Establishment of mechanism for lottery ticket winner to make charitable contribution.**

The board, in coordination with the secretary of state, shall establish a mechanism whereby a lottery ticket winner of a drawing-style game may, upon redemption of prize money of one million dollars ($1,000,000) or more, make a charitable contribution of ten percent (10%) of the total prize money, either before taxes or after payment of taxes and fees, to a 501(c)(3) or 501(c)(19) nonprofit organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) or Section 501(c)(19) of the Internal Revenue Code (26 U.S.C. § 501(c)(19)), as applicable. The board shall carry out its duties under this section no later than January 1, 2019. This section does not apply to instant or scratch-off games.

**4-57-104. State fair and exposition commission.**

(a) Notwithstanding any other law to the contrary establishing a state fair board, there is hereby created a state fair and exposition commission which shall be composed of the following members to be appointed by the governor:

(1) The dean of the University of Tennessee extension;

(2) The president of the Tennessee Farm Bureau;

(3) The state advisor of the Future Farmers of America;

(4) The executive director of the Tennessee Association of Fairs; and

(5) The chair of the Tennessee State Fair Association.

(b) Within sixty (60) days of creation of the commission, the commission

members shall establish by rule a method of selecting a chair for the commission and shall select a chair. The chair shall serve a two-year term but shall be limited to no more than two (2) consecutive terms. Commission members shall serve on the commission as long as the member holds the position the member held at the time of initial appointment.

**4-57-105. Authority and powers of the commission.**

The commission is authorized and empowered to:

(1) Advise, facilitate, and coordinate with the Tennessee State Fair Association, a not-for-profit corporation, for the purpose of the Tennessee State Fair Association operating, managing, and conducting at least one (1) fair or exposition annually, under the supervision of the commission, with such additional fairs, expositions, or exhibitions as the commission determines are in the general public interest;

(2) Enter into any contracts and agreements necessary and do and perform any acts necessary to carry out the purposes of this chapter;

(3) Maintain and manage property held by the state for the purpose of conducting fairs, expositions, and exhibits;

(4) Accept gifts, contributions and bequests of unrestricted funds from individuals, foundations, corporations and other organizations or institutions for the purpose of furthering the objectives of the commission's programs;

(5) Accept on behalf of the state conveyances of property for the purposes of conducting fairs, expositions, and exhibits, subject to any terms and conditions agreed to by the commission;

(6) Sell or convey all or a portion of the property, land, or buildings under its management subject to the approval of the state building commission;

(7) Grant leases on all or any part of the property, land, or buildings under the management of the commission to private or public organizations, which appear to be in the best interests of the state;

(8) Recommend to the commissioner such rules and regulations that should be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, in order to carry out the purposes of the commission; and

(9) Form advisory panels, as needed, from qualified persons within the state to obtain their advice and counsel on matters pertaining to the state fair. Members of these panels shall serve at the will and pleasure of the commission and shall receive no compensation.

**5-1-110. District maps and boundaries.**

(a)(1) The county legislative body shall make, or have made, a map showing civil districts of the county and shall have typed or printed a description of the boundaries of the civil districts.

(2) The county legislative body shall make, or have made, a map showing the county districts from which the members are elected to the county legislative body. The county legislative body may also make, or have made, a census block equivalency file or a typed or printed description of the boundaries of the county districts. In the event of any discrepancy between the boundaries set forth on the map showing the county districts from which the members are elected to the county legislative body and the census block equivalency file or typed or printed description of the boundaries of the

county districts, the boundaries set forth on the map shall control.

(b) A copy of the map or maps and the accompanying descriptions of the civil district boundaries and, if any, the county district boundaries shall be filed with the county clerk, and a copy also shall be filed with the secretary of state and the comptroller of the treasury.

(c) Revised maps shall be filed within ninety (90) days of any revision in any civil district or any other district from which members of the county legislative body are elected.

**5-1-115. Removal of vegetation and debris from certain lots. [For Amendment contingent on county approval; see the Compiler's Notes.]**

(a) The authority in this section is permissive and not mandatory and may or may not be exercised by a county, as each county deems appropriate.

(b) If it is determined by the appropriate department or person, as designated by the governing body of a county, that any owner of record of real property has created, maintained or permitted to be maintained on such property, the growth of trees, vines, grass, underbrush or the accumulation of debris, trash, litter, garbage, or any combination of the preceding elements, or a vacant dilapidated building or structure, so as to endanger the health, safety or welfare of other citizens, or to encourage the infestation of rats and other harmful animals, the appropriate department or person shall provide notice to the owner of record to remedy the condition immediately. The notice shall be given by United States mail, addressed to the last known address of the owner of record. The notice shall state that the owner of the property is entitled to a hearing. The notice shall be written in plain language and shall also include, but not be limited to, the following elements:

(1) A brief statement of this section, which shall contain the consequences of failing to remedy the noted condition;

(2) The person, office, address and telephone number of the department or person giving notice;

(3) A cost estimate for remedying the noted condition, which shall be in conformity with the standards of cost in the community; and

(4) A place wherein the notified party may return a copy of the notice, indicating the desire for a hearing.

(c)(1) If the person fails or refuses to remedy the condition within ten (10) days after receiving the notice, the appropriate department or person shall immediately cause the condition to be remedied or removed at a cost in conformity with reasonable standards and the cost thereof assessed against the owner of the property. The cost shall be a lien upon the property in favor of the county. These costs shall be placed upon the tax rolls of the county as a lien upon the property and shall be collected in the same manner as the county's taxes are collected, when the county causes a notice thereof to be filed in the office of the register of deeds of the county in which the property lies, second only to liens of the state, county and municipality for taxes, any lien of the county for special assessments and any valid lien, right or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice. Such notice shall identify the owner of record of the real property, contain the property address, describe the property sufficiently to identify it and recite the amount of the obligation secured by the lien.

(2) If the person who is the owner of record is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewerage or other materials, the ten-day period provided for in subdivision (c)(1) shall be twenty (20) days, excluding Saturdays, Sundays and legal holidays.

(d)(1) The county governing body or the appropriate department, or both, may make any rules and regulations necessary for the administration and enforcement of this section. The county shall provide for a hearing upon request of the person aggrieved by the determination made pursuant to subsection (b). A request for a hearing shall be made within ten (10) days following the receipt of the notice issued pursuant to subsection (b). Failure to make the request within this time shall without exception constitute a waiver of the right to a hearing.

(2) Any person aggrieved by an order or act of the board, agency or commission under this subsection (d) may seek judicial review of the order or act. The time period established in subsection (c) shall be stayed during the pendency of a hearing.

(e)(1) Except in any county having a population of:

| not less than | nor more than |
|---|---|
| 5,800 | 6,100 |
| 31,500 | 31,800 |
| 40,200 | 40,500 |
| 55,700 | 56,000 |
| 77,800 | 78,000 |
| 92,200 | 92,500 |

according to the 1990 federal census or any subsequent federal census, the provisions of subsection (c) permitting a county to remedy such dangerous conditions shall not apply to any parcel of property upon which an owner-occupied residence is located.

(2) Notwithstanding subdivision (e)(1), in any county having a population of not less than sixty-nine thousand four hundred (69,400) nor more than sixty-nine thousand five hundred (69,500), according to the 2000 federal census or any subsequent federal census, the provisions of subsection (c) permitting a county to remedy such dangerous conditions shall apply to any parcel of property, including any parcel upon which an owner-occupied residence is located.

(3) This subsection (e) shall not apply to subsection (g).

(4) Notwithstanding subdivision (e)(1), in any county having a population of not less than twenty-seven thousand seven hundred (27,700) nor more than twenty-seven thousand eight hundred (27,800), according to the 2010 federal census or any subsequent federal census, subsection (c) permitting a county to remedy such dangerous conditions shall apply to any parcel of property, including any parcel upon which an owner-occupied residence is located.

(5) Notwithstanding subdivision (e)(1), in any county having a population of not less than seventy-two thousand three hundred (72,300) nor more than seventy-two thousand four hundred (72,400), according to the 2010 federal census or any subsequent federal census, subsection (c) permitting a county to remedy such dangerous conditions shall apply to any parcel of property, including any parcel upon which an owner-occupied residence is located.

(6) Notwithstanding subdivision (e)(1), in any county having a population of not less than thirty-eight thousand three hundred (38,300) and not more

than thirty-eight thousand four hundred (38,400), according to the 2010 federal census or any subsequent federal census, subsection (c) permitting a county to remedy such dangerous conditions shall apply to any parcel of property, including any parcel upon which an owner-occupied residence is located.

(7) Notwithstanding subdivision (e)(1), in any county having a population of not less than fifty-seven thousand four hundred (57,400) and not more than fifty-seven thousand five hundred (57,500), according to the 2010 federal census or any subsequent federal census, subsection (c) permitting a county to remedy such dangerous conditions shall apply to any parcel of property, including any parcel upon which an owner-occupied residence is located.

(f) This section is in addition and supplemental to, and not in substitution for, similar authority in any county's charter or other applicable law.

(g)(1) As used in this subsection (g):

(A) "Community organization" means a community-oriented organization or group including, but not limited to, a school group, church youth group, neighborhood preservation nonprofit corporation, or community support group; and

(B) "Vacant property" means property on which no building exists or on which a building exists but any such building is no longer utilized for any business, commercial or residential purposes.

(2) If a person fails to remedy the condition on vacant property within the time period prescribed by subsection (c), subject to any stay as provided in subsection (d), upon the adoption of a resolution by a two-thirds (⅔) vote of the county legislative body of any county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census, to implement this subsection (g) within such county, a community organization shall be entitled to petition the county to enter upon such vacant property to remedy the conditions identified in subsection (b). Upon the filing of such a petition, the county is authorized to contract with such community organization for such purposes. The contract shall provide for the manner in which the community organization shall be compensated for remedying the conditions pursuant to such contract. Any county that contracts with a community organization for such purposes shall be absolutely immune from any liability to any and all persons and for damage to the vacant property for conditions remedied by the community organization. No monetary liability and no cause of action of any nature shall arise against the county for acts of omission or commission of such community organization for conditions remedied pursuant to such contract.

**5-1-131. Term limits relative to persons serving without compensation.**

Notwithstanding any law to the contrary, a county legislative body may adopt a resolution by a majority vote prohibiting term limits for persons appointed to boards or commissions by the county mayor if the appointee serves without compensation, not including reimbursement for travel and expenses.

**5-5-113. Required orientation training for members of county legislative bodies.**

(a) Each member of a county legislative body shall:

(1) No later than one hundred twenty (120) days after election or appointment, complete orientation training provided by the University of Tennessee's county technical assistance service (CTAS). This subdivision (a)(1) applies only to members newly elected or appointed on or after April 12, 2018; and

(2) Complete at least seven (7) hours of continuing education training provided or approved by CTAS annually. The period for compliance under this subdivision (a)(2) begins on September 1, 2018. This subdivision (a)(2) does not apply to:

(A) A person appointed to fill a vacancy on a county legislative body until September 1 after the person's appointment;

(B) An incumbent in office on April 12, 2018, until the incumbent is separated from office for any reason and is subsequently elected or appointed to serve as a member of a county legislative body; and

(C) Any commissioner after eight (8) years of service.

(b) CTAS may provide the training required under subsection (a) in person or by any other means available.

(c) The comptroller of the treasury shall, at least annually, post on its website the name of each member of a legislative body and the hours of training required and completed for each member in compliance with subsection (a).

**5-5-114. Resolution or ordinance prohibiting or restricting display of flag prohibited — Resolution or ordinance regulating manner or placement of flag.**

(a) Except as provided in subsection (b), a county legislative body shall not adopt or enforce a resolution or ordinance that prohibits or restricts, or has the effect of prohibiting or restricting, a property owner from displaying a flag of the United States of America, a flag of the state of Tennessee, the MIA/POW flag, or an official or replica flag of any branch of the United States armed forces on the property owner's property.

(b) A county legislative body may adopt and enforce a resolution or ordinance that reasonably regulates the manner and placement of the display of a flag of the United States of America, a flag of the state of Tennessee, the MIA/POW flag, or an official or replica flag of any branch of the United States armed forces only when necessary to promote public health and safety.

**5-6-120. Transfer of duties to water and wastewater treatment authorities.**

(a)(1) The duties of the county mayor in regard to any petition filed pursuant to title 7, chapter 82, are transferred to the water and wastewater treatment authority board under title 68, chapter 221, part 6 in any county that has created such authority. The preceding sentence does not apply to any petition by any governmental entity or state instrumentality that does not purport to adjust or otherwise modify any territory included in the service area of a water and wastewater treatment authority. Such petitions

may be granted if the board determines in its sole discretion that the public convenience and necessity require the same. The general assembly enacts this section as a statement of its intent that this section is a clarification of title 68, chapter 221, part 6. From and after the creation of a water and wastewater treatment authority and the establishment of its service area, the authority shall be the sole and exclusive provider of its authorized services in its service area. The designated service area for any particular function or service shall not include any area located within the boundaries of another governmental entity providing the same function or service on the date the service area is established. Different service areas may be established for different functions or services. The authority may cede all or any portion of its functions or service area to another governmental entity upon the board determining in its sole discretion that the public convenience and necessity require the same.

(2) Notwithstanding any law to the contrary, the transfer of duties as provided in subdivision (a)(1) do not apply to a county which:

(A) Is served by a water and wastewater treatment authority that does not provide water service;

(B) Has its water provided by more than five (5) utility districts; and

(C) Has, under state law, had its county mayor hear petitions of utility districts.

(b) The authority granted in this section shall prevail over any other law to the contrary for all water and wastewater service providers proposing to provide such services in the service area of the authority. Any city proposing to provide such services in the service area of the authority shall have authorization to do so only by filing a petition in the manner established by this section and receiving a cession by the authority.

**5-8-102. Privilege tax — Motor vehicle tax.**

(a) **Privilege Taxes Authorized.** Each county is empowered to levy privilege taxes upon merchants and such other vocations, occupations or businesses as are declared to be privileges, not exceeding in amount that levied by the state for state purposes.

(b) **Motor Vehicle Tax — Authorization.** Each county is empowered to levy for county purposes by action of its governing body a motor vehicle privilege tax as a condition precedent to the operation of a motor vehicle within the county. The tax may be levied on any motor vehicle taxable by the state.

(c) **Motor Vehicle Tax — Imposition.**

(1) No resolution authorizing such motor vehicle privilege tax shall take effect unless it is approved by a two-thirds (⅔) vote of the county legislative body at two (2) consecutive, regularly scheduled meetings or unless it is approved by a majority of the number of qualified voters of the county voting in an election on the question of whether or not the tax should be levied.

(2)(A) Except as provided in subdivision (c)(2)(B), if there is a petition of registered voters amounting to ten percent (10%) of the votes cast in the county in the last gubernatorial election that is filed with the county election commission within thirty (30) days of final approval of such resolution by the county legislative body, then the county election commission shall call an election on the question of whether or not the tax should be levied in accordance with this section.

(B) In any county having a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000), according to the 1990 federal census or any subsequent federal census, if there is a petition of ten percent (10%) of the qualified voters who voted in the county in the last gubernatorial election that is filed with the county election commission within thirty (30) days of final approval of such resolution by the county legislative body, then the county election commission shall call an election on the question of whether or not the tax should be levied in accordance with this section.

(3) The local governing body shall direct the county election commission to call such election to be held in a regular election or in a special election for the purpose of approving or rejecting such tax levy.

(4) The ballots used in such election shall have printed on them the substance of such resolution and the voters shall vote for or against its approval.

(5) The votes cast on the question shall be canvassed and the results proclaimed by the county election commission and certified by it to the local governing body.

(6) The qualifications of voters voting on the question shall be the same as those required for participation in general elections.

(7) All laws applicable to general elections shall apply to the determination of the approval or rejection of this tax levy.

(d) **Motor Vehicle Tax — Requirements and Limitations.**

(1) Any disabled veteran who has one hundred percent (100%) permanent total disability from a service-connected cause or any former prisoner-of-war, as determined by the United States veterans administration, is exempt from the motor vehicle privilege tax imposed by this section or by private act upon submission of evidence of such disability to the officer in the county charged with the responsibility for collecting such tax.

(2) In each county that has levied or may hereafter levy a motor vehicle privilege tax under either this chapter or by private act, the duration or term for which the privilege is issued, method of collection, proration of the amount chargeable for a period of either more or less than a calendar year interval, and the grace period allowable shall be the same as that provided for in § 55-4-104 for payment of state motor vehicle registration fees for all such vehicles described in that section. During the period of transition from the current collection procedure and tax interval to the alternate interval method, each county shall use the same system of fee proration for applicable vehicles as that applied by the state during its transitional period. No resolution of the local governing body or election on the question by qualified voters of the county is required for implementation of these specific provisions.

(3) In each county that has levied or may hereafter levy a motor vehicle privilege tax under either this chapter or by private act, the county legislative body shall determine by resolution whether a resident who operates a motor vehicle in the county shall have a decal or emblem affixed upon the motor vehicle as evidence of compliance and, if a decal or emblem is required by the county legislative body, the place on the motor vehicle at which it shall be affixed. Any person who fails to display the decal or emblem required by a county legislative body under this subdivision (d)(3) commits a Class C misdemeanor. However, § 7-51-702, concerning nonresident

motorists, shall remain in effect.

(4) Any OEM headquarters company may make application to the commissioner of revenue to be exempt from the motor vehicle privilege tax imposed by this section or by private act; provided, however, that the exemption granted under this subdivision (d)(4) shall apply only with respect to OEM headquarters company vehicles. For purposes of this subdivision (d)(4), "OEM headquarters company" and "OEM headquarters company vehicle" have the same meaning as provided in title 55, chapter 1.

(5)(A) For purposes of this subdivision (d)(5), "antique motor vehicle" means any antique motor vehicle, as defined in § 55-4-111, for which a permanent antique motor vehicle registration plate has been or is issued pursuant to § 55-4-111(b) and title 55, chapter 4, part 2.

(B) In each county that has levied or may levy a motor vehicle privilege tax under either this chapter or by private act, the county may, by action of its governing body, either:

(i) Exempt any owner of an antique motor vehicle who resides in the county from liability for the tax; or

(ii) In lieu of paying the tax annually, require any owner of an antique motor vehicle who resides in the county to pay the tax on a one-time-only basis upon issuance of a permanent decal or other device pursuant to subdivision (d)(5)(D).

(C) No resolution authorizing an exemption pursuant to subdivision (d)(5)(B)(i) or requiring the one-time payment of the tax pursuant to subdivision (d)(5)(B)(ii), whichever is applicable, shall take effect unless it is approved by a two-thirds (⅔) vote of the county legislative body at two (2) consecutive, regularly scheduled meetings or unless it is approved by a majority of the number of qualified voters of the county voting in an election conducted in accordance with subsection (c) on the question of whether or not owners should be exempted from the tax or liable for the one-time payment of the tax, whichever is applicable.

(D)(i) In any county that approves a resolution requiring the payment of a one-time tax pursuant to subdivision (d)(5)(B)(ii), any owner who has been previously issued a decal or other device evidencing payment of the tax pursuant to this chapter or by private act and any owner who applies for initial issuance of such a decal or device shall be entitled to issuance of a permanent decal or other device upon payment of a one-time-only tax and the fee imposed by subdivision (d)(5)(D)(iii).

(ii) The permanent decal or other device shall be nonrenewable and nontransferable and shall be valid so long as the permanent antique motor vehicle registration plate issued to the owner is valid pursuant to § 55-4-111(b)(2).

(iii) The county clerk may charge a one-time-only fee for the initial issuance of the permanent decal or other device in an amount sufficient to defray the costs of implementing this subdivision (d)(5)(D).

(6) A veteran or active-duty service member of the armed services is exempt from the motor vehicle privilege tax imposed by this section or by private act for a motor vehicle sold, given, or donated to the veteran or service member if:

(A) The veteran or service member has a service-connected disability as described in 38 U.S.C. § 3901;

(B) The veteran or service member receives a grant from the United States department of veterans affairs, pursuant to 38 U.S.C. §§ 3901-

3904; and

(C) The grant is used to provide or assist in providing the vehicle to the veteran or service member.

**5-9-113. Affordable housing and workforce housing.**

(a) The county legislative body of any county with a metropolitan government and a population not less than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census, is authorized to appropriate funds for affordable housing or workforce housing.

(b) As used in this section:

(1) "Affordable housing" means housing that, on an annual basis, costs thirty percent (30%) or less than the estimated median household income for households earning sixty percent (60%) or less of the area median income for the Nashville-Davidson County metropolitan statistical area as determined by the United States department of housing and urban development, adjusted for family size; and

(2) "Workforce housing" means housing that, on an annual basis, costs thirty percent (30%) or less than the estimated median household income for households earning more than sixty percent (60%) and not to exceed one hundred twenty percent (120%) of the area median income for the Nashville-Davidson County metropolitan statistical area as determined by the United States department of housing and urban development, adjusted for family size.

**5-16-103. Board of public utilities. [For contingent amendment, see the Compiler's Notes.]**

(a)(1) In the event the resolution provides for the exercise of the powers provided for in this chapter by a board, upon the approval of the resolution, the county mayor shall appoint, subject to confirmation by the county legislative body, three (3), five (5) or seven (7) persons to comprise what shall be known as "the county board of public utilities."

(2) The county mayor shall have the option of appointing a seven-person board only in any county having a population of not less than sixty-seven thousand three hundred (67,300) nor more than sixty-seven thousand four hundred (67,400), according to the 1980 federal census or any subsequent federal census.

(b)(1) In the event the board has three (3) members, the initial appointees shall serve for one (1), two (2) and three (3) years respectively, from July 1 next succeeding the date of appointment.

(2)(A) In the event five (5) members are desired as provided in subsection (a), the county mayor shall appoint, subject to confirmation by the county legislative body, such additional members to initial terms of two (2) and three (3) years respectively from July 1 next succeeding the date of appointment.

(B) The terms of no more than two (2) members of the county board of public utilities shall expire at the same time.

(3)(A) In the event seven (7) members are desired as provided in subsection (a), the county mayor shall appoint, subject to confirmation by the county legislative body, the necessary additional members to initial terms of not more than three (3) years, beginning July 1 next succeeding the date

of appointment.

(B) The initial terms of the additional members shall be staggered in such a manner that the terms of no more than three (3) members of the county board of public utilities shall expire at the same time.

(c) Successors to such appointees shall each be appointed for a term of three (3) years by the county mayor, subject to confirmation as provided in subsections (a) and (b).

(d) The county mayor shall in like manner fill any vacancies that may occur for the unexpired terms of the vacancies.

(e) Each member shall give such bond as may be required by resolution of the county legislative body.

(f)(1) Except as provided in this subsection (f), such members shall serve without compensation except for necessary expenses incurred in the performance of their duties.

(2) In any county having a population of not less than sixty-seven thousand three hundred (67,300) nor more than sixty-seven thousand four hundred (67,400), according to the 1980 federal census or any subsequent federal census, and in any county having a population of not less than one hundred forty thousand (140,000) nor more than one hundred forty-five thousand (145,000), according to the 1990 federal census or any subsequent federal census, the county legislative body may provide for compensation of not more than one hundred dollars ($100) for a monthly meeting for such members upon approval by a two-thirds (⅔) vote of the county legislative body to which this subdivision (f)(2) may apply. The approval or nonapproval of this subdivision (f)(2) shall be proclaimed by the presiding officer of such county legislative body and certified by such presiding officer to the secretary of state. If the county legislative body provides compensation for such members, the members shall also adopt a resolution that ratifies the compensation before any such compensation may be paid.

(3)(A) In counties having a population of not less than twenty-four thousand five hundred (24,500) nor more than twenty-four thousand five hundred sixty (24,560), according to the 1980 federal census or any subsequent federal census, the county legislative body may provide for compensation of such members upon approval by a two-thirds (⅔) vote of the county legislative body to which this subdivision (f)(3) may apply.

(B) The approval or nonapproval of this subdivision (f)(3) shall be proclaimed by the presiding officer of such county legislative body and certified by such presiding officer to the secretary of state.

(4) Each member of any board created pursuant to the Interlocal Cooperation Act, compiled in title 12, chapter 9, for the purpose of providing service to two (2) or more counties is, due to the increased responsibilities and duties arising as a result of such multi-county service area, entitled to compensation in an amount not exceeding one hundred dollars ($100) per month, the exact amount of such compensation to be determined by resolution of such board.

(5)(A) In counties having a population of not less than twenty-eight thousand one hundred (28,100) nor more than twenty-eight thousand four hundred (28,400), according to the 1990 federal census or any subsequent federal census, the county legislative body may provide for compensation of such members upon approval by a two-thirds (⅔) vote of the county legislative body of any county to which this subdivision (f)(5) may apply.

(B) The approval or nonapproval of this subdivision (f)(5) shall be proclaimed by the presiding officer of such county legislative body and certified by the presiding officer to the secretary of state.

(6)(A) In counties having a population of not less than twenty-six thousand seven hundred (26,700) nor more than twenty-six thousand eight hundred (26,800), according to the 2000 federal census or any subsequent federal census, the county legislative body may provide for compensation of board members upon approval by a two-thirds (⅔) vote of the county legislative body to which this subdivision (f)(6)(A) may apply.

(B) The approval or nonapproval of subdivision (f)(6)(A) shall be proclaimed by the presiding officer of such county legislative body and certified by such presiding officer to the secretary of state.

(7) **[For contingent amendment, see the Compiler's Notes.]**

(A) In counties having a population of not less than fifty-one thousand nine hundred (51,900) nor more than fifty-two thousand (52,000), according to the 2000 federal census or any subsequent federal census, the county legislative body may provide for compensation of not more than one hundred dollars ($100) per month for the board members; provided, that attendance at board meetings shall be required in order to receive the compensation, upon approval by a two-thirds (⅔) vote of the county legislative body to which this subdivision (f)(7)(A) may apply.

(B) The approval or nonapproval of subdivision (f)(7)(A) shall be proclaimed by the presiding officer of the county legislative body and certified by the presiding officer to the secretary of state.

(g) A majority of the board shall constitute a quorum.

(h) The board shall elect its own chair, and shall be authorized to employ such clerical help as may be necessary.

(i) The board shall hold public meetings at least once each month at such regular time and place as the board may determine, and special meetings upon the call of the chair.

(j) The board shall establish its own rules of procedure.

(k) Any member of the board may be removed from office for cause upon a vote of two-thirds (⅔) of the members of the county legislative body, but only after preferment of formal charges by a resolution of a majority of the county legislative body following a public hearing before it.

(*l*) Before the board shall adopt any proposed budget or salary plan for its employees, it shall submit same to the county legislative body for approval or rejection.

(m) Notwithstanding any law to the contrary, in any county having a population of not less than sixty-seven thousand three hundred (67,300) nor more than sixty-seven thousand four hundred (67,400), according to the 1980 federal census or any subsequent federal census, the county mayor may appoint members of the county legislative body to serve upon the board. Such members shall be subject to confirmation as provided in subsections (a) and (b).

(n) Notwithstanding subsections (a)-(d), a county having a population greater than nine hundred thousand (900,000), according to the 2010 federal census or any subsequent federal census, that creates a county board of public utilities on or after April 18, 2018 may call, in the resolution creating the board, for the election of the members of the board at the regular August election. The resolution shall:

(1) Specify the number of members of the board of public utilities;

(2) Specify the length of the terms of the members;
(3) Provide for the staggering of terms;
(4) Provide for the removal of members;
(5) Provide for the filling of vacancies on the board; and
(6) Specify the compensation for the members, if any.

**5-16-105. Superintendent — Powers and duties.**

(a) The superintendent shall have charge of all actual construction, the immediate management and operation of all the facilities as provided in this chapter and the enforcement of all rules, regulations, programs, plans and decisions of the governing authority, which shall be either the county legislative body or other governing body, or the board as provided in this chapter.

(b) The superintendent shall hire all employees and fix their duties, excepting that the appointment of all technical consultants, advisers and legal assistants shall be subject to the approval of the governing authority.

(c) The superintendent, with the approval of the governing authority, may fix compensation of all employees.

(d)(1) The superintendent may, with the approval of the governing authority, acquire and dispose of all property, real and personal, necessary to effectuate the purposes of this chapter. Title to such property shall in all cases be taken in the name of the county.

(2) The superintendent, subject to the approval of the governing authority, shall let all contracts.

(3) The superintendent may, however, make purchases of personalty up to a cost of ten thousand dollars ($10,000) without the approval of the governing authority, but subject to such regulations as the governing authority may prescribe.

(4) Any contract for construction exceeding ten thousand dollars ($10,000) shall be advertised by the superintendent for bids.

(5) If the powers conferred by this chapter are exercised by an agency other than the board as provided in this chapter, such bids shall be subject to the approval of the county mayor, and if they are exercised through the board, they shall be subject to approval of the board.

(6) If the county has a central purchasing authority, purchases for the purposes herein contemplated must, at the discretion of the governing body of the county, be made through:

(A) The central purchasing authority; or

(B) The county board of public utilities, in accordance with purchasing policies approved by the governing body of the county.

(e) The superintendent shall make and keep full and proper books and records, subject to the supervision and direction of the governing authority.

**5-16-109. Service charges — Rules and regulations.**

(a) The board or administrative agency shall determine and fix charges to be made for furnishing any and all of the facilities as provided in this chapter, upon a basis calculated to ensure the fiscal solvency of the operation at all times.

(b) The board or administrative agency is further authorized and directed to make and publish reasonable rules and regulations covering the use by any individual, firm or corporation of any facility furnished to users.

(c) A board or administrative agency that is increasing the charges for fire

protection services by more than ten percent (10%) shall obtain approval for such increase from the county legislative body prior to the increase taking effect. This subsection (c) applies in any county having a population greater than nine hundred thousand (900,000), according to the 2010 federal census or any subsequent federal census.

**5-21-103. Finance department — General provisions — County hospitals and nursing homes — Exclusion from coverage of chapter.**

(a)(1) There is hereby created a finance department to administer the finances of the county for all funds of the various departments, agencies and boards that are handled by the county trustee.

(2) The accounting, bank accounts, personnel and salary policies, and other policies of the funds and offices of the clerks of courts, county clerk, register of deeds, sheriff and trustee, that were not subject to the budgeting authority of the county legislative body prior to application of this part, are not subject to this part. This part shall not be construed as authority over the fee and commission accounts of other accounts that are not handled by the trustee for offices other than the trustee nor for the trustee's fee and commission account. This part shall not be construed as authority over personnel policies or procedures or salaries of the various county offices or departments, except with respect to requiring necessary recordkeeping and reporting needed for performing the payroll functions as prescribed by the finance committee.

(b) The finance department shall be responsible for purchasing, accounting, budgeting, payroll, cash management and other such financial matters of the county as provided in this chapter.

(c) All employees performing the functions of purchasing, payroll, accounting and budgeting in the various operating departments shall be transferred to the supervision of the director of finance, and such salaries, benefits and expenses relating to such personnel shall be budgeted under the finance department, notwithstanding any other law to the contrary. No employee may be transferred, however, from the office of the trustee, county clerk, assessor of property, clerks of courts, register of deeds or sheriff.

(d)(1) The department shall establish a system of fiscal management, control, accounting, budgeting, purchasing and cash management as herein provided.

(2) The system shall conform to generally accepted accounting principles and shall be in substantial agreement with the comptroller of the treasury uniform audit manual, the rules established by the commissioner of education, and state law.

(e)(1) Notwithstanding this chapter to the contrary, the county legislative body may exclude, by two thirds (⅔) majority vote, the county hospitals or nursing homes, or both, from this chapter. In the event county hospitals or nursing homes, or both, are excluded, the county legislative body may establish, after allowing the financial management committee to submit recommendations, financial procedures and reporting requirements to include, but not to be limited to, the following:

(A) Monthly financial reports;

(B) Approval of the required annual audit contract with a licensed Tennessee certified public accountant and the reports presented in such

audit;

(C) Inspection of records, bank statements and other financial records; and

(D) Approval of the annual budget by the county legislative body prior to the beginning of the fiscal year.

(2) If a hospital or nursing home, or both, is excluded from this chapter, the county legislative body may by two-thirds (⅔) majority vote include such hospitals or nursing homes, or both, under this chapter. Upon voting to include such hospital or nursing home, or both, implementation of this chapter shall begin no later than the beginning of the next fiscal year.

**5-21-115. Accounting system — Preaudit of invoices, etc.**

(a) There shall be set up and maintained in the department a system of fiscal procedure, control and centralized accounting, which shall be under the administrative control and direction of the director. The procedures and records shall be maintained in accordance with § 5-21-103(d).

(b)(1) Before any obligation against the county shall be paid or any disbursement warrant or voucher issued, a detailed invoice, receivable copy of the purchase order, or such document indicating receipt of merchandise or service should be approved by the head of an office, department or agency for which the obligation was made and be filed with the director.

(2) The director shall establish a system for making a careful preaudit of such invoice, purchase order, or other documents, including a comparison with any encumbrance document previously posted or filed authorizing such obligation, and shall approve for payment only such items as appear to be correct, properly authorized, and not exceeding the otherwise unencumbered balance of the allotments or appropriations against which they are chargeable.

(3) Disbursement warrants shall be promptly prepared for all such approved obligations by the director, signed in accordance with § 5-21-116 and mailed or delivered to the payees thereof.

**6-1-201. Right to adopt charter — Incorporation within specified distances from existing cities.**

(a)(1) The residents of any incorporated municipality or of any territory wanting to incorporate under this charter may adopt chapters 1-4 of this title in the manner provided in this chapter. Thereupon, the municipality or territory shall be and become incorporated and be governed as set forth in this chapter. No unincorporated territory shall be incorporated under this charter unless such territory contains not fewer than one thousand five hundred (1,500) persons, who shall be actual residents of the territory.

(2) No unincorporated territory shall be allowed to hold a referendum on the question of whether or not to incorporate under this charter until a plan of services is documented, setting forth the identification and projected timing of municipal services proposed to be provided and the revenue from purely local sources to be payable annually. The plan of services shall be attached to the petition to incorporate when such petition is filed with the county election commission. The plan of services shall include, but not be limited to, police protection, fire protection, water service, sanitary sewage system, solid waste disposal, road and street construction and repair,

recreational facilities, a proposed five-year operational budget, including projected revenues and expenditures, and the revenue from purely local sources to be payable annually. Municipalities that are first incorporated on or after July 1, 1993, and that produce no local own-source revenues in any fiscal year, shall not receive any state-shared revenues during the next fiscal year.

(3) Prior to filing the petition with the county election commission, a public hearing on the referendum on the question of whether or not to incorporate under this charter and plan of services shall be conducted. The public hearing shall be advertised in a newspaper of general circulation for two (2) consecutive weeks.

(b)(1)(A) Except as provided in subdivision (b)(2), no unincorporated territory shall be incorporated within three (3) miles of an existing municipality or within five (5) miles of an existing municipality of one hundred thousand (100,000) or more in population according to the latest census certified by the department of economic and community development. "Existing municipality" and "existing municipality of one hundred thousand (100,000) or more in population" do not include any county with a metropolitan form of government with a population of one hundred thousand (100,000) or more, according to the 1990 federal census or any subsequent census.

(B) If any part of the unincorporated territory proposed for incorporation is within five (5) miles of an existing municipality of one hundred thousand (100,000) or more, according to the most recent federal census, and if the governing body of such municipality adopts a resolution by a two-thirds (⅔) vote indicating that the municipality has no desire to annex the territory, such territory may be included in a proposed new municipality. A petition for incorporation shall include a certified copy of such resolution from the affected municipality.

(2) In any county having a population of more than eighteen thousand two hundred (18,200) and less than eighteen thousand five hundred (18,500), according to the latest census certified by the department of economic and community development, if any part of the unincorporated territory proposed for incorporation is within five (5) miles of an existing municipality of one hundred thousand (100,000) or more in population or within two (2) miles of an existing municipality of more than one thousand (1,000) and fewer than one hundred thousand (100,000) in population, according to the 1990 federal census or any subsequent census, then action on the petition as provided in §§ 6-1-202 and 6-1-204 shall be held in abeyance for fifteen (15) months from the date of filing the petition. If, within this period, the existing municipality does not annex at least twenty percent (20%) of the land area or twenty percent (20%) of the population of the territory proposed for incorporation, then proceedings shall be continued as provided in §§ 6-1-202 and 6-1-204 as though the petition had been filed at the conclusion of the fifteen-month period. If the existing municipality annexes at least that part of the territory within this period, then the petition shall be null and void.

(c) Notwithstanding subsection (a) or (b) to the contrary, a territory may be incorporated if the following conditions are fulfilled:

(1) The territory contains two hundred twenty-five (225) residents or more;

(2) The territory is composed of property that is one thousand six hundred feet (1,600′) or more above sea level on the western border of the territory and contiguous with a county boundary on the eastern border of the territory;

(3) The territory is located within an area that is bordered on the west, north and east by the Tennessee River and on the south by the border between Tennessee and another state; and

(4) The territory is located within a metropolitan statistical area.

(d) Notwithstanding subsections (a)-(c) to the contrary, a territory may be incorporated that meets the following conditions:

(1) The territory contains three hundred (300) residents or more;

(2) The territory's western boundary is contiguous with the western boundary of the county in which it is located;

(3) The territory is located within an area bordered on the north by the Loosahatchie River and on the south by the Wolf River;

(4) The territory's eastern boundary is approximately parallel with the western boundary, but in no place is more than eight (8) miles from the western boundary; and

(5) The territory is located within a metropolitan statistical area.

(e) Notwithstanding the requirements of this section, or §§ 6-1-202, 6-1-203, and 6-1-209, or any other law to the contrary, the petition for incorporation of the territory described in this subsection (e) may consist of a letter from a resident of the territory desiring to incorporate to the county election commission requesting that the question of incorporating the territory be placed on the ballot. The letter shall describe the exact boundaries of the proposed municipality, indicate the name of the proposed municipality, and indicate under which charter the territory desires to incorporate. The letter shall be treated as a petition meeting all the requirements of law.

(f)(1) Notwithstanding any law to the contrary, whenever the governing body of any existing city affected by this section, by a resolution adopted by a majority vote of its governing body, indicates that it has no interest in annexing the property to be incorporated, and when a certified copy of such resolution and a petition requesting that an incorporation election be held are filed with the county election commission, then the proceedings shall continue as provided in this chapter as though the proposed new incorporation was not within the specified distance of such existing city as provided in this section.

(2) Subdivision (f)(1) applies in counties having a population of not less than eighty thousand (80,000) nor more than eighty-three thousand (83,000), according to the 1990 federal census or any subsequent federal census, and in counties having a population of not less than twenty-four thousand six hundred seventy-six (24,676) nor more than twenty-four thousand seven hundred (24,700), according to the 2010 federal census or any subsequent federal census. An existing municipality located in an adjoining county may adopt a resolution in accordance with subdivision (f)(1) for purposes of authorizing incorporation under this subsection (f).

(g) Nothing in this part affects an existing municipality's authority to annex unincorporated areas within the existing municipality's urban growth boundary.

**6-20-101. Number and terms of commissioners — Election by districts.**

(a) In all cities that adopt chapters 18-22 of this title, commissioners as provided for in this charter shall be elected in the manner prescribed in this chapter.

(b) If such city or territory has a population of five thousand (5,000) or more according to the last federal census, there shall be elected at the first election five (5) commissioners, the three (3) receiving the highest number of votes to hold office for four (4) years, and the other two (2) for two (2) years. If such city or territory has a population of less than five thousand (5,000) according to the last federal census, there shall be elected at the first election three (3) commissioners, the two (2) receiving the highest number of votes to hold office for four (4) years and the third for two (2) years. The term of all commissioners thereafter elected shall be for four (4) years, or until their successors are elected and qualified. Any such city that has a population of not less than two thousand nine hundred twenty (2,920) nor more than two thousand nine hundred twenty-two (2,922), according to the federal census of 1960 or any subsequent federal census, five (5) commissioners shall be elected as provided for cities of more than five thousand (5,000) population. The deadline for filing nominating petitions for the first commissioners is thirty-five (35) days before the incorporation election.

(c) Any city having a population of less than five thousand (5,000) shall have the option of increasing the number of commissioners to five (5) by ordinance. In the next regular city election after the adoption of such an ordinance, voters shall be entitled to vote for three (3) commissioners, or four (4) commissioners, as the case may be, and at the same election the approval of the ordinance shall also be submitted to the voters. If a majority of those voting on the ordinance shall be for approval and the number of commissioners to be elected is three (3), the two (2) receiving the highest number of votes shall hold office for four (4) years, and the third for two (2) years. If the number of commissioners to be elected is four (4), the two (2) receiving the highest number of votes shall hold office for four (4) years, and the other two (2) for two (2) years. The terms of all commissioners thereafter elected shall be for four (4) years, or until their successors are elected and qualified. If a majority of those voting on the ordinance shall not be for approval, the ordinance shall be null and void, and the results of the election shall be certified as though the election were for one (1) commissioner, or two (2) commissioners, as the case may be, and as though no ordinance had been adopted. Any city that has previously adopted an ordinance approved by the voters pursuant to this subsection (c) increasing the number of commissioners from three (3) to five (5), may, after six (6) years, adopt an ordinance to decrease the number of commissioners from five (5) to three (3) following the same procedure. If a majority of those persons voting on the ordinance shall be for approval, then the number of commissioners shall be reduced to three (3). Any such ordinance providing for a decrease in the number of commissioners shall not operate to abbreviate the term of office of any elected commissioner.

(d) An ordinance increasing the number of commissioners to five (5) may also be submitted to the voters in an election on the question that the board of commissioners directs the county election commission to hold. At such election, voters shall be entitled to vote for two (2) commissioners to serve until the next regular city election. If a majority of those voting on the ordinance shall be for

approval, the two (2) candidates for commissioner receiving the highest number of votes shall be declared elected. At the next regular city election if the number of commissioners to be elected is four (4), the three (3) receiving the highest number of votes shall hold office for four (4) years, and the fourth for two (2) years; if the number of commissioners to be elected is three (3), they shall hold office for four (4) years. The terms of all commissioners thereafter elected shall be for four (4) years, or until their successors are elected and qualified. If a majority of those voting on the ordinance in the special election shall not be for approval, the ordinance and the election of the two (2) commissioners shall be null and void.

(e) Notwithstanding subsections (a)-(d), a city with a population of not less than six hundred (600) nor more than six hundred twenty-five (625) persons, according to the 1980 federal census or any subsequent federal census, located in a county with a population in excess of seven hundred thousand (700,000) persons, also according to the 1980 federal census or any subsequent federal census, shall elect all commissioners at one time for a four-year term so that the city may be spared the expense of conducting elections every two (2) years. In order to effectuate this provision, all commissioners to be elected at the 1983 election shall be elected to a two-year term only, to serve until the 1985 election at which time, and every four (4) years thereafter, all commissioners shall be elected to four-year terms. Subsection (e) shall have no effect unless approved by a two-thirds (⅔) vote of the governing body of any municipality to which it may apply.

(f) Cities that have adopted § 6-20-201(a)(3) to provide for popular election of the mayor shall have two (2) or four (4) commissioners as the case may be under subsection (b) or (c).

(g) Notwithstanding subsections (a)-(f), any city incorporated under or adopting this charter may, by ordinance, choose to elect the members of the board of commissioners by district. If the board chooses to elect commissioners by district, the board shall by ordinance create contiguous single-member districts equal to the number of commissioners. The districts shall be equitably apportioned according to population. The establishment of the districts and the fixing of their boundaries shall be accomplished not less than twelve (12) months prior to the regular city election at which commissioners are to be elected, and any change in district boundaries shall also be accomplished within this time limitation. The board shall, within ten (10) years from the initial establishment of districts and at least once in every ten (10) years thereafter, reapportion the districts so that the apportionment shall comply with the requirements of this section. One (1) commissioner shall be elected from each district of the city. The ordinance providing that the commissioners will be chosen by districts may provide that each district commissioner will be elected by the voters of the city at-large or by only the voters of the district. A person must reside in a district to run for or hold the office of commissioner from that district. The ordinance providing that commissioners will be chosen by district may also provide for transition provisions, including increasing the terms of the number of commissioners necessary so that the initial election from all districts shall take place at the same time. The ordinance may provide that all commissioners initially elected serve four-year terms or that some serve four (4) years and some serve two (2) years. If some are elected for two (2) years, their successors shall be elected for four (4) years, so that the commissioners have staggered terms. After the initial election, all commission-

ers shall be elected for four-year terms.

(h) Any city having a population of more than twenty thousand (20,000), according to the last federal census, shall have the option of increasing the number of commissioners to seven (7) by ordinance. Upon adoption of such an ordinance, it shall be filed with the county election commission, which shall submit approval of the ordinance to the voters of the city at the next general election or regular city election that follows the filing period required pursuant to § 2-3-204(b). If a majority of those voting on the ordinance are not for approval, the ordinance shall be null and void. If a majority of those voting on the ordinance are for approval, then at the next regular city election, voters shall be entitled to vote for four (4) commissioners, or five (5) commissioners, as the case may be, in order to provide for a total of seven (7) commissioners. If the number of commissioners to be elected is four (4), each shall hold office for four (4) years. If the number of commissioners to be elected is five (5), the three (3) receiving the highest number of votes shall hold office for four (4) years, and the other two (2) for two (2) years. The terms of all commissioners thereafter elected shall be for four (4) years, or until their successors are elected and qualified. An ordinance approved by the voters pursuant to this section may not be repealed or amended.

(i)(1) In elections of commissioners in a city having a population of not less than five thousand seven hundred sixty (5,760) nor more than five thousand eight hundred eighty (5,880) which is located inside a county having a population of not less than eighty-nine thousand eight hundred (89,800) nor more than eighty-nine thousand nine hundred (89,900), according to the 2010 federal census or any subsequent federal census, commission positions shall be designated as Seat A, Seat B, Seat C, Seat D, or Seat E. Any candidate for the commission shall designate, upon qualifying for election, the particular designated seat that the candidate seeks. In each regular city election, all voters in the city may vote for one (1) candidate for each designated seat that is open by reason of the expiration of a commissioner's term.

(2) Subdivision (i)(1) shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of any municipality to which it may apply.

(j) In any city having a population of not less than seven thousand five hundred fifty (7,550) nor more than seven thousand eight hundred (7,800) that is located inside a county having a population of not less than one hundred eighty-three thousand one hundred (183,100) nor more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 federal census or any subsequent federal census, the board of commissioners shall be elected as follows:

(1) In the 2020 election, the two (2) candidates receiving the highest number of votes are elected to four-year terms, and the candidate receiving the third highest number of votes is elected to a two-year term;

(2) In the 2022 election, the two (2) candidates receiving the highest number of votes are elected to four-year terms, and the candidate for mayor receiving the highest number of votes is elected to a four-year term; and

(3) In subsequent elections, all members of the board of commissioners shall be elected to four-year terms.

**6-20-109. Beginning of terms of office.**

(a) The terms of all commissioners shall begin at the beginning of the first regularly scheduled meeting of the board of commissioners following the date of their election.

(b) In any city having a population of not less than seven thousand five hundred fifty (7,550) nor more than seven thousand eight hundred (7,800) that is located inside a county having a population of not less than one hundred eighty-three thousand one hundred (183,100) nor more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 federal census or any subsequent federal census, the terms of all members of the board of commissioners begin at the beginning of the first regularly scheduled meeting of the board of commissioners in the month of January immediately following the date of the members' elections. The terms of the members of the board of commissioners in office on May 3, 2018, are extended until the first regularly scheduled meeting of the board of commissioners in the month of January following the election for which their seat is contested, but no term may be extended beyond four (4) years and two (2) months.

**6-51-104. Resolution for annexation by referendum — Notice.**

(a)(1) A municipality, when petitioned by interested persons, or upon its own initiative, by resolution, may propose extension of its corporate limits by the annexation of territory adjoining to its existing boundaries; provided, however, no such resolution shall propose annexation of any property being used primarily for agricultural purposes. Notwithstanding this part or any other law to the contrary, property being used primarily for agricultural purposes shall be annexed only with the written consent of the property owner or owners.

(2) A referendum is not required to effectuate annexation of territory if:

(A) All of the property owners within the territory proposed for annexation consent in writing; or

(B) **[Effective until January 1, 2023.]**

(i)*(a)* Two-thirds (2/3) of the property owners within the territory proposed for annexation consent in writing;

*(b)* The total area of the property owned by the owners consenting to annexation under subdivision (a)(2)(B)(i) is more than one-half (1/2) of the territory proposed for annexation; and

*(c)* The proposed annexation consists of nine (9) or fewer parcels;

(ii) Subdivision (a)(2)(B) is repealed January 1, 2023.

(b)(1)(A) A copy of the resolution, describing the territory proposed for annexation, shall be promptly sent by the municipality to the last known address listed in the office of the property assessor for each property owner of record within the territory proposed for annexation. The resolution shall be sent by first class mail and shall be mailed no later than fourteen (14) calendar days prior to the scheduled date of the hearing on such proposed annexation. The resolution shall also be published by posting copies of it in at least three (3) public places in the territory proposed for annexation and in a like number of public places in the municipality proposing such annexation, and by publishing notice of such resolution at or about the same time in a newspaper of general circulation, if there is one, in such territory and municipality. The resolution shall also include a plan of

services for the area proposed for annexation. The plan of services shall comply with the requirements of § 6-51-102, including the public hearing and notice requirements, prior to the adoption of the resolution. Upon adoption of the plan of services, the municipality shall cause a copy of the resolution to be forwarded to the county mayor in whose county the territory being annexed is located.

(B) A person or persons with personal knowledge of the mailing of the resolutions to each property owner of record pursuant to subdivision (b)(1)(A) may submit a notarized affidavit to the presiding officer of the municipality attesting that such resolutions were mailed in accordance with this subdivision (b)(1). Failure of a property owner to receive a notice that was mailed pursuant to subdivision (b)(1)(A) shall not be grounds to invalidate the annexation.

(2) After receiving the notice from the municipality as provided in subdivision (b)(1), the county mayor shall notify the appropriate departments within the county regarding the information received from the municipality.

(c) A resolution proposing annexation by written consent of the property owner or owners shall become effective only upon adoption of such resolution by the municipality.

(d)(1) A municipality may by resolution propose annexation of territory that does not adjoin the boundary of the main part of the municipality, without extending the corporate limits of that territory, if the territory proposed for annexation is entirely contained within the municipality's urban growth boundary and is either:

(A) To be used for industrial or commercial purpose or future residential development; or

(B) Owned by one (1) or more governmental entities.

(2) A resolution under this subsection (d) shall be ratified only with the written consent of the property owner or owners.

(3) For purposes of this subsection (d), the boundary of the main part of the municipality is defined as the corporate limits of the territory containing its town seat or city hall. Territory that does not adjoin that boundary before a proposal to annex it is introduced cannot be annexed except as provided in this subsection (d).

(4) The resolution shall include the plan of services adopted under § 6-51-102. The plan shall be prepared by the municipality in cooperation with the county in which the territory is located. The municipality and county shall enter into an interlocal agreement pursuant to § 5-1-113 to provide emergency services for any interceding properties and to maintain roads and bridges comprising the primary route to the area thus annexed as the municipality and county deem necessary.

(5) [Deleted by 2017 amendment.]

**6-54-143. Attendance of meetings by service members through use of two-way electronic audio-video communication.**

(a) By passage of an ordinance, by a two-thirds (⅔) vote, a municipal legislative body may allow a service member who is deployed for thirteen (13) months or less while serving as a member of the municipal legislative body to attend sessions of the body through the use of two-way electronic audio-video

communication during the deployment. Attendance by the use of two-way electronic audio-video communication does not prevent the service member from being allowed to vote or drawing pay for attendance. Only one (1) service member at a time may attend and vote in sessions of the body as provided in this subsection (a).

(b) As used in this section, "service member" means a member of the following:

(1) The active and reserve components of the army, navy, air force, marine corps, or coast guard of the United States;

(2) The United States merchant marine;

(3) The commissioned corps of the United States public health service;

(4) The commissioned corps of the national oceanic and atmospheric administration of the United States; or

(5) The national guard of this state.

**6-54-144. Ordinance prohibiting or restricting display of flag prohibited — Ordinance regulating manner or placement of flag.**

(a) As used in this section, "municipality" means any incorporated town, city, or metropolitan government.

(b) Except as provided in subsection (c), a municipality shall not adopt or enforce an ordinance that prohibits or restricts, or has the effect of prohibiting or restricting, a property owner from displaying a flag of the United States of America, a flag of the state of Tennessee, the MIA/POW flag, or an official or replica flag of any branch of the United States armed forces on the property owner's property.

(c) A municipality may adopt and enforce an ordinance that reasonably regulates the manner and placement of the display of a flag of the United States of America, a flag of the state of Tennessee, the MIA/POW flag, or an official or replica flag of any branch of the United States armed forces only when necessary to promote public health and safety.

**6-54-145. Stopping Addiction and Fostering Excellence (SAFE) Act.**

(a) As used in this section:

(1) "Municipality" means an incorporated city or town, or a county with a metropolitan form of government; and

(2)(A) "Sober living home" means any home classified as a "single family residence" under § 13-24-102 that provides alcohol-free or drug-free housing, promotes independent living, life skill development, and reintegration, and provides structured activities that are directed primarily toward a group of unrelated individuals who are recovering from drug or alcohol addiction and who may be receiving outpatient healthcare services for substance abuse or addiction treatment while living in the home;

(B) "Sober living home" does not mean:

(i) A home that is chartered by a 501(c)(3) nonprofit organization that:

*(a)* Serves as an umbrella organization and organizes homes into chapters; and

*(b)* Is governed by a council and board of directors that maintain the sole right to charter, and revoke the charter of, a home;

(ii) A home that is an affiliate of a 501(c)(3) nonprofit organization

located in this state that:

*(a)* Pre-screens new affiliates;

*(b)* Requires affiliates to adhere to a code of ethics; and

*(c)* Requires affiliates to make an annual contribution based on the number of recovery residences; or

(iii) A home or facility that is licensed or funded by the department of mental health and substance abuse services.

(b) A municipality may adopt an ordinance requiring each sober living home to display in a prominent place within the sober living home, a sign at least eleven inches (11″) in height and seventeen inches (17″) in width stating:

NOTICE: THIS IS A SOBER LIVING HOME THAT PROVIDES HOUSING TO MEN AND/OR WOMEN WHO DO NOT REQUIRE MORE STRUCTURED TREATMENT ENVIRONMENTS. THIS HOME PROMOTES INDEPENDENT LIVING, LIFE SKILL DEVELOPMENT, AND REINTEGRATION. THIS HOME IS DESIGNED TO ASSIST MEN AND/OR WOMEN TO RECOVER FROM DRUG OR ALCOHOL ADDICTION. **THIS HOME IS NOT LICENSED OR FUNDED BY THE TENNESSEE DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES** AS IT IS PRIVATELY FUNDED AND DOES NOT PROVIDE TREATMENT SERVICES.

IF YOU ARE IN NEED OF TREATMENT SERVICES, PLEASE CALL THE TENNESSEE REDLINE AT 1-800-889-9789.

IF YOU WOULD LIKE ADDITIONAL INFORMATION REGARDING ADDITIONAL SUBSTANCE ABUSE SERVICES AND RESOURCES, INCLUDING SOBER LIVING OPTIONS, PLEASE VISIT THE TENNESSEE DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES WEBSITE AT https://www.tn.gov/behavioral-health.html. THIS IS A NOTICE POSTED PURSUANT TO [MUNICIPALITY CODE REFERENCE].

(c) A municipality shall display in the city hall or other building which houses the municipality's seat of local government, a sign at least eleven inches (11″) in height and seventeen inches (17″) in width stating:

PURSUANT TO TENNESSEE CODE ANNOTATED § 33-2-405, IT IS UNLAWFUL FOR A PERSON, PARTNERSHIP, ASSOCIATION, OR CORPORATION TO OWN OR OPERATE A SERVICE OR FACILITY THAT PROVIDES ALCOHOL AND DRUG ABUSE PREVENTION AND/OR TREATMENT WITHIN THE MEANING OF TITLE 33 OF THE TENNESSEE CODE ANNOTATED WITHOUT HAVING OBTAINED A LICENSE. A VIOLATION OF THIS REQUIREMENT IS A CLASS B MISDEMEANOR. EACH DAY OF OPERATION WITHOUT A LICENSE CONSTITUTES A SEPARATE OFFENSE. REPORT ANY SUSPECTED UNLICENSED ALCOHOL AND DRUG ABUSE PREVENTION AND/OR TREATMENT SERVICES TO THE TENNESSEE DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES' OFFICE OF LICENSURE BY DIALING [WEST TENNESSEE LICENSURE OFFICE PHONE NUMBER; MIDDLE TENNESSEE LICENSURE OFFICE PHONE NUMBER; OR EAST TENNESSEE LICENSURE OFFICE PHONE NUMBER, AS APPLICABLE TO THE LOCATION OF THE MUNICIPALITY].

(d) If a municipality maintains a website, the notice required under subsection (c) must be placed prominently on the municipality's website.

(e) A municipality may adopt an ordinance encouraging sober living homes

to:

(1) Become chartered by an organization described under (a)(2)(B)(i); or

(2) Comply with the requirements for recovery residences prescribed by an organization described under subdivision (a)(2)(B)(ii).

(f) Any ordinance adopted under this section must comply with the Fair Housing Act, 42 U.S.C. § 3601 et seq., and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.

**7-34-115. Operation of utility systems — Disposition of revenue.**

(a)(1) Notwithstanding any other law to the contrary, as a matter of public policy, municipal utility systems shall be operated on sound business principles as self-sufficient entities. User charges, rates and fees shall reflect the actual cost of providing the services rendered. No public works shall operate for gain or profit or as a source of revenue to a governmental entity, but shall operate for the use and benefit of the consumers served by such public works and for the improvement of the health and safety of the inhabitants of the area served. Nothing in this section shall preclude a municipal utility system from operating water and sewer systems as individual or combined entities. Nothing in this section shall preclude a municipal utility system from operating a public works system as a special revenue fund when the governing body of the municipality determines that it is in the best interest of the customers of the public works system and the citizens of the municipality. All water systems and wastewater facilities must utilize an enterprise fund for accounting and reporting its operations. Any water system or wastewater facility currently not operating as an enterprise fund must be doing so by July 1, 2016. To the extent of any conflict between this section and the Wastewater Facilities Act of 1987, compiled in title 68, chapter 221, part 10, the latter statute shall control. Any municipality shall devote all revenues derived from a public works to or for:

(A) The payment of all operating expenses;

(B) Bond interest and retirement or sinking fund payments, or both;

(C) The acquisition and improvement of public works;

(D) Contingencies;

(E) The payment of other obligations incurred in the operation and maintenance of the public works and the furnishing of services;

(F) The redemption and purchase of bonds, in which case such bonds shall be cancelled;

(G) The creation and maintenance of a cash working fund;

(H) The payment of an amount to the general fund of the municipality not to exceed a cumulative return of six percent (6%) per annum of any equity invested from the general fund, if any, of the municipality. Equity investment includes any contributions or purchases made by the municipality from the general fund, including, but not limited to, cash contributions, retirement of debt service and purchases of equipment, so long as these contributions are reflected in the utility's financial statement; provided, that such definition of equity investment shall not change the status under this section of any payments made pursuant to any city charter in existence on or before July 1, 1993; and

(I) If the governing body of the municipality by resolution so requests, payments to the municipality in lieu of ad valorem tax on the property of

the public works within the corporate limits of the municipality not to exceed the amount of taxes payable on privately owned property of similar nature.

(2) Notwithstanding subdivision (a)(1) or any other law to the contrary, if the municipal utility system is a natural gas utility system, the municipal utility board with management responsibility for the municipal utility system or, if there is no such board, the municipal governing body, may also devote revenues derived from the system to funding chambers of commerce and economic and community organizations in accordance with an ordinance or resolution adopted by the governing body of the municipality. A municipal utility system whose revenues are devoted pursuant to this subdivision (a)(2) shall not raise rates on customers to cover contributions targeted for economic development efforts. The authorization provided in this subdivision (a)(2) shall only apply to municipal natural gas utility systems that are located in counties having a population of less than three hundred thirty-six thousand four hundred (336,400) according to the 2010 federal census, and the authorization provided in this subdivision (a)(2) is in addition to such authorization as may be provided to municipal utility systems under otherwise applicable law.

(b) Any surplus remaining, after establishment of proper reserves, if any, shall be devoted solely to the reduction of rates.

(c) In the event a municipality establishes a pension plan for employees of public works, expenditures incident to inaugurating and maintaining such plan shall be deemed an operating expense for purposes of this section.

(d) In computing the equity investment of the municipality, the value of the public works shall be taken as its historical cost. The payment of bonds or the acquisition or improvement of property from the receipts derived from a public works or any other operation of the public works as such shall not be considered to increase the equity investment of the municipality.

(e) Nothing in this section shall be construed to limit the power of the municipality to make contracts with the purchasers of bonds:

(1) As to the use and disposition of the revenues otherwise than as set forth in subsection (a);

(2) As to the order of application of such revenues; or

(3) As to limitations on the amount of payments to the municipality either as a return on the equity investment of the municipality, if any, or as a payment in lieu of taxes.

(f) If a municipality violates this section, it must repay any funds illegally transferred. If the municipality does not have sufficient funds to repay any funds illegally transferred, the municipality is required to submit a plan covering a period not to exceed five (5) years in which to repay the funds. The plan shall be submitted to and approved by the comptroller of the treasury or the comptroller's designee. Upon discovery of such violation through an audit, any city official in violation of this section is subject to ouster under title 8, chapter 47.

(g) Nothing in this section shall preclude a local government from being entitled to receive from a utility the amount of direct and properly allocated and disclosed indirect operating expenses incurred by the municipality on behalf of the utility.

(h) To the extent of any conflict between this section and § 7-39-404, or chapter 52, part 3 of this title, § 7-39-404, or chapter 52, part 3 of this title

shall control.

(i)(1) In addition to the authority granted under otherwise applicable law, a municipality operating a municipal utility system has the power and is authorized, acting through the authorization of the board or supervisory body having responsibility for the municipal utility system, to accept and distribute voluntary contributions for bona fide charitable purposes pursuant to programs approved by the board or supervisory body, which programs may include, but shall not be limited to, programs in which utility bills are rounded up to the next dollar when such contribution is shown as a separate line on the utility bill.

(2) Contributions accepted by a municipal utility system pursuant to programs authorized by subdivision (i)(1) shall not be considered revenue to the municipal utility system, and such contributions shall be used only for charitable purposes.

(3) For purposes of this subsection (i), a "charitable purpose" is one that provides relief to the poor or underprivileged, advances education or science, addresses community deterioration, provides community assistance, assists in economic development, provides for the erection of public buildings, monuments or works, assists in historic preservation, or promotes social welfare through nonprofit or governmental organizations designed to accomplish any of the purposes listed in this subdivision (i)(3).

(j)(1) The governing body of a municipal utility system subject to this section that supervises, controls, or operates a public water or public sewer system, including, but not limited to, those systems using a separate utility board pursuant to any public or private act, must meet the training and continuing education requirements in this subsection (j).

(2) All members of the municipal utility board of commissioners shall, within one (1) year of initial appointment or election to the board of commissioners or within one (1) year of reappointment or reelection to the board of commissioners, attend a minimum of twelve (12) hours of training and continuing education in one (1) or more of the subjects listed in subdivision (j)(4).

(3)(A) In each continuing education period after the initial training and continuing education required by subdivision (j)(2), a municipal utility board commissioner shall attend a minimum of twelve (12) hours of training and continuing education in one (1) or more of the subjects listed in subdivision (j)(4).

(B) For the purposes of this subsection (j) and subsection (k), "continuing education period" means a period of three (3) years beginning January 1 after the calendar year in which a municipal utility board commissioner completes the training and continuing education requirements set forth in subdivision (j)(2) and each succeeding three-year period thereafter.

(4) The subjects for the training and continuing education required by this subsection (j) shall include, but not be limited to, board governance, financial oversight, policy-making responsibilities, and other topics reasonably related to the duties of the members of the board of commissioners of a municipal utility.

(5) Any association or organization with appropriate knowledge and experience may prepare a training and continuing education curriculum for municipal utility board commissioners covering the subjects set forth in subdivision (j)(4) to be submitted to the comptroller of the treasury for

review and approval prior to use. The comptroller shall file a copy of approved training and continuing education curriculum with the water and wastewater financing board. Changes and updates to the curriculum must be submitted to the comptroller for approval prior to use. Any training and continuing education curriculum approved by the comptroller must be updated every three (3) years and resubmitted to the comptroller for review and approval.

(6) For purposes of this subsection (j), a municipal utility board commissioner may request a training and continuing education extension of up to six (6) months from the comptroller of the treasury or the comptroller's designee. The request shall only be granted upon a reasonable showing of substantial compliance with this subsection (j). If the extension is granted, the municipal utility board commissioner must complete any additional required training hours necessary to achieve full compliance for only the relevant continuing education period within the extension period. The municipal utility board commissioner shall file copies of any extension request letters and corresponding comptroller of the treasury determination letters with the water and wastewater financing board.

(7)(A) Beginning no later than March 1, 2019, the comptroller of the treasury shall offer online training and continuing education courses for purposes of compliance with this subsection (j).

(B) Any association or organization with appropriate knowledge and experience may prepare an online training and continuing education curriculum for municipal utility board commissioners covering the subjects set forth in subdivision (j)(4) to be submitted to the comptroller of the treasury for review and approval prior to use.

(C) The comptroller of the treasury shall file a copy of approved online training and continuing education curriculum with the water and wastewater financing board. Changes and updates to the curriculum must be submitted to the comptroller of the treasury for approval prior to use. Any online training and continuing education curriculum approved by the comptroller of the treasury must be updated every three (3) years and resubmitted to the comptroller of the treasury for review and approval.

(D) Any person required to complete training and continuing education under this subsection (j) may take one (1) or more of such online courses in lieu of attending training and continuing education courses in person.

(E) The online training and continuing education provider shall provide an affidavit, in a form prescribed by the comptroller of the treasury, that shall be submitted by the commissioner to the provider to verify attendance and completion of the online training and continuing education course. The training and continuing education provider shall forward completed affidavits to the appropriate records custodian for maintenance.

(k) If any member of a municipal utility board of commissioners fails to meet the training and continuing education requirements set forth in subsection (j) before the end of the continuing education period or before the end of any extension approved by the comptroller of the treasury or the comptroller's designee, then the water and wastewater financing board shall have full discretion to order reasonable sanctions against the municipality, including, but not limited to, the municipality being ineligible to receive assistance from the Tennessee local development authority under § 68-221-1206(a)(3).

**7-35-202. Action for unpaid sewer or wastewater utility fees or assessments.**

(a) In addition to § 7-35-201, upon approval by a two-thirds (⅔) vote of the legislative body, any municipality having a municipal sanitary sewer system may enforce the payment of fees or assessments charged for sewer or wastewater disposal utility services by filing an action in the same manner and with the same penalties and interest attached as provided for the enforcement of unpaid taxes pursuant to title 67, including the sale or execution of such property as provided in title 26, chapter 5, and the redemption provisions of title 66, chapter 8. Such action may be taken only once every calendar year by the municipal sanitary sewer system for unpaid sewer or wastewater utility fees or assessments. The municipal sanitary sewer system shall be required to give notice to the property owner, if different from the service user, not less than ninety (90) days prior to the filing of any action, which would include levying on the real property. Such notice shall be mailed to the last known address of the property owner as contained on the tax records of the county where the property is located, and shall include the amount of the unpaid fee or assessment for sewer or wastewater disposal services, together with penalties and interest. The notice shall also contain a statement to the effect that, unless the payments are brought up to date, a lien will attach to the property and an action will be filed pursuant to title 67. The municipal sanitary sewer system shall bear the reasonable costs incurred by a property owner in defending such an action due to an error in the records or fees of the system for the provision of such sewer or wastewater disposal services.

(b) As used in this section, "municipality" means a municipality having a population of:

(1) Not less than eight hundred ninety (890) nor more than nine hundred (900), according to the 1990 federal census or any subsequent federal census; and

(2) Not less than five hundred thirty (530) nor more than five hundred forty (540) that is located in a county having a population of not less than thirty-one thousand seven hundred one (31,701) nor more than thirty-one thousand eight hundred seven (31,807), according to the 2010 federal census or any subsequent federal census.

**7-40-103. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Base tax revenues" means the revenues generated from the collection of state sales and use taxes from all businesses within the applicable border region retail tourism development district as of the end of the fiscal year of this state immediately prior to the year in which the municipality or industrial development corporation is entitled to receive an allocation of tax revenue pursuant to this chapter. In no event shall the apportionment pursuant to this chapter be adjusted to reduce the economic benefit to the municipality as is provided in this chapter;

(2) "Best interests of the state" means a determination by the commissioner of revenue, with approval by the commissioner of economic and community development, that:

(A) The economic development project or extraordinary retail or tourism facility within the district is a result of the special allocation and

distribution of state sales tax provided for in § 7-40-106; and

(B) The district is a result of the project or extraordinary retail or tourism facility;

(3) "Border region retail tourism development district" or "district" means one (1) or more parcels of real property located within a municipality, some part of whose corporate limits borders a neighboring state, and which some boundary of a district is no more than one-half (½) mile from an existing federally-designated interstate exit, is no more than twelve (12) miles from a state border as measured by straight line, is no larger than a total area of nine hundred fifty (950) acres, and designated as a border region retail tourism development district by a municipal ordinance and certified by the commissioner;

(4) "Commissioner" means the commissioner of revenue;

(5) "Cost" means all cost of an economic development project in a district incurred by the municipality or industrial development corporation during the investment period, including, but not limited to, the cost of developing the district, as well as acquisition, design, construction, renovation, improvement, demolition, and relocation of any improvements; the cost of labor, materials, and equipment; the cost of all lands, property rights, easements and franchises required; financing charges, interest, and debt service prior to, during, or after construction; the cost of issuing bonds in connection with any financing, cost of plans and specifications, services and estimates of costs and of revenue; cost of direct or indirect assistance, including funds for location assistance; cost of site preparation, engineering, accounting, and legal services; all expenses necessary or incident to determining the feasibility or practicability of such acquisitions or constructions; salaries, overhead, and other costs of the municipality or industrial development corporation allocated to the project, including new development or subsequent phases of the project to be completed within the thirty-year period established in § 7-40-104(d), and administrative, legal, and engineering expenses and such other expenses as may be necessary or incident to such acquisition, design, construction, renovation, demolition, relocation, or the financing thereof, including any such costs incurred by a municipality or industrial development corporation relating to the development of an extraordinary retail or tourism facility within two (2) years prior to the municipality's designation of the proposed border region retail tourism development district for such project;

(6) "Economic development project" or "project" means the provision of direct or indirect financial assistance, including funds for location assistance, to an extraordinary retail or tourism facility and other retail or tourism facilities developed to accompany the extraordinary retail or tourism facility in a border region retail tourism development district by a municipality or an industrial development corporation including, but not limited to, the purchase, lease, grant, construction, reconstruction, improvement, or other acquisition or conveyance of land, buildings or equipment, or other infrastructure; public works improvements essential to the location of an extraordinary retail or tourism facility and other retail or tourism facilities developed to accompany the extraordinary retail or tourism facility; payments for professional services contracts necessary for a municipality or industrial development corporation to implement a plan or project; the provision of direct loans or grants for land, buildings, or infrastructure; and

loan guarantees securing the cost of land, buildings, location assistance, or infrastructure in an amount not to exceed the revenue that may be derived from the sales and use tax transferred to the municipality as provided in this chapter. It also includes development of parks, plazas, sidewalks, access ways, roads, drives, bridges, ramps, landscaping, signage, parking lots, parking structures, and other public improvements constructed or renovated by the municipality or an industrial development corporation in connection with the project in the district and any related infrastructure and utility improvements for public or private peripheral development for the district and which is constructed, renovated, or installed by the municipality or an industrial development corporation;

(7) "Extraordinary retail or tourism facility" means a single store, series of stores, or other public tourism facility or facilities located within a border region retail tourism development district, and shall include retail or other public tourism facilities that are reasonably anticipated to draw at least one million (1,000,000) visitors a year upon completion. The extraordinary retail or tourism facility shall reasonably be expected to require a capital investment of at least twenty million dollars ($20,000,000) including land, buildings, site preparation costs, and is reasonably anticipated to remit at least two million dollars ($2,000,000) in state sales and use tax, annually, when completed;

(8) "Industrial development corporation" means a corporation created or authorized by a municipality or county pursuant to chapter 53 of this title;

(9) "Investment period" means a period beginning two (2) years prior to the municipality's designation of the proposed border region retail tourism development district for the project and ending fifteen (15) years after certification of the district pursuant to § 7-40-104(a)(4);

(10) "Municipal governing body" means the city council, city commission, or board of mayor and aldermen of a city; and

(11) "Municipality" means an incorporated city located in this state.

**7-53-101. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Applicable ad valorem taxes" means any ad valorem taxes that, but for ownership of a project by a corporation, would have been due and payable pursuant to §§ 67-5-102 and 67-5-103;

(2) "Bonds" means bonds, notes, interim certificates or other obligations of a corporation issued pursuant to this chapter;

(3) "Contracting party" or "other contracting party" means any party to a sale contract or loan agreement except the corporation;

(4) "Corporation" means any corporation organized pursuant to this chapter;

(5) "Eligible headquarters facility" means a facility, located in a county with a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census, that houses an international, national or regional headquarters facility of an entity that agrees, at a minimum, to make payments to the municipality in lieu of any special assessments or other fees or charges that would be levied on the project pursuant to chapter 84 of this title if the project were privately owned;

(6) "Enterprise" means the manufacturing, processing, assembling, commercial, service and agricultural operations to be carried on with or otherwise using the facilities of the project;

(7) "Governing body" means the board or body in which the general legislative powers of the municipality are vested;

(8) "Lease" includes a lease containing an option to purchase the project for a nominal sum upon payment in full, or provision for payment in full, of all bonds issued in connection with the project and all interest on the bonds and all other expenses in connection with the project, and a lease containing an option to purchase the project at any time, as provided in the lease, upon payment of the purchase price, which shall be sufficient to pay all bonds issued in connection with the project and all interest on the bonds and all other expenses incurred in connection with the project, but which payment may be made in the form of one (1) or more notes, debentures, bonds or other secured or unsecured debt obligations of the lessee providing for timely payments, including, without limitation, interest on the obligations sufficient for such purposes and delivered to the corporation or to the trustee under the indenture pursuant to which the bonds were issued;

(9) "Loan agreement" means an agreement providing for a corporation to loan the proceeds derived from the issuance of bonds pursuant to this chapter to one (1) or more contracting parties to be used to pay the cost of one (1) or more projects and providing for the repayment of such loan by the other contracting party or parties, and that may provide for such loans to be secured or evidenced by one (1) or more notes, debentures, bonds or other secured or unsecured debt obligations of the contracting party or parties, delivered to the corporation or to the trustee under the indenture pursuant to which the bonds were issued;

(10) "Mayor," as used in § 7-53-314, means the chief executive officer of any county having a metropolitan form of government and having a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, with respect to which a corporation has been organized;

(11) "Municipality" means any county or incorporated city or town in this state with respect to which a corporation may be organized and in which it is contemplated the corporation will function;

(12) "Payments in lieu of taxes" means any amount negotiated separately from rent in lieu of applicable ad valorem taxes;

(13) "Pollution" means the placing of any noxious or deleterious substances, including noise, in any air or water of or adjacent to the state of Tennessee affecting the physical, chemical or biological properties of any air or waters of or adjacent to the state of Tennessee in a manner and to an extent that renders or is likely to render such air or waters inimical or harmful to the public health, safety or welfare, or to animal, bird or aquatic life, or to the use of such air or waters for domestic, industrial, agricultural or recreational purposes;

(14) "Pollution control facilities" means any equipment, structure or facility or any land and any building, structure, facility or other improvement on the land, or any combination thereof, and all real and personal property deemed necessary therewith having to do with or the end purpose of which is the control, abatement or prevention of water, air, noise or general environmental pollution, including, but not limited to, any air

pollution control facility, noise abatement facility, water management facility, waste water collecting systems, waste water treatment works or solid waste disposal facility;

(15) "Project" means all or any part of, or any interest in:

(A) Any land and building, including office building, any facility or other improvement on the land, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, that shall be suitable for the following or by any combination of two (2) or more thereof:

(i) Any industry for the manufacturing, processing or assembling of any agricultural, mining, or manufactured products;

(ii) Any commercial enterprise in selling, providing, or handling any financial service or in storing, warehousing, distributing or selling any products of agriculture, mining or industry;

(iii) Any undertaking involving the use of ship canals, ports or port facilities, off-street parking facilities, docks or dock facilities, or harbor facilities, or of railroads, monorail or tramway, railway terminals, or railway belt lines and switches;

(iv) All or any part of any office building or buildings for the use of such tenant or tenants as may be determined or authorized by the board of directors of the corporation, including, without limitation, any industrial, commercial, financial or service enterprise, any nonprofit domestic corporation or enterprise now or hereafter organized, whose purpose is the promotion, support and encouragement of either agriculture or commerce in this state or whose purpose is the promoting of the health, welfare and safety of the citizens of the state;

(v) Any office or other public building for any city, county or metropolitan government of the state of Tennessee or any board of public utilities, or any public authority, agency, or instrumentality of the state of Tennessee or of the United States;

(vi) Any buildings, structures and facilities, including the site of the buildings, structure and facilities, machinery, equipment and furnishings, suitable for use by any city, county or metropolitan government of the state of Tennessee or any for profit corporation operating buildings, structures and facilities, including the site of the buildings, structures and facilities, machinery, equipment and furnishings, under contract with any city, county or metropolitan government of the state of Tennessee as health care or related facilities, including, without limitation, hospitals, clinics, nursing homes, research facilities, extended or long-term care facilities, and all buildings, structures and facilities deemed necessary or useful in connection therewith;

(vii) Any nonprofit educational institution in any manner related to or in furtherance of the educational purposes of such institution, including, but not limited to, classroom, laboratory, housing, administrative, physical education, and medical research and treatment facilities;

(viii) Any planetarium or museum;

(ix) Any facilities for any recreation or amusement park, public park or theme park suitable for use by any private corporation or any governmental unit of the state of Tennessee, including the state of Tennessee;

(x) Any multifamily housing facilities to be occupied by persons of low or moderate income, elderly, or handicapped persons as may be determined by the board of directors, which determination shall be conclusive;

(xi)*(a)* Any undertaking involving the operation or management of the Job Training Partnership Act program pursuant to 29 U.S.C. § 1501 et seq. [repealed]. It is the legislative intent to include such project in order to increase employment opportunities pursuant to § 7-53-102;

*(b)* Subdivision (13)(A)(xi)(*a*) shall not apply in any county having a population, according to the 1980 federal census or any subsequent federal census of:

| not less than | nor more than |
|---|---|
| 14,940 | 15,000 |
| 49,400 | 49,500 |
| 56,000 | 56,100 |
| 74,500 | 74,600 |
| 85,725 | 85,825 |
| 477,000 | 500,000 |

(xii) Any land, buildings, structures and facilities, including the site of the building, structure and facilities, machinery, equipment and furnishings that constitute "recovery zone property" as in § 1400U-3(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 1400U-3(c)); and

(xiii) Facilities or expenditures paid or incurred for "qualified conservation purposes" as defined in § 54D of the Internal Revenue Code of 1986 (26 U.S.C. § 54D), in connection with the issuance of "qualified energy conservation bonds", as defined in § 54D of the Internal Revenue Code of 1986 (26 U.S.C. § 54D);

(B)(i) In any municipality in which there has been created a central business improvement district pursuant to chapter 84 of this title, "project" also means any hotel, motel or apartment building located within an area designated by appropriate resolution or ordinance by the municipality as the center-city area; and, in any municipality, "project" also means any hotel, including any conference or convention center facilities related to the hotel, or motel within an area that could provide substantial sources of tax revenues or economic activity to the municipality;

(ii) In counties with a metropolitan form of government, "project" also means any hotel, motel or apartment building located on property owned by or leased from an airport authority created pursuant to title 42, chapter 3 or 4, but this subdivision (15)(B)(ii) shall not apply in any county having a population of not less than one hundred twenty thousand (120,000) nor more than one hundred thirty thousand (130,000), according to the 1970 federal census or any subsequent federal census;

(iii) In the county seat of any county having a population of not less than nineteen thousand six hundred fifty (19,650) or more than nineteen thousand seven hundred fifty (19,750), according to the 1980

federal census or any subsequent federal census, "project" also means the purchase, acquisition, leasing, construction and equipping of hotels, motels, and apartments in any area within the county seat of such county;

(iv) In any municipality in which there is a closed or substantially downsized facility, including, but not limited to, a facility formerly operated by the United States department of defense or department of energy, "project" also means the purchase, acquisition, leasing, construction and equipping of hotels, motels, conference centers and apartments, on or adjacent to the site of the closed or substantially downsized federal facility;

(v) In any municipality with a population of at least fifteen thousand (15,000) or more, according to the 2010 federal census or any subsequent federal census, located partly within a county having a metropolitan form of government and partly within an adjacent county, "project" also means the purchase, acquisition, leasing, construction, and equipping of hotels and motels within any such municipality's corporate boundaries;

(C) Pollution control facilities, coal gasification facilities, and energy production facilities, as defined in § 7-54-101, and any buildings, structures and facilities, including the site of any buildings, structures and facilities, machinery, equipment and furnishings, for the production of electricity, that shall be suitable for use by any person including any public utility whether publicly or privately owned, board of public utilities, public authority, municipality, or agency or instrumentality of the state of Tennessee or the United States, or by any combination of two (2) or more. The board of directors of the corporation shall find, with respect to any office building or any hotel, motel or apartment building financed under this chapter that the acquisition and leasing or sale of such building, or the financing of the building by loan agreement, as the case may be, will develop trade and commerce in and adjacent to the municipality, will contribute to the general welfare and will alleviate conditions of unemployment, and with regard to any apartment building that the construction of an apartment building will increase the quantity of housing available in the municipality, and such finding by the board of directors shall be conclusive;

(D) Land or buildings or other improvements to land or buildings, or any combination thereof, and any breeding stock and machinery or equipment necessary or suitable for use in farming, ranching, the production of agricultural commodities, including the products of agriculture and silviculture, or necessary and suitable for treating, processing, storing or transporting raw agricultural commodities;

(E) A tourism attraction involving an aggregate investment of public and private funds in excess of seventy-five million dollars ($75,000,000) that is designed to attract tourists to the state, including a cultural or historical site, a museum or visitors center, a recreation or entertainment facility, and all related hotel or hotels, convention center facilities, administrative facilities and offices, mixed use facilities, restaurants and other tourism amenities constructed or acquired as a part of the attraction;

(F) In any municipality in which there has been created a central business improvement district pursuant to chapter 84 of this title,

"project" also means any public infrastructure, public improvement, public facilities, or combination thereof, located within an area designated by appropriate resolution or ordinance by the municipality as the center city area, including without limitation, any alleys, auditoriums, bridges, culverts, curbs, drainage systems, including storm water sewers and drains, garages, parks, parking facilities, parkways, playgrounds, plazas, public art, roads, sewers, sidewalks, stadiums, streets, street equipment, tunnels, and viaducts;

(G) Any economic development project as defined in § 7-40-103; and

(H) Land or buildings or other improvements to land or buildings, or any combination thereof, and any machinery or equipment necessary or suitable for use in the production of biofuels, biopower, biochemicals, biomaterials, synthetic fuels and/or petroleum products, or necessary and suitable for treating, processing, storing or transporting raw materials used in such production or in storing and transporting the finished product, intermediate products or co-products;

(16) "Rent" means a charge for use of property, including the lessee's obligation to repay debt issued or assumed by a lessor, or rent implied by the lessee's stated obligation to construct improvements;

(17) "Retail business" means a retail establishment providing general retail sales or services to consumers;

(18) "Revenues" of a project, or derived from a project, include payments under a lease or sale contract and repayments under a loan agreement, or under notes, debentures, bonds and other secured or unsecured debt obligations of a lessee or contracting party delivered as provided in this chapter;

(19) "Sale contract" means a contract providing for the sale of one (1) or more projects to one (1) or more contracting parties and includes a contract providing for payment of the purchase price in one (1) or more installments. If the sale contract permits title to the project to pass to the other contracting party or parties prior to payment in full of the entire purchase price, it shall also provide for the other contracting party or parties to deliver to the corporation or to the trustee under the indenture pursuant to which the bonds were issued one (1) or more notes, debentures, bonds or other secured or unsecured debt obligations of such contracting party or parties providing for timely payments, including, without limitation, interest on the obligations for the balance of the purchase price at or prior to the passage of such title; and

(20) "Waiver" means an agreement that does not require the payment of any payments in lieu of taxes for a period of time.

**7-53-302. Corporate powers — Meetings public.**

(a) The corporation has the following powers, together with all powers incidental to such powers or necessary for the performance of those powers, to:

(1) Have succession by its corporate name for the period specified in the certificate of incorporation, unless sooner dissolved;

(2) Sue and be sued and prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;

(3) Have and use a corporate seal and alter the corporate seal at pleasure;

(4) Acquire, whether by purchase, exchange, gift, lease, or otherwise, and improve, maintain, equip and furnish one (1) or more projects, including all

real and personal properties the board of directors of the corporation may deem necessary in connection with the projects and regardless of whether or not any such projects shall then be in existence; provided, that no hotel, motel or apartment building shall be purchased or otherwise acquired by a corporation under this subdivision (a)(4) after July 1, 1988, except that this proviso shall not affect the development or financing of any project that is located in a center city area or in a central business improvement district and that involves an apartment or residential building, hotel, motel or of any project acquired prior to July 1, 1988, regardless of when such project is completed, nor shall this proviso be construed to impair, limit, abrogate or modify the contractual rights and obligations that any such corporation assumes with the issuance of any bonds, notes or other forms of indebtedness or any other contract, nor shall this proviso apply to any hotel listed in the National Register of Historic Places acquired by the corporation prior to December 31, 1989, nor shall this proviso apply to any hotel that contains conference or convention center facilities containing at least seventy-five thousand square feet (75,000 sq. ft.), nor shall this proviso apply to any hotel or hotels, and related conference, mixed use or convention center facilities, if any, constructed in connection with a project or series of related projects involving an aggregate investment of public and private funds in excess of two hundred million dollars ($200,000,000), nor shall this proviso apply to any project located in a county having a population greater than nine hundred thousand (900,000), according to the 2010 federal census or any subsequent federal census;

(5) Lease to others one (1) or more projects and charge and collect rent for the projects and terminate any such lease upon the failure of the lessee to comply with any of the obligations of such lease; and include in any such lease, if desired, a provision that the lessee of the projects shall have options to purchase any or all of its projects or that upon payment of all of the indebtedness of the corporation it may lease or convey any or all of its projects to the lessee of the projects with or without consideration, and to enter into amendments to such leases, which amendments, among other things, may provide for extending the terms of such leases, amending or extending any payments in lieu of taxes due under the leases, subject to any applicable limitations provided in § 7-53-305(b), and amending or extending any rents or other payments due under the leases;

(6) Sell to others one (1) or more projects for such payments and upon such terms and conditions as the board of directors of the corporation may deem advisable, in accordance with sale contracts entered into pursuant to this chapter;

(7) Enter into loan agreements with others with respect to one (1) or more projects for such payments and upon such terms and conditions as the board of directors of the corporation may deem advisable, in accordance with this chapter;

(8) Sell, exchange, donate and convey any or all of its properties, including, without limitation, all or any part of the rents, revenues and receipts of the corporation from its projects, whenever its board of directors shall find any such action to be in furtherance of the purposes for which the corporation was organized;

(9) Issue its bonds, and otherwise borrow money from banks or other financial institutions by issuing its notes for the purpose of carrying out any

of its powers;

(10) Borrow money from a municipality through a loan agreement executed with a municipality for the purpose of carrying out any of its powers;

(11) As security for the payment of the principal of and interest on any bonds or notes so issued and any agreements made in connection with the bonds or notes, or to secure any indebtedness or obligations of any lessee of the corporation, mortgage and pledge any or all of its projects or any part or parts of the projects, whether then owned or thereafter acquired, and pledge the revenues and receipts from any projects, or assign and pledge all or any part of its interest in and rights under the leases, sale contracts or loan agreements relating to the projects, including, without limitation, the pledging and/or assignment and pledging of all or any part of the rents, revenues and receipts of any project as security for payment of any bonds or notes of the corporation issued with respect to the project, or any other project or projects of the corporation and any agreements made in connection with the projects, or procure or pledge municipal bond insurance, letters of credit, lines of credit or other liquidity facilities as additional security and liquidity for the bonds or notes;

(12) Employ and pay compensation to such employees and agents, including attorneys, as the board of directors shall deem necessary for the business of the corporation; and

(13) Exercise all powers expressly given in its certificate of incorporation and establish bylaws and make all rules and regulations not inconsistent with the certificate of incorporation or this chapter, deemed expedient for the management of the corporation's affairs.

(b) The corporation does not have the power to operate any project financed under this chapter as a business or in any manner except as specifically provided in this chapter, nor does it have the power to pledge at any time or in any manner the general credit or taxing power of the municipality except as provided in § 7-53-306.

(c) Any meeting held by the board of directors for any purpose whatsoever shall be open to the public.

(d) In addition to the powers specified in subsection (a) and upon the adoption of a resolution of the county legislative body, a corporation in any county having a population of over nine hundred thousand (900,000), according to the 2010 federal census or any subsequent federal census:

(1) Has the following powers, together with all powers incidental to such powers or necessary for the performance of those powers, to:

(A) Enter into loan agreements with others with respect to one (1) or more projects or for activities, costs, debt restructuring or working capital associated with projects for such payments or deferrals and upon such terms and conditions as the board of directors of the corporation may deem advisable in accordance with this chapter; and

(B) Sell, exchange, donate, forgive debt, grant and convey any or all of its assets or properties, including, without limitation, all or any part of the rents, revenues and receipts of the corporation from its projects, whenever its board of directors shall find any such action to be in furtherance of the purposes for which the corporation was organized; and

(2) Shall not enter into a loan agreement, accept a note or issue any indebtedness, or otherwise provide financing for working capital that:

(A) Exceeds two hundred fifty thousand dollars ($250,000) in principal

amount to any project or borrower; or

(B) Provides for a term in excess of five (5) years, including any renewals or extensions of such financing.

**7-53-304. Security for payment of bonds — Default — Bondholders' remedies — Maintenance of aggregate listing of debt.**

(a) The principal of and interest on any bonds issued by the corporation shall be secured by a pledge of the revenues and receipts out of which the bonds shall be made payable, and may be secured by a mortgage or deed of trust covering all or any part of the projects from which the revenues or receipts so pledged may be derived, including any enlargements of and additions to any such projects thereafter made, or by an assignment and pledge of all or any part of the corporation's interest in and rights under the leases, sale contracts or loan agreements relating to such projects, or any thereof. The resolution under which the bonds are authorized to be issued and any such mortgage or deed of trust may contain any agreements and provisions respecting the maintenance of the projects covered by the resolution, the fixing and collection of rents or payments with respect to any projects or portions of the projects covered by such resolution, mortgage or deed of trust, the creation and maintenance of special funds from such revenues and from the proceeds of such bonds, and the rights and remedies available in the event of default, all as the board of directors shall deem advisable not in conflict with this section. Each pledge, agreement, mortgage and deed of trust made for the benefit or security of any of the bonds of the corporation shall continue effective until the principal of and interest on the bonds for the benefit of which the pledge, agreement, mortgage and deed of trust were made shall have been fully paid. In the event of default in such payment or in any agreements of the corporation made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any mortgage and deed of trust executed as security for the bonds, such payment or agreement may be enforced by suit, mandamus, the appointment of a receiver in equity, or by foreclosure of any such mortgage and deed of trust, or any one (1) or more of such remedies.

(b) The corporation shall maintain an aggregate listing of its current debt, including conduit debt obligations, in accordance with guidelines approved by the state funding board. At the end of each fiscal year, the corporation shall file the listing, and any other information required by the guidelines, with the state funding board. The corporation shall file with the board notice of default on any of its debt obligations within fifteen (15) days of the event. As used in this subsection (b), "conduit debt obligations" means those debt obligations issued by the corporation to provide capital financing for a public or private entity.

**7-53-305. Exemption from taxation — Payments in lieu of ad valorem taxes — Securities.**

(a)(1) The corporation is hereby declared to be performing a public function in behalf of the municipality with respect to which the corporation is organized and to be a public instrumentality of such municipality. Accordingly, the corporation and all properties at any time owned by it, and the income and revenues from the properties, and all bonds issued by it, and the

income from the bonds, shall be exempt from all taxation in the state of Tennessee. Also for purposes of the Securities Act of 1980, compiled as title 48, chapter 1, part 1, bonds issued by the corporation shall be deemed to be securities issued by a public instrumentality or a political subdivision of the state of Tennessee.

(2)(A) Notwithstanding this section to the contrary, and unless the municipality adopts an ordinance or resolution requiring that any agreement with respect to the payments in lieu of taxes entered into pursuant to this subdivision (a)(2) be approved by the municipality, a corporation may negotiate and receive from any lessee of the corporation, without any delegation from the municipality, payments in lieu of taxes with respect to a tax-credit housing project; provided, that:

(i) The payments in lieu of taxes are payable to all applicable taxing jurisdictions in which the project is located and are not less than the taxes that would have been paid to each such taxing jurisdiction for the tax year prior to the year the project became a tax-credit housing project; and

(ii) The chief executive officer of the municipality has executed a letter supporting the project that is filed with the corporation.

(B) The corporation is declared to be serving a public purpose by negotiating and receiving from any lessee of the corporation payments in lieu of taxes with respect to a tax-credit housing project.

(C) As used in this subdivision (a)(2), "tax-credit housing project" or "project" means a project that has received an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. § 42), or any successor provision, from the Tennessee housing development agency or is otherwise eligible for the tax credits as the result of the issuance of bonds, the interest on which is not subject to federal income taxation.

(D) The corporation may acquire and lease a tax-credit housing project as authorized in this chapter, notwithstanding any limitations in this chapter on the power of the corporation to purchase or otherwise acquire apartments.

(b)(1)(A) The corporation has the authority to negotiate, accept, or waive from any of the corporation's lessees payments in lieu of taxes only upon receipt of a formal delegation of such authority from the municipality or municipalities that formed the corporation. Any such authorization shall be granted only upon a finding by the municipality or municipalities that the payments or waiver of the payments are deemed to be in furtherance of the corporation's public purposes. The legislative body of the municipality or municipalities making the delegation may require the corporation to submit for approval any agreement with any of the corporation's lessees providing for the acceptance or waiver of payments in lieu of taxes.

(B) No agreement providing for the acceptance or waiver of payments in lieu of taxes, including any renewal or extension of such agreement, entered into by a municipality or corporation to which such authority has been delegated shall result in a corporation's lessee making payments in lieu of taxes in an amount less than the applicable ad valorem taxes for a period that is greater than twenty (20) years plus a reasonable construction or installation period not to exceed three (3) years, unless both the commissioner of economic and community development and the comptroller of the treasury have made a written determination that the agreement

is in the best interest of the state.

(C) The corporation shall attach to each agreement an analysis of the costs and benefits of the agreement, in such manner and under such conditions as shall be prescribed by the commissioner of economic and community development or the commissioner's designee.

(2) With regard to any project located within an area designated as the center-city area by a municipality in which there has been created a central business improvement district pursuant to the Central Business Improvement District Act of 1971, compiled in chapter 84 of this title, the amount of such payments shall not be fixed below the lesser of:

(A) Ad valorem taxes otherwise due and payable by a tax-paying entity upon the current fair market value of the leased properties; or

(B) Ad valorem taxes that were or would have been due and payable on the leased properties for the period immediately preceding the date of their acquisition by the corporation.

(3) The minimum payments in subdivisions (b)(2)(A) and (B) shall not be applicable to an eligible headquarters facility.

(c) This section shall apply, from the date of their issuance, to all bonds heretofore or hereafter issued under this chapter and the income from such bonds whether heretofore or hereafter received.

(d)(1) Payments in lieu of taxes and any lease payments payable to a corporation, to the extent such payments in lieu of taxes and lease payments in the aggregate do not exceed ad valorem taxes otherwise due and payable where the leased property is owned by an entity subject to taxation, shall become and remain a first lien upon the fee interest in the leased property from January 1 of the year in which such payment in lieu of taxes on lease payments is due. The corporation may enforce such lien, and also obtain interest at ten percent (10%) per annum from the date due and reasonable attorneys' fees, by suit filed in the circuit or chancery court.

(2) Subdivision (d)(1) shall apply with equal force to all such subleases and their sublessees.

(3) To the extent lease payments or payments in lieu of taxes exceed the amount necessary to defray debt service on project bonds or other financing, any payments not timely made as agreed may be collected by or on behalf of the city or county in the same manner as delinquent property taxes.

(e)(1) On or before October 1 of each year, the corporation lessee shall submit to the comptroller of the treasury an annual report containing:

(A) A list of all the real and personal property owned by the corporation and its associated entities and subsidiaries;

(B) The value of each listed property as estimated by the lessee;

(C) The date and term of the lease for each listed property;

(D) The amount of payments made in lieu of property taxes for each listed property;

(E) The date each listed property is scheduled to return to the regular tax rolls;

(F) [Deleted by 2016 amendment.]

(G) The property address and parcel identification number of the property assigned by the assessor of property;

(H) The amount of rents paid;

(I) The amount of any property taxes paid on the leasehold assessment under § 67-5-502(d);

(J) Any changes in the name since the last filing;

(K) How the payments in lieu of taxes are allocated between the city and county according to the economic development agreement; and

(L) Identification of project type according to definitions provided in this chapter.

(2) A copy of the filing made pursuant to subdivision (e)(1) shall be filed with the assessor of property in the county where the property is located on or before October 15 of the year in which the filing is made with the comptroller of the treasury. The assessor of property may audit or review, or both, the data report on all payment in lieu of tax agreements and conduct comparative analysis to ensure that all agreements are reported to the assessor of property.

(3) Each lessee of the corporation shall be responsible for the timely completion and filing of the report. Failure to timely complete and file the report shall subject the lessee to a late filing fee of fifty dollars ($50.00) payable to the comptroller of the treasury. In addition, any lessee failing to file the report with the comptroller of the treasury or the assessor within thirty (30) days after written demand for the report, shall owe an additional payment in lieu of tax in the amount of five hundred dollars ($500). This payment shall be collectable by the trustee for the benefit of the county, in the same manner as property taxes, on certification from the comptroller of the treasury or the assessor.

(f) The corporation to which authority has been delegated to create pilot leaseholds and payments in lieu of ad valorem taxes shall prepare biannual reports detailing the lessee's compliance with the terms and conditions of the pilot lease agreement or any other agreement whereby ad valorem taxes are substituted in favor of a payment in lieu of taxes. Such report shall detail the lessee's compliance and noncompliance where applicable, and its fiscal impact on revenues generated from ad valorem taxes in each municipality affected by such payment in lieu of taxes. This subsection (f) shall apply only to counties with populations of eight hundred thousand (800,000) or more, according to the 1990 federal census or any subsequent federal census, and to municipalities within such counties.

(g)(1) An industrial development corporation may not negotiate any payment in lieu of tax agreement for less than the county ad valorem taxes otherwise due unless:

(A) The corporation is a joint corporation organized by the county and one or more of the municipalities in the county;

(B) The corporation has entered into an interlocal agreement with the county in regard to payments in lieu of ad valorem taxes; or

(C) The corporation has received written approval from the county mayor and the legislative body of the county regarding payments in lieu of ad valorem taxes.

(2) Subdivision (g)(1) shall apply to any county having a population of not less than eight hundred ninety-seven thousand four hundred (897,400) nor more than eight hundred ninety-seven thousand five hundred (897,500) and at least five (5) industrial development corporations formed under title 7, chapter 53, according to the 2000 federal census or any subsequent federal census.

(h) Notwithstanding this section or any other law to the contrary, an industrial development corporation organized solely by a municipality that does not impose a real property tax may only enter into a payment in lieu of ad

valorem tax agreement or lease if:

(1) The county in which the municipality is located has approved the entering into a payment in lieu of ad valorem tax agreement or lease with respect to the property at issue; or

(2) Either the industrial development corporation or the municipality which organized the industrial development corporation agrees to pay to the county in which the municipality is located an amount equal to the amount of real property tax that would have been assessed to the property at issue for each year in which the payment in lieu of ad valorem tax agreement or lease is effective were the property not owned by the industrial development corporation during such time period.

(i)(1) An industrial development corporation may negotiate a payment in lieu of tax agreement for less than the ad valorem taxes otherwise due for a retail business for a period longer than ten (10) years, plus a reasonable construction or installation period not to exceed three (3) years, if:

(A) The corporation is a joint industrial development corporation with representation of all affected taxing jurisdictions within the county;

(B) The corporation has entered into an interlocal agreement with other taxing jurisdictions to establish criteria for any payment in lieu of tax agreements that might affect shared tax bases;

(C) The corporation has received written approval from each affected local governmental entity. As used in this subdivision (i)(1)(C), "affected local governmental entity" means a county or local special school district which will suffer an actual loss of tax revenue under a payment in lieu of tax agreement; or

(D) The corporation pays the other affected local governments the amount of ad valorem taxes those governments would otherwise receive for the affected property based on its assessed value after the initial ten (10) years of the agreement.

(2) The requirements under this subsection (i) shall not apply to payment in lieu of tax agreements affecting only the municipality that created the corporation and the beneficiary making the agreement.

(3) This subsection (i) does not apply in any county having a population of not less than nine hundred thousand (900,000), according to the 2010 or any subsequent federal census.

(j) Before an industrial development corporation approves a payment in lieu of tax agreement, the corporation shall hold a public meeting relating to the proposed agreement after notice is provided by the corporation or governing body, as may be required by law, at least five (5) days prior to the date of such public meeting. Such notice must include the time, place, and purpose of the public meeting.

### 7-59-304. Cable, video service or network facility — Certificate of franchise authority — Application — Transfer and termination.

(a)(1) Any entity, person or joint venture, as authorized under this part, seeking to provide cable or video service over a cable system or video service network facility in this state after July 1, 2008, at the discretion of the cable service provider or video service provider, may elect from among the franchise options as set forth in this section. A cable or video service provider shall not provide cable service or video service without a franchise obtained

pursuant to this part, except as in accordance with § 7-59-102.

(2) A person seeking to provide cable service or video service may elect to negotiate a local cable service or video service franchise agreement with a municipal or county franchise authority and may enter into a negotiated cable television franchise agreement in accordance with Title VI of the Communications Act of 1934 (47 U.S.C. § 521 et seq.), or a video service franchise agreement in accordance with any applicable state or federal law that establishes the terms and conditions for the franchise agreement within the jurisdictional limits of that municipality or county, including parts 1 and 2 of this chapter. A local cable service or video service franchise agreement entered into after July 1, 2008, shall remain in force and effect through its expiration date notwithstanding the provision for terminating a local franchise agreement established in subsection (b).

(3) A person seeking to provide cable or video service, including any incumbent cable service provider, may elect to adopt the terms of a negotiated franchise agreement entered into between a cable service provider or video service provider and a municipal or county franchise authority in the service area in which the provider desires to provide service. The municipal or county franchise authority shall be required to enter into any such negotiated franchise agreement upon the same terms and conditions with any requesting provider of cable service or video service. A local cable service or video service franchise agreement that is adopted by a cable service provider or provider of video service after July 1, 2008, shall remain in force and effect through its expiration date notwithstanding the provision for terminating a local franchise agreement established in subsection (b).

(4) A cable or video service provider may elect to file an application with the department for a state-issued certificate of franchise authority for one (1) or more specified service areas in accordance with the procedures set forth in this part.

(5)(A) The state-issued certificate of franchise authority issued by the department is fully transferable to any successor in interest in accordance with the requirements in this subdivision (a)(5). Notice of the transfer shall be provided to the department and to the governing authority of the affected local government at least ten (10) days prior to the consummation of the transaction. No later than forty-five (45) days following the consummation of the transaction, the transferor shall be required to pay any franchise fees or other amounts owed to any municipality or county. No later than ninety (90) days following the consummation of the transaction, the transferee shall apply to the department for a state-issued certificate of franchise authority. The transferee shall have interim authority to provide cable or video service pending the receipt of a state-issued certificate of franchise authority from the department. Notwithstanding this subdivision (a)(5)(A):

(i) Subject to § 7-59-305(d), if the successor entity already holds a state-issued certificate of franchise authority, it may amend that certificate to add the transferred service area; and

(ii) Any intra-company transfer of a state-issued certificate of franchise authority may be accomplished by providing the notice described in subdivision (a)(5)(A).

(B) Except to the extent permitted by applicable local permitting rules, transfer of a state-issued certificate of franchise authority does not

transfer any interest or right under any local public permits for construction or work in public rights-of-way obtained by or in the name of the transferor and in no event shall a transfer of a state-issued certificate of franchise authority provide authority to a transferee to construct, maintain, or conduct any work in a public right-of-way until such time that the transferee obtains the required permits from, or is otherwise in compliance with the permitting requirements of, all applicable governmental authorities.

(b)(1) An incumbent cable service provider or an entity or person providing video service on July 1, 2008, under a franchise previously granted by a municipality or county may elect to terminate one (1) or more of its municipal or county franchises at its option and seek a state-issued certificate of franchise authority by filing an application for a state-issued certificate of franchise authority for one (1) or more specified service areas with the department in accordance with the procedures set forth in this part. The municipal or county franchise is terminated on the date the department issues the state-issued certificate of franchise authority and no provision of the terminated local franchise is enforceable thereafter, except that until the date upon which the local franchise would have naturally expired, an incumbent cable service provider or entity or person providing cable or video services under a local franchise agreement that is terminated pursuant to this part shall not reduce or otherwise diminish access to cable or video services of any subscriber as of the date of termination if the subscriber does not have access to cable or video services from another local franchise holder or a holder of a state-issued certificate of franchise authority.

(2) An incumbent cable service provider may elect to continue to operate under one (1) or more local franchises at its option and to apply to the department for a state-issued certificate of franchise authority to continue to operate with respect to one (1) or more other service areas not covered by the local franchises. Any incumbent cable service provider providing service under an expired local franchise, including a local franchise that expires at any time prior to July 1, 2008, shall follow the procedure set forth in § 7-59-307(a) to obtain either a local or state-issued certificate of franchise authority.

(3)(A) If an incumbent cable service provider or entity or person who chooses to terminate its local franchise agreement to obtain a state-issued certificate of franchise authority as provided in subdivision (b)(1) is providing to a municipality or county an institutional data network funded pursuant to the local franchise agreement, however defined or referenced in the local incumbent franchise, but generally including private line data network capacity for noncommercial purposes that is in existence as of January 1, 2008, and is funded via a line item per subscriber charge, then the incumbent cable service provider shall continue to provide the data network and a holder of a state-issued certificate of franchise authority serving the municipality or county is required to remit to the affected municipality or county the same per subscriber charge collected by the incumbent cable provider until the natural termination date of the local franchise.

(B) All cable and video service providers, including a holder of a state-issued certificate of franchise authority, may designate that portion of the subscriber's bill attributable to any payment required under this

subdivision (b)(3) as a separate item on the bill for recovery of such amount from the subscriber. The fees shall be collected by the cable or video service provider or holder of a state-issued certificate of franchise authority and paid to the municipality or county. The municipality or county shall then remit or otherwise provide credit to the incumbent cable provider in a manner consistent with the local franchise agreement.

(4) For any other institutional data networks in existence and provided by an incumbent cable provider on January 1, 2008, the incumbent cable provider shall continue to provide and fund the institutional network as set forth in its local franchise agreement and may petition the department for an order requiring all cable and video service providers and holders of state-issued certificates of franchise authority whose service area includes the affected municipality or county to contribute to the funding of the institutional network on a per subscriber basis in the municipality or county and to approve the appropriate per subscriber charge. To obtain such an order, the incumbent cable provider shall demonstrate to the department that it had the right to recover its costs on a per subscriber basis under its local franchise agreement and shall also demonstrate the reasonable recovery cost, consistent with its local franchise agreement and consistent with applicable federal law, relating to the institutional network. The department shall review and establish the accuracy of the information provided by the incumbent cable provider after notice and an opportunity for any provider or holder who may, under this subdivision (b)(4), be required to contribute, to challenge the information before the department.

**7-68-102. Chapter definitions. [Effective on January 1, 2019. See version effective until January 1, 2019.]**

*As used in this chapter:*

*(1) "Law enforcement agency":*

*(A) Means an agency of a political subdivision of this state charged with enforcement of state, county, municipal, or federal laws, or with managing custody of detained persons in this state, and includes, but is not limited to, county and other municipal police departments and sheriffs' departments; and*

*(B) Includes officials, representatives, agents, and employees of an agency described in subdivision (1)(A);*

*(2) "Local governmental entity" means a governing body, board, commission, committee, department, or law enforcement agency of a municipality, county, or other political subdivision of this state;*

*(3) "Official" means an agent, employee, member, or representative of a local governmental entity; and*

*(4) "Sanctuary policy" means any directive, order, ordinance, resolution, practice, or policy, whether formally enacted, informally adopted, or otherwise effectuated, that:*

*(A) Limits or prohibits any local governmental entity or official from communicating or cooperating with federal agencies or officials to verify or report the immigration status of any alien;*

*(B) Grants to aliens unlawfully present in the United States the right to lawful presence within the boundaries of this state in violation of federal law;*

*(C) Violates 8 U.S.C. § 1373;*

*(D) Restricts in any way, or imposes any conditions on, a state or local governmental entity's cooperation or compliance with detainers from the United States department of homeland security, or other successor agency, to maintain custody of any alien or to transfer any alien to the custody of the United States department of homeland security, or other successor agency;*

*(E) Requires the United States department of homeland security, or other successor agency, to obtain a warrant or demonstrate probable cause before complying with detainers from the department to maintain custody of any alien or to transfer any alien to its custody; or*

*(F) Prevents law enforcement agencies from inquiring as to the citizenship or immigration status of any person.*

**7-68-103. Adoption of sanctuary policy prohibited. [Effective on January 1, 2019. See version effective until January 1, 2019.]**

*No local governmental entity or official shall adopt or enact a sanctuary policy. A local governmental entity that adopts or enacts a sanctuary policy is ineligible to enter into any grant contract with the department of economic and community development until the sanctuary policy is repealed, rescinded, or otherwise no longer in effect.*

**7-68-104. Violations — Filing complaint — Burden of proof — Court actions — Compliance with orders. [Effective on January 1, 2019. See version effective until January 1, 2019.]**

*(a) A person residing in a municipality or county who believes a local governmental entity or official has violated § 7-68-103 may file a complaint in chancery court in that person's county of residence.*

*(b) The person filing the complaint shall have the burden of proving by a preponderance of the evidence that a violation of § 7-68-103 has occurred.*

*(c)(1) If the court finds the local governmental entity or official is in violation of § 7-68-103, the court shall issue a writ of mandamus against the entity or official ordering the entity or official to comply with § 7-68-103, enjoin the entity or official from further interference, and take other action to ensure compliance as is within the jurisdiction of the court.*

*(2) Upon a finding by the court that a local governmental entity or official has adopted or enacted a sanctuary policy, the local governmental entity, or the entity to which the official belongs, becomes ineligible to enter into any grant contract with the department of economic and community development. Ineligibility commences on the date the court finds that the local governmental entity or official is in violation of § 7-68-103 and continues until such time that the court certifies that the sanctuary policy is repealed, rescinded, or otherwise no longer in effect.*

*(d) A local governmental entity shall have no less than ninety (90) days nor more than one hundred twenty (120) days from the date of the court's order to comply with the order. If, after one hundred twenty (120) days, the local governmental entity has not complied with the court's order, the court may take whatever action necessary to enforce compliance.*

**7-68-105. Authority to communicate with federal officials regarding immigration status of aliens not lawfully present — Memorandum of agreement between law enforcement agency and federal official — Notice to governor. [Effective on January 1, 2019.]**

*(a) All law enforcement agencies and officials are authorized, in accordance with 8 U.S.C. § 1357(g)(10), to communicate with the appropriate federal official regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States or otherwise to cooperate with the appropriate federal official in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.*

*(b) A law enforcement agency may negotiate the terms of a memorandum of agreement between the law enforcement agency and the appropriate federal official in 8 U.S.C. § 1357(g), concerning the enforcement of federal immigration laws. Any memorandum of agreement negotiated pursuant to 8 U.S.C. § 1357(g) must:*

*(1) Be entered into in accordance with federal law;*

*(2) Require that each officer employed by the law enforcement agency be trained in accordance with the memorandum of agreement between the law enforcement agency and the appropriate federal official concerning the law enforcement officer's role in enforcing federal immigration laws, in accordance with 8 U.S.C. § 1357(g); and*

*(3) Allow for the enforcement of federal immigration laws to the full extent permitted under federal law.*

*(c)(1) Whenever a law enforcement agency enters into a memorandum of agreement pursuant to subsection (b), notice of the agreement must be submitted in writing to the governor, the office of the lieutenant governor, who shall transmit the notice to the members of the senate, and the office of the speaker of the house of representatives, who shall transmit the notice to the members of the house of representatives.*

*(2) Any renewal, modification, or termination of a memorandum of agreement must be reported in the same manner as the original memorandum of agreement in subdivision (c)(1).*

**7-82-102. Review of rates and services.**

In all counties and districts, the following apply:

(1) In addition to any other procedure provided by law for the review of the actions of the board of commissioners, there is granted to the utility management review board the authority to review rates charged and services provided by public utility districts. The review provided for in this subdivision (1) may only be initiated by a petition containing the genuine signatures of at least ten percent (10%) of the customers within the authorized area of the public utility district;

(2) To be considered by the board, the customer or customers initiating the petition must file a letter of intent to compile and file the petition with the board before the petition is signed. All signatures of customers on the petition must have been obtained within ninety (90) days of the date the notice of intent to compile and file petition is filed with the board. Each customer signing the petition shall include the address at which the

customer receives utility service and the date the customer signed the petition. The petition must be addressed to the utility management review board and a copy of the petition must be served upon the board of commissioners of the affected utility district. The petition must contain the genuine signatures of the customers of the utility district. All information submitted in the petition must be legible;

(3) Upon receipt of the petition, the board shall verify the names and addresses of the signers of the petition to ensure that they are bona fide customers of the utility district and to ensure that all signatures have been obtained within ninety (90) days of the date the notice of intent to compile and file petition is filed with the board. As used in this part, "customer" means a person who receives a bill for utility services and pays money for such services. Each utility account shall be entitled to one (1) signature, but no person shall sign the petition more than once. Only one (1) petition to review the rates and services provided under this section can be filed in any twelve-month period. The review by the utility management review board shall be held only upon public hearings, after notice;

(4) For purposes of this section, "genuine signatures" means written, original signatures and excludes facsimile and electronic signatures of any kind;

(5) The utility management review board shall review those petitions pertaining to rates on the basis of all provisions of this chapter governing the establishment of rates, the provisions of any bond resolutions or other debt contract instruments binding upon such utility districts, and the uniform audit manual prepared by the comptroller of the treasury pursuant to § 7-82-401;

(6) It is the express intent of the general assembly that the review granted in this section shall be a substantive and meaningful review. In order to accomplish this intention, the utility district shall take no action that will result in contractually binding the district or obligating the district to issue bonds that would require a rate increase, until the district has first given notice to the customers of the district of the anticipated action. For purposes of this subdivision (6), the notice shall be deemed to have been given by the district with respect to an issuance of bonds or notes upon the publication of the report of the comptroller of the treasury, or the comptroller's designee, as contemplated by § 7-82-501(c), and "bonds" does not include any bond or bonds or other evidence of indebtedness of the utility district to be purchased by the United States department of agriculture or any other direct lending department of the government of the United States; and

(7) The Uniform Administrative Procedures Act, compiled in title 4, chapter 5, applies to all procedures and proceedings coming before the utility management review board pursuant to this section, to the extent not inconsistent with this chapter.

**7-82-302. Power to operate utilities.**

(a)(1) Any district heretofore or hereafter created under authority of this chapter is empowered to conduct, operate and maintain a system or systems for the furnishing of water, sewer, sewage disposal, natural gas, natural gas storage and related facilities, liquefied natural gas storage and related facilities, liquid propane gas storage and related facilities and other gaseous

storage and related facilities, artificial gas, police, fire protection, garbage collection and garbage disposal, street lighting, parks and recreational facilities, transit facilities, transmission of industrial chemicals by pipeline to or from industries or plants located within the boundary of the district, transmission of natural gas by pipeline from one (1) or more wells or other sources of natural gas, or from one (1) or more collection points of natural gas located within or without the district, but in no event more than five (5) miles beyond the boundary of the district to one (1) or more utilities, "utilities" to include natural gas transportation pipelines, industries, or plants located within or without the district, but in no event more than one hundred (100) miles beyond the boundary of the district, community antenna television service, except for community antenna television service in counties having a population of more than sixty thousand (60,000) but less than sixty thousand one hundred (60,100), according to the 1960 federal census or any subsequent federal census, or two (2) or more of such systems, and to carry out such purpose it shall have the power and authority to acquire, construct, reconstruct, improve, better, extend, consolidate, maintain and operate such system or systems, within or without the district, and to purchase from, and furnish, deliver and sell to any municipality, the state, any public institution and the public, generally, any of the services authorized by this chapter.

(2) Powers relating to garbage disposal shall include the power of one (1) or more utility districts, acting individually or jointly, to engage in the conversion of garbage into steam power. In connection with the construction, financing, operation or maintenance of a facility for converting garbage into steam power, a utility district shall have the same power and authority as a municipality has under § 7-54-103(d) in connection with energy production facilities, and shall comply with the requirements set out in § 7-54-110, it being the intent of the general assembly to further the energy and environmental objectives of Acts 1983, chapter 226 and title 68, chapter 211.

(3) Powers relating to natural gas shall include the power to own and operate natural gas vehicle fueling stations; provided, that no utility district is authorized to franchise the operation of any such natural gas vehicle fueling station to another entity; provided, further, that subdivision (a)(1)(B) shall not prohibit nor in any way be construed to prohibit any other person, firm or corporation from owning and operating a natural gas vehicle fueling station within the area embraced by the district.

(4) Powers relating to natural gas include the power to sell any appliance or heating system, or set of appliances, that have a natural gas or propane gas component, and to facilitate those sales by installment payment plans and financing to customers. Incentives plans that include financing to home builders and contractors are also authorized. Transactions with customers may provide for periodic payments for appliances and heating to be added to customer monthly service billing statements. Natural gas providers may terminate utility service upon non-payment of these transactions in accordance with policies adopted by the utility's governing board.

(5) Powers relating to natural gas include the power, together with all powers incidental to that power or necessary for the performance of that power, acting by resolution of its governing body to purchase natural gas by contract or other agreement from a public corporation that is created under the authority of a contiguous state and that is similar to an energy acquisition corporation, as defined in § 7-39-102. A utility district has the

power to enter into a contract or arrangement, including contracts to take or pay for any gas or gas substitutes, with such a public corporation created under the authority of a contiguous state. The contract or arrangement must contain the terms, covenants, representations, warranties, provisions, and duration as the governing body of the utility district determines.

(b) With respect to the conduct and operation of a police protection system, nothing contained in this chapter shall be construed as meaning or intending any encroachment upon the police powers of the sheriff of any county in this state, but shall only empower the district to conduct and operate such police protection system when it is enabled to do so through legal arrangements with the sheriff of the county, and other constituted authorities, in a manner consistent with all provisions of the Constitution of Tennessee. The inclusion of the power of conducting and operating a police protection system as one of the purposes for which a district may be created shall not in anywise affect the validity of this section, the general assembly hereby expressly declaring its purpose to enact the remainder of this section without the provision contained in this section authorizing the conduct and operation of a police protection system, if the inclusion of such provision should be held to be invalid.

(c) "Transit facilities" means all real and personal property needed to provide public passenger transportation by means of trolley coach, bus, motor coach, or any combination of trolley coach, bus, and motorcoach, including terminal, maintenance and storage facilities.

(d) Community antenna television service shall be limited to all practices permitted by rules and regulations promulgated from time to time by the federal communications commission. This provision shall not apply to counties having populations over six hundred thousand (600,000), according to the 1970 federal census or any subsequent federal census. Such community antenna television service shall include the right to acquire and hold such real and personal property as may be needed to accomplish this subsection (d).

(e)(1) Districts created on or after July 1, 1967, shall be empowered to furnish only those services stated in the order creating the district. Districts incorporated before July 1, 1967, shall be authorized to furnish only the services being furnished on that date, or that shall be furnished by facilities to be constructed from the proceeds of bonds issued not later than July 1, 1968. Supplemental petitions for authority to furnish other services contained in this section may be addressed to the county mayor, who shall give notice and hold hearings on such petitions in the same manner, on the same issues, and under the same conditions as for original incorporation.

(2) A supplemental petition shall be filed with the utility management review board simultaneously with the filing of the petition with the county mayor or county mayors but is not subject to approval or disapproval by the utility management review board as set forth in §§ 7-82-201(a) and 7-82-202(a). In the order granting a supplemental petition, the county mayor or mayors may exclude territory within the district's boundaries that is already receiving the service sought to be furnished by the district from the grant of authority to the district to provide such service under this subsection (e).

(f)(1) A system or facilities for "the transmission of industrial chemicals by pipeline," as used in this section, means and includes facilities or a system used or useful in the transmission by pipeline of industrial chemicals and related commodities, in liquid, gaseous, or solid form, including raw materials, processed products, or by-products, to or from plants or industries

located within the boundary of the district, on an individual basis, or in company with other plants, and to or from docks, terminals or tank farms located within or without the boundary of the district, but within the same county. Such system or facilities include, but are not limited to, the pipelines, docks, terminals, tank farms, compressor stations, storage and temperature treatment facilities, rights-of-way, and together with all real and personal property and equipment appurtenant to, or useful in connection with, such facilities.

(2) Before any district shall be authorized to conduct, operate or maintain such system or facilities for transmission of industrial chemicals by pipeline, as provided in this section, the board of commissioners of the district, whether previously installed in such office or nominated only, shall submit a petition signed in their own names to the county mayor in which the order approving the creation of the district was or shall be entered, whereupon the county mayor shall, upon notice published, as provided by § 7-82-202, and public hearing, determine whether or not the project so proposed shall promote industry and develop trade to provide against low employment, and enter an order so finding.

(3) On the issue of whether or not industry, trade and employment shall be so promoted and developed, the county mayor shall take into consideration the plants proposed to be served by the facilities for transmission of industrial chemicals by pipeline, but no project so proposed to be undertaken shall be found not to promote and develop industry, trade and employment for either of the following reasons:

(A) That the project shall provide service for a single plant; or

(B) That the project shall serve to maintain existing industry and employment rather than encourage new industry and additional employment.

(4) Any party in interest, including any subscriber to existing services of the district, shall have the right of appeal from the order as provided by § 7-82-204, but no consent to the undertaking of such district services by any number of existing subscribers shall be required, notwithstanding § 7-82-303.

(g) Incorporated cities and towns having a population of five thousand (5,000) or more shall have the prior right as respects utility districts to extend water, sewer or other utilities in any territory within five (5) miles of their corporate limits; where an incorporated city or town has a population of less than five thousand (5,000), the limit shall be three (3) miles; provided, that this provision shall not apply within the boundaries of a utility district or to facilities heretofore extended by a utility district beyond its boundaries; and provided, further, that a utility district may extend water, sewer or other utility facilities into such an area through agreement with the city or town concerned. A city or town shall lose its prior right under the following conditions:

(1) Where an agreement cannot be reached, the utility district, by a resolution setting out the area to be served and the type of utility, shall notify the city or town of its intention to serve the area;

(2) After receipt of such notice, the city or town shall have sixty (60) days in which to adopt an appropriate ordinance or resolution determining to serve the area within a specified time. The utility district may, within ten (10) days, appeal to the county mayor of the county in which the major part of the land area is located if it considers the time so determined is too long,

whereupon the county mayor after hearing both parties, shall determine a reasonable time for the city or town to provide the services, and further appeal may be taken by either party as provided in § 7-82-204; and

(3) Upon failure of the city or town to provide the services within the time so determined, the utility district shall be authorized to serve any part of the area not already served by the city or town.

(h)(1) A system or facilities for "the transmission of natural gas by pipeline," as used in this section, means and includes facilities or a system used or useful in the transmission by pipeline of natural gas from one (1) or more wells or other sources of natural gas or from one (1) or more collection points of natural gas located within or without the district, but in no event more than five (5) miles beyond the boundary of the district, to one (1) or more utilities, plants or industries located within or without the district, but in no event more than one hundred (100) miles distant from the boundary of the district; provided, that a portion of the system or facilities shall be located within the boundary of the district. Such system or facilities shall include, but not be limited to, pipelines, collection facilities, terminal facilities, rights-of-way and all real and personal property, including machinery and equipment, appurtenant to, or useful in connection with, such system or facilities.

(2) No district shall be authorized to conduct, operate or maintain such system or facilities for transmission of natural gas by pipeline, as provided in this section, unless the board of commissioners of the district, whether previously installed in such office or nominated only, shall submit a petition signed in their own names to the county mayor in which the order approving the creation of the district was or shall be entered, and the county mayor shall, upon notice published as provided by § 7-82-202 and public hearing, determine either that the project so proposed shall promote commerce, preserve the natural resources, or aid in the prevention of environmental pollution, and enter an order so finding.

(3) On the issue of whether or not such purpose or purposes shall be so promoted, preserved or aided, the county mayor shall take into consideration the utilities, plants or industries proposed to be served by the facilities for transmission of natural gas by pipeline, but no project so proposed to be undertaken shall be found not to promote commerce, preserve the natural resources, or aid in the prevention of environmental pollution for the reason that the project shall provide service for a single utility, plant or industry.

(4) Any party in interest, including any subscriber to existing services of the district, shall have the right of appeal from the order as provided by § 7-82-204, but no consent to the undertaking of such district services by any number of existing subscribers shall be required, notwithstanding § 7-82-303.

(i) Section 7-82-501, authorizing the issuance of revenue bonds for the purpose of constructing, acquiring, reconstructing, improving, bettering or extending any facility or system authorized by this chapter, is hereby made applicable to any district undertaking to exercise the power conferred by this section to conduct, operate and maintain a system or facilities for the transmission of industrial chemicals or natural gas by pipeline.

(j) Any district providing propane gas service on April 15, 1998, is empowered to provide such service within the county or counties in which it is providing service on that date without any further proceedings before or

approvals of any county mayor, the utility management review board or any other person or agency; provided, that the authorization contained in this subsection (j) shall not preclude any other person, firm or corporation, public or private, from furnishing propane gas service within the area served by the district. Any such utility district is further empowered to sell or dispose of its propane gas service operation, in whole or in part.

**7-82-308. Compensation of commissioners — Delegation of powers — Officers — Records — Qualifications — Meetings.**

(a)(1) The members of the board shall serve without compensation for their services, except that by resolution duly adopted by the board of commissioners, each commissioner may receive per diem payments for not more than twelve (12) meetings of the board of commissioners in any calendar year, at rates not greater than three hundred dollars ($300) per meeting. However, in any county with a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor more than two hundred eighty-seven thousand eight hundred (287,800), according to the 1980 federal census or any subsequent federal census, the members of the utility district board of commissioners shall serve without compensation for their services, except that by resolution duly adopted by the board of commissioners, each commissioner may receive per diem payments for not more than twelve (12) meetings of the board of commissioners in any calendar year at rates not greater than two hundred fifty dollars ($250) per meeting for each district having more than three thousand (3,000) users and not more than one hundred dollars ($100) per meeting for each district having three thousand (3,000) or fewer users. In addition, group medical insurance coverage and group life insurance coverage as may be provided other employees, or payment of premiums for an equivalent or similar group medical coverage and group life insurance coverage that a commissioner may be participating in on April 18, 1985, or that a commissioner may have been participating in on May 25, 1984, or a group plan entered into subsequent thereto; provided, that such payment of such medical coverage and group life insurance coverage does not exceed the per person cost of the district's group medical insurance coverage and group life insurance coverage for its employees. Commissioners in those districts that are not financially distressed utility districts as defined in § 7-82-401(g) that distribute and sell natural gas are thereby authorized, upon resolution duly adopted by the board of commissioners, to receive not more than five hundred dollars ($500) per diem payments in the manner provided in this part.

(2) In any county with a population of not less than eighty-five thousand eight hundred (85,800) nor more than eighty-six thousand one hundred (86,100), according to the 1990 federal census or any subsequent federal census, the members of utility district board of commissioners shall serve without compensation for their services, except that, by resolution duly adopted by the board of commissioners, each commissioner may receive per diem payments for not more than twelve (12) meetings of the board of commissioners in any calendar year, at rates not greater than one hundred fifty dollars ($150) per meeting for each district having more than three thousand (3,000) users, and not more than one hundred dollars ($100) per meeting for each district having three thousand (3,000) or fewer users.

(3) In any county having a charter form of government, the members of a utility district board of commissioners shall serve without compensation for their services, except that, by resolution duly adopted by the board of commissioners, each commissioner may receive per diem payments for not more than twelve (12) meetings of the board of commissioners in any calendar year, at rates not greater than three hundred fifty dollars ($350) per meeting for each district having more than five thousand (5,000) users, and not more than one hundred dollars ($100) per meeting for each district having five thousand (5,000) or fewer users. In addition, group medical insurance coverage and group life insurance coverage may be provided for commissioners as such coverage is provided for other employees, or premiums for an equivalent or similar group medical coverage and group life insurance may be paid; however, payment of such medical coverage and group life insurance coverage must not exceed the per person cost of the district's group medical insurance coverage and group life insurance coverage for its employees.

(A)(i) In any county having a population of not less than one hundred forty thousand (140,000) nor more than one hundred forty-five thousand (145,000), according to the 1990 federal census or any subsequent federal census, the members of a utility district board of commissioners shall serve without compensation for their services, except that, by resolution duly adopted by the board of commissioners, each commissioner may receive per diem payments for not more than twelve (12) meetings of the board of commissioners in any calendar year, at rates not greater than two hundred fifty dollars ($250) per meeting.

(ii) In addition, group medical insurance coverage and group life insurance coverage may be provided for commissioners as such coverage is provided for other employees, or premiums for an equivalent or similar group medical coverage and group life insurance may be paid; however, payment of such medical coverage and group life insurance coverage must not exceed the per person cost of the district's group medical insurance coverage and group life insurance coverage for its employees.

(B) Any resolution adopted, pursuant to subdivision (a)(3)(A)(i), on or after July 1, 2001, shall not take effect unless and until it is ratified by a majority of the customers of the utility district as provided in this subdivision (a)(3)(B). Upon adopting any such resolution, the board must promptly schedule a meeting of the district's customers for an election of ratification. Such election of ratification must coincide with the next succeeding meeting at which one (1) or more persons shall be elected or selected to serve on the utility district board of commissioners. At least thirty (30) days prior to the date of such meeting, the board must mail written notice to all customers of the utility district announcing the time, place and purposes of such meeting. If a majority of the customers present and voting at the meeting favor ratification of the resolution, then the resolution shall immediately take effect.

(4) Notwithstanding this section or any other law to the contrary, in any county having a population of not less than seventeen thousand eight hundred (17,800) nor more than seventeen thousand eight hundred seventy-five (17,875), or in any county having a population of not less than twenty thousand six hundred (20,600) nor more than twenty thousand seven

hundred (20,700), according to the 2000 federal census or any subsequent federal census, the members of a utility district board of commissioners shall serve without compensation for their services, except that, by resolution duly adopted by the board of commissioners, each commissioner may receive per diem payments for not more than twelve (12) meetings of the board of commissioners in any calendar year, at rates not greater than two hundred fifty dollars ($250) per meeting.

(5) Notwithstanding this section or any other law to the contrary, the members of the utility district board of commissioners in a census designated place that is the county seat of any county having a population of not less than one hundred fifty-six thousand eight hundred (156,800) nor more than one hundred fifty-six thousand nine hundred (156,900), according to the 2010 federal census or any subsequent federal census, shall serve without compensation for their services, except that by resolution duly adopted by the board of commissioners, each commissioner may receive per diem payments for not more than twelve (12) meetings of the board of commissioners in any calendar year, at rates not greater than three hundred fifty dollars ($350) per meeting.

(b) The board may delegate to one (1) or more of its members, or to its agents and employees, such powers and duties as it may deem proper, but, at its first meeting and at the first meeting of each calendar year thereafter, it shall elect one (1) of its members to serve as president, and another of its members as secretary of the board of commissioners.

(c) The secretary shall keep a record of all proceedings of the commission, which shall be available for inspection as other public records, and shall be custodian of all official records of the district.

(d) Only persons who reside within the district's boundaries or who are customers of the district shall be eligible for appointment or election to the board. As used in this subsection (d), "customer" means a person who is regularly billed and pays for a utility service rendered by the district.

(e) The board of commissioners of every utility district created pursuant to this chapter shall meet at least once each quarter, the time and place of such meeting to be published in accordance with title 8, chapter 44.

(f)(1) Within one (1) year of initial appointment or election to the board of commissioners of a utility district or prior to or within one (1) year of the reappointment or reelection to the board of commissioners of an incumbent utility district commissioner holding office on June 30, 2010, a utility district commissioner shall attend a minimum of twelve (12) hours of training and continuing education in one (1) or more of the subjects listed in subdivision (f)(6). An incumbent utility district commissioner holding office on June 30, 2010, who has received a minimum of twelve (12) hours of training or more in one (1) or more courses addressing subjects identified in subdivision (f)(6) within the past three (3) years may submit a request to the comptroller to be exempt from the training and continuing education requirements set forth in this subdivision (f)(1).

(2) In each continuing education period after the initial training and continuing education required by subdivision (f)(1), a utility district commissioner shall attend a minimum of twelve (12) hours of training and continuing education in one (1) or more of the subjects listed in subdivision (f)(6). For the purposes of this subdivision (f)(2), a "continuing education period" is a period of three (3) years beginning January 1 after the calendar

year in which a utility district commissioner completes the training and continuing education requirements set forth in subdivision (f)(1) and each succeeding three-year period thereafter.

(3) For purposes of subdivisions (f)(1) and (2), a utility district commissioner may request a training and continuing education extension of up to six (6) months from the comptroller of the treasury or the comptroller's designee. The request shall only be granted upon a reasonable showing of substantial compliance with subdivisions (f)(1) and (2). If the extension is granted, the utility district commissioner must complete any additional required training hours necessary to achieve full compliance for only the relevant continuing education period within the extension period. The utility district commissioner shall file copies of any extension request letters and corresponding comptroller of the treasury determination letters with the utility management review board. The failure to file this information with the utility management review board shall cause a commissioner to be ineligible to receive any further payment or benefit as provided in subsection (a) until the information is properly filed.

(4) Each utility district commissioner shall certify by January 31 of each year the training and continuing education courses attended during the prior calendar year by filing an annual written statement with the utility district on a form developed by the comptroller. Each annual statement shall identify the date of each course attended, its subject matter, location, sponsor, and the hours attended for each course and shall include a certificate of attendance for each course listed on the annual statement. Each utility district commissioner shall be responsible for obtaining a certificate of attendance certifying that the utility district commissioner attended the course, on a form acceptable to the comptroller. The failure to file the annual statement shall cause a commissioner to be ineligible to receive any further payment or benefit as provided in subsection (a) until the annual written statement is filed. Each utility district shall keep for six (6) years after the calendar year in which each annual statement is filed a copy of the annual statements of attendance filed by members of the board of commissioners of the utility district.

(5) The utility district shall be responsible for paying the training and continuing education course registration and travel expenses for the training and continuing education required by this subsection (f) for the members of the utility district's board of commissioners.

(6) The subjects for the training and continuing education required by subdivisions (f)(1) and (2) shall include, but not be limited to, board governance, financial oversight, policy-making responsibilities and other topics reasonably related to the duties of the members of the board of commissioners of a utility district.

(7) Any association or organization with appropriate knowledge and experience may prepare a training and continuing education curriculum for utility district commissioners covering the subjects set forth in subdivision (f)(6) to be submitted to the comptroller for review and approval prior to use. The comptroller shall file a copy of approved training and continuing education curriculum with the utility management review board. Changes and updates to the curriculum shall be submitted to the comptroller for approval prior to use. Any training and continuing education curriculum approved by the comptroller shall be updated every three (3) years and

resubmitted to the comptroller for review and approval.

(8) Nothing in this subsection (f) shall prohibit the utility management review board from requiring training and continuing education in addition to that required under this subsection (f) for utility district commissioners of a utility district which is financially distressed under § 7-82-703.

(9) As used in this subsection (f), "utility district commissioners" include the members of the governing board of any utility district created pursuant to this chapter or any public or private act and the members of the governing board of any water or sewer authority created by any public or private act; provided, that the education and training requirements pursuant to subsection (g) and not this subsection (f) shall apply to members of the governing board of a gas utility district.

(g) Subsection (f) shall not apply to any member of the governing board of a gas utility district who receives extensive annual training substantially equal to the training required pursuant to subsection (f) offered by an association of gas utility districts or directly through the gas utility district; provided, that the gas utility district submits the training curriculum to the comptroller for review and approval prior to use.

(h) If a utility district provides both water and gas, then the members of the governing board shall be subject to the education and training requirements of either subsection (f) or (g) based on the predominate customer base of the utility district.

**7-82-401. Audited annual financial report — Accounting manual — Books and records.**

(a)(1) The commissioners of each utility district shall cause an audited annual financial report to be made of the books and records of their district. The comptroller of the treasury, through the department of audit, is responsible for determining that such audits are prepared in accordance with generally accepted governmental auditing standards, and that such audits meet the minimum standards prescribed by the comptroller of the treasury.

(2) In all counties and districts, the comptroller of the treasury shall prepare a uniform audit manual as is required to assure that the books and records are kept in accordance with generally accepted accounting principles and that the minimum audit standards prescribed by the comptroller are met. The manual shall not be applied to invalidate obligations contained in bond resolutions or other debt contracts, nor to modify any substantive legal powers or requirements applicable to utility districts.

(b) The audits shall be prepared by certified public accountants, public accountants or by the department of audit. In the event the governing body of the utility district shall fail or refuse to have the audit prepared, then the comptroller of the treasury may appoint a certified public accountant, or public accountant or direct the department to prepare the audit, the cost of such audit to be paid by the utility district.

(c) The comptroller of the treasury is authorized to modify the requirements for an audit as set out in this section for utility districts whose activity, in the comptroller of the treasury's judgment, is not sufficient to justify the expenses of a complete audit. Furthermore, the comptroller of the treasury is authorized to direct the department of audit to make an audit or financial review of the

books and records of utility districts.

(d) Within ninety (90) days after the close of the fiscal year of each district organized and operating under this law, the commissioners of the district shall publish in a newspaper of general circulation, published in the county in which the district is situated, a statement showing:

(1) The financial condition of the district at the end of the fiscal year;

(2) The earnings of the district during the fiscal year just ended;

(3) All travel and related costs or expenses where any portion of such costs or expenses is paid by the district or any entity or entities, public or private, associated with the district, including, but not limited to, travel for commissioners and employees;

(4) A statement of the water rates then being charged by the district; and

(5) A brief statement of the method used in arriving at such rates.

(e) A copy of such annual statement and audit shall be filed with the county mayor or mayors where publication is required in accordance with this section and § 7-82-608.

(f) Audits performed by the internal audit staffs of the utility districts shall be conducted in accordance with the standards established by the comptroller of the treasury pursuant to § 4-3-304(9).

(g)(1) Any utility district that is a financially distressed utility district shall be subject to the supervision and evaluation of the utility management review board created pursuant to part 7 of this chapter.

(2) A government joint venture that supplies or treats water or wastewater for wholesale use only to other governments shall not fall under the jurisdiction of the utility management review board for the purpose of reporting negative change in net position annually, but shall be referred to the board if the government joint venture is in a deficit or default position as described in subdivision (g)(3).

(3) For the purposes of this chapter, "financially distressed utility district" means a utility district, and its system or systems, that, as shown by the audited annual financial reports, has either a deficit in total net position, is in default on an indebtedness, or has a negative change in net position for two (2) consecutive years without regard to any grants, capital contributions, or excluded non-cash items. For purposes of this section, "change in net position" means total revenues less all grants, capital contributions, and expenses, but without reduction for any excluded non-cash items. For purposes of this section, "excluded non-cash items" means any non-cash charges arising from changes to or the implementation of pension and other post-employment benefit standards promulgated by the governmental accounting standards board.

(h)(1) Utility districts operating public water systems shall include in their audited annual financial report the utility district's water loss in the manner as prescribed by the utility management review board. Failure of the utility district to include the schedule required in this section constitutes excessive water loss and the utility district shall be referred to the utility management review board. Within sixty (60) days from the time that a utility district's audit is filed with the comptroller of the treasury, the comptroller of the treasury shall file with the utility management review board the audited annual financial report of any utility district operating a water system whose water loss is excessive as established by rules promulgated by the utility management review board.

(2) For the purposes of subdivision (h)(1), "utility district" includes agencies, authorities, or instrumentalities of government created by private act having the authority to administer a water or wastewater facility.

(i) By February 1 of each year, the comptroller of the treasury shall provide a written report to the speaker of the house of representatives and the speaker of the senate listing the average annual water loss contained in the audited annual financial report for those utility districts described in subsection (h).

**7-82-701. Created — Authority — Composition — Terms — Chair.**

(a) There is hereby created in the office of comptroller of the treasury a utility management review board for the purpose of advising utility district boards of commissioners in the area of utility management. The utility management review board created by this section is vested with authority over all utility districts established pursuant to this chapter or by any public or private act.

(b) The board shall be composed of nine (9) members as follows:

(1) The commissioner of environment and conservation or the commissioner's designee;

(2) The comptroller of the treasury or the comptroller's designee, who shall serve as chair; and

(3) Seven (7) members appointed by the governor, three (3) of whom shall be experienced utility district managers, three (3) of whom shall be experienced utility district commissioners and one (1) of whom shall be a consumer residing in the state who may have experience in residential development but is not engaged in utility district management or operation. The consumer member shall be appointed for a four-year term of office at the expiration of the term of office of a utility district manager first occurring after June 11, 2009.

(c) The governor shall consult with the Tennessee Association of Utility Districts (TAUD) as to qualified individuals to be appointed to the board.

(d) Members shall be appointed to four-year terms; provided, that the initial appointments shall be for terms, not to exceed four (4) years, as shall be necessary so that the terms of no more than two (2) members of the board shall end in any one (1) year.

(e) [Deleted by 2015 amendment]

**7-82-709. Authority of board to investigate compliance with federal and state law.**

(a) Notwithstanding any law to the contrary, the utility management review board shall have the authority, in the case of public water systems of utility districts, to investigate, with the assistance of the department of environment and conservation and the comptroller of the treasury, and determine the financial, technical, and managerial capacity of the systems to comply with the requirements of the federal and the state acts; and to require systems to take appropriate action to correct any deficiencies in such areas, including, but not limited to, changes in ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures.

(b) The utility management review board shall have the authority to investigate public water systems of utility districts whose water loss as reported in the utility district's annual audit is excessive as established by

rules determined by the board. In the event a utility district fails to take the appropriate actions required by the board to reduce water loss to an acceptable level, the utility management review board may petition the chancery court in a jurisdiction in which the utility district is operating to require the utility district to take such actions.

**7-86-113. Audits.**

(a) The board of directors of each district shall cause an annual audit to be made of the books and records of the district. Within thirty (30) days after receipt by the district, a copy of the annual audit shall be filed with the clerk or recorder of the appropriate county or municipality who shall then distribute copies to members of the appropriate legislative body. Within thirty (30) days after receipt by the district, a copy of the annual audit shall also be filed with the chief administrative officer of the appropriate county or municipality. The comptroller of the treasury, through the department of audit, shall be responsible for determining that such audits are prepared in accordance with generally accepted governmental auditing standards and that such audits meet the minimum standards prescribed by the comptroller of the treasury. The comptroller of the treasury, through the department of audit, shall also prescribe procedures such as are required to assure that the books and records are kept in accordance with generally accepted accounting principles.

(b) These audits shall be prepared by certified public accountants, public accountants or by the department of audit. In the event the governing body of the district shall fail or refuse to have the audit prepared, then the comptroller of the treasury may appoint a certified public accountant, or public accountant or direct the department of audit to prepare the audit, the cost of such audit to be paid by the district.

(c) The comptroller of the treasury is authorized to modify the requirements for an audit as set out in this section for any districts whose activity, in the comptroller of the treasury's judgment, is not sufficient to justify the expenses of a complete audit. Furthermore, the comptroller of the treasury is authorized to direct the department of audit to make an audit of financial review of the books and records of districts.

**7-88-106. Apportionment and distribution of incremental increases due to public use facility.**

(a)(1) If a municipality or public authority has financed, constructed, leased, equipped, renovated or acquired a qualified public use facility within a tourism development zone, then state and local sales and use taxes shall be apportioned and distributed to the municipality in an amount equal to the incremental increase in state and local sales and use tax revenue derived from the sale of goods, products and services within the tourism development zone in excess of base tax revenues, excluding any increase in the state rate for sales and use tax; provided, however, that, with respect to any facility that elects to qualify as a qualified public use facility under § 7-88-103(7)(A)(ii) or (7)(A)(iii), only the portion of the incremental increase in the local sales and use tax revenue as is designated by resolution of the municipality shall be so apportioned and distributed under this section, unless the municipality designates by resolution a lesser time period for the apportionment and distribution of the revenues; and in the event one (1) or

more other local taxes are authorized for use within the tourist development zone, then the portion of the additional taxes as are designated by resolution of the municipality shall be similarly apportioned and distributed. For any facility that elects to qualify as a qualified public use facility under § 7-88-103(7)(A)(ii) or (7)(A)(iii), the portion of the incremental increase in the local sales and use tax revenue that is statutorily designated for local schools may not be apportioned and distributed for such a qualified public use facility. For any facility that elects to qualify as a qualified public use facility and is located in any county having a population of not less than seventy-one thousand one hundred (71,100) nor more than seventy-one thousand two hundred (71,200), according to the 2000 federal census or any subsequent federal census, any revenue derived from an increase in the local sales and use tax rate occurring on or after January 1, 2009, may not be apportioned and distributed for such a qualified public use facility and instead shall be apportioned and distributed exclusively as provided in § 67-6-712(a); provided, however, that this sentence shall not apply to any increase in the local sales and use tax enacted after July 1, 2010. Apportionment and distribution of such taxes shall continue, until the earlier of:

(A) The date on which the cumulative amount apportioned and distributed to the municipality equals the cost of the qualified public use facility, plus any interest on indebtedness of the municipality or public authority related to such cost;

(B) The date on which the qualified public use facility ceases to be a qualified public use facility; or

(C) Thirty (30) years from the date it is reasonably anticipated that the facility will commence operations as a public use facility.

(2)(A) Notwithstanding subdivision (a)(1), and subject to the recommendation of the comptroller of the treasury and approval by the state building commission no later than December 31, 2018, the portion of the incremental increase in the local sales and use tax revenue shall be apportioned and distributed for one (1) qualified public use facility if placed in service no later than December 31, 2022, and if such facility consists of a hotel with at least five hundred (500) rooms and related retail, parking, and commercial uses. No state sales and use tax revenue shall be allocated to the municipality pursuant to this subdivision (a)(2).

(B) Apportionment and distribution of local tax revenue in accordance with subdivision (a)(2)(A) shall continue until the earlier of:

(i) Thirty (30) years from the date it is reasonably anticipated that the facility will commence operations as a public use facility; or

(ii) The date the cumulative amount apportioned and distributed to the municipality under subdivision (a)(2)(A) with respect to such facility equals the indebtedness of the municipality or public authority, plus interest thereon, related to the cost of the public use facility payable from such amount.

(b) Except as otherwise provided in subsection (c), tax revenue distributed to the municipality shall be for the exclusive use of the municipality or the public authority formally designated by the municipality, in accordance with the Local Government Public Obligations Act of 1986, compiled in title 9, chapter 21, the Public Building Authorities Act of 1971, compiled in title 12, chapter 10, or chapter 53 of this title for payment of the cost of the public use facility, including interest and debt service on any indebtedness related to the

public use facility, or the lease payments with respect to any public use facility, and shall apply to only one (1) tourism development zone per municipality. The apportionment and payment shall be made by the department of revenue to the municipality within ninety (90) days of the end of each fiscal year for which the municipality is entitled to receive an allocation and payment pursuant to this chapter. Notwithstanding this subsection (b), a county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, and a municipality in a county having a population of more than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, shall not be limited to one (1) tourism development zone eligible to receive a distribution of tax revenue, and such county and such municipality are not required to designate additional tourism development zones as a secondary tourism development zone to receive a distribution of tax revenue.

(c) If there has been designated within the municipality a secondary tourist development zone, then the incremental increase in state and local sales and use tax revenue derived from the sale of goods, products and services within the secondary tourist development zone in excess of base tax revenues, excluding any increase in the state rate for sales and use tax, shall be apportioned and distributed to the municipality for deposit in its general fund. Apportionment and distribution of the taxes shall continue until the earliest of:

(1) The first date on which the indebtedness of the municipality or public authority related to the qualified public use facility located within the secondary tourist development zone has been paid in full;

(2) The date on which the cumulative amount apportioned and distributed equals the cumulative amount of principal and interest on indebtedness of the municipality or public authority related to the qualified public use facility located within the secondary tourist development zone;

(3) The date on which the qualified public use facility ceases to be a qualified public use facility; or

(4) Thirty (30) years from the date it is reasonably anticipated that the facility will commence operations as a public use facility.

**7-88-107. Limitations on indebtedness.**

(a) Any bonds, notes or other indebtedness relative to the cost of a qualified public use facility shall not be issued for a term longer than thirty (30) years from the date it is reasonably anticipated that the facility will commence operation as a public use facility, and the municipality or public authority is authorized to pledge all proceeds or taxes received by it, pursuant to this chapter, to the payment of principal of and interest on such bonds, notes or other indebtedness.

(b) A municipality is authorized to enter into a structured lease agreement; provided, that the municipality complies with § 9-21-305(c) regarding guidelines, rules or regulations adopted or promulgated by the state funding board under § 9-21-130, treating the lease as if it were a revenue bond of the municipality and the comptroller determines compliance with the guidelines. However, if the municipality is additionally obligated to make the lease payments from legally available sources, subject to appropriation, other than

revenues available under § 7-88-106(b) and revenues derived from the project, then the municipality, seven (7) days before the effective date of the structured lease agreement or the amendment to a lease making it a structured lease agreement, must provide notice generally available within the municipality, disclosing the purpose for the structured lease agreement, the additional sources, whether taxes or revenues, to be used for lease payments, and the maximum liability of the municipality.

(c) Any bonds, notes, or other indebtedness, including any refinancing or refunding, proposed to be issued under this part must be approved by the state funding board.

**7-88-114. Application.**

(a) This part shall apply to:

(1) Tourism development zones existing as of April 27, 2018; and

(2) Tourism development zones approved by the state building commission no later than December 31, 2018, that are created pursuant to a letter of intent or application filed as of June 26, 2007.

(b) No tourism development zones shall be created after April 27, 2018, except for those tourism development zones created pursuant to subdivision (a)(2).

(c) Should an application not be approved by the state building commission by December 31, 2018, whether or not it is filed pursuant to a letter of intent filed by June 26, 2007, the application and letter of intent shall be null and void.

(d) The state building commission has the authority to approve or disapprove an application for a tourism development zone in whole or in part.

(e)(1) The state building commission has the authority to approve or disapprove any modification to a tourism development zone in whole or in part; however, a tourism development zone may not be modified to expand its boundaries or extend its term unless specifically authorized by statute with respect to a particular tourism development zone. The state building commission has the authority to deny a modification relative to the use of the tourism development zone funds if it determines that any proposed use is not economically feasible or not in the best interest of the state.

(2) As used in this part, "modification" means any change in a tourism development zone, including, but not limited to, adding new qualified public use facilities; adding qualified associated developments or ancillary structures or facilities; or adding any use of property tax revenue pursuant to § 7-88-113.

(f) The municipality or public authority in which a tourism development zone is located shall file with the commissioner of finance and administration and the state building commission an annual report on a form and in accordance with the procedures prescribed by the comptroller of the treasury for the year previous to the date of the annual report, which shall include:

(1) A list of contractual commitments specifying the individual parties, expenditures, and the scope of work. For the purpose of this part, "contractual commitment" means any contract, agreement, or commitment for goods or services that is funded in whole or in part by tourism development zone funds;

(2) A tourism development zone's principal debt and interest, revenues, total expenditures, expenditures made with surplus funds, outstanding

indebtedness, periodic surplus/deficit, and cumulative surplus/deficit;

(3) The cumulative amount of funds expended by the tourism development zone on the zone itself specified by subaccount on each qualified public use facility, and specifying whether such funds were bond proceeds or surplus revenues; and

(4) A sources and uses report showing all funds received or expended in conjunction with, in relation to, or leveraged with, tourism development zone funds. Received funds shall be stated separately from the funding source. Receipts or expenditures of less than one hundred thousand dollars ($100,000) may be reported in the aggregate by category. For receipts and expenditures equal to or in excess of one hundred thousand dollars ($100,000), each item must be listed with specificity and include the payee or payees, purpose, and date.

(g) In addition to the annual report, the state building commission shall have the authority to request at any time a sources and uses report showing all funds received or expended by the municipality or public authority with respect to the tourism development zone during the previous three (3) months.

### 7-91-101. JustBeGreen Villages of America development area. [Repealed effective July 1, 2026.]

An area of property meeting the following description may be deemed, in accordance with this chapter, the JustBeGreen Villages of America development area, and the future site of an agricultural and educational based development supported by state-of-the-art smart technologies to be known as JustBeGreen Villages of America, for purposes of sustainable living and sustainable economic development, including, but not limited to, the development of sustainable technologies, products, and agriculture:

(1) The property is located in a county with a population of not less than twenty-one thousand nine hundred (21,900) and not more than twenty-two thousand (22,000), according to the 2010 or any subsequent federal census; and

(2) The property consists of not less than two thousand (2,000) contiguous acres.

### 7-91-102. Petition — Resolution. [Repealed effective July 1, 2026.]

(a) One (1) or more property owners of property within an area described under § 7-91-101 may petition the county commission to be deemed the JustBeGreen Villages of America development area.

(b) For purposes of filing a petition under subsection (a), property owners shall provide to the county commission:

(1) A description of all property to be included in the proposed development area;

(2) The identity of each property owner filing the petition; and

(3) A description of the proposed development and its purpose and land uses within the development area.

(c) Upon receipt of a petition, the county commission may adopt a resolution:

(1) Designating the area described in the petition as the JustBeGreen Villages of America development area; and

(2) Authorizing the area to be referred to as JustBeGreen Villages of America.

**7-91-103. Development area not a municipality. [Repealed effective July 1, 2026.]**

The JustBeGreen Villages of America development area, designated JustBeGreen Villages of America in accordance with this chapter, is not a municipality for purposes of this code, and does not have the corporate powers and authority of a municipality under this code.

**7-91-104. Repealer. [Repealed effective July 1, 2026.]**

This chapter is repealed on July 1, 2026.

**8-4-115. Standardized procedures for booking of arrestees. [Effective until January 1, 2019. See the version effective on January 1, 2019.]**

(a)(1) The comptroller of the treasury, in consultation with the Tennessee bureau of investigation, the Tennessee Sheriff's Association, the Tennessee Association of Chiefs of Police, and the Tennessee corrections institute, developed standardized booking procedures which include:

(A) A photograph of the arrestee;

(B)(i) A set of fingerprints. If fingerprints are maintained manually, the booking agency shall mail two (2) sets of properly completed fingerprint cards to the Tennessee bureau of investigation. If fingerprints are transmitted to the Tennessee bureau of investigation electronically, the booking agency shall maintain with the arrest report one (1) hard copy of the fingerprints along with an acknowledgement from the Tennessee bureau of investigation that a copy of the fingerprints have been received and accepted;

(ii)*(a)* When a person is arrested for a vehicular impairment offense, and fingerprints are maintained manually, the booking agency shall mail two (2) sets of properly completed fingerprint cards to the Tennessee bureau of investigation within five (5) business days of the person being booked for the offense;

*(b)* If fingerprints of a person arrested for a vehicular impairment offense are transmitted to the Tennessee bureau of investigation electronically, the fingerprints shall be transmitted within up to five (5) business days of booking;

*(c)* As used in this subdivision (a)(1)(B), "vehicular impairment offense" means the person is charged with a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401;

(C)(i) Delivery to the appropriate local law enforcement agency of a completed judgment order signed by a judge to be used by the local law enforcement agency for completion of an R-84 Disposition Card, except as provided in this subdivision (a)(1)(C). A local law enforcement agency and a clerk of court can collaborate on an automated process for the electronic submission of final dispositions for criminal cases to the Tennessee bureau of investigation. After a law enforcement agency and a clerk of court have implemented an automated process for the electronic submission of final dispositions for criminal cases, and have had the process certified by the Tennessee bureau of investigation, all final dispositions shall be reported electronically. Upon implementation

of an automated process for the electronic submission of final dispositions for criminal cases, the delivery to the local law enforcement agency of a completed judgment order signed by a judge to be used by the local law enforcement agency for completion of an R-84 Disposition Card, and the submission by the local law enforcement agency of a completed R-84 Disposition Card to the Tennessee bureau of investigation are no longer required;

(ii)*(a)* When a person is convicted of a vehicular impairment offense, the clerk shall deliver the judgment order signed by the judge to the appropriate law enforcement agency within seven (7) business days of the date the judge signs the order. Upon receiving the judgment order from the clerk, the appropriate law enforcement agency shall have seven (7) business days to complete an R-84 Disposition Card on the person convicted and send it to the Tennessee bureau of investigation for entry into the National Crime Information Center (NCIC);

*(b)* If a person is convicted of a vehicular impairment offense, in a county where the clerk and the law enforcement agency have implemented an automated process for the electronic submission of final dispositions for criminal cases that is certified by the Tennessee bureau of investigation, the conviction shall be transmitted by the clerk to the Tennessee bureau of investigation within two (2) business days of the judgment order being signed by the judge. The Tennessee bureau of investigation shall immediately enter the conviction into the National Crime Information Center (NCIC);

*(c)* As used in this subdivision (a)(1)(C), "vehicular impairment offense" means the person was convicted of a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401;

(D) An arrest report; and

(E) Delivery to the appropriate court clerk office of a warrant or capias for offense containing the state control number assigned by the law enforcement agency upon the arrest of an individual to be recorded in the court information system of the court clerk office.

(2) Notwithstanding § 8-8-201 or § 38-3-122 to the contrary, it shall be the duty of the law enforcement agency responsible for maintaining the arrested person's booking records to take the fingerprints from such person as required by such sections.

(3) Where individuals are arrested multiple times for a violation of § 39-17-310, the offense of public intoxication, the arresting officer shall note on the arrest report that fingerprints are on file for this individual pursuant to § 38-3-122(a).

(4) Compliance with these standardized booking procedures shall be the basis for the comptroller of the treasury determining compliance with the fingerprinting requirements of §§ 8-8-201(a)(35) and 38-3-122. The Tennessee corrections institute and the law enforcement training academy shall train correctional personnel in municipal, county and metropolitan jurisdictions in the application of these standardized booking procedures.

(b) The respective county or municipal legislative body shall appropriate funds for the respective sheriff's office or police department, including funds for personnel and supplies which are sufficient to comply with this section.

(c)(1) The comptroller of the treasury shall audit or cause to be audited under title 4, chapter 3, part 3 and title 6, chapter 56, part 1, on an annual

basis the sheriff's office or police department to determine whether or not such law enforcement agency is in compliance with the requirements of this section. If the comptroller of the treasury determines that a particular sheriff's office or police department is not in compliance with §§ 8-8-201(a)(35), 38-3-122 and this section, the comptroller of the treasury, within thirty (30) days of such determination, shall notify such sheriff or police chief and the Tennessee peace officer standards and training commission of such noncompliance.

(2) Such sheriff or police chief shall show cause to the Tennessee peace officer standards and training commission within thirty (30) days of notification why such sheriff or police chief should not be found to be in noncompliance with the requirements of §§ 8-8-201(a)(35) and 38-3-122. If the appropriate sheriff or police chief does not respond or show good cause within thirty (30) days, the Tennessee peace officer standards and training commission shall forthwith decertify the appropriate sheriff or police chief and impound the supplement provided for such sheriff or police chief in § 38-8-111. The Tennessee peace officer standards and training commission shall notify the comptroller of the treasury and both the sheriff and county commission or the police chief and city council of such action.

(3) The burden shall be on such sheriff or police chief to demonstrate compliance to the Tennessee peace officer standards and training commission and if such sheriff or police chief is found to be in compliance with this section within sixty (60) days after decertification, the Tennessee peace officer standards and training commission shall rescind the decertification order and cause any salary supplement impounded to be returned to the appropriate sheriff or police chief except for one twelfth ($^1/_{12}$) of the annual supplement.

(d) In addition to any proceeding under chapter 47 of this title, the sheriff or police chief may be removed from office in accordance with this section. The comptroller of the treasury shall forward a copy of reports of noncompliance with this section by the sheriff or police chief to the district attorney general having jurisdiction and to the attorney general and reporter. The district attorney general and the attorney general and reporter shall each review the report and determine if there is sufficient cause for further investigation. If further investigation indicates willful misfeasance, malfeasance or nonfeasance by the sheriff or police chief, the district attorney general shall proceed pursuant to chapter 47 of this title, to remove the sheriff or police chief from office. This subsection (d) is effective for fingerprints taken or required to be taken on or after July 1, 1999.

(e) Prior to purchasing an electronic fingerprint imaging system, the sheriff or municipal police department shall obtain certification from the Tennessee bureau of investigation that such equipment is compatible with the Tennessee bureau of investigation's and the federal bureau of investigation's integrated automated fingerprint identification system.

(f) Subject to the approval of the general assembly, a portion of the funds derived from the additional privilege tax levied on all criminal cases instituted in this state as provided for in § 67-4-602(g), may be appropriated to the Tennessee bureau of investigation for the purchase, installation, maintenance, and line charges of electronic fingerprint imaging systems.

(g) Upon establishment of an automated system for final disposition reporting, clerks of court shall submit final disposition reports electronically to the

Tennessee bureau of investigation. Jurisdictions that submit final disposition reports electronically will cease the submission of R-84 Disposition Cards upon advisement from the Tennessee bureau of investigation. The submission of an electronic final disposition report shall have the same force and effect as the submission of a R-84 Disposition Card.

(h) Any automated court information system being used or developed on or after July 1, 2005, including, but not limited to, the Tennessee court information system (TnCIS) being designed pursuant to § 16-3-803(h), shall ensure that an electronic file of final disposition data will be reported to the Tennessee bureau of investigation. The form, general content, time, and manner of submission of the electronic file of final disposition data will comply with the rules and regulations prescribed by the Tennessee bureau of investigation.

**8-4-115. Standardized procedures for booking of arrestees. [Effective on January 1, 2019. See the version effective until January 1, 2019.]**

*(a)(1) The comptroller of the treasury, in consultation with the Tennessee bureau of investigation, the Tennessee Sheriff's Association, the Tennessee Association of Chiefs of Police, and the Tennessee corrections institute, developed standardized booking procedures which include:*

*(A) A photograph of the arrestee;*

*(B)(i) A set of fingerprints. If fingerprints are maintained manually, the booking agency shall mail two (2) sets of properly completed fingerprint cards to the Tennessee bureau of investigation. If fingerprints are transmitted to the Tennessee bureau of investigation electronically, the booking agency shall maintain with the arrest report one (1) hard copy of the fingerprints along with an acknowledgement from the Tennessee bureau of investigation that a copy of the fingerprints have been received and accepted;*

*(ii)**(a)** When a person is arrested for a vehicular impairment offense, and fingerprints are maintained manually, the booking agency shall mail two (2) sets of properly completed fingerprint cards to the Tennessee bureau of investigation within five (5) business days of the person being booked for the offense;*

***(b)** If fingerprints of a person arrested for a vehicular impairment offense are transmitted to the Tennessee bureau of investigation electronically, the fingerprints shall be transmitted within up to five (5) business days of booking;*

***(c)** As used in this subdivision (a)(1)(B), "vehicular impairment offense" means the person is charged with a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401;*

*(C)(i) Delivery to the appropriate local law enforcement agency of a completed judgment order containing the state control number, signed by a judge to be used by the local law enforcement agency for completion of an R-84 Disposition Card, except as provided in this subdivision (a)(1)(C). A local law enforcement agency shall provide a state control number printed on the R-84 Disposition Card and attached to the arresting document to the clerk within seven (7) business days of arrest so that the clerk or court can electronically submit final dispositions of criminal cases, including the state control number, to the Tennessee*

*bureau of investigation. Unless otherwise authorized by the Tennessee bureau of investigation, all final dispositions shall be reported electronically. A formal disposition shall not be sent to the Tennessee bureau of investigation without the state control number or transaction control number being contained within the document;*

*(ii)**(a)** When a person is convicted of a vehicular impairment offense, the clerk shall deliver the judgment order signed by the judge to the appropriate law enforcement agency within seven (7) business days of the date the judge signs the order. Upon receiving the judgment order from the clerk, the appropriate law enforcement agency shall have seven (7) business days to complete an R-84 Disposition Card on the person convicted and send it to the Tennessee bureau of investigation for entry into the National Crime Information Center (NCIC);*

***(b)** If a person is convicted of a vehicular impairment offense, in a county where the clerk and the law enforcement agency have implemented an automated process for the electronic submission of final dispositions for criminal cases that is certified by the Tennessee bureau of investigation, the conviction containing the state control number shall be transmitted by the clerk to the Tennessee bureau of investigation within two (2) business days of the judgment order being signed by the judge. The Tennessee bureau of investigation shall immediately enter the conviction into the National Crime Information Center (NCIC);*

***(c)** As used in this subdivision (a)(1)(C), "vehicular impairment offense" means the person was convicted of a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401;*

*(D) An arrest report; and*

*(E) Delivery to the appropriate court clerk office of a warrant or capias for offense containing the state control number assigned by the law enforcement agency upon the arrest of an individual to be recorded in the court information system of the court clerk office.*

*(2) Notwithstanding § 8-8-201 or § 38-3-122 to the contrary, it shall be the duty of the law enforcement agency responsible for maintaining the arrested person's booking records to take the fingerprints from such person as required by such sections.*

*(3) Where individuals are arrested multiple times for a violation of § 39-17-310, the offense of public intoxication, the arresting officer shall note on the arrest report that fingerprints are on file for this individual pursuant to § 38-3-122(a).*

*(4) Compliance with these standardized booking procedures shall be the basis for the comptroller of the treasury determining compliance with the fingerprinting requirements of §§ 8-8-201(a)(35) and 38-3-122. The Tennessee corrections institute and the law enforcement training academy shall train correctional personnel in municipal, county and metropolitan jurisdictions in the application of these standardized booking procedures.*

*(b) The respective county or municipal legislative body shall appropriate funds for the respective sheriff's office or police department, including funds for personnel and supplies which are sufficient to comply with this section.*

*(c)(1) The comptroller of the treasury shall audit or cause to be audited under title 4, chapter 3, part 3 and title 6, chapter 56, part 1, on an annual basis the sheriff's office or police department to determine whether or not such law*

*enforcement agency is in compliance with the requirements of this section. If the comptroller of the treasury determines that a particular sheriff's office or police department is not in compliance with §§ 8-8-201(a)(35), 38-3-122 and this section, the comptroller of the treasury, within thirty (30) days of such determination, shall notify such sheriff or police chief and the Tennessee peace officer standards and training commission of such noncompliance.*

*(2) Such sheriff or police chief shall show cause to the Tennessee peace officer standards and training commission within thirty (30) days of notification why such sheriff or police chief should not be found to be in noncompliance with the requirements of §§ 8-8-201(a)(35) and 38-3-122. If the appropriate sheriff or police chief does not respond or show good cause within thirty (30) days, the Tennessee peace officer standards and training commission shall forthwith decertify the appropriate sheriff or police chief and impound the supplement provided for such sheriff or police chief in § 38-8-111. The Tennessee peace officer standards and training commission shall notify the comptroller of the treasury and both the sheriff and county commission or the police chief and city council of such action.*

*(3) The burden shall be on such sheriff or police chief to demonstrate compliance to the Tennessee peace officer standards and training commission and if such sheriff or police chief is found to be in compliance with this section within sixty (60) days after decertification, the Tennessee peace officer standards and training commission shall rescind the decertification order and cause any salary supplement impounded to be returned to the appropriate sheriff or police chief except for one twelfth ($^1/_{12}$)* of the annual supplement.

*(d) In addition to any proceeding under chapter 47 of this title, the sheriff or police chief may be removed from office in accordance with this section. The comptroller of the treasury shall forward a copy of reports of noncompliance with this section by the sheriff or police chief to the district attorney general having jurisdiction and to the attorney general and reporter. The district attorney general and the attorney general and reporter shall each review the report and determine if there is sufficient cause for further investigation. If further investigation indicates willful misfeasance, malfeasance or nonfeasance by the sheriff or police chief, the district attorney general shall proceed pursuant to chapter 47 of this title, to remove the sheriff or police chief from office. This subsection (d) is effective for fingerprints taken or required to be taken on or after July 1, 1999.*

*(e) Prior to purchasing an electronic fingerprint imaging system, the sheriff or municipal police department shall obtain certification from the Tennessee bureau of investigation that such equipment is compatible with the Tennessee bureau of investigation's and the federal bureau of investigation's integrated automated fingerprint identification system.*

*(f) Subject to the approval of the general assembly, a portion of the funds derived from the additional privilege tax levied on all criminal cases instituted in this state as provided for in § 67-4-602(g), may be appropriated to the Tennessee bureau of investigation for the purchase, installation, maintenance, and line charges of electronic fingerprint imaging systems.*

*(g) Upon establishment of an automated system for final disposition reporting, clerks of the court shall submit final disposition reports containing the state control number electronically to the Tennessee bureau of investigation. Jurisdictions that submit final disposition reports electronically will cease the*

*submission of R-84 Disposition Cards upon advisement from the Tennessee bureau of investigation. The submission of an electronic final disposition report containing the state control number shall have the same force and effect as the submission of the R-84 Disposition Card.*

*(h) Any automated court information system being used or developed on or after July 1, 2005, including, but not limited to, the Tennessee court information system (TnCIS) being designed pursuant to § 16-3-803(h), shall ensure that an electronic file of final disposition data, including the state control number, will be reported to the Tennessee bureau of investigation. The form, general content, time, and manner of submission of the electronic file of final disposition data, including the state control number, will comply with the rules prescribed by the Tennessee bureau of investigation.*

*(i) As used in this section, unless the context otherwise requires:*

*(1) "Final disposition" means a court document that reflects the outcome of a criminal case and shall include:*

*(A) The defendant's full name;*

*(B) The defendant's social security number;*

*(C) The defendant's date of birth;*

*(D) The defendant's sex;*

*(E) The defendant's race;*

*(F) The county of arrest;*

*(G) The class designation of the crime;*

*(H) The state control number;*

*(I) The date of arrest and date of offense;*

*(J) The date of disposition and date of sentence imposed;*

*(K) The criminal charge or charges convicted of;*

*(L) Any fines, court costs, and restitution;*

*(M) The case number and court number;*

*(N) Whether the defendant is sentenced to confinement in the Tennessee department of correction, a county jail, or workhouse;*

*(O) Whether the defendant was sentenced to supervised or unsupervised probation or to community correction; and*

*(P) Whether diversion was ordered;*

*(2) "Finger printing agency" means any entity approved by the Tennessee bureau of investigation responsible for the submission of fingerprint arrests in a Tennessee municipality or county; including a state or local law enforcement agency, sheriff's office, or police department; and*

*(3) "State control number" means a unique twelve (12) digit number generated and printed by a live scan device or automated fingerprint identification system (AFIS) for the purpose of identifying, tracking, or referencing a criminal transaction.*

**8-4-502. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Public entity" means any branch or agency of a county, municipality, public utility, utility district, entity created pursuant to any interlocal agreement, or any other political subdivision thereof;

(2) "Public official" means a person elected or appointed to any office of a public entity;

(3) "Reasonable amount of time" means any amount of time that is reasonable under the particular circumstances, but shall not under any

circumstances exceed five (5) working days; and

(4) "Unlawful conduct" means theft, forgery, credit or debit card fraud, or any other act of unlawful taking, waste, or abuse of, or official misconduct, as defined in § 39-16-402, involving public money, property, or services.

**8-4-503. Reporting unlawful conduct — Method of making report.**

(a) A public official with knowledge based upon available information that reasonably causes the public official to believe that unlawful conduct has occurred shall report the information in a reasonable amount of time to the office of the comptroller of the treasury.

(b) A certified public accountant or firm conducting an audit, investigation, or other engagement under a contract with the comptroller of the treasury, or with a public entity that requires approval by the comptroller of the treasury, shall promptly report any reasonable suspicion of unlawful conduct to the office of the comptroller of the treasury.

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(c) The comptroller of the treasury may prescribe the method of making the report.

**8-4-504. Good faith immunity.**

(a) If acting in good faith, a public official, or a certified public accountant or firm, makes a report, as required by § 8-4-503, the person or firm shall not be liable in any civil or criminal action that is based solely upon:

(1) The person's or firm's decision to report what the person or firm believed to be unlawful conduct;

(2) The person's or firm's belief that reporting the unlawful conduct was required by law or by contract; or

(3) The fact that a report of unlawful conduct was made.

(b) No immunity conferred pursuant to subsection (a) shall attach if the person or firm reporting the unlawful conduct:

(1) Participated in or benefited from the unlawful conduct; or

(2) Knowingly provides false information pursuant to this part.

**8-4-603. Open meetings laws — Review of proposed legislation — Report.**

(a)(1) The advisory committee shall, with the guidance of the office of open records counsel, hold meetings to review and provide written comments, if requested, on any proposed legislation regarding the open meetings laws, compiled in chapter 44 of this title, and the open records laws, compiled in title 10, chapter 7.

(2)(A) The advisory committee shall select two (2) co-chairs from among its membership.

(B) One (1) co-chair selected under subdivision (a)(2)(A) shall represent the interests of advisory committee members appointed under § 8-4-602(b)(1)(C)-(E), (H), and (J)-(L); and one (1) co-chair selected shall represent the interests of members appointed under § 8-4-602(b)(1)(A), (B), (F), (G), (I), (M), and (N).

(C)(i) The advisory committee shall meet at least once during each calendar year, with the date for such meeting to be set by joint agreement of the co-chairs.

(ii) The co-chairs of the committee:

*(a)* May, by joint agreement, call additional meetings at any time; and

*(b)* Shall, upon the request of a majority of the members, call additional meetings.

(3) All meetings of the advisory committee shall be open to the public, pursuant to § 8-44-102.

(b)(1) The office of open records counsel and the advisory committee shall separately provide a detailed report of their activities to the governor, the speaker of the senate, the speaker of the house of representatives, the chair of the state and local government committee of the senate, the chair of the local government committee of the house of representatives, and the chair of the state government committee of the house of representatives by March 1 of each year.

(2) The advisory committee shall provide reports on open records and open meetings laws and issues as requested by the governor or any committee of the general assembly.

(c) Any written comments or reports provided by the advisory committee shall require unanimous consent of the co-chairs.

**8-7-105. Salary.**

(a) On July 1, 1990, the salary for district attorneys general shall be sixty-eight thousand dollars ($68,000) per annum. On July 1, 1991, the base salary for district attorneys general shall be seventy-four thousand one hundred dollars ($74,100) per annum. On September 1, 2006, the salary for district attorneys general shall be one hundred twenty-four thousand nine hundred dollars ($124,900). On March 1, 2018, the base salary for district attorneys general shall be one hundred fifty-six thousand twenty-four dollars ($156,024) and shall be adjusted on July 1 to reflect the average percentage pay increase provided for state employees by the general appropriations act.

(b) On September 1, 2006, and on July 1 for each subsequent year, the base salary fixed in subsection (a) shall be adjusted to reflect the average percentage pay increase provided for state employees by the general appropriations act.

(c) For the sole purpose of calculating the salaries payable to assistant district attorneys general under § 8-7-201, the annual compensation of a district attorney general shall be as follows:

(1) For full-time assistant district attorneys general through the end of the final fiscal year in which they are eligible for step increases, the salary provided by law for district attorneys general for the 1982-1983 fiscal year;

(2) Effective July 1, 1990, for full-time assistant district attorneys general no longer eligible for step increases, a base salary equal to the salary provided by law for district attorneys general for the 1989-1990 fiscal year, adjusted on July 1, 1990, by the percentage set out in subsection (b); and

(3) Effective July 1, 1991, for full-time assistant district attorneys general no longer eligible for step increases, but having less than twelve (12) years of credited service as an assistant district attorney general or district attorney general in this state, a base salary equal to the salary provided by

law for district attorneys general for the 1989-1990 fiscal year, adjusted as set out in subdivision (c)(2), and further adjusted on July 1, 1991, and on each succeeding July 1, by the percentage set out in subsection (b).

(d) For purposes of this chapter, in computing annual salary increases that are tied to salary increases appropriated to state employees, it is the intention of the general assembly that the increases are to be based solely on the specific percentage increase granted by the general appropriations act to all general state employees. Adjustments to annual salary increases as provided for in this chapter that are tied to salary increases of state employees are not to be adjusted on the basis of any class compensation efforts, class compression efforts, or any other method of salary adjustments.

**8-7-226. Salaries of assistant district attorneys general.**

(a) All assistant district attorneys general hired after July 1, 1994, or reclassified pursuant to § 8-7-201(e)(3), shall be compensated according to the following pay schedule:

| | | |
|---|---|---|
| Entry level | $ | 49,080 |
| after one (1) year | | 52,164 |
| after two (2) years | | 55,248 |
| after three (3) years | | 58,344 |
| after four (4) years | | 61,452 |
| after five (5) years | | 64,512 |
| after six (6) years | | 67,596 |
| after seven (7) years | | 70,704 |
| after eight (8) years | | 73,812 |
| after nine (9) years | | 76,872 |
| after ten (10) years | | 79,968 |
| after eleven (11) years | | 83,052 |
| after twelve (12) years | | 86,100 |
| after thirteen (13) years | | 89,184 |
| after fourteen (14) years | | 92,256 |
| after fifteen (15) years | | 95,328 |
| after sixteen (16) years | | 98,424 |
| after seventeen (17) years | | 101,220 |
| after eighteen (18) years | | 103,932 |
| after nineteen (19) years | | 106,548 |
| after twenty (20) years | | 109,020 |
| after twenty-one (21) years | | 112,620 |
| after twenty-two (22) years | | 116,316 |
| after twenty-three (23) years | | 120,144 |
| after twenty-four (24) years | | 124,392 |
| after twenty-five (25) years | | 128,616 |

(b) Implementation of salary increases pursuant to the pay schedule prescribed in subsection (a) shall be suspended for the fiscal years beginning July 1, 2003, and ending June 30, 2004, and beginning July 1, 2009, and ending June 30, 2010. In the fiscal years beginning July 1, 2004, and July 1, 2010, and in subsequent fiscal years, salary increases pursuant to the pay schedule prescribed in subsection (a) shall not include time of service between July 1, 2003, and June 30, 2004, nor between July 1, 2009, and June 30, 2010.

(c) The salary increase provided by subsection (a), and suspended by

subsection (b) for the period July 1, 2003, through June 30, 2004, is reinstated effective July 1, 2017. For purposes of determining the appropriate salary classification for assistant district attorneys, credible service for the time period of July 1, 2003, through June 30, 2004, is included.

**8-7-230. Salaries of criminal investigators.**

(a) All criminal investigators hired after July 1, 1994, shall be compensated according to the following pay schedule:

| | |
|---|---|
| Entry level | $33,852 |
| after two (2) years | 36,924 |
| after four (4) years | 39,972 |
| after six (6) years | 43,032 |
| after eight (8) years | 46,164 |
| after ten (10) years | 49,188 |
| after twelve (12) years | 52,320 |
| after fourteen (14) years | 55,332 |
| after sixteen (16) years | 58,428 |
| after eighteen (18) years | 61,512 |
| after twenty (20) years | 64,584 |

(b) Implementation of salary increases pursuant to the pay schedule prescribed in subsection (a) shall be suspended for the fiscal years beginning July 1, 2003, and ending June 30, 2004, and beginning July 1, 2009, and ending June 30, 2010. In the fiscal years beginning July 1, 2004, and July 1, 2010, and in subsequent fiscal years, salary increases pursuant to the pay schedule prescribed in subsection (a) shall not include time of service between July 1, 2003, and June 30, 2004, nor between July 1, 2009, and June 30, 2010.

**8-10-202. Course time requirements.**

(a) Each constable elected under § 8-10-101 shall complete forty (40) hours of in-service course time for each twelve-month period during which the constable holds office, beginning on the date the constable is sworn into office.

(b) This section does not apply to any constable with twenty (20) years of cumulative service as a constable before May 3, 2018.

**8-14-107. Compensation.**

(a) Effective July 1, 1994, the salary for district public defenders shall be an amount equal to eighty-eight percent (88%) of the salary established by law for district attorneys general. Effective July 1, 1995, the salary for district public defenders shall be an amount equal to the salary established by law for district attorneys general. On March 1, 2018, the base salary for district public defenders shall be one hundred fifty-six thousand twenty-four dollars ($156,024) and shall be adjusted on July 1 to reflect the average percentage pay increase provided for state employees by the general appropriations act.

(b)(1) A full-time assistant district public defender shall be compensated according to the following pay schedule:

| | | |
|---|---|---|
| Entry level | $ | 49,080 |
| after one (1) year | | 52,164 |
| after two (2) years | | 55,248 |
| after three (3) years | | 58,344 |
| after four (4) years | | 61,452 |
| after five (5) years | | 64,512 |
| after six (6) years | | 67,596 |
| after seven (7) years | | 70,704 |
| after eight (8) years | | 73,812 |
| after nine (9) years | | 76,872 |
| after ten (10) years | | 79,968 |
| after eleven (11) years | | 83,052 |
| after twelve (12) years | | 86,100 |
| after thirteen (13) years | | 89,184 |
| after fourteen (14) years | | 92,256 |
| after fifteen (15) years | | 95,328 |
| after sixteen (16) years | | 98,424 |
| after seventeen (17) years | | 101,220 |
| after eighteen (18) years | | 103,932 |
| after nineteen (19) years | | 106,548 |
| after twenty (20) years | | 109,020 |
| after twenty-one (21) years | | 112,620 |
| after twenty-two (22) years | | 116,316 |
| after twenty-three (23) years | | 120,144 |
| after twenty-four (24) years | | 124,392 |
| after twenty-five (25) years | | 128,616 |

(2) The salary levels for assistant district public defenders shall be increased by such percentage amount as shall be fixed by the general assembly in the general appropriations act. For the purpose of budget preparation, it shall be presumed that such percentage amount shall be the same as that received by other state employees.

(3) The executive director of the Tennessee district public defenders conference shall certify the entry level of compensation awarded to assistant district public defenders based on prior service credits. Subject to the approval of the district public defender, assistant district public defenders shall be entitled to prior service credits as follows:

(A) Any assistant district public defender who has prior experience as an assistant district public defender, an assistant district attorney general, a district public defender, a district attorney general, a criminal investigator for the district public defenders, a criminal investigator for the district attorneys general, a United States attorney, an assistant United States attorney, an assistant attorney general representing the state in criminal litigation, an elected judge of a court with criminal jurisdiction, an attorney who served as a law clerk for an appellate or trial judge of a court with criminal jurisdiction or an attorney who as a commissioned officer worked as a military attorney in the field of criminal defense or criminal prosecution while on full-time active duty in the judge advocate general's corps of any of the armed services of the United States, shall be eligible to receive year-for-year credit upon the recommendation of the hiring district public defender, and subject to the approval of the executive committee of the Tennessee district public defenders conference.

(B) The executive director of the Tennessee district public defenders conference may certify prior service credits for prior practice of law but not exceeding the assistant's experience as a licensed practicing attorney and, in no case, shall year-for-year credit exceed twelve (12) years.

(4) Implementation of salary increases pursuant to the pay schedule prescribed in subdivision (b)(1) shall be suspended for the fiscal years beginning July 1, 2003, and ending June 30, 2004, and beginning July 1, 2009, and ending June 30, 2010. In the fiscal years beginning July 1, 2004, and July 1, 2010, and in subsequent fiscal years, salary increases pursuant to the pay schedule prescribed in subdivision (b)(1) shall not include time of service between July 1, 2003, and June 30, 2004, nor between July 1, 2009, and June 30, 2010.

(5) The salary increase provided by subdivision (b)(1), and suspended by subdivision (b)(4) for the period July 1, 2003, through June 30, 2004, shall be reinstated effective July 1, 2017. For purposes of determining the appropriate salary classification for assistant district public defenders, credible service for the time period of July 1, 2003, through June 30, 2004, shall be included.

(c)(1) Effective March 1, 2018, all full-time district investigators shall be compensated according to the following pay schedule:

| | |
|---|---|
| Entry level | $ 33,852 |
| after two (2) years | 36,924 |
| after four (4) years | 39,972 |
| after six (6) years | 43,032 |
| after eight (8) years | 46,164 |
| after ten (10) years | 49,188 |
| after twelve (12) years | 52,320 |
| after fourteen (14) years | 55,332 |
| after sixteen (16) years | 58,428 |
| after eighteen (18) years | 61,512 |
| after twenty (20) years | 64,584 |

(2) The salary levels for district investigators shall be increased by such percentage amount as shall be fixed by the general assembly in the general appropriations act. For the purpose of budget preparation, it shall be presumed that such percentage amount shall be the same as that received by other state employees.

(3) The executive director of the district public defenders conference shall certify the level of compensation awarded to district investigators based on prior service credits. Subject to the approval of the district public defender, district investigators shall be entitled to the same prior service credits as allowed criminal investigators for the district attorneys general in § 8-7-231.

(4) If a district public defender having a vacant district investigator position appoints a licensed attorney to that position and designates that person to serve as an assistant district public defender, the appointee may, upon recommendation of the appointing district public defender, with approval of the executive committee of the district public defenders conference be compensated as an assistant district public defender as provided for in subsection (b).

(5) Implementation of salary increases pursuant to the pay schedule prescribed in subdivision (c)(1) shall be suspended for the fiscal years

beginning July 1, 2003, and ending June 30, 2004, and beginning July 1, 2009, and ending June 30, 2010. In the fiscal years beginning July 1, 2004, and July 1, 2010, and in subsequent fiscal years, salary increases pursuant to the pay schedule prescribed in subdivision (c)(1) shall not include time of service between July 1, 2003, and June 30, 2004, nor between July 1, 2009, and June 30, 2010.

(6) The salary increase provided by subdivision (c)(1), and suspended by subdivision (c)(5) for the period July 1, 2003, through June 30, 2004, shall be reinstated effective July 1, 2017. For purposes of determining the appropriate salary classification for district public defender investigators, credible service for the time period of July 1, 2003, through June 30, 2004, shall be included.

**8-25-103. Deferred compensation plans — Approval of plans — Approval of companies providing plans.**

(a) The state of Tennessee or any Tennessee political subdivision or instrumentality of such subdivision may, by contract, agree with any employee to defer, in whole or in part, any portion of that employee's income and may subsequently purchase or contract with any company licensed to do business in this state to provide a deferred compensation plan, as requested by the employee.

(b) The commissioner of finance and administration, the chair of the finance, ways and means committee of the senate, the chair of the finance, ways and means committee of the house of representatives, and the chair of the board of trustees for the Tennessee consolidated retirement system shall serve as trustees of any deferred or tax-sheltered compensation plans established pursuant to this chapter on behalf of state employees, including employees of institutions of higher education. For the purposes of this section, the term "state employees" shall not include kindergarten through grade twelve (K-12) teachers and other local education agency employees. Such plans include, but are not limited to, plans established pursuant to § 403(b) of the Internal Revenue Code (26 U.S.C. § 403(b)). The chair of the board of trustees for the Tennessee consolidated retirement system shall develop a plan document for the implementation and administration of deferred or tax-sheltered compensation plans established by the trustees. The terms of any deferred or tax-sheltered compensation plan established on behalf of state employees, including employees of institutions of higher education, may be modified by the chair of the board of trustees for the Tennessee consolidated retirement system with the concurrence of the commissioner of finance and administration.

(c) For plans provided to state employees, including employees of institutions of higher education, any company providing administrative plan services must be approved by the trustees prior to the company's participation in any deferred compensation plan. In the case of all other plans, any company providing investment or administrative plan services shall be approved by the chief governing body of the governmental unit.

(d) Any deferred compensation program implemented and operating under the authority of this part shall conform to all applicable laws, rules and regulations of the internal revenue service governing state deferred compensation plans.

(e) [Deleted by 2018 amendment.]

**8-25-104. Responsibility for implementing programs — Payroll deductions — Billing and administration — Requiring participation.**

(a)(1) The responsibility for implementing any deferred or tax-sheltered compensation plans maintained on behalf of employees of institutions of higher education pursuant to § 403(b) of the Internal Revenue Code (26 U.S.C. § 403(b)) shall be delegated to the chair of the board of trustees for the Tennessee consolidated retirement system with the approval of the remaining trustees. Through this delegation, the chair of the board of trustees for the Tennessee consolidated retirement system is authorized to establish the terms of the plans; offer investment options in accordance with the investment and administrative plan services approved by the trustees; complete the financial reporting and financial statements for the plans; assume the fiduciary duties for the plans; enter into contracts or agreements for the administration of the plans; carry out the day-to-day operations and responsibilities for the implementation of the plans, and any other duties not inconsistent with this chapter. The chair of the board of trustees for the Tennessee consolidated retirement system may assume responsibility for the implementation of any deferred or tax-sheltered compensation plans existing before or after March 16, 2018, that are maintained on behalf of employees of institutions of higher education or pursuant to § 403(b) of the Internal Revenue Code (26 U.S.C. § 403(b)).

(2) The responsibility for implementing the deferred compensation program for employees of state agencies, including employees of institutions of higher education, shall be delegated to the chair of the board of trustees for the Tennessee consolidated retirement system, with the approval of the remaining trustees.

(3) The responsibility for implementing the deferred compensation plan for state employees who are not paid on either the centralized state payroll system or by an institution of higher education, may be delegated as determined by the chair of the consolidated retirement board.

(4)(A) Whenever plans are operated for state employees, including employees of institutions of higher education, pursuant to authority delegated herein to officials other than the chair of the consolidated retirement board, they shall be operated under the terms and conditions set out in contracts entered into by the chair of the consolidated retirement board for the purpose of effectuating this part.

(B) [Deleted by 2018 amendment.]

(5) The responsibility for implementing the deferred compensation program for all other employees, as defined hereunder, shall be delegated to the appropriate officer, board, or committee, as designated by the local legislative body of such other agencies, counties or municipalities.

(b) Payroll deductions shall be made, in each instance, by the appropriate payroll officer.

(c) The chair of the consolidated retirement board or appropriately designated local officer, board or committee of such deferred compensation program may contract with a private corporation, institution and/or custodial bank to provide consolidated billing and all or any other administrative services deemed necessary or appropriate for the administration and operation of the program. The chair of the consolidated retirement board or appropriately

designated local officer, board or committee of such deferred compensation program may assess the costs associated with administrating the program to the respective participating employees in order that any such plans adopted shall operate without cost to or contribution from this state.

(d) Notwithstanding any law to the contrary, the chair of the consolidated retirement board, with the concurrence of the commissioner of finance and administration, has the authority to implement an automatic deferred or tax-sheltered compensation plan. Such plan shall provide that any person who becomes a full-time state employee on or after the implementation date of the plan, including a full-time employee of an institution of higher education, who is eligible to participate in one of the deferred or tax-sheltered compensation plans established pursuant to parts 1 or 3 of this chapter shall participate in at least one of the plans as a condition of employment, unless such employee files with that person's employer a notice of that person's election not to participate.

(e) Any notice of non-election shall be made in such format and through such medium as prescribed by the chair of the Tennessee consolidated retirement system and must be filed with that employee's employer by no later than thirty (30) calendar days from the date of the notice of automatic deferral letter. Any employee who does not file a notice of non-election within the prescribed period shall be automatically enrolled in the state's salary reduction plan established in part 3 of this chapter with a salary deferral of two percent (2%) of that employee's compensation. All contributions made by or on behalf of the employee shall be directed to such default option as shall be established by the chair of the consolidated retirement board until such time as the employee selects a different investment option or options. Notwithstanding this section or any other law to the contrary, future deferrals may be cancelled or adjusted at any time by the employee provided the employee notifies that employee's employer in such format and through such medium as may be prescribed by the chair of the Tennessee consolidated retirement system at least one month before the payday on which the cancellation or change is to be effective; provided, however, that any adjustment in the deferrals, other than a cancellation, cannot cause the amount of the deferrals to be less than twenty dollars ($20.00) per month, or if the employee is paid twice a month, ten dollars ($10.00) semimonthly, or such other lower amount as may be established under chapter 25, part 3 of this title. In addition, any adjustment in the deferrals cannot cause the amount of the deferrals to exceed the maximum allowed under the Internal Revenue Code.

(f)(1) Any employee who affirmatively declines to make employee deferrals after the first automatic enrollment contribution was made may make an election to withdraw that employee's entire automatic enrollment contribution. This election must be submitted no later than ninety (90) calendar days after the payroll date in which the first automatic enrollment contribution is made on behalf of the employee. The amount of the distribution shall be the value of the automatic enrollment contributions plus or minus investment gains or losses as of the date the distribution is processed. Automatic enrollment contributions made after such date shall remain in the plan and shall be subject to the plan's regular distribution rules. Further, an employee who has made an election to withdraw and who thereafter leaves employment and is then rehired by the same employer as defined in this subsection (f) or, by the same political subdivision in the case of a political subdivision

employee, before a twelve-continuous month absence shall not be permitted to make another election to withdraw that participant's automatic enrollment contribution.

(2) For purposes of this subsection (f), "same employer" means the employer for which the person last worked prior to separation from covered employment. All departments, agencies and instrumentalities in the executive, legislative and judicial branches of state government, including public institutions of higher education, shall be deemed one and the same employer. All public schools within the Tennessee public school system, except for public institutions of higher education, shall be deemed one and the same employer.

(3) Notwithstanding the vesting provisions of the plan's document, the employer matching contributions described in § 8-25-303 that are attributable to the distribution of the automatic enrollment contributions shall be forfeited and placed in a forfeiture account. Amounts in the forfeiture account shall be used in the manner provided in the plan document established for the profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title. The employer matching contributions described in § 8-25-303 shall not be made if a permissible withdrawal is taken pursuant to this subsection (f) before the date the matching contribution is allocated.

(g) The initial two percent (2%) automatic enrollment contribution described in this section shall be subject to a percentage annual increase thereafter if provided for in the plan document established for the profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title.

(h) The automatic deferrals shall be contributed on a pre-tax basis and shall continue until the employee affirmatively elects otherwise.

**8-25-105. Investment of funds from program.**

(a) Notwithstanding any other law to the contrary, the chair of the consolidated retirement board, and the appropriately designated local officer or local board responsible for implementing a deferred compensation program are hereby authorized to invest the moneys held pursuant to any such deferred compensation plan in investment options that meet the requirements of the Internal Revenue Code.

(b) It is the intent of the general assembly that a variety of investment options be offered to participants in the plan, which may include one (1) or more commingled funds in which assets in the custody of the state treasurer that consist exclusively of assets of exempt pension and profit sharing trusts and individual retirement accounts, custodial accounts, retirement income accounts, governmental plans and tax-exempt trusts under the Internal Revenue Code of 1986 and Rev. Rul. 81-100, as modified by Rev. Ruls. 2004-67, 2008-40 and 2011-1 are pooled, solely for investment purposes, in a common or group trust fund. The assets so invested shall be subject to all the provisions of the group trust instruments establishing and governing such trust or trusts. Those instruments of group trusts, including any subsequent amendments, are hereby incorporated by reference and made a part of the plan.

(c) [Deleted by 2018 amendment.]

**8-25-203. Trustees — Duties — Delegation of duties — Cost of administration — Selection of investment products.**

(a) The commissioner of finance and administration, the chair of the finance, ways and means committee of the senate, the chair of the finance, ways and means committee of the house of representatives, and the chair of the consolidated retirement board shall serve as trustees of the optional retirement program established under § 8-25-202.

(b) The trustees shall establish an investment policy for the assets of the optional retirement program.

(c) The trustees may delegate to the state treasurer the duty to carry out the day-to-day operations and responsibilities for the administration of the optional retirement program. In exercising the delegation, the state treasurer shall be authorized to exercise such powers as are vested in the trustees that are necessary to fulfill the delegated duties and responsibilities; may assign any duties and responsibilities to the state treasurer's staff or private vendors and contractors, as the state treasurer deems necessary and proper; and may consult with professionals as necessary about the administration of the program. In administering the program, the state treasurer may make such rules as deemed necessary and proper for the effective functioning of the program. Any such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The state treasurer may also establish policies, guidelines, and operating procedures in exercising the state treasurer's delegation from the trustees, including, but not limited to, complying with all applicable state and federal laws and rules.

(d) The state treasurer may assess the costs associated with administering this program to the participating employees in order that such plan shall operate without administrative cost to or contribution from the state.

(e) The trustees shall designate a company or companies from which administrative services are to be purchased under the optional retirement program. The trustees may delegate to the state treasurer the authority to procure these administrative services in a manner prescribed by the trustees.

(f) The trustees, at the request of the board of trustees of the University of Tennessee and the board of regents, may authorize the adoption of optional features to such programs. Any such authorization shall be subject to the approval of the council on pensions and insurance. For the purposes of this subsection (f), "optional features" does not include optional investment products.

(g) The investment products offered to participants in the optional retirement program are subject to the approval of the trustees, and the trustees reserve the right to refuse or discontinue any product offered. The companies providing administrative services to the optional retirement program shall provide a report to the trustees at least semi-annually about participant use of the investment products offered.

**8-25-204. Election of retirement system or optional retirement program — Time of election — Failure to elect — Transfer of membership.**

(a) Notwithstanding any other law to the contrary, any individual who is exempt from the Fair Labor Standards Act (29 U.S.C. § 201 et seq.) and who is employed in a state-supported institution of higher education, including, but

not limited to, the Tennessee colleges of applied technology, may elect membership either in the retirement system established in § 8-34-201 or in the optional retirement program established under this part. In all cases of doubt, the state treasurer shall determine whether the employee is eligible to participate in the optional retirement program.

(b) As used in this part, the term "retirement system" has the same meaning as in § 8-34-101.

(c) Each eligible employee who elects to participate in an optional retirement program rather than the retirement system shall make the election in the manner prescribed by the state treasurer and shall file the election with the state treasurer and with the institution where the employee is employed. Any such election shall be irrevocable.

(d) Any such eligible employee who is not already a member of the retirement system and who has not accumulated creditable service thereunder as a member of a local retirement fund shall make this election on the employee's initial date of employment with a state-supported institution of higher education.

(e) Any member of the retirement system or any member of a local retirement fund having rights under the retirement system may elect to participate in the optional retirement program established under this part in lieu of participating in the retirement system while employed in a state-supported institution of higher education. Any such election shall become effective no later than the first day of the month following thirty (30) days' written notice to the retirement system and to the institution where the employee is employed. Such notification shall be made in a manner prescribed by the state treasurer.

(f) Any eligible employee who fails to make the election as prescribed in this section shall be a member of the retirement system.

(g) Notwithstanding any provision of this part or any other law to the contrary, any employee who, on or after January 1, 2005, attains either five (5) or more but less than six (6) years of creditable service in the optional retirement program, or five (5) or more but less than six (6) years of creditable service in the retirement system and the optional retirement program combined, shall have the option of transferring membership from the optional retirement program to the retirement system under the following terms and conditions:

(1) The employee is employed in a position covered by the retirement system;

(2) The election must be made in the manner prescribed by the state treasurer and filed with the state treasurer and the institution where the employee is employed by no later than the end of the calendar year following the year the employee completes five (5) years of creditable service;

(3) Any such transfer shall include both past and prospective membership;

(4) The transfer shall be irrevocable;

(5) The employee must pay to the retirement system a sum equal to twelve and sixty-five hundredths percent (12.65%) of the employee's earnable compensation during the period of the employee's membership in the optional retirement program, plus interest on the amount at the rate provided in § 8-37-214;

(6) Notwithstanding § 8-37-220, the payment required under this subsection (g) shall be made in a lump sum to the retirement system by no later

than the end of the calendar year following the year the employee completes five (5) years of creditable service, and may be funded in whole or in part from amounts transferred from the employee's accounts in the optional retirement program, from other eligible retirement accounts, or from other funds available to the employee. For the purposes of this subdivision (g)(6), amounts transferred from an eligible retirement account shall have the same meaning as described in § 8-37-214(g)(1). Any difference between the payment required under this subsection (g) and the amount transferred from the optional retirement program or an eligible retirement account shall be paid to the retirement system within sixty (60) days following the transfer, but in any event no later than the end of the calendar year following the year the employee completes five (5) years of creditable service. Notwithstanding § 8-35-111 or any other law to the contrary, if the payment is not funded in whole or in part from amounts transferred from the optional retirement program, the employee shall be permitted to retain ownership of the amounts without violating § 8-35-111;

(7) The employee shall have no rights, benefits, or privileges in the retirement system until the full amount of the payment required under this subsection (g) is received by the retirement system. In the event the employee fails to remit the full amount by the time specified in subdivision (g)(6), the employee shall irrevocably lose the employee's right to transfer membership from the optional retirement program to the retirement system; and

(8) All payments made under this subsection (g) shall be credited to the state accumulation fund pursuant to § 8-37-301 and not to the individual accounts of members in the members' fund.

(h) [Deleted by 2016 amendment.]

**8-25-205. Employer contributions.**

(a)(1) The employer shall make employer contributions at the rate of ten percent (10%) of each eligible employee's earnable compensation, plus one percent (1%) of the part of the eligible employee's earnable compensation in excess of the employee's covered compensation.

(2) The amount of salary taken into account in determining such contributions shall not exceed the maximum dollar limitation imposed by Section 401(a)(17) of the Internal Revenue Code (26 U.S.C. § 401(a)(17)). For any person becoming a participant in an optional retirement program before July 1, 1996, the dollar limitation under Section 401(a)(17) of the Internal Revenue Code shall not apply to the extent the amount of compensation that is allowed to be taken into account under the plan would be reduced below the amount that was allowed to be taken into account under the plan as in effect on July 1, 1993.

(b) Employer contributions shall be credited to the optional retirement fund to provide retirement and death benefits for members and are not refundable in a lump sum for any reason, except death.

(c) [Deleted by 2018 amendment.]

**8-25-211. Cash withdrawal from program — Effect of cash withdrawal.**

Upon retiring or otherwise terminating employment, an employee participating in an optional retirement program may elect to receive a cash with-

drawal of such employee's accumulated account or accounts if permitted by the relevant optional retirement product and the Internal Revenue Code, as amended, and all rules, regulations, notices, and interpretations released by the United States treasury, including the internal revenue service. Any employee who receives a cash withdrawal pursuant to this section shall not be entitled to reestablish the withdrawn amount or any period of service represented by that amount in either the optional retirement program, the retirement system, or any other Tennessee state retirement program.

**8-27-205. Health benefit for retired state employees — Schedule of premiums — Disabled retirees — Dependents of retirees — Applicability — Implementation of defined contribution plan or related investment vehicle.**

(a) The state insurance committee may establish a health benefit, as the state insurance committee deems necessary and reasonable, for state employees, as defined in § 8-27-204(a)(1), who are retired. The health benefit may be made available to retired state employees who are drawing retirement benefits through the consolidated retirement system and to retired state employees of the University of Tennessee and the state university and community college system who are drawing retirement benefits through the consolidated retirement system or any other retirement plan as a result of their employment with the University of Tennessee or the state university and community college system.

(b)(1) The state insurance committee shall establish a schedule of premiums and is authorized to establish a schedule of defined contributions for retirees eligible for the health benefits established under this part. The schedule shall be graduated to reflect the retiree's length of service. Retirees with thirty (30) or more years of service shall receive eighty percent (80%) of the scheduled premium or defined contribution. Retirees with twenty (20) years of service, but less than thirty (30) years of service, shall receive seventy percent (70%) of the scheduled premium or defined contribution. Retirees having less than twenty (20) years of service shall receive sixty percent (60%) of the scheduled premium or defined contribution.

(2) "Years of service," as used in this subsection (b), means:

(A) Only those years of service rendered by the retiree as a state employee, as defined in § 8-27-204(a)(1), or as a teacher as defined in § 8-34-101, and upon which the retiree's monthly retirement allowance is based; or

(B) Those years of service rendered by a retiree prior to July 1, 2002, as an employee of any board, commission, or agency created by the supreme court of Tennessee, regardless of whether the retiree established that service in the consolidated retirement system pursuant to § 8-35-115.

(c) Any retired state employee who is participating in the insurance plan authorized by this section and who is in receipt of a disability retirement allowance pursuant to chapter 36, part 5 of this title, shall not be required to discontinue coverage in the basic health plan authorized by § 8-27-202(a)(1) upon eligibility for Part A of Medicare and may continue in the plan as a retired state employee to the point at which Medicare eligibility would have been attained had the disability not occurred; provided, that the retired state employee remains eligible for the disability retirement allowance and that

Part B of Medicare is retained. The insurance premium shall be the same as that charged to nondisability retirees who are not yet eligible for Medicare. Any retired state employee who is granted a service retirement under chapter 36 of this title shall also qualify for a continuation of insurance coverage if the retired state employee meets the conditions set forth in this subsection (c) and the eligibility criteria established by the state insurance committee.

(d) The state insurance committee shall extend eligibility to the dependents of retired state employees who are eligible for the retiree coverage authorized in this section. The state insurance committee may determine which dependents are eligible, and what documentation is required to establish eligibility, subject to the requirements of state and federal law. Eligibility standards for dependents will be approved at public meetings of the state insurance committee and published in the plan documents. The state may deny coverage to the spouses of retired state employees who are eligible for similar group health insurance through their employers. Any denial of coverage made pursuant to this subsection (d) and based on a retiree's spouse's eligibility for similar group health insurance through the spouse's employer shall only apply to the spouse of a retiree whose employment commenced on or after July 1, 2015.

(e) The retiree coverage authorized under this section shall not be available to any retiree whose employment with the state commenced on or after July 1, 2015. Any retiree whose first employment with the state commenced before July 1, 2015, and who returns to state service after that date shall not be prohibited from retiree coverage under this section; provided, that the retiree did not accept a lump sum payment from the Tennessee consolidated retirement system before July 1, 2015. Any retiree whose first employment with a participating local education agency, as defined in § 8-27-301, commenced before July 1, 2015, and who initiates state service after that date shall not be prohibited from retiree coverage under this section; provided, that the retiree did not accept a lump sum payment from the Tennessee consolidated retirement system before July 1, 2015.

(f)(1) The commissioner of finance and administration, the chair of the finance, ways and means committee of the senate, the chair of the finance, ways and means committee of the house of representatives, and the chair of the consolidated retirement board shall serve as trustees of any defined contribution plan or related investment vehicle established as a health benefit by the state insurance committee under this section. The trustees shall have the authority to implement any such defined contribution plan or related investment vehicle. Notwithstanding § 8-27-103(a), such authority shall include, but not be limited to, administering any contract related to such defined contribution plan or related investment vehicle, procuring services necessary or desirable for efficient administration of the investment vehicles used for the health benefit and overseeing the investment policy for any investment vehicles used.

(2) The trustees shall delegate the duty to conduct the day-to-day responsibilities for managing the investment vehicles to the state treasurer.

(3) The costs associated with administering any such defined contribution plan or related investment vehicle shall be assessed to the funds generated by any such defined contribution plan or related investment vehicle and, if necessary, to the employee benefits trust.

(4) This subsection (f) shall be effective September 1, 2015.

**8-27-305. Health benefit for retired local education employees — Eligibility criteria — Schedule of premiums — Disabled retirees — Applicability — Implementation of defined contribution plan or related investment vehicle.**

(a) The local education insurance committee shall establish a health benefit, as the local education insurance committee deems necessary and reasonable, for retired local education employees. The health benefit may be made available to retired employees who are drawing retirement benefits either through the consolidated retirement system or through a non-TCRS retirement program sponsored by a participating local education agency.

(b) The local education insurance committee is authorized to establish the eligibility criteria for retired teachers and the administrative requirements for the collection of premiums.

(c)(1) The local education insurance committee is authorized to establish a schedule of premiums or a schedule of defined contributions subject to funding by the general assembly for retirees eligible for the health benefits established under this part. The schedule of defined contributions shall be graduated to reflect the retiree's length of service. Retirees with thirty (30) or more years of service will receive forty-five percent (45%) of the scheduled premium or defined contribution. Retirees with twenty (20) years of service, but less than thirty (30) years of service, will receive thirty-five percent (35%) of the scheduled premium or defined contribution. Retirees having less than twenty (20) years of service will receive twenty-five percent (25%) of the scheduled premium or defined contribution.

(2) "Years of service," as used in this subsection (c), means only those years of service rendered by the retiree as a teacher, as defined in § 8-34-101, or as a state employee, as defined in § 8-27-204(a)(1), and upon which the retiree's monthly retirement allowance is based.

(3) To the extent that premiums are assessed and retirees pay less than the total monthly premium, and to the extent that the benefit payments exceed the anticipated premium for eligible retirees who were not retired during the prior calendar year, that expense shall be reimbursed by the state through a direct appropriation to the local education group insurance plan.

(d) Any retired local education employee who is participating in the health benefit authorized by this section and who is in receipt of a disability retirement allowance pursuant to chapter 36, part 5 of this title, shall not be required to discontinue coverage in the basic health plan authorized by § 8-27-302(a)(1) upon eligibility for Part A of Medicare and may continue in the plan as a retired employee to the point at which Medicare eligibility would have been attained had the disability not occurred; provided, that the retired employee remains eligible for the disability retirement allowance and that Part B of Medicare is retained. The insurance premium shall be the same as that charged to nondisability retirees who are not yet eligible for Medicare. Any retired local education teacher who is granted a service retirement under chapter 36 of this title shall also qualify for a continuation of insurance coverage if the teacher meets the conditions set forth in this subsection (d) and the eligibility criteria established by the local education insurance committee.

(e) The retiree coverage authorized under this section shall not be available to any retiree whose employment with a participating agency commenced on or after July 1, 2015. Any retiree whose first employment with a participating

agency commenced before July 1, 2015, and who returns to service with a participating agency after that date shall not be prohibited from retiree coverage under this section; provided, that the retiree did not accept a lump sum payment from the Tennessee consolidated retirement system before July 1, 2015. Any retiree whose first employment with the state of Tennessee commenced before July 1, 2015, and who initiates service with a participating local education agency after that date shall not be prohibited from retiree coverage under this section; provided, that the retiree did not accept a lump sum payment from the Tennessee consolidated retirement system before July 1, 2015.

(f)(1) The commissioner of finance and administration, the chair of the finance, ways and means committee of the senate, the chair of the finance, ways and means committee of the house of representatives, and the chair of the consolidated retirement board shall serve as trustees of any defined contribution plan or related investment vehicle established as a health benefit by the local education insurance committee under this section. The trustees shall have the authority to implement any such defined contribution plan or related investment vehicle. Notwithstanding § 8-27-103(a), such authority shall include, but not be limited to, administering any contract related to such defined contribution plan or related investment vehicle, procuring services necessary or desirable for efficient administration of the investment vehicles used for the health benefit and overseeing the investment policy for any investment vehicles used.

(2) The trustees shall delegate the duty to conduct the day-to-day responsibilities for managing the investment vehicles to the state treasurer.

(3) The costs associated with administering any such defined contribution plan or related investment vehicle shall be assessed to the funds generated by any such defined contribution plan or related investment vehicle and, if necessary, to the employee benefits trust.

(4) This subsection (f) shall be effective September 1, 2015.

**8-27-705. Health benefit for retired local government employees — Eligibility for coverage — Implementation of defined contribution plan or related investment vehicle.**

(a) The local government insurance committee may establish a health benefit, as the local government insurance committee deems necessary and reasonable, for retired local government employees. The health benefit may be made available to retired employees who are drawing retirement benefits either through the Tennessee consolidated retirement system or through a non-TCRS retirement program sponsored by a participating local government agency.

(b) The local government insurance committee is authorized to establish the eligibility criteria for retirees and the administrative requirements for the collection of premiums.

(c) [Deleted by 2018 amendment.]

(d)(1) The commissioner of finance and administration, the chair of the finance, ways and means committee of the senate, the chair of the finance, ways and means committee of the house of representatives, and the chair of the consolidated retirement board shall serve as trustees of any defined contribution plan or related investment vehicle established as a health

benefit by the local government insurance committee under this section. The trustees shall have the authority to implement any such defined contribution plan or related investment vehicle. Notwithstanding § 8-27-103(a), such authority shall include, but not be limited to, administering any contract related to such defined contribution plan or related investment vehicle, procuring services necessary or desirable for efficient administration of the investment vehicles used for the health benefit and overseeing the investment policy for any investment vehicles used.

(2) The trustees shall delegate the duty to conduct the day-to-day responsibilities for managing the investment vehicles to the state treasurer.

(3) The costs associated with administering any such defined contribution plan or related investment vehicle shall be assessed to the funds generated by any such defined contribution plan or related investment vehicle and, if necessary, to the employee benefits trust.

(4) This subsection (d) shall be effective September 1, 2015.

**8-27-801. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Authorized local education employees" means local education employees who have been authorized by the trustees to participate in the trust based upon the trustees' decision to establish a trust for local education employees and the employing local education agencies' contribution of the share of other post-employment benefits liabilities to the trust, as determined by the trustees;

(2) "Other post-employment benefits" or "post-employment benefits" means non-pension benefits paid on behalf of former state employees, former state employees' beneficiaries, authorized local education agency employees or the authorized local education agency employees' beneficiaries after separation from service. The benefits may include, but shall not be limited to, medical, prescription drugs, dental, vision, hearing, Medicare part B or part D premiums, life insurance, long-term care, and long-term disability;

(3) "Trustees" means the four (4) trustees designated in § 8-27-205(f).

**8-27-802. Establishment of investment trusts for purpose of pre-funding other post-employment benefits — Investment of trust funds.**

(a) The trustees shall establish an investment trust or trusts for the purpose of pre-funding other post-employment benefits accrued by employees of the state, to be paid as they come due in accordance with the arrangements between the state, the plan members, and their beneficiaries. The trustees may, in their discretion, also choose to establish an investment trust or trusts for the purpose of pre-funding other post-employment benefits accrued by authorized employees of local education agencies, to be paid as they come due in accordance with the arrangements between the local education agency, the plan members, and their beneficiaries.

(b) The trustees must adopt, in writing, an investment policy or policies authorizing how assets in the trust or trusts may be invested.

(c) The trust or trusts may invest in any security or investment in which the Tennessee consolidated retirement system is permitted to invest; provided, that investments by the trust shall be governed by the investment policies and

guidelines adopted by the trustees in accordance with this part. The trustees shall delegate to the state treasurer the responsibility for the investment and reinvestment of trust funds in accordance with the policies and guidelines established by the trustees.

(d) The trust must conform to all applicable laws, rules, and regulations of the Internal Revenue Service, if any.

**8-27-803. Trusts to be irrevocable — Administration of trusts — Protection of trust assets, income and distributions.**

(a) Any trust created under this part shall be an irrevocable trust and the assets thereof shall be preserved, invested and expended solely pursuant to and for the purposes of this part and shall not be loaned or otherwise transferred or used for any other purpose. The assets of the trust or trusts shall be expended solely to:

(1) Make payments for other post-employment benefits pursuant to and in accordance with terms of the state's post-employment benefit plans;

(2) Make payments for other post-employment benefits pursuant to and in accordance with the terms of certain local education agencies' post-employment benefits plans, at the discretion of and subject to requirements established by the trustees; and

(3) Pay the cost of administering the trust.

(b) The state treasurer shall administer any trust created under this part. The attorney general and reporter shall approve the terms of any trust created under this part.

(c) Any investment trust so created shall have the powers, privileges and immunities of a corporation; and all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held in trust for the purpose for which received.

(d) Notwithstanding any law to the contrary, all assets, income and distributions of the investment trust shall be protected against the claims of creditors of the state, plan administrators, and plan participants, and shall not be subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws or other process whatsoever, nor shall any assignment thereof be enforceable in any court.

**8-27-804. Initial funding of trust — Disposition of unexpended funds — Commingling of funds transferred to trust.**

(a) The initial funding of any trust created under this part for state employees and their beneficiaries shall be from appropriations made in the general appropriations act for such purpose. Initial funding for a trust created for authorized local education agency employees and their beneficiaries may come from appropriations made in the general appropriations act for such purpose or other sources as authorized by the trustees.

(b) Unexpended funds remaining in any trust or trusts created under this part in any fiscal year shall not revert to the general fund;

(c) The funds transferred to any trust created under this part may be commingled with, co-invested with, and invested or reinvested with other assets transferred to the trust or trusts. All or a portion of the trust or trusts may be invested, reinvested and co-invested with other funds, not a part of the trust or trusts, held by the state treasurer, including, but not limited to, assets

of the Tennessee consolidated retirement system and the state pooled investment fund established pursuant to title 9, chapter 4, part 6. The state treasurer shall account for such trust funds in one (1) or more separate accounts in accordance with this section and other law.

**8-27-805. Powers of trustees.**

In addition to the powers granted by any other provisions of this part, the trustees shall have the powers necessary or convenient to carry out the purposes and provisions of this part and the purposes and objectives of the investment trust or trusts, including, but not limited to, the following express powers:

(1) To invest any funds of the trust in any instrument, obligation, security, or property that constitutes legal investments, as provided in the investment policy adopted pursuant to § 8-27-802(b);

(2) To contract for the provision of all or any part of the services necessary for the management and operation of the investment trust;

(3) To contract with financial consultants, auditors, and other consultants as necessary to carry out its responsibilities under this part;

(4) To contract with an actuary or actuaries in determining the level of funding necessary by the state or certain local education agencies, if authorized by the trustees, to fund the other post-employment benefits offered by the subdivision;

(5) To prepare annual financial reports, including financial statements following the close of each fiscal year relative to the activities of the trust or trusts. The statements and reports shall be prepared in accordance with the governmental accounting standards board. The annual report, including financial statements, all books, accounts and financial records of any trust created under this part shall be subject to audit by the comptroller of the treasury.

**8-27-806. Part does not grant rights or privileges to other post-employment benefits.**

Nothing in this part shall be construed to define or otherwise grant any rights or privileges to other post-employment benefits. The rights and privileges, if any, shall be governed by the terms of the state's or the local education agency's post-employment benefit plans.

**8-27-807. Participation in other post-employment investment trust.**

Nothing in this part prohibits a local education agency from participating in any other post-employment benefits investment trust created pursuant to chapter 50, part 12 of this title.

**8-30-102. Application of chapter.**

(a) Except as provided in subsection (b), this chapter applies to all personnel in state service. "State service" means all officers and positions of trust or employment in the service of state government in the executive branch and all boards, commissions and agencies of state government, except those specifically excluded in this chapter.

(b) This chapter does not apply to the following:

(1) The legislative branch of state government including, but not limited to, employees of the fiscal review committee, and employees of any other committee, office or other entity created pursuant to law or resolution of either house of the general assembly for the purpose of serving either or both houses of the general assembly in executing its duties under the constitution of Tennessee;

(2) The judicial branch of state government including, but not limited to, employees of the administrative office of the courts;

(3) The office of the secretary of state;

(4) The office of the state treasurer;

(5) The office of the comptroller of the treasury;

(6) The office of the attorney general and reporter;

(7) The offices of the district attorneys general and the district public defenders;

(8) The schools, institutions, and entities governed by the state university boards, the board of regents, and the board of trustees of the University of Tennessee, including the members of the teaching staffs and the staffs of the boards themselves; and only certified professional employees of the Tennessee School for the Blind, Tennessee School for the Deaf, West Tennessee School for the Deaf, Alvin C. York Institute, and any other special school hereafter established;

(9) Any administrative boards and commissions, or any other officers or employees, attached to the entities listed in subdivisions (b)(1)-(8) for administrative purposes;

(10) The Tennessee higher education commission and all employees of that commission;

(11) All employees of the Tennessee advisory commission on intergovernmental relations;

(12) The Tennessee housing development agency and all employees of that agency; and

(13) All employees of the Tennessee rehabilitative initiative in correction board.

(c) The commissioner shall, upon request of the heads of any of the excluded entities enumerated in subsection (b), perform any of the functions set forth in this chapter. Such a request shall not be deemed to make this chapter applicable to those entities.

**8-30-307. Invitations to interview candidates who are armed forces veterans — Preference to veterans — Spouse or surviving spouse of veteran.**

(a) When invitations to interview candidates are extended, whether for appointment or promotion, and the list of eligibles includes any person who has been honorably discharged from the army, navy, air force, marine corps or coast guard or any member of the reserve components, as defined in 10 USC § 10101, who performs active federal service in the armed forces of the United States, these persons must be invited to interview.

(b) If a veteran is on the list of eligibles, and if the minimum qualifications and the skills, abilities, competencies and knowledge of the veteran and any another applicant being interviewed for the position are equal, preference shall be given to the veteran for the position.

(c) When invitations to interview candidates are extended, whether for

appointment or promotion, the spouse or surviving spouse of a veteran must be invited to interview, if the spouse or surviving spouse is a qualified voter in Tennessee or has been a resident of this state for two (2) years preceding such person's application, and one (1) of the two (2) following circumstances exists:

(1) As a result of such military service, the veteran suffered a one hundred percent (100%) service-connected disability or is permanently and totally disabled; or

(2)(A) The veteran died in the line of duty during such military service; and

(B) The surviving spouse has not remarried since the death of the veteran.

(d) Any appointing authority who passes over an eligible veteran and selects an eligible nonveteran shall file with the commissioner, within thirty (30) days, the reasons for so doing, which reasons will become a part of the veteran's record, but will not be made available to anyone other than the veteran, except in the discretion of the appointing authority.

**8-30-308. Probationary period of employment for preferred service employees.**

(a) Every person appointed to a position in the preferred service shall be subject to a probationary period of employment. The probationary period shall commence immediately upon appointment and shall continue for such time, not less than one (1) year, as shall be established by the commissioner. At any time during the employee's probationary period the appointing authority may remove the employee if, in the opinion of the appointing authority, the employee's performance or conduct during the probationary period indicates that such employee is unable or unwilling to satisfactorily perform or is not satisfactorily performing the employee's duties, or that the employee's habits, dependability, or conduct do not merit continuance in the service.

(b) During the last month of an employee's probationary period, the appointing authority shall notify the commissioner in writing whether the performance and conduct of the employee have been satisfactory and whether continued employment is recommended.

(c) An employee in the preferred service who accepts another preferred service position within the same state agency shall serve a subsequent probationary period for a time period of not less than one (1) year. An employee serving a subsequent probationary period may appeal a suspension, demotion, or separation from service; provided, that an employee shall not appeal a demotion that returns the employee to the employee's immediately preceding former position.

**8-30-318. Appeal procedure for employees — Complaints.**

(a) The department shall promulgate rules and guidelines establishing an appeal procedure for employees, which shall include the orderly conduct of proceedings.

(b) An employee in the preferred service system, who has successfully completed the required probationary period, may file a complaint concerning the application of a law, rule, or policy to the dismissal, demotion, or suspension of the employee. If the term of the suspension is less than three (3) days, the right to appeal is limited to an appeal to the commissioner under Step II, codified as subdivision (h)(1)(B). An employee shall not be entitled to appeal

a suspension of less than three (3) days to the board of appeals.

(c) An executive service employee, however, does not have standing to file a complaint under this section.

(d) A complaint filed under this section must identify the law, rule, or policy that was allegedly violated.

(e) An employee who files a complaint under this section must file the complaint as soon as possible after the occurrence of the act or condition complained of, and not later than fourteen (14) days after the date the employee became aware, or by the exercise of reasonable diligence should have become aware, of the occurrence giving rise to the complaint. If an employee fails to file the complaint within the fourteen-day period, the right to appeal under this chapter lapses and is deemed to have been waived in its entirety by the employee.

(f) For the purposes of this chapter, a complaint is filed when the appointing authority, the commissioner, or the board of appeals, depending on whether the complaint is being made under Step I, II or III as provided in subsection (h), receives a written or electronic copy of the complaint.

(g) A remedy granted under this section may not extend back more than thirty (30) days before the complaint was filed.

(h) The following appeal procedure is established:

(1)(A) **Step I:** The complainant shall reduce the complaint to writing and file the complaint with the complainant's appointing authority. The appropriate appointing authority or designee shall conduct any investigation considered necessary, meet with the complainant in person, and issue a decision, in writing, not later than fifteen (15) days after the date the appointing authority receives the complaint. The appointing authority or designee shall provide to the complainant in advance of the meeting a copy of any and all documents or other evidence in the appointing authority's or designee's possession that is relevant to the meeting, including, but not limited to, reports, videos, and recordings. The appointing authority or designee must make all reasonable efforts to gather all relevant documents and evidence that are germane to the meeting prior to conducting the meeting for purposes of providing such information to the complainant. If a document or other evidence is part of an active criminal investigation or prosecution by any law enforcement agency, or is otherwise deemed confidential under existing law, then the document or evidence must not be provided in advance of the hearing; provided, that the employee may view the document or other evidence during the meeting, if such document or other evidence will be relied upon by the appointing authority for purposes of issuing a decision. If viewed, the employee shall acknowledge in writing that the employee viewed the document or evidence. Any documents or evidence in possession of the appointing authority or designee prior to the meeting that was not provided to the complainant in accordance with this subdivision (h)(1)(A) must not be considered by the appointing authority for purposes of issuing a decision. Prior to issuing a decision, the appointing authority or designee may independently collect new evidence or information regarding any factual issue raised during any proceeding under Step I. If the appointing authority or designee independently collects such evidence or information, the appointing authority or designee shall provide a copy of the evidence or information, as soon as practicable, to the complainant. Copies of

confidential evidence or information shall not be distributed to the complainant, but the complainant shall be afforded an opportunity to view such evidence or information. The complainant, not later than three (3) days after receiving the evidence or information, may submit a response to the appointing authority or designee in support or opposition to the new evidence or information, and may include with the response any evidence or information obtained by the complainant relating to the response. The appointing authority or designee shall not issue a decision under this subdivision (h)(1)(A) until the complainant has been afforded the opportunity to respond to any new evidence or information in accordance with this subdivision (h)(1)(A), unless doing so violates the fifteen-day timeframe in this subdivision (h)(1)(A). If the appointing authority does not issue a decision fifteen (15) days after the appointing authority receives the complaint, the complainant may appeal to the commissioner by filing the complaint in accordance with Step II.

(B)(i) **Step II:** If the appointing authority does not find in favor of the complainant, the complainant may appeal to the commissioner of human resources by filing the complaint not later than fourteen (14) days after the date of the appointing authority's written decision. The commissioner of human resources shall review the complaint and the appointing authority's decision, and issue a decision, in writing, not later than thirty (30) days after the date the complaint was filed with the commissioner. The commissioner shall provide to the complainant a copy of any and all documents or other evidence in the commissioner's possession that is relevant to the review of the complaint, including, but not limited to, reports, videos, and recordings. The commissioner must make all reasonable efforts to gather all relevant documents and evidence that are germane to the review of the complaint prior to issuing a decision for purposes of providing such information to the complainant. If a document or other evidence is part of an active criminal investigation or prosecution by any law enforcement agency, or is otherwise deemed confidential under existing law, including any documents viewed under subdivision (h)(1)(A), then the document or evidence must not be provided to the employee; provided, that the employee may make an appointment with the department of human resources to view the document or other evidence, if such document or other evidence will be relied upon by the commissioner for purposes of issuing a decision. If viewed, the employee shall acknowledge in writing that the employee viewed the document or evidence. Any documents or evidence in possession of the commissioner prior to issuing a decision that was not provided to the complainant or that the complainant was not allowed to view prior to the issuance of the decision must not be considered by the commissioner for purposes of issuing the decision. Prior to issuing a decision, the commissioner may independently collect new evidence or information regarding any factual issue raised during any proceeding under Step I. If the commissioner independently collects such evidence or information, the commissioner shall provide a copy of the evidence or information, as soon as practicable, to the complainant. Copies of confidential evidence or information shall not be distributed to the complainant, but the complainant shall be afforded an opportunity to view such evidence or information. The complainant, not later than

three (3) days after receiving the evidence or information, may submit a response to the appointing authority or designee in support or opposition to the new evidence or information, and may include with the response any evidence or information obtained by the complainant relating to the response. The commissioner shall not issue a decision under this subdivision (h)(1)(B)(i) until the complainant has been afforded the opportunity to respond to any new evidence or information in accordance with this subdivision (h)(1)(B)(i), unless doing so violates the thirty-day timeframe in this subdivision (h)(1)(B)(i). If the commissioner does not issue a decision thirty (30) days after the commissioner receives the complaint, the complainant may appeal to the board of appeals in accordance with Step III.

(ii) At Step II of the appeal procedure, it is the duty of the employee to provide written argument to the commissioner setting out why the employee believes the Step I decision was in error and ought to be overturned, reduced, or amended. An employee failing to provide such information to the commissioner shall be considered in default and forfeits the ability to appeal to Step III.

(C) **Step III:** The complainant or state agency may appeal in writing to the board of appeals not later than fourteen (14) days after the date the complainant, or in the case of a state agency, the state agency receives written notice of the action taken by the commissioner of human resources. Within ten (10) days after the receipt of the appeal, the administrative law judge assigned to assist the board of appeals in the proceedings related to the appeal shall determine whether all previous procedural requirements were completed properly and in a timely manner. If a procedural requirement has not been met, the appeal shall be dismissed. If the procedural requirements have been met, the board of appeals shall conduct proceedings in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as modified herein, to determine if the law, rule, or policy specified in the complaint was violated.

(2) Each hearing under this chapter shall occur before a panel of at least three (3) members of the board of appeals, assisted by one (1) administrative law judge (ALJ). The ALJ shall assist at the hearing by ruling on questions of the admissibility of evidence, swearing witnesses, advising members of the board of appeals on the law of the case, and ensuring that the proceedings are carried out in accordance with this chapter and other applicable law. At no time shall the ALJ take part in the determination of a question of fact. An ALJ, upon timely motion, may decide any procedural question of law.

(3) The board of appeals shall issue its final decision in each proceeding no later than one hundred twenty (120) days after the date of the filing of the appeal with the board of appeals.

(i) In order to ensure that the board of appeals issues its final decision no later than one hundred twenty (120) days after the date of the filing of the appeal, the following conditions shall be imposed on hearings before the board of appeals:

(1) The parties shall participate in a pre-hearing conference no later than twenty (20) days after the filing of the appeal. At the pre-hearing conference, a date must be set on which the hearing before the board of appeals will be held;

(2) All discovery must be completed no later than sixty (60) days after the filing of the appeal;

(3) All motions, both dispositive and non-dispositive, must be ruled on no later than thirty (30) days before the date of the hearing;

(4) The department shall forward the record of the case, which consists of the Step I complaint, the Step I decision, the Step II complaint and the commissioner's Step II decision, to sitting board members prior to the Step III meeting for preliminary review. Evidentiary attachments to the aforementioned documents shall not be considered part of the record and shall not be submitted to the board members prior to the Step III hearing;

(5) Extensions on the deadlines provided herein are only to be granted in extraordinary circumstances. In any event, the granting of an extension shall not extend the one-hundred-twenty-day time period for the board of appeals to issue its decision;

(6) Continuances of the hearing before the board of appeals may be granted only in extraordinary circumstances, as determined by the board of appeals or the ALJ; and

(7) Neither party shall be entitled to a petition for reconsideration under § 4-5-317.

(j) Decisions of the board of appeals are subject to judicial review in accordance with the Uniform Administrative Procedures Act and the rules and regulations promulgated thereunder, in each case as amended in this chapter.

(k) The board of appeals may award attorney's fees and costs to a successfully appealing employee. The commissioner shall establish by rule the manner in which those fees shall be determined. The unsuccessful party or other state agency shall pay any fees or costs awarded under this subsection (k).

(*l*) If the employee is successful in obtaining reinstatement to a position from which the employee has been terminated, the employee shall be reinstated to a position in the county in which the employee was employed at the time of termination. The commissioner may grant exceptions on a case-by-case basis.

(m) In any case in which a successful complainant has been awarded reinstatement, back pay or attorney's fees, the agency involved shall have a period of thirty (30) days from the date of the final order within which to provide reinstatement, back pay and/or attorney's fees.

(n) A complainant who does not appear, personally, electronically or through the appearance of counsel, for a hearing before the board of appeals waives the complainant's hearing at Step III. The board shall enter a default judgment against the complainant and the decision of the commissioner at Step II shall become final. In no instance shall the board of appeals proceed with the Step III hearing without the presence of the complainant personally, electronically, or through the appearance of counsel.

(o) An order of the board of appeals is considered final upon execution by the presiding board member. Neither settlement agreements issued voluntarily by the parties nor decisions rendered by the board require a signature of the administrative law judge to be considered final. Once executed, the department shall forward a copy to the administrative procedures division for record purposes.

(p) The parties in a Step I appeal may make an audio tape recording of the proceeding.

(q) In a Step I appeal, if more than one (1) representative of the state agency,

excluding the hearing officer, is in attendance, then the complainant may have a non-lawyer representative participate in the appeal.

**8-30-320. Calculation of time with respect to proceedings against state employees.**

For purposes of calculating time with respect to any proceedings against state employees under this part, time must be counted by calendar days, excluding holidays.

**8-33-109. Reservists' leave of absence.**

(a) All officers and employees of this state, or any department or agency thereof, or of any county, municipality, school district, or other political subdivision, and all other public employees of this state who are, or may become, members of any reserve component of the armed forces of the United States, including members of the Tennessee army and air national guard, shall be entitled to leave of absence from their respective duties, without loss of time, pay, regular leave or vacation, impairment of efficiency rating, or any other rights or benefits to which otherwise entitled, for all periods of military service during which they are engaged in the performance of duty or training in the service of this state, or of the United States, under competent orders; provided, that an officer or employee while on such leave shall be paid salary or compensation for a period, or periods, not exceeding twenty (20) working days in any one (1) calendar year, plus such additional days as may result from any call to active state duty pursuant to § 58-1-106. The military leave herein provided shall be unaffected by date of employment or length of service and shall have no effect on other leaves provided by law, regulation, policy or practice. After the twenty (20) working days of full compensation, any public employer may provide partial compensation to its employees while under competent orders. After the twenty (20) working days of full compensation, members of any reserve component of the armed forces of the United States, including members of the Tennessee army and air national guard, may use up to five (5) days of sick leave in lieu of annual leave for the purposes of not having to take leave without pay.

(b) Notwithstanding subsection (a), after the twenty (20) working days of full compensation, any educator who is a member of any reserve component of the armed forces of the United States, including members of the Tennessee army and air national guard, is authorized, but not required, to use any accumulated sick leave in lieu of annual leave for the purposes of not having to take leave without pay when called into active duty. Nothing in this subsection (b) prohibits an educator from using up to five (5) days of an initial allotment of sick leave pursuant to § 49-5-710(a)(3) in accordance with subsection (a). For purposes of this subsection (b), "educator" has the same meaning as defined in § 49-5-204(b).

**8-34-101. Definitions for chapters 34-37.**

As used in chapters 34-37 of this title, unless the context otherwise requires:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member, together with any amount

transferred to the account of the member established pursuant to chapters 34-37 of this title from the respective account of the member under one (1) or more of the superseded systems, with interest thereon, as provided in § 8-37-307;

(2) "Actuarial equivalent" means a benefit of equal value when computed at regular interest upon the basis of the mortality tables last adopted for such purpose by the board of trustees;

(3) "Attorney general" means the attorney general and reporter and any assistant thereto by whatever name known, any district attorney general and any assistant thereto by whatever name called, and any officer or full-time employee of the general assembly or any committee thereof established by statute, who is duly licensed to practice law in Tennessee, whose duty it is to provide facilities for drafting bills or to assist individual legislators in drafting bills or who renders legal advice and services to the members of the general assembly or committees thereof;

(4)(A) "Average final compensation" means the average annual earnable compensation of a member during the five (5) consecutive years of the member's creditable service affording the highest such average, or during all of the years in the member's creditable service if less than five (5) years;

(B)(i) The annual earnable compensation received after June 30, 1981, for any member covered by the noncontributory provisions of the retirement system on July 1, 1981, or upon the effective date of the noncontributory provisions for any member covered after July 1, 1981, shall be increased by three and six-tenths percent (3.6%) for the purpose of computing the average final compensation. Such increases in the annual earnable compensation shall be discontinued for earnable compensation received after June 30, 1991. However, such increases in the annual earnable compensation received after June 30, 1991, shall continue for such members until June 30, 1998, unless such members are employees of employers participating in the retirement system pursuant to chapter 35 of this title. The governing body of any such employer may at its discretion authorize and accept the liability for such continued increases by resolution;

(ii) Notwithstanding subdivision (4)(B)(i), effective July 1, 1998, such increases in the annual earnable compensation shall continue indefinitely for any member covered by the noncontributory provisions of the retirement system on July 1, 1981, or upon the effective date of the noncontributory provisions for any member covered after July 1, 1981, unless such members are employees of employers participating in the retirement system pursuant to chapter 35 of this title. The governing body of any such employer may at its discretion authorize and accept the liability for such continued increases by resolution;

(iii) This subdivision (4) does not apply to a noncontributory prior class member of the superseded attorneys general retirement system who is a district attorney general, the executive director of the district attorneys general conference or a full-time assistant district attorney general;

(C) Average final compensation shall not include more than five (5) longevity payments to a member pursuant to § 8-23-206;

(5) "Beneficiary" means any person, persons or institution receiving a retirement allowance or other benefit as provided in chapters 34-37 of this

title;

(6) "Board of trustees" or "board" means the board provided for in part 3 of this chapter;

(7) "Commissioner" means any person in office as a member of the public service commission, as prescribed by title 65, chapter 1, prior to June 30, 1996;

(8) "County judge" means any person who is, or when such office existed was, a judge of a general sessions court, trial justice court, county chair, county judge, probate judge, or judge of a juvenile and/or domestic relations court, and whose compensation for such judicial service is paid wholly by a county of the state, or any person who is a county attorney who receives regular monthly or quarterly compensation from a county of the state, or any county manager or county administrator who receives regular monthly or quarterly compensation from a county of the state; provided, that no county manager or county administrator shall be eligible for membership if a county judge, chair of the quarterly county court or county mayor from that county is a member;

(9)(A) "County official" means a county clerk, a clerk of a circuit court, a criminal court, or a probate court, a clerk and master of a chancery court, a clerk of a general sessions court where such general sessions court has an independent clerk who serves such court only, a register of deeds, a county trustee, a sheriff, a county road superintendent elected by a county legislative body, by a county road commission or commissioners, or by popular vote, and an assessor of property, any county commissioner elected by popular vote, serving in a county having a county commission form of government. In the event a consolidation or reorganization of any or all of such courts is provided by constitutional amendments or by act of the general assembly or both, "county official" also means a clerk of any such consolidated or reorganized court;

(B) "County official" also includes any person filling the position of county mayor;

(10)(A) "Covered compensation" means, with respect to any calendar year, the amount of a member's earnable compensation subject to contributions under the Federal Insurance Contributions Act (26 U.S.C. §§ 3101-3126);

(B) The amount of nontaxable benefits elected in lieu of cash wages under a cafeteria plan, as permitted by § 125 of the Internal Revenue Code of 1986 (26 U.S.C. § 125), shall be included in computing the member's covered compensation. In no event shall the total amount included in covered compensation exceed the maximum social security wage base;

(11) "Creditable service" means prior service plus membership service, as provided in part 6 of this chapter;

(12) "Date of establishment" means the date as of which the retirement system is established as provided in § 8-34-201;

(13) "Disability" or "disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of not less than twelve (12) months. This means that the condition must be both totally and permanently disabling;

(14)(A) "Earnable compensation" means the compensation payable to a member for services rendered to an employer;

(B)(i) "Earnable compensation" includes, but is not limited to, any bonus or incentive payment; provided, that:

*(a)* Such payment is authorized by legislation passed by the general assembly and that such legislation provides that the payment shall be included as earnable compensation for retirement purposes and is not made for the purpose of increasing a member's retirement benefit or inducing a member to retire; or

*(b)* Such payment is authorized by resolution legally adopted and approved by the chief governing body of an employer participating in the retirement system pursuant to chapter 35, part 2 of this title and that the resolution provides that the payment shall be included as earnable compensation for retirement purposes and is not made for the purpose of increasing a member's retirement benefit or inducing a member to retire. All employees generally, or all employees in a broad class or broad group of employees must be given the opportunity to qualify for the bonus or incentive payment under similar terms and conditions. If the bonus or incentive payment plan only applies to a class or group of employees, a distinct and reasonable basis must exist for offering the plan to the particular class or group of employees;

(ii) "Earnable compensation" also includes the total amount for which an employee may choose to receive cash or a combination of cash and benefits under a cafeteria plan as permitted by § 125 of the Internal Revenue Code of 1986."Earnable compensation" shall also include for any general employee in the executive, legislative, or judicial branch of government any compensation paid under § 3-1-106(f) and any non-cash compensation falling under Internal Revenue Service Regulation Section 1.61-2T(d) as such section exists on July 17, 2002, if such compensation was includable in gross income for federal income tax purposes and was subject to contributions under the provisions of the Federal Insurance Contributions Act;

(C) In cases where compensation includes maintenance, the board of trustees shall fix the value of that part of the compensation not paid in money;

(D) Notwithstanding any other law to the contrary, "earnable compensation" does not include compensation paid to a teacher employed in a state-supported institution of higher education for performing extra services for the institution that exceeds twenty-five percent (25%) of the teacher's base compensation. For purposes of this subdivision (14), "extra services" means any duties other than summer school or regular duties;

(E) Notwithstanding this subdivision (14) or any other law to the contrary, "earnable compensation" does not include compensation that exceeds the maximum dollar limitation imposed by § 401(a)(17) of the Internal Revenue Code, as adjusted for cost-of-living increases in accordance with § 401(a)(17)(B) of the Internal Revenue Code (26 U.S.C. § 401(a)(17)(B)). For any person becoming a member of the retirement system before July 1, 1996, the dollar limitation under § 401(a)(17) of the Internal Revenue Code (26 U.S.C § 401(a)(17)), shall not apply to the extent the amount of compensation which is allowed to be taken into account under the system would be reduced below the amount which was allowed to be taken into account under the system as in effect on July 1, 1993;

(F) In all cases of doubt, the retirement system shall determine whether a certain payment is includable as earnable compensation;

(15) "Education television association" means a nonprofit educational organization which has a contract with the state department of education through its television division to provide education television service;

(16) "Employer" means:

(A) The state or any department, commission, institution, board or agency of the state government by which a member is paid, with respect to members in its employ;

(B) The state, the county board of education, the city board of education, the state board of education, the board of trustees of the University of Tennessee, the board of trustees of other educational institutions and agencies supported by and under the control of the state, or any other agency of and within the state by which a teacher is paid, with respect to teachers in its employ;

(C) Any political subdivision of the state or educational cooperative participating in the retirement system pursuant to chapter 35, part 2 of this title or the Tennessee County Services Association, with respect to members in its employ;

(D) Any county of the state with respect to members in its employ;

(E) Any other association which was a member of one (1) of the superseded systems;

(F) A contractor that manages and operates a mental health institute under this chapter; or

(G) A contractor that manages and operates a blind workshop pursuant to § 71-4-608;

(17) "Firefighter" means a person in the employ of a political subdivision participating under chapter 35, part 2 of this title who is a member of the fire department of such political subdivision, and is trained in firefighting and actively engaged in such work or subject to call for such services, providing such person's primary livelihood is derived from such work;

(18) "General employee" means any person who is a state official, including legislative officials elected by the general assembly, or who is employed in the service of, and whose compensation is payable in whole or in part by, the state, including employees under supervision of the state whose compensation is paid, in whole or in part, from federal or other funds, or any person in the employ of a political subdivision participating under chapter 35, part 2 of this title, or of the Tennessee County Services Association, but does not include any teacher, state police officer, wildlife officer, firefighter, police officer, state judge, county judge, attorney general, governor, or county official or public service commissioner, or any person performing services on a contractual or percentage basis;

(19) "In-service" means a member who has not retired, has not been refunded and is within one hundred fifty (150) days of such member's last paid day of employment. The last paid day of employment for a teacher shall be the last scheduled working day of the normal school year or the last day of employment if prior to the end of the school year;

(20) "Internal Revenue Code" means the Internal Revenue Code of 1986, codified in United States Code, title 26, as amended;

(21) "Limitation year" means, for testing purposes under § 415 of the Internal Revenue Code (26 U.S.C. § 415), the calendar year;

(22) "Local retirement fund" means any teachers' retirement fund or other arrangement for payment of retirement benefits to teachers, except this retirement system, supported wholly or in part by contributions made by an employer as defined by chapters 34-37 of this title;

(23) "Medical advisors" means the physicians, companies, or organizations provided for in part 4 of this chapter;

(24) "Member" means any person included in the membership of the retirement system, as provided in chapter 35, part 1 of this title;

(25) "Member annuity" means annual payments for life derived from the accumulated contributions of the member;

(26) "Membership service" means service rendered while a member of the retirement system;

(27) "Minor" has the meaning set forth in § 1-3-105, except when a contrary intention is manifest;

(28) "Part-time employee" means any person employed by the state or a political subdivision who renders less than a full day of service per working day or less than a full week of service per working week. Any employee falling into either of the above categories shall be considered part-time unless the law otherwise provides. "Part-time employee" does not include employees who are students, seasonal or temporary employees under twenty-five (25) years of age, temporary employees in institutions of higher education, or substitute teachers, unless such substitutes are under contract and scheduled to work the same time as a regular teacher. "Part-time employee" includes any interim teacher who is employed on a temporary basis to teach for a regular teacher who is on unpaid leave;

(29) "Physical or mental impairment" means one which is medically determinable. This means that the condition should be one that can be determined by a physician. The physical or mental impairment must be the primary reason for the individual's inability to engage in substantial gainful activity;

(30) "Plan year" means the fiscal year commencing July 1;

(31) "Police officer" means a person in the employ of a political subdivision participating under chapter 35, part 2 of this title who is a member of the police department of such political subdivision and is trained in police work and actively engaged in such work;

(32) "Prior class member" means a member who, on the day preceding the date of establishment, shall have been a member of a superseded system and who elects to remain covered by the benefit and contribution provisions of the superseded system, or who fails to elect to become covered by the benefit and contribution provisions of the retirement system applicable to new employees, as the case may be, in accordance with chapter 35, part 1 of this title;

(33) "Prior service" means service rendered prior to the date of membership in the retirement system for which credit was given under the terms of one (1) or more of the superseded systems as provided in part 6 of this chapter;

(34) "Public school" means any school conducted within the state under the authority and supervision of a duly elected or appointed city or county school board, and any educational institution supported by and under the control of the state;

(35) "Regular interest" means interest at such rate or rates compounded annually as may be set from time to time by the board of trustees in

accordance with § 8-34-505;

(36) "Retirement" means withdrawal from membership with a retirement allowance granted under chapters 34-37 of this title;

(37)(A) "Retirement allowance" means the sum of the member annuity and the state annuity. All retirement allowances shall be payable in equal monthly installments, which shall cease with the month in which death occurs, unless otherwise specifically provided in this section; provided, that if the retirement allowance is less than ten dollars ($10.00) per month, it shall be paid in a lump sum of equivalent actuarial value. If the entire monthly retirement allowance is ten dollars ($10.00) or more per month but less than seventy-five dollars ($75.00) per month, it shall be paid in a lump sum of equivalent actuarial value unless the recipient thereof files with the retirement division an election to receive the benefit in equal monthly installments pursuant to this subdivision (34). To be effective, the recipient must file the election by no later than sixty (60) calendar days after the recipient's receipt of the lump sum payment and the recipient must return any such payment to the retirement division. Notwithstanding any provision of this subdivision (34) to the contrary, any retirement allowance that equals ten dollars ($10.00) or more per month but less than fifty dollars ($50.00) per month shall be paid in a lump sum of equivalent actuarial value if such allowance is payable on account of a person who became a member of the retirement system on or after July 1, 2001;

(B) Notwithstanding subdivision (34)(A) to the contrary, any retirement allowance that equals ten dollars ($10.00) or more per month but less than seventy-five dollars ($75.00) per month shall be paid in a lump sum of equivalent actuarial value if such allowance is payable on account of a person who became a member of the retirement system on or after July 1, 2013;

(38) "Retirement system" means the Tennessee consolidated retirement system as defined in §§ 8-34-201, 8-34-202;

(39) "Service" means service as a general employee, a teacher, a state police officer, a wildlife officer, a firefighter, a police officer, a state judge, a county judge, an attorney general, a commissioner or a county official which is paid for by an employer, and also includes service for which a former member of the general assembly is entitled to under former §§ 3-401 and 3-406; provided, that such member received compensation for such service;

(40) "Service retirement date" means the date on which a member first becomes eligible for a service retirement allowance, or would first become eligible for a service retirement allowance if the member were to remain in service until such date, as provided in §§ 8-36-201 — 8-36-204 or §§ 8-36-301 — 8-36-304;

(41) "Social security integration level" means, with respect to the calendar year in which a member retires, the average annual amount of compensation with respect to which old age and survivors benefits would be provided under Title II of the Federal Social Security Act (42 U.S.C. §§ 401-425), for a male employee attaining sixty-five (65) years of age in such calendar year, computed as though for each year prior to such calendar year annual compensation is at least equal to the maximum amount of annual earnings subject to contributions under the Federal Insurance Contributions Act. Such average annual amount of compensation shall be rounded to the

nearest multiple of six hundred dollars ($600);

(42) "State" means the state of Tennessee;

(43) "State annuity" means annual payments for life derived from contributions by an employer;

(44) "State judge" means any person in office as a judge of a court of record in this state, whose salary for the judge's judicial position has been paid during the period of the judge's service wholly from the treasury of the state, including the administrative director of the courts;

(45) "State police officer" means any commissioned member of the department of safety, and any agent of the Tennessee bureau of investigation;

(46) "Student" means any person enrolled in a course of study in a school or in a post-secondary educational institution who as a condition of such enrollment is employed in a full-time position. However, "student" does not include any person who is otherwise eligible for membership in the retirement system in accordance with § 8-35-101(a);

(47)(A) "Substantial gainful activity" means the performance of significant duties over a reasonable period of time of work for remuneration or profit or in work of a type generally performed for remuneration or profit. Work which results in earnings considered by the law or regulations governing the social security administration to be substantial for disability recipients from that system shall be considered to be substantial gainful employment in this system; and

(B) "Significant duties" means that the duties are useful in the accomplishment of a job or the operation of a business but also that they have a degree of economic value;

(48) "Superseded system" means, where applicable, the Tennessee state retirement system, the Tennessee teachers' retirement system, the Tennessee judges' retirement system, the retirement system for county paid judges of Tennessee, the attorneys general retirement system of Tennessee, the public service commissioners' retirement system, and the Tennessee retirement system for county officials, any one (1) of them, or any combination thereof;

(49) "Teacher" means:

(A) Any person employed in a public school as a teacher, librarian, principal or supervisor, and includes any superintendent of public schools, or administrative officer of a department of education, or of any educational institution supported in whole or in part by and under the control of the state; or

(B) Any person employed in a public school as a teacher, librarian, principal, superintendent or chief administrative officer of a public school system, a supervisor of teachers, or any other position whereby the state requires the employee to be certificated as a teacher, or licensed as a nurse, physical therapist, or occupational therapist, in the public schools or of any educational institution supported in whole or in part by and under the control of the state. Notwithstanding the foregoing, a physical therapist and an occupational therapist employed with the Metropolitan Nashville Public Schools District shall not be included within the definition of teacher. "Teacher" also includes any person employed in a public school as a reserve officer training corps (ROTC) instructor. This definition shall be in effect from and after July 1, 1986, and shall be applied to all persons seeking membership in the retirement plan as a teacher from this date

forward. It is further provided that any teacher who has taught in the public schools for a period of at least one (1) year who transfers to a position within the Tennessee public school system that does not require a teacher's certificate shall continue participation in the retirement plan as a teacher;

(50) "Temporary employment" means any general employee can be considered as a temporary employee for a period not to exceed six (6) months before becoming eligible for membership in the retirement system, except as provided in § 8-35-107(b);

(51) "Transferred Class A member" means a member who on the day preceding the date of establishment shall have been a Class A member of the Tennessee teachers' retirement system or the Tennessee state retirement system and who is not a prior class member;

(52) "Transferred Class B member" means a member who on the day preceding the date of establishment shall have been a Class B member of the Tennessee teachers' retirement system or the Tennessee state retirement system and who is not a prior class member; and

(53) "Wildlife officer" means any commissioned employee of the wildlife resources agency engaged in law enforcement activities on a day-to-day basis.

**8-34-401. Contracting for medical advisors.**

The board of trustees shall contract with at least one (1) but no more than three (3) physicians who are not eligible to participate in the retirement system to serve as medical advisors. Notwithstanding this section or any other law to the contrary, the board of trustees is authorized to contract with one (1) or more companies or organizations for all or any part of the services necessary or desirable for the management and operation of the disability retirement program authorized in chapter 36, part 5 of this title, including medical advisory services. Any company or organization engaged to provide the medical advisory services shall be deemed a medical advisor for purposes of this part and for purposes of chapter 36, part 5 of this title.

**8-35-112 Membership in retirement system as condition of employment.**

(a) Notwithstanding any other law to the contrary and except as provided in subsection (b), any current or former member of the retirement system or of a superseded system who accepts, or is elected to, a position on or after July 1, 2018, for which membership in the retirement system is otherwise optional shall become a member of the retirement system as a condition of employment.

(b) Subsection (a) shall not apply to an employee having optional membership who was employed by a political subdivision on the date the political subdivision elected to extend retirement coverage to the employee, unless the employee was a member or former member of a preexisting defined benefit plan maintained by that political subdivision. For purposes of this section, "political subdivision" means any entity authorized to participate in the retirement system pursuant to part 2 of this chapter.

(c) This section shall not apply to retired members of the retirement system or of a superseded system who return to service in a position covered by the retirement system as provided in § 8-36-805, § 8-36-810, § 8-36-818, or § 8-36-821.

**8-35-116. County judges and county officials.**

(a)(1) Notwithstanding any other law to the contrary, and except as provided in subdivision (a)(2), all county officials or county judges taking office after July 1, 1977, may become members of the Tennessee consolidated retirement system only in accordance with part 2 of this chapter, and shall be allowed to participate in the Tennessee consolidated retirement system if the county in which they are employed is participating in accordance with part 2 of this chapter.

(2) Any such county official or county judge who takes office on or after July 1, 2018, shall become a member of the Tennessee consolidated retirement system as a condition of taking office if the county official or county judge is a current or former member of the retirement system. This subdivision (a)(2) shall not apply if the county official or county judge was in office as a county official or county judge with the county on the date the county elected to participate in the retirement system, unless the county official or county judge was a member or former member of a closed preexisting defined benefit plan maintained by that county.

(3) The county shall be responsible for all employer costs on behalf of its county officials and county judges as provided in part 2 of this chapter.

(b)(1) Notwithstanding subsection (a) or any other law to the contrary, full-time employees in the positions of county judges and county officials, as these terms are defined in chapter 34 of this title, in office or taking office after June 30, 1981, may participate in the retirement system as Group 1 members in accordance with chapters 34-37 of this title and this subsection (b) under the following terms and conditions:

(A) Except as provided in subdivision (b)(1)(C), any such county official or county judge taking office on or after July 1, 2018, shall participate in the Tennessee consolidated retirement system as a condition of taking office if the county official or county judge is a current or former member of the retirement system;

(B) The employer cost of such participation shall be paid from funds appropriated by the county legislative body for the office of the participating judge or official or from the excess fees of the participating official's office, where such excess fees are available;

(C) Participation in the Tennessee consolidated retirement system shall not be available to county judges or county officials in counties that provide a county retirement system in which such judges or officials may participate unless:

(i) The county legislative body passes a resolution allowing such election; provided, that the passage of the resolution shall not be required for any person who has obtained vesting in the Tennessee consolidated retirement system and who is elected or appointed as a county judge or county official;

(ii) The participation is approved by the state retirement division; and

(iii) The county official or county judge is not a current or former member of the county retirement system;

(D) The state's share of any additional costs of this section shall be funded from the increase in state-imposed taxes that are earmarked to counties and that are not designated to be used by such counties for a

particular purpose;

(E) All employer and employee contributions, together with investment earnings made on behalf of persons covered under this subsection (b), must be equal to or exceed benefits that will be paid out. Employees participating pursuant to this subsection (b) shall contribute to the retirement system at a rate of five percent (5%) of earnable compensation or, in lieu of employee contributions, the employer may pay or cause to be paid all or part of such contributions on behalf of the employees. Employer contributions shall be determined by the state retirement division based on an actuarial valuation for each county with county officials electing to participate under this subsection (b);

(F) Any liabilities resulting from the participation of a county under this subsection (b) shall be a liability of the county and not the state. If any required employer costs become delinquent, the commissioner of finance and administration, at the direction of the board of trustees of the retirement system, is authorized to withhold such amount or part of such amount from any state-shared taxes that are otherwise apportioned to the county; and

(G) In the event of withdrawal of a county participating under this subsection (b), the assets of the county shall be distributed in accordance with § 8-35-211.

(2) The governing body of a county may pass a resolution to permit its county judges and county officials who participate in the retirement system pursuant to this subsection (b) to claim prior service credit for service rendered as full-time county general employees, county judges, or county officials, if the county authorizes the credit and assumes the liability for such prior service. Upon the authorization and assumption of the liability for prior service credit by the county, the county official or county judge shall be entitled to receive credit for such prior service only by the making of a lump sum payment of the contributions the official or judge would have made had the official or judge been a member, plus interest at the rate provided for in § 8-37-214. Except as otherwise provided in chapter 36, part 8 of this title, no person who has service credit in the retirement system under this subsection (b) shall be permitted to draw a retirement allowance from the system if the person continues or returns to service with the county in an employment classification for which the person received service credit under this subsection (b). For purposes of this subdivision (b)(2), "employment classification" means county general employee, county judge, or county official as those terms are defined in § 8-34-101. Notwithstanding any other law to the contrary, on or after January 1, 2009, county officials and county judges may claim prior service credit in the retirement system for service rendered as county general employees only if the county for which they are employed is participating in accordance with part 2 of this chapter, and only for periods of previous service that are authorized for other employees of the county.

(3) Any person entitled to participate in the retirement system under this subsection (b) shall be entitled to all rights, benefits, and privileges accruing under chapters 34-37 of this title, except as otherwise provided in this subsection (b), and such person shall be prohibited from participating in any other retirement system while at the same time participating in the Tennessee consolidated retirement system.

(4) A county judge or county official must choose to participate in either the consolidated retirement system in accordance with this subsection (b) or a county retirement system. A county judge or county official who is covered by a county system shall not be eligible to participate in the consolidated system.

**8-35-206. Contributions.**

(a)(1) The actuary of the retirement system shall compute the rates of contribution payable by employers on behalf of their employees who become members under this part by an actuarial valuation in a manner similar to that provided by chapter 37, part 3 of this title; provided, that the contribution rate as determined by the actuary for any employer who begins participating on or after July 1, 1983, shall be determined in a manner so as to amortize the accrued liabilities created on account of such participation over a period of time as established by the board of trustees, such period not to exceed thirty (30) years from the date of participation.

(2) Effective July 1, 1979, the liability for cost-of-living benefits is to be included in the computation of normal and accrued liability contribution rates payable by the employers.

(b) Each such employer shall make a special accrued liability contribution on account of the participation of its employees in the retirement system which shall be determined by an actuarial valuation of the employer's share of the accrued liability on account of the employees of such employer who elected to become members.

(c) In determining the accrued liability on account of the employees of any such employer, the actuary shall exclude the value of benefits which may become payable with respect to any period of service as a state employer prior to the employer's participation in the retirement system.

(d)(1) The special accrued liability contribution shall be subject to such adjustments as may be necessary on account of any additional prior service credits awarded to employees of such employer or changes in provisions relating to such employees.

(2) The expense of making such initial valuation shall be assessed against and paid by the employer on whose account it is necessary.

(3) The board of trustees may require that a new study be performed if the political subdivision does not begin participation within six (6) months after the effective date of the initial actuarial study. Such employer shall be responsible for the cost of any additional studies.

(e) In addition, the employer shall pay a pro rata share of the cost-of-living contribution allocated on the basis of the amount of retirement allowances payable on account of retired employees of the employer or determined on such other equitable basis as the board of trustees may prescribe.

(f) The contributions so computed, together with a pro rata share of the cost of the administration of the retirement system, based upon the payroll of the employees, shall be certified by the board to the chief fiscal officer of the employer. The amount so certified shall be a charge against the employer.

(g) The chief fiscal officer of such employer shall pay to the state treasurer the amount certified by the board as payable under this section, and the state treasurer shall credit such amounts, when paid, to the appropriate funds of the retirement system.

(h) Notwithstanding any other law to the contrary, any employer that

desires to participate in the retirement system on or after July 1, 2016, shall, as a condition of participating, pay its accrued unfunded liability, if any, in a lump sum or through an increase in the employer's contribution rate for the next fiscal year (July 1 — June 30) following the adoption of the participation resolution by the employer. At the request of the employer, the state treasurer may, in the treasurer's sole discretion, allow the employer to amortize the accrued unfunded liability over a period of time not to exceed twenty (20) years from the date of participation.

(i) Any participating employer who desires to establish a benefit improvement authorized under chapters 34-37 of this title shall pay the estimated increased pension liability created by the improvement in a lump sum or through an increase in the employer's contribution rate for the next fiscal year (July 1 — June 30) following the adoption of the resolution by the employer. No former or current employee of the employer shall be entitled to the benefit improvement until the estimated increased pension liability has been totally funded by the employer. The retirement system or the retirement system's actuary shall determine the estimated increased pension liability and associated increased contribution rate for the employer.

**8-35-255. Establishment of alternative defined benefit plan.**

(a) There is established an alternate defined benefit plan that shall offer a service retirement allowance of one and four-tenths percent (1.4%) of the member's average final compensation, multiplied by the number of years of creditable service.

(b) A political subdivision may, by resolution legally adopted and approved by the chief governing body and in accordance with the procedure set out in § 8-35-201, authorize its employees in all of its departments or instrumentalities to become eligible to participate in the alternate defined benefit plan.

(c) Except as otherwise provided in this subsection (c), any member in the alternate defined benefit plan shall be eligible for service retirement upon attainment of sixty-five (65) years of age and upon completion of five (5) years of creditable service, or upon attainment of a combination of age and years of creditable service as to equal ninety (90). Any member serving in a position covered by the mandatory retirement provisions of § 8-36-205 shall be eligible for service retirement upon attainment of sixty (60) years of age and upon completion of five (5) years of creditable service, or at any age upon completion of thirty (30) years of creditable service. Further, any member who has creditable service in a position covered by the mandatory retirement provisions of § 8-36-205 and who is entitled to the supplemental bridge benefit established pursuant to § 8-36-211 shall be eligible for service retirement upon attainment of fifty-five (55) years of age and upon completion of twenty-five (25) years of creditable service; provided, that the service rendered while the member was in a position covered by the mandatory retirement provisions shall be independent of all other creditable service for the purpose of calculating the member's retirement benefits under subsection (a). Section 8-36-211(b)(2) shall not apply in calculating the supplemental bridge benefit for members covered by the mandatory retirement provisions of § 8-36-205(a)(2) who retire on an early service retirement allowance pursuant to this subsection (c). Instead, the supplemental bridge benefit shall be equal to three-fourths of one percent (0.75%) of the member's average final compensation,

multiplied by the member's years of creditable service when the member was in a position covered by the mandatory retirement provisions of § 8-36-205(a)(2), but reduced by an actuarially determined factor as set by the board from time to time.

(d) Except as otherwise provided in this subsection (d), any member in the alternate defined benefit plan shall be eligible for early service retirement upon attainment of sixty (60) years of age with five (5) years of creditable service, or upon attainment of a combination of age and years of creditable service as to equal eighty (80). Any member serving in a position covered by the mandatory retirement provisions of § 8-36-205 shall be eligible for early service retirement upon attainment of fifty-five (55) years of age and upon completion of five (5) years of creditable service. The early service retirement allowance calculated under this subsection (d) shall be computed as a service retirement allowance in accordance with subsection (a) but reduced by an actuarially determined factor as set by the board from time to time.

(e) Any member may apply for a disability retirement benefit pursuant to the provisions and criteria set forth in chapter 36, part 5 of this title. All provisions of chapter 36, part 5 of this title shall be applicable, except that the disability retirement allowance shall be equal to nine-tenths ($^{9}/_{10}$) of a service retirement allowance as computed in subsection (a) and as may be further reduced in accordance with chapter 36, part 5 of this title.

(f) Any reference in chapters 34-37 of this title to the eligibility requirements for an early or service retirement allowance shall for purposes of this section mean the eligibility requirements set forth in subsections (c) and (d). Any reference in chapters 34-37 of this title to the formula for computing an early or service retirement allowance, or for computing a disability retirement allowance, shall for purposes of this section mean the applicable formula as set out in subsections (a), (d) or (e).

(g) Sections 8-36-109(b)(1)(C) and 8-36-123(a)(2) shall not apply in determining the retirement allowance payable under § 8-36-109(b) or under § 8-36-123(a) to a deceased member's surviving spouse, if any. Instead, the retirement allowance payable under such sections shall be reduced by an actuarially determined factor as set by the board from time to time.

(h) In no event shall any member in this alternate defined benefit plan receive a base annual pension benefit of more than eighty thousand dollars ($80,000) beginning July 1, 2012. Each July 1 thereafter, this amount shall be increased or decreased in accordance with the consumer price index as defined in § 8-36-701(c), and the amount of increase or decrease shall be based on the prior calendar year. The member's annual pension benefit shall be limited to the base benefit in effect at the time of the member's retirement. This provision does not preclude any cost-of-living adjustments authorized pursuant to § 8-36-701(b)(1) and (2). Notwithstanding this subsection (h), the service retirement allowance payable under this section shall not exceed ninety percent (90%) of the member's average final compensation, as may be adjusted by the cost-of-living provisions of § 8-36-701(b)(1) and (2).

(i) A political subdivision electing to participate in the retirement system pursuant to this section shall participate in the provisions of the plan as they exist for state employees on the date of participation, except that §§ 8-36-123(b), 8-36-124, and 8-36-209 shall not apply and shall not be optional. Further, the provisions of the hybrid plan established under chapter 36, part 9 of this title shall not apply unless the political subdivision subsequently

elects to participate in such plan on a prospective basis pursuant to § 8-36-919. Notwithstanding the foregoing, the following provisions shall remain optional to the political subdivision:

(1) Employee contributions as provided in § 8-35-203(a)(1)(B)(iii), § 8-35-254, or § 8-37-202, as applicable;

(2) Part-time, seasonal, or temporary employee service credit in accordance with § 8-34-621;

(3) Mandatory retirement in accordance with § 8-36-205;

(4) Cost of living increase allowance in accordance with § 8-36-701.

(j) Any member who desires to establish service credit pursuant to chapters 34-37 of this title shall pay employee contributions equal to the amount the member would have paid had such member been a member of the system during the period claimed, plus interest at the rate provided in § 8-37-214. Any such service shall be credited to the plan in existence at the time the service is established, provided such plan is with the political subdivision for which the service was rendered.

**8-35-256. Establishment of hybrid plan which consists of defined benefit plan with a defined contribution plan.**

(a)(1) There is established a hybrid plan which consists of a defined benefit plan with a defined contribution plan. The defined benefit plan shall offer a service retirement allowance of one percent (1.0%) of the member's average final compensation, multiplied by the number of years of creditable service. The defined contribution plan shall be a plan that conforms to all applicable laws, rules and regulations of the internal revenue service governing such plans, may be any plan selected by the political subdivision, and may be acquired from any source. Notwithstanding any law to the contrary, a political subdivision electing to participate in the hybrid plan authorized in this section shall provide a cost of living increase allowance pursuant to § 8-36-701(b).

(2) Notwithstanding § 8-35-111 or any other law to the contrary, a political subdivision that adopts the hybrid plan authorized in this section may make employer contributions to the defined contribution plan component of the hybrid plan and to any one or more additional tax deferred compensation or retirement plans; provided, that the total combined employer contributions to such defined contribution plans on behalf of an employee shall not exceed seven percent (7%) of the employee's salary.

(3) Notwithstanding this or any other law to the contrary, the amount of any employer matching shall not exceed the maximum allowed under the Internal Revenue Code (26 U.S.C.) and shall conform to all applicable laws, rules and regulations of the internal revenue service.

(b) A political subdivision may, by resolution legally adopted and approved by the chief governing body and in accordance with the procedure set out in § 8-35-201, authorize its employees in all of its departments or instrumentalities to become eligible to participate in the hybrid plan.

(c) Except as otherwise provided in this subsection (c), any member in the hybrid plan shall be eligible for service retirement upon attainment of sixty-five (65) years of age and upon completion of five (5) years of creditable service, or upon attainment of a combination of age and years of creditable service as to equal ninety (90). Any member serving in a position covered by the

mandatory retirement provisions of § 8-36-205 shall be eligible for service retirement upon attainment of sixty (60) years of age and upon completion of five (5) years of creditable service, or at any age upon completion of thirty (30) years of creditable service. Further, any member who has creditable service in a position covered by the mandatory retirement provisions of § 8-36-205 and who is entitled to the supplemental bridge benefit established pursuant to § 8-36-211 shall be eligible for service retirement upon attainment of fifty-five (55) years of age and upon completion of twenty-five (25) years of creditable service; provided, that the service rendered while the member was in a position covered by the mandatory retirement provisions shall be independent of all other creditable service for the purpose of calculating the member's retirement benefits under subsection (a). Section 8-36-211(b)(2) shall not apply in calculating the supplemental bridge benefit for members covered by the mandatory retirement provisions of § 8-36-205(a)(2) who retire on an early service retirement allowance pursuant to this subsection (c). Instead, the supplemental bridge benefit shall be equal to three-fourths of one percent (0.75%) of the member's average final compensation, multiplied by the member's years of creditable service when the member was in a position covered by the mandatory retirement provisions of § 8-36-205(a)(2), but reduced by an actuarially determined factor as set by the board from time to time.

(d) Except as otherwise provided in this subsection (d), any member in the hybrid plan shall be eligible for early service retirement upon attainment of sixty (60) years of age with five (5) years of creditable service, or upon attainment of a combination of age and years of creditable service as to equal eighty (80). Any member serving in a position covered by the mandatory retirement provisions of § 8-36-205 shall be eligible for early service retirement upon attainment of fifty-five (55) years of age and upon completion of five (5) years of creditable service. The early service retirement allowance calculated under this subsection (d) shall be computed as a service retirement allowance in accordance with subsection (a) but reduced by an actuarially determined factor as set by the board from time to time.

(e) Any member may apply for a disability retirement benefit pursuant to the provisions and criteria set forth in chapter 36, part 5 of this title. All provisions of chapter 36, part 5 of this title shall be applicable, except that the disability retirement allowance shall be equal to nine-tenths ($^{9}/_{10}$) of a service retirement allowance as computed in subsection (a) and as may be further reduced in accordance with chapter 36, part 5 of this title.

(f) Any reference in chapters 34-37 of this title to the eligibility requirements for an early or service retirement allowance shall for purposes of this section mean the eligibility requirements set forth in subsections (c) and (d). Any reference in chapters 34-37 of this title to the formula for computing an early or service retirement allowance, or for computing a disability retirement allowance, shall for purposes of this section mean the applicable formula as set out in subsections (a), (d) or (e).

(g) Sections 8-36-109(b)(1)(C) and 8-36-123(a)(2) shall not apply in determining the retirement allowance payable under § 8-36-109(b) or under § 8-36-123(a) to a deceased member's surviving spouse, if any. Instead, the retirement allowance payable under such sections shall be reduced by an actuarially determined factor as set by the board from time to time.

(h) In no event shall any member in this hybrid plan receive a base annual pension benefit of more than eighty thousand dollars ($80,000) beginning July

1, 2012. Each July 1 thereafter, this amount shall be increased or decreased in accordance with the consumer price index as defined in § 8-36-701(c), and the amount of increase or decrease shall be based on the prior calendar year. The member's annual pension benefit shall be limited to the base benefit in effect at the time of the member's retirement, but shall be subject to increase in accordance with the cost-of-living provisions of § 8-36-701(b)(1) and (2). Notwithstanding this subsection (h), the service retirement allowance payable under this section shall not exceed ninety percent (90%) of the member's average final compensation, as may be adjusted by the cost-of-living provisions of § 8-36-701(b)(1) and (2).

(i) A political subdivision electing to participate in the retirement system pursuant to this section shall participate in the provisions of the plan as they exist for state employees on the date of participation, except that §§ 8-36-123(b), 8-36-124, and 8-36-209 shall not apply and shall not be optional. Further, the provisions of the hybrid plan established under chapter 36, part 9 of this title shall not apply unless the political subdivision subsequently elects to participate in such plan on a prospective basis pursuant to § 8-36-919. Notwithstanding the foregoing, the following provisions shall remain optional to the political subdivision:

(1) Employee contributions as provided in § 8-35-203(a)(1)(B)(iii), § 8-35-254, or § 8-37-202, as applicable;

(2) Part-time, seasonal, or temporary employee service credit in accordance with § 8-34-621;

(3) Mandatory retirement in accordance with § 8-36-205.

(j) Any member who desires to establish service credit pursuant to chapters 34-37 of this title shall pay employee contributions equal to the amount the member would have paid had such member been a member of the system during the period claimed, plus interest at the rate provided in § 8-37-214. Any such service shall be credited to the plan in existence at the time the service is established, provided such plan is with the political subdivision for which the service was rendered.

**8-36-203. Effective date of retirement — Commencement of benefits.**

The retirement system shall pay all benefits in accordance with a good faith interpretation of the requirements of § 401(a)(9) of the Internal Revenue Code (26 U.S.C. § 401(a)(9)), and the regulations in effect under that section, as applicable to a governmental plan within the meaning of § 414(d) of the Internal Revenue Code (26 U.S.C. § 414(d)). The retirement system is subject to the following provisions:

(1) Any member eligible to retire may set the effective date of the member's retirement at any date within one hundred fifty (150) days before or after the date that the member's application is filed with the board; provided, that such effective date of retirement follows the date of the member's separation from service;

(2) A member may submit only one (1) retirement application even if the member has service credit in one (1) or more of the four (4) defined benefit plans administered by the retirement system pursuant to chapters 34-37 of this title. The retirement payment plan and beneficiary selected by the member on the retirement application shall be the same for all of the plans and may not be changed or revoked, except as provided in part 6 of this

chapter. The retirement system shall pay benefits from each of the applicable plans on the member's effective date of retirement; provided, that the member has met the eligibility requirements of the particular plan for a retirement allowance. If on a member's effective date of retirement the member has not met the eligibility requirements for a retirement allowance from a particular plan, the retirement system shall commence payments from that plan once the member meets the eligibility requirements of the plan;

(3) Distribution of a member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the member attains age seventy and one-half (70½) or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as required by this section in the applicable form provided in § 8-36-206; and

(4) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of § 401(a)(9)(G) of the Internal Revenue Code (26 U.S.C. § 401(a)(9)(G)), and the minimum distribution incidental benefit rule under Treasury Regulation § 1.401(a)(9)-6, Q&A-2.

**8-36-302. Eligibility and computation of allowances.**

(a) Notwithstanding any other law to the contrary and beginning on November 1, 1982, any of the following employees who are not eligible for social security coverage shall be eligible for early service retirement upon the completion of ten (10) years of membership service in a position covered by a local retirement system as provided for in chapter 35, part 3 of this title; the Tennessee consolidated retirement system; or a superseded system:

(1) General employee;

(2) Firefighter or police officer;

(3) Teacher; and

(4) Member of a local retirement system.

(b) The retirement allowance, as provided under this section, shall be computed as a service retirement allowance and reduced by the greater of:

(1) Four tenths of one percent (0.4%) for each month by which the date of early service retirement precedes the service retirement date; or

(2) An actuarial equivalent of the retirement allowance.

**8-36-303. Setting of retirement date.**

(a) Any member eligible to retire may set the effective date of the member's retirement at any date within one hundred fifty (150) days before or after the date the member's application is filed with the board; provided, that such effective date of retirement follows the date of such member's separation from service and that the member at the time so specified for the member's retirement shall have completed the applicable eligibility requirements as hereinabove set forth.

(b) A member may submit only one (1) retirement application even if the member has service credit in one (1) or more of the four (4) defined benefit plans administered by the retirement system pursuant to chapters 34-37 of this title. The retirement payment plan and beneficiary selected by the

member on the retirement application shall be the same for all of the plans and may not be changed or revoked, except as provided in part 6 of this chapter. The retirement system shall pay benefits from each of the applicable plans on the member's effective date of retirement; provided, that the member has met the eligibility requirements of the particular plan for a retirement allowance. If on a member's effective date of retirement the member has not met the eligibility requirements for a retirement allowance from a particular plan, the retirement system shall commence payments from that plan once the member meets the eligibility requirements of the plan.

**8-36-714. Requirements to be compensated as president emeritus — Continued eligibility requirements — Filing of agreement.**

(a) The board of trustees of the University of Tennessee may grant to any former president of the University of Tennessee the title "president emeritus." A state university board or the board of regents may grant to any former president of any college or university it governs a similar "emeritus" title. No former president shall receive any compensation or remuneration for holding the emeritus title, unless the following conditions are met:

(1) The remuneration is for time actually spent by the former president in performing services for the respective governing board;

(2) An agreement is executed between the respective governing board and the former president which sets forth the duties to be performed by the former president;

(3) The agreement cannot exceed a term of one (1) year. The respective governing board may enter into additional one-year agreements with the former president. No renewal agreement shall be entered into until the governing board reviews and is satisfied with the emeritus work performed by the former president. Any such renewal must be approved by an affirmative vote of a majority of the respective governing board;

(4) The former president must reside in the state of Tennessee at the time of the initial appointment and at the time of any subsequent appointment; and

(5) The former president shall not accrue any additional retirement credit as a result of such appointment.

(b) Notwithstanding any other law to the contrary, any former president receiving compensation or remuneration for holding the emeritus title pursuant to this section shall be eligible to continue drawing such person's retirement allowance; provided, that the former president does not work and is not compensated for more than one hundred twenty (120) days or the equivalent of one hundred twenty (120) days during the one-year appointment, or, if working as a teacher, for more than twenty-four (24) quarter credit hours or eighteen (18) semester credit hours during the one-year appointment. If the period exceeds that specified in this subsection (b), the former president's monthly retirement allowance shall be reduced in direct proportion thereto. The retirement system is authorized to obtain reimbursement for any retirement benefits overpaid as a result of any compensation being paid to a former president in excess of that permitted by this section. Such reimbursement may be made by deductions from the former president's monthly benefit.

(c) For each emeritus appointment for which compensation or remuneration will be paid, the respective governing board shall be responsible for filing with

the retirement division the agreement, which sets forth the name of the person holding the title, and the beginning and ending date of the appointment. The agreement shall be accompanied with documentation showing the amount of compensation to be paid to the person and the number of hours to be worked. The agreement and documentation shall be filed annually, if applicable, and signed by the former president acknowledging the conditions of the appointment. The governing board shall send written notice to the speaker of the senate, the speaker of the house of representatives, the chairs of the senate standing committees on education and on finance, ways and means, the chairs of the standing committees on education administration and planning and finance, ways and means of the house of representatives, and the office of legislative budget analysis of each emeritus appointment for which compensation or remuneration will be paid.

**8-36-801. Suspension of benefits while reemployed — Further contributions optional.**

(a) Except as provided in this part, any retired member of the Tennessee consolidated retirement system, or of any superseded system, or of any local retirement fund established pursuant to chapter 35, part 3 of this title who accepts employment in a position covered by the Tennessee consolidated retirement system shall, as a condition of such employment, cease to draw the member's retirement allowance during the period of the employment; however, the member shall keep the member's retirement benefit in the month that the member returns to work.

(b) A retiree restored to employment shall not be required to reenroll as an active member of the retirement system, to make further contributions to the retirement system or to void the retirement payment plan elected by the member. Employees covered by the noncontributory provisions of the system in accordance with § 8-34-206 shall reenroll and accrue service. Any retiree restored to employment who reenrolls as an active member of the retirement system shall be treated as voiding any optional benefit previously elected under § 8-36-601 for purposes of in-service death benefits. Subject to § 8-36-802(c), any such optional benefit previously elected shall be restored upon subsequent retirement.

(c) Notwithstanding subsection (b), any retiree who is hired or rehired in a position covered by the retirement system on or after July 1, 2018, shall reenroll as an active member of the retirement system, make such contributions as are required for the retiree's position, and establish credit for the additional service. This subsection (c) shall not apply to retirees who return to service in a position covered by the retirement system as provided in § 8-36-805, § 8-36-810, § 8-36-818, or § 8-36-821. This subsection (c) shall also not apply to retired members who are employees of a political subdivision that subsequently elects to cover its employees under the retirement system, unless the employee was a member or former member of a preexisting defined benefit plan maintained by that political subdivision.

**8-36-802. Reenrollment upon reemployment or local system's inclusion in consolidated system.**

(a) If a retiree restored to employment reenrolls as an active member of the retirement system, the excess, if any, of the retired member's accumulated

contributions at retirement over the sum of the retirement allowance payments received by the retired member shall be credited to the retiree as accumulated contributions.

(b) Any creditable service to which the retiree was entitled when the retiree retired shall be restored to the retiree, and upon subsequent retirement, the retiree's retirement allowance shall be based on the retiree's compensation and creditable service before and after the period of prior retirement.

(c)(1) If the retiree does not complete three (3) years of creditable service after restoration to service, the part of the retiree's retirement allowance upon subsequent retirement payable with respect to creditable service rendered before the period of the retiree's previous retirement, or included in the computation of the retiree's previous retirement allowance, shall be equal to the retiree's previous retirement allowance with all of the provisions of the retirement payment plan elected by the retiree, with respect to such part of the retiree's retirement allowance.

(2) If the retiree completes three (3) years or more of creditable service after restoration to service, the retirement payment plan elected by the retiree shall be void. Upon subsequent retirement, the retiree shall again elect the payment plan under which the retiree's retirement benefits shall be paid. The benefits shall be recomputed under such plan based on the total service and salary credit accrued by the retiree both before and after the retiree's previous retirement, unless such recomputation results in the retiree receiving a lower retirement allowance than the retiree would have received under that plan prior to restoration to service. If the recomputation results in a lower allowance, then the retiree's retirement allowance under the payment plan elected upon subsequent retirement shall be computed pursuant to subdivision (c)(1). Notwithstanding this subsection (c) or any other law to the contrary, the retirement benefits of any retiree who previously elected the social security leveling retirement payment plan pursuant to § 8-36-601(c) shall not be recomputed pursuant to this subdivision (c)(2) unless the retiree pays to the retirement system the difference in benefits received under the social security leveling plan during the retiree's previous retirement and the regular retirement payment plan. Any such retiree who fails to make such payment shall have such retiree's benefits computed pursuant to subdivision (c)(1).

**8-36-803. Election not to reenroll in retirement system.**

Should the reemployed retiree elect not to participate as provided in § 8-36-801, the retiree shall make no further contributions nor establish any additional service, but, upon final retirement, shall be entitled to the same benefits to which the retiree was entitled before restoration to service.

**8-36-806. Assignment to duty of retired state judges — Compensation — Creditable service.**

(a) The chief justice of the supreme court is empowered to assign any retired state judge to:

(1) Hold any court in the state whenever in the chief justice's judgment it is necessary to do so in order to relieve congested dockets; or

(2) Sit for judges who may be incapacitated or who may be absent because of illness or otherwise.

(b) A retired state judge holding court hereunder shall be paid, in addition

to the retirement allowance for the period during which the retired state judge sits as judge, the difference between the retired state judge's retirement allowance for the period and the amount the retired state judge would receive for that period if the retired state judge were an active judge of the same court.

(c) The chief justice shall certify to the judicial cost accountant the date on which such service commences and the date on which such service terminates.

(d)(1) Any retired judge assigned to duty under this section who has not attained the maximum creditable service shall be entitled to receive credit for services performed in such duty; provided, that:

(A) Such judge elects to receive such credit by notice to the board; and

(B) Such judge authorizes the deduction of the applicable contributions as set forth under chapter 37, part 2 of this title.

(2) Such service shall be added to the creditable service of such judge and, on July 1 of each year, such judge's benefits shall be adjusted according to the superseded system or of the retirement system hereby created as may be appropriate.

(3) Notwithstanding this subsection (d) to the contrary, any retired judge assigned to duty under this section on or after July 1, 2018, shall reenroll as an active member of the retirement system, make such contributions as are required for the retiree's position, and establish credit for the additional service.

**8-36-808. Members of general assembly.**

(a) Notwithstanding any law to the contrary, any retired member of the Tennessee consolidated retirement system or of any superseded system administered by the state of Tennessee who becomes a member of the general assembly after November 1, 1982, may continue service in the general assembly without loss or suspension of retirement benefits; provided, that:

(1) The retirement benefits are based on service and salary rendered in a capacity other than that as a general assembly member; and

(2) For any such retiree who is elected to the general assembly on or after July 1, 2018, the retiree shall reenroll as an active member of the retirement system, make such contributions as are required for the retiree's position, and establish credit for the general assembly service.

(b) Any retirement benefits accrued as a result of general assembly service will only be paid upon termination of services in the general assembly.

(c) Any general assembly member previously denied retirement credit:

(1) Under this section prior to its amendment by Acts 1985, ch. 449, §§ 22 and 23; or

(2) Under any other law governing the retirement system because such member was receiving a retirement benefit;

shall be entitled to claim retirement credit for general assembly service upon making application therefor to the retirement system and making any contributions such member would have made had such member been a member during such period plus interest as provided by § 8-37-214. Any adjustment in retirement benefits shall be effective at the beginning of the following month.

**8-36-903. Persons eligible to participate in hybrid retirement plan — Determination of eligibility — Continuing membership in optional retirement program — Transfer to hybrid plan — Application of provisions of the Tennessee consolidated retirement system.**

(a) Notwithstanding any other law to the contrary and except as provided in this section, any person otherwise eligible to participate in the retirement system or in the optional retirement program established in the Optional Retirement Program for Employees of Public Institutions of Higher Education, compiled in chapter 25, part 2 of this title who enters service as a state employee or teacher on or after July 1, 2014, shall participate in the hybrid plan established under this part; provided, however, that any person who enters service with a state-supported institution of higher education on or after July 1, 2014, and who is exempt from the Fair Labor Standards Act (29 U.S.C. § 201 et seq.), may elect membership in the optional retirement program as provided in § 8-36-923 in lieu of the hybrid plan. In all cases of doubt, the state treasurer shall determine whether the person is eligible to participate in the optional retirement program.

(b) Any state employee or teacher who is a member of the retirement system or of the optional retirement program established in chapter 25, part 2 of this title on June 30, 2014, shall continue membership in the retirement system pursuant to the terms of chapters 34-37 of this title or in the optional retirement program pursuant to the terms of chapter 25, part 2 of this title, as applicable, that were in effect on June 30, 2014. Any person who reenters service as a state employee or teacher on or after July 1, 2014, having previously served as a state employee or teacher prior to July 1, 2014, and who has not otherwise lost membership in the retirement system pursuant to § 8-35-104(a)(1) or (a)(2) or in the optional retirement program shall continue membership in the retirement system pursuant to the terms of chapters 34-37 of this title or in the optional retirement program pursuant to the terms of chapter 25, part 2 of this title, as applicable, that were in effect on June 30, 2014. A person loses membership in the optional retirement program by either annuitizing that person's entire account, rolling the person's entire account balance over to another plan, or by taking a distribution of the person's entire account balance.

(c)(1) Except as provided in subdivision (c)(6), membership in the hybrid plan or the optional retirement program, as applicable, shall not be required for any part-time state employee or part-time teacher who would otherwise be covered under this part, or for any state employee who has optional membership in the retirement system pursuant to chapters 34-37 of this title.

(2) Notwithstanding any other law to the contrary and except as provided in subdivision (c)(6), any person who becomes a part-time state employee or a part-time teacher on or after July 1, 2016, and who otherwise would be covered under this part, shall upon initial date of hire file an irrevocable election to become or not to become a participant in the hybrid plan or in the optional retirement program described in § 8-36-923, as applicable. Any person serving as a part-time state employee or part-time teacher on June 30, 2016, and who otherwise would be covered under this part, but who did not elect to participate in the hybrid plan or in the optional retirement

program described in § 8-36-923, shall, by no later than October 31, 2016, file an irrevocable election to become or not to become a participant in the hybrid plan or in the optional retirement program described in § 8-36-923, as applicable. This subdivision (c)(2) shall not be construed to prohibit an eligible employee from making the elections authorized in chapter 25, part 2 of this title.

(3) Notwithstanding any other law to the contrary and except as provided in subdivision (c)(6), any person who becomes a state judge, an attorney general, or a member of the general assembly on or after July 1, 2016, and who has not otherwise maintained membership in the retirement system based on previous service as a state employee or teacher, shall, upon the initial date of taking office, file an irrevocable election to become or not to become a participant in the hybrid plan. Any person serving as a state judge, attorney general, or member of the general assembly on June 30, 2016, and who is not a participant in the hybrid plan or who has not otherwise maintained membership in the retirement system based on previous service as a state employee or teacher, shall, by no later than October 31, 2016, file an irrevocable election to become or not to become a participant in the hybrid plan.

(4) Notwithstanding any other law to the contrary and except as provided in subdivision (c)(6), any member of the state election commission who has not otherwise maintained membership in the retirement system based on previous service as a state employee or teacher, shall, on the first day following completion of five (5) years of service on the commission, file an irrevocable election to become or not to become a participant in the hybrid plan. Any member of the state election commission who has completed a minimum of five (5) years of service on the commission as of June 30, 2016, and who is not a participant in the hybrid plan or who has not otherwise maintained membership in the retirement system based on previous service as a state employee or teacher, shall, by no later than October 31, 2016, file an irrevocable election to become or not to become a participant in the hybrid plan.

(5) The elections provided for in this subsection (c) shall be made in the manner prescribed by the retirement system and shall be filed with the retirement system. The elections provided for in this subsection (c) shall not include any option for the employee to have a cash or deferred election right with respect to designated employee contributions, and the employee contributions shall be picked up in accordance with § 8-36-904(b).

(6) Notwithstanding this subsection (c), any current or former member of the retirement system or of a superseded system who accepts, or is elected to, a position on or after July 1, 2018, for which membership in the hybrid plan is otherwise optional pursuant to this subsection (c) shall become a member of the hybrid plan as a condition of employment. This subdivision (c)(6) shall not apply to retired members of the retirement system or of a superseded system who return to service in a position covered by the retirement system as provided in § 8-36-805, § 8-36-810, § 8-36-818, or § 8-36-821.

(d) Any teacher as defined in § 8-34-101(49)(B) who is a member of the retirement system pursuant to § 8-35-101 shall have the option to transfer from the retirement system to the hybrid plan on a prospective basis; provided, that allowing such choice meets all applicable state and federal requirements, including § 414(h) of the Internal Revenue Code (26 U.S.C. § 414(h)), that are

necessary for the retirement system to maintain its status as a qualified plan under the Internal Revenue Code. The election to transfer shall be made in the manner prescribed by the retirement system and filed with the retirement system. Any such election shall become effective on the first day of the month next following the month the election is filed with the retirement system, and shall be irrevocable. The actuarial value of accrued benefits earned prior to the effective date of the transfer shall be determined under the applicable provisions of the retirement system in effect on the date of the transfer. The teacher shall thereafter be subject to the applicable provisions of this part for all service rendered and compensation received by the teacher as a teacher with any elementary or secondary Tennessee public school system or as a future state employee.

(e) All provisions of chapter 25, part 2 and of chapters 34-37 of this title that are not inconsistent with this part shall continue to apply, as applicable, to participants in the hybrid plan or the optional retirement program.

**8-36-919. Membership in the hybrid plan for employees of political subdivisions electing to participate.**

(a)(1) A political subdivision that is not otherwise participating under any of the plans afforded under chapters 34-37 of this title may, by resolution legally adopted and approved by its chief governing body and in accordance with the procedure set out in § 8-35-201, authorize its employees in all of its departments or instrumentalities to become eligible to participate in the hybrid plan. Membership in the hybrid plan for employees of political subdivisions that are admitted into the hybrid plan pursuant to this subsection shall be:

(A) Optional for all employees in the service of the political subdivision on the date the approval is given, except as provided in subdivisions (a)(2) and (3); and

(B) Mandatory for all eligible employees entering the service of the political subdivision thereafter; provided, however, and except as provided in subdivision (a)(3), membership shall not be required for any part-time employee who would otherwise be covered under this part, or for any employee who has optional membership in the retirement system pursuant to chapters 34-37 of this title. Any election made by an employee to become a participant shall be irrevocable and such employee shall thereafter be subject to the terms and conditions of the hybrid plan.

(2)(A) If the political subdivision continues to maintain a preexisting pension plan that is closed to new membership on the date of the political subdivision's participation date in the hybrid plan, the political subdivision may, by resolution duly adopted by its chief legislative body, authorize its current employees who participate in the preexisting plan the choice of maintaining membership in the preexisting plan or joining the hybrid plan; provided, that allowing such choice meets all applicable state and federal requirements, including § 414(h) of the Internal Revenue Code (26 U.S.C. § 414(h)), that are necessary for the hybrid plan to maintain its status as a qualified plan under the Internal Revenue Code.

(B) [Deleted by 2016 amendment.]

(C) Notwithstanding § 8-36-904 or any other law to the contrary, any political subdivision described in subdivision (a)(2)(A) shall set the em-

ployee contribution rate for its employees at the same rate as required under the political subdivision's preexisting plan. The political subdivision shall submit to the retirement system a duly executed adoption resolution as provided in subdivision (a)(1) prior to the political subdivision's effective date of participation in the hybrid plan, which must be approved by the board of trustees. If the employee contribution rate is set at an amount less than five percent (5%) of the employees' earnable compensation, the four percent (4%) employer contribution rate described in § 8-36-922 shall be increased by the percentage difference between five percent (5%) and the employee contribution rate.

(3)(A) Except as provided in subdivision (a)(3)(B), any current or former member of the retirement system or of a superseded system who accepts, or is elected to, a position on or after July 1, 2018, for which membership in the hybrid plan is otherwise optional pursuant to subdivision (a)(1) shall become a member of the hybrid plan as a condition of employment.

(B) Subdivision (a)(3)(A) shall not apply to an employee having optional membership who was employed by a political subdivision on the date the political subdivision elected to extend retirement coverage to the employee, unless the employee was a member or former member of a preexisting defined benefit plan maintained by that employer. Subdivision (a)(3)(A) shall also not apply to retired members of the retirement system who return to service in a position covered by the retirement system as provided in § 8-36-805, § 8-36-818, or § 8-36-821.

(4) Any person who is employed by a political subdivision that is admitted into the hybrid plan on or after July 1, 2016, and who has optional membership pursuant to this section, shall, upon the date approval is given, file an irrevocable election to become or not to become a participant in the hybrid plan. Any employee of a political subdivision who had optional membership in the hybrid plan on June 30, 2016, and who has not elected to participate, shall, by no later than October 31, 2016, file an irrevocable election to become or not to become a participant in the hybrid plan. The elections provided for in this subdivision (a)(4) shall be made in the manner prescribed by the retirement system and shall be filed with the retirement system. The elections provided for in this subdivision (a)(4) shall not include any option for the employee to have a cash or deferred election right with respect to designated employee contributions and the employee contributions shall be picked up in accordance with § 8-36-904(b).

(b) Except as otherwise specifically provided in this part, any political subdivision electing to participate in the hybrid plan pursuant to this section shall participate in the provisions of the plan as they exist for state employees on the date of participation or at any other given time pursuant to any changes made pursuant to §§ 8-36-921 and 8-36-922; provided, however, that any subsequent changes that increase the liability of a participating political subdivision within the meaning of Constitution of Tennessee, Article II, § 24 shall not apply to the political subdivision unless the chief governing body of the political subdivision agrees to such changes and accepts the liability therefore. Notwithstanding this subsection (b), the following provisions shall remain optional to political subdivisions:

(1) Part-time, seasonal, or temporary employee service credit in accordance with § 8-34-621; and

(2) Mandatory retirement in accordance with § 8-36-205.

(c) A political subdivision already participating in the retirement system

under one of the additional plans afforded under chapters 34-37 of this title may change from that plan to the hybrid plan on a prospective basis by passage of a resolution pursuant to subsection (a) above. Any such resolution shall set forth the effective date of the change; provided, that the date shall be on the first day of any quarter following a minimum of six (6) months' notice to the retirement system. The actuarial value of accrued benefits earned by employees of the political subdivision prior to the effective date of the change shall remain an enforceable right and may not be reduced or otherwise forfeited except by the consent of the employee or in accordance with § 8-35-124.

(d) Any political subdivision that participates in the hybrid plan shall have the right to change from the hybrid plan to any of the additional plans afforded to the political subdivision under chapters 34-37. Any such change shall be in accordance with and subject to the terms and conditions of §§ 8-35-253 — 8-35-256. In addition, any political subdivision that participates in the hybrid plan shall be subject to the withdrawal provisions of §§ 8-35-211 and 8-35-218. Benefits accrued under the hybrid plan or under any of the plans adopted pursuant to §§ 8-35-253 — 8-35-256 shall be in accordance with 26 U.S.C. § 411. Notwithstanding this section or any other law to the contrary, the cost-of-living provisions of § 8-36-701 shall not be deemed an accrued benefit and may be subject to change pursuant to this section and §§ 8-36-921 and 8-36-922.

(e) Notwithstanding this section or any other law to the contrary, a political subdivision may authorize its county judges to participate in the hybrid plan under the same provisions governing state judges as set forth in this part provided the political subdivision authorizes and pays for the cost of an actuarial study to determine the liability associated with such membership and, following review of the cost of such membership, the chief governing body of the political subdivision passes a resolution authorizing the membership and accepting the liability therefor. In addition, a political subdivision may authorize its county judge to participate in the hybrid plan under this subsection (e) without extending retirement coverage to its other employees provided the political subdivision authorizes and pays for the cost of an actuarial study to determine the liability associated with such membership and, following review of the cost of such membership, the chief governing body of the political subdivision passes a resolution authorizing the membership and accepting the liability therefor. The retirement system shall not be liable for the payment of retirement allowances or other payments on account of such membership for which reserves have not been previously created from funds contributed by the political division and/or its county judges. It is the legislative intent that the state shall realize no increased cost as a result of this section. All costs associated with retirement coverage, including administrative costs, shall be the responsibility of the political subdivision.

(f) Notwithstanding this part or any law to the contrary, a political subdivision that extends retirement coverage to its employees under this section may elect to provide its own profit sharing and/or salary reduction plan that is authorized under § 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)) in lieu of participating in the state's profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title; provided, that the political subdivision makes mandatory contributions to such plan on behalf of each of its employees participating in the hybrid plan, regardless of whether the employees make any employee contributions to that plan. The amount of the employer contributions shall be five percent (5%) of the respective employee's

salary unless suspended or reduced pursuant to § 8-36-922.

(g) Any political subdivision that participates in the hybrid plan that previously participated in the retirement system under the plan afforded under chapters 34-37 of this title that was established on July 1, 1972, may, by resolution legally adopted and approved by its chief governing body, authorize its current employees who continue to participate under the previous plan the option to transfer from the previous plan to the hybrid plan on a prospective basis, but only under the following conditions:

(1) The employee contribution rate in the previous plan must be the same as the employee contribution rate required under the hybrid plan;

(2) The election shall not include any option for the employee to have a cash or deferred election right with respect to designated employee contributions, and the employee contributions shall be picked up in accordance with § 8-36-904(b);

(3) The option to transfer to the hybrid plan must meet all applicable state and federal requirements, including § 414(h) of the Internal Revenue Code (26 U.S.C. § 414(h)), that are necessary for the hybrid plan to maintain its status as a qualified plan under the Internal Revenue Code;

(4) The election to transfer shall be made in the manner prescribed by the retirement system and filed with the retirement system;

(5) The election shall become effective on the first day of the month next following the month the election is filed with the retirement system;

(6) The actuarial value of accrued benefits earned prior to the effective date of the transfer shall be determined under the applicable provisions of the previous plan in effect on the date of the transfer; and

(7) Any employee who elects to transfer shall be subject to the applicable provisions of this part on and after the effective date of the transfer.

**8-37-108. [Repealed.]**

**8-37-109. [Repealed.]**

**8-44-102. Open meetings — "Governing body" defined — "Meeting" defined.**

(a) All meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.

(b)(1) "Governing body" means:

(A) The members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration and also means a private nonprofit community organization eligible to receive funds from the community services block grant program under 42 U.S.C. §§ 9901 - 9926. Any governing body so defined by this section shall remain so defined, notwithstanding the fact that such governing body may have designated itself as a negotiation committee for collective bargaining purposes, and strategy sessions of a governing body under such circumstances shall be open to the public at all times;

(B) The board of directors of any nonprofit corporation which contracts with a state agency to receive community grant funds in consideration for

rendering specified services to the public; provided, that community grant funds comprise at least thirty percent (30%) of the total annual income of such corporation. Except such meetings of the board of directors of such nonprofit corporation that are called solely to discuss matters involving confidential doctor-patient relationships, personnel matters or matters required to be kept confidential by federal or state law or by federal or state regulation shall not be covered under this chapter, and no other matter shall be discussed at such meetings;

(C) The board of directors of any not-for-profit corporation authorized by the laws of Tennessee to act for the benefit or on behalf of any one (1) or more counties, cities, towns and local governments pursuant to title 7, chapter 54 or 58. This subdivision (b)(1)(C) shall not apply to any county with a metropolitan form of government and having a population of four hundred thousand (400,000) or more, according to the 1980 federal census or any subsequent federal census;

(D) The board of directors of any nonprofit corporation which through contract or otherwise provides a metropolitan form of government having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census, with heat, steam or incineration of refuse;

(E)(i) The board of directors of any association or nonprofit corporation authorized by the laws of Tennessee that:

*(a)* Was established for the benefit of local government officials or counties, cities, towns or other local governments or as a municipal bond financing pool;

*(b)* Receives dues, service fees or any other income from local government officials or such local governments that constitute at least thirty percent (30%) of its total annual income; and

*(c)* Was authorized as of January 1, 1998, under state law to obtain coverage for its employees in the Tennessee consolidated retirement system.

(ii) This subdivision (b)(1)(E) shall not be construed to require the disclosure of a trade secret or proprietary information held or used by an association or nonprofit corporation to which this chapter applies. In the event a trade secret or proprietary information is required to be discussed in an open meeting, the association or nonprofit corporation may conduct an executive session to discuss such trade secret or proprietary information; provided, that a notice of the executive session is included in the agenda for such meeting.

(iii) As used in this subdivision (b)(1)(E):

*(a)* "Proprietary information" means rating information, plans, or proposals; actuarial information; specifications for specific services provided; and any other similar commercial or financial information used in making or deliberating toward a decision by employees, agents or the board of directors of such association or corporation; and which if known to a person or entity outside the association or corporation would give such person or entity an advantage or an opportunity to gain an advantage over the association or corporation when providing or bidding to provide the same or similar services to local governments; and

*(b)* "Trade secret" means the whole or any portion or phrase of any scientific or technical information, design, process, procedure, formula

or improvement which is secret and of value. The trier of fact may infer a trade secret to be secret when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(2) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any on-site inspection of any project or program.

(c) Nothing in this section shall be construed as to require a chance meeting of two (2) or more members of a public body to be considered a public meeting. No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part.

**8-50-119. Tennessee Public Safety Behavioral Health Act.**

(a) This section shall be known and may be cited as the "Tennessee Public Safety Behavioral Health Act."

(b) As used in this section:

(1) "Mental health service provider" means a person who:

(A)(i) Is licensed as:

*(a)* A professional counselor designated as a mental health service provider under title 63, chapter 22, part 1;

*(b)* A licensed clinical social worker under title 63, chapter 23;

*(c)* A psychiatric mental health nurse practitioner under title 63, chapter 7;

*(d)* A licensed marital and family therapist under title 63, chapter 22; or

*(e)* A licensed occupational therapist under title 63, chapter 13, part 2;

(ii) Is in good standing with:

*(a)* The board for professional counselors, marital and family therapists, and clinical pastoral therapists;

*(b)* The board of nursing;

*(c)* The board of social worker licensure; or

*(d)* The board of occupational therapy;

(iii) Has successfully completed education and training in at least one (1) trauma therapy and can provide evidence of successful completion to a public safety employer; and

(iv) Has a minimum of two (2) years of post-licensure work experience working with trauma patients; or

(B) Is licensed in good standing as a:

(i) Physician licensed under title 63, chapter 6 or 9;

(ii) Psychological examiner licensed under § 63-11-201(a)(1);

(iii) Senior psychological examiner licensed under § 63-11-201(a)(2); or

(iv) Psychologist licensed under § 63-11-201(a)(3);

(2) "Post traumatic stress disorder" or "PTSD" has the same meaning as defined in the most recent publication of the Diagnostic and Statistical Manual of Mental Disorders;

(3) "Public safety employee" means an emergency medical worker or professional firefighter who is a paid, full-time employee of a public safety employer;

(4) "Public safety employer" means this state, a local government, or any other political subdivision of this state that employs public safety employees on a full-time basis; and

(5) "Trauma therapy" means, with respect to victims of trauma, at least one (1) of the following evidence-based trauma treatment practices: trauma-focused cognitive behavior therapy, exposure therapy, stress inoculation therapy, or eye movement desensitization reprocessing.

(c) Public safety employers shall:

(1) Provide not less than ten (10) visits or sessions with a mental health service provider for the purpose of treating PTSD through the employee's health benefits or otherwise. Public safety employers may require a co-pay or co-insurance for these visits that is no more than co-pays or co-insurance for other health benefits offered by the employer;

(2) Promote the use of a mental health service provider and other behavioral health professionals to public safety employees;

(3) Establish, in conjunction with a mental health service provider, support programs in an effort to mitigate behavioral health issues within the public safety employee community; and

(4) Maintain, and regularly provide public safety employees with, at a minimum of once per year, a list of mental health service providers who are qualified to provide trauma therapy under this section.

(d) Public safety employers shall not engage in the retaliatory treatment of public safety employees seeking or utilizing mental health service providers or behavioral health programs, including, but not limited to, discharge, denial of promotions, punitive work assignments, transfers, or other similar retaliatory actions.

(e)(1) At a minimum of once per year, a mental health service provider providing services to public safety employees shall participate in training, within the jurisdiction in which the public safety employees work, that familiarizes the provider with the unique problems associated with each public safety profession lifestyle, including, but not limited to, critical incident response training, critical incident stress management, field exercises such as ride-alongs and visits to fire and emergency medical services (EMS) stations, and similarly appropriate training.

(2) This subsection (e) does not apply to a mental health service provider described in subdivision (b)(1)(B).

(f) Any benefits offered and provided for by this section do not apply to workers' compensation plans under title 50.

**8-50-120. Acceptance of identification documents to determine person's citizenship, immigration status, or residency.**

(a) An official or employee of this state or any political subdivision of this state shall not accept an identification document issued or created by any person, organization, county, city, or other local authority to determine a person's citizenship, immigration status, or residency, except where expressly authorized to be used for identification purposes by the general assembly or by federal law.

(b) A local government or law enforcement agency shall not authorize, by

policy, resolution, or ordinance, the use of any document described in subsection (a) as a form of identification to be used to determine the citizenship, immigration status, or residency of any person. Any local government or law enforcement policy, resolution, or ordinance that conflicts with this section is unenforceable and must be repealed or rescinded by the appropriate authority.

**8-50-501. Disclosure statements of conflict of interests by certain public officials.**

(a) Disclosure of the interests named in § 8-50-502 shall be made to the Tennessee ethics commission by candidates for and appointees to the following offices:

(1) Each member of the general assembly;

(2) The secretary of state, comptroller of the treasury, state treasurer and each member of the state election commission;

(3) Each commissioner of the Tennessee public utility commission;

(4) The governor;

(5) Each officer of the governor's cabinet;

(6) Each supreme court justice, each judge of the court of criminal appeals and each judge of the court of appeals;

(7) Each delegate to a constitutional convention called to consider a new constitution or amendments to the Constitution of Tennessee;

(8) The attorney general and reporter;

(9) The district attorneys general and the public defenders for each judicial district;

(10) The administrative director of the courts;

(11) The executive director of the district attorneys general conference;

(12) The state election coordinator;

(13) Members of the board of parole;

(14) Members and executive director of the alcoholic beverage commission;

(15) The chancellor of the board of regents, the president of each institution governed by the board of regents, and the president of each university governed by a state university board as that term is used in title 49, chapter 8;

(16) The president of the University of Tennessee, and the chancellor of each separate branch or campus of the University of Tennessee;

(17) Members of the registry of election finance;

(18) Members of the Tennessee ethics commission;

(19) Each candidate or appointee to a local public office as defined in § 2-10-102;

(20) Members of any local planning commission; and

(21) Members of any regional planning commission.

(b) A candidate for any of the offices in subsection (a) that are elective shall file a disclosure statement no later than thirty (30) days after the last day provided by law for qualifying as a candidate. An appointee to any of the offices listed in subsection (a) shall file a disclosure statement within thirty (30) days from the date of appointment. The appointing authority shall notify the commission of any such appointment within three (3) days of the appointment.

(c) Any candidate or appointee who is running for reelection or is reap-

pointed to the same office or position the candidate or appointee currently holds shall not be required to file the statement required by subsection (b), as long as such candidate or appointee is in compliance with §§ 8-50-503 and 8-50-504.

(d)(1) The disclosure shall be in writing in the form prescribed by the Tennessee ethics commission and shall be a public record; provided, however, that no candidate or appointee to a local public office required to disclose pursuant to subdivision (a)(19) shall be required to electronically file documents with the commission.

(2) A person required to file the form required by this part shall have one (1) attesting witness sign the form before it is submitted to the appropriate authority. The form need not be notarized before it is submitted to the appropriate authority.

(3) Any disclosure filed as a candidate or appointee by a member of the general assembly, the secretary of state, the comptroller of the treasury, the state treasurer, the governor, or an officer of the governor's cabinet, and any amended disclosures filed by any such persons, shall be posted on the web site of the commission.

(e) The computation of time within which to do any act required by this part shall be in accordance with § 1-3-102.

**8-50-802. Sick leave.**

(a)(1) Sick leave may be granted to each officer and employee who is scheduled to work one thousand six hundred (1,600) hours or more in a fiscal year, whether compensated on an hourly, daily, monthly, or piecework basis, at the rate of one (1) day for each month of service or major fraction thereof, at the discretion of the head of the department or agency and with the approval of the commissioner of human resources.

(2) Sick leave shall be cumulative for all earned days not used. Saturdays, Sundays, and official holidays falling within a leave period shall not be charged as leave, unless such days are considered as work days for the employee in the employee's particular assignment. Part-time employees, employees holding temporary positions for less than six (6) months, seasonal employees, and emergency employees in the preferred service are expressly excluded from this subsection (a).

(3) Sick leave may only be used for absence from duty because of illness or disability due to accident of employee, the employee's exposure to contagious diseases, or because of illness or death in the immediate family of the employee for such period as the attendance of the employee shall be necessary, except as hereinafter provided.

(4)(A) A state employee may use sick leave and annual leave, as described in § 8-50-801, for maternity or paternity leave for a period not to exceed the state employee's accumulated sick leave and annual leave balance, or twelve (12) weeks, whichever is less. In order to be eligible to use sick leave as maternity or paternity leave, the state employee must submit a written request therefor, together with a statement from the attending physician indicating the expected date of confinement, not later than the end of the fifth month of pregnancy.

(B) As used in this subdivision (a)(4):

(i) "Educator" has the same meaning as defined in § 49-5-204; and

(ii) "State employee" means any person who is a state official, including members of the general assembly, the attorney general and reporter, district attorneys general, state judges, district public defenders, educators, any person who is employed in the service of and whose compensation is payable by the state, or any person who is employed by the state whose compensation is paid in whole or in part from federal or other funds. "State employee" also means any person who is employed in the service of and whose compensation is payable by a public institution of higher education, or any person who is employed by a public institution of higher education whose compensation is paid in whole or in part from federal or other funds.

(5) An employee may be required to present evidence in the form of personal affidavits, physicians' certificates, or other testimonials, at the request of the appointing authority or the commissioner of human resources, to support the reason for any absence during the time for which sick leave was taken. The appointing authority may not deny sick leave to any employee who furnishes a statement of a licensed physician or accredited Christian Science practitioner in support of the reason for the absence. However, the appointing authority may require additional documentation if, upon further investigation, there is substantial evidence of sick leave abuse by the employee.

(b) Each officer and employee who is employed full time and who has accumulated the maximum number of allowable annual leave days shall have any additional leave days accrued in excess of the maximum amount transferred annually to the officer's or employee's credit as sick leave.

(c)(1) The commissioner of human resources shall develop policies and procedures which shall allow for the transfer of sick leave between employees who are covered by this part.

(2) Employees shall be members of the sick leave bank established in part 9 of this chapter to be eligible for a transfer of sick leave from another employee.

(3) The commissioner shall establish one (1) open enrollment period for the sick leave bank following April 12, 1994, which shall be in addition to the enrollment period established in § 8-50-905(c). Such open enrollment period shall not exceed sixty (60) days.

**8-50-806. Leave for adoptive parents.**

Special leave shall be granted for a period of twelve (12) weeks to adoptive parents. Employees may use sick leave and annual leave for all or a portion of that twelve (12) weeks, not to exceed the employee's leave balance if the child is one (1) year old or less; in the event both parents are state employees, the aggregate of sick leave used for such purpose is limited to twelve (12) weeks. In order to be eligible for adoptive leave, the employee shall submit to the appointing authority a statement from a state-licensed child-placing agency verifying the adoption. Additional special leave may be granted at the discretion of the appointing authority not to exceed one (1) year. In the event the adoption process is not completed, the approval of leave pursuant to this section is rescinded. This section shall not apply in case of stepchild or adult adoption.

**8-50-809. Applicability — Exemptions.**

(a) These provisions for annual, sick leave and terminal leave do not apply to the members of the instructional staffs of the special schools administered by the department of education.

(b) This part, except for those provisions that relate to annual/sick leave transfer, sick leave reinstatement, or §§ 8-50-802(a)(4) and 8-50-806, shall not apply to officers or employees of the University of Tennessee system or the state university and community college system. The board of regents, the state university boards, and the board of trustees of the University of Tennessee shall prepare a leave policy to apply to their respective officers and employees which, in terms of total paid time off, would be substantially in accordance with this part for other state employees. Such policies shall be approved by the commissioner of finance and administration and filed with the comptroller of the treasury. Nothing in this part shall prohibit or modify the creation or approval of a sick leave bank pursuant to § 8-50-925 at institutions governed by the board of regents, the state university boards, or the board of trustees of the University of Tennessee.

**9-3-212. Duty to order and pay for audits — Audit standards — Rules and regulations.**

(a) It is the duty of each political subdivision, special taxing district, board, commission, educational cooperative, intergovernmental cooperative or other governmental agency, including, but not limited to, municipal corporations, utility districts, school boards, and housing authorities created under the Housing Authorities Law, compiled in title 13, chapter 20, part 1, with respect to all funds under its control, to order and pay for such audit and for any other audit which it is required to perform under state law, and to contract with certified public accountants, public accountants, or the department of audit to make such audit.

(b) The comptroller of the treasury, when the comptroller deems it necessary, may require any audit required of any such agency, or any investigative or review work in addition to such audit which, in the exercise of the comptroller's discretion, the comptroller believes necessary to ascertain or correct errors, irregularities, or defaults in the management and disbursement of funds controlled by such agency, to be conducted by the department of audit; provided, that the comptroller may also charge such agency for additional investigative or review work or additional accounting services which the comptroller may deem necessary.

(c) Nothing herein shall amend or modify any requirement of a general or private act for an audit by a certified public accountant or public accountant. This section shall apply to political subdivisions, special taxing districts, boards, commissions, educational cooperatives, intergovernmental cooperatives, and any other governmental agency, including, but not limited to, municipal corporations, utility districts, school boards, and housing authorities created under the Housing Authorities Law, compiled in title 13, chapter 20, part 1, which are otherwise subject to financial audit by the state or federal government. In addition to the other requirements of this section, such agency shall furnish a copy of such audit report to the comptroller of the treasury.

(d) The comptroller of the treasury, through the department of audit, shall be responsible for determining that such audits are prepared in accordance

with generally accepted governmental auditing standards and that such audits meet the minimum standards prescribed by the comptroller. The comptroller of the treasury shall prepare a uniform audit manual as is required to assure that the books and records are kept in accordance with generally accepted accounting principles and that the minimum audit standards prescribed by the comptroller are met.

**9-3-402. Determination of local governments not in compliance with accounting and financial reporting standards — Development of work plan.**

The comptroller of the treasury shall determine those local governments that are in noncompliance with the accounting and financial reporting standards established by the Governmental Accounting Standards Board (GASB). Those governments determined to be in noncompliance with GASB accounting and financial reporting standards shall be required to submit an implementation work plan to the comptroller of the treasury on a date prescribed by the comptroller. The chief executive officer of the local government shall serve as the primary person with authority and responsibility for development and submission of the local government's work plan, which shall include the primary government and all component units of the local government. The work plan shall include due dates and responsible persons or parties for implementation.

**9-3-403. Assistance to develop work plan.**

If a local government fails to submit a work plan by the date prescribed, the comptroller shall provide assistance to the local government to develop a work plan within sixty (60) days of the date the plan should have been filed. If the local government does not agree to a work plan within this sixty-day period, the comptroller shall provide a work plan that meets the requirements for implementation.

**9-3-404. Penalties and restrictions for failure to implement accounting and financial reporting standards.**

If a local government fails to implement accounting and financial reporting standards as required by the GASB, as determined by the comptroller, the following penalties or restrictions may be imposed on the noncomplying local government:

(1)(A) The local government shall not be eligible for economic and community development grants funded by the state and administered by the department of economic and community development as mutually agreed upon by the comptroller and the commissioner of economic and community development, and bank excise tax and hall income tax revenues that are collected and distributed by the state shall be reduced to an amount agreed upon by the comptroller and the commissioner of revenue, but not to exceed five percent (5%) of the total amount due the local government in any fiscal year, until the local government is in compliance with accounting and financial reporting standards required by the GASB;

(B) If a school district, defined as a county, municipal or special school district or system, fails to comply, the school district shall not be eligible

for certain state funded education grants administered by the department of education until the school district complies with accounting and financial reporting standards required by the GASB. The comptroller and the commissioner of education shall mutually agree to the categories of grants subject to this restriction; and

(C) If a county highway department fails to comply, the comptroller and the commissioner of revenue shall agree on an amount whereby the funds that the county highway fund would otherwise receive from state gasoline tax proceeds as allocated pursuant to § 67-3-901 shall be reduced. After such amount is agreed upon, the department of revenue shall make the reductions from the monthly allocations of gasoline tax proceeds to the county. The amounts so reduced shall be held in reserve by the department of revenue and allocated to the county upon the county becoming compliant as determined by the comptroller;

(2) The comptroller shall provide the local government with a list of professional accounting firms available to assist in implementation of the work plan. The local government shall provide funds for the cost of this assistance. If the local government fails to provide funds for the cost of this assistance, such cost shall become an outstanding legal obligation of the local government. If the local government fails to pay the cost, the state shall pay the cost and the local government shall be required to reimburse the state; and

(3) In those county governments that fail to implement accounting and financial reporting standards required by the GASB, the comptroller shall review and evaluate the county's financial management system and make a recommendation to the county's legislative body on how to improve the financial management system to facilitate compliance with accounting and financial reporting standards. The county legislative body shall act upon the recommendation of the comptroller within ninety (90) days of notification.

**9-3-405. Establishment of audit committee — Notice requirements — Open meetings — Confidential, nonpublic executive sessions.**

(a) Local governments are encouraged to consider establishing an audit committee. The comptroller may require that an audit committee be established in any local government in this state that:

(1) Is in noncompliance with the accounting and financial reporting standards required by the GASB; or

(2) Has recurring findings from the annual audit for three (3) or more consecutive years as determined by the comptroller to be a material weakness in internal control or material noncompliance under government auditing standards.

(b) The governing body of the local government shall create the audit committee. The audit committee members shall be external to management and may be members of the governing body, citizens from within the boundaries of the local government, or a combination of both. Members of the audit committee shall be selected by the legislative body. The audit committee shall establish responsibilities and duties that are stated in a resolution approved by the legislative body. The responsibilities and duties, at a minimum, shall address financial and other reporting practices, internal control, compliance

with laws and regulations, and ethics. The resolution, or any subsequent amendments to the resolution, creating the duties and responsibilities of the audit committee shall be submitted to the comptroller prior to approval by the legislative body. The comptroller shall review the proposed resolution, or any subsequent amendments to the resolution, and report back to the local government on whether the resolution, or subsequent amendments to the resolution, follows recommended guidelines for an audit committee. The resolution, or subsequent amendments to the resolution, adopted by the legislative body must conform to the report issued by the comptroller. Notwithstanding the requirements of this subsection (b), if an audit committee was created by the legislative body of a county whose charter requires charter changes to be approved in a referendum, and if such actions occurred and were approved in a referendum prior to January 1, 2011, then such an audit committee shall be considered created pursuant to this part.

(c) Except as provided in subsection (d), all meetings of an audit committee created pursuant to this chapter shall abide by the notice requirements adhered to by the local government to which the audit committee is attached.

(d) All meetings of an audit committee created pursuant to this chapter shall be subject to the open meetings provisions of title 8, chapter 44, except, upon a majority vote of those members in attendance for the public portion of the meeting, the audit committee may hold confidential, nonpublic executive sessions to discuss the following items:

(1) Items deemed not subject to public inspection under §§ 10-7-503 and 10-7-504, and all other matters designated as confidential or privileged under this code;

(2) Current or pending litigation and pending legal controversies;

(3) Pending or ongoing audits or audit related investigations;

(4) Information protected by federal law; and

(5) Matters involving information under § 9-3-406 where the informant has requested anonymity.

(e) The presiding officer shall announce during the public portion of the audit committee meeting that no business, other than that described under subdivisions (d)(1)-(5), shall be considered during the confidential, nonpublic executive session by the audit committee.

(f) For purposes of providing notice of a confidential, nonpublic executive session, the agenda must disclose the general nature of the item or items to be discussed as described under subdivisions (d)(1)-(5).

(g) A meeting at which both subject matter open to the public and confidential subject matter will be discussed shall be conducted as follows:

(1) All business relating to subject matter that is public in nature shall be conducted first; and

(2) At the conclusion of the meeting relating to subject matter that is public in nature and upon a successful majority vote to enter into executive session, the chair shall announce to the members and the public assembled that the public portion of the meeting is adjourned and that the remainder of the meeting will concern matters that are confidential under subdivisions (d)(1)-(5). When everyone at the meeting who is not authorized to attend the confidential portion of the meeting has departed, the confidential portion of the meeting shall commence.

(h) Only individuals whose presence is reasonably necessary in order for the audit committee to carry out its executive session responsibilities may attend

the portion of the executive session relevant to that person's presence; however, nothing contained in this section shall prohibit the comptroller of the treasury or the comptroller's designee from attending or being present during an executive session.

(i) This chapter is not intended to prevent the full governing body of the local government from going into confidential, nonpublic executive session with the audit committee at a regularly or specially scheduled meeting of the full governing body for the purpose of further discussing only those matters as described under subdivisions (d)(1)-(5). All portions of meetings of the full governing body of the local government, where matters described under subdivisions (d)(1)-(5) will be discussed, shall be exempt from title 8, chapter 44; provided, that the full governing body of the local government shall abide by the same executive session notice requirements imposed upon the audit committee by this section, and shall not make a decision or deliberate toward a decision on any matter.

**9-3-504. Political subdivisions to develop funding policies.**

(a) Notwithstanding any law, rule, ordinance, resolution, charter, pension plan, agreement or pension plan contract to the contrary, the applicable provisions of this part shall apply to any political subdivision in the state that has established and maintains, directly or indirectly, a defined benefit pension plan for the benefits of its employees, irrespective of the manner in which the pension plan is administered.

(b) Each political subdivision shall develop a funding policy for financing the obligations under the pension plan. Such funding policy shall be legally adopted and approved through a resolution by the political subdivision's chief legislative body or governing body. The funding policy shall be in effect until amended. Each political subdivision shall develop a funding policy for fiscal years beginning after June 15, 2015. The funding policy and any amendment thereto shall be submitted to the comptroller of the treasury within thirty (30) days after adoption.

(c) The political subdivision's funding policy shall include, but not be limited to the following:

(1) The ADC for each pension plan shall include the normal costs and the amortization of the unfunded accrued liability, to the extent that any of the plans have any unfunded accrued liability for a particular fiscal year;

(2) The maximum amortization period for which any unfunded accrued liabilities will be paid; and

(3) A statement that the political subdivision's budget shall include funding of at least one hundred percent (100%) of the ADC, except as provided in § 9-3-505(b).

(d) The actuarial methodology is expected to provide that projected revenues (employer contributions, employee contributions, and investment earnings), and current assets will finance all of the projected benefits (death, disability, and retirement) provided by the plan. In the event that pension plan has an unfunded accrued liability, the level dollar amortization method shall be utilized beginning on or before June 15, 2020, for financing the unfunded accrued liability, and will continue to be utilized thereafter.

(e) The ADC calculated by the political subdivision's actuary shall be calculated utilizing the following methodology, and in accordance with the

Actuarial Standards of Practice established by the Actuarial Standards Board:

(1) Actuarial cost method allocating normal costs over a period beginning no earlier than the date of employment which should not exceed the last assumed retirement age. This method is designed to fully fund the long-term costs of promised benefits, consistent with the objective of keeping contributions relatively stable and equitably allocating the costs over the employees' period of active service. Commencing with the plan fiscal year beginning after June 15, 2019, a generally accepted actuarial method that achieves the above objectives shall be used, except the projected unit credit method is not permitted;

(2) Actuarial value of assets calculated using a maximum ten (10) year asset smoothing period. Any smoothing period greater than five (5) years will have a maximum twenty percent (20%) market corridor. For the purposes of this subsection (e), the term "market corridor" means a range beyond which deviations are not smoothed;

(3) No later than the plan fiscal year beginning after June 15, 2020, the level dollar amortization method of unfunded accrued liabilities;

(4) Mortality assumptions, which should consider the effect of expected mortality improvements, and shall be utilized beginning on or before the plan fiscal year after June 15, 2024, and will continue to be utilized thereafter;

(5) Investment earnings assumption that shall not be greater than fifty (50) basis points above the rate adopted by the Tennessee consolidated retirement system; and

(6) A closed amortization period not to exceed thirty (30) years for all unfunded accrued liabilities.

(f) The ADC for the political subdivision's pension plan shall be determined by an independent, qualified actuary.

(g) The actuary used by the political subdivision shall be a member of the American Academy of Actuaries.

(h) The actuary used by a political subdivision for the calculation of the ADC for its pension plan shall not be an employee of that political subdivision, and shall not be otherwise eligible to participate in any of the political subdivision's pension plans.

(i) The measurement standard used to determine a pension plan's funded status must be done in accordance with rules, standards, guidelines, and interpretations established by the governmental accounting standards board.

**9-3-506. Provisions applicable to political subdivision's administration of pension plan benefits.**

(a) The following shall apply to all political subdivisions subject to this part:

(1)(A) For political subdivision employees hired on or after May 22, 2014, the political subdivision may freeze, suspend or modify benefits, employee contributions, plan terms and design on a prospective basis.

(B) Subdivision (a)(1)(A) does not affect any judicial precedents or statutory law as they apply to employees who were employed prior to May 22, 2014;

(2) For any pension plan that is funded below sixty percent (60%), the political subdivision shall not establish benefits enhancements unless approved by the state treasurer; and

(3) For political subdivisions with an existing pension plan as of May 22, 2014, the political subdivision shall not establish a new pension plan until it has received written approval from the state treasurer.

(b) The accrued benefits earned prior to any adjustment pursuant to subdivision (a)(1) shall remain an enforceable right and may not be reduced without the written consent of the political subdivision employee, unless the employee is subject to the forfeiture of the employee's retirement benefits in accordance with § 8-35-124.

(c)(1) Notwithstanding any other law, for political subdivision employees hired on or after May 22, 2014, nothing under state law confers to participants in the pension plan an implied right to future retirement benefit arrangements, and such participants may not assert the indefinite continuation of the retirement formulas, contribution rates, eligibility ages, or any other provision of the pension plan.

(2) Subdivision (c)(1) does not affect any judicial precedents or statutory law as they apply to employees who were employed prior to May 22, 2014.

**9-3-507. Withholding of money from state-shared taxes to be paid to political subdivision's pension plan in event of failure to pay established percentages.**

(a) In the event the political subdivision shall fail to fund the ADC according to the percentages established in § 9-3-505, the commissioner of finance and administration, at the direction of the comptroller of the treasury, is authorized to withhold such amount or part of such amount from any state-shared taxes that are otherwise apportioned to such political subdivision. The money withheld from state-shared taxes shall be paid to the political subdivision's pension plan.

(b) The deduction shall be made as a first charge against any moneys payable to such political subdivision regardless of the source of such payment and regardless of the purpose or contemplated use of such funds.

(c) Regardless of a political subdivision's funding level of its ADC, a political subdivision may, with the recommendation of the state treasurer and the approval of the board of trustees of the Tennessee consolidated retirement system:

(1) Continue the administration of its pension plan, but have the pension plan funds co-invested with the pension plan assets for the Tennessee consolidated retirement system, but established in a separate fund from the Tennessee consolidated retirement system assets, and accounted for separately with accurate and detailed accounting records. The separate fund shall be operated in accordance with IRS Revenue Ruling 2011-1 or subsequent guidance regarding a group trust fund under Internal Revenue Code § 401(a)(24), codified at 26 U.S.C. § 401(a)(24). Before a political subdivision's pension plan assets are co-invested with Tennessee consolidated retirement system assets, the political subdivision shall provide the department of treasury with its plan document and a determination letter from the internal revenue service that its plan assets are qualified assets or written advice from competent counsel of the Tennessee consolidated retirement system that the plan is a qualified plan. The political subdivision shall enter into an agreement with the retirement system for the co-investment of the political subdivision's pension plan assets, which shall include a charge assessed by the retirement system against the political subdivision for

services related to the co-investment of assets; or

(2)(A) Continue the pension plan, but have the plan administered by the Tennessee consolidated retirement system and have the assets co-invested with the Tennessee consolidated retirement system pension plan assets;

(B) The political subdivision shall enter into an agreement with the Tennessee consolidated retirement system to provide billing services, participant enrollment services, participant accounts, data processing, recordkeeping, investment and other related services that are necessary or appropriate to the administration of the political subdivision's pension plan. The agreement may provide that the services be provided directly by staff of the retirement system or through contracts with other providers;

(C) Any agreement entered into under this section shall require that the political subdivision remain the responsible administrator for the political subdivision's pension plan, and that neither the state of Tennessee nor the retirement system, or any of its officers, agents, employees, or boards shall act as a trustee or be considered the trustee for the political subdivision's pension plan;

(D) The chair of the retirement system shall assess a charge to the political subdivision for the administration of the political subdivision's pension plan and co-investment of its assets, in an amount to be determined by the chair, to meet the administrative expenses of the retirement system in providing the administration and co-investment services under this section. It is the legislative intent that the state shall realize no increased cost as a result of the administration of the political subdivision's pension plan and co-investment of its assets, and that all costs associated with the administration of the pension plan, including administrative and co-investment costs, shall be the responsibility of the respective political subdivision. In the event that the political subdivision refuses or otherwise fails to satisfy this liability, such amounts shall become a lien on the property of the political subdivision and may be withheld from state-shared taxes which are otherwise apportioned to the political subdivision;

(E) As a condition of providing the services described in this section for the administration of a political subdivision's pension plan, and at any time thereafter, the chair of the retirement system may require that the political subdivision provide proof that the political subdivision's pension plan is a qualified plan and otherwise complies with the applicable provisions of the Internal Revenue Code, as amended. The chair of the retirement system may require an opinion of counsel or other assurance satisfactory to the chair that the provision of the services described in this section does not cause the retirement system, the state, or any of their agencies or employees to violate any federal or state laws or regulations;

(F) Political subdivisions shall take all actions that the retirement system, in its discretion, deems necessary for compliance by the retirement system with all applicable federal and state laws or for qualification of the retirement system for any exemptions from regulation available under those laws, including, but not limited to, the federal Securities Act of 1933, as amended, compiled in 15 U.S.C. § 77a et seq., and the Investment Company Act of 1940, as amended, compiled in 15 U.S.C. § 80(a)-1 et seq.;

(G) The political subdivision's plan shall be administered separately from the Tennessee consolidated retirement system, and shall be admin-

istered according to the political subdivision's pension plan documents;

(H) The political subdivision's plan assets shall be established in a separate fund from the Tennessee consolidated retirement system assets, and accounted for separately with accurate and detailed accounting records. The separate fund shall be operated in accordance with IRS Revenue Ruling 2011-1 or subsequent guidance regarding a group trust fund under Internal Revenue Code § 401(a)(24). Before a political subdivision's pension plan assets are co-invested with Tennessee consolidated retirement system assets, the political subdivision shall provide the department of treasury with its plan document and a determination letter from the internal revenue service that its plan assets are qualified assets.

(d) Notwithstanding any law to the contrary, through its administration of a political subdivision's pension plan, or the co-investment of the political subdivision's pension plan assets, as set forth in subdivisions (c)(1) and (2), the Tennessee consolidated retirement system shall not be liable for the payment of any retirement allowances or other benefits on account for the political subdivision employees or their respective beneficiaries, for which reserves have not been previously created from funds contributed by the political subdivision or the political subdivision employees for such benefits.

(e)(1) Notwithstanding any law to the contrary, to the extent that some or all of a political subdivision's pension plan assets intended to be invested pursuant to subsection (c) do not comport with the investment policy for the Tennessee consolidated retirement system:

(A) The board of trustees for the Tennessee consolidated retirement system may permit, as a written exception or amendment to the investment policy, the co-investment of the pension plan assets with the pension plan assets for the Tennessee consolidated retirement system under subsection (c). Such an exception or amendment shall contain the limitations, conditions, or restrictions on the co-investment of pension plan assets, including, but not limited to, the management strategy and timeframe for the conversion or liquidation of the pension plan assets to an investment authorized by the retirement system's investment policy within a reasonable period of time, considering the market for such investments. An exception or amendment under this subsection (e) may address multiple pension plans, a single pension plan, or be general in nature; or

(B) The state treasurer may take custody of the pension plan assets in an account separate from the Tennessee consolidated retirement system assets. The state treasurer shall invest the pension plan assets in accordance with the political subdivision's investment policy. The political subdivision's agreement for services provided under this section shall provide:

(i) The limitations, conditions, or restrictions on the investment of pension plan assets, including, but not limited to, the management strategy and timeframe for the conversion or liquidation of the pension plan assets to an investment authorized by the retirement system's investment policy within a reasonable period of time, considering the market for such investments; and

(ii) A charge assessed to the political subdivision for such services.

(2) Nothing in this subsection (e) shall prohibit a portion of a political subdivision's assets from being co-invested while a portion of the political subdivision's assets are invested separately under this subsection (e).

**9-4-103. Eligible collateral.**

"Eligible collateral" means:

(1) Bonds of the United States or any of its agencies;

(2) Obligations guaranteed by the United States or any of its agencies, the payments of which are fully guaranteed both as to principal and interest by the United States;

(3) [Deleted by 2013 amendment, effective April 23, 2013.]

(4) Bonds of the state of Tennessee, including any revenue bond issued by any agency of the state specifically including institutions under the control of the state board of regents, the board of trustees of the University of Tennessee and bonds issued in the name of the state school bond authority;

(5) Bonds of any utility district, county or municipal corporation of the state of Tennessee, including bonds payable from revenues (expressly excluding bonds of any road, levee or drainage district) upon which such bonds there has been no default in the payment of interest more than thirty (30) days upon any one (1) installment of interest, for the five (5) years next preceding the deposit of such bonds;

(6) Loans to students guaranteed one hundred percent (100%) by the Tennessee student assistance corporation, during the dormant period of such loan;

(7) Bonds issued under title 7, chapters 37 and 53, or under title 48, chapter 101, part 3, that are rated "A" or higher by any nationally recognized rating service;

(8) In addition, the state treasurer, with the concurrence of the commissioners of finance and administration and of financial institutions, may accept any other collateral security which is acceptable to the secretary of the treasury to secure the United States for deposits of public money in tax and/or loan accounts;

(9) An irrevocable letter of credit issued by the federal home loan bank; provided, that:

(A) The federal home loan bank is rated investment grade by at least one (1) nationally recognized securities rating service; and

(B) The state treasurer may require the state depository to promptly pledge securities in lieu of the letter of credit if the state treasurer believes it necessary to protect public funds;

(10) A surety bond issued by an insurance company licensed under the laws of this state that meets the following:

(A)(i) The company has a financial strength rating, also known as claims-paying ability, in one (1) of the two (2) highest categories by at least one (1) nationally recognized statistical rating agency; and

(ii) Any other financial or participation criteria and conditions established by the state funding board;

(B) The company offering the surety bond and the form of the bond is approved by the state funding board;

(C) The amount of surety bond pledged by any one (1) state depository or qualified public depository in lieu of other eligible collateral shall not exceed thirty million dollars ($30,000,000) or fifty percent (50%) of all collateral for that institution required to be pledged to the state treasurer or to the collateral pool, whichever is lower;

(D) The treasurer shall monitor the financial strength rating of a qualified insurance company no less than weekly, and at least annually

shall file a report with the state funding board and the collateral pool board on the condition of the qualified insurance company. If the condition of an insurer changes to the extent that the issuer would no longer be qualified under the requirements of subdivision (10)(A), the treasurer shall immediately notify the state funding board and the collateral pool board; and the insurer shall thereafter become disqualified;

(E) In the event an insurer becomes disqualified under subdivision (10)(D), the state depository or qualified public depository using the insurer's surety bond shall be required within thirty (30) days' notice from the treasurer to substitute other eligible collateral or to otherwise meet the required collateral level;

(F) Notwithstanding the disqualification of an insurer under subdivisions (10)(D) and (E), the surety bond of the insurer shall remain in effect until its expiration, nonrenewal or termination as otherwise permitted by law;

(G) In addition to the authority otherwise provided in this section or by law, the state treasurer may require the state depository or qualified public depository to promptly pledge eligible collateral in lieu of the surety bond if the treasurer makes a finding that additional collateral is necessary to protect public funds;

(H) A surety bond authorized in this subdivision (10) may only be used to secure funds in the custody of the state treasurer or to secure funds covered by the collateral pool created under part 5 of this chapter; and

(I) In the event that an issuer of surety bonds desires to withdraw from the program or to terminate a surety bond, the bond issuer shall give the state treasurer and the insured state depository or qualified public depository no less than sixty (60) days' advance notice of the withdrawal, nonrenewal or cancellation of the bonds; or

(11) State or municipal bonds from other states or from municipalities in other states; provided, that:

(A) The bond meets the definition of "qualified tax-exempt obligation" as defined in Section 265(b)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 265(b)(3));

(B) The bond is rated AA-, Aa3, or a higher rating by a nationally recognized bond rating service;

(C) The bond is not a structured debt instrument; and

(D) If the bond is downgraded below the minimum rating, the state depository shall substitute other eligible collateral or otherwise meet the required collateral levels within two (2) working days.

**9-4-213. State appropriations to child advocacy centers.**

(a) Except as otherwise provided in subsection (b), on and after July 1, 1998, no state funds appropriated specifically for child advocacy centers shall be allocated or paid to any such center unless the center clearly demonstrates that it:

(1) Is a nonprofit corporation which has received a determination of exemption from the internal revenue service under 26 U.S.C. § 501(c)(3);

(2) Employs an executive director who is answerable to the board of directors and who is not the salaried employee of any governmental entity signing the memorandum of understanding and working protocol identified

in subdivision (a)(3);

(3) Has a signed memorandum of understanding and working protocol executed among:

(A) The department of children's services;

(B) All county and municipal law enforcement agencies within the geographical area served by the center;

(C) All district attorneys general offices within the geographical area served by the center; and

(D) Any other governmental entity which participates in child abuse investigations or offers services to child abuse victims within the geographical area served by the center;

(4) Facilitates the use of a multidisciplinary team (representing prosecution, law enforcement, mental health, medical, child protective and social services professionals and the juvenile court) which jointly:

(A) Assess victims of child abuse and their families; and

(B) Determine the need for services;

(5) Provides a facility that is child-focused, neutral, comfortable, private, and safe, where the multidisciplinary team can meet to coordinate the efficient and appropriate disposition of child abuse cases through the civil and criminal justice systems;

(6) Provides for the provision of needed services, referral to such services, and case tracking;

(7) Has written policies and procedures consistent with the standards established by the National Children's Alliance; and

(8) Agrees to accurately collect and report key outcome data and information relative to each center's operations to the Tennessee chapter of children's advocacy centers, which is the statewide membership organization. The Tennessee chapter of children's advocacy centers shall compile and report such data annually to the chairs of the judiciary committee of the senate, civil justice committee of the house of representatives, health and welfare committee of the senate, and health committee of the house of representatives. The data and information collected pursuant to this subdivision (a)(8) shall include, at a minimum, the following:

(A) Number and demographic profiles of cases served by age, gender, race, type of abuse, and treatment thereof, including mental health and medical services rendered;

(B) Demographic profiles of perpetrators of abuse by age, gender, race, relationship to victim, and the outcome of any legal action taken against such perpetrators;

(C) Nature of services and support provided by or through the center; and

(D) Data and information relative to community investment in and community support of the center.

(b)(1) On and after July 1, 1998, no state funds appropriated specifically for one-time, start-up assistance for new child advocacy centers shall be allocated or paid to any such center unless the center clearly demonstrates that it:

(A) Has a signed memorandum of understanding and working protocol executed among:

(i) The department of children's services;

(ii) All county and municipal law enforcement agencies within the

area served by the center;

(iii) All district attorneys general offices within the area served by the center; and

(iv) Any other governmental entity which participates in child abuse investigations or offers services to child abuse victims within the area served by the center; and

(B) Has formally filed an application for a determination of exemption from the internal revenue service under 26 U.S.C. § 501(c)(3).

(2) After receiving any such start-up assistance, no additional state funds appropriated specifically for child advocacy centers shall be allocated or paid to such center unless the center clearly demonstrates that it complies with the enumerated requirements set forth in subsection (a).

(c) In those geographical areas in which a child advocacy center meets the requirements of subsection (a) or (b), child advocacy center directors or their designees shall be members of the child protective multi-disciplinary teams under title 37, chapter 1, parts 4 and 6, for purposes of provision of services and functions established by this section or delegated pursuant to this section. In such event, child advocacy center directors or their designees may access and generate all necessary information, which shall retain its confidential status, consistent with § 37-1-612.

(d) Notwithstanding any other provision of this section to the contrary, the department of children's services, or any other department administering state funds specially appropriated for child advocacy centers, shall continue to allocate and/or pay such funds to existing child advocacy centers with active applications on file with the department, if such centers demonstrate satisfactory progress in efforts to achieve compliance with this section.

**9-4-612. Investments of state funds in obligations guaranteed by United States government.**

(a) Notwithstanding any requirement of this part, or any other law to the contrary, on and after April 22, 2015, the state treasurer may, in the state treasurer's sole discretion, invest money in the custody of any officer or officers of the state, which is otherwise required to be invested pursuant to § 9-4-603 or § 9-4-608, pursuant to this section, if the state officer or officers who have custody of the money request that the money be invested pursuant to this section.

(b) Investments made pursuant to this section are not subject to § 9-4-602.

(c) The authorized instruments for investment under this section shall be:

(1) Bonds, notes, and treasury bills of the United States or any other obligations guaranteed as to principal and interest by the United States or any of its agencies; and

(2) Obligations guaranteed as to principal and interest by the federal home loan mortgage corporation, federal national mortgage association, student loan marketing association, and other United States government sponsored corporations.

(d) Investments made pursuant to this section shall not be pooled, and each investor will bear the capital gains, income, and losses for that investor's investment.

(e) The state treasurer shall keep a separate account, designated by name and number of each investor. Individual transactions and totals of all invest-

ments belonging to each investor shall be recorded in the accounts.

(f) The state treasurer shall report monthly to every investor under this section. The report shall show any changes in investments made during the preceding month.

(g) The state treasurer shall establish a revolving account, under the state treasurer's custody, to defray administrative costs, investment costs, and any other expenses associated with investments made pursuant to this section. The state treasurer may deduct from each investor's earnings, a reasonable charge for administering the investor's investment. In the event that the state treasurer does deduct an administrative fee, it shall be deposited and expended through the revolving account.

(h)(1) Subject to subdivision (h)(2), at any time, an investor may request the return of the investor's principal investment or investment income or both; however, a redemption of the investment does not guarantee that an investor will receive the entire amount of the principal investment or investment income or both.

(2) In any case where an investor requests the return of an investment that will require liquidation of the investment prior to the investment reaching full maturity, the liquidation and return of the investment shall not be made unless the state treasurer approves the liquidation of the investment.

**9-4-1001. Pension stabilization reserve trust fund.**

The pension stabilization reserve trust is created. The pension stabilization reserve trust fund shall be established and funded through the employer contributions contributed to the trust pursuant to § 8-36-920(d)(4), and all income from the investment of the funds in the trust fund. The trust and the funds therein shall be administered by the treasury department. The trust fund shall be an irrevocable trust exclusively for the benefit of the participants and beneficiaries of the Hybrid Retirement Plan for State Employees and Teachers compiled in title 8, chapter 36, part 9. The assets of the trust fund shall be preserved, invested, and expended solely pursuant to and for the purposes of this part and shall not be loaned or otherwise transferred or used for any other purpose. It shall be impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the Hybrid Retirement Plan for State Employees and Teachers and this trust, for any part of the corpus or income of the trust to be used or diverted for purposes other than for the exclusive benefit of the employees or their beneficiaries. The attorney general and reporter shall approve the terms of the trust instrument.

**9-4-1003. Investment policy — Individual separate stabilization reserve trust accounts.**

(a) The trustees shall adopt an investment policy authorizing how assets in the trust may be invested. The policy shall not authorize assets in the trust to be invested in any instrument, obligation, security, or property that would not constitute a legal investment for assets of the Tennessee consolidated retirement system. The state treasurer shall be responsible for the investment and reinvestment of trust funds in accordance with the policies and guidelines established by the trustees.

(b) The funds transferred or deposited into the trust may be commingled

with, co-invested with, and invested or reinvested with other assets transferred or deposited into the trust. All or a portion of the trust may be invested, reinvested, and co-invested with other funds, not a part of the trust, which are held by the state treasurer, including, but not limited to, assets of the Tennessee consolidated retirement system and the state pooled investment fund established pursuant to part 6 of this chapter. The assets of the trust may also be co-invested in a group trust in accordance with § 8-37-104(f).

(c) The trust fund shall consist of the following individual separate stabilization reserve trust accounts for the purpose of accounting for the employer contributions made to the trust on account of:

(1) State employees participating in the Hybrid Retirement Plan for State Employees and Teachers, compiled in title 8, chapter 36, part 9; and

(2) Teachers participating in the Hybrid Retirement Plan for State Employees and Teachers.

(d) In addition, the trust fund shall consist of individual separate stabilization reserve trust accounts established in the name of each political subdivision participating in the Hybrid Retirement Plan for State Employees and Teachers for the purpose of accounting for the employer contributions made to the trust by the political subdivision on account of its employees.

(e) The state treasurer shall assess a charge to the trust, in an amount to be determined by the treasurer, to meet the administrative and investment expenses of the treasury department in providing services under this part.

**9-4-1004. Purpose of trust fund — Certification of amount needed to fund benefits — Use of assets.**

(a) As provided in this section, the purpose of the pension stabilization reserve trust fund is to protect the participants and beneficiaries of the Hybrid Retirement Plan for State Employees and Teachers from a reduction or loss of benefits through the implementation of the cost controls contained in § 8-36-922(c)(1)(C)-(G) or in § 8-36-922(d)(1). If in any given year, the total amount in an employer's employer reserve account established pursuant to § 8-36-920(e) is not sufficient to meet the actuarial liabilities for which the employer's employer reserve account was created, then the board of trustees of the Tennessee consolidated retirement system shall certify to the trustees of the trust the amount necessary to fund current benefits as determined by the actuarial valuation performed by the retirement system's actuary. Upon receipt of the certification, the trustees of the trust shall determine whether transferring all or a portion of the requested amount from the employer's stabilization reserve trust account to the applicable employer reserve account of the employer would be in the best interests of the trust beneficiaries. If it is, the trustees shall direct the treasurer to transfer such amount as the trustees shall determine from the employer's stabilization reserve trust account to the applicable employer reserve account of the employer.

(b) The assets of the pension stabilization reserve trust fund shall be used exclusively for the purpose set forth in this section and to pay the reasonable expenses incurred in administering and investing the trust assets.

**9-4-1102. State employee legacy pension stabilization reserve trust fund.**

The state employee legacy pension stabilization reserve trust is created. The state employee legacy pension stabilization reserve trust fund shall be estab-

lished and funded through appropriations made in the general appropriations act from time to time for such purpose. The trust and the funds therein shall be administered by the department of the treasury. The trust fund shall be an irrevocable trust exclusively for the benefit of state employees who are members of the legacy plan. The assets of the trust fund shall be preserved, invested, and expended solely pursuant to and for the purposes of this part and shall not be loaned or otherwise transferred or used for any other purpose. It shall be impossible, at any time prior to the satisfaction of all liabilities with respect to state employees and their beneficiaries under the legacy pension plan and this trust, for any part of the corpus or income of the trust to be used or diverted for purposes other than for the exclusive benefit of the state employees or their beneficiaries. The attorney general and reporter shall approve the terms of the trust instrument.

**9-4-1104. Investment policy — Charge for administrative and investment expenses.**

(a) The trustees shall adopt an investment policy authorizing how assets in the trust may be invested. The policy shall not authorize assets in the trust to be invested in any instrument, obligation, security, or property that would not constitute a legal investment for assets of the Tennessee consolidated retirement system. The state treasurer shall be responsible for the investment and reinvestment of trust funds in accordance with the policies and guidelines established by the trustees.

(b) The funds transferred or deposited into the trust may be commingled with, co-invested with, and invested or reinvested with other assets transferred or deposited into the trust. All or a portion of the trust may be invested, reinvested, and co-invested with other funds, not a part of the trust, which are held by the state treasurer, including, but not limited to, assets of the Tennessee consolidated retirement system and the state pooled investment fund established pursuant to part 6 of this chapter. The assets of the trust may also be co-invested in a group trust in accordance with § 8-37-104(f).

(c) The state treasurer shall assess a charge to the trust, in an amount to be determined by the treasurer, to meet the administrative and investment expenses of the treasury department in providing services under this part.

**9-4-1202. Teacher legacy pension stabilization reserve trust fund.**

The teacher legacy pension stabilization reserve trust is created. The teacher legacy pension stabilization reserve trust fund shall be established and funded through a mechanism and methodology as shall be determined in the future by the commissioner of finance and administration and the state treasurer. The trust and the funds therein shall be administered by the department of the treasury. The trust fund shall be an irrevocable trust exclusively for the benefit of teachers who are members of the legacy plan. The assets of the trust fund shall be preserved, invested, and expended solely pursuant to and for the purposes of this part and shall not be loaned or otherwise transferred or used for any other purpose. It shall be impossible, at any time prior to the satisfaction of all liabilities with respect to teachers and their beneficiaries under the legacy pension plan and this trust, for any part of the corpus or income of the trust to be used or diverted for purposes other than for the exclusive benefit of the teachers or their beneficiaries. The attorney general and reporter shall approve the terms of the trust instrument.

**9-4-1204. Investment policy — Charge for administrative and investment expenses.**

(a) The trustees shall adopt an investment policy authorizing how assets in the trust may be invested. The policy shall not authorize assets in the trust to be invested in any instrument, obligation, security, or property that would not constitute a legal investment for assets of the Tennessee consolidated retirement system. The state treasurer shall be responsible for the investment and reinvestment of trust funds in accordance with the policies and guidelines established by the trustees.

(b) The funds transferred or deposited into the trust may be commingled with, co-invested with, and invested or reinvested with other assets transferred or deposited into the trust. All or a portion of the trust may be invested, reinvested, and co-invested with other funds, not a part of the trust, which are held by the state treasurer, including, but not limited to, assets of the Tennessee consolidated retirement system and the state pooled investment fund established pursuant to part 6 of this chapter. The assets of the trust may also be co-invested in a group trust in accordance with § 8-37-104(f).

(c) The state treasurer shall assess a charge to the trust, in an amount to be determined by the treasurer, to meet the administrative and investment expenses of the treasury department in providing services under this part.

**9-4-5202. Reports of estimated rate of growth of economy — Duties of state funding board.**

(a) At least once each year, and whenever requested to do so by the commissioner of finance and administration or by the joint request of the chairs of the finance, ways and means committees of the senate and house of representatives, the state funding board shall secure from the Tennessee econometric model a report of the estimated rate of growth of the state's economy. Such report shall include the major assumptions and the methodology used in arriving at such estimate.

(b) Upon receiving the report specified in subsection (a), the state funding board shall make comments relating to the reasonableness of the estimate, including any different estimate the board deems necessary. The board shall also enclose a list identifying state tax revenue sources and nontax revenue sources, approved by the attorney general and reporter. The department of finance and administration shall provide to the board revenue estimates for each source. The department of revenue shall provide to the board estimates of growth in franchise and excise tax revenue and include in the estimates a description of whether the growth is nonrecurring or recurring.

(c) In the event data from Tennessee econometric model is unavailable, the funding board, after consulting with the finance, ways and means committees of the senate and house of representatives, shall obtain and/or prepare a report of the estimated rate of growth of the state's economy.

(d) The reports specified in subsections (a), (b) and (c) shall be forwarded to the commissioner of finance and administration and to each member of the general assembly, after review and definitive comment by the finance, ways and means committees of the senate and house of representatives.

(e)(1) In November of each year, the state funding board shall conduct public hearings to develop estimates of state revenue for the upcoming fiscal year, as well as any revisions to the current fiscal year estimates, as the board deems appropriate. All estimates shall be adopted by a majority vote of the

entire board.

(2) The funding board shall request economic forecasts and revenue estimates from representatives of state higher education institution business centers located in each of the grand divisions and such other groups or persons as the funding board deems appropriate.

(3) On December 1, or as soon thereafter as practical, the funding board shall present its state revenue estimates, together with a summary of the economic forecast upon which the estimates are based, to the governor and the chairs of the finance, ways and means committees of the senate and house of representatives. If, in the opinion of the funding board, circumstances warrant a review of state revenue estimates it has previously presented, or upon a request of the chairs, the funding board shall consider information it deems necessary and appropriate and may revise its state revenue estimates if appropriate. Any revision to its revenue estimates and reasons therefor shall be forwarded to the governor and chairs.

(4) The funding board shall identify and report in its presentation of state revenue estimates whether any growth in franchise and excise tax revenue is nonrecurring or recurring.

**9-4-5203. Governor's budget document — Appropriations exceeding growth of state's economy — Bills — Index.**

(a) The budget document presented by the governor to the general assembly shall include a statement or showing projecting Tennessee personal income as provided in § 9-4-5201, for the ensuing fiscal year, for the calendar year in progress, for the fiscal year in progress, for the latest completed calendar year, and for calendar year 1977.

(b) The budget document presented by the governor shall also include a statement or a summary showing recommended appropriations from state tax revenues for the ensuing fiscal year, such actual appropriations for the fiscal year in progress, and the 1977-1978 fiscal year appropriations from state tax revenues.

(c)(1) When in any budget document the percentage increase of recommended appropriations from state tax revenues exceeds the percentage increase of estimated Tennessee personal income as defined in § 9-4-5201, for the ensuing fiscal year, the governor shall submit a bill or bills for introduction in both houses of the general assembly which shall contain no other subject matter and shall set forth the dollar and percentage by which the estimated growth of the state's economy is exceeded by the appropriations of state tax revenue in accordance with the Constitution of Tennessee, art. II, § 24.

(2) For purposes of determining compliance with this section and with the Constitution of Tennessee, Art. II, § 24:

(A) Funds allocated to the reserve for revenue fluctuations shall not be included as appropriations from state tax revenues; and

(B) Funds expended from the reserve for revenue fluctuations to offset shortfalls in state tax revenue in accordance with § 9-4-211(b) shall not be included as appropriations from state tax revenues.

(d) When the percentage increase of appropriations of state tax revenue by the general assembly exceeds the percentage increase of estimated Tennessee personal income as defined in § 9-4-5201, for the ensuing fiscal year, the

general assembly shall by law containing no other subject matter, set forth the dollar and the percentage by which the estimated growth of the state's economy is exceeded by the appropriations of state tax revenue in accordance with the article II, § 24 of the Tennessee constitution.

(e)(1) The index of appropriations from state tax revenues for the 2011-2012 fiscal year may exceed the index of estimated growth in the state's economy by two hundred fifty million dollars ($250,000,000) or two and one one-hundredths percent (2.01%).

(2) The index of appropriations from state tax revenues for the 2012-2013 fiscal year may exceed the index of estimated growth in the state's economy by one hundred thirty-two million five hundred thousand dollars ($132,500,000) or one percent (1.0%).

(3) The index of appropriations from state tax revenues for the 2016-2017 fiscal year may exceed the index of estimated growth in the state's economy by four hundred thirty-eight million dollars ($438,000,000) or two and eighty-five hundredths percent (2.85%).

**9-8-307. Jurisdiction — Claims — Waiver of actions — Standard for tort liability — Damages — Immunities — Definitions — Transfer of claims.**

(a)(1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of "state employees," as defined in § 8-42-101, falling within one (1) or more of the following categories:

(A) The negligent operation or maintenance of any motor vehicle or any other land, air, or sea conveyance. In addition, the state may be held liable pursuant to this subdivision (a)(1)(A) for the negligent operation of state-owned motor vehicles or other conveyances by persons who are not state employees; provided, that such persons operated the vehicle or other conveyance with the permission of a state employee;

(B) Nuisances created or maintained;

(C) Negligently created or maintained dangerous conditions on state controlled real property. The claimant under this subdivision (a)(1)(C) must establish the foreseeability of the risks and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures;

(D) Legal malpractice or health care liability by a state employee; provided, that the state employee has a professional/client relationship with the claimant;

(E) Negligent care, custody and control of persons;

(F) Negligent care, custody or control of personal property;

(G) Negligent care, custody or control of animals. Damages are not recoverable under this section for damages caused by wild animals;

(H) Negligent construction of state sidewalks and buildings;

(I) Negligence in planning and programming for, inspection of, design of, preparation of plans for, approval of plans for, and construction of, public roads, streets, highways, or bridges and similar structures, and negligence in maintenance of highways, and bridges and similar structures, designated by the department of transportation as being on the state system of highways or the state system of interstate highways;

(J) Dangerous conditions on state maintained highways. The claimant under this subdivision (a)(1)(J) must establish the foreseeability of the risk and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures;

(K)(i) Workers' compensation claims by state employees, including injuries incurred by national guard members, Tennessee state guard members, civil air patrol members, civil defense agency personnel and emergency forest firefighters while on active duty and in the course of that duty;

(ii) The commission's payment of these claims shall be in such amount and subject to such limitations as set forth in title 50, chapter 6, except the following provisions shall have no application to workers' compensation claims filed against the state: §§ 50-6-103, 50-6-104, 50-6-106(5), 50-6-118, 50-6-128, 50-6-203(a)-(e) and (g), 50-6-205(b)(2), (b)(3), (c) and (d), 50-6-208, 50-6-210(f), 50-6-211, 50-6-213, 50-6-222, 50-6-225(d), 50-6-229(b), 50-6-233, 50-6-236(c)(2)-(3) and (g), 50-6-237, 50-6-238, 50-6-239, 50-6-244, 50-6-306, 50-6-307, and title 50, chapter 6, part 4. Section 50-6-114 shall apply to workers' compensation claims against the state, except that the state is authorized to give an employee the option to use accrued sick and annual leave in lieu of receiving temporary total disability benefits. In no event shall an employee receive both accrued sick and annual leave and temporary total disability benefits for the period of temporary total disability. Where appropriate, the claims commission shall be considered the court or tribunal to determine claims within title 50, chapter 6. Payments shall be made and accepted without regard to fault as a cause of the injury or death;

(iii) The subsequent injury and vocational recovery fund shall have no application to workers' compensation claims against the state of Tennessee. Payment of compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments. Likewise, the acceptance of compensation by the officer or employee is not considered a binding determination of the obligations of the employer as to future compensation payments; nor shall the acceptance of compensation by the officer or employee be considered a binding determination of the employer's rights;

(iv) The interested parties have the right to settle all matters of compensation between themselves, but all settlements, before the settlements are binding on either party, shall be reduced to writing and shall be approved by the claims commissioner before whom the claim for compensation is entitled to be heard, or to a workers' compensation judge pursuant to § 50-6-240. Any proposed settlement presented to a claims commissioner for approval pursuant to this subdivision (a)(1)(K)(iv) shall be examined by the claims commissioner to determine whether the officer or employee is receiving, substantially, the benefits provided by the Workers' Compensation Law, compiled in title 50, chapter 6. To this end, the commissioner may call and examine witnesses. Upon such settlement being approved, an order shall be rendered by the commissioner and duly entered by the clerk;

(v) In case any officer or employee of the state of Tennessee for whose injury or death compensation is payable under the Workers' Compensation Law shall at the time of injury be employed or paid jointly by two

(2) or more employers subject to such law, such employers shall contribute to payment of such compensation in a proportion of their several wage liability to such officer or employee. The state of Tennessee is considered the primary employer and the determination of workers' compensation paid shall be pursuant to the procedures provided for state officers and employees. If one (1) or more, but not all, of such officers and employees are subject to the Workers' Compensation Law and otherwise subject to liability for compensation hereunder, then the liability of such of them as are so subject shall be to pay the proportion of the entire compensation which their portion of the wage liability bears to the wages of the officer or employee; provided, that nothing in this section shall prevent any agreement between the different employers between themselves as to the distribution of the ultimate burden of such compensation. The state of Tennessee shall pay the officer or employee under the Workers' Compensation Law and seek contribution from other contributing employers. The state of Tennessee has a right of action in the courts against the joint employers;

(vi) Notwithstanding § 9-8-402(d) or any other law to the contrary, upon motion of the employee, the claims commission may, prior to the benefits review conference or any final hearing on the claim, order the state to initiate, continue or reinstate temporary disability benefits or to provide medical benefits to the employee pending a final decision in the case, if the claims commission determines that such an order would be appropriate in light of available information. If the commission determines it appropriate to order the state to provide medical benefits pursuant to this subdivision (a)(1)(K)(vi), the commission's authority shall include, but not be limited to, the authority to order specific medical treatment recommended by the treating physician, and the authority to require the state to provide the appropriate panel of physicians to the employee, including a panel of appropriate specialists. With respect to the determination of whether to order the payment of temporary disability or medical benefits, the claims commission shall decide such issues solely on the basis of the information available to the commission, without favor or presumption for or against either party;

(L) Actions for breach of a written contract between the claimant and the state which was executed by one (1) or more state officers or employees with authority to execute the contract; provided, that the group insurance agreements created pursuant to §§ 8-27-201 [now § 8-27-202; See Compiler's Notes] and 8-27-302 shall be considered contracts for purposes of this subsection (a) in order for the commission to determine insurance claims which have been previously rejected by the state insurance committee or the local education insurance committee;

(M) Negligent operation of machinery or equipment;

(N) Negligent deprivation of statutory rights created under Tennessee law, except for actions arising out of claims over which the civil service commission has jurisdiction. The claimant must prove under this subdivision (a)(1)(N) that the general assembly expressly conferred a private right of action in favor of the claimant against the state for the state's violation of the particular statute's provisions;

(O) Claims for the recovery of taxes collected or administered by the state, except any tax collected or administered by the commissioner of

revenue, any tax collected or administered by the commissioner of commerce and insurance pursuant to title 56, and any unemployment insurance tax collected or administered by the commissioner of labor and workforce development;

(P) Claims for the loss, damage or destruction of the personal property of state employees based on § 9-8-111;

(Q)(i) Claims for injuries incurred by persons where such injury occurred while the person was a passenger in a motor vehicle operated by a state employee while such employee was acting within the scope of employment. The claimant has the burden of proving the following:

*(a)* The injuries suffered by the claimant occurred as a result of an accident involving a motor vehicle operated by a non-state employee and a motor vehicle operated by a state employee who, at the time of the accident, was acting within the scope of employment;

*(b)* The proximate cause of the accident was the negligent operation of the motor vehicle operated by the nonstate employee;

*(c)* The claimant has been unable to recover any damages from the negligent party because the negligent party was uninsured or underinsured at the time of the accident and is otherwise financially incapable of fully compensating the claimant;

*(d)* The claimant has been unable to recover sufficient amounts under the Workers' Compensation Law or from any other public or private source, including the claimant's uninsured motorist's insurance policy, to fully compensate for the injuries suffered; and

*(e)* The claimant's presence in the motor vehicle operated by the state employee was for the benefit of the state, except that this requirement shall be waived for persons who are injured while a passenger in a state-owned motor vehicle used in the state employee van pool program authorized in § 4-3-1105(19).

(ii) Notwithstanding subsection (e), awards under this subdivision (a)(1)(Q) are limited to amounts recoverable under subdivision (a)(1)(K). Awards under this subdivision (a)(1)(Q) shall not be considered payments under an uninsured motorists insurance policy as provided for in title 56, chapter 7, part 12;

(R) Claims for libel and/or slander where a state employee is determined to be acting within the scope of employment;

(S)(i) Claims for compensation filed under the Criminal Injuries Compensation Act, compiled in title 29, chapter 13, and § 40-24-107. Claims filed pursuant to this subdivision (a)(1)(S) shall be determined in accordance with title 29, chapter 13;

(ii) Notwithstanding title 29, chapter 13, to the contrary, the claims commission has exclusive jurisdiction to determine all claims filed for compensation under the Criminal Injuries Compensation Act in accordance with title 29, chapter 13; provided, that this exclusive jurisdiction shall apply only to claims for compensation filed on or after January 1, 1987. At the request of the claimant and with the consent of the court, any claim filed prior to January 1, 1987, may be transferred to the claims commission for determination of the claim;

(T) Actions based on § 69-1-201;

(U) Actions based on violations of the requirements of procurement of commodities or services under title 71, chapter 4, part 7;

(V) Unconstitutional taking of private property, as defined in § 12-1-202, including intentional state governmental action resulting in a taking other than the taking of real property and real property rights for the state's system of highways or the state's system of interstate highways; and

(W) Claims arising out of the billing, collection, or remittance of 911 surcharges.

(2) No item enumerated in this subsection (a) shall be interpreted to allow any claim against the state on account of the acts or omissions of persons, partnerships, corporations or other entities licensed or regulated by agencies of the state, notwithstanding any negligence committed by the state in the course of performing licensing or regulatory activities. No item enumerated in this subsection (a) shall be interpreted to allow any claims against the state arising out of or resulting from:

(A) The issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization, except as provided for in subdivision (a)(1)(V);

(B) An inspection, or by reason of making an inadequate or negligent inspection of any property, except as provided for in subdivision (a)(1)(I);

(C) Riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances; except that the claims commission shall have jurisdiction over riots and disturbances occurring on or after January 1, 1985, by persons who are in the care, custody and control of the state where the state's negligence is the proximate cause of the riot or disturbance which, in turn, is the proximate cause of the injury to the claimant or damage to the claimant's personal property;

(D) Acts of a defendant serving a sentence under probation coupled with periodic confinement pursuant to § 40-35-307; work release pursuant to § 40-35-315; on furlough pursuant to § 40-35-316; a community-based alternative to confinement pursuant to title 40, chapter 36; or parole pursuant to § 40-35-504, unless the defendant is in the custody of or under the control or supervision of a jailer, corrections officer, law enforcement officer, or other agent of the state, or unless the state was negligent in its release of the defendant; provided, that the state is liable for reasonable medical care for inmates under work release, furlough, or community-based alternatives to confinement, although the inmates are not physically in the custody and control of and under the direct personal control of a jailer, corrections officer or other law enforcement officer. The state, county, municipality or political subdivision which may employ the inmate but does not have direct supervision and control of the inmate's work release, confinement or community-based alternative to confinement is not liable for the inmate's reasonable medical treatment for injuries incurred while on such work release, community-based alternative, or other work detail. Nothing in this subdivision (a)(2)(D) shall be construed as changing the general law of comparative fault. Nothing in this subdivision (a)(2)(D) shall be construed as changing the liability for injuries caused by a person or agency due to that person's or agency's own negligence. Nothing in this subdivision (a)(2)(D) shall be construed as changing the general law on liability in subdivision (a)(1)(E); or

(E) Any failure or malfunction occurring before January 1, 2005, which is caused directly or indirectly by the failure of computer software or any

device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times, if, and only if, the failure or malfunction causing the loss was unforeseeable or if the failure or malfunction causing the loss was foreseeable but a reasonable plan or design or both for identifying and preventing the failure or malfunction was adopted and reasonably implemented complying with generally accepted computer and information system design standards. Notwithstanding any other provision of the law, nothing in this subdivision (a)(2)(E) shall in any way limit the liability of a third party, direct or indirect, who is negligent. Further, a person who is injured by the negligence of a third party contractor, direct or indirect, shall have a cause of action against the contractor.

(3) It is the intent of the general assembly that the claims commission shall only hear claims arising on or after January 1, 1985. All claims arising prior to January 1, 1985, are to be governed by the law as it was prior to that date. For purposes of jurisdiction, a claim for recovery of taxes is deemed to arise on the date of the payment under protest. However, for any claim falling within the jurisdiction of the claims commission as determined by this subdivision (a)(3) and arising before January 1, 1985, the board of claims may authorize the chair of the board to transfer any claim or classes of claims to the claims commission. No claims shall be transferred where the claimant objects. Transferred claims are subject to the same requirements and procedures as claims originally filed with the claims commission. It is the intent of the general assembly that the jurisdiction of the claims commission be liberally construed to implement the remedial purposes of this legislation. It is the intent of the general assembly that no distinctions be made between officers and employees of the state under this legislation. The availability of state records and documents concerning claims is subject to the same discovery defenses as are available to other parties. The portion of the records in possession of the division of claims and risk management containing the amount of funds reserved for each claim for the risk management fund is confidential and not subject to § 10-7-503, until the final adjudication of the claim.

(b) Claims against the state filed pursuant to subsection (a) shall operate as a waiver of any cause of action, based on the same act or omission, which the claimant has against any state officer or employee. The waiver is void if the commission determines that the act or omission was not within the scope of the officer's or employee's office or employment.

(c) The determination of the state's liability in tort shall be based on the traditional tort concepts of duty and the reasonably prudent person's standard of care.

(d) The state will be liable for actual damages only. No award shall be made unless the facts found by the commission would entitle the claimant to a judgment in an action at law if the state had been a private individual. The state will not be liable for punitive damages and the costs of litigation other than court costs. The state will not be liable for willful, malicious, or criminal acts by state employees, or for acts on the part of state employees done for personal gain. The state may assert any and all defenses, including common law defenses, which would have been available to the officer or employee in an action against such an individual based upon the same occurrence. The state may assert any absolute common law immunities available to the officer or

employee, however, good faith common law immunity may not be asserted. If the claimant is successful with any claim filed with the claims commission after January 1, 1985, the state shall pay such interest as the commissioner may determine to be proper, not exceeding the legal rate as provided in § 47-14-121. In contract actions, interest may be awarded, but if the rate of interest is provided in the contract, the award of interest shall be at that rate.

(e) For causes of action arising in tort, the state shall only be liable for damages up to the sum of three hundred thousand dollars ($300,000) per claimant and one million dollars ($1,000,000) per occurrence. The board of claims is authorized to purchase insurance, on a per claimant or per occurrence basis, for any class of claim. Any recovery covered by such a policy may exceed the monetary limits of this subsection (e), but only up to the policy limit.

(f) No language contained in this chapter is intended to be construed as a waiver of the immunity of the state of Tennessee from suit in federal courts guaranteed by the eleventh amendment to the Constitution of the United States.

(g) No language contained in this chapter is intended to be construed to abridge the common law immunities of state officials and employees.

(h) State officers and employees are absolutely immune from liability for acts or omissions within the scope of the officer's or employee's office or employment, except for willful, malicious, or criminal acts or omissions or for acts or omissions done for personal gain. For purposes of this chapter, "state officer" or "employee" has the meaning set forth in § 8-42-101(3).

(i)(1) Claims that were timely filed against a state employee with a court of competent jurisdiction and that fall within the jurisdiction of the claims commission found in subdivision (a)(1)(A) shall be dismissed as to the state employee and transferred to the division of claims and risk management to proceed as a claim against the state; provided, that the state employee alleged to have acted negligently was, at the time of the incident giving rise to the claim, operating a private motor vehicle within the scope of the employee's office or employment, and the employee's action or inaction was not willful, malicious, criminal or done for personal gain. When a motion for transfer is made, the court shall require that notice be given the attorney general and reporter and the state shall be permitted to intervene and respond to the motion. Upon such transfer, the claim shall be considered timely filed with the division of claims and risk management and the claims commission. Such transfer shall be effected upon an order of dismissal and transfer from the court. Any such transfer must be made within one (1) year of the filing of the original complaint with the court or on or after April 22, 1998, whichever is later. Such claims shall be considered by the division of claims and risk management and the claims commission, as provided by law. This subsection (i) shall be effective for causes of action arising on or after July 1, 1995, pending on or after April 22, 1998, and causes of action arising on or after April 22, 1998.

(2) Claims which are transferred to the division of claims and risk management pursuant to this subsection (i) shall be investigated by the division of claims and risk management , acted upon or transferred by the division, and acted upon by the claims commission pursuant to the same statutory requirements and procedures as apply to claims originally filed with the division of claims and risk management.

**9-21-134. Approval of comptroller of treasury required prior to issuance of balloon indebtedness — Evaluation of plan.**

(a) As used in this section:

(1) "Balloon indebtedness":

(A) Means any indebtedness that:

(i) Has a final term to maturity totaling thirty-one (31) or more years from the original date of issuance of the indebtedness to the date the indebtedness is fully amortized, including any subsequent refinancing thereof;

(ii) Delays principal repayment for more than three (3) years after the date of issuance;

(iii) Capitalizes interest beyond the later of the construction period or three (3) years from the date of issuance; or

(iv) Does not have substantially level or declining debt service; and

(B) Does not include any indebtedness that:

(i) Has at least seventy-five percent (75%) of total principal amortized within ten (10) years from the date of issuance with no more than twenty-five percent (25%) of principal subject to payment in any one (1) year;

(ii) Has a debt service schedule in which each annual principal installment is not more than fifty percent (50%) in excess of the smallest prior installment;

(iii) Has a general obligation pledge and is being issued by a local government or local government instrumentality that has some amount of long-term general obligation indebtedness outstanding or proposed to be issued that is rated in the highest rating category for long-term debt instruments (AAA/Aaa) or the first tier (AA+/Aa1) of the second highest rating category for long-term debt instruments by a nationally recognized rating agency for municipal securities, without regard to the effect of any credit agreement or other form of credit enhancement entered into in connection with such rated indebtedness;

(iv) Is secured solely by a revenue pledge and is being issued by a local government or local government instrumentality that has some amount of long-term revenue indebtedness outstanding or proposed to be issued that is rated in the highest rating category for long-term debt instruments (AAA/Aaa) or the first tier (AA+/Aa1) of the second highest rating category for long-term debt instruments by a nationally recognized rating agency for municipal securities, without regard to the effect of any credit agreement or other form of credit enhancement entered into in connection with such rated indebtedness;

(v) State or federal law requires the local government or local government instrumentality to participate in the financing program;

(vi) Is a conduit transaction for a nongovernmental entity;

(vii) Is evidenced by a loan with either the United States department of agriculture or the United States department of housing and urban development; or

(viii) Is a note the issuance of which is otherwise subject to the approval of the comptroller of the treasury;

(2) "Indebtedness" means:

(A) Any bond, note, loan agreement or any other evidence of a debt obligation in which a local government or local government instrumentality, either directly or indirectly, incurs a definite and absolute obligation to

the payment of the principal of and interest on the debt obligation; and

(B) Does not include bonds and loan agreements authorized by title 7, chapter 53;

(3) "Local government" means, solely for the purposes of this section, any incorporated city or town, metropolitan government, county, or utility district; and

(4)(A) "Substantially level or declining debt service" means an amortization schedule in which the aggregate amount of debt service calculated as principal plus interest that is payable in each year is not in excess of the lowest aggregate amount of debt service payable in any prior year by more than the greater of five percent (5%) or ten thousand dollars ($10,000);

(B) For purposes of determining whether debt service is substantially level or declining in accordance with the preceding sentence, the first three (3) years of debt service do not need to be taken into account. For purposes of determining whether debt service is substantially level or declining on bonds issued with a variable interest rate, the average rate of interest at which fixed interest rate bonds of the same maturities would be sold should be estimated and the total principal amount should be amortized based upon such interest rate assumption.

(b) For purposes of this section, principal of debt will be treated as being payable or amortized upon its stated maturity, upon any mandatory redemption date, and upon any date on which the holder of the debt has the option to require the debt to be prepaid, redeemed, or purchased, other than with the proceeds of a liquidity facility provided by a third party.

(c) Solely for purposes of this section, a local government may account for the amortization of principal and the payment of debt service on:

(1) A fiscal year basis;

(2) A calendar year basis; or

(3) An annual basis commencing on the date upon which debt is issued.

(d) On and after July 1, 2014, if any local government or local government instrumentality proposes to issue any balloon indebtedness, then the local government or local government instrumentality shall first obtain approval from the comptroller of the treasury in accordance with subsection (e).

(e) Prior to the adoption by the local government or local government instrumentality of any action authorizing the issuance of balloon indebtedness, the local government or local government instrumentality shall submit a plan of balloon indebtedness to the comptroller of the treasury or the comptroller's designee for approval. The comptroller of the treasury or the comptroller's designee may request any additional information as may be required to properly review the proposed plan of balloon indebtedness. The comptroller of the treasury or the comptroller's designee shall evaluate each plan of balloon indebtedness based on the plan's particular circumstances and shall approve the plan only if a determination is made that the repayment structure is in the public's interest.

(f) The comptroller of the treasury or the comptroller's designee shall report the comptroller's approval or disapproval of the plan of balloon indebtedness to the governing body within fifteen (15) business days after receipt of the plan and all requested supplemental documentation. After receiving the approval of the comptroller of the treasury or the comptroller's designee of the plan of balloon indebtedness or after the expiration of fifteen (15) business days from the date the plan of balloon indebtedness is received by the comptroller of the

treasury or the comptroller's designee and no disapproval having been reported by the comptroller of the treasury or the comptroller's designee, whichever date is earlier, the governing body may take such action with reference to the proposed plan of balloon indebtedness as it deems advisable in accordance with this part.

(g) The state funding board is authorized to establish guidelines, rules, or regulations with respect to the comptroller of the treasury's approval of balloon indebtedness and may exempt certain classes or issues of indebtedness from such approval.

**10-1-103. Components of state library system.**

The state library system shall consist of the existing state library, archives, regional library for accessible books and media and library extension properties and services, and such other properties and services as may from time to time be assigned to the division of public libraries and archives, excluding the law library of the state, which functions under the direction of the supreme court.

**10-1-110. People with disabilities.**

The secretary of state is authorized to:

(1) Cooperate with the division for the blind and physically handicapped in the library of congress in planning and conducting a program of bringing free reading materials and related services and other library services to people with disabilities, as defined by the library of congress, who are residents of the state;

(2) Establish and implement eligibility and certification standards and rules and regulations for these services;

(3) Produce and distribute, and contract with competent organizations and agencies for the production and distribution of reading materials, and related library services, in the conduct of this program;

(4) Cooperate in making sound reproduction equipment and other reading equipment available to people with disabilities, as defined by the library of congress; and

(5) Establish and maintain local or regional centers as the library of congress may designate for the loan of reading materials, reproducers and other library materials to eligible readers in the state; provided, that nothing in this section shall be construed to interfere with or supersede the rules and regulations of the library of congress in the loan of library materials and reading equipment for people with disabilities, as defined by the library of congress.

**10-3-104. Powers and duties of library board.**

The members of the library board shall organize by electing officers and adopting bylaws and regulations. The board has the authority to direct all the affairs of the library, including the authority to appoint a library administrator. The library administrator shall direct the internal affairs of the library, including hiring and directing such assistants or employees as may be necessary. The board may make and enforce rules and regulations and establish branches of service at its discretion. The board may expend funds for

the special training and formal education of library personnel; provided, that such personnel shall agree to work in the library for at least two (2) years after completion of such training and education. The board may receive donations, devises, and bequests to be used by it directly for library purposes. The board may hold and convey realty and personal property and negotiate leases for and on behalf of such library. The board shall furnish to the state library agency such statistics and information as may be required, and shall make annual reports to the county legislative body or city governing body.

**10-7-103. [Repealed]**

**10-7-503. Records open to public inspection — Schedule of reasonable charges — Costs.**

(a)(1) As used in this part and title 8, chapter 4, part 6:

(A) "Public record or records" or "state record or records":

(i) Means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity; and

(ii) Does not include the device or equipment, including, but not limited to, a cell phone, computer, or other electronic or mechanical device or equipment, that may have been used to create or store a public record or state record;

(B) "Public records request coordinator" means any individual within a governmental entity whose role it is to ensure that public records requests are routed to the appropriate records custodian and that requests are fulfilled in accordance with § 10-7-503(a)(2)(B); and

(C) "Records custodian" means any office, official, or employee of any governmental entity lawfully responsible for the direct custody and care of a public record.

(2)(A) All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

(B) The custodian of a public record or the custodian's designee shall promptly make available for inspection any public record not specifically exempt from disclosure. In the event it is not practicable for the record to be promptly available for inspection, the custodian shall, within seven (7) business days:

(i) Make the information available to the requestor;

(ii) Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or

(iii) Furnish the requestor a completed records request response form developed by the office of open records counsel stating the time reasonably necessary to produce the record or information.

(3) Failure to respond to the request as described in subdivision (a)(2) shall constitute a denial and the person making the request shall have the

right to bring an action as provided in § 10-7-505.

(4) This section shall not be construed as requiring a governmental entity to sort through files to compile information or to create or recreate a record that does not exist. Any request for inspection or copying of a public record shall be sufficiently detailed to enable the governmental entity to identify the specific records for inspection and copying.

(5) Information made confidential by state law shall be redacted whenever possible, and the redacted record shall be made available for inspection and copying. The redaction of confidential information shall not constitute the creation of a new record. Costs associated with redacting records, including the cost of copies and staff time to provide redacted copies, shall be borne as provided by law.

(6) A governmental entity is prohibited from avoiding its disclosure obligations by contractually delegating its responsibility to a private entity.

(7)(A)(i) A governmental entity shall not require a written request or assess a charge to view a public record unless otherwise required by law. Requests to view public records may be submitted in person or by telephone, fax, mail, or email if the governmental entity uses such means of communication to transact official business, or via internet portal if the governmental entity maintains an internet portal that is used for accepting public records requests.

(ii) A governmental entity may require a request for copies of public records to be:

*(a)* In writing;

*(b)* On a form that complies with subsection (c); or

*(c)* On a form developed by the office of open records counsel.

(iii) If a governmental entity does not require a request for copies to be in writing or on a form in accordance with subdivision (a)(7)(A)(ii), then a request for copies of public records may be submitted as provided in subdivision (a)(7)(A)(i).

(iv) If a governmental entity requires a request to be in writing under subdivision (a)(7)(A)(ii)(*a*), the records custodian of the governmental entity shall accept any of the following:

*(a)* A request submitted in person or by mail;

*(b)* An email request if the governmental entity uses email to transact official business; and

*(c)* A request submitted on an electronic form via internet portal if the governmental entity maintains an internet portal that is used for accepting public records requests.

(v) If a governmental entity requires that a request for copies of public records be made on a form as provided in subdivision (a)(7)(A)(ii), then the governmental entity shall provide such form in the most expeditious means possible when the form is requested.

(vi) A governmental entity may require any person making a request to view or make a copy of a public record to present a government-issued photo identification, if the person possesses photo identification, that includes the person's address. If a person does not possess photo identification, the governmental entity may require other forms of identification acceptable to the governmental entity.

(vii) Notwithstanding any other law to the contrary:

*(a)* If a person makes two (2) or more requests to view a public record within a six-month period and, for each request, the person fails to view

the public record within fifteen (15) business days of receiving notification that the record is available to view, the governmental entity is not required to comply with any public records request from the person for a period of six (6) months from the date of the second request to view the public record unless the governmental entity determines failure to view the public record was for good cause; and

*(b)* If a person makes a request for copies of a public record and, after copies have been produced, the person fails to pay to the governmental entity the cost for producing such copies, the governmental entity is not required to comply with any public records request from the person until the person pays for such copies; provided, that the person was provided with an estimated cost for producing the copies in accordance with subdivision (a)(7)(C)(ii) prior to producing the copies and the person agreed to pay the estimated cost for such copies.

(B) [Deleted by 2016 amendment.]

(C)(i) A records custodian may require a requestor to pay the custodian's reasonable costs incurred in producing the requested material and to assess the reasonable costs in the manner established by the office of open records counsel pursuant to § 8-4-604.

(ii) The records custodian shall provide a requestor an estimate of the reasonable costs to provide copies of the requested material.

(b) The head of a governmental entity may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to maintain the confidentiality of records concerning adoption proceedings or records required to be kept confidential by federal statute or regulation as a condition for the receipt of federal funds or for participation in a federally funded program.

(c)(1) Except as provided in § 10-7-504(g), all law enforcement personnel records shall be open for inspection as provided in subsection (a); however, whenever the personnel records of a law enforcement officer are inspected as provided in subsection (a), the custodian shall make a record of such inspection and provide notice, within three (3) days from the date of the inspection, to the officer whose personnel records have been inspected:

(A) That such inspection has taken place;

(B) The name, address and telephone number of the person making such inspection;

(C) For whom the inspection was made; and

(D) The date of such inspection.

(2) [Deleted by 2016 amendment.]

(3) Any person making an inspection of such records shall provide such person's name, address, business telephone number, home telephone number, driver license number or other appropriate identification prior to inspecting such records.

(d)(1) All records of any association or nonprofit corporation described in § 8-44-102(b)(1)(E)(i) shall be open for inspection as provided in subsection (a); provided, that any such organization shall not be subject to the requirements of this subsection (d) so long as it complies with the following requirements:

(A) The board of directors of the organization shall cause an annual audit to be made of the financial affairs of the organization, including all receipts from every source and every expenditure or disbursement of the

money of the organization, made by a disinterested person skilled in such work. Each audit shall cover the period extending back to the date of the last preceding audit and it shall be paid out of the funds of the organization;

(B) Each audit shall be conducted in accordance with the standards established by the comptroller of the treasury pursuant to § 4-3-304(9) for local governments;

(C) The comptroller of the treasury, through the department of audit, shall be responsible for ensuring that the audits are prepared in accordance with generally accepted governmental auditing standards, and determining whether the audits meet minimum audit standards which shall be prescribed by the comptroller of the treasury. No audit may be accepted as meeting the requirements of this section until such audit has been approved by the comptroller of the treasury;

(D) The audits may be prepared by a certified public accountant, a public accountant or by the department of audit. If the governing body of the municipality fails or refuses to have the audit prepared, the comptroller of the treasury may appoint a certified public accountant or public accountant or direct the department to prepare the audit. The cost of such audit shall be paid by the organization;

(E) Each such audit shall be completed as soon as practicable after the end of the fiscal year of the organization. One (1) copy of each audit shall be furnished to the organization and one (1) copy shall be filed with the comptroller of the treasury. The copy of the comptroller of the treasury shall be available for public inspection. Copies of each audit shall also be made available to the press; and

(F) In addition to any other information required by the comptroller of the treasury, each audit shall also contain:

(i) A listing, by name of the recipient, of all compensation, fees or other remuneration paid by the organization during the audit year to, or accrued on behalf of, the organization's directors and officers;

(ii) A listing, by name of recipient, of all compensation and any other remuneration paid by the organization during the audit year to, or accrued on behalf of, any employee of the organization who receives more than twenty-five thousand dollars ($25,000) in remuneration for such year;

(iii) A listing, by name of beneficiary, of any deferred compensation, salary continuation, retirement or other fringe benefit plan or program (excluding qualified health and life insurance plans available to all employees of the organization on a nondiscriminatory basis) established or maintained by the organization for the benefit of any of the organization's directors, officers or employees, and the amount of any funds paid or accrued to such plan or program during the audit year; and

(iv) A listing, by name of recipient, of all fees paid by the organization during the audit year to any contractor, professional advisor or other personal services provider, which exceeds two thousand five hundred dollars ($2,500) for such year. Such listing shall also include a statement as to the general effect of each contract, but not the amount paid or payable thereunder.

(2) This subsection (d) shall not apply to any association or nonprofit corporation described in § 8-44-102(b)(1)(E)(i), that employs no more than

two (2) full-time staff members.

(3) This subsection (d) shall not apply to any association, organization or corporation that was exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code, codified in 26 U.S.C. § 501(c)(3), as of January 1, 1998, and which makes available to the public its federal return of organization exempt from income tax (Form 990) in accordance with the Internal Revenue Code and related regulations.

(e) All contingency plans of law enforcement agencies prepared to respond to any violent incident, bomb threat, ongoing act of violence at a school or business, ongoing act of violence at a place of public gathering, threat involving a weapon of mass destruction, or terrorist incident shall not be open for inspection as provided in subsection (a).

(f) All records, employment applications, credentials and similar documents obtained by any person in conjunction with an employment search for a director of schools or any chief public administrative officer shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law. For the purposes of this subsection (f), the term "person" includes a natural person, corporation, firm, company, association or any other business entity.

(g)(1) No later than July 1, 2018, every county and municipal governmental entity subject to this section shall establish a written public records policy properly adopted by the appropriate governing authority. The public records policy shall not impose requirements on those requesting records that are more burdensome than state law and shall include:

(A) The process for making requests to inspect public records or receive copies of public records and a copy of any required request form;

(B) The process for responding to requests, including redaction practices;

(C) A statement of any fees charged for copies of public records and the procedures for billing and payment; and

(D) The name or title and the contact information of the individual or individuals within such governmental entity designated as the public records request coordinator.

(2) No later than January 1, 2019, state governmental entities shall promulgate rules regarding public records, which must meet the requirements under subdivisions (g)(1)(A)-(D). Such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act. Any written public records policy of a state governmental entity adopted prior to April 12, 2018, if any, remains in full force and effect until the state governmental entity adopts rules in accordance with this subdivision (g)(2).

**10-7-504. Confidential records — Exceptions.**

(a)(1)(A) The medical records of patients in state, county, and municipal hospitals and medical facilities, and the medical records of persons receiving medical treatment, in whole or in part, at the expense of the state, county, or municipality, shall be treated as confidential and shall not be open for inspection by members of the public. Any records containing the source of body parts for transplantation or any information concerning persons donating body parts for transplantation shall be treated as

confidential and shall not be open for inspection by members of the public. Individually identifiable health information collected, created, or prepared by the department of health shall be treated as confidential and shall not be open for inspection by members of the public; provided, however, that the department may disclose such information as authorized or required by law.

(B) As used in this subdivision (a)(1), "individually identifiable health information" means information related to the physical or mental health of an individual and that explicitly or by implication identifies the individual who is the subject of the information, including by name, address, birth date, death date, admission or discharge date, telephone number, facsimile number, electronic mail address, social security number, medical record number, health plan beneficiary number, account number, certificate or license number, biometric identifier, or any other identifying number, characteristic, or code.

(2)(A) All investigative records of the Tennessee bureau of investigation, the office of inspector general, all criminal investigative files of the department of agriculture and the department of environment and conservation, all criminal investigative files of the motor vehicle enforcement division of the department of safety relating to stolen vehicles or parts, all criminal investigative files and records of the Tennessee alcoholic beverage commission, and all files of the handgun carry permit and driver license issuance divisions of the department of safety relating to bogus handgun carry permits and bogus driver licenses issued to undercover law enforcement agents shall be treated as confidential and shall not be open to inspection by members of the public. The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record; provided, however, that such investigative records of the Tennessee bureau of investigation shall be open to inspection by elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house, or if such inspection is directed by a majority vote of the entire membership of an ad hoc committee appointed specifically to study unsolved civil rights crimes that occurred between 1938 and 1975 and that is composed only of elected members of the general assembly. Any record inspected pursuant to this exception shall maintain its confidentiality throughout the inspection. Records shall not be available to any member of the executive branch except to the governor and to those directly involved in the investigation in the specified agencies.

(B) The records of the departments of agriculture and environment and conservation and the Tennessee alcoholic beverage commission referenced in subdivision (a)(2)(A) shall cease to be confidential when the investigation is closed by the department or commission or when the court in which a criminal prosecution is brought has entered an order concluding all proceedings and the opportunity for direct appeal has been exhausted; provided, however, that any identifying information about a confidential informant or undercover law enforcement agent shall remain confidential.

(C) The Tennessee bureau of investigation, upon written request by an authorized person of a state governmental agency, is authorized to furnish and disclose to the requesting agency the criminal history, records and data from its files, and the files of the federal government and other states

to which it may have access, for the limited purpose of determining whether a license or permit should be issued to any person, corporation, partnership or other entity, to engage in an authorized activity affecting the rights, property or interests of the public or segments thereof.

(3) The records, documents and papers in the possession of the military department which involve the security of the United States and/or the state of Tennessee, including, but not restricted to, national guard personnel records, staff studies and investigations, shall be treated as confidential and shall not be open for inspection by members of the public.

(4)(A) The records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or the student's parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel of the institution or to the public or any agency, except those agencies authorized by the educational institution to conduct specific research or otherwise authorized by the governing board of the institution, without the consent of the student involved or the parent or guardian of a minor student attending any institution of elementary or secondary education, except as otherwise provided by law or regulation pursuant thereto, and except in consequence of due legal process or in cases when the safety of persons or property is involved. The governing board of the institution, the department of education, and the Tennessee higher education commission shall have access on a confidential basis to such records as are required to fulfill their lawful functions. Statistical information not identified with a particular student may be released to any person, agency, or the public; and information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed.

(B) Notwithstanding the provisions of subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by the federal Family Educational Rights and Privacy Act (FERPA), codified in 20 U.S.C. § 1232g, an institution of post-secondary education shall disclose to an alleged victim of any crime of violence, as that term is defined in 18 U.S.C. § 16, or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(C) Notwithstanding the provisions of subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by FERPA, an institution of post-secondary education shall disclose the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence, as that term is defined in 18 U.S.C. § 16, or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(D) For the purpose of this section, the final results of any disciplinary proceeding:

(i) Shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student;

(ii) May include the name of any other student, such as a victim or

witness, only with the written consent of that other student; and

(iii) Shall only apply to disciplinary hearings in which the final results were reached on or after October 7, 1998.

(E) Notwithstanding the provisions of subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by FERPA, an educational institution shall disclose information provided to the institution under former § 40-39-106 [repealed], concerning registered sex offenders who are required to register under former § 40-39-103 [repealed].

(F) Notwithstanding the provisions of subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by FERPA, an institution of higher education shall disclose to a parent or legal guardian of a student information regarding any violation of any federal, state, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol, a controlled substance or a controlled substance analogue, regardless of whether that information is contained in the student's education records, if:

(i) The student is under twenty-one (21) years of age;

(ii) The institution determines that the student has committed a disciplinary violation with respect to such use or possession; and

(iii) The final determination that the student committed such a disciplinary violation was reached on or after October 7, 1998.

(G) Notwithstanding subdivision (a)(4)(A), § 37-5-107 or § 37-1-612, the institution shall release records to the parent or guardian of a victim or alleged victim of child abuse or child sexual abuse pursuant to § 37-1-403(i)(3) or § 37-1-605(d)(2). Any person or entity that is provided access to records under this subdivision (a)(4)(G) shall be required to maintain the records in accordance with state and federal laws and regulations regarding confidentiality.

(5)(A) The following books, records and other materials in the possession of the office of the attorney general and reporter which relate to any pending or contemplated legal or administrative proceeding in which the office of the attorney general and reporter may be involved shall not be open for public inspection:

(i) Books, records or other materials which are confidential or privileged by state law;

(ii) Books, records or other materials relating to investigations conducted by federal law enforcement or federal regulatory agencies, which are confidential or privileged under federal law;

(iii) The work product of the attorney general and reporter or any attorney working under the attorney general and reporter's supervision and control;

(iv) Communications made to or by the attorney general and reporter or any attorney working under the attorney general and reporter's supervision and control in the context of the attorney-client relationship; or

(v) Books, records and other materials in the possession of other departments and agencies which are available for public inspection and copying pursuant to §§ 10-7-503 and 10-7-506. It is the intent of this section to leave subject to public inspection and copying pursuant to §§ 10-7-503 and 10-7-506 such books, records and other materials in the possession of other departments even though copies of the same books,

records and other materials which are also in the possession of the office of the attorney general and reporter are not subject to inspection or copying in the office of the attorney general and reporter; provided, that such records, books and materials are available for copying and inspection in such other departments.

(B) Books, records and other materials made confidential by this subsection (a) which are in the possession of the office of the attorney general and reporter shall be open to inspection by the elected members of the general assembly, if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house and is required for the conduct of legislative business.

(C) Except for the provisions of subdivision (a)(5)(B), the books, records and materials made confidential or privileged by this subdivision (a)(5) shall be disclosed to the public only in the discharge of the duties of the office of the attorney general and reporter.

(6) State agency records containing opinions of value of real and personal property intended to be acquired for a public purpose shall not be open for public inspection until the acquisition thereof has been finalized. This shall not prohibit any party to a condemnation action from making discovery relative to values pursuant to the Rules of Civil Procedure as prescribed by law.

(7) Proposals received pursuant to personal service, professional service, and consultant service contract regulations, and related records, including evaluations and memoranda, shall be available for public inspection only after the completion of evaluation of same by the state. Sealed bids for the purchase of goods and services, and leases of real property, and individual purchase records, including evaluations and memoranda relating to same, shall be available for public inspection only after the completion of evaluation of same by the state.

(8) All investigative records and reports of the internal affairs division of the department of correction or of the department of children's services shall be treated as confidential and shall not be open to inspection by members of the public. However, an employee of the department of correction or of the department of children's services shall be allowed to inspect such investigative records and reports if the records or reports form the basis of an adverse action against the employee. An employee of the department of correction shall also be allowed to inspect such investigative records of the internal affairs division of the department of correction, or relevant portion thereof, prior to a due process hearing at which disciplinary action is considered or issued unless the commissioner of correction specifically denies in writing the employee's request to examine such records prior to the hearing. The release of reports and records shall be in accordance with the Tennessee Rules of Civil Procedure. The court or administrative judge having jurisdiction over the proceedings shall issue appropriate protective orders, when necessary, to ensure that the information is disclosed only to appropriate persons. The information contained in such records and reports shall be disclosed to the public only in compliance with a subpoena or an order of a court of record.

(9)(A) Official health certificates, collected and maintained by the state veterinarian pursuant to rule chapter 0080-2-1 of the department of agriculture, shall be treated as confidential and shall not be open for

inspection by members of the public.

(B) Any data or records provided to or collected by the department of agriculture pursuant to the implementation and operation of premise identification or animal tracking programs shall be considered confidential and shall not be open for inspection by members of the public. Likewise, all contingency plans prepared concerning the department's response to agriculture-related homeland security events shall be considered confidential and shall not be open for inspection by members of the public. The department may disclose data or contingency plans to aid the law enforcement process or to protect human or animal health.

(C) Information received by the state that is required by federal law or regulation to be kept confidential shall be exempt from public disclosure and shall not be open for inspection by members of the public.

(10)(A) The capital plans, marketing information, proprietary information and trade secrets submitted to the Tennessee venture capital network at Middle Tennessee State University shall be treated as confidential and shall not be open for inspection by members of the public.

(B) As used in this subdivision (a)(10), unless the context otherwise requires:

(i) "Capital plans" means plans, feasibility studies, and similar research and information that will contribute to the identification of future business sites and capital investments;

(ii) "Marketing information" means marketing studies, marketing analyses, and similar research and information designed to identify potential customers and business relationships;

(iii) "Proprietary information" means commercial or financial information which is used either directly or indirectly in the business of any person or company submitting information to the Tennessee venture capital network at Middle Tennessee State University, and which gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information;

(iv) "Trade secrets" means manufacturing processes, materials used therein, and costs associated with the manufacturing process of a person or company submitting information to the Tennessee venture capital network at Middle Tennessee State University.

(11) Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Tennessee board of regents or the University of Tennessee, when the owner or donor of such records wishes to place restrictions on access to the records shall be treated as confidential and shall not be open for inspection by members of the public. This exemption shall not apply to any records prepared or received in the course of the operation of state or local governments.

(12) Personal information contained in motor vehicle records shall be treated as confidential and shall only be open for inspection in accordance with title 55, chapter 25.

(13)(A) All memoranda, work notes or products, case files and communications related to mental health intervention techniques conducted by mental health professionals in a group setting to provide job-related critical incident counseling and therapy to law enforcement officers, county and municipal correctional officers, dispatchers, emergency medi-

cal technicians, emergency medical technician-paramedics, and firefighters, both volunteer and professional, are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless all parties waive such privilege. In order for such privilege to apply, the incident counseling and/or therapy shall be conducted by a qualified mental health professional as defined in § 33-1-101.

(B) For the purposes of this section, "group setting" means that more than one (1) person is present with the mental health professional when the incident counseling and/or therapy is being conducted.

(C) All memoranda, work notes or products, case files and communications pursuant to this section shall not be construed to be public records pursuant to this chapter.

(D) Nothing in this section shall be construed as limiting a licensed professional's obligation to report suspected child abuse or limiting such professional's duty to warn about dangerous individuals as provided under §§ 33-3-206 — 33-3-209, or other provisions relevant to the mental health professional's license.

(E) Nothing in this section shall be construed as limiting the ability of a patient or client, or such person's survivor, to discover under the Rules of Civil Procedure or to admit in evidence under the Rules of Evidence any memoranda, work notes or products, case files and communications which are privileged by this section and which are relevant to a health care liability action or any other action by a patient against a mental health professional arising out of the professional relationship. In such an action against a mental health professional, neither shall anything in this section be construed as limiting the ability of the mental health professional to so discover or admit in evidence such memoranda, work notes or products, case files and communications.

(14) All riot, escape and emergency transport plans which are incorporated in a policy and procedures manual of county jails and workhouses or prisons operated by the department of correction or under private contract shall be treated as confidential and shall not be open for inspection by members of the public.

(15)(A) As used in this subdivision (a)(15), unless the context otherwise requires:

(i) "Identifying information" means the home and work addresses and telephone numbers, social security number, and any other information that could reasonably be used to locate the whereabouts of an individual;

(ii) "Protection document" means:

*(a)* An order of protection issued pursuant to title 36, chapter 3, part 6, that has been granted after proper notice and an opportunity to be heard;

*(b)* A similar order of protection issued by the court of another jurisdiction;

*(c)* An extension of an ex parte order of protection granted pursuant to § 36-3-605(a);

*(d)* A similar extension of an ex parte order of protection granted by a court of competent jurisdiction in another jurisdiction;

*(e)* A restraining order issued by a court of competent jurisdiction prohibiting violence against the person to whom it is issued;

*(f)* A court order protecting the confidentiality of certain information issued upon the request of a district attorney general to a victim or witness in a criminal case, whether pending or completed; and

*(g)* An affidavit from the director of a rape crisis center, domestic violence shelter, or human trafficking service provider, as defined in § 36-3-623, certifying that an individual is a victim in need of protection; provided, that such affidavit is on a standardized form to be developed and distributed to such centers, shelters, and providers by the Tennessee task force against domestic violence; and

(iii) "Utility service provider" means any entity, whether public or private, that provides electricity, natural gas, water, or telephone service to customers on a subscription basis, whether or not regulated by the Tennessee public utility commission.

(B) If the procedure set out in this subdivision (a)(15) is followed, identifying information compiled and maintained by a utility service provider concerning a person who has obtained a valid protection document shall be treated as confidential and not open for inspection by the public.

(C) For subdivision (a)(15)(B) to be applicable, a copy of the protection document must be presented during regular business hours by the person to whom it was granted to the records custodian of the utility service provider whose records such person seeks to make confidential, and such person must request that all identifying information about such person be maintained as confidential.

(D) The protection document must at the time of presentation be in full force and effect. The records custodian may assume that a protection document is in full force and effect if it is on the proper form and if on its face it has not expired.

(E) Upon being presented with a valid protection document, the records custodian shall accept receipt of it and maintain it in a separate file containing in alphabetical order all protection documents presented to such records custodian pursuant to this subdivision (a)(15). Nothing in this subdivision (a)(15) shall be construed as prohibiting a records custodian from maintaining an electronic file of such protection documents provided the records custodian retains the original document presented.

(F) Identifying information concerning a person that is maintained as confidential pursuant to this subdivision (a)(15) shall remain confidential until the person who requested such confidentiality notifies in person the records custodian of the appropriate utility service provider that there is no longer a need for such information to remain confidential. A records custodian receiving such notification shall remove the protection document concerning such person from the file maintained pursuant to subdivision (a)(15)(E), and the identifying information about such person shall be treated in the same manner as the identifying information concerning any other customer of the utility. Before removing the protection document and releasing any identifying information, the records custodian of the utility service provider shall require that the person requesting release of the identifying information maintained as confidential produce sufficient identification to satisfy such custodian that that person is the same person as the person to whom the document was originally granted.

(G) After July 1, 1999, if information is requested from a utility service provider about a person other than the requestor and such request is for information that is in whole or in part identifying information, the records custodian of the utility service provider shall check the separate file containing all protection documents that have been presented to such utility. If the person about whom information is being requested has presented a valid protection document to the records custodian in accordance with the procedure set out in this subdivision (a)(15), and has requested that identifying information about such person be maintained as confidential, the records custodian shall redact or refuse to disclose to the requestor any identifying information about such person.

(H) Nothing in this subdivision (a)(15) shall prevent the district attorney general and counsel for the defendant from providing to each other in a pending criminal case, where the constitutional rights of the defendant require it, information which otherwise would be held confidential under this subdivision (a)(15).

(16)(A) As used in this subdivision (a)(16), unless the context otherwise requires:

(i) "Governmental entity" means the state of Tennessee and any county, municipality, city or other political subdivision of the state of Tennessee;

(ii) "Identifying information" means the home and work addresses and telephone numbers, social security number, and any other information that could reasonably be used to locate the whereabouts of an individual;

(iii) "Protection document" means:

*(a)* An order of protection issued pursuant to title 36, chapter 3, part 6, that has been granted after proper notice and an opportunity to be heard;

*(b)* A similar order of protection issued by the court of another jurisdiction;

*(c)* An extension of an ex parte order of protection granted pursuant to § 36-3-605(a);

*(d)* A similar extension of an ex parte order of protection granted by a court of competent jurisdiction in another jurisdiction;

*(e)* A restraining order issued by a court of competent jurisdiction prohibiting violence against the person to whom it is issued;

*(f)* A court order protecting the confidentiality of certain information issued upon the request of a district attorney general to a victim or witness in a criminal case, whether pending or completed; and

*(g)* An affidavit from the director of a rape crisis center or domestic violence shelter certifying that an individual is a victim in need of protection; provided, that such affidavit is on a standardized form to be developed and distributed to such centers and shelters by the Tennessee task force against domestic violence.

(B) If the procedure set out in this subdivision (a)(16) is followed, identifying information compiled and maintained by a governmental entity concerning a person who has obtained a valid protection document may be treated as confidential and may not be open for inspection by the public.

(C) For subdivision (a)(16)(B) to be applicable, a copy of the protection document must be presented during regular business hours by the person

to whom it was granted to the records custodian of the governmental entity whose records such person seeks to make confidential, and such person must request that all identifying information about such person be maintained as confidential.

(D) The protection document presented must at the time of presentation be in full force and effect. The records custodian may assume that a protection document is in full force and effect if it is on the proper form and if on its face it has not expired.

(E) Upon being presented with a valid protection document, the record custodian may accept receipt of it. If the records custodian does not accept receipt of such document, the records custodian shall explain to the person presenting the document why receipt cannot be accepted and that the identifying information concerning such person will not be maintained as confidential. If the records custodian does accept receipt of the protection document, such records custodian shall maintain it in a separate file containing in alphabetical order all protection documents presented to such custodian pursuant to this subdivision (a)(16). Nothing in this subdivision (a)(16) shall be construed as prohibiting a records custodian from maintaining an electronic file of such protection documents; provided, that the custodian retains the original document presented.

(F) Identifying information concerning a person that is maintained as confidential pursuant to this subdivision (a)(16) shall remain confidential until the person requesting such confidentiality notifies in person the appropriate records custodian of the governmental entity that there is no longer a need for such information to remain confidential. A records custodian receiving such notification shall remove the protection document concerning such person from the file maintained pursuant to subdivision (a)(16)(E), and the identifying information about such person shall be treated in the same manner as identifying information maintained by the governmental entity about other persons. Before removing the protection document and releasing any identifying information, the records custodian of the governmental entity shall require that the person requesting release of the identifying information maintained as confidential produce sufficient identification to satisfy such records custodian that that person is the same person as the person to whom the document was originally granted.

(G)(i) After July 1, 1999, if:

*(a)* Information is requested from a governmental entity about a person other than the person making the request;

*(b)* Such request is for information that is in whole or in part identifying information; and

*(c)* The records custodian of the governmental entity to whom the request was made accepts receipt of protection documents and maintains identifying information as confidential;

(ii) then such records custodian shall check the separate file containing all protection documents that have been presented to such entity. If the person about whom information is being requested has presented a valid protection document to the records custodian in accordance with the procedure set out in this subdivision (a)(16), and has requested that identifying information about such person be maintained as confidential, the records custodian shall redact or refuse to disclose to the

requestor any identifying information about such person.

(H) Nothing in this subdivision (a)(16) shall prevent the district attorney general and counsel for the defendant from providing to each other in a pending criminal case, where the constitutional rights of the defendant require it, information which otherwise may be held confidential under this subdivision (a)(16).

(I) In an order of protection case, any document required for filing, other than the forms promulgated by the supreme court pursuant to § 36-3-604(b), shall be treated as confidential and kept under seal except that the clerk may transmit any such document to the Tennessee bureau of investigation, 911 service or emergency response agency or other law enforcement agency.

(17) The telephone number, address, and any other information which could be used to locate the whereabouts of a domestic violence shelter, family safety center, rape crisis center, or human trafficking service provider, as defined in § 36-3-623, may be treated as confidential by a governmental entity, and shall be treated as confidential by a utility service provider, as defined in subdivision (a)(15), upon the director of the shelter, family safety center, crisis center, or human trafficking service provider giving written notice to the records custodian of the appropriate entity or utility that such shelter, family safety center, crisis center, or human trafficking service provider desires that such identifying information be maintained as confidential. The records of family safety centers shall be treated as confidential in the same manner as the records of domestic violence shelters pursuant to § 36-3-623.

(18) Computer programs, software, software manuals, and other types of information manufactured or marketed by persons or entities under legal right and sold, licensed, or donated to Tennessee state boards, agencies, political subdivisions, or higher education institutions shall not be open to public inspection; provided, that computer programs, software, software manuals, and other types of information produced by state or higher education employees at state expense shall be available for inspection as part of an audit or legislative review process.

(19) Credit card account numbers and any related personal identification numbers (PIN) or authorization codes in the possession of the state or a political subdivision thereof shall be maintained as confidential and shall not be open for inspection by members of the public.

(20)(A) For the purposes of this subdivision (a)(20), the following terms shall have the following meaning:

(i) "Consumer" means any person, partnership, limited partnership, corporation, professional corporation, limited liability company, trust, or any other entity, or any user of a utility service;

(ii) "Municipal" and "municipality" means a county, metropolitan government, incorporated city, town of the state, or utility district as created in title 7, chapter 82;

(iii) "Private records" means a credit card number, social security number, tax identification number, financial institution account number, burglar alarm codes, security codes, access codes, and consumer-specific energy and water usage data except for aggregate monthly billing information; and

(iv) "Utility" includes any public electric generation system, electric distribution system, water storage or processing system, water distri-

bution system, gas storage system or facilities related thereto, gas distribution system, wastewater system, telecommunications system, or any services similar to any of the foregoing.

(B) The private records of any utility shall be treated as confidential and shall not be open for inspection by members of the public.

(C) Information made confidential by this subsection (a) shall be redacted wherever possible and nothing in this subsection (a) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains confidential information. For purposes of this section only, it shall be presumed that redaction of such information is possible. The entity requesting the records shall pay all reasonable costs associated with redaction of materials.

(D) Nothing in this subsection (a) shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(E) Nothing in this subsection (a) shall be construed to limit access to information made confidential under this subsection (a), when the consumer expressly authorizes the release of such information.

(21)(A) The following records shall be treated as confidential and shall not be open for public inspection:

(i) Records that would allow a person to identify areas of structural or operational vulnerability of a utility service provider or that would permit unlawful disruption to, or interference with, the services provided by a utility service provider;

(ii) All contingency plans of a governmental entity prepared to respond to or prevent any violent incident, bomb threat, ongoing act of violence at a school or business, ongoing act of violence at a place of public gathering, threat involving a weapon of mass destruction, or terrorist incident.

(B) Documents concerning the cost of governmental utility property, the cost of protecting governmental utility property, the cost of identifying areas of structural or operational vulnerability of a governmental utility, the cost of developing contingency plans for a governmental entity, and the identity of vendors providing goods or services to a governmental entity in connection with the foregoing shall not be confidential. However, any documents relating to these subjects shall not be made available to the public unless information that is confidential under this subsection (a) or any other provision of this chapter has been redacted or deleted from the documents.

(C) As used in this subdivision (a)(21):

(i) "Governmental entity" means the state of Tennessee or any county, municipality, city or other political subdivision of the state of Tennessee;

(ii) "Governmental utility" means a utility service provider that is also a governmental entity; and

(iii) "Utility service provider" means any entity, whether public or private, that provides electric, gas, water, sewer or telephone service, or any combination of the foregoing, to citizens of the state of Tennessee, whether or not regulated by the Tennessee public utility commission.

(D) Nothing in this subdivision (a)(21) shall be construed to limit access to these records by other governmental agencies performing official functions or to preclude any governmental agency from allowing public

access to these records in the course of performing official functions.

(22) The following records shall be treated as confidential and shall not be open for public inspection:

(A) The audit working papers of the comptroller of the treasury and state, county and local government internal audit staffs conducting audits as authorized by § 4-3-304. For purposes of this subdivision (a)(22) "audit working papers" includes, but is not limited to, auditee records, intra-agency and interagency communications, draft reports, schedules, notes, memoranda and all other records relating to an audit or investigation;

(B) All information and records received or generated by the comptroller of the treasury containing allegations of unlawful conduct or fraud, waste or abuse;

(C) All examinations administered by the comptroller of the treasury as part of the assessment certification and education program, including, but not limited to, the total bank of questions from which the tests are developed, the answers, and the answer sheets of individual test takers; and

(D) Survey records, responses, data, identifying information as defined in subdivision (a)(15), intra-agency and interagency communications, and other records received to serve as input for any survey created, obtained, or compiled by the comptroller of the treasury; provided, however, this subdivision (a)(22)(D) shall not apply to any survey conducted by the office of open records counsel, created by § 8-4-601.

(23) All records containing the results of individual teacher evaluations administered pursuant to the policies, guidelines, and criteria adopted by the state board of education under § 49-1-302 shall be treated as confidential and shall not be open to the public. Nothing in this subdivision (a)(23) shall be construed to prevent the LEA, public charter school, state board of education, or department of education from accessing and utilizing such records as required to fulfill their lawful functions. Lawful functions shall include the releasing of such records to parties conducting research in accordance with § 49-1-606(b).

(24) All proprietary information provided to the alcoholic beverage commission shall be treated as confidential and shall not be open for inspection by members of the public. As used in this subdivision (a)(24), "proprietary information" means commercial or financial information which is used either directly or indirectly in the business of any person or company submitting information to the alcoholic beverage commission and which gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information.

(25) A voluntary association that establishes and enforces bylaws or rules for interscholastic sports competition for secondary schools in this state shall have access to records or information from public, charter, non-public, other schools, school officials and parents or guardians of school children as is required to fulfill its duties and functions. Records or information relating to academic performance, financial status of a student or the student's parent or guardian, medical or psychological treatment or testing, and personal family information in the possession of such association shall be confidential.

(26)(A) Job performance evaluations of the following employees shall be treated as confidential and shall not be open for public inspection:

(i) Employees of the department of treasury;

(ii) Employees of the comptroller of the treasury;

(iii) Employees of the secretary of state's office; and

(iv) Employees of public institutions of higher education.

(B) For purposes of this subdivision (a)(26), "job performance evaluations" includes, but is not limited to, job performance evaluations completed by supervisors, communications concerning job performance evaluations, self-evaluations of job performance prepared by employees, job performance evaluation scores, drafts, notes, memoranda, and all other records relating to job performance evaluations.

(C) Nothing in this subdivision (a)(26) shall be construed to limit access to those records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(27) E-mail addresses collected by the department of state's division of business services, except those that may be contained on filings submitted pursuant to title 47, chapter 9, or § 55-3-126(f), shall be treated as confidential and shall not be open to inspection by members of the public.

(28) Proposals and statements of qualifications received by a local government entity in response to a personal service, professional service, or consultant service request for proposals or request for qualifications solicitation, and related records, including, but not limited to, evaluations, names of evaluation committee members, and all related memoranda or notes, shall not be open for public inspection until the intent to award the contract to a particular respondent is announced.

(29)(A) No governmental entity shall publicly disclose personally identifying information of any citizen of the state unless:

(i) Permission is given by the citizen;

(ii) Distribution is authorized under state or federal law; or

(iii) Distribution is made:

*(a)* To a consumer reporting agency as defined by the federal Fair Credit Reporting Act (15 U.S.C. §§ 1681 et seq.);

*(b)* To a financial institution subject to the privacy provisions of the federal Gramm Leach Bliley Act (15 U.S.C. § 6802); or

*(c)* To a financial institution subject to the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 (31 U.S.C. §§ 5311 et seq.).

(B)(i) This subdivision (a)(29) does not prohibit the use of personally identifying information by a governmental entity in the performance of its functions or the disclosure of personally identifying information to another governmental entity, or an agency of the federal government, or a private person or entity that has been authorized to perform certain duties as a contractor of the governmental entity.

(ii) Any person or entity receiving personally identifying information from a governmental entity shall be subject to the same confidentiality provisions as the disclosing entity; provided, however, that the confidentiality provisions applicable to a consumer reporting agency or financial institution as defined in subdivision (a)(29)(A)(iii) shall be governed by federal law.

(C) For purposes of this subdivision (a)(29), "personally identifying information" means:

(i) Social security numbers;

(ii) Official state or government issued driver licenses or identifica-

tion numbers;

(iii) Alien registration numbers or passport numbers;

(iv) Employer or taxpayer identification numbers;

(v) Unique biometric data, such as fingerprints, voice prints, retina or iris images, or other unique physical representations; or

(vi) Unique electronic identification numbers, routing codes or other personal identifying data which enables an individual to obtain merchandise or service or to otherwise financially encumber the legitimate possessor of the identifying data.

(30)(A) Proprietary information, trade secrets, and marketing information submitted to any food-based business incubation service provider created by a municipality shall be treated as confidential and shall not be open for inspection by members of the public.

(B) As used in this subdivision (a)(30):

(i) "Proprietary information":

*(a)* Means commercial or financial information that is used either directly or indirectly in the business of any person or company submitting information to a food-based business incubation service provider, and that gives such person or company an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information; and

*(b)* Does not include lease agreements with the incubation service provider, the identity of businesses or persons using the incubation service provider's services, amounts paid to the incubation service provider by businesses or persons for use of facilities or for other services, or financial records of the incubation service provider;

(ii) "Marketing information" means marketing studies, marketing analyses, and similar research and information designed to identify potential customers and business relationships; and

(iii) "Trade secret" means a manufacturing process, materials used therein, and costs associated with the manufacturing process of any person or company submitting information to a food-based business incubation service provider.

(b) Any record designated "confidential" shall be so treated by agencies in the maintenance, storage and disposition of such confidential records. These records shall be destroyed in such a manner that they cannot be read, interpreted or reconstructed. The destruction shall be in accordance with an approved records disposition authorization from the public records commission.

(c) Notwithstanding any law to the contrary, any confidential public record in existence more than seventy (70) years shall be open for public inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law or unless the record is a record of services for a person for mental illness or intellectual and developmental disabilities. This section does not apply to a record concerning an adoption or a record maintained by the office of vital records or by the Tennessee bureau of investigation. For the purpose of providing an orderly schedule of availability for access to such confidential public records for public inspection, all records created and designated as confidential prior to January 1, 1901, shall be open for public inspection on January 1, 1985. All other public records created and designated as confidential after January 1, 1901 and which are seventy (70) years of age

on January 1, 1985, shall be open for public inspection on January 1, 1986; thereafter all such records shall be open for public inspection pursuant to this part after seventy (70) years from the creation date of such records.

(d) Records of any employee's identity, diagnosis, treatment, or referral for treatment that are maintained by any state or local government employee assistance program shall be confidential; provided, that any such records are maintained separately from personnel and other records regarding such employee that are open for inspection. For purposes of this subsection (d), "employee assistance program" means any program that provides counseling, problem identification, intervention, assessment, or referral for appropriate diagnosis and treatment, and follow-up services to assist employees of such state or local governmental entity who are impaired by personal concerns including, but not limited to, health, marital, family, financial, alcohol, drug, legal, emotional, stress or other personal concerns which may adversely affect employee job performance.

(e) Unpublished telephone numbers in the possession of emergency communications districts created pursuant to title 7, chapter 86, or the emergency communications board created pursuant to § 7-86-302 or its designated agent shall be treated as confidential and shall not be open for inspection by members of the public until such time as any provision of the service contract between the telephone service provider and the consumer providing otherwise is effectuated; provided, that addresses held with such unpublished telephone numbers, or addresses otherwise collected or compiled, and in the possession of emergency communications districts created pursuant to title 7, part 86, or the emergency communications board created pursuant to § 7-86-302 or its designated agent shall be made available upon written request to any county election commission for the purpose of compiling a voter mailing list for a respective county.

(f)(1) The following records or information of any state, county, municipal or other public employee or former employee, or applicant to such position, or of any law enforcement officer commissioned pursuant to § 49-7-118, in the possession of a governmental entity or any person in its capacity as an employer shall be treated as confidential and shall not be open for inspection by members of the public:

(A) Home telephone and personal cell phone numbers;

(B) Bank account and individual health savings account, retirement account and pension account information; provided, that nothing shall limit access to financial records of a governmental employer that show the amounts and sources of contributions to the accounts or the amount of pension or retirement benefits provided to the employee or former employee by the governmental employer;

(C) Social security number;

(D)(i) Residential information, including the street address, city, state and zip code, for any state employee; and

(ii) Residential street address for any county, municipal or other public employee;

(E) Driver license information except where driving or operating a vehicle is part of the employee's job description or job duties or incidental to the performance of the employee's job;

(F) The information listed in subdivisions (f)(1)(A)-(E) of immediate family members, whether or not the immediate family member resides

with the employee, or household members;

(G) Emergency contact information, except for that information open to public inspection in accordance with subdivision (f)(1)(D)(ii); and

(H) Personal, nongovernment issued, email address.

(2) Information made confidential by this subsection (f) shall be redacted wherever possible and nothing in this subsection (f) shall be used to limit or deny access to otherwise public information because a file, a document, or data file contains confidential information.

(3) Nothing in this subsection (f) shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(4) Nothing in this subsection (f) shall be construed to close any personnel records of public officers which are currently open under state law.

(5) Nothing in this subsection (f) shall be construed to limit access to information made confidential under this subsection (f), when the employee expressly authorizes the release of such information.

(6) Notwithstanding any provision to the contrary, the bank account information for any state, county, municipal, or other public employee, former employee or applicant to such position, or any law enforcement officer commissioned pursuant to § 49-7-118, that is received, compiled or maintained by the department of treasury, shall be confidential and not open for inspection by members of the public, regardless of whether the employee is employed by the department of treasury. The bank account information that shall be kept confidential shall include, but not be limited to bank account numbers, transit routing numbers and the name of the financial institutions.

(7) Notwithstanding any provision to the contrary, the following information that is received, compiled or maintained by the department of treasury relating to the department's investment division employees who are so designated in writing by the state treasurer shall be kept confidential and not open for inspection by members of the public: holdings reports, confirmations, transaction reports and account statements relative to securities, investments or other assets disclosed by the employee to the employer, or authorized by the employee to be released to the employer directly or otherwise.

(8)(A) Any person required by law to treat information described in subdivision (f)(1)(D) as confidential commits an offense if such information pertains to a law enforcement officer or a county corrections officer and:

(i) The person acts with criminal negligence, as defined in § 39-11-106, in releasing the information to the public; or

(ii) The person knows the information is to be treated as confidential and intentionally releases the information to the public.

(B)(i) A violation of subdivision (f)(8)(A)(i) is a Class B misdemeanor punishable only by a fine of five hundred dollars ($500).

(ii) A violation of subdivision (f)(8)(A)(ii) is a Class A misdemeanor.

(C) Subdivision (f)(8)(A) shall not apply if:

(i) The law enforcement officer or county corrections officer whose information is treated as confidential under subdivision (f)(1)(D) expressly authorizes the release of such information; or

(ii) The information is released pursuant to court order.

(g)(1)(A)(i) All law enforcement personnel information in the possession of any entity or agency in its capacity as an employer, including officers

commissioned pursuant to § 49-7-118, shall be open for inspection as provided in § 10-7-503(a), except personal information shall be redacted where there is a reason not to disclose as determined by the chief law enforcement officer or the chief law enforcement officer's designee.

(ii) When a request to inspect includes personal information and the request is for a professional, business, or official purpose, the chief law enforcement officer or custodian shall consider the specific circumstances to determine whether there is a reason not to disclose and shall release all information, except information made confidential in subsection (f), if there is not such a reason. In all other circumstances, the officer shall be notified prior to disclosure of the personal information and shall be given a reasonable opportunity to be heard and oppose the release of the information. Nothing in this subdivision (g)(1) shall be construed to limit the requestor's right to judicial review set out in § 10-7-505.

(iii) The chief law enforcement officer shall reserve the right to segregate information that could be used to identify or to locate an officer designated as working undercover.

(B) In addition to the requirements of § 10-7-503(c), the request for a professional, business, or official purpose shall include the person's business address, business telephone number and email address. The request may be made on official or business letterhead and the person making the request shall provide the name and contact number or email address for a supervisor for verification purposes.

(C) If the chief law enforcement official, the chief law enforcement official's designee, or the custodian of the information decides to withhold personal information, a specific reason shall be given to the requestor in writing within two (2) business days, and the file shall be released with the personal information redacted.

(D) For purposes of this subsection (g), personal information shall include the officer's residential address, home and personal cellular telephone number; place of employment; name, work address and telephone numbers of the officer's immediate family; name, location, and telephone number of any educational institution or daycare provider where the officer's spouse or child is enrolled.

(2) Nothing in this subsection (g) shall be used to limit or deny access to otherwise public information because a file, a document, or data file contains some information made confidential by subdivision (g)(1).

(3) Nothing in this subsection (g) shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(4) Except as provided in subdivision (g)(1), nothing in this subsection (g) shall be construed to close personnel records of public officers, which are currently open under state law.

(5) Nothing in this subsection (g) shall be construed to limit access to information made confidential by subdivision (g)(1), when the employee expressly authorizes the release of such information.

(h)(1) Notwithstanding any other law to the contrary, those parts of the record identifying an individual or entity as a person or entity who or that has been or may in the future be directly involved in the process of executing a sentence of death shall be treated as confidential and shall not be open to

public inspection. For the purposes of this section "person or entity" includes, but is not limited to, an employee of the state who has training related to direct involvement in the process of executing a sentence of death, a contractor or employee of a contractor, a volunteer who has direct involvement in the process of executing a sentence of death, or a person or entity involved in the procurement or provision of chemicals, equipment, supplies and other items for use in carrying out a sentence of death. Records made confidential by this section include, but are not limited to, records related to remuneration to a person or entity in connection with such person's or entity's participation in or preparation for the execution of a sentence of death. Such payments shall be made in accordance with a memorandum of understanding between the commissioner of correction and the commissioner of finance and administration in a manner that will protect the public identity of the recipients; provided, that, if a contractor is employed to participate in or prepare for the execution of a sentence of death, the amount of the special payment made to such contractor pursuant to the contract shall be reported by the commissioner of correction to the comptroller of the treasury and such amount shall be a public record.

(2) Information made confidential by this subsection (h) shall be redacted wherever possible and nothing in this subsection (h) shall be used to limit or deny access to otherwise public information because a file, a document, or data file contains confidential information.

(i)(1) Information that would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential. For the purpose of this section, "government property" includes electronic information processing systems, telecommunication systems, or other communications systems of a governmental entity subject to this chapter. For the purpose of this section, "governmental entity" means the state of Tennessee and any county, municipality, city or other political subdivision of the state of Tennessee. Such records include:

(A) Plans, security codes, passwords, combinations, or computer programs used to protect electronic information and government property;

(B) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and

(C) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property.

(2) Information made confidential by this subsection (i) shall be redacted wherever possible and nothing in this subsection (i) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains confidential information.

(3)(A) Documents concerning the cost of protecting government property or electronic information shall not be confidential.

(B) The identity of a vendor that provides to the state goods and services used to protect electronic information processing systems, telecommunication and other communication systems, data storage systems, government employee information, or citizen information shall be confidential.

(C) The identity of a vendor that provides to a governmental entity other than the state goods and services used to protect electronic information processing systems, telecommunication and other communication

systems, data storage systems, government employee information, or citizen information shall not be confidential; provided, that the identity of the vendor shall be confidential if the governing body of the governmental entity votes affirmatively to make such information confidential.

(D) Notwithstanding subdivisions (i)(3)(B) and (C), a governmental entity shall, upon request, provide the identity of a vendor to the comptroller of the treasury, the fiscal review committee of the general assembly, and any member of the general assembly. If the identity of the vendor is confidential under subdivision (i)(3)(B) or (i)(3)(C), the comptroller, fiscal review committee, or member shall exercise reasonable care in maintaining the confidentiality of the identity of the vendor obtained under this subdivision (i)(3)(D).

(j)(1) Notwithstanding any other law to the contrary, identifying information compiled and maintained by the department of correction and the board of parole concerning any person shall be confidential when the person has been notified or requested that notification be provided to the person regarding the status of criminal proceedings or of a convicted felon incarcerated in a department of correction institution, county jail or workhouse or under state supervised probation or parole pursuant to § 40-28-505, § 40-38-103, § 40-38-110, § 40-38-111, § 41-21-240 or § 41-21-242.

(2) For purposes of subdivision (j)(1), "identifying information" means the name, home and work addresses, telephone numbers and social security number of the person being notified or requesting that notification be provided.

(k) The following information regarding victims who apply for compensation under the Criminal Injuries Compensation Act, compiled in title 29, chapter 13, shall be treated as confidential and shall not be open for inspection by members of the public:

(1) Residential information, including the street address, city, state and zip code;

(2) Home telephone and personal cell phone numbers;

(3) Social security number; and

(4) The criminal offense from which the victim is receiving compensation.

(*l*)(1) All applications, certificates, records, reports, legal documents and petitions made or information received pursuant to title 37 that directly or indirectly identifies a child or family receiving services from the department of children's services or that identifies the person who made a report of harm pursuant to § 37-1-403 or § 37-1-605 shall be confidential and shall not be open for public inspection, except as provided by §§ 37-1-131, 37-1-409, 37-1-612, 37-5-107 and 49-6-3051.

(2) The information made confidential pursuant to subdivision (*l*)(1) includes information contained in applications, certifications, records, reports, legal documents and petitions in the possession of not only the department of children's services but any state or local agency, including, but not limited to, law enforcement and the department of education.

(m)(1) Information and records that are directly related to the security of any government building shall be maintained as confidential and shall not be open to public inspection. For purposes of this subsection (m), "government building" means any building that is owned, leased or controlled, in whole or in part, by the state of Tennessee or any county, municipality, city or other political subdivision of the state of Tennessee. Such information and

records include, but are not limited to:

(A) Information and records about alarm and security systems used at the government building, including codes, passwords, wiring diagrams, plans and security procedures and protocols related to the security systems;

(B) Security plans, including security-related contingency planning and emergency response plans;

(C) Assessments of security vulnerability;

(D) Information and records that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and

(E) Surveillance recordings, whether recorded to audio or visual format, or both, except segments of the recordings may be made public when they include an act or incident involving public safety or security or possible criminal activity. In addition, if the recordings are relevant to a civil action or criminal prosecution, then the recordings may be released in compliance with a subpoena or an order of a court of record in accordance with the Tennessee rules of civil or criminal procedure. The court or administrative judge having jurisdiction over the proceedings shall issue appropriate protective orders, when necessary, to ensure that the information is disclosed only to appropriate persons. Release of any segment or segments of the recordings shall not be construed as waiving the confidentiality of the remaining segments of the audio or visual tape.

(2) Information made confidential by this subsection (m) shall be redacted wherever possible and nothing in this subsection (m) shall be used to limit or deny access to otherwise public information because a file or document contains confidential information.

(n)(1) Notwithstanding any law to the contrary, the following documents submitted to the state in response to a request for proposal or other procurement method shall remain confidential after completion of the evaluation period:

(A) Discount, rebate, pricing or other financial arrangements at the individual drug level between pharmaceutical manufacturers, pharmaceutical wholesalers/distributors, and pharmacy benefits managers, as defined in § 56-7-3102, that a proposer:

(i) Submits to the state in response to a request for proposals or other procurement methods for pharmacy-related benefits or services;

(ii) Includes in its cost or price proposal, or provides to the state after the notice of intended award of the contract is issued, where the proposer is the apparent contract awardee; and

(iii) Explicitly marks as confidential and proprietary; and

(B) Discount, rebate, pricing or other financial arrangements at the individual provider level between health care providers and health insurance entities, as defined in § 56-7-109, insurers, insurance arrangements and third party administrators that a proposer:

(i) Submits to the state in response to a request for proposals or other procurement method after the notice of intended award of the contract is issued, where the proposer is the apparent contract awardee, in response to a request by the state for additional information; and

(ii) Explicitly marks as confidential and proprietary.

(2)(A) Information made confidential by subdivision (n)(1) shall be redacted wherever possible; and nothing contained in this subsection (n) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains confidential information. The confidentiality established by subdivision (n)(1)(B) is applicable only to information submitted to the state after completion of the evaluation period; and provision of the notice of intended award of the contract and such information shall only be used to validate the accuracy of the apparent contract awardee's proposal and shall not be used to alter the scope of the information required by the state's procurement document requesting proposals. Any report produced by the state, or on the state's behalf, utilizing the information made confidential by subdivision (n)(1)(B) shall not be considered confidential hereunder so long as such report is disclosed in an aggregate or summary format without disclosing discount, rebate, pricing or other financial arrangements at the individual provider level.

(B) The comptroller of the treasury, for the purpose of conducting audits or program evaluations, shall have access to the discount, rebate, pricing and descriptions of other financial arrangements cited in this subsection (n) as submitted in a procurement or as a report to the contractor; provided, however, that no official, employee or agent of the state of Tennessee may release or provide for the release, in any form, of information subject to confidential custody under this subsection (n).

(o)(1) Except as provided in subdivisions (o)(2)-(4), the following information and records are confidential, not open or available for public inspection and shall not be released in any manner:

(A) All information contained in any application for a handgun carry permit issued pursuant to § 39-17-1351, a permit renewal application, or contained in any materials required to be submitted in order to obtain such a permit;

(B) All information provided to any state or federal agency, to any county, municipality, or other political subdivision, to any official, agent, or employee of any state or federal agency, or obtained by any state or federal agency in the course of its investigation of an applicant for a handgun carry permit; and

(C) Any and all records maintained relative to an application for a handgun carry permit issued pursuant to § 39-17-1351, a permit renewal application, the issuance, renewal, expiration, suspension, or revocation of a handgun carry permit, or the result of any criminal history record check conducted under this part.

(2) Any information or other records regarding an applicant or permit holder may be released to a law enforcement agency for the purpose of conducting an investigation or prosecution, or for determining the validity of a handgun carry permit, or to a child support enforcement agency for purposes of child support enforcement, but shall not be publicly disclosed except as evidence in a criminal or child support enforcement proceeding.

(3) Any person or entity may request the department of safety to search its handgun permit holder database to determine if a named person has a Tennessee handgun carry permit, as of the date of the request, if the person or entity presents with the request a judgment of conviction, criminal history report, order of protection, or other official government document or record that indicates the named person is not eligible to possess a handgun carry

permit under the requirements of § 39-17-1351.

(4) Nothing in this subsection (o) shall prohibit release of the handgun carry permit statistical reports authorized by § 39-17-1351(s).

(p) Information, records, and plans that are related to school security, the district-wide school safety plans or the building-level school safety plans shall not be open to public inspection. Nothing in this part shall be interpreted to prevent school administrators of an LEA from discussing or distributing information to parents or legal guardians of children attending the school regarding procedures for contacting or obtaining a child following a natural disaster.

(q)(1) Where a defendant has plead guilty to, or has been convicted of, and has been sentenced for a sexual offense or violent sexual offense specified in § 40-39-202, the following information regarding the victim of the offense shall be treated as confidential and shall not be open for inspection by members of the public:

(A) Name, unless waived pursuant to subdivision (q)(2);

(B) Home, work and electronic mail addresses;

(C) Telephone numbers;

(D) Social security number; and

(E) Any photographic or video depiction of the victim.

(2)(A) At any time after the defendant or defendants in a case have been sentenced for an offense specified in subdivision (q)(1), the victim of such offense whose name is made confidential pursuant to subdivision (q)(1)(A) may waive such provision and allow the victim's name to be obtained in the same manner as other public records.

(B) The district attorney general prosecuting the case shall notify the victim that the victim has the right to waive the confidentiality of the information set forth in subdivision (q)(1)(A).

(C) If the victim executes a written waiver provided by the district attorney general's office to waive confidentiality pursuant to subdivision (q)(2)(A), the waiver shall be filed in the defendant's case file in the office of the court of competent jurisdiction.

(3) Nothing in this subsection (q) shall prevent the district attorney general or attorney general and reporter and counsel for a defendant from providing to each other in a pending criminal case or appeal, where the constitutional rights of the defendant require it, information which otherwise may be held confidential under this subsection (q).

(4) Nothing in this subsection (q) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains some information made confidential by subdivision (q)(1); provided, that confidential information shall be redacted before any access is granted to a member of the public.

(5) Nothing in this subsection (q) shall be construed to limit access to records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(r) Notwithstanding any provision to the contrary, any bank account information that is received, compiled, or maintained by a state governmental agency, shall be confidential and shall not be an open record for inspection by members of the public. The bank account information that shall be kept confidential includes, but is not limited to, debit card numbers and any related personal identification numbers (PINs) or authorization codes, bank account

numbers, and transit routing numbers.

(s) The records of the insurance verification program created pursuant to the James Lee Atwood Jr. Law, compiled in title 55, chapter 12, part 2, in the possession of the department of revenue or its agent, the department of safety, the department of commerce and insurance, law enforcement, and the judiciary pursuant to the James Lee Atwood Jr. Law, shall be treated as confidential and shall not be open for inspection by members of the public. Subsection (c) shall not apply to the records described in this subsection (s).

(t)(1) The following information concerning the victim of a criminal offense who is a minor shall be treated as confidential and shall not be open for inspection by members of the public:

(A) Name, unless waived pursuant to subdivision (t)(2);

(B) Home, work, and electronic mail addresses;

(C) Telephone numbers;

(D) Social security number;

(E) Any photographic or video depiction of the minor victim; and

(F) Whether the defendant is related to the victim unless the relationship is an essential element of the offense.

(2) The custodial parent or legal guardian of the minor victim of an offense whose name is made confidential pursuant to subdivision (t)(1)(A) may petition a court of record to waive confidentiality and allow the minor victim's name to be obtained in the same manner as other public records. Upon finding good cause shown, the court shall enter the order granting the waiver.

(3) This subsection (t) shall not be construed to:

(A) Restrict the application of Rule 16 of the Tennessee Rules of Criminal Procedure in any court or the disclosure of information required of counsel by the state or federal constitution;

(B) Limit or deny access to otherwise public information because a file, document, or data file contains some information made confidential by subdivision (t)(1); provided, that confidential information shall be redacted before any access is granted to a member of the public;

(C) Limit access to records by law enforcement agencies, courts, or other governmental agencies performing official functions; or

(D) Limit or prevent law enforcement from releasing information included in this subsection (t) for the purposes of locating and identifying missing, exploited, or abducted minors.

(u) **[Effective until July 1, 2022. See the Compiler's Notes.]**

(1) Video taken by a law enforcement body camera that depicts the following shall be treated as confidential and not subject to public inspection:

(A) Minors, when taken within a school that serves any grades from kindergarten through grade twelve (K-12);

(B) The interior of a facility licensed under title 33 or title 68; or

(C) The interior of a private residence that is not being investigated as a crime scene.

(2) Nothing in this subsection (u) shall prevent the district attorney general or attorney general and reporter and counsel for a defendant charged with a criminal offense from providing to each other in a pending criminal case or appeal, where the constitutional rights of the defendant require it, information which otherwise may be held confidential under this subsection (u).

(3) Nothing in this subsection (u) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains some information made confidential by subdivision (u)(1); provided, that confidential information shall be redacted before any access is granted to a member of the public.

(4) Nothing in this subsection (u) shall be construed to limit access to records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(5) This subsection (u) is deleted on July 1, 2022, and shall no longer be effective on and after such date.

(v) Notwithstanding any law to the contrary, examination questions, answer sheets, scoring keys, and other examination data used for the purpose of licensure, certification, or registration of health professionals under title 63 or title 68 shall be treated as confidential and shall not be open for inspection by members of the public; provided, however, that:

(1) A person who has taken such an examination has the right to review the person's own completed examination; and

(2) Final examination scores of persons licensed, certified, or registered as health professionals under title 63 or title 68 shall be open for inspection by members of the public, upon request.

(w)(1) Notwithstanding any law to the contrary, information that is reasonably likely to identify a student accused of committing an alleged sexual offense or alleged violent sexual offense as defined in § 40-39-202 or any information that is reasonably likely to identify the victim of an alleged sexual offense or alleged violent sexual offense as defined in § 40-39-202, must be treated as confidential and not be open for inspection by members of the public.

(2) Nothing in this subsection (w):

(A) Limits or denies access to otherwise public information because a file, document, or data file contains information that is reasonably likely to identify a student accused of committing a sexual offense or violent sexual offense or the victim of a sexual offense or violent sexual offense; however, all information that is reasonably likely to identify a student accused of committing a sexual offense or violent sexual offense, or the victim of a sexual offense or violent sexual offense must be redacted before any access is granted to a member of the public for inspection;

(B) Prevents the district attorney general, the attorney general and reporter, or counsel for a defendant from providing to each other in a pending criminal case or appeal, where the constitutional rights of the defendant require it, information that otherwise may be held confidential under this subsection (w); or

(C) Limits access to records by law enforcement agencies, courts, or other governmental agencies or instrumentalities performing official functions.

### 11-1-102. Records and equipment of various divisions kept by department.

(a) All records, equipment and properties of the division of geology and the former Tennessee state park and forestry commission shall be kept in the department of environment and conservation.

(b) All records, equipment and properties of the division of forestry shall be

kept in the department of agriculture.

(c) Notwithstanding any law to the contrary, the following records as defined by § 10-7-503 of any division of the department of environment and conservation shall be confidential and shall not be open for inspection by members of the public:

(1) Concerning radioactive materials regulated by the United States nuclear regulatory commission or by a state under an agreement with the nuclear regulatory commission pursuant to § 274(b) of the Atomic Energy Act (42 U.S.C. § 2021(b)), that are not available to the public under federal law, regulation, or guidance, or nuclear regulatory commission regulatory issue summary; provided, that records made confidential pursuant to this subdivision (c)(1) may be redacted whenever possible and made open for inspection and copying;

(2) Disclosing the specific location of threatened, endangered, or rare species that would not be available to the public under the federal law or regulation;

(3)(A) Relating to a guest's use of state parks, including a state park guest's:

(i) Name;

(ii) Home or mobile telephone number;

(iii) Address, including the street address or post office box number, city, state, and zip code;

(iv) Social security number;

(v) Email address;

(vi) Reservation, rescheduling, and cancellation information;

(vii) Transaction information, including but not limited to purchases of goods or services; provided, however, that this subdivision (c)(3)(A)(vii) does not apply to aggregated statistical information that does not contain personally identifying information;

(viii) Payment and refund information, including, but not limited to, bank account, credit card, and gift certificate or gift card information;

(ix) Driver license information;

(x) Vehicle registrations, including, but not limited to, automobiles, boats, and off-highway vehicles; and

(xi) Emergency contact information;

(B) Nothing in subdivision (c)(3)(A) limits:

(i) Access to information made confidential pursuant to subdivision (c)(3)(A):

*(a)* By law enforcement agencies, courts, or other governmental agencies performing official functions; or

*(b)* When a guest expressly authorizes the release of such information; or

(ii) The creation and release of an internal investigation report to persons identified within the report, unless the report is subject to a legal privilege against disclosure; or

(4) Containing information regarding the specific location of a site or artifact if the commissioner or the commissioner's designee determines that disclosure of such records would create a substantial risk of damage to or destruction of either the historical value of such site or artifact or private property. For purposes of this subdivision (c)(4), "site" and "artifact" have the same meaning as defined in § 11-6-102.

**11-4-807. Free use of timber from state forests — Designated free-use areas — Notice — State immunity from liability.**

(a) As used in this section, "free-use area" means an area where residents of this state may remove downed and dead timber from a state forest, without cost, for their own personal use as firewood for home heating and cooking; provided, that none of the firewood is offered for sale.

(b) The state forester must designate portions or all of each state forest as free-use areas where such designation is compatible with the comprehensive state forest system plan prepared under § 11-4-802.

(c) Removing downed and dead timber in designated free-use areas shall be in accordance with rules promulgated by the state forester and approved by the commissioner to prevent fires, minimize damage to live trees and other resources, and to avoid confusion and safety risks among users.

(d) The state forester must publish notice of any designation made under subsection (b) on the department's website in a manner approved by the commissioner.

(e) This state and its officers and employees shall not be liable to any person for any personal injury, property damage, or death sustained or caused by an individual while removing downed and dead timber in a designated free-use area unless conduct of the state or a state officer or employee that directly caused the personal injury, property damage, or death was intentional tortious conduct or an act or omission constituting gross negligence.

**11-6-103. Archaeological advisory council.**

(a) An eleven-member archaeological advisory council to the commissioner of environment and conservation and the state archaeologist is hereby created.

(b)(1) Members of the archaeological advisory council shall serve staggered terms, and to such end the governor shall by June 30, 1983, appoint one (1) member to serve a term of four (4) years.

(2) The governor shall by June 30, 1986, appoint:

(A) One (1) member to serve a term of two (2) years;

(B) One (1) member to serve a term of three (3) years;

(C) One (1) member to serve a term of four (4) years;

(D) Two (2) members to serve terms of five (5) years;

(E) Three (3) members to serve terms of three (3), four (4), and five (5) years, respectively, to be appointed by June 30, 1990; and

(F) The initial appointment for the anthropologist representing Middle Tennessee State University shall be for two (2) years, to be appointed by June 30, 1995.

(3) Thereafter, each newly-appointed member shall be appointed to serve a term of five (5) years and may be subject to reappointment.

(c) The council shall be composed of:

(1) Five (5) anthropologists representing the University of Tennessee, University of Memphis, Vanderbilt University, Middle Tennessee State University, and East Tennessee State University, respectively;

(2) One (1) representative from the Tennessee historical commission;

(3) One (1) representative from a recognized archaeological association in Tennessee;

(4) Three (3) members shall be persons of Native American descent and representative of the Native American community in Tennessee; and

(5) One (1) member from the public at large.

(d) The members of the council shall receive no salary; provided, that travel expenses incurred by such members in the performance of duties with respect to the council shall be reimbursed in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(e) The duties of the council shall be to advise the commissioner of environment and conservation and the state archaeologist on all matters of policy relating to the activities of the division and to the employment of professional personnel. It is the responsibility of this council to organize and set forth its rules and operational procedures.

(f) The council and the state archaeologist shall submit annually a comprehensive report of their activities and the results of their studies to the commissioner and to the governor and to the members of the general assembly in the first month of each calendar year. They shall also from time to time submit such additional and special reports as are deemed advisable.

### 11-8-103. Ocoee River recreation and economic development fund — Purpose of chapter.

(a) The Ocoee River recreation and economic development fund is established as a special agency account in the general fund.

(b) The purpose of this chapter is to support recreational water releases on the Ocoee River, to provide for management of the Ocoee River management zone by Tennessee State Parks, and to encourage the economic growth of the Ocoee River.

(c) All revenue collected from the Ocoee River recreation fee, pursuant to § 11-8-107, shall be deposited into the development fund.

(d) The development fund shall be available to the commissioner for expenditures for the following purposes:

(1) All costs incurred by the department associated with management of the Ocoee River management zone; and

(2) Expenses of the board and the department associated with administration of the development fund.

(e) Subject to availability of sufficient moneys in the development fund beyond those needed for expenditures for the purposes stated in subsection (d), the commissioner and the board may use the development fund for expenditures for the following purposes:

(1) Infrastructure upgrades to the Ocoee River management zone;

(2) Tourism promotion and economic development activities that benefit the Ocoee River management zone; and

(3) Other reasonable expenses as determined by the commissioner or the board to be necessary to carry out the intent of this chapter.

(f) The development fund may accept funds from any public or private entity and may solicit private grants or donations.

(g) Moneys from the development fund shall not be transferred or otherwise revert to the general fund.

(h) The state treasurer shall invest moneys in the development fund, in accordance with § 9-4-603, except as qualified by this chapter. The state treasurer shall hold the development fund separate and apart from all other moneys, funds, and accounts.

(i) Any balance remaining unexpended at the end of a fiscal year in the

development fund shall be carried forward into the subsequent fiscal year.

(j) Investment earnings credited to the assets of the development fund, including, but not limited to, interest, shall be carried forward into the subsequent fiscal year.

(k) Moneys received by a nonprofit entity created pursuant to § 11-8-105(a)(3), shall be expended only in accordance with, and for the purposes stated in, this chapter.

**11-8-104. Ocoee River recreation and economic development fund board.**

(a) On July 1, 2018, there is established the Ocoee River recreation and economic development fund board. The board shall be attached to the department of environment and conservation for administrative purposes, but shall be independent of the department.

(b)(1) The board shall consist of nine (9) voting members as follows:

(A) The manager of the Hiwassee/Ocoee Scenic River State Park;

(B) The comptroller of the treasury, or the comptroller's designee;

(C) The state treasurer, or the treasurer's designee;

(D) The Polk County mayor;

(E) One (1) member, appointed by the governor, who represents economic development interests;

(F) One (1) member, appointed by the governor, who represents private boater interests; and

(G) Three (3) members, appointed by the governor, who are Ocoee River management zone commercial permit holders.

(2) The following shall serve as ex officio, nonvoting members of the board:

(A) The commissioner of environment and conservation, or the commissioner's designee;

(B) The commissioner of tourism, or the commissioner's designee;

(C) The commissioner of economic and community development, or the commissioner's designee;

(D) The executive director of the wildlife resources agency, or the executive director's designee;

(E) The member of the house of representatives whose legislative district includes the majority of the Ocoee River management zone; and

(F) The member of the senate whose legislative district includes the majority of the Ocoee River management zone.

(c) Appointed board members shall serve four-year, renewable terms. In order that the members of the board serve staggered terms, the initial appointments to the board shall consist of:

(1) One (1) commercial permit holder member to serve a term of two (2) years;

(2) One (1) commercial permit holder member and one (1) private boater member to serve a term of three (3) years; and

(3) One (1) commercial permit holder member and one (1) economic development member to serve a term of four (4) years.

(d) The initial members of the board shall be appointed by June 15, 2018, and take office on July 1, 2018. All subsequent appointments shall be made by June 15, begin on July 1, and expire on June 30 of the appropriate years.

(e) Should a board position become vacant through resignation, removal, or

other cause, the governor shall appoint a new member to serve the unexpired term. A board member shall continue to serve on the board after the expiration of the member's term until a new member is appointed.

(f) Seven (7) members of the board shall constitute a quorum for the purpose of conducting business.

(g) Board members shall receive no compensation for their service on the board, but may be reimbursed for those expenses allowed by the comprehensive travel regulations, as promulgated by the department of finance and administration and approved by the attorney general and reporter.

**11-11-203. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Adventure tourism" means outdoor recreational opportunities such as equine and motorized trail riding, white water rafting and kayaking, rappelling, road biking, rock climbing, hang-gliding, spelunking, shooting sports, mountain biking, canoeing, paragliding, rowing, zip lining and other such activities;

(2) "Adventure tourism district" means a defined geographic area identified and authorized by a two-thirds (⅔) vote of a local governing body and approved by the department and the department of environment and conservation as an area where the promotion of adventure tourism is encouraged;

(3) "All-terrain vehicle" means either:

(A) [Deleted by 2018 amendment.]

(B) A motorized vehicle with not less than four (4) nonhighway tires, nor more than six (6) nonhighway tires, that is limited in total dry weight up to two thousand five hundred pounds (2,500 lbs.), and is eighty inches (80″) or less in width;

(C) A motor vehicle as defined in § 55-1-103, which possesses a four-wheel drive capability and that is designed and suitable for operation off the highway on natural terrain; or

(D) A motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, snow, or other natural terrain and not intended for use on public roads traveling on two (2) wheels and having a seat or saddle designed to be straddled by the operator and handlebars for steering control;

(4) "Best interests of the state" means a determination by the commissioner of revenue, with approval by the commissioner of tourist development, that:

(A) The qualified business enterprise or enterprises made within or adjacent to an adventure tourism district is a result of the special allocation and tax credits provided for in § 67-4-2109(b)(2)(C);

(B) The adventure tourism district is a result of such qualified business enterprise or enterprises; and

(C) The zone is not structured to create a competitive advantage for one business;

(5) "Canoeing" means the use of canoe for navigation of waterways;

(6) "Department" means the department of tourist development;

(7) "Hang-gliding" means an air sport in which a pilot flies a light and un-motorized aircraft launched by foot;

(8) "Kayaking" means the use of a kayak for navigation of waterways;

(9) "Local governing body" means the elected legislative body of a municipal, metropolitan or county government;

(10) "Motorized trail riding" means the exploration of trails and natural areas by use of all-terrain vehicles;

(11) "Mountain biking" means the exploration of trails and natural areas by the use of bicycles;

(12) "Paragliding" means the air sport in which a pilot flies a light motorized aircraft that uses a parachute to stay airborne;

(13) "Rappelling" is the controlled descent down a rope by climbers used to explore cliffs or slopes that are too steep to descend without protection;

(14) "Road biking" means both noncompetitive and competitive bicycling events that take place on improved roads;

(15) "Rock climbing" means the recreational sport of climbing up or across natural rock formations;

(16) "Rowing" means the propelling of a boat by means of oars;

(17) "Shooting sports" means the recreational sport of firing handguns, rifles or shotguns at moving or fixed targets;

(18) "Spelunking" means the recreational sport of exploring noncommercial cave systems;

(19) "Triathlon" means the recreational activity of sporting contests involving open waters swimming, bicycle riding, and running, whether on trails or improved roads;

(20) "White water rafting" means the recreational activity of using an inflatable raft or kayak to navigate rough water; and

(21) "Zip lining" means the exploration of natural areas by use of above-ground cable systems.

**11-13-108. General rules for establishing boundaries of area — Establishment of Duck River area.**

(a) The commissioner of environment and conservation may, within two (2) years after a river or segment of river has been made part of the state scenic rivers system, determine generally the boundaries of the scenic river area associated with that river or river segment. If a determination of the boundaries is made, the determination shall be in accordance with the following river classifications:

(1) For a Class I river (the gorge and swamp rivers), the boundary shall be established in such a way that it includes at least the entire scenic vista from the river and its banks. For gorge rivers, the boundaries shall be no more than three thousand feet (3,000′) from the center of the river on each side. For swamp rivers, the boundaries shall be no more than one thousand feet (1,000′) from the center of the river on each side; and

(2) For Class II or Class III river areas, the boundary shall include the vista from the river and shall be no more than four hundred fifty feet (450′) from the usual banks of the river on each side.

(b)(1) If the commissioner of environment and conservation determines that the establishment of boundaries on that segment of Duck River established as a scenic river under § 11-13-104 is to be established then the commissioner shall initiate an outreach program to educate property owners and local communities in the area of this river segment about the program and

the environmental and economic benefit the establishment of such boundaries provides. The commissioner shall then, using sound discretion and considering all relevant circumstances, establish a perpetual boundary of the scenic river area associated with the river or river segment.

(2)(A) If the proposed boundary of the scenic river area includes private property, then the state shall obtain the notarized consent of the private landowner before establishing the boundary.

(B) The department shall only establish boundaries on this river based upon the consent of the owner of any affected private lands.

**11-14-406. Compensation fund.**

(a) There is hereby created a special agency account in the state general fund to be known as the compensation fund. Expenditures from such fund shall only be made to implement and effectuate the purposes of this part. Funds deposited in such fund shall not revert at the end of any fiscal year and all interest accruing on investments and deposits of the fund shall be returned to and made a part of the fund. The first three hundred thousand dollars ($300,000) deposited in the 1986 wetland acquisition fund shall be transferred and credited to the "compensation fund."

(b) On or before January 1 of each year, the commissioner of finance and administration shall certify to the comptroller of the treasury such information as is necessary to identify the parcels of property which have been rendered tax exempt pursuant to this part. The comptroller of the treasury shall determine the appropriate tax rate and assessed value of every parcel of property acquired by the wildlife resources agency regardless of whether the land was acquired with wetlands funds, and, on or before March 1 of each year, shall certify to the commissioner of finance and administration the amount of property tax revenue lost by each affected city or county the prior calendar year. The assessed value shall be based on the use value provided for in title 67, chapter 5, part 10, if the property is of sufficient size to have been classified under that part. Acquisition pursuant to this part of property classified under title 67, chapter 5, part 10, shall not constitute a change in the use of the property, and no rollback taxes shall become due solely as a result of such acquisition. If the property is not of sufficient size to have been classified under title 67, chapter 5, part 10, the assessed value shall be determined according to the same basis as other like property within the jurisdiction. Each subsequent yearly reimbursement amount shall be based on the same assessed value, tax rate and use in effect on the date of purchase. The commissioner of finance and administration shall reimburse each affected city and county the amount so determined from funds available in the compensation fund. In any year in which funds available in the compensation fund are insufficient to fully reimburse such cities and counties, the commissioner of finance and administration shall effect a transfer of funds from the 1986 Wetland Acquisition Fund to the compensation fund in an amount sufficient to fully reimburse the affected cities and counties. Funds transferred from the 1986 Wetland Acquisition Fund to the compensation fund along with interest, if any, accruing on such funds after their transfer to the compensation fund, shall be expended to reimburse affected cities and counties only for lands purchased under the U.A. Moore Wetlands Acquisition Act. If there is an amount owing on June 19, 1997, to a city or a county for a reimbursement, due to insufficient funds having been

available in the compensation fund, such amount owing shall be paid to the affected city or county under the terms of this part.

**12-2-112. Disposal of surplus interests in real property and energy resources.**

(a) The commissioner of general services, with the approval of the governor and attorney general and reporter, may sell, lease or otherwise convey any interest in surplus state real property according to the following provisions:

(1) Real property shall not be sold in fee, and any interest or rights in minerals, coal, natural gas, oil, timber and any other energy related resources shall not be conveyed if there is any feasible use for the property by any state agency, as determined by the governor, the attorney general and reporter and the commissioner of general services. Should the state agency have an approved use for the property, the commissioner is authorized to transfer jurisdiction to the appropriate agency at no cost;

(2) As to sales in fee, and to any conveyance of any interest or rights in minerals, coal, natural gas, oil, timber and any other energy-related resources, such property shall be appraised by at least two (2) independent, qualified appraisers, wholly disconnected from state government or any other legal governmental entity except as may otherwise be determined by the state building commission;

(3) As to sales in fee, and to any conveyance of any interest or rights in minerals, coal, natural gas, oil, timber and any other energy-related resources, such surplus property having an average appraised value exceeding twenty-five thousand dollars ($25,000) shall be advertised not less than one (1) time in a newspaper which is local with respect to the property to be sold and once in a newspaper in either Nashville, Memphis, Chattanooga or Knoxville, whichever is nearest by air; provided, that if one (1) of these four (4) cities is the situs of the property to be sold, advertisement shall be made twice within a two-week period. Any interest or rights in minerals, coal, natural gas, oil, timber and any other energy-related resources shall be sold by the sealed bid method with the condition that the state shall have the right to refuse any and all bids. Fee interests in real property shall be sold by the sealed bid method or by public auction in accordance with policies established by the state building commission, with the condition that the state shall have the rights to refuse any and all bids. As used in this subdivision (a)(3), "public auction" may include, without limitation, Internet auctions and in-person auctions so long as such auctions are open for participation by the public at large. Upon the approval of the governor, the attorney general and reporter, and the commissioner, the successful bidder will be notified of the intent to award within a period of forty-five (45) days commencing from the date of bid openings;

(4) All interests in real property other than the fee interest, including, but not limited to, leases, easements and rights-of-way, shall be disposed of in accordance with policies established by the state building commission, including advertisement and appraisal where deemed appropriate by the state building commission; provided, however, that, if the property was acquired by or for the use of the department of transportation for right-of-way, then the department of transportation may convey the interests in the property by negotiated sale or disposal to any legal governmental body for a

public use purpose, subject to reversion to the department of transportation for failure to continue public ownership and use, or to the former owner or an adjoining owner for fair market value, in accordance with procedures established in subdivision (a)(8). If approved by the department of transportation, and the federal highway administration where required by federal law, a functional replacement of real property may be considered to continue public ownership and use, and shall not be subject to reversion to the department of transportation, if the replacement property is at least equal in fair market value to the property being replaced. For the purposes of this subdivision (a)(4), a functional replacement of real property means real property that serves the same function as the real property conveyed by the state by providing equivalent utility, as determined by the department of transportation, and the federal highway administration where required by federal law. The fair market value of the replacement property shall be determined in accordance with the procedures for determining the fair market value of the surplus property established in subdivision (a)(8). This subdivision (a)(4) shall not apply to the disposal or conveyance in any manner of any interest or rights in minerals, coal, natural gas, oil, timber and any other energy related resources; provided, that the commission shall have authority to promulgate rules and regulations over the disposal or conveyances pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(5) Subdivisions (a)(2) and (3) may be waived to permit the negotiated sale of any such property to any legal governmental body for a public use purpose, and, further, to permit any other negotiated sale or disposal without advertisement or appraisal as the state building commission may deem in the best interest of the state. Subdivisions (a)(2) and (3) may also be waived to permit the commissioner, with the approval of the attorney general and reporter and the governor, to grant such easements and rights-of-way as are deemed necessary to provide services for the benefit of the state agency, department or institution or of the general public;

(6) The final conveyance of any property shall be effective to vest in the purchaser thereof such title as the state shall have in the premises; the state shall not be liable upon any covenant of warranty or seisin irrespective of whether or not the same is contained in such conveyance;

(7) The funds so collected from the sale and conveyance of such property not otherwise specified shall be paid into the general fund of the state; provided, that all expenses incurred during such sale shall be paid from the proceeds and the balance of such proceeds shall be deposited into the general fund, except where otherwise provided by law. In instances in which other law specifies that the proceeds be deposited into a fund other than the general fund or into a special account in the general fund, the expenses of such sale or conveyance shall be paid from such other fund or special account. The funds so collected from the sale and conveyance of any property which has been deemed surplus right-of-way held for the use or benefit of the department of transportation shall be paid into the highway fund, and all expenses incurred during such sale shall be paid from the highway fund;

(8)(A) If the property was acquired by or for the use of the department of transportation for right-of-way, if its fair market value does not exceed seventy-five thousand dollars ($75,000) or such amounts in excess of seventy-five thousand dollars ($75,000) as may be approved by the state

building commission, and if any adjoining property owner or the former owner of that property wishes to purchase the property, or if a legal governmental body wishes to acquire the property for a public use purpose under this subdivision (a)(8)(A) or subdivision (a)(8)(B), or if a legal governmental body wishes to acquire the property for fair market value as provided in subdivision (a)(8)(D), then this subdivision (a)(8) shall apply, notwithstanding any other provision of this section. Instead, the commissioner of transportation is authorized to declare the property surplus if the commissioner determines that the purpose of its acquisition has been completed and that the property is no longer needed by the department of transportation or another state agency, and may sell it to any adjoining property owner or the former owner of that property, for an amount representing not less than the fair market value, together with costs; provided, however, that the department of transportation may convey the property or any interest in the property by negotiated sale or disposal to any legal governmental body for a public use purpose, subject to reversion to the department of transportation for failure to continue public ownership and use. If approved by the department of transportation, and the federal highway administration where required by federal law, the department of transportation may accept real property in exchange for the surplus real property conveyed if the replacement property is at least equal in fair market value to the surplus property being replaced. The fair market value of the replacement property shall be determined in accordance with the procedures for determining the fair market value of the surplus property established in this subdivision (a)(8). The commissioner of general services shall concur in the fair market value amount or in the negotiated sale or disposal of the property to a legal governmental body for a public use purpose. If in the judgment of the department of transportation a survey of the property is required, the prospective purchaser shall pay the department of transportation in advance for the cost of the survey;

(B) The former property owner's right shall terminate ten (10) years after the date of acquisition by the department of transportation by conveyance or date of taking in condemnation of the subject property by the department. The former property owner's right shall not transfer to the owner's heirs. The former property owner shall have first right of refusal to purchase the right-of-way; provided, however, that the department may convey the property or any interest in the property to a legal governmental body for a public use purpose, subject to reversion to the department of transportation for failure to continue public ownership and use, without offering the former owner a first right of refusal to purchase the property. If the former property owner relinquishes the owner's right or the right has expired, the property may be conveyed to a legal governmental body in accordance with subdivision (a)(8)(D) or to an adjoining property owner. If more than one (1) adjoining property owner is interested in purchasing the right-of-way, the interested adjoining property owners shall submit sealed bids to the department of transportation, with the minimum bid price being the fair market value determined by appraisal, and the property may be conveyed to the adjoining property owner offering the highest responsive bid. The successful bidder shall reimburse any unsuccessful prospective purchaser for survey and appraisal costs incurred in accordance with the requirements of this subdi-

vision (a)(8);

(C) For the purposes of this subdivision (a)(8), the fair market value of surplus right-of-way property shall be determined in accordance with the following procedures:

(i) The department of transportation shall make a preliminary planning estimate of the fair market value of the property in accordance with procedures that the department may establish;

(ii) If the department of transportation's preliminary planning estimate of the fair market value of the property is ten thousand dollars ($10,000) or less, the property shall be appraised by an appraiser on staff with the department of transportation at no cost to the prospective purchaser;

(iii) If the department of transportation's preliminary planning estimate or subsequent staff appraisal of the fair market value of the property is greater than ten thousand dollars ($10,000), the property shall be appraised by an independent appraiser whose services shall be procured by the department of transportation in accordance with state law. The independent appraiser must be licensed and certified by the Tennessee real estate appraiser commission and shall be selected from a list of prequalified appraisers approved by the department of transportation. The prospective purchaser shall pay the department of transportation in advance for the cost of the independent appraisal;

(iv) The initial appraisal shall be subject to review and approval by the department of transportation in accordance with procedures that the department of transportation may establish. The appraisal review shall be conducted, at the department of transportation's expense, by a review appraiser who is licensed and certified by the Tennessee real estate appraiser commission and who is either employed by or under contract with the department of transportation. The review appraiser shall either approve the initial appraisal or reject the initial appraisal and reappraise the property to determine the fair market value of the property, subject to the approval of the director of the right-of-way division of the department of transportation or the director's designee. If approved by the director or the director's designee, the review appraiser's determination shall be presented to a prospective purchaser as the fair market value of the property;

(v) If a prospective purchaser does not accept the appraised fair market value of the property as determined by the review appraiser, the prospective purchaser may request a final review and reconsideration by the commissioner of transportation or the commissioner's designee. The commissioner or the commissioner's designee shall obtain a final review of the appraisal by a review appraiser who is licensed and certified by the Tennessee real estate appraiser commission and who is either employed by or under contract with the department of transportation; provided, however, that the final review appraiser shall not be the same person who previously reviewed the initial appraisal. The prospective purchaser shall be given the opportunity to present information concerning the value of the property for the consideration of the final review appraiser. The final review appraiser shall consider all relevant information, including any appraisal previously performed by or for the department of transportation, and shall have the authority to

reappraise or make adjustments in the appraised fair market value, in accordance with generally accepted professional standards and guidelines. The final review appraiser's determination of the fair market value of the property shall be subject to the approval of the commissioner or the commissioner's designee; and

(vi) The department's final determination of the fair market value of the property is subject to the concurrence of the commissioner of general services;

(D) Notwithstanding any law to the contrary, if the department of transportation's staff appraisal of a tract of surplus real property under subdivision (a)(8)(C)(ii) is equal to or less than ten thousand dollars ($10,000), the department may transfer its interest in the property to any legal governmental body for the appraised value of the property, subject to the former owner's right of first refusal under subdivision (a)(8)(B), without further appraisal or approval under this section, except for the appraisal review provided in subdivision (a)(8)(C)(iv);

(9) If property acquired by the department of transportation for a right-of-way through the exercise of eminent domain or otherwise is determined by the commissioner of transportation to be no longer needed by the department of transportation, and the excess property is not transferred to another state agency or conveyed to some other legal governmental body as provided in this section, and the excess property is not disposed of in accordance with subdivision (a)(8), the excess property shall be disposed of by the department of general services in accordance with the following procedures:

(A) The excess property shall be sold to any adjoining property owner or the former owner of that property at fair market value. All funds collected from the sale of the property shall be paid into the highway fund, as provided in subdivision (a)(7);

(B) The costs associated with the conveyance of the land, including, but not limited to, the cost of appraising and surveying the property, shall be reimbursed to the state by the purchaser of the property;

(C) Any conveyance of the property made pursuant to this subsection (a) shall be subject to approval in advance by the state building commission;

(D) If no adjoining property owner or the former owner of that property is able and willing to purchase the excess property at fair market value, then the excess property may be disposed of in accordance with existing statutes;

(E) For the purposes of this subsection (a), the fair market value of the excess property shall initially be determined by the state through procedures established by the state building commission. If such initial determination of fair market value is deemed unacceptable by the intended purchaser, the fair market value of the excess property shall then be determined by averaging the state's initial determination of fair market value with two (2) additional fair market value appraisals of the excess property. The two (2) additional appraisals shall be performed by two (2) nonassociated appraisers from the locality in which the property is located. The two (2) appraisers shall be mutually agreed upon by the parties to the conveyance; none of the appraisers involved shall have any personal or financial interest in the conveyance;

(F) The former property owner's right shall terminate ten (10) years after the date of acquisition by the department of transportation by conveyance or date of taking in condemnation of the subject property by the department. The former property owner's right shall not transfer to such owner's heirs. The former property owner shall have the first right of refusal to purchase the right-of-way. If the former property owner relinquishes such owner's right, the adjoining property owners interested in purchasing the right-of-way shall submit sealed bids with the minimum bid price being the fair market value determined by appraisal;

(G) If approved by the department of transportation, and the federal highway administration where required by federal law, the department of general services may accept real property in exchange for the excess real property conveyed if the replacement property is at least equal in fair market value to the excess property being replaced. The fair market value of the replacement property shall be determined in accordance with the procedures for determining the fair market value of the excess property established in this subdivision (a)(9);

(10) Notwithstanding any provision to the contrary, any funds collected from the lease of surplus state real property for communications relay apparatus or antennae sites that would otherwise be paid into the general fund of the state pursuant to subdivision (a)(7) shall be specifically earmarked for maintenance of state park facilities, including furniture, fixtures and equipment. Any such funds that are unencumbered or unexpended at the end of any fiscal year shall not revert to the state general fund, but shall be carried forward until expended for the purposes stated in this section;

(11)(A) Notwithstanding subdivision (a)(9) or any other law to the contrary, when and if the state transfers to the local government in which any tract or combination of tracts of property which are contiguous to one another and exceed twenty (20) acres in size and which were acquired by the department of transportation as part of an uncompleted and cancelled interstate and defense highway right-of-way in a county with a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census, is located, the transfer shall be subject to final approval by the state building commission and shall only be used for redevelopment pursuant to subdivision (a)(11)(B).

(B) Any property transferred pursuant to subdivision (a)(11)(A) shall be subject to the following restrictions:

(i) Development by the local government of a flowering-tree landscaped parkway-type roadway in accordance with title 54, chapter 17, part 1;

(ii) Development of the remaining property, with priority given to subdivision (a)(11)(B)(ii)(*a*), for:

*(a)* Housing; provided, that some of the land is used for development of affordable housing with the needs of the community for affordable housing properly addressed in that use;

*(b)* School land;

*(c)* Park land;

*(d)* Public spaces; and

*(e)* Associated mixed-use neighborhood uses; and

(iii) The roadway involved herein from the end of Sam Cooper Boulevard to East Parkway and all the land involved herein shall conform to the limitations regulating scenic highways as in § 54-17-109,

except for § 54-17-109(11); and

(12) Notwithstanding any provisions of this section to the contrary, if property acquired by or for the use of the department of transportation for right-of-way has not been disposed of in accordance with subdivision (a)(8) or (a)(9) and no person or entity, including the former owner of that property, has been able and willing to purchase the property within five (5) years after the date the property has been offered for sale by the department of transportation, then the property may be sold at public auction pursuant to rules promulgated by the commissioner of transportation.

(b) The commissioner of general services shall notify the house of representatives and senate member or members from the district in which the property to be sold or conveyed is located, and the notification shall be at least twenty (20) days prior to the agreement of sale or conveyance.

(c) This section and § 4-15-102 do not apply to timber which is harvested and sold pursuant to bona fide timber management practices. For the purpose of harvesting and selling of timber pursuant to bona fide timber management practices, the timber shall be treated as personal property and sold pursuant to rules and regulations of the procurement commission as provided in part 4 of this chapter.

(d) This section and § 4-15-102 do not apply to leasing surplus state real property under crop lease arrangements by the Tennessee wildlife resources agency which shall be responsible for the leasing of such surplus state real property for crop leases, as well as being responsible for the administration of all crop leases; such leasing and administration shall be through procedures reviewed and approved by the state building commission.

**12-3-312. Contract Accountability and Responsible Employment (CARE) Act.**

(a) As used in this section, "state agency" also includes institutions of higher education. "State agency" does not include the department of treasury, the Tennessee financial literacy commission, the Tennessee consolidated retirement system, or any office of a constitutional officer of this state.

(b) Prior to the procurement of a contract for services between a state agency and a private party in excess of two and one-half million dollars ($2,500,000) and that results in the layoff or furlough of one (1) or more state employees, the state agency shall produce an economic impact statement using professionally accepted methodologies. The economic impact statement must include the information identified in § 4-33-104(b).

(c) An economic impact statement produced under subsection (b) must be submitted to the fiscal review committee for dissemination to the members of the general assembly no less than forty-five (45) days prior to the execution of the contract.

(d) Upon receipt of an economic impact statement under subsection (c), the chair of the fiscal review committee may schedule a hearing to review the economic impact statement.

(e) A state agency notified of a hearing conducted under subsection (d) shall provide the fiscal review committee, upon request, any information reasonably related to the proposed contract that the committee deems relevant; provided, that a state agency is not required to produce privileged information or any record that is not open for public inspection pursuant to

state law.

(f) Upon compliance with subsections (b) and (c), nothing in this section prohibits a state agency from executing a proposed contract for services that is subject to this section.

(g) This section applies only to contracts procured on and after March 9, 2018, and does not apply to any contract for services executed on or before March 9, 2018, including, but not limited to, any option for renewal or extension of such contract.

**12-3-1201. Purchases for local governmental units.**

(a) The central procurement office may, upon request, purchase goods and services for any county, city, municipality, special district, school district, other local governmental unit of the state, or quasi-governmental entity organized under a city, municipality, or county. The purchases shall be made on the same terms and under the same rules and regulations as now provided for the purchase of goods and services by the central procurement office. The cost of any purchase made pursuant to this section shall be borne by the local governmental unit concerned. The central procurement office has the power to promulgate all rules and regulations necessary for the operation of this section, subject to the approval of the procurement commission.

(b) It is the intent of this section that the central procurement office advise local governments of the benefits to be derived from the use of the purchasing procedures authorized herein. Where any local or private act, charter, or general law requires that a local governmental unit purchase by competitive procurement method, the local unit of government may, notwithstanding the local or private act, charter, or general law, purchase, without public advertisement or competitive soliciting, under the provisions of contracts or price agreements entered into by the central procurement office.

(c) To the extent permitted by federal law or regulations, local governments may make purchases of goods, except motor vehicles other than those manufactured for a special purpose as defined in § 12-3-1208, or services included in federal general service administration contracts or other applicable federal open purchase contracts either directly or through the appropriate state agency; provided, that no purchase under this section shall be made at a price higher than that which is contained in the contract between the general services administration and the vendor affected.

(d)(1) Except as provided in subdivision (d)(5), when any local or private act, charter, or general law requires that a local governmental unit purchase by competitive soliciting, the local unit of government may, notwithstanding the local or private act, charter, or general law, purchase, without public advertisement or competitive soliciting, any item from local sources if such item is available for purchase under the provisions of contracts or price agreements entered into by the central procurement office, and such item is available at the same or lower cost from such local sources. This subsection (d) shall apply only in cases where the local governmental entity is not permitted to purchase from an existing contract established by the central procurement office. Any item purchased locally must be of equal or better specifications than the item under the competitive contract.

(2) The legislative body of a county by resolution or a municipality by ordinance may establish and adopt a program to encourage participation in government purchasing programs by minority-owned businesses. Such pro-

grams may include set-aside provisions which conform to federal law.

(3) This subsection (d) shall be permissive relative to sellers of motor vehicles.

(4) This subsection (d) shall have no effect unless it is approved by a two-thirds (⅔) vote of the local legislative body and such approval is filed with the comptroller of the treasury.

(5) This subsection (d) does not apply in a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), or in a county having a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census.

**12-3-1205. Cooperative purchasing agreements.**

(a) Any municipality, county, utility district, or other local government of the state may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any supplies, services or construction with one (1) or more other local governments in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between local governments. Where the participants in a joint or multi-party contract are required to advertise and receive bids, it shall be sufficient for those purposes that the purchasing entity comply only with its own purchasing requirements.

(b)(1) Notwithstanding any other law to the contrary, any municipality, county, utility district, or other local government of the state may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any goods, supplies, services, or equipment with one (1) or more other governmental entities outside this state, to the extent the laws of the other state permit the joint exercise of purchasing authority, or with an agency of the United States, to the extent federal law permits the joint exercise of purchasing authority, in accordance with an agreement entered into between or among the participants; provided, such goods, supplies, services, or equipment were procured in a manner that constitutes competitive bidding and were advertised, evaluated, and awarded by a governmental entity and made available for use by other governmental entities.

(2) A municipality, county, utility district, or other local government of the state may participate in a master agreement by adopting a resolution accepting the terms of the master agreement. If a participant in a joint or multi-party agreement is required to advertise and receive bids, then it will be deemed sufficient for those purposes that the purchasing entity or the entity that procured the bid complied with its own purchasing requirements. The participant shall acquire and maintain documentation that the purchasing entity or entities that procured the bid complied with its own purchasing requirements.

(3) The powers conferred by this section are in addition and supplemental to the powers conferred by any other law, and any limitations imposed by this section shall not affect powers conferred by any other law.

(4) This subsection (b) does not apply to:

(A) Purchases of new or unused motor vehicles, unless the motor vehicles are manufactured for a special purpose as defined in § 12-3-1208. As used in this subdivision (b)(4)(A), "motor vehicle" does not include a farm tractor, mower, earth-moving machinery, construction machinery, or

other similar machinery or equipment;

(B) Purchases of construction, engineering, or architectural services, or construction materials. As used in this subdivision (b)(4)(B), "construction materials" does not include materials used in the operation of a municipal utility system, including, but not limited to, transformers, conductors, insulators, poles, cross-arms, anchors, pipes, valves, meters, or other components or parts of a utility system, whether purchased in accordance with a purchasing agreement with the Tennessee Valley authority or another purchasing arrangement; or

(C) Purchases of fuel, fuel products, and lubricating oils.

(5) The authorization for exercising joint purchasing authority with an agency of the United States under subdivision (b)(1) does not include the authority to purchase construction machinery, including, but not limited to, bulldozers and other heavy equipment utilized in construction or on construction sites.

(c) The chief procurement officer may collect information from municipalities, counties, utility districts, or any other local government unit concerning the type, cost, quality, and quantity of commonly used goods, supplies, services, or equipment being procured under cooperative purchasing agreements. The chief procurement officer may make available all such information to any municipality, county, utility district, or other local government unit upon request.

**12-4-107. Contracts for professional services.**

(a) All contracts for architectural and engineering services procured by any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute, and all contracts for construction services procured by any county, city, metropolitan government, or town for projects described in subsection (b), shall meet the following requirements:

(1) In the procurement of architectural and engineering services, the selection committee or procurement official may seek qualifications and experience data from any firm or firms licensed in this state and interview such firm or firms. The selection committee or procurement official shall evaluate statements of qualifications and experience data regarding the procurement of architectural and engineering services, and shall conduct discussions with such firm or firms regarding the furnishing of required services and then shall select the firm deemed to be qualified to provide the services required;

(2) The selection committee or procurement official shall negotiate a contract with the qualified firm for architectural and engineering services at compensation which the selection committee or procurement official determines to be fair and reasonable to the government. In making such determination, the selection committee or procurement official shall take into account the estimated value of the services to be rendered, the scope of work, complexity and professional nature thereof;

(3) Should the selection committee or procurement official be unable to negotiate a satisfactory contract with the firm considered to be qualified, at a price determined to be fair and reasonable, negotiations will continue with other qualified firms until an agreement is reached;

(4) A city, county or utility district having a satisfactory existing working relationship for architectural or engineering services may expand the scope of the services; provided, that they are within the technical competency of the existing firm, without exercising this section.

(b) Construction projects of a county, city, metropolitan government, or town shall meet the following requirements:

(1) For construction of local projects or additions to existing buildings, a county, city, metropolitan government, or town may contract for construction management agent or advisor services or construction manager at-risk services. Construction management services may be performed by a qualified person licensed under the Contractors Licensing Act of 1994, compiled in title 62, chapter 6, part 1. Construction management services are to be procured for each project through a written request for proposals process through advertisement. The procurement and advertisement shall be in accordance with the laws, regulations, and ordinances of the county, city, metropolitan government, or town. The written request for proposals process shall invite prospective proposers to participate and shall indicate the service requirements and the factors used for evaluating the proposals. These factors may include the construction manager's qualifications and experience on similar projects, qualifications of personnel to be assigned to the project, fees and costs, or any additional factors deemed relevant by the procuring entity for procurement of the service. The contract for such services shall be awarded to the best qualified and responsive responder. A construction manager agent or advisor is prohibited from undertaking actual construction work on a project over which the construction manager agent or advisor coordinates or oversees the planning, bid, or construction phases of the project, except in instances when bids have been solicited twice and no bids have been submitted. If the construction manager agent or advisor can document that a good faith effort was made in each bid solicitation to obtain bids and no bids were received, then the construction manager agent or advisor may perform the construction work at a price agreed upon by the construction manager agent or advisor, the architect, and the owner of the project. A governing body, at its own discretion, may perform work on the project with its own employees and may include the coordination and oversight of this work as part of the services of the construction manager agent or advisor. Sealed bids for actual construction work shall be opened at the bid opening and the names of the contractors and their bid amounts shall be announced;

(2) Construction management agent or advisor services or construction manager at-risk services for the construction of local projects or additions to existing buildings may be performed by:

(A) A general contractor licensed in this state pursuant to the Contractors Licensing Act of 1994, compiled in title 62, chapter 6, part 1; provided, that none of such services performed by a general contractor involve any of the services exempt from the requirements of title 62, chapter 6, part 1 as "normal architectural and engineering services" under § 62-6-102(4)(B), unless, with regard to the performance of any services defined as normal architectural and engineering services, the general contractor is also licensed as an architect or engineer under title 62, chapter 2; or

(B) An architect or an engineer licensed pursuant to title 62, chapter 2; provided, that none of such services performed by an architect or engineer

involve any of the services required to be performed by a contractor within the definition of "contractor" under § 62-6-102, unless with regard to the performance of any services included within the definition of "contractor", the architect or engineer is also licensed as a contractor under the Contractors Licensing Act of 1994;

(3) Construction work that is under the coordination and oversight of a construction manager shall be procured through competitive bids.

**12-4-118. Energy performance or guaranteed energy savings contract pilot projects — Alternative procurement or contracting vehicles.**

(a) Notwithstanding any law to the contrary, for purposes of developing and implementing up to five (5) energy performance or guaranteed energy savings contract pilot projects for state-owned buildings and facilities, state procurement agencies may enter into an energy performance or guaranteed energy savings contract using alternative procurement or contracting vehicles, including, but not limited to, existing in-state and out-of-state government contracts that have been competitively procured, that incorporate energy savings into the scope of work to be performed under the contract, and that expressly authorize other contracting entities to execute contracts or price agreements under the terms and conditions of the master contract on behalf of a department, institution, agency, or campus having control of, or responsibility for, the management or operation of buildings and facilities; provided, that the contract award meets the requirements of § 12-4-110 relative to energy-related service contracts for counties, cities, metropolitan governments, towns, utility districts, and other municipal and public corporations of the state. Such contracts are subject to approval by the state building commission.

(b) All projects implemented under an energy performance or guaranteed energy savings contract under subsection (a) are deemed to be pilot projects and shall be limited to the following energy conservation measures:

(1) Building envelope weatherization;

(2) Building automation controls;

(3) Lighting retrofits and controls;

(4) Water conservation, HVAC, chiller plant, boiler plant, or other mechanical modifications; and

(5) Submetering to measure performance of controls or systems.

(c) For the duration of each individual contract, an annual measurement and verification audit utilizing generally accepted auditing standards, such as the International Performance Measurement and Verification Protocol, shall be conducted, and the related audit report will include, but not be limited to, energy savings achieved, energy savings targets met or exceeded, energy savings targets missed, and guarantees paid by the energy service company executing the contract. The annual measurement and verification audit shall be conducted by, and the related audit report shall be prepared by, a third-party at the expense of the energy service company executing the contract. Each audit report shall be submitted annually by the state department, institution, or agency participating in one (1) or more pilot projects to the department of environment and conservation's office of energy programs within thirty (30) days following the close of the fiscal year. The

department of environment and conservation's office of energy programs shall submit the data to the governor, the commissioner of environment and conservation, state procurement agencies, the state building commission, the comptroller of the treasury, the speaker of the senate, and the speaker of the house of representatives no later than August 31 for each year in which each project is implemented and in effect.

(d) Any energy performance or guaranteed energy savings contract executed in accordance with this section must reach substantial completion of energy conservation measures on or before December 31, 2020.

(e) The commissioner of environment and conservation, in cooperation with the state procurement agencies participating in one (1) or more pilot projects under this section, shall submit a report summarizing the results of each pilot project implemented under this section to the governor, the comptroller of the treasury, the speaker of the senate, and the speaker of the house of representatives no later than June 30, 2022.

(f) This section shall not limit the availability of appropriate state agencies to otherwise enter into energy performance or guaranteed energy savings contracts.

**13-3-402. Regional planning commission platting authority — Recording plat by county register.**

(a)(1) From and after the time when the regional planning commission of any region, as defined and created by the department of economic and community development, has adopted a regional plan which includes at least a major road plan or has progressed in its planning to the state of the making and adoption of a major road plan, and has filed a certified copy of such major road plan in the office or offices of the county register or registers of the county or counties lying in whole or in part in such region, then no plat of a subdivision of land within such region, other than land located within the boundaries of any municipal corporation, shall be filed for record or recorded until it has been approved by such regional planning commission or the staff of the regional planning commission if this responsibility has been delegated to the staff by the regional planning commission as provided in subsection (c), and such approval endorsed in writing on the plat by the secretary of the commission or by another designee of the regional planning commission; provided, that if the plat of subdivision divides the tract into no more than two (2) lots, the approval may be endorsed in writing on the plat by the secretary of the commission or by another designee of the regional planning commission without the approval of the regional planning commission, upon certification by the planning staff of the regional planning commission that the subdivision complies with such regulations governing a subdivision of land as have been adopted by the regional planning commission pursuant to § 13-3-403; provided further, that no request for variance from such regulations has been requested.

(2) No plat shall be submitted to or approved by the regional planning commission or the staff of the regional planning commission if this responsibility has been delegated to the staff by the regional planning commission as provided in subsection (c) unless it is submitted by the owner of the property to be subdivided by the plat, or a governmental entity. "Owner," for purposes of this section, means the legal or beneficial owner or owners of all

the land proposed to be included in the proposed subdivision, or the holder of a written option or contract to purchase the land, or the attorney or authorized representative of any of the aforementioned.

(b) No county register shall receive, file or record a plat of a subdivision, or an amendment, modification, or correction to a recorded plat of a subdivision, without the approval of the regional planning commission when and as required by this part. Each such plat so filed shall include the most recent recorded deed book number and page number for each deed constituting part of the property being platted. Notwithstanding this subsection (b), an easement or survey attached to an easement granted to the state, a county, municipality, metropolitan government, or entity of the state, county, municipality or metropolitan government, shall not constitute an amendment, modification, or correction of a recorded plat of a subdivision.

(c) A regional planning commission may delegate the responsibility for approval of a subdivision plat to the staff of the regional planning commission by a majority vote of the regional planning commission that is taken in a public meeting after being placed on the regional planning commission's meeting agenda and notice being provided as required for other matters before the regional planning commission.

(d) A regional planning commission may grant variances to subdivision regulations, if such variances are adopted at a public meeting of the commission.

### 13-3-403. Platting regulations — Road and utility main regulations — Completion bond — Hearing on regulations.

(a) In exercising the powers granted to it by § 13-3-402, the regional planning commission shall adopt regulations governing the subdivision of land within its jurisdiction. Such regulations may provide for the harmonious development of the region and its environs; for the coordination of roads within the subdivided land with other existing or planned roads or with the state or regional plan or with the plans of municipalities in or near the region; for adequate open spaces for traffic, light, air and recreation; for the conservation of or production of adequate transportation, water, drainage and sanitary facilities; for the avoidance of population congestion; and for the avoidance of such scattered or premature subdivision of land as would involve danger or injury to health, safety or prosperity by reason of the lack of water supply, drainage, transportation or other public services or would necessitate an excessive expenditure of public funds for the supply of such services or would be located in areas where there are inadequate or nonexistent publicly or privately owned and maintained services and facilities when the planning commission has determined the services are necessary in order for development to occur.

(b)(1) As a condition precedent to the final approval of the plat, the regulations may include infrastructure improvement requirements as to the extent to which and the manner in which:

(A) Roads are constructed and improved;

(B) Water, sewer, and other utility mains, piping, and connections are constructed or installed; or

(C) Other infrastructure and facilities are constructed or installed.

(2) The regulations of the regional planning commission may provide for the preliminary approval of the plat before the infrastructure improvements,

but any preliminary approval shall not be entered on the plat.

(3) In lieu of the completion of the infrastructure improvements before the final approval of a subdivision plat, the regional planning commission may grant final plat approval subject to the submittal and acceptance of a bond, letter of credit, or other method of assurance, in form, in amount, and with conditions and surety satisfactory to the regional planning commission. The bond, letter of credit, or other method of assurance shall provide for and secure to the public and the local government the actual construction and installation of the infrastructure improvements within a period specified by the regional planning commission and expressed in the bond, letter of credit, or other method of assurance.

(4) The attorney for the county shall enforce any bond, letter of credit, or other method of assurance by all appropriate legal and equitable remedies, and moneys collected on the bond, letter of credit, or other method of assurance shall be paid into the county's treasury. Upon the order of the regional planning commission, the moneys shall be applied to the construction and installation of the infrastructure improvements.

(c)(1) Before adoption of its subdivision regulations or any amendment thereof, a public hearing thereon shall be held by the regional planning commission, thirty (30) days' notice of the time and place of which shall be given by one (1) publication in a newspaper of general circulation in each county lying wholly or partly in the region.

(2)(A) The adoption of subdivision regulations or an amendment to existing subdivision regulations proposed by a regional planning commission shall not be given effect unless approved:

(i) By the county legislative body of each county lying wholly or partly within the region and by the governing body of each municipality lying wholly or partly within the region;

(ii) By only the legislative body of the county that is regulated by those subdivision regulations, if the subdivision regulations apply only to land outside of any municipality within the region; or

(iii) By only the governing body of the municipality that is regulated by those subdivision regulations, if the subdivision regulations apply only to land within municipal boundaries.

(B) This subdivision (c)(2) applies to a regional planning commission if the legislative body of each county and municipality lying wholly or partly within the region adopts a resolution or ordinance requiring approval of the regional planning commission's subdivision regulations or amendments to existing subdivision regulations.

**13-6-102. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Abate" or "abatement" in connection with any building means the removal or correction of any conditions that constitute a public nuisance and the making of any other improvements that are needed to effect such a rehabilitation of the building as is consistent with maintaining safe and habitable conditions over its remaining useful life;

(2) "Acceptable petitioner" means:

(A) Any nonprofit corporation;

(B) The municipal corporation within which such subject parcel is

located;

(C) The owner or legal occupant of a parcel of real property that is adversely impacted by the condition of the subject parcel; or

(D) Any interested person;

(3) "Building" means any building or structure that is located on the subject parcel;

(4) "Certified person" means any person determined by the court pursuant to § 13-6-108 to be qualified as a receiver or a qualified buyer;

(5) "Dwelling unit" means a building or the part of a building that is intended to be used as a home, residence, or sleeping place;

(6) "Governmental authority" means any court or governmental, administrative, legislative, regulatory, adjudicatory, or arbitrational body, agency, commission, department, board, bureau, tribunal, or instrumentality of the United States or of any state, commonwealth, nation, territory, possession, county, parish, or municipality, whether now or hereafter constituted or existing, having or claiming jurisdiction over the subject parcel;

(7) "Interested person" means, with respect to a subject parcel, any owner, named trustee, or other person that:

(A) Holds, or is the assignee of the holder of, a lien against that subject parcel;

(B) Is named as a nominee or agent of the holder of an obligation that is secured by a deed or a deed of trust affecting such subject parcel;

(C) Holds the benefit of an easement appurtenant to such subject parcel;

(D) Holds the benefit of a restrictive real covenant against such subject parcel; or

(E) Possesses an interest of record in or to such subject parcel;

(8) "Municipal corporation" means any incorporated city or any county, including any county having a metropolitan form of government, and the code enforcement department or agency or other unit responsible for enforcing building and property conditions in the territorial jurisdiction of the city or county;

(9) "Nonprofit corporation" means any nonprofit corporation that has been duly organized and is in good standing under the laws of this state;

(10) "Owner" means one (1) or more persons, jointly or severally, in whom is vested all or part of the legal title to, or beneficial ownership of, the subject parcel;

(11) "Person" means any individual, firm, corporation, association, trust, partnership, joint venture, limited liability company, governmental authority, or other entity;

(12) "Public nuisance" means any building that is:

(A) A menace to the public health, welfare, or safety;

(B) Structurally unsafe, unsanitary, or not provided with adequate safe egress;

(C) A fire hazard, dangerous to human life, or no longer fit and habitable;

(D) A nuisance, as defined in § 29-3-101; or

(E) Otherwise determined by the court or a municipal corporation to be a violation of any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to any subject parcel;

(13) "Qualified buyer" means any person determined by the court to be a certified person as provided in § 13-6-108;

(14) "Receiver" means any certified person appointed by the court for the purpose of preserving or improving the subject parcel and all of the powers of a receiver appointed for tax enforcement pursuant to § 67-5-2103 are, as applicable, the powers of a receiver appointed pursuant to this chapter;

(15) "Receiver's lien" means a first priority lien in favor of the receiver against the subject parcel that, with regard to the subject parcel, upon approval of the court, secures:

(A) Any and all direct and indirect expenses and costs incurred by the receiver, including reasonable attorney's fees and costs;

(B) Any and all outstanding municipal fines, penalties, expenditures, and assessments;

(C) Any and all amounts attributable to state and local taxes and assessments, including any and all outstanding amounts secured by delinquent property tax liens; and

(D) A fee, payable to the receiver, equal to ten percent (10%) of the total of the amounts provided under subdivision (15)(A), but in no event less than two thousand five hundred dollars ($2,500);

(16) "Residential property" means a subject parcel that includes one (1) or more dwelling units that is owner-occupied and the owner's principal place of residence, or that is otherwise intended for single-family residential use;

(17) "Residential rental property" means a building or structure consisting of one (1) or two (2) dwelling units; and

(18) "Subject parcel" means a tract or item of real or personal property that becomes subject to the jurisdiction of a court pursuant to this chapter.

**13-6-105. Application.**

This chapter shall apply:

(1) In any county having a metropolitan form of government that has a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(2) In any county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census;

(3) In any county having a population of not less than ninety-eight thousand two hundred (98,200) nor more than ninety-eight thousand three hundred (98,300), according to the 2010 federal census or any subsequent federal census; and

(4) In any county or municipality that has formed a land bank pursuant to § 13-30-104.

**13-6-106. Civil action to enforce compliance — Draft order of compliance.**

(a) An acceptable petitioner may file a petition for a judgment in rem against a subject parcel, naming the subject parcel as the defendant and seeking an order that the subject parcel is a public nuisance and for the abatement of the public nuisance. A proceeding pursuant to this section shall be a proceeding in rem. If the applicable municipal corporation is not the acceptable petitioner, then the applicable municipal corporation shall be put on

notice of the in rem proceeding and provided with a full copy of the petition as filed by the acceptable petitioner. If the acceptable petitioner has not attached a certificate of public nuisance to the petition, the municipal corporation shall complete an inspection of the subject parcel within thirty (30) calendar days after the first setting of the matter in court, and the court shall promptly schedule a hearing on the issue of public nuisance. At the conclusion of the hearing on the issue of public nuisance, the court shall determine whether or not the issuance of a certificate of public nuisance is warranted. The court shall dismiss the action if the subject parcel is found not to be a public nuisance by the court.

(b) The petition filed pursuant to subsection (a) must include a draft order of compliance setting forth the relief requested as described in this section and shall specifically request the appointment of a receiver if an order of compliance pursuant to subsection (e) is entered and if the owner fails to comply with such order.

(c) The filing of a petition for a judgment in rem pursuant to subsection (a) shall:

(1) Create a receiver's lien that secures an undetermined amount until the court establishes the amount. The precise amount of the receiver's lien will be established by the court at any time upon the request of any owner, interested person, or the receiver. The receiver's lien shall be a first lien on the subject parcel, which is superior to all prior and subsequent liens or other encumbrances associated with the subject parcel. The acceptable petitioner shall file for record in the register's office of the county an abstract certified by the clerk, within one (1) day of certification by the clerk, containing the names of the parties to the suit, a statement that petition has been filed pursuant to this section, a description of the subject parcel and its ownership, and a brief statement of the nature and amount of the lien sought to be imposed, all in compliance with § 20-3-101, which filing shall act as a lien lis pendens against the subject parcel. The outstanding principal amount of the receiver's lien carries interest at a standard statutory rate applicable to judgment liens as provided in § 67-5-2010;

(2) Act as a bar of any transfer of title of the subject parcel or of any interests pertaining to such subject parcel, including, but not limited to, transfers by tax sale or other foreclosure, transfers or creation of lien interests in the subject parcel, or otherwise, from the date of the filing until the petition is dismissed or until specific orders of the court authorizing a transfer of title, if the petition has attached a certificate of public nuisance issued pursuant to subsection (a); and

(3) Authorize the municipal corporation, in its discretion, to access the subject parcel for boarding, securing, and maintaining the subject parcel at any time if it has been determined by the court that the owner has failed to do so. Any costs incurred by the municipal corporation shall be charged to the owner.

(d) Notice of a petition for a judgment in rem filed pursuant to subsection (a) shall, at a minimum, be provided to each owner and interested person identified by a thorough title search and examination of the subject parcel, including a search of court records of the county where the subject parcel is located. The petitioner shall file with the court a certification that notice has been provided pursuant to this subsection (d). Notice shall be provided by:

(1) Sending a copy of the petition by first-class mail to the last known

address of record;

(2) Posting a copy of the petition in a conspicuous place on the building;

(3) Publication of the petition in a newspaper of general circulation published in the county where the subject parcel is located; and

(4) Sending a copy of the petition by first-class mail addressed to "occupant" at the subject parcel.

(e) If the subject parcel is found to be a public nuisance, the court shall issue an order of compliance requiring the owner of the subject parcel to produce a plan for the abatement of the public nuisance. The acceptable petitioner shall file such order in the register's office of the county where the subject parcel is located. The plan must comply with subsection (h) and must be approved by the court. If the owner has commenced work on the subject parcel prior to, or during the pendency of the action, the owner is required to provide a report of the work that has been completed to date, as well as a plan for the abatement of the public nuisance. Once a plan is approved by the court, the municipal corporation shall provide periodic updates to the court on the owner's progress towards completion of the plan and other relevant information about the subject parcel and surrounding area. Upon a finding by the court that the subject parcel is a public nuisance, the court may award all reasonable attorney's fees and costs to the person filing the petition for a judgment in rem.

(f) If the owner fails to comply with the court's order of compliance pursuant to subsection (e), the court may allow an interested person the opportunity to undertake the work to abate the public nuisance pursuant to a plan that complies with subsection (h) submitted by such interested person.

(g) If the actions pursuant to subsections (e) and (f) fail to abate the public nuisance, the court may authorize a receiver to take possession and control of the subject parcel to abate the public nuisance pursuant to a plan submitted by such receiver that complies with subsection (h). A receiver appointed pursuant to this chapter is not personally liable for actions taken pursuant to the receivership except for misfeasance, malfeasance, or nonfeasance in the performance of the functions of the office.

(h)(1) Prior to ordering any action be taken to abate the public nuisance, the court shall cause a detailed development plan to be submitted for review, which must include, but is not limited to:

(A) A detailed budget for abating the public nuisance;

(B) A projected timeline for abating the public nuisance;

(C) If repair and rehabilitation of the subject parcel are found not to be feasible, the cost of demolition of the subject parcel or of the portions of the subject parcel that constitute the public nuisance; and

(D) The terms, conditions, and availability of any financing that is necessary to abate the public nuisance or a show of sufficient assets.

(2) If the receiver is submitting the plan, the receiver may petition the court for authority to conduct an auction and sale to a qualified buyer, in accordance with subsection (j), without abatement of the public nuisance upon showing that the terms of the auction minimum bid will include a bond or other security, in an amount fixed by the court, ensuring performance of the remediation within nine (9) months of the date of the auction sale, executed by the qualified buyer in favor of the receiver.

(i)(1) If the court deems a plan submitted by a receiver to be sufficient and appropriate, the court may empower the receiver to:

(A) Take possession and control of the subject parcel;

(B) Pay all expenses of operating and conserving the subject parcel, including obtaining property insurance;

(C) Pay prereceivership mortgages or installments of such mortgages and other liens; and

(D) Implement the plan; provided, that, if the plan requires demolition, the court shall order that the demolition be done properly and in compliance with applicable laws.

(2) The receiver shall file a report with the court every sixty (60) calendar days and, upon completion of the detailed development plan, shall file a final report with the court indicating that the public nuisance has been abated and moving for the establishment of the full amount of the receiver's lien. Upon a finding by the court that the public nuisance has been abated and establishing the amount of the receiver's lien, the owner shall be put on notice that the owner has thirty (30) days from such finding to satisfy the receiver's lien in full. If the owner satisfies the receiver's lien in full during such time, the receivership shall be terminated by order of the court.

(j) If the receiver's lien is not satisfied by the owner pursuant to subdivision (i)(2), the court shall direct the receiver to offer the subject parcel for sale in accordance with the following:

(1) The sales procedure shall follow the procedures provided in §§ 35-5-101 — 35-5-109;

(2) The minimum bid at a receiver's lien sale shall be the full amount of the receiver's lien;

(3) If any local land bank formed pursuant to § 13-30-104 notifies the receiver in writing in advance of the receiver's lien sale that it wishes to enter the minimum bid for cash for the subject parcel, then such minimum bid shall preempt all other bids, and the local land bank shall be the prevailing bidder;

(4) If there is no bidder at the receiver's lien auction for greater than the minimum bid, the subject parcel shall be transferred by receiver's deed to the receiver, and there shall be no requirement of cash payment of the minimum bid by the receiver;

(5) When the successful bid is paid in cash, the amount of the minimum bid is paid to satisfy the receiver's lien, including payment to the appropriate property tax officials, of that portion of the receiver's lien that constituted delinquent property taxes. Any surplus shall be distributed, as approved by the court, to the owner and interested persons in the priority in which their interests encumbered the subject parcel prior to the auction; and

(6) The receiver shall report the prevailing bid at the sale to the court, and upon approval by the court, a receiver's deed shall be issued to the successful bidder and promptly recorded in the office of the register of deeds. The county trustee shall be allowed a credit pursuant to § 67-5-1903(b)(1) for any local taxes and assessments that are not collected as a result of the failure of the receiver's lien sale to receive a cash payment for the minimum bid pursuant to subdivision (j)(2). Title shall be absolute in the purchaser, and the interests of any interested persons prior to the auction shall be terminated as of the date of the sale. The receivership shall be terminated after the sale by order of the court after a hearing on receiver's motion for termination of the receivership.

(k)(1) Nothing in this chapter limits the powers granted to a court having jurisdiction pursuant to § 13-6-107.

(2) The monetary and other limitations specified in § 16-15-501(d)(1) upon any court with jurisdiction over an action described in subsection (a) do not operate as limitations upon any of the following:

(A) Expenditures of a mortgagee, lienholder, other interested person, or receiver that has been selected pursuant to subsection (f) or (g) to undertake the work and to furnish the materials necessary to abate a public nuisance;

(B) Any notes issued by a receiver;

(C) Any mortgage granted by a receiver;

(D) Expenditures in connection with the foreclosure of a mortgage granted by a receiver in accordance with subsection (i);

(E) The enforcement of an order of a judge entered pursuant to this chapter; or

(F) The actions that may be taken pursuant to this chapter by a receiver or a mortgagee, lienholder, or other interested person that has been selected pursuant to subsection (f) or (g) to undertake the work and to furnish the materials necessary to abate a public nuisance.

(3) A judge in a civil action described in subsection (a), or the judge's successor in office, has continuing jurisdiction to review and order correction of the condition of any subject parcel that was determined to be a public nuisance pursuant to this chapter.

**13-6-108. Qualification as a certified person.**

(a) Any person seeking to be qualified as a certified person shall make application to the applicable court in the county in which such person seeks to serve, on such form and according to such standards and procedures as such court reasonably may require, including the following, which the court may require to be brought current at any time, as applicable:

(1) An external verification of good standing;

(2) The articles of incorporation and bylaws or formation documents;

(3) Evidence of financial capacity to carry out an abatement plan, including audited financial statements of the person for the past five (5) years, where applicable;

(4) A formal conflict of interest policy governing the staff, officers, and the board of directors, if applicable;

(5) Evidence of the administrative capacity to successfully undertake the abatement plan; and

(6) Any other documents, evidence, or assurances that the court may require.

(b) Any local land bank formed pursuant to § 13-30-104 is a certified person for all purposes under this chapter. In the court's discretion, an acceptable petitioner may also be qualified as a certified person who is appointed as a receiver.

**13-7-208. Enforcement of ordinances — Remedies — Applicability of provisions.**

(a)(1) The chief legislative body may provide for the enforcement of any ordinance enacted under this part and part 3 of this chapter. A violation of any such ordinance is a Class C misdemeanor.

(2) In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any build-

ing, structure or land is or is proposed to be used in violation of any ordinance enacted under this part and part 3 of this chapter, the building commissioner, municipal counsel or other appropriate authority of the municipality, or any adjacent or neighboring property owner who would be specially damaged by such violation, may, in addition to other remedies, institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate such violation, or to prevent the occupancy of the building, structure or land.

(b)(1) In the event that a zoning change occurs in any land area where such land area was not previously covered by any zoning restrictions of any governmental agency of this state or its political subdivisions, or where such land area is covered by zoning restrictions of a governmental agency of this state or its political subdivisions, and such zoning restrictions differ from zoning restrictions imposed after the zoning change, then any industrial, commercial or business establishment in operation, permitted to operate under zoning regulations or exceptions thereto prior to the zoning change shall be allowed to continue in operation and be permitted; provided, that no change in the use of the land is undertaken by such industry or business.

(2) When the use permitted to continue to expand, or to be rebuilt pursuant to any subsection of this section is an off-premises sign, such use shall not preclude any new or additional conforming use or structure on the property on which the sign structure is located or on any adjacent property under the same ownership; provided, however, that any such new or additional use or structure does not result in any violations of the applicable zoning restrictions other than those nonconformities associated with the off-premises sign as allowed under this subdivision (b)(2).

(c) Industrial, commercial or other business establishments in operation and permitted to operate under zoning regulations or exceptions thereto in effect immediately preceding a change in zoning shall be allowed to expand operations and construct additional facilities which involve an actual continuance and expansion of the activities of the industry or business which were permitted and being conducted prior to the change in zoning; provided, that there is a reasonable amount of space for such expansion on the property owned by such industry or business situated within the area which is affected by the change in zoning, so as to avoid nuisances to adjoining landowners. No building permit or like permission for construction or landscaping shall be denied to an industry or business seeking to expand and continue activities conducted by that industry or business which were permitted prior to the change in zoning; provided, that there is a reasonable amount of space for such expansion on the property owned by such industry or business situated within the area which is affected by the change in zoning, so as to avoid nuisances to adjoining landowners.

(d)(1) Industrial, commercial, or other business establishments in operation and permitted to operate under zoning regulations or exceptions thereto immediately preceding a change in zoning shall be allowed to destroy present facilities and reconstruct new facilities necessary to the conduct of such industry or business subsequent to the zoning change; provided, that no destruction and rebuilding shall occur which shall act to change the use classification of the land as classified under any zoning regulations or exceptions thereto in effect immediately prior to or subsequent to a change

in the zoning of the land area on which such industry or business is located. No building permit or like permission for demolition, construction or landscaping shall be denied to an industry or business seeking to destroy and reconstruct facilities necessary to the continued conduct of the activities of that industry or business, where such conduct was permitted prior to a change in zoning; provided, that there is a reasonable amount of space for such expansion on the property owned by such industry or business situated within the area which is affected by the change in zoning, so as to avoid nuisances to adjoining landowners.

(2)(A) Multifamily residential establishments, whether used as owner-occupied property or rental property, which were permitted to operate under zoning regulations or exceptions thereto immediately preceding a change in zoning shall be allowed to reconstruct new facilities necessary to the conduct of such multifamily residential establishment subsequent to the zoning change, in the event of damage, whether partial or complete, by involuntary fire or wind damage or other natural disaster.

(B) If any such new facilities exceed the original height, density, setback, or square-footage of the original facilities in existence immediately prior to the damage, then the new facilities shall constitute a change in the use of the land, and any protections provided hereunder shall be forfeited.

(C) If any such new facilities do not exceed the original height, density, setback, or square-footage of the original facilities in existence immediately prior to the damage, then the new facilities shall constitute a continuation of the use of the land immediately prior to the damage, and any protections provided hereunder shall not be forfeited.

(D) Whenever any ordinance enacted under authority of this chapter establishes stricter terms regarding the amount of partial damage that may be allowed without forfeiture of these protections, then the provisions of any such ordinance shall govern.

(E) New facilities shall comply with all architectural design standards required under current zoning regulations and be consistent with the architectural context of the immediate and adjacent block faces.

(e) Subsections (b)-(d) apply only to land owned and in use by such affected business, and do not operate to permit expansion of an existing industry or business through the acquisition of additional land.

(f) Subsections (b)-(e) do not apply to any municipality defined as a premiere type tourist resort according to § 67-6-103(a)(3)(B).

(g) Except as provided in subsection (*l*), subsections (b)-(d) shall not apply if an industrial, commercial, or other business establishment ceases to operate for a period of thirty (30) continuous months and the industrial, commercial, or other business use of the property did not conform with the land use classification as denoted in the existing zoning regulations for the zoning district in which it is located. Anytime after the thirty-month cessation, any use proposed to be established on the site, including any existing or proposed on-site sign, must conform to the provisions of the existing zoning regulations. For the purposes of this subsection (g), the thirty-month period of continuous ceased operation shall be tolled by:

(1) The period in which an industrial, commercial, or other business establishment is party to any action in a court of competent jurisdiction regarding the use of the property until such time that a final settlement,

order, decree, or judgment has been rendered;

(2) Any period in which a facility is being constructed, reconstructed, renovated, or refurbished, provided that all necessary building permits were obtained within thirty (30) months of cessation of continuous use;

(3) The filing of an application for a building permit for the alteration, renovation or reconstruction of a structure which is non-conforming or of a structure in which or out of which a non-conforming industrial, commercial or other business use operates or is located; or

(4) The reactivation of the non-conforming use any time prior to the end of the thirty-month period; provided, however, that the restrictions of this subsection (g) and subsection (i) shall only apply if the property owner intentionally and voluntarily abandons the nonconforming use of the property. In any contested matter on the use of such property, the government has the burden of proving an overt act of abandonment in such matter.

(h) Subsections (b)-(d) shall apply to an off-site sign which, for the purposes of this subsection (h), means any sign that advertises or gives direction to any business, product, service, attraction, or any other purpose or interest, other than the industrial, commercial or other business establishment located on the site where the sign is located; provided, however, that any expansion shall be limited as follows:

(1) Any off-site sign smaller than a standard 8-sheet poster which, for the purposes of this subsection (h), means an off-site sign with overall dimensions of at least five feet four inches (5′ 4″) to six feet two inches (6′ 2″) in height and eleven feet four inches (11′ 4″) to twelve feet two inches (12′ 2″) in width shall not be expanded to a size greater than a standard 8-sheet poster;

(2) Any standard 8-sheet poster shall not be expanded to a size greater than a 30-sheet poster which, for the purposes of this subsection (h), means an off-site sign with overall dimensions of twelve feet three inches (12′ 3″) in height and twenty-four feet six inches (24′ 6″) in width;

(3) Any standard 30-sheet poster shall not be expanded to a size greater than any standard bulletin which, for the purposes of this subsection (h), means any off-site sign with overall dimensions of ten feet (10′) to fourteen feet (14′) in height and thirty-six feet (36′) to forty-eight feet (48′) in width;

(4) Any standard bulletin shall not be expanded to a size greater than any super bulletin which, for the purposes of this subsection (h), means any off-site sign with overall dimensions of sixteen feet (16′) to twenty feet (20′) in height and sixty feet (60′) in width;

(5) Any super bulletin shall not be expanded;

(6) Any off-site sign with a height larger than standard 8-sheet poster height or width larger than standard 8-sheet poster width but not meeting the definition of a standard 8-sheet poster, a standard 30-sheet poster, a standard bulletin, or a standard super bulletin shall not be expanded by more than one hundred percent (100%) of its surface area; or

(7) Any operation, rebuilding, or expansion of an off-site sign that has been in existence for ten (10) years or more shall not be denied solely on the basis that the original permit for the sign does not exist to prove that it was a lawful use when constructed.

(i) Notwithstanding subsection (d), any structure rebuilt on the site must conform to the provisions of the existing zoning regulations as to setbacks, height, bulk, or requirements as to the physical location of a structure upon the

site, provided that this subsection (i) shall not apply to off-site signs.

(j) Subsections (g), (h) and (i) do not apply to any home rule municipality; provided, however, that subject to the approval of the local legislative body, a home rule municipality may opt into these subsections.

(k) Notwithstanding subsections (a)-(i), subsection (g) shall not apply to any industrial establishment location where twenty-five percent (25%) or more of the gross annual sales from such location are derived from sales to or contracts with Local, state or federal governments or as a subcontractor to contracts with local, state or federal governments, or to any industrial establishment location where seventy-five percent (75%) or more of the gross annual sales from the location are made to agriculture or construction businesses.

(*l*)(1) As used in this subsection (*l*):

(A) "Block" means a unit of land bounded by streets or by a combination of streets and public land, railroad rights-of-way, waterways or any other barrier to the continuity of development; and

(B) "Motor vehicle business establishment" means a business establishment that sells operable motor vehicles and all the motor vehicles have been previously titled, excluding any franchised retail motor vehicle dealership located on property that is principally used for the marketing and display of new motor vehicles, whether by sale, rental, lease or other commercial or financial means that is primarily housed in a structure and characterized by a mixture of the following secondary supporting uses:

(i) An inventory of new or used motor vehicles in operating condition for sale or lease either on the same parcel or at a location affiliated with a franchised retail motor vehicle dealership; and

(ii) On-site facilities for the repair and service of motor vehicles previously sold, rented or leased by the retail motor vehicle dealership.

(2) In any municipality having a metropolitan form of government and a population of over five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, any nonconforming motor vehicle business establishment may be terminated after notice and a hearing before the board of zoning appeals upon a finding that all of the following have been established in the record before the board of zoning appeals:

(A) Another motor vehicle business establishment is located within the one thousand feet (1,000′) of the nonconforming motor vehicle business establishment, in the same block as the nonconforming motor vehicle business establishment, or in the block across a public street or road from the block in which the nonconforming motor vehicle business establishment is located;

(B) The parcel on which the nonconforming motor vehicle business establishment is located has less than two hundred fifty feet (250′) of frontage on any public street or road, excluding any portion of the frontage not owned or leased by the licensed operator of the nonconforming motor vehicle business establishment; and

(C) At least ten percent (10%) of the inventory of the nonconforming motor vehicle business establishment at any point in time consists of motor vehicles titled pursuant to title 55, chapter 3, part 2, including, but not limited to, vehicles with salvage titles, flood titles, rebuilt titles, or nonrepairable vehicle certificates. The operator of the nonconforming motor vehicle business establishment shall make the titles for all of the

vehicles located on the premises of the nonconforming motor vehicle business establishment immediately available upon request of a local zoning inspection official, or produce the original titles at the office of the local zoning inspection official within three (3) business days of the request by the local zoning inspection official. The failure of the nonconforming motor vehicle business establishment to make the titles for the vehicles located on the premises of the nonconforming motor vehicle business establishment available to the local zoning inspection official in accordance with this subsection (*l*) shall create a rebuttable presumption that at least ten percent (10%) of the inventory of the nonconforming motor vehicle business establishment consists of the motor vehicles titled pursuant to title 55, chapter 3, part 2.

(3) All other industrial, commercial or other business establishments in any municipality with a metropolitan form of government and a population of over five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, shall be entitled to operate pursuant to subsection (g).

(m)(1) If any land area becomes subject to land use restrictions imposed pursuant to a redevelopment plan undertaken by any governmental agency of this state or of its political subdivisions pursuant to chapter 20, part 2 or part 7 of this title, or if the land area is subject to land use restrictions that are amended by any governmental agency of this state or of its political subdivisions pursuant to chapter 20, part 2 or part 7 of this title, and if the land use restrictions differ from the land use restrictions contained in the amended land use restrictions, then any industrial, commercial, or other business establishment in operation and permitted to operate prior to the initial adoption of the land use restrictions or an amendment thereto, shall be allowed to continue in operation and shall be permitted; provided, that no change in the use of the land is undertaken by the industrial, commercial, or business establishment.

(2) Immediately preceding an initial adoption of the land use restrictions or an amendment of the restrictions, industrial, commercial, and other business establishments in operation and permitted to operate under land use restrictions imposed pursuant to a redevelopment plan undertaken by any governmental agency of this state or of its political subdivisions pursuant to chapter 20, part 2 or part 7 of this title, shall be allowed to replace facilities necessary to conduct the industry or business if the facilities are acquired by a governmental entity pursuant to the power of eminent domain, or under threat of the exercise of the power of eminent domain, or replace facilities required to be relocated as the result of the acquisition of property by a governmental entity pursuant to the power of eminent domain, or under threat of the exercise of the power of eminent domain, or to rebuild facilities if they are damaged by unplanned casualty or act of God; provided, that:

(A) The replacement facilities shall not be larger in size than the facilities in existence prior to the acquisition, relocation, or damage caused by unplanned casualty or act of God;

(B) The construction of the replacement facilities shall commence within thirty (30) months of the date of the taking or acquisition under threat of the exercise of the power of eminent domain or the date of the damage caused by unplanned casualty or act of God; and

(C) There is a reasonable amount of space for the replacement facilities on the property owned by the industry or business situated within the area that is affected by the adoption of the land use restrictions or an amendment of the restrictions, so as to avoid nuisances to adjoining landowners.

(3) Subdivision (m)(2) applies only to land owned and in use by the affected industrial, commercial, or other business establishment prior to acquisition or relocation resulting from the exercise of the power of eminent domain, or the threat of the exercise of the power of eminent domain, or the damage to facilities caused by unplanned casualty or act of God, and does not operate to permit the replacement of facilities necessary to the conduct of the industry or business through the acquisition of additional land.

(4) Subdivisions (m)(2) and (3) apply only to any acquisition or relocation of facilities within an area subject to land use restrictions imposed pursuant to a redevelopment plan undertaken on or after July 1, 2015, by any governmental agency of this state or of its political subdivisions pursuant to chapter 20, part 2 or part 7 of this title, or to damage to facilities caused by casualty or act of God occurring on or after July 1, 2015, regardless of the redevelopment plan's date of enactment.

**13-7-601. Short title.**

This part shall be known and may be cited as the "Short-Term Rental Unit Act."

**13-7-602. Part definitions.**

As used in this part:

(1) "Effectively prohibit" means a local governing body acts or fails to act in a manner that prevents a property owner from using the owner's property as a short-term rental unit after reasonable compliance with generally applicable local laws;

(2) "Generally applicable local law" means an ordinance, resolution, regulation, rule, or other requirement of any type other than zoning enacted, maintained, or enforced by a local governing body that applies to all property or use of all property and does not apply only to property used as a short-term rental unit;

(3) "Used as a short-term rental unit" means the property was held out to the public for use as a short-term rental unit, and:

(A) For property that began being held out to the public for use as a short-term rental unit within the jurisdiction of a local governing body that required a permit to be issued or an application to be approved pursuant to an ordinance specifically governing short-term rental units prior to using the property as a short-term rental unit, a permit was issued or an application was approved by the local governing body for the property; or

(B) For property that began being held out to the public for use as a short-term rental unit within the jurisdiction of a local governing body that did not require a permit to be issued or an application to be approved pursuant to an ordinance specifically governing short-term rental units, the provider remitted taxes due on renting the unit pursuant to title 67, chapter 6, part 5 for filing periods that cover at least six (6) months within

the twelve-month period immediately preceding the later of:

(i) May 17, 2018; or

(ii) The effective date of an ordinance, resolution, regulation, rule, or other requirement by a local governing body having jurisdiction over the property requiring a permit or an application to be approved pursuant to an ordinance specifically governing short-term rental units;

(4) "Local governing body" means the legislative body of a city, municipality, county, or other political subdivision of this state that has authority to enact a zoning ordinance, resolution, regulation, rule, or other requirement of any type regarding land use in its jurisdiction;

(5) "Prohibit" means to forbid or ban the operation of short-term rental units, either permanently or temporarily, within a local governing body's jurisdiction, portion of the local governing body's jurisdiction, or a portion of an owner's property;

(6) "Property" means a tract of land as recorded with the register of deeds office of the county where the property is located;

(7) "Provider" means any person engaged in renting a short-term rental unit and includes an owner of a residential unit that is made available through a vacation lodging service as that term is defined in § 62-13-104;

(8) "Residential dwelling" means a cabin, house, or structure used or designed to be used as an abode or home of a person, family, or household, and includes a single-family dwelling, a portion of a single-family dwelling, or an individual residential dwelling in a multi-dwelling building, such as an apartment building, condominium, cooperative, or timeshare; and

(9) "Short-term rental unit" or "unit" means a residential dwelling that is rented wholly or partially for a fee for a period of less than thirty (30) continuous days and does not include a hotel as defined in § 68-14-302 or a bed and breakfast establishment or a bed and breakfast homestay as those terms are defined in § 68-14-502.

**13-7-603. Effect of ordinance or other requirement that prohibits or regulates use of property as short-term rental unit.**

(a) Except as otherwise provided in subsection (b), an ordinance, resolution, regulation, rule, or other requirement of any type that prohibits, effectively prohibits, or otherwise regulates the use of property as a short-term rental unit shall not apply to property if the property was being used as a short-term rental unit by the owner of the property prior to the enactment of the ordinance, resolution, regulation, rule, or other requirement by the local governing body. The ordinance, resolution, regulation, rule, or other requirement in effect at the time the property began being used as a short-term rental unit is the law that governs the use of the property as a short-term rental unit until the property is sold, transferred, ceases being used as a short-term rental unit for a period of thirty (30) continuous months, or has been in violation of a generally applicable local law three (3) or more separate times as provided by § 13-7-604. For purposes of this subsection (a), an ordinance, resolution, regulation, rule, or other requirement is in effect at the time it is lawfully enacted by the local governing body and not the time in which it is introduced for consideration by the local governing body.

(b) Notwithstanding subsection (a), an ordinance, resolution, regulation, rule, or other requirement of any type enacted prior to January 1, 2014, that

prohibits or effectively prohibits the use of property as a short-term rental unit may apply to any property within a local governing body's jurisdiction, regardless of the property's existing use. However, this subsection (b) applies only to ordinances, resolutions, regulations, rules, or other requirements that expressly limit the period of time a residential dwelling may be rented, and does not apply to ordinances, resolutions, regulations, rules, or other requirements that generally prohibit commercial activity or the renting of residential dwellings to transients.

**13-7-604. Prohibition of continued use of property as short-term rental unit based on violations — Authorization of short-term rental units through permitting or application process.**

(a) Section 13-7-603 does not prevent a local governing body from prohibiting the continued use of property as a short-term rental unit if, as a direct result of the operation of the short-term rental unit, the unit has been in violation of a generally applicable local law three (3) or more separate times, and the provider has no appeal rights remaining for any of the three (3) violations. The burden of proof that a violation of a generally applicable local law was a direct result of the operation of the short-term rental unit is on the local governing body.

(b)(1) The local governing body may authorize short-term rental units through a permitting or application process.

(2) Notwithstanding this part to the contrary, a local governing body that authorizes short-term rental units through a permitting or application process pursuant to subdivision (b)(1) may suspend the continued use of property as provided in § 13-7-603(a) during the time that the unit does not maintain a permit or approved application if the permitting or application requirements are reasonable.

(3) Nothing in this subsection (b) extinguishes a provider's right to continued use of property as a short-term rental unit set out in § 13-7-603(a) unless the property is sold, transferred, ceases being used as a short-term rental unit for a period of thirty (30) continuous months, or has been in violation of a generally applicable local law three (3) or more separate times as provided by subsection (a).

(c) A local governing body that accepts public complaints regarding the operation of short-term rental units in its jurisdiction pursuant to a permitting or application process shall assure that all complainants are notified that any false complaint made against a short-term rental unit provider are punishable as perjury under § 39-16-702.

(d) If a local governing body prohibits, effectively prohibits, suspends, or otherwise regulates property used as a short-term rental unit that is also subject to § 13-7-603(a), the provider may challenge the prohibition, regulation, suspension, or regulation as in conflict with this part through a civil action or appeal. The circuit or chancery court has jurisdiction of any appeal instituted by a provider pursuant to this subsection (d) and review is de novo.

**13-7-605. Effect of part on condominiums, co-ops, homeowners associations, or other similar entities, lessors, and property owners.**

Nothing in this part prohibits:

(1) A condominium, co-op, homeowners association, or other similar entity from prohibiting or otherwise restricting an owner of property within the jurisdiction of the condominium, co-op, association, or other similar entity from using the owner's property as a short-term rental unit as provided for in the entity's governing documents;

(2) A lessor, through the terms of a lease agreement, from restricting the use of the leased property as a short-term rental unit; or

(3) A property owner from placing a restrictive covenant or easement on the property that restricts the future use of the property as a short-term rental unit as authorized under existing law.

**13-7-606. Supersession of conflicting requirements.**

This part supersedes any ordinance, resolution, regulation, rule, or other requirement of any type enacted, maintained, or enforced by a local governing body that is in conflict with this part.

**13-10-101. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of transportation;

(2) "Department" means the department of transportation;

(3) "Local government" means an incorporated municipality, county, agency or instrumentality of an incorporated municipality or county, two (2) or more of the foregoing acting jointly, or an authority established by law to provide mass transportation services, or a nonprofit corporation authorized to provide mass transportation services;

(4) "Mass transportation project" means the planning, acquisition, construction, reconstruction, improvement, maintenance or operation of any mass transportation system or capital equipment used in connection therewith;

(5) "Project cost" means actual or estimated cost of a mass transportation project, including relocation assistance payments, or the estimated reasonable cost thereof as approved by the commissioner, whichever is lower, less any federal assistance received or to be received for the project; and

(6) "Rail fixed guideway public transportation system" has the same meaning as provided in 49 CFR Part 674.

**13-10-201. Responsibility for implementation.**

(a) The department is designated as the agency responsible for implementing a state safety oversight program that satisfies the requirements of 49 U.S.C. § 5329(e) and shall have the authority to implement all requirements necessary to comply with 49 U.S.C. § 5329(e) and the implementing federal regulations.

(b) The department may enter into an agreement with one (1) or more contractors to act on behalf of the department in carrying out the duties of the department under this part. However, any such contractor may not provide services to both the department and a rail fixed guideway public transportation system under the oversight of the department, unless authorized by a waiver issued by the federal transit administrator or the administrator's designee.

**13-10-202. Financial and legal independence.**

(a) Unless waived under 49 U.S.C. § 5329(e), the department:

(1) Shall be financially and legally independent from any rail fixed guideway public transportation system under the oversight of the department;

(2) May not employ an individual who is also employed by a rail fixed guideway public transportation system under the oversight of the department; and

(3) May not directly provide public transportation services in an area with a rail fixed guideway public transportation system under the oversight of the department.

(b) A rail fixed guideway public transportation system under the oversight of the department may not provide funding to the department in a manner prohibited by the federal transit administration.

**13-10-203. Enforcement authority.**

(a) The department shall oversee and have the authority to implement all safety aspects of rail fixed guideway public transportation systems in accordance with 49 U.S.C. § 5329(e), including:

(1) Investigation and enforcement of federal and state laws regarding rail fixed guideway public transportation safety;

(2) Establishment of minimum safety standards for the rail fixed guideway public transportation systems in the state;

(3) Review, approval, oversight, and enforcement of the public transportation agency safety plan required under 49 U.S.C. § 5329(d), including implementation by a rail fixed guideway public transportation system of the system's plan; and

(4) Oversight and enforcement of corrective action by rail fixed guideway public transportation systems in a manner directed by the commissioner or commissioner's designee as needed, including compelling the removal of a specific hazard, immediately suspending or prohibiting rail service as appropriate, or taking other action consistent with this purpose.

(b) The department shall have the right to access the property, vehicles, accident scenes, and records of each rail fixed guideway public transportation system under the oversight of the department for the purpose of fulfilling its duties under this part.

**13-10-204. Confidentiality of information.**

(a) The data collected for and reports concerning investigations conducted under this part by the department, or a contractor acting on behalf of the department, shall be confidential and not open for inspection by members of the public pursuant to the open records law, compiled in title 10, chapter 7, and may not be admitted into evidence or used in a civil action for damages resulting from a matter mentioned in such a report.

(b) Any portion of a rail fixed guideway public transportation system safety plan that concerns security for the system shall be confidential and not open for inspection by members of the public pursuant to the open records law.

**13-10-205. Audits and reporting.**

(a) At least once every three (3) years, the department shall audit each rail fixed guideway public transportation system's compliance with the public transportation agency safety plan as required by 49 U.S.C. § 5329(e).

(b) At least once per year, the department shall report the status of the safety of each rail fixed guideway public transportation system to the governor, the federal transit administration, and the board of directors, or equivalent, of the rail fixed guideway public transportation system.

**13-10-206. Authority to adopt policies and regulations.**

The department is authorized to establish policies and promulgate rules and regulations in furtherance of this part. All rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**13-20-118. Immunity of officials.**

The individual commissioners, directors, supervisory employees, and supervisory agents of a housing authority, whether such housing authority is formed under this chapter or by private act, while acting in the scope of their authority, including those entities that a housing authority or entity affiliated with an authority may form, incorporate, or join as a partner or member to develop or manage a mixed-finance project, and the directors, supervisory employees, and supervisory agents of such entities, while acting in the scope of their authority for the development or management of the mixed-finance project, enjoy the same protections and immunities that are presently provided for housing authority corporations under the law of this state, and any protections and immunities that may be provided to housing authorities in the future under the law of this state.

**13-21-314. Application of part.**

This part shall apply to any county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census. In addition, this part shall apply in any city having a population of not less than twenty seven thousand three hundred eighty (27,380) nor more than twenty seven thousand three hundred ninety (27,390), according to the 2000 federal census or any subsequent federal census. This part shall also apply in any city having a population of not less than twenty thousand nine hundred seventy (20,970) nor more than twenty thousand nine hundred eighty (20,980), according to the 2010 federal census or any subsequent federal census. In addition, this part applies in any city having a population of not less than fifteen thousand nine hundred (15,900) nor more than sixteen thousand (16,000), according to the 2010 federal census or any subsequent federal census, lying partly within a county with a metropolitan form of government and partly within an adjacent county.

**13-24-401. Short title.**

This part shall be known and may be cited as the "Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018."

**13-24-402. Part definitions.**

As used in this part:

(1) "Aesthetic plan" means any publicly available written resolution, regulation, policy, site plan, or approved plat establishing generally applicable aesthetic requirements within the authority or designated area within the authority. An aesthetic plan may include a provision that limits the plan's application to construction or deployment that occurs after adoption of the aesthetic plan. For purposes of this part, such a limitation is not discriminatory as long as all construction or deployment occurring after adoption, regardless of the entity constructing or deploying, is subject to the aesthetic plan;

(2) "Applicant" means any person who submits an application pursuant to this part;

(3) "Application" means a request submitted by an applicant to an authority:

(A) For a permit to deploy or colocate small wireless facilities in the ROW; or

(B) To approve the installation or modification of a PSS associated with deployment or colocation of small wireless facilities in the ROW;

(4)(A) "Authority" means:

(i) Within a municipal boundary, the municipality, regardless of whether such municipality is a metropolitan government;

(ii) Within a county and outside a municipal boundary, the county; or

(iii) Upon state-owned property, the state;

(B) "Authority" does not include a government-owned electric, gas, water, or wastewater utility that is a division of, or affiliated with, a municipality, metropolitan government, or county for any purpose of this part, and the decision of the utility regarding a request to attach to or modify the plant, facilities, or equipment owned by the utility shall not be governed by this part;

(5) "Authority-owned PSS" means a PSS owned by an authority but does not include a PSS owned by a distributor of electric power, regardless of whether an electric distributor is investor-owned, cooperatively-owned, or government-owned;

(6) "Colocate," "colocating", and "colocation" mean, in their respective noun and verb forms, to install, mount, maintain, modify, operate, or replace small wireless facilities on, adjacent to, or related to a PSS. "Colocation" does not include the installation of a new PSS or replacement of authority-owned PSS;

(7) "Communications facility" means the set of equipment and network components, including wires and cables and associated facilities, used by a communications service provider to provide communications service;

(8) "Communications service" means cable service as defined in 47 U.S.C. § 522(6), telecommunications service as defined in 47 U.S.C. § 153(53), information service as defined in 47 U.S.C. § 153(24) or wireless service;

(9) "Communications service provider" means a cable operator as defined in 47 U.S.C. § 522(5), a telecommunications carrier as defined in 47 U.S.C. § 153(51), a provider of information service as defined in 47 U.S.C. § 153(24), a video service provider as defined in § 7-59-303, or a wireless provider;

(10) "Fee" means a one-time, nonrecurring charge;

(11) "Historic district" means a property or area zoned as a historic district or zone pursuant to § 13-7-404;

(12) "Local authority" means an authority that is either a municipality, regardless of whether the municipality is a metropolitan government, or a county, and does not include an authority that is the state;

(13) "Micro wireless facility" means a small wireless facility that:

(A) Does not exceed twenty-four inches (24″) in length, fifteen inches (15″) in width, and twelve inches (12″) in height; and

(B) The exterior antenna, if any, does not exceed eleven inches (11″) in length;

(14) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority;

(15) "Potential support structure for a small wireless facility" or "PSS" means a pole or other structure used for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, including poles installed solely for the colocation of a small wireless facility. When "PSS" is modified by the term "new," then "new PSS" means a PSS that does not exist at the time the application is submitted, including, but not limited to, a PSS that will replace an existing pole. The fact that a structure is a PSS does not alone authorize an applicant to colocate on, modify, or replace the PSS until an application is approved and all requirements are satisfied pursuant to this part;

(16) "Rate" means a recurring charge;

(17) "Residential neighborhood" means an area within a local authority's geographic boundary that is zoned or otherwise designated by the local authority for general purposes as an area primarily used for single-family residences and does not include multiple commercial properties and is subject to speed limits and traffic controls consistent with residential areas;

(18) "Right-of-way" or "ROW" means the space, in, upon, above, along, across, and over all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of the authority, and any unrestricted public utility easement established, dedicated, platted, improved, or devoted for utility purposes and accepted as such public utility easement by the authority, but excluding lands other than streets that are owned by the authority;

(19)(A) "Small wireless facility" means a wireless facility with:

(i) An antenna that could fit within an enclosure of no more than six (6) cubic feet in volume; and

(ii) Other wireless equipment in addition to the antenna that is cumulatively no more than twenty-eight (28) cubic feet in volume, regardless of whether the facility is ground-mounted or pole-mounted. For purposes of this subdivision (19)(A)(ii), "other wireless equipment" does not include an electric meter, concealment element, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, or a vertical cable run for the connection of power and other services; and

(B) "Small wireless facility" includes a micro wireless facility;

(20) "Wireline backhaul facility" means a communications facility used to transport communications services by wire from a wireless facility to a

network;

(21)(A) "Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

(i) Equipment associated with wireless communications; and

(ii) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration;

(B) "Wireless facility" does not include:

(i) The structure or improvements on, under, or within which the equipment is colocated;

(ii) Wireline backhaul facilities; or

(iii) Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna; and

(C) "Wireless facility" includes small wireless facilities;

(22) "Wireless provider" means a person who provides wireless service; and

(23) "Wireless services" means any service using licensed or unlicensed spectrum, including the use of WiFi, whether at a fixed location or mobile, provided to the public.

**13-24-403. Construction and applicability of part.**

(a) This part shall be construed to maximize investment in wireless connectivity across the state by creating a uniform and predictable framework that limits local obstacles to deployment of small wireless facilities in the ROW and to encourage, where feasible, shared use of public infrastructure and colocation in a manner that is the most technology neutral and nondiscriminatory.

(b) This part does not apply to:

(1) Deployment of infrastructure outside of the ROW; or

(2) Taller towers or monopoles traditionally used to provide wireless services that are governed by §§ 13-24-304 and 13-24-305.

**13-24-404. Local option and local preemption.**

(a) Nothing in this part requires any local authority to promulgate any limits, permitting requirements, zoning requirements, approval policies, or any process to obtain permission to deploy small wireless facilities. However, any local authority that promulgates limits, permitting requirements, zoning requirements, approval policies, or processes relative to deployment of small wireless facilities shall not impose limits, requirements, policies, or processes that are:

(1) More restrictive than requirements, policies, or processes set forth in this part;

(2) In excess of that which is granted by this part; or

(3) Otherwise in conflict with this part.

(b) Any local authority limits, requirements, policies, or processes that are more restrictive, in conflict with, or in excess of that which is granted by this part are void, regardless of the date on which the requirement, policy, or process was enacted or became law.

(c) For colocation of small wireless facilities in the ROW that is within the

jurisdiction of a local authority that does not require an application and does not require work permits for deployment of infrastructure within the ROW, an applicant shall provide notice of the colocation by providing the materials set forth in § 13-24-409(g) to the office of the county mayor and the chief administrative officer of the county highway department, if the colocation is in the unincorporated area, or the city, if the colocation is in an incorporated area.

**13-24-405. Existing law unaffected.**

This part does not:

(1) Create regulatory jurisdiction for any subdivision of the state regarding communications services that does not exist under applicable law, regardless of the technology used to deliver the services;

(2) Restrict access granted by § 65-21-201 or expand access authorized under § 54-16-112;

(3) Authorize the creation of local taxation in the form of ROW taxes, rates, or fees that exceed the cost-based fees authorized under existing law, except that the specific fees or rates established pursuant to this part do not exceed cost;

(4) Alter or exempt any entity from the franchising requirements for providing video services or cable services set forth in title 7, chapter 59;

(5) Apply to any segment of the statewide P25 interoperable communications system governed by § 4-3-2018;

(6) Alter the requirements or exempt any entity from the requirements to relocate facilities, including any PSS, small wireless facility, or other related infrastructure, to the same extent as any facility pursuant to title 54, chapter 5, part 8, or other similar generally applicable requirement imposed on entities who deploy infrastructure in ROW;

(7) Prohibit a local authority from the nondiscriminatory enforcement of breakaway sign post requirements and safety restrictions generally imposed for all structures within a ROW;

(8) Prohibit a local authority from the nondiscriminatory enforcement of vegetation control requirements that are imposed upon entities that deploy infrastructure in a ROW for the purpose of limiting the chances of damage or injury as a result of infrastructure that is obscured from view due to vegetation; or

(9) Prohibit a local authority from the nondiscriminatory enforcement of generally applicable local rules regarding removal of unsafe, abandoned, or inoperable obstructions in a ROW.

**13-24-406. Prohibited activities.**

An authority shall not:

(1) Enter into an exclusive arrangement with any person for use of a ROW for the construction, operation, marketing, or maintenance of small wireless facilities;

(2) Discriminate by prohibiting an applicant from making any type of installation that is generally permitted when performed by other entities entitled to deploy infrastructure in a ROW or by imposing any maintenance or repair obligations not generally applicable to all entities entitled to deploy infrastructure in a ROW;

(3) Impose discriminatory prohibitions against deploying a new PSS for small wireless facilities in a ROW. Only requirements imposed generally to other entities entitled to deploy infrastructure in a ROW may be applied to prohibit an applicant's deployment of a new PSS in a ROW; or

(4) Except as provided in this part or otherwise specifically authorized by state law, adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a ROW by a communications service provider authorized by state or local law to operate in a ROW; regulate any communications services; or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider's communications facilities in a ROW.

**13-24-407. Uniform local authority fees for deployment of small wireless facilities — Exceptions.**

(a) The following are the maximum fees and rates that may be charged to an applicant by a local authority for deployment of a small wireless facility:

(1) The maximum application fee is one hundred dollars ($100) each for the first five (5) small wireless facilities and fifty dollars ($50.00) each for additional small wireless facilities included in a single application. A local authority may also require an additional fee of two hundred dollars ($200) on the first application an applicant files following April 24, 2018 to offset the local authority's initial costs of preparing to comply with this part. Beginning on January 1, 2020, and at each five-year interval thereafter, the maximum application fees established in this section must increase in an amount of ten percent (10%), rounded to the nearest dollar; and

(2) The maximum annual rate for colocation of a small wireless facility on a local authority-owned PSS is one hundred dollars ($100).

(b) In addition to the maximum fees and rates described in subsection (a), a local authority shall not require applicants:

(1) To pay fees or reimburse costs for the services or assistance provided to the authority by a consultant or third party retained by the authority relative to deployment of small wireless facilities; or

(2) To file additional applications or permits for regular maintenance, replacement of, or repairs made to an applicant's own facilities. In no event shall replacement of a PSS constitute regular maintenance.

(c) This section does not prohibit an authority from requiring generally applicable work or traffic permits, or from collecting the same applicable fees for such permits, for deployment of a small wireless facility or new PSS as long as the work or traffic permits are issued and associated fees are charged on the same basis as other construction activity in a ROW.

(d) This section does not prohibit an authority from retaining any consultant or third party when the fees and costs for the consultant or third party are paid by the authority, using the authority's own funds, rather than requiring applicants to reimburse or pay for the consultants or third parties.

(e)(1) Except for the application fees, permit fees, and colocation rates set out in this section, no local authority shall require additional rates or fees of any kind, including, but not limited to, rental fees, access fees, or site license fees for the initial deployment or the continuing presence of a small wireless facility.

(2) No local authority shall require approval, or any applications, fees, or

rates, for:

(A) Routine maintenance of a small wireless facility, which maintenance does not require the installation of a new PSS or the replacement of a PSS;

(B) The replacement of a small wireless facility with another small wireless facility that is the same size or smaller than the size conditions set out in the definition of "small wireless facility" in § 13-24-402; or

(C) The installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in § 68-101-104.

(3) No local authority shall require execution of any access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW.

(4) A local authority shall not directly or indirectly require an applicant to perform services for the authority or provide goods to the authority such as in-kind contributions to the authority, including, but not limited to, reserving fiber, conduit, or pole space for the authority in exchange for deployment of small wireless facilities. The prohibition in this subdivision (e)(4) does not preclude the approval of an application to colocate a small cell in which the applicant chooses, in its sole discretion, a design that accommodates other functions or attributes of benefit to the authority.

**13-24-408. Uniform local authority requirements for deployment and maintenance of small wireless facilities — Exceptions.**

(a)(1) No local authority shall restrict the size, height, or otherwise regulate the appearance or placement of small wireless facilities, or prohibit colocation on PSSs, except a local authority shall require that:

(A) A new PSS installed or an existing PSS replaced in the ROW not exceed the greater of:

(i) Ten feet (10′) in height above the tallest existing PSS in place as of April 24, 2018 that is located within five hundred feet (500′) of the new PSS in the ROW and, in residential neighborhoods, the tallest existing PSS that is located within five hundred feet (500′) of the new PSS and is also located within the same residential neighborhood as the new PSS in the ROW;

(ii) Fifty feet (50′) above ground level; or

(iii) For a PSS installed in a residential neighborhood, forty feet (40′) above ground level;

(B) Small wireless facilities deployed in the ROW after April 24, 2018 shall not extend:

(i) More than ten feet (10′) above an existing PSS in place as of April 24, 2018; or

(ii) On a new PSS, ten feet (10') above the height permitted for a new PSS under this section.

(2) Nothing in this part applies to or restricts the ability of an electric distributor or its agent or designated party to change the height of a utility pole used for electric distribution, regardless of whether a small wireless facility is colocated on the utility pole. This section does not authorize a wireless provider to install or replace a PSS above the height restrictions in

subdivision (a)(1)(A).

(3) An applicant may construct, modify, and maintain a PSS or small wireless facility that exceeds the height limits set out in subdivision (a)(1) only if approved under the local authority's generally applicable zoning regulations that expressly allow for the taller structures or if approved pursuant to a zoning appeal.

(b) A local authority may require an applicant to comply with a local authority's nondiscriminatory requirements for placing all electric, cable, and communications facilities underground in a designated area of a ROW if the local authority:

(1) Has required all electric, communications, and cable facilities, other than authority-owned PSSs and attachments, to be placed underground prior to the date on which the application is submitted;

(2) Does not prohibit the replacement of authority-owned PSSs in the designated area when the design for the new PSS meets the authority's design aesthetic plan for the area and all other applicable criteria provided for in this part; and

(3) Permits applicants to seek a waiver of the underground requirements for the placement of a new PSS to support small wireless facilities and the approval or nonapproval of the waivers are decided in a nondiscriminatory manner.

(c)(1) Except for facilities excluded from evaluation for effects on historic properties under 47 C.F.R. § 1.1307(a)(4) or any subsequently enacted similar regulations, a local authority may require reasonable, nondiscriminatory, and technology neutral design or concealment measures in a historic district if:

(A) The design or concealment measures do not have the effect of prohibiting any applicant's technology or substantially reducing the functionality of the small wireless facility, and the local authority permits alternative design or concealment measures that are reasonably similar; and

(B) The design or concealment measures are not considered a part of the small wireless facility for purposes of the size conditions contained in the definition of "small wireless facility" in § 13-24-402.

(2) Nothing in this section limits a local authority's enforcement of historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966 (54 U.S.C. § 300101 et seq.), and the regulations adopted and amended from time to time to implement those laws.

(d) No local authority shall require network design for small wireless facilities, including mandating the selection of any specific PSS or category of PSS to which an applicant must attach any part of its network. No local authority shall limit the placement of small wireless facilities by imposing minimum separation distances for small wireless facilities or the structures on which the facilities are colocated. The prohibitions in this subsection (d) do not preclude a local authority from providing general guidance regarding preferred designs or from requesting consideration of design alternatives in accordance with the process set forth in § 13-24-409(b).

(e) A local authority may prohibit colocation on local authority-owned PSSs that are identified as PSSs the mast arms of which are routinely removed to

accommodate frequent events, including, but not limited to, regularly scheduled street festivals or parades. To qualify for the exception set out in this subsection (e), an authority must publish a list of the PSSs on its website and may prohibit colocation only if the PSS has been designated and published as an exception prior to an application. A local authority may grant a waiver to allow colocation on a PSS designated under this subsection (e) if an applicant demonstrates that its design for colocation will not interfere with the operation of the PSS and otherwise meets all other requirements of this part.

(f) An applicant may replace an existing local authority-owned PSS when colocating a small wireless facility. When replacing a PSS, any replacement PSS must reasonably conform to the design aesthetics of the PSS being replaced, and must continue to be capable of performing the same function in a comparable manner as it performed prior to replacement.

(g) When replacing a local authority-owned PSS, the replacement PSS becomes the property of the local authority and maintenance and repair obligations are as follows:

(1) For local authority-owned PSSs used for lighting, a local authority may require the applicant to provide lighting on the replacement PSS. Both the PSS and the lighting shall become the property of the local authority only upon completion of the local authority's inspection of the new PSS to ensure it is in working condition and that any lighting is equivalent to the quality and standards of the lighting on the PSS prior to replacement. After satisfactory inspection, the local authority's ownership shall include responsibility for electricity and ordinary maintenance, but the local authority shall not be responsible for electric power, maintenance or repair of the small wireless facility colocated on the local authority-owned PSS; and

(2) When the applicant's design for replacing a local authority-owned PSS substantially alters the PSS, then the applicant shall indicate in its application whether the applicant will manage maintenance and repairs in case of damage or whether the applicant agrees that, if the PSS is damaged and requires repair, then the local authority may replace the PSS without regard to the alterations and require the applicant to perform any work necessary to remove or dispose of the small wireless facility. If the applicant assumes the responsibility for repair, then the applicant is entitled to a right of subrogation with regard to local authority insurance coverage or any recovery obtained from third parties liable for the damage.

(h) A local authority may conduct periodic training sessions or seminars for the purpose of sharing local information relevant to deployment of small wireless facilities and best practices. Applicants must make a good faith effort to participate in the opportunities.

**13-24-409. Uniform application procedures for local authorities.**

(a) A local authority may require an applicant to seek permission by application to colocate a small wireless facility or install a new or modified PSS associated with a small wireless facility and obtain one (1) or more work permits, as long as the work permits are of general applicability and do not apply exclusively to wireless facilities.

(b) If a local authority requires an applicant to seek permission pursuant to subsection (a), the authority must comply with the following:

(1) A local authority shall allow an applicant to include up to twenty (20)

small wireless facilities within a single application;

(2) A local authority shall, within thirty (30) days of receiving an application, determine whether an application is complete and notify the applicant. If an application is incomplete, a local authority must specifically identify the missing information in writing when the applicant is notified;

(3)(A) Within thirty (30) days of receiving an application, a local authority may notify an applicant of the need for a conference with the applicant to assist the local authority in understanding or evaluating the applicant's design with regard to one (1) or more small wireless facilities contained in its application;

(B) For an application containing multiple small wireless facilities, the local authority shall specify the specific small wireless facilities for which conference is needed, and the sixty-day period for reviewing the application must be extended to seventy-five (75) days as provided in subdivision (b)(7);

(C) The local authority is responsible for scheduling the conference and shall permit the applicant to attend telephonically. The seventy-five-day period is not tolled while the conference is scheduled unless the applicant agrees to an additional extension of the review period;

(D) Issues that may be addressed by the conference include, but are not limited to:

(i) Safety considerations not adequately addressed by the application or regarding which the local authority proposes additional safety-related alterations to the design;

(ii) Potential of conflict with another applicant's application for the same or a nearby location;

(iii) Impact of planned construction or other public works projects at or near the location identified by the application; and

(iv) Alternative design options that may enable colocation on an existing PSS instead of deployment of a new PSS or opportunities and potential benefits of alternative design that would incorporate other features or elements of benefit to the local authority. However, the existence of alternatives does not constitute a basis for denial of an application that otherwise satisfies all generally applicable standards for construction in the ROW and the requirements established by this part;

(4) A local authority shall process all applications on a nondiscriminatory basis;

(5) Except when extension of the review period is allowed by this section, a local authority shall approve or deny all small wireless facilities within an application within sixty (60) days of receipt of the application. For those applications seeking permission to deploy or colocate multiple small wireless facilities, the local authority shall deny permission only as to those small wireless facilities for which the application does not demonstrate compliance with all generally applicable ROW standards imposed on entities entitled to place infrastructure in the ROW and the requirements established by this part. A local authority shall not deny permission solely on the basis that the small wireless facility was contained in the same application as other small wireless facilities that are not approved;

(6) Any application or any portion of an application that is not approved or denied within sixty (60) days is deemed approved, unless the sixty-day

period has been extended consistent with this section. If the period has been extended, then the date on which approval will be deemed to occur is also extended to the same date of the applicable extension;

(7) Except as otherwise provided in this subdivision (b)(7), a local authority shall not extend the sixty-day period to provide for additional or supplemental review by additional departments or designees. The sixty (60) day review period may be tolled or extended only as follows:

(A) The sixty-day period is tolled if a local authority sends notice to the applicant that the application is incomplete within thirty (30) days after the initial application is filed, but this tolling ceases once additional or supplemental information is provided to the local authority. If supplemental information is not received within thirty (30) days of the date on which notice of incompleteness is sent by the authority, then the application may be denied and a new application required;

(B) The local authority and the applicant may mutually agree to toll the sixty-day period;

(C) The sixty-day review period is extended to seventy-five (75) days upon timely notice by the authority of the need for a conference as provided in subdivision (b)(3), but the seventy-five-day period must not be further extended for applications under subdivision (b)(7)(D) or (b)(7)(E);

(D) If an applicant submits applications to the same local authority seeking permission to deploy or colocate more than thirty (30), but fewer than fifty (50), small wireless facilities within any thirty-day period, then the local authority may upon notice to the applicant extend the sixty-day period for reviewing the applications to seventy-five (75) days, but the seventy-five-day period shall not be further extended for a conference as provided in subdivision (b)(7)(C);

(E) If an applicant submits applications to the same local authority seeking permission to deploy or colocate fifty (50) or more small wireless facilities within any thirty-day period, then the local authority may, upon notice to the applicant, extend the period for reviewing the applications to ninety (90) days, but the ninety-day period must not be further extended for a conference as provided in subdivision (b)(7)(C);

(F) If an applicant submits applications to the same local authority seeking permission to deploy or colocate more than one hundred twenty (120) small wireless facilities within any sixty-day period, then the local authority may issue notice to the applicant that the authority requires the applicant to select from the following two (2) options for high-volume applicants:

(i) Pay a surcharge to maintain the same review time period that would be otherwise applicable. The surcharge is in addition to the ordinary application fee provided in § 13-24-407. The surcharge is one hundred dollars ($100) for each small wireless facility that the applicant elects to have reviewed using the otherwise applicable review period, and the applicant shall submit its list identifying the specific small wireless facilities it elects to have reviewed in the ordinarily applicable period with its surcharge payment within five (5) days of receiving the local authority's notice that applications have been received, triggering the election of either a surcharge or extension of the review time period described in (b)(7)(C), (b)(7)(D), or (b)(7)(E); or

(ii) If no identifying list is provided or if payment of a surcharge is not made within the applicable time period, or, for those small wireless

facilities not timely identified and for which no surcharge is timely paid, the ordinarily applicable review period shall be extended to one hundred-twenty (120) days;

(G) If an applicant submits an application in which the proposed design will affect in any manner a regulatory sign, as defined by the Manual on Uniform Traffic Control Devices, or any sign subject to a requirement for breakaway supports, then the local authority may reject the application. If an application is rejected on that basis, however, the local authority shall permit the applicant to seek reconsideration of its design. If the applicant requests reconsideration, then the local authority shall provide the opportunity for the applicant to schedule a conference to discuss the local authority's specific concerns within thirty (30) days of the reconsideration request. The applicant must submit a revised design or otherwise respond to the local authority's concerns within thirty (30) days of the conference, and upon receipt of the revised design or response, the local authority shall approve or deny the application within sixty (60) days, and the local authority has complete discretion to approve or deny the application in a nondiscriminatory manner;

(8) If a local authority denies an application, it shall provide written explanation of this denial at the same time the local authority issues the denial.

(c) A local authority shall not deny an application unless the applicant has failed to satisfy this part or has failed to submit a design that complies with the generally applicable requirements that the local authority imposes on a nondiscriminatory basis upon entities deploying or constructing infrastructure in a ROW.

(d) Contemporaneous with an approval of an application in which the design includes replacement or construction of a new or replacement PSS, a local authority may notify the applicant of the further requirement that the applicant shall provide a professional engineer's certification that the installation of the new or replacement PSS has been completed consistent with the approved design as well as all generally applicable safety and engineering standards.

(e) After denial of an application, if an applicant provides a revised application that cures deficiencies identified by the local authority within thirty (30) days of the denial, then no additional application fee shall be required. A local authority shall approve or deny the revised application within thirty (30) days from the time the revised application is submitted to the authority. Any subsequent review of an application by a local government must be limited to the deficiencies cited in the denial or deficiencies that relate to changes in the revised application and that were not contained in the original application.

(f) A local authority shall not, either expressly or de facto, discontinue its application process or prohibit deployment under the terms of this part prior to adoption of any application process.

(g) A local authority shall not require applicants to provide any information not listed in this subsection (g). A local authority may require the following information to be provided in an application:

(1) A preliminary site plan with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the local authority to determine that the design of the

installation and any new PSS or any modification of a PSS is consistent with all generally applicable safety and design requirements, including the requirements of the Manual on Uniform Traffic Control Devices;

(2) The location of the site, including the latitudinal and longitudinal coordinates of the specific location of the site;

(3) Identification of any third party upon whose PSS the applicant intends to colocate and certification by the applicant that it has obtained approval from the third party;

(4) The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of an emergency related to the small wireless facility;

(5) The applicant's certification of compliance with surety bond, insurance, or indemnification requirements; rules requiring maintenance of infrastructure deployed in ROW; rule requiring relocation or timely removal of infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the local authority imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and

(6) The applicant's certification that the proposed site plan and design plans meet or exceed all applicable engineering, materials, electrical, and safety standards, including all standards related to the structural integrity and weight-bearing capacity of the PSS and small wireless facility. Those standards relevant to engineering must be certified by a licensed professional engineer.

(h) An applicant must complete deployment of the applicant's small wireless facilities within nine (9) months of approval of applications for the small wireless facilities unless the local authority and the applicant agree to extend the period, or a delay is caused by a lack of commercial power or communications transport facilities to the site. If an applicant fails to complete deployment within the time required pursuant to this subsection (h), then the local authority may require that the applicant complete a new application and pay an application fee.

(i) If a local authority receives multiple applications seeking to deploy or colocate small wireless facilities at the same location in an incompatible manner, then the local authority may deny the later filed application.

(j) A local authority may require the applicant to designate a safety contact for any colocation design that includes attachment of any facility or structure to a bridge or overpass. After the applicant's construction is complete, the applicant shall provide to the safety contact a licensed professional engineer's certification that the construction is consistent with the applicant's approved design, that the bridge or overpass maintains the same structural integrity as before the construction and installation process, and that during the construction and installation process neither the applicant nor its contractors have discovered evidence of damage to or deterioration of the bridge or overpass that compromises its structural integrity. If such evidence is discovered during construction, then the applicant shall provide notice of the evidence to the

safety contact.

(k) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this part does not authorize the provision of any communications service or the installation, placement, maintenance or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in a right of way.

**13-24-410. Provisions applicable solely to the state as an authority.**

Notwithstanding any other provision in this part to the contrary, the deployment of small wireless facilities in state ROW is subject to this section, as follows:

(1) In those instances in which an applicant seeks to deploy a small wireless facility or new PSS within a state ROW under the control of the department of transportation or to colocate on state-owned PSSs that are subject to oversight by the department of transportation, an application must be made to the department of transportation;

(2)(A) The department of transportation may charge an applicant an application fee of one hundred dollars ($100) for each application to deploy small wireless facilities in a state ROW up to a maximum of five (5) small wireless facilities. The department may charge an additional fee in the amount of fifty dollars ($50.00) for each additional small wireless facility included in a single application. Beginning on January 1, 2020, and at each five-year interval thereafter, the application fees established in this subdivision (2)(A) shall increase by the amount of ten percent (10%);

(B) The department of transportation shall not require a permit or charge an application fee for routine maintenance or replacement of a small wireless facility in a state ROW unless the maintenance or replacement requires the installation of a new PSS or the replacement of a PSS or the maintenance or replacement activity will require disturbance of the highway pavement or shoulders;

(C) The department of transportation may impose inspection costs in the same manner such costs are imposed with respect to other entities that deploy infrastructure in a state ROW; and

(D) The department of transportation may require the applicant to provide a surety bond in the same manner as a surety bond is required with respect to other entities that deploy infrastructure in a state ROW;

(3) The application shall conform to the department of transportation's generally applicable rules or policies applicable to those entities that the department of transportation permits to deploy infrastructure in a state ROW;

(4) The department of transportation shall endeavor, when feasible in its discretion, to comply with the timetable for review of applications by local authorities set out in § 13-24-409, but the department of transportation shall have discretion to extend the time for review and shall provide notice to the applicant of additional time needed. No application to the department of transportation shall be deemed approved until the application is affirmatively acted upon;

(5) Until the department of transportation promulgates rules for the deployment of small wireless facilities as set forth in subdivision (8), the

department of transportation shall accept applications to deploy small wireless facilities in a state ROW and shall consider each application on a case-by-case basis and shall, in its complete discretion, grant or deny such applications;

(6) Nothing in this part precludes the department of transportation from exercising any regulatory power or conducting any action necessary to comply with 23 USC § 131 and § 54-21-116 relating to the regulation of billboards or to satisfy any requirements of federal funding established by state and federal law;

(7) To ensure that this part does not impose new costs significant enough to outweigh the benefits of small wireless facilities, the department of transportation shall not be required to reimburse the costs of relocation of small wireless facilities from a state ROW, notwithstanding any decision the department of transportation may make to exercise its discretionary authority under § 54-5-804 to reimburse other owners of utility facilities for relocation costs arising from a highway construction project;

(8) The department of transportation shall promulgate rules or establish agency policies applicable to deployment of small wireless facilities within state ROW and the colocation of small wireless facilities on state-owned PSS in state ROW, including, but not limited to, the establishment of an annual rate for the colocation of a small wireless facility on state-owned PSS in a state ROW. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; and

(9) Nothing in this part restricts the department of transportation from the management of a state ROW or a state-owned PSS in a state ROW as otherwise established by law.

**13-24-411. Authority powers preserved.**

Consistent with the limitations in this part, an authority may require applicants to:

(1) Follow generally applicable and nondiscriminatory requirements for entities that deploy infrastructure or perform construction in a ROW:

(A) Requiring structures and facilities placed within a ROW to be constructed and maintained as not to obstruct or hinder the usual travel upon pedestrian or automotive travel ways;

(B) Requiring compliance with Americans with Disabilities Act Accessibility Guidelines (ADAAG) standards adopted by the authority to achieve compliance with the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), including Public Rights-of-Way Accessibility Guidelines (PROWAG) if adopted by the authority;

(C) Requiring compliance with measures necessary for public safety; and

(D) Prohibiting obstruction of the legal use of a ROW by utilities;

(2) Follow an aesthetic plan established by the authority for a defined area, neighborhood, or zone by complying with generally applicable and nondiscriminatory standards on all entities entitled to deploy infrastructure in a ROW, except that an authority shall not apply standards in a manner that precludes all deployment of small wireless facilities or precludes deployment of small wireless facilities as a permitted use pursuant to zoning requirements and an authority shall provide detailed explanation of any

denial based on the failure of the design to conform to the aesthetic plan. Notwithstanding this subdivision (2), in residential neighborhoods, an authority may impose generally applicable standards that limit deployment or colocation of small wireless facilities in public utility easements when the easements are:

(A) Not contiguous with paved roads or alleys on which vehicles are permitted;

(B) Located along the rear of residential lots; and

(C) Subject to a generally applicable restriction that no electric distribution or telephone utility poles are permitted to be deployed;

(3) In residential neighborhoods, deploy new PSS in a ROW to be located within twenty-five feet (25′) from the property boundaries separating residential lots larger than three-quarters of an acre in size and may require new PSS deployed in a ROW to be located within fifteen feet (15′) from the property boundaries separating residential lots three-quarters of an acre in size or smaller;

(4) Repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public roadways or to other utility facilities placed in a ROW based on generally applicable and nondiscriminatory requirements imposed by the authority; and

(5) Require maintenance or relocation of infrastructure deployed in the ROW; timely removal of infrastructure no longer utilized; and insurance, surety bonds, or indemnification for claims arising from the applicant's negligence to the same extent the authority applies such requirements generally to entities entitled to deploy infrastructure in ROW based on generally applicable and nondiscriminatory requirements imposed by the authority.

**13-24-412. Private right of action.**

Any party aggrieved by the failure of an authority to act in accordance with this part may seek remedy in the chancery court for the county in which the applicant attempted to deploy or has deployed a small wireless facility, unless the claim seeks a remedy against the state, in which case the claim must be brought in the chancery court of Davidson County. The court may order an appropriate remedy to address any action inconsistent with this part.

**13-24-413. Study on impact of deployment of broadband — Best Practices — Recommendations — Report.**

(a) The Tennessee advisory commission on intergovernmental relations shall study and prepare a report on the impact of this part, including:

(1) The impact on deployment of broadband;

(2) The fiscal impact on authorities resulting from the administrative process required by this part;

(3) Best practices from the perspective of applicants and authorities;

(4) Best practices in other states and identify opportunities to advance the quality of transportation in this state by utilizing technological applications, sometimes referred to as "smart transportation applications," that are supported by smallwireless facilities; and

(5) Recommendations for changes to this part based on the study's findings.

(b) The report must be delivered to the chairs of the house business and

utilities committee of the house of representatives and commerce and labor committee of the senate by January 1, 2021.

**13-26-107. Appropriations — Local contributions.**

(a) Any funds appropriated to implement this chapter are subject to the approval of the governor and the commissioner of finance and administration.

(b) Such approval shall be given only after review by the office of the governor of the annual work program developed by the human resource agency to assure that such program is in accordance with the development plans of the state.

(c) It is the intent of the state to assist financially with the delivery of human resources for residents. After the creation of any such board as provided in this chapter and when the local governments have indicated a willingness to contribute financially by adopting a budget requiring a certain per capita assessment, the state is authorized to match the local contributions according to the following schedule:

| Local Assessment Cents/Capita | Annual State Contribution | Contribution Cap/County |
|---|---|---|
| 1-5 | $40,000 | $7,500 |
| 6-10 | $70,000 | $7,500 |
| 11-15 | $100,000 | $10,000 |
| 16-20 | $150,000 | $12,500 |

(d) Such local contributions shall be based upon, in the case of counties, an amount not to exceed fifteen cents (15¢) per capita based on the latest decennial census, one half (½) of which may be contributed by local incorporated cities or by other private, public or semipublic bodies; provided, that no county shall be required to contribute more than ten thousand dollars ($10,000) annually. The aggregate of such funds may also be used for purposes of matching various federal programs of assistance. Counties and municipalities may participate independently of each other in financing the activities of the board. Cities and counties are specifically authorized to appropriate and expend funds for carrying out the purposes of this chapter.

**13-30-102. Legislative findings.**

The legislature finds and declares as follows:

(1) Tennessee's communities are important to the social and economic vitality of the state. Whether urban, suburban or rural, many communities are struggling to cope with vacant, abandoned and tax-delinquent properties.

(2) There exists a crisis in many cities and their metro areas caused by disinvestment in real property and resulting in a significant amount of vacant and abandoned property. This condition of vacant and abandoned property represents lost revenue to local governments and large costs associated with demolition, safety hazards and spreading deterioration of neighborhoods including resulting mortgage foreclosures.

(3) The need exists to strengthen and revitalize the economy of the state and its local units of government by solving the problems of vacant and abandoned property in a coordinated manner and to foster the development

of such property and promote economic growth. Such problems may include multiple taxing jurisdictions lacking common policies, ineffective property inspection, code enforcement and property rehabilitation support, lengthy and/or inadequate foreclosure proceedings, and lack of coordination and resources to support economic revitalization.

(4) There is an overriding public need to confront the problems caused by vacant, abandoned and tax-delinquent properties through the creation of new tools to be available to communities throughout the state enabling them to turn vacant spaces into vibrant places.

(5) Land banks are one of the tools that can be utilized by communities to facilitate the return of vacant, abandoned and tax-delinquent properties to productive use.

(6) [Deleted by 2018 amendment.]

**13-30-103. Chapter definitions.**

As used in this chapter, unless the context clearly indicates otherwise:

(1) "Board of directors" or "board" means the board of directors or other similar governing body of the corporation;

(2) "Corporation" means a corporation created pursuant to this chapter to operate a land bank;

(3) "Land bank" means real property, however obtained or acquired and held by a corporation, created pursuant to this chapter, with the intent of acquiring and holding onto the real property so acquired until such a time as the corporation is able to find a willing and able buyer to acquire the real property from the corporation;

(4) "Local government" means:

(A) Any home rule municipality;

(B) Any county having a population of not less than one hundred twenty-three thousand one (123,001) nor more than one hundred twenty-three thousand one hundred (123,100), according to the 2010 federal census or any subsequent federal census;

(C) Any county having a population of not less than eighty-nine thousand eight hundred (89,800) nor more than eighty-nine thousand nine hundred (89,900), according to the 2010 federal census or any subsequent federal census;

(D) Any county having a metropolitan form of government; or

(E) Any municipality having a population of not less than forty-eight thousand two hundred (48,200) nor more than forty-eight thousand two hundred nine (48,209), according to the 2010 federal census or any subsequent federal census;

(F) Any municipality having a population of not less than forty-one thousand (41,000) nor more than forty-two thousand (42,000), according to the 2010 federal census or any subsequent federal census; and

(G) Any county having a population of not less than twenty-seven thousand two hundred (27,200) nor more than twenty-seven thousand three hundred (27,300), according to the 2010 federal census or any subsequent federal census;

(5) "Real estate" means an identified parcel or tract of land, including improvements, if any; and

(6) "Real property" means one (1) or more defined parcels or tracts of land or interests, benefits and rights inherent in the ownership of real estate.

**13-30-110. Acquisition and maintenance of real property and interests in real property.**

(a) The corporation may acquire real property or interests in real property for the land bank by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the corporation considers proper.

(b) The corporation may acquire real property by purchase contracts, lease purchase agreements, installment sales contracts or land contracts, and may accept transfers from municipalities or counties upon such terms and conditions as agreed to by the corporation and the local government.

(c) The corporation shall maintain all of its real property and real property held in the land bank in accordance with state law and the laws and ordinances of the jurisdiction in which the real property is located.

(d) The corporation shall not own or hold real property located outside the jurisdictional boundaries of the local governmental entity or entities that created the corporation; provided, however, that the corporation may be granted authority pursuant to an intergovernmental cooperation agreement with another municipality or county to manage and maintain real property located within the jurisdiction of such other municipality or county.

(e) Except as provided in § 13-30-120, notwithstanding any other law to the contrary, any municipality or county may convey to the corporation real property and interests in real property on such terms and conditions, and according to such procedures, as determined by the legislative body of the local government conveying the real property to the corporation.

(f)(1) The corporation may provide written notice to the clerk and master in advance of any delinquent property tax sale auction held pursuant to § 67-5-2005(b) that it wishes to enter the minimum bid for cash for any parcel advertised for sale in such auction, and such minimum bid shall preempt all other bids for said parcel, and the local land bank shall be the prevailing bidder.

(2) If there are no other bidders on a parcel under subdivision (f)(1), such minimum bid shall be accepted for no cash, and the local land bank shall be the prevailing bidder and take title to said parcel in the same manner as a municipality bidding the minimum bid.

(g) Commencing upon the date of transfer of any real property from a land bank to a taxable person or entity, if approved by local government, the land bank shall be entitled to receive payments from the local government equal to fifty percent (50%) of real property taxes collected by the local government for a period of five (5) years.

**15-2-129. Tennessee Songwriters Week.**

The last full week of February each year must be observed as "Tennessee Songwriters Week," to be proclaimed by the governor, to promote Tennessee's musical heritage by recognizing the contributions of past and present songwriters to this state.

**15-2-130. Febb Burn Day.**

August 18 of each year shall be observed as "Febb Burn Day" to be proclaimed as such by the governor, to honor Febb Burn's role in the

enfranchisement of women. This day shall not be a legal holiday as defined in § 15-1-101.

**16-1-117. Reporting case statistics — Automated court information system.**

(a) It is the duty of the administrative office of the courts to collect, develop, and maintain uniform statistical information relative to court caseloads in Tennessee. To assist the administrative office of the courts in this duty, the clerks of each court shall report case data as set forth below:

(1) Each criminal case shall be assigned a unique docket number. A criminal case shall be defined and reported as a single charge or set of charges arising out of a single incident concerning a single defendant in one (1) court proceeding. An incident shall be all criminal activity occurring on the same date. A court proceeding refers to a single level of court, such as general sessions or circuit. An appeal, probation revocation, or other post-judgment proceeding shall be considered a separate case. This definition shall not alter the practice in the Tennessee rules of criminal procedure dealing with joinder and severance of criminal cases. In addition, in courts of record, multiple incidents shall be counted as a single case when the charges are of a related nature and it is the district attorney general's intention that all of the charges be handled in the same court proceeding pursuant to a single indictment. If a case has more than one (1) charge or count, then the administrative office of the courts shall count the case according to the highest class of charge or count for the weighted caseload study based on the formula set out in § 16-2-513(a). Nothing in this subdivision (a)(1) shall operate to deprive court clerks of any fees to which they were entitled prior to July 1, 2014;

(2) A civil case shall be defined as all motions, petitions, claims, counter-claims or proceedings between the parties resulting from the initial filing until the case is disposed. A unique docket number will be assigned to a civil case upon filing. Until the case is disposed, all subsequent motions, petitions, claims, counterclaims or proceedings between the parties resulting from the initial filing will be handled under the assigned docket number and will not be assigned a new docket number. Once a civil case has been disposed and further actions occur on the case, the original case will be reopened using the same docket number under which it was originally filed and is subject to additional court costs. All subsequent motions, petitions, claims, counter-claims or proceedings relating to the reopened case will be handled under the one reopened case docket number until disposed. Any subsequent re-openings will still use the original docket number, but will be counted by the administrative office of the courts as a new case for case-reporting purposes and are subject to additional court costs. Civil cases in courts of record shall be counted and reported to the administrative office of the courts according to this subdivision (a)(2);

(3) All general sessions courts and municipal courts with general sessions jurisdiction shall collect and provide court data to the administrative office of the courts based on the definitions for criminal and civil cases as provided in subdivisions (a)(1) and (2);

(4) All courts of record, except for juvenile courts, and all general sessions courts and municipal courts with general sessions jurisdiction shall report

caseload data to the administrative office of the courts not less than one (1) time each month, so that all cases filed and disposed in one (1) month have been received by the administrative office of the courts by the fifteenth day of the following month in which the case is filed or disposed. The administrative office of the courts shall create forms to be used by each court in reporting the caseload data;

(5) The administrative office of the courts will provide written notification to any responsible party found not to be in compliance with the reporting requirements. Written notification will detail the type of noncompliance and recommend the corrective action to be taken. If compliance is not achieved during the subsequent reporting period following notification, the administrative office of the courts will no longer accept data from the office not in compliance until such time as the errors are corrected. Notification of this action will be sent to all judges, district attorneys general, district public defenders and court clerks within the district where the noncomplying office is located. Notification will also be sent to the district attorneys general conference, the district public defender conference, the administrative office of the courts and the county officials association of Tennessee. Any periods of noncompliance will also be reported in the annual report to the judicial council and to the chairs of the civil justice committee of the house of representatives and the judiciary committee of the senate;

(6)(A) The clerks of those courts wherein commitments to a mental institution, as defined in § 16-10-213, are ordered or persons are adjudicated as a mental defective, as defined in § 16-10-213, shall report information described in § 16-10-213(c) regarding individuals who have been adjudicated as a mental defective or judicially committed to a mental institution. Included in the report pursuant to this subdivision (a)(6)(A) shall be the date in which such information was also reported to the federal bureau of investigation-NICS index;

(B) The clerks of courts, pursuant to the reporting requirements of §§ 16-10-213, 16-11-206, 16-15-303 and 16-16-120, shall provide sufficient information to the administrative office of the courts who shall make such reports on behalf of those clerks as soon as practicable, but no later than the third business day following the date of receipt of signed order;

(C) The information reported pursuant to subdivision (a)(6)(A) shall be maintained as confidential and not subject to public inspection, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354;

(D) The administrative office of the courts shall provide written notification to any responsible party found not to be in compliance with the reporting requirements of this subdivision (a)(6) or with the reporting requirements of §§ 16-10-213, 16-11-206, 16-15-303 and 16-16-120. If compliance is not achieved during the subsequent reporting period following notification, the administrative office of the courts will no longer accept data from the office not in compliance. Notification of this action will be sent to all judges, district attorneys general, district public defenders and court clerks within the district where the noncomplying office is located. Notification will also be sent to the district attorneys general conference, the district public defenders conference, the administrative office of the courts and the county officials association of Tennessee. Any periods of noncompliance will also be reported in the annual report to the chair of the judiciary committee of the senate and the chair of the civil justice

committee of the house of representatives.

(b) Any automated court information system being used or developed on or after July 1, 2003, including, but not limited to, the Tennessee court information system (TnCIS) being designed pursuant to § 16-3-803(h), shall ensure comparable data will be reported to the administrative office of the courts with respect to courts of record, and criminal cases in general sessions courts and municipal courts with general sessions jurisdiction, using the definitions and standards set forth in subsection (a). Each system shall use the Tennessee code citation on each criminal charge, and have the capability of using this information to classify the type and class of each charge.

**16-1-119. Advisory task force to review composition of judicial districts.**

(a)(1)(A) By no later than September 1, 2018, the speaker of the senate and the speaker of the house of representatives shall establish an advisory task force to review the composition of Tennessee's current judicial districts codified at § 16-2-506.

(B) The task force shall be composed of eleven (11) members, as follows:

(i) Three (3) current trial court judges, one (1) representing each grand division, appointed by joint action of the speaker of the senate and speaker of the house of representatives;

(ii) Three (3) current district attorneys general, one (1) representing each grand division, appointed by joint action of the speaker of the senate and speaker of the house of representatives;

(iii) Three (3) current district public defenders, one (1) representing each grand division, appointed by the joint action of the speaker of the senate and speaker of the house of representatives; and

(iv) Two (2) citizen members, one (1) appointed by each speaker. The citizen members must reside in different grand divisions.

(C) The speakers shall jointly designate one (1) of the members to serve as chair of the task force.

(2)(A) By no later than December 1, 2019, the task force shall complete its findings and recommend and publish a proposed statewide judicial redistricting plan. The plan shall provide reasonable and timely access to Tennessee's circuit, chancery, and criminal courts and shall promote the efficient utilization of publicly funded resources allocated for the courts.

(B) Prior to completing its findings and recommending this plan, the task force shall conduct at least one (1) public hearing within each of the three (3) grand divisions and shall receive oral and written testimony from interested organizations and citizens of this state. In addition, the task force shall establish a publicly accessible judicial redistricting task force page on the website of the administrative office of the courts for redistricting-related information, including meeting notices and redistricting plans.

(3) The task force shall deliver a report of its findings, as well as its proposed judicial redistricting plan, to the governor, the speakers of the senate and house of representatives, the judiciary committee of the senate, the civil justice committee of the house of representatives, and the administrative office of the courts at least one (1) week prior to publication of the proposed judicial redistricting plan.

(b)(1) The administrative office of the courts shall provide support services

to the task force created under this section.

(2) The members of the task force shall serve without compensation but shall be entitled to reimbursement of any travel expenses incurred. All reimbursement for travel expenses shall be in conformity with the comprehensive state travel regulations as promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(3) The task force shall cease to exist upon completion of the task force's report and recommendations.

**16-2-506. Establishment of judicial districts — Assistant district attorneys general — Criminal investigators — Equity and law courts — Chancery courts.**

The state is divided into thirty-one (31) judicial districts composed as follows:

(1)(A) The first judicial district consists of the counties of Carter, Johnson, Unicoi and Washington. The four (4) incumbent trial court judges and the district attorney general currently residing in those counties shall continue to serve the first judicial district in their respective capacities. In 1988, the qualified voters of the first judicial district shall elect an additional judge or chancellor in accordance with § 16-2-505 to serve the court and part of court designated pursuant to § 16-2-512;

(B) The district attorney general of the first judicial district is entitled to nine (9) assistant district attorney general positions and one (1) criminal investigator position;

(2)(A) The second judicial district consists of the county of Sullivan. The three (3) incumbent trial court judges and the district attorney general currently residing in such county shall continue to serve the second judicial district in their respective capacities. Effective September 1, 1984, the law and equity court currently located in Sullivan County shall become a chancery court for the second judicial district and the current law and equity judge shall become a chancellor who on such date shall possess the same jurisdiction, powers and duties and shall receive the same compensation, benefits, emoluments and dignity of office as is required or provided by law for chancellors. In 1984, the qualified voters of the second judicial district shall elect an additional judge in accordance with § 16-2-505 to serve part II of the circuit court of such district;

(B) The district attorney general of the second judicial district is entitled to eight (8) assistant district attorney general positions and two (2) criminal investigator positions;

(3)(A) The third judicial district consists of the counties of Greene, Hamblen, Hancock and Hawkins. The three (3) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the third judicial district in their respective capacities. In 1986, the qualified voters of the third judicial district shall elect an additional judge or chancellor in accordance with § 16-2-505 to serve the court and part of court designated pursuant to § 16-2-512. In 1990, the qualified voters of the third judicial district shall elect an additional circuit court judge in accordance with § 16-2-505 to serve part III of the circuit court of such district;

(B) The district attorney general of the third judicial district is entitled to nine (9) full-time assistant district attorney general positions and three (3) criminal investigator positions;

(4)(A) The fourth judicial district consists of the counties of Cocke, Grainger, Jefferson and Sevier. The three (3) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the fourth judicial district in their respective capacities. Notwithstanding any other provision of law or this part to the contrary, the chancellor currently serving in the fourth judicial district shall also serve the fifth judicial district. As long as the chancellor for the fourth judicial district also serves the fifth judicial district, such chancellor shall be elected by the qualified voters of both such districts and may reside in either district. In 1990, the qualified voters of the fourth judicial district shall elect an additional circuit court judge in accordance with § 16-2-505 to serve part III of the circuit court of such district. Effective September 1, 1998, there is created an additional circuit court in the fourth judicial district. At the August 1998 general election, the qualified voters of the fourth judicial district shall elect a person in accordance with § 16-2-505, to serve as judge of the circuit court created by this section for an eight-year term;

(B) The district attorney general of the fourth judicial district is entitled to seven (7) assistant district attorney general positions and two (2) criminal investigator positions;

(5)(A) The fifth judicial district consists of the county of Blount. The two (2) incumbent trial court judges and the district attorney general currently residing in such county shall continue to serve the fifth judicial district in their respective capacities;

(B) The district attorney general of the fifth judicial district is entitled to five (5) assistant district attorney general positions and one (1) criminal investigator position;

(6)(A) The sixth judicial district shall consist of the county of Knox. The nine (9) incumbent trial court judges and the district attorney general currently residing in such county shall continue to serve the sixth judicial district in their respective capacities. In 1986, the qualified voters of the sixth judicial district shall elect an additional chancellor in accordance with § 16-2-505 to serve part III of the chancery court of such district;

(B) The district attorney general of the sixth judicial district is entitled to sixteen (16) assistant district attorney general positions and two (2) criminal investigator positions;

(7)(A) The seventh judicial district consists of the county of Anderson. The two (2) incumbent trial court judges and the district attorney general currently residing in such county shall continue to serve the seventh judicial district;

(B) The district attorney general of the seventh judicial district is entitled to three (3) assistant district attorney general positions and one (1) criminal investigator position;

(8)(A) The eighth judicial district consists of the counties of Campbell, Claiborne, Fentress, Scott and Union. The three (3) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the eighth judicial district in their respective capacities;

(B) The district attorney general of the eighth judicial district is entitled to six (6) assistant district attorney general positions and two (2) criminal investigator positions;

(9)(A) The ninth judicial district consists of the counties of Loudon, Meigs, Morgan and Roane. The two (2) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the ninth judicial district in their respective capacities. In 1984, the qualified voters of the ninth judicial district shall elect a chancellor in accordance with § 16-2-505 to serve part I of the chancery court of such district;

(B) The district attorney general of the ninth judicial district is entitled to five (5) assistant district attorney general positions and two (2) criminal investigator positions;

(10)(A) The tenth judicial district consists of the counties of Bradley, McMinn, Monroe and Polk. The four (4) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the tenth judicial district in their respective capacities. In 1986, the qualified voters of the tenth judicial district shall elect an additional judge or chancellor in accordance with § 16-2-505 to serve the court and part of court designated pursuant to § 16-2-512;

(B) The district attorney general of the tenth judicial district is entitled to ten (10) assistant district attorney general positions and two (2) criminal investigator positions;

(11)(A) The eleventh judicial district consists of the county of Hamilton. The nine (9) incumbent trial court judges and the district attorney general currently residing in such county shall continue to serve the eleventh judicial district in their respective capacities;

(B) The district attorney general of the eleventh judicial district is entitled to seventeen (17) assistant district attorney general positions and four (4) criminal investigator positions;

(12)(A)(i) The twelfth judicial district consists of the counties of Bledsoe, Franklin, Grundy, Marion, Rhea and Sequatchie. The three (3) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the twelfth judicial district in their respective capacities. In 1986, the qualified voters of the twelfth judicial district shall elect an additional judge in accordance with § 16-2-505, to serve part III of the circuit court of such district;

(ii) Notwithstanding any other provision of this part to the contrary, from September 1, 1984 until September 1, 1990, the chancellor currently residing in the twelfth judicial district shall also serve as chancellor for Coffee and Warren counties in the fourteenth and thirty-first judicial districts, respectively;

(B) The district attorney general of the twelfth judicial district is entitled to eight (8) assistant district attorney general positions and two (2) criminal investigator positions;

(13)(A) The thirteenth judicial district consists of the counties of Clay, Cumberland, DeKalb, Overton, Pickett, Putnam and White. The three (3) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the thirteenth judicial district in their respective capacities. In 1984, the qualified voters of the thirteenth judicial district shall elect an additional judge in accordance

with § 16-2-505 to serve part II of the circuit court of such district. Effective September 1, 1998, there is created a criminal court in the thirteenth judicial district. At the August 1998 general election, the qualified voters of the thirteenth judicial district shall elect a person in accordance with § 16-2-505, to serve as judge of the criminal court created by this section for an eight-year term;

(B) The district attorney general of the thirteenth judicial district is entitled to eight (8) assistant district attorney general positions and two (2) criminal investigator positions;

(14)(A) The fourteenth judicial district consists of the county of Coffee. The incumbent trial court judge and district attorney general currently residing in such county shall continue to serve the fourteenth judicial district in their respective capacities. In 1990, the qualified voters of the fourteenth judicial district shall elect an additional judge or chancellor in accordance with § 16-2-505, to serve the court and part of court designated pursuant to § 16-2-512. The additional judge elected in 1990 shall serve the fourteenth judicial district exclusively and the judge currently residing in such district shall also have the responsibility and duty to assist the judge of the thirty-first judicial district with the judge's docket by interchange;

(B) The district attorney general of the fourteenth judicial district is entitled to three (3) assistant district attorney general positions and one (1) criminal investigator positions;

(15)(A) The fifteenth judicial district consists of the counties of Jackson, Macon, Smith, Trousdale and Wilson. The three (3) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the fifteenth judicial district. The present criminal court judge shall continue to serve as judge of the criminal court; the present chancellor shall continue to serve as judge of the chancery court; and the present circuit judge shall continue to serve as judge of the circuit court. Effective September 1, 1998, there is created an additional circuit court in the fifteenth judicial district. At the August 1998 general election, the qualified voters of the fifteenth judicial district shall elect a person in accordance with § 16-2-505, to serve as judge of the circuit court created by this section for an eight-year term;

(B) The district attorney general of the fifteenth judicial district is entitled to seven (7) assistant district attorney general positions and two (2) criminal investigator positions;

(16)(A)(i) The sixteenth judicial district consists of the counties of Cannon and Rutherford. The two (2) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the sixteenth judicial district in their respective capacities. In 1984, the qualified voters of the sixteenth judicial district shall elect an additional judge in accordance with § 16-2-505 to serve part II of the circuit court of such district;

(ii) On May 31, 1993, there is created an additional court in the sixteenth judicial district with the type of such court, type of judge to preside over such court and part of court being designated as provided in § 16-2-512. The position of judge or chancellor for such court is also created on such date and such position shall be filled by appointment as provided by law. The person so appointed shall serve until September 1,

1994, or until such person's successor is elected and qualified. At the August 1994 general election, the qualified voters of the sixteenth judicial district shall elect a judge or chancellor in accordance with § 16-2-505 to serve the court and part of court created by subdivision (16)(A)(ii);

(iii) Effective September 1, 1998, there is created an additional circuit court in the sixteenth judicial district. At the August 1998 general election, the qualified voters of the sixteenth judicial district shall elect a person in accordance with § 16-2-505, to serve as judge of the circuit court created by this section for an eight-year term;

(iv) Effective September 1, 2018, there is created an additional trial court in the sixteenth judicial district. The type of court, type of judge to preside over the court, and part of court shall be designated as provided in § 16-2-512. The governor shall appoint a person to serve as an additional judge or chancellor, and the person so appointed shall serve in that capacity until September 1, 2020, or until the person's successor is elected and qualified. At the August 2020 general election, the qualified voters of the sixteenth judicial district shall elect an additional judge or chancellor to serve until September 1, 2022, or until the person's successor is elected and qualified. At the August 2022 general election, and every eight (8) years thereafter, the qualified voters of the sixteenth judicial district shall elect an additional judge or chancellor for a full eight-year term;

(B) The district attorney general of the sixteenth judicial district is entitled to ten (10) assistant district attorney general positions and one (1) criminal investigator position;

(17)(A) The seventeenth judicial district consists of the counties of Bedford, Lincoln, Marshall and Moore. The two (2) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the seventeenth judicial district in their respective capacities. Effective September 1, 1989, there is created the position of circuit court judge to serve part II of the circuit court of the seventeenth judicial district. Such position shall be filled by appointment of the governor as provided by law and the person so appointed shall serve until September 1, 1990, or until such person's successor is elected and qualified. In 1990, the qualified voters of the seventeenth judicial district shall elect a circuit court judge in accordance with § 16-2-505, to serve part II of the circuit court of such district. The judge of part II of such circuit court may be a resident of any county within the seventeenth judicial district and shall serve the entire district;

(B) The district attorney general of the seventeenth judicial district is entitled to five (5) assistant district attorney general positions and one (1) criminal investigator position;

(18)(A)(i) The eighteenth judicial district consists of the county of Sumner. The two (2) incumbent trial court judges and the district attorney general currently residing in such county shall continue to serve the eighteenth judicial district in their respective capacities. In 1986, the qualified voters of the eighteenth judicial district shall elect an additional judge or chancellor in accordance with § 16-2-505 to serve the court and part of court designated pursuant to § 16-2-512;

(ii) Notwithstanding any other provision of this part to the contrary, from September 1, 1984 until September 1, 1990, the circuit court judge currently residing in the eighteenth judicial district shall also serve the nineteenth judicial district;

(B) The district attorney general of the eighteenth judicial district is entitled to seven (7) assistant district attorney general positions and two (2) criminal investigator positions;

(19)(A)(i) The nineteenth judicial district consists of the counties of Montgomery and Robertson. The two (2) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the nineteenth judicial district in their respective capacities. In 1984, the qualified voters of the nineteenth judicial district shall elect an additional judge in accordance with § 16-2-505 to serve part I of the circuit court of such district;

(ii) Notwithstanding any other provision of this part to the contrary, from September 1, 1984 until September 1, 1988, the chancellor currently residing in the nineteenth judicial district shall also serve as chancellor for Stewart County in the twenty-third judicial district;

(iii) The circuit court judge elected in 1984 to serve part I of the circuit court of the nineteenth judicial district shall be a resident of Robertson County but shall serve the entire district. In any subsequent election for part I of such circuit court, the judge may be a resident of any county within the district. Notwithstanding any other provision of this part to the contrary, from September 1, 1984 until September 1, 1986, the circuit judge for the nineteenth judicial district is authorized to sit by interchange in the eighteenth judicial district when requested to do so by the judges of the eighteenth judicial district. During such two-year period, nothing other than the agreement of the judges involved is necessary to effectuate such an interchange;

(iv) Effective September 1, 1984, the law and equity court currently located in Montgomery County shall become part II of the circuit court of the nineteenth judicial district and the current law and equity judge shall become judge of part II of such circuit court. On such date, such law and equity judge shall possess the same jurisdiction, powers and duties and shall receive the same compensation, benefits, emoluments and dignity of office as is required or provided by law for circuit court judges;

(v) In 1990, the qualified voters of the nineteenth judicial district shall elect an additional circuit court judge in accordance with § 16-2-505 to serve part III of the circuit court of such district;

(vi) Effective September 1, 2015, there is created in the nineteenth judicial district one (1) additional circuit court to be designated as division IV. The governor shall appoint a person to serve as judge of division IV of the circuit court. The person so appointed shall serve in such capacity until September 1, 2016, or until the person's successor is elected and qualified. At the August 2016 general election, the qualified voters of the nineteenth judicial district shall elect, in accordance with § 16-2-505, one (1) person to serve as judge of division IV of the circuit court. The person so elected at the August 2016 general election shall hold office until September 1, 2022, or until the person's successor is elected and qualified. Thereafter, the judge of division IV of the circuit

court shall be elected for a full eight-year term;

(vii) Effective September 1, 2018, there is created an additional trial court in the nineteenth judicial district. The type of court, type of judge to preside over the court, and part of court shall be designated as provided in § 16-2-512. The governor shall appoint a person to serve as an additional judge or chancellor, and the person so appointed shall serve in that capacity until September 1, 2020, or until the person's successor is elected and qualified. At the August 2020 general election, the qualified voters of the nineteenth judicial district shall elect an additional judge or chancellor to serve until September 1, 2022, or until the person's successor is elected and qualified. At the August 2022 general election, and every eight (8) years thereafter, the qualified voters of the nineteenth judicial district shall elect an additional judge or chancellor for a full eight-year term;

(B) The district attorney general of the nineteenth judicial district is entitled to ten (10) assistant district attorney general positions and one (1) criminal investigator position;

(20)(A)(i) The twentieth judicial district consists of the county of Davidson. The twelve (12) incumbent trial court judges and the district attorney general currently residing in such county shall continue to serve the twentieth judicial district in their respective capacities. In 1990, the qualified voters of the twentieth judicial district shall elect an additional judge or chancellor in accordance with § 16-2-505 to serve the court and part of court designated pursuant to § 16-2-512. In 1998, the qualified voters of the twentieth judicial district shall elect an additional circuit court judge in accordance with § 16-2-505 to serve as judge of division VII of the circuit court of such district. In addition to the jurisdiction of a circuit court judge, the judge of division VII shall have concurrent chancery court jurisdiction and exclusive jurisdiction over the probate of wills and the administration of estates, including the estates of decedents and of wards under guardianships and conservatorships. Effective September 1, 1998, there is created an additional circuit court in the twentieth judicial district. At the August 1998 general election, the qualified voters of the twentieth judicial district shall elect a person in accordance with § 16-2-505, to serve as judge of the circuit court created by this section for an eight-year term;

(ii) Effective September 1, 2003, there is created in the twentieth judicial district one (1) additional chancery court to be designated as division IV and two (2) additional criminal courts to be designated as division V and division VI. The governor shall appoint a person to serve as chancellor of division IV of the chancery court, a person to serve as judge of division V of the criminal court and a person to serve as judge of division VI of the criminal court. The persons so appointed shall serve in such capacity until September 1, 2004, or until their successors are elected and qualified. At the August 2004 general election, the qualified voters of the twentieth judicial district shall elect, in accordance with § 16-2-505, one (1) person to serve as chancellor of division IV of the chancery court, one (1) person to serve as judge of division V of the criminal court and one (1) person to serve as judge of division VI of the criminal court. The persons so elected at the August 2004 election shall hold office until September 1, 2006, and until their successors are elected and qualified. Thereafter, the chancellor and judges shall be

elected for full eight-year terms;

(B) The district attorney general of the twentieth judicial district is entitled to thirty (30) assistant district attorney general positions and five (5) criminal investigator positions;

(21)(A)(i) The twenty-first judicial district consists of the counties of Hickman, Lewis, Perry and Williamson. The two (2) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the twenty-first judicial district in their respective capacities. In 1986, the qualified voters of the twenty-first judicial district shall elect an additional judge or chancellor in accordance with § 16-2-505 to serve the court and part of court designated pursuant to § 16-2-512. Effective January 1, 1998, there is created an additional circuit court in the twenty-first judicial district. At the August 1998 general election, the qualified voters of the twenty-first district shall elect a person in accordance with § 16-2-505, to serve as judge of the circuit court created by this section for an eight-year term;

(ii) Effective September 1, 2018, there is created an additional trial court in the twenty-first judicial district. The type of court, type of judge to preside over the court, and part of court shall be designated as provided in § 16-2-512. The governor shall appoint a person to serve as an additional judge or chancellor, and the person so appointed shall serve in that capacity until September 1, 2020, or until the person's successor is elected and qualified. At the August 2020 general election, the qualified voters of the twenty-first judicial district shall elect an additional judge or chancellor to serve until September 1, 2022, or until the person's successor is elected and qualified. At the August 2022 general election, and every eight (8) years thereafter, the qualified voters of the twenty-first judicial district shall elect an additional judge or chancellor for a full eight-year term;

(iii) It is the intent of the general assembly by adding an additional trial court in the twenty-first judicial district that the interests of public access to the courts and economy of judicial travel are best served by the presiding judge designating the new trial court created by subdivision (21)(A)(ii) to serve Hickman, Lewis, and Perry counties. Unless otherwise designated by the presiding judge to effectuate the duties enumerated in § 16-2-509(b), the remaining judges shall serve Williamson County;

(B) The district attorney general of the twenty-first judicial district is entitled to seven (7) assistant district attorney general positions, one (1) criminal investigator position, and one (1) additional assistant district attorney general position; provided, that the funding for such additional assistant district attorney general position is provided exclusively by the municipal and county governments that comprise the twenty-first judicial district;

(22)(A) The twenty-second judicial district consists of the counties of Giles, Lawrence, Maury and Wayne. The three (3) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the twenty-second judicial district in their respective capacities. Effective September 1, 1998, there is created an additional circuit court in the twenty-second judicial district. At the August 1998 general election, the qualified voters of the twenty-second judicial district shall elect a person in accordance with § 16-2-505, to serve

as judge of the circuit court created by this section for an eight-year term;

(B) The district attorney general of the twenty-second judicial district is entitled to eight (8) assistant district attorney general positions and two (2) criminal investigator positions;

(23)(A) The twenty-third judicial district consists of the counties of Cheatham, Dickson, Houston, Humphreys and Stewart. The two (2) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the twenty-third judicial district in their respective capacities. In 1988, the qualified voters of the twenty-third judicial district shall elect an additional judge or chancellor in accordance with § 16-2-505 to serve the court and part of court designated pursuant to § 16-2-512;

(B) The district attorney general of the twenty-third judicial district is entitled to seven (7) assistant district attorney general positions and two (2) criminal investigator positions. The fifth assistant district attorney general position shall not be filled unless full funding for the position is secured from local, federal or other funding sources apart from state appropriations;

(24)(A) The twenty-fourth judicial district consists of the counties of Benton, Carroll, Decatur, Hardin and Henry. The two (2) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the twenty-fourth judicial district in their respective capacities. In 1984, the qualified voters of the twenty-fourth judicial district shall elect an additional judge in accordance with § 16-2-505 to serve part II of the circuit court of such district;

(B) The district attorney general of the twenty-fourth judicial district is entitled to five (5) assistant district attorney general positions and one (1) criminal investigator position;

(25)(A) The twenty-fifth judicial district consists of the counties of Fayette, Hardeman, Lauderdale, McNairy and Tipton. The three (3) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the twenty-fifth judicial district in their respective capacities. In 1990, the qualified voters of the twenty-fifth judicial district shall elect an additional judge or chancellor in accordance with § 16-2-505 to serve the court and part of court designated pursuant to § 16-2-512;

(B) The district attorney general of the twenty-fifth judicial district is entitled to nine (9) assistant district attorney general positions and one (1) criminal investigator position;

(26)(A) The twenty-sixth judicial district consists of the counties of Chester, Henderson and Madison. The three (3) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the twenty-sixth judicial district in their respective capacities. Effective September 1, 1998, there is created an additional circuit court in the twenty-sixth judicial district. At the August 1998 general election, the qualified voters of the twenty-sixth judicial district shall elect a person in accordance with § 16-2-505, to serve as judge of the circuit court created by this section for an eight-year term;

(B) The district attorney general of the twenty-sixth judicial district is entitled to seven (7) assistant district attorney general positions and one (1) criminal investigator position;

(27)(A) The twenty-seventh judicial district consists of the counties of Obion and Weakley. The two (2) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the twenty-seventh judicial district in their respective capacities;

(B) The district attorney general of the twenty-seventh judicial district is entitled to three (3) assistant district attorney general positions and one (1) criminal investigator position;

(28)(A)(i) The twenty-eighth judicial district consists of the counties of Crockett, Gibson and Haywood. The two (2) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the twenty-eighth judicial district in their respective capacities;

(ii) Effective September 1, 1984, the law and equity court currently located in Gibson County shall become a chancery court for the twenty-eighth judicial district and the current law and equity judge shall become a chancellor who on such date shall possess the same jurisdiction, powers and duties and shall receive the same compensation, benefits, emoluments and dignity of office as is required or provided by law for chancellors;

(B) The district attorney general of the twenty-eighth judicial district is entitled to five (5) assistant district attorney general positions and one (1) criminal investigator position;

(29)(A)(i) The twenty-ninth judicial district consists of the counties of Dyer and Lake. The two (2) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the twenty-ninth judicial district in their respective capacities. Juvenile jurisdiction in Dyer County shall be in the court of general sessions as provided in §§ 37-1-102 and 37-1-203, unless such jurisdiction is vested in another court by law or private act.

(ii) Effective April 15, 1986, part II of the circuit court of the twenty-ninth judicial district shall become part I of the chancery court of such district and the current judge of part II of such circuit court shall become chancellor of part I of the chancery court of such district. On such date, such chancellor shall possess the same jurisdiction, powers and duties and shall receive the same compensation, benefits, emoluments and dignity of office as is required or provided by law for chancellors. This chancellor shall have concurrent jurisdiction with the circuit court of this district;

(B) The district attorney general of the twenty-ninth judicial district is entitled to three (3) assistant district attorney general positions and one (1) criminal investigator position;

(C) Effective September 1, 1984, there is created the position of secretary for the chancellor of part I of the chancery court of the twenty-ninth judicial district and such chancellor is authorized to employ a person to fill such position in accordance with § 16-2-505(c);

(30)(A) The thirtieth judicial district is composed of the county of Shelby. The nineteen (19) incumbent trial court judges and the district attorney general currently residing in such county shall continue to serve the thirtieth judicial district in their respective capacities. In 1984, the qualified voters of the thirtieth judicial district shall elect an additional judge in accordance with § 16-2-505 to serve part IX of the circuit court of

such district. In 1990, the qualified voters of the thirtieth judicial district shall elect one (1) additional criminal court judge in accordance with § 16-2-505 to serve part IX of the criminal court of such district. The board of commissioners of Shelby County shall furnish all books other than those provided by the administrative director of the courts and other necessary supplies for the judge to be elected in 1990. On June 6, 1995, there is created an additional criminal court in the thirtieth judicial district. The court shall be Part X of the criminal court of such district. The position shall be filled by appointment as provided by law. The person so appointed shall serve until September 1, 1996, or until such person's successor is elected and qualified. At the August 1996 general election, the qualified voters of the thirtieth judicial district shall elect a criminal court judge in accordance with § 16-2-505 to serve Part X of the court;

(B) The district attorney general of the thirtieth judicial district is entitled to forty-four (44) assistant district attorney general positions and thirteen (13) criminal investigator positions; and

(31)(A) The thirty-first judicial district consists of the counties of Van Buren and Warren. The incumbent trial court judge currently residing in such counties shall continue to serve the thirty-first judicial district. The judge residing in the thirty-first judicial district shall also have the responsibility and duty to assist the judge of the fourteenth judicial district by interchange with such judge's docket;

(B)(i) Effective September 1, 1990, there is created the position of district attorney general for the thirty-first judicial district. At the regular August election in 1990, the qualified voters of the thirty-first judicial district shall elect a person to the position of district attorney general for a full eight-year term. The person elected to such position shall possess the same qualifications, powers and duties and shall receive the same compensation, payable in the same manner, benefits, emoluments and dignity of office as is required or provided by law for other district attorneys general.

(ii) Effective July 1, 1989, there are created two (2) secretarial positions for the district attorney general of the thirty-first judicial district. Such district attorney general shall select a suitable person to fill one (1) position and such person shall receive the same compensation, payable in the same manner, as is provided by law for the secretary of other district attorneys general. The secretary shall perform such duties as may be assigned by such district attorney general. Such district attorney general shall transfer all authority and funding concerning the other secretarial position to the district attorney general for the fourth judicial district who shall select a suitable person to fill the other position, and such person shall receive the same compensation, payable in the same manner, as is provided by law for the secretary of other district attorneys general. The secretary shall perform such duties as may be assigned by the district attorney general for the fourth judicial district.

(iii) The district attorney general of the thirty-first judicial district is entitled to three (3) assistant district attorney general positions and one (1) criminal investigator position.

(iv) On September 1, 1990, the office space and all state-owned furniture, equipment, supplies, books and other such office property

located in the Warren County courthouse and currently being used by the district attorney general of the fourteenth judicial district, or by one (1) of the district attorney general's assistants or investigators, shall be transferred for the use of the district attorney of the thirty-first judicial district. On and after such date, all such office space and other office property located in the Warren County courthouse shall become the space for and property of the office of district attorney general for the thirty-first judicial district. Nothing contained herein shall be construed as prohibiting such district attorney general from also establishing an office in the other county comprising the thirty-first judicial district.

(v) By September 1, 1990, all records, files, papers and other official documents pertaining to any pending or completed case arising out of any of the counties comprising the thirty-first judicial district shall be transferred to and become the property of the office of district attorney general for the thirty-first judicial district.

(vi) Notwithstanding any other law or this subdivision (31) to the contrary, if a vacancy occurs in the office of the district attorney general currently serving the thirty-first judicial district, the governor shall appoint a suitable person to serve as district attorney general for such district. The person so appointed shall possess all of the qualifications required by law for district attorneys general and shall serve until September 1, 1990, or until the district attorney general to be elected by the voters of the thirty-first judicial district pursuant to this subdivision (31)(B) is elected and qualified.

**16-10-213. Information to be collected and reported to the federal bureau of investigation-NICS index and the department of safety by those circuit courts and criminal courts in which commitments to a mental institution are ordered.**

(a) As used in this section:

(1) "Adjudication as a mental defective or adjudicated as a mental defective" means:

(A) A determination by a court in this state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease:

(i) Is a danger to such person or to others; or

(ii) Lacks the ability to contract or manage such person's own affairs due to mental defect;

(B) A finding of insanity by a court in a criminal proceeding; or

(C) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to §§ 50a and 72b of the Uniform Code of Military Justice, codified in 10 U.S.C. §§ 850a, 876b;

(2) "Judicial commitment to a mental institution" means a judicially ordered involuntary admission to a private or state hospital or treatment resource in proceedings conducted pursuant to title 33, chapter 6 or 7;

(3) "Mental institution" means a mental health facility, mental hospital, sanitarium, psychiatric facility and any other facility that provides diagnoses by a licensed professional of mental retardation or mental illness, including, but not limited to, a psychiatric ward in a general hospital; and

(4) "Treatment resource" means any public or private facility, service or program providing treatment or rehabilitation services for mental illness or

serious emotional disturbance, including, but not limited to, detoxification centers, hospitals, community mental health centers, clinics or programs, halfway houses and rehabilitation centers.

(b) Those circuit courts and criminal courts wherein commitments to a mental institution are ordered pursuant to title 33, chapter 6 or 7 or persons are adjudicated as a mental defective shall enter a standing and continuing order instructing the clerk to collect and report as soon as practicable, but no later than the third business day following the date of such an order or adjudication, information described in subsection (c) regarding individuals who have been adjudicated as a mental defective or judicially committed to a mental institution for the purposes of complying with the NICS Improvement Amendments Act of 2007, P.L. 110-180.

(c) The following information shall be collected and reported to the federal bureau of investigation-NICS Index and the department of safety, pursuant to subsection (b):

(1) Complete name and all aliases of the individual judicially committed or adjudicated as a mental defective, including, but not limited to, any names that the individual may have had or currently has by reason of marriage or otherwise;

(2) Case or docket number of the judicial commitment or the adjudication as a mental defective;

(3) Date judicial commitment ordered or adjudication as a mental defective was made;

(4) Private or state hospital or treatment resource to which the individual was judicially committed;

(5) Date of birth of the individual judicially committed or adjudicated as a mental defective, if such information has been provided to the clerk;

(6) Race and sex of the individual judicially committed or adjudicated as a mental defective; and

(7) Social security number of the individual judicially committed or adjudicated as a mental defective if available.

(d) The information in subdivisions (c)(1)-(5), the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to applicable statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 38-6-109, 39-17-1316, and 39-17-1352 — 39-17-1354.

**16-15-701. Electronic filing.**

Any court governed by this chapter may, by local rule, allow papers to be filed, signed, or verified by electronic means that comply with technological standards promulgated by the supreme court. Pleadings and other papers filed electronically under such local rules shall be considered the same as written papers.

**16-15-903. Service upon defendants in this state.**

The plaintiff shall after issuance by the clerk of the general sessions court furnish the persons making the service with all necessary copies. Service shall be made as follows:

(1) Upon an individual other than an unmarried infant incompetent person, by delivering a copy of the warrant, writ or other papers to the

individual personally, or if the individual evades or attempts to evade service, by leaving copies of the warrant, writ or other papers at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing in the dwelling house or usual place of abode, whose name shall appear on the proof of service, or by delivering the copies to an agent authorized by appointment or by law to receive service on behalf of the individual served;

(2) Upon an unmarried infant or an incompetent person, by delivering a copy of the warrant, writ or other papers to the person's residence guardian or conservator if there is one known to the plaintiff, by delivering the copies to the individual's parent having custody within this state; or if no such parent is within this state, then by delivering the copies to the person within this state having control of the individual. If none of the persons defined and enumerated in this subdivision (2) exists, the court shall appoint a practicing attorney as guardian ad litem to whom the copies shall be delivered. If any of the persons directed by this subdivision (2) to be served is a plaintiff, then the person who is not a plaintiff who stands next in the order named in this subdivision (2) shall be served. In addition to the service provided in this subdivision (2), service shall also be made on an unmarried minor who is fourteen (14) years of age or more and who is not otherwise incompetent;

(3) Upon a partnership or unincorporated association, including a limited liability company, that is named defendant under a common name, by delivering a copy of the warrant, writ or other papers to a partner or managing agent of the partnership, to an officer or managing agent of the association or to an agent authorized by appointment or by law to receive service on behalf of the partnership or association;

(4) Upon a domestic corporation or a foreign corporation doing business in this state, by delivering a copy of the warrant, writ or other papers to an officer or managing agent of the corporation, to the chief agent in the county in which the action is brought, or by delivering the copies to any other agent authorized by appointment or by law to receive service on behalf of the corporation;

(5) Upon a nonresident individual who transacts business through an office or agency in this state, or a resident individual who transacts business through an office or agency in a county other than the county in which the resident individual resides, in any action growing out of or connected with the business of that office or agency, by delivering a copy of the warrant, writ or other papers to the person in charge of the office or agency;

(6) Upon the state of Tennessee or any agency of the state, by delivering a copy of the warrant, writ or other papers to the attorney general of the state or to any assistant attorney general and reporter;

(7) Upon a county, by delivering a copy of the warrant, writ or other papers to the county mayor, or if absent from the county, to the county attorney if there is one designated; if not, by delivering the copies to the county court clerk;

(8) Upon a municipality, by delivering a copy of the warrant, writ or other papers to the chief executive officer or to the city attorney;

(9) Upon any governmental or any quasi-government entity, by delivering a copy of the warrant, writ or other papers to any officer or managing agent of the entity; and

(10) Service by mail of a warrant, writ, or other papers upon a defendant may be made by the plaintiff, the plaintiff's attorney, or by any person

authorized by statute. After the complaint, warrant, writ, or other papers are filed, the clerk shall, upon request, furnish the original warrant, writ, or other papers, a certified copy of the original warrant, writ, or other paper, and a copy of the filed warrant, writ, or other papers to the plaintiff, the plaintiff's attorney, or other authorized person for service by mail. Such person shall send, postage prepaid, a certified copy of the warrant, writ, or other papers by registered return receipt or certified return receipt mail to the defendant. The original warrant, writ, or other papers shall be used for return of service of process. Service by mail shall not be the basis for the entry of a judgment by default unless the record contains a return receipt showing personal acceptance by the defendant or by persons designated by this section. If the defendant is a domestic corporation, or a foreign corporation authorized to conduct business in this state, a refusal to accept delivery shall be the basis for a default judgment only where the request for default is accompanied by evidence from the Tennessee secretary of state showing that the moving party made the certified mail service with the correct entity name and the correct name and address for the registered agent authorized by law to receive service of process. If service by mail is unsuccessful, it may be attempted again or other methods authorized by this title or by statute may be used.

**16-15-904. Service upon defendants outside of state.**

(a)(1) Whenever the law of this state authorizes service outside this state, service, when reasonably calculated to give notice, may be made:

(A) By any form of service authorized within this state pursuant to this part;

(B) In any manner prescribed by the law of the state in which service is effected for an action in any of the courts of general jurisdiction in that state; and

(C) As directed by the court.

(2) This section is inapplicable when service is effected in a place not within any judicial district of the United States.

(b) Service of process pursuant to this section shall include a copy of the warrant, writ or other papers.

(c) Service by mail upon a corporation shall be addressed to an officer or managing agent of the corporation, to the chief agent in the county in which the action is brought or by delivering the copies to any other agent authorized by appointment or by law to receive service on behalf of the corporation.

(d) Service by mail upon a partnership or unincorporated association, included a limited liability company, that is named defendant upon a common name shall be addressed to a partner or managing agent of the partnership or to an officer or managing agent of the association, or to an agent authorized by appointment or by law to receive service on behalf of the partnership or association.

(e) When service of a warrant, writ, or other papers is provided for or permitted by registered or certified mail under the laws of this state, and the addressee, or the addressee's agent, refuses to accept delivery, and it is so stated in the return receipt of the United States postal service, the written return receipt, if returned and filed in the action, shall be deemed an actual and valid service of the warrant, writ, or other papers. Service by mail is complete upon mailing. Service by mail shall not be the basis for the entry of

a judgment by default unless the record contains either:

(1) A return receipt showing personal acceptance by the defendant or by persons designated by statute; or

(2) A return receipt stating that the addressee or the addressee's agent refused to accept delivery, which is deemed to be personal acceptance by the defendant pursuant to this subsection (e).

**16-15-5002. Time judge must devote to office — Practice of law or other employment.**

(a) All general sessions judges in Class 1, 2 or 3 counties shall devote full time to the duties of such office and shall be prohibited from the practice of law or any other employment which conflicts with the performance of their duties as judge.

(b) General sessions judges in Class 4 through Class 8 counties shall be considered part-time judges and shall not be prohibited from the practice of law or other gainful employment while serving as judge except to the extent the practice or employment constitutes a conflict of interest.

(c) Notwithstanding this section to the contrary, a judge of the general sessions court in any county with a population of not less than eighteen thousand three hundred one (18,301) nor more than eighteen thousand four hundred (18,400), according to the 2010 federal census or any subsequent federal census, upon adoption of a resolution by a two-thirds (⅔) majority vote of the county legislative body, shall devote full time to the duties of such office and shall be prohibited from the practice of law or any other employment which conflicts with the performance of their duties as judge.

**16-15-5003. Base salaries — Annual supplement — Restrictions on adding jurisdiction — Annual adjustment — Construction.**

(a) The annual base salaries for general sessions judges shall be as follows:

(1) Counties of the first class ..... $70,000
(2) Counties of the second class ..... 50,000
(3) Counties of the third class ..... 40,000
(4) Counties of the fourth class ..... 32,000
(5) Counties of the fifth class ..... 26,000
(6) Counties of the sixth class ..... 22,000
(7) Counties of the seventh class ..... 20,000

(b)(1) In addition to the base salary provided by subsection (a), if a general sessions judge in a Class 2 or 3 county has or by operation of law obtains any of the following additional jurisdictions, the general sessions judge shall receive an annual supplement in the amounts indicated below:

(A) Juvenile jurisdiction ..... $20,000
(B) Probate ..... 10,000
(C) Domestic relations ..... 10,000
(D) Workers' compensation ..... 10,000

(2) Regardless of the kind or amount of additional jurisdiction a Class 2 judge may have, the judge shall not receive annual supplements in excess of twenty thousand dollars ($20,000).

(3) Regardless of the kind or amount of additional jurisdiction a Class 3 judge may have, the judge shall not receive annual supplements in excess of forty thousand dollars ($40,000).

(c)(1) In addition to the base salary provided by subsection (a), if a general sessions judge in a Class 4, 5 or 6 county has or by operation of law obtains any of the following additional jurisdictions, the general sessions judge shall receive an annual supplement in the amounts indicated below:

| | |
|---|---|
| (A) Juvenile jurisdiction | $10,000 |
| (B) Probate | 5,000 |
| (C) Domestic relations | 5,000 |
| (D) Workers' compensation | 5,000 |
| (E) Mental health commitments | 10,000 |

(2) Regardless of the kind or amount of additional jurisdiction a Class 4, 5 or 6 judge may have, the judge shall not receive annual supplements in excess of twenty thousand dollars ($20,000).

(3) Upon adoption of a resolution by a two-thirds (⅔) majority vote of the county legislative body, in addition to the base salary and additional supplements stated in subsections (a) and (c), any Class 4, 5 or 6 judge who is required to exercise the duties and powers set forth in title 33, chapter 6, part 4 regarding the emergency custody and hospitalization of persons believed to be mentally ill, due to a mental hospital or treatment source being located in the county where the judge presides, the judge shall receive an additional annual supplement of five thousand dollars ($5,000), which may be in excess of the twenty thousand dollars ($20,000) limitation on supplements set forth in subdivision (c)(2).

(d)(1) In addition to the base salary provided by subsection (a), if a general sessions judge in a Class 7 county has or by operation of law obtains any of the following jurisdictions, the general sessions judge shall receive an annual supplement in the amounts indicated below:

| | |
|---|---|
| (A) Juvenile jurisdiction | $7,500 |
| (B) Probate | 2,500 |
| (C) Domestic relations | 2,500 |
| (D) Workers' compensation | 2,500 |

(2) Regardless of the kind or amount of additional jurisdiction a Class 7 judge may have, the judge shall not receive annual supplements in excess of ten thousand dollars ($10,000).

(e)(1) On July 1, 1991, the base salaries established by this section shall be adjusted in accordance with subdivision (e)(2) to reflect the percentage of change in the average consumer price index (all items — city average) as published by the United States department of labor, bureau of labor statistics, between calendar year 1989 and calendar year 1990. Each succeeding July 1, a similar adjustment shall be made upon the percentage of change in the average consumer price index between the two (2) calendar years preceding July 1 of the year in which the adjustment is made. However, no reduction shall be made by way of adjustment on account of any decrease in the average consumer price index between the two (2) successive calendar years.

(2) For each two percent (2%) increase in the average consumer price index between two (2) successive calendar years, the base salaries shall be adjusted by one percent (1%). No annual adjustment shall exceed four percent (4%) regardless of the increase in the average consumer price index between any two (2) successive calendar years. Annual adjustments shall be made upon the base salary set out in subsection (a) and the adjustment shall not include any supplement that may be received pursuant to subsection (b)

or (c).

(f) The compensation, supplement and annual adjustment provisions of this section are to be construed as minimum levels. Nothing in this part shall be construed as prohibiting a county, by private act, from compensating its general sessions judge or judges at levels in excess of what is required by this part. Any private or public act in effect on September 1, 1990, that provides greater compensation for a general sessions judge than is required by this section shall, to the extent of the judge's amount of compensation, prevail over this part, and the base salary of the judge shall be the salary paid to the holder of that office on August 31, 1990, pursuant to such public or private act, plus a percentage increase equivalent to the same percentage increase given by subsection (a) to a judge of a Class 6 county. Nothing in this part shall prevent a county from establishing and funding the position of part-time general sessions judge in a county with a full-time general sessions judge.

(g) Notwithstanding any provision of law or this part to the contrary, no judge of a general sessions court shall be paid a salary that is greater than the salary paid to a judge of a circuit court.

(h)(1) Effective September 1, 1998, the annual salary for a general sessions court judge shall be increased over the annual compensation and supplements and annual adjustments that each judge actually received as of August 31, 1998, by the lesser of:

(A) Ten thousand dollars ($10,000); or

(B) Twenty percent (20%) of the annual compensation and supplements and annual adjustments as of August 31, 1998.

(2) Notwithstanding any other provision of law to the contrary, each full-time general sessions court judge in a county shall receive the same compensation as the most highly compensated general sessions court judge in that county if the judges have the same jurisdiction.

(3) Instead of the annual adjustments authorized in subsection (e), on July 1, 1999, and each succeeding July 1, the base salaries as adjusted annually and supplements as adjusted annually established by this section shall be adjusted in accordance with § 8-23-103.

(4)(A) The compensation, supplement and annual adjustment provisions of this section are to be construed as minimum levels. The compensation schedule established by this part is a comprehensive plan, and no salary supplement in excess of the supplements provided by this part shall be available to a general sessions judge unless expressly provided and funded by a private act.

(B) Notwithstanding any law to the contrary, a judge of a court of general sessions may not be paid compensation based on both this part and the compensation provisions in a private act.

(C) Nothing in this part shall be construed as prohibiting a county, by private act, from compensating its general sessions judge or judges at levels in excess of what is required by this part. Any private or public act in effect on September 1, 1998, that provides greater compensation for a general sessions judge than is required by this section shall, to the extent of the judge's amount of compensation, prevail over this part, and the base salary of the judge shall be the salary paid to the holder of that office on August 31, 1998, pursuant to the public or private act plus a percentage increase equivalent to the same percentage increase given by subdivision (h)(1) to a judge of a Class 6 county determined as of August 31, 1998.

(i)(1) Notwithstanding any law or public chapter to the contrary, effective September 1, 2006, the annual salary for a general sessions court judge who is compensated under this section shall be increased over the annual compensation and supplements and annual adjustments that each judge actually received as of August 31, 2006, by the lesser of:

(A) Ten thousand dollars ($10,000); or

(B) Twenty percent (20%) of the annual compensation and supplements and annual adjustments as of August 31, 2006.

(2) A judge of a general sessions court may not be paid compensation based on both this part and the compensation provisions of a private act.

(3) Notwithstanding any provision of this subsection (i) to the contrary, each general sessions court judge in a Class 1 county who is compensated under this section shall receive the same compensation as the most highly compensated general sessions court judge in a Class 1 county who is compensated under this section.

(4) Notwithstanding any provision of this subsection (i) to the contrary, each general sessions court judge in a Class 2-7 county who is compensated under this section and who receives the maximum amount of annual supplements shall receive the same compensation as the most highly compensated general sessions court judge in the same county classification who is compensated under this section. All other general sessions court judges in Class 2-7 counties who are compensated under this section shall receive the same compensation as the most highly compensated general sessions court judge in the same county classification with the same jurisdiction who is compensated under this section; provided, however, that no judge shall be paid a salary that reflects jurisdictional supplements that the judge is not entitled to exercise by law.

(5) Instead of the annual adjustments authorized in subsection (e), on July 1, 2007, and each succeeding July 1, the annual compensation and supplements and annual adjustments established under this section shall be adjusted in accordance with § 8-23-103.

(6) Nothing in this part shall be construed as prohibiting a county, by public or private act, from compensating its general sessions court judge or judges at levels in excess of what is required by this section. Any public or private act in effect on September 1, 2006, that provides greater compensation for a general sessions court judge than is required by this section shall, to the extent of the judge's amount of compensation, prevail over this section. Notwithstanding any provision of this subsection (i) to the contrary, a general sessions court judge in a Class 6 county who receives no supplements and who is compensated under the provisions of a private or public act and not under this section shall receive the same increase provided in subdivision (i)(1).

(7) On or before July 15, 2006, each general sessions court judge shall certify to the administrative office of the courts (AOC) the total amount of the judge's actual compensation as of August 31, 2006, the jurisdictions exercised by the judge, the legal basis for exercising the jurisdiction, and whether the judge is compensated under this section or under a public or private act. Included in the information submitted by the judge to the AOC shall be a certification of the county's chief financial officer of the actual compensation of the judge as of August 31, 2006, or other verifiable proof of the judge's actual compensation. When all judges have certified the required

information to the AOC, the AOC shall report to each general sessions court judge the amount of compensation to be paid to the general sessions court judge beginning on September 1, 2006, based on the information provided by the judge. Thereafter, when a new court is created, a new judge takes office or any similar change occurs, or upon the completion of a new federal census, the administrative office of the courts shall report the amount of compensation to be paid to any judge affected by the change.

(8) The judges of the general sessions court in any county with a population of not less than three hundred eighty-two thousand (382,000) nor more than three hundred eighty-two thousand one hundred (382,100), according to the 2000 federal census or any subsequent federal census, and that has a charter form of government shall receive the same annual compensation as the general sessions judges in those counties with a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census.

(9) No general sessions judge who engages in the private practice of law shall receive any increase in salary pursuant to this subsection (i), if the judge is prohibited by law from engaging in private practice.

(j) Notwithstanding any provision of law or this part to the contrary, no judge of a general sessions court shall be paid a salary which is greater than the salary paid to a judge of a circuit court.

(k) In addition to the base salary provided by this section, a judge of the general sessions court in any county with a population of not less than eighteen thousand three hundred one (18,301) nor more than eighteen thousand four hundred (18,400), according to the 2010 federal census or any subsequent federal census, shall receive an additional twenty thousand dollars ($20,000) in salary upon adoption of a resolution by a two-thirds (⅔) majority vote of the county legislative body approving the increased salary and if such position is full time.

**17-2-303. Issuance of commission — Term.**

(a) The supreme court is authorized to appoint senior judges only after it has made an affirmative finding that the effective administration of justice in one (1) or more judicial districts requires additional judicial resources.

(b)(1) If the supreme court, at its discretion, determines that a former justice or judge is physically and mentally capable of performing valuable judicial service on a continuing basis and that the justice's or judge's service will promote the effective administration of justice, then the supreme court shall cause an appropriate commission to be issued under its seal for the period provided in subsection (c); provided, that such commission shall be issued only to a former justice or judge who left the justice's or judge's most recent term of judicial service in good standing with the board of judicial conduct or any successor to the board.

(2) Except as provided in subdivision (b)(3), no such commission shall be issued to any former justice or judge who, during the justice's or judge's most recent term of judicial service, sought reelection or retention but was defeated in the reelection or retention bid.

(3) Notwithstanding subdivision (b)(2), if the election following the most recent term of judicial service for a judge in a state court of record results in

the judge not being reelected, the judge is authorized to be issued a commission if the judge has been elected at least twice and served at least two (2) full eight-year terms.

(c) The supreme court's designation shall be for a term of four (4) years unless the justice or judge has reached seventy (70) years of age, whereupon the term of the designation shall be for two (2) years or for any shorter period deemed proper by the supreme court. Senior justices and judges shall be eligible for reappointment.

(d) The supreme court's decision with regard to the initial designation or the renewal of senior designation is final and cannot be reviewed in any manner.

**17-2-305. Compensation, benefits, quarters, personnel and expenses.**

(a)(1) Senior justices and judges shall receive a salary calculated on the amount of time the senior justice or judge actually worked. The rate of payment shall be based upon the current compensation of the former office held by the senior justice or judge; provided, that where a senior justice or judge is receiving a retirement allowance under any retirement program administered by the Tennessee consolidated retirement system, the total combined annual amount of retirement allowance and annual salary received as a senior justice or judge cannot exceed the current annual compensation of the office from which the justice or judge retired.

(2) The salary shall be payable in monthly installments by the commissioner of finance and administration out of the state treasury.

(b)(1) Senior justices and judges shall be considered to be state employees and shall be entitled to participate in the state's insurance and benefit programs on the same basis as other active justices and judges, except as provided in subdivision (b)(2).

(2)(A) Any senior justice or judge who has not attained the maximum creditable service under the retirement system to which the justice or judge belongs shall be entitled to receive credit in the retirement system for service as a senior justice or judge; provided, that the senior justice or judge:

(i) Elects to receive the credit by notice to the board of trustees of the Tennessee consolidated retirement system; and

(ii) Authorizes the deduction of the applicable contributions as set forth under title 8, chapter 37, part 2.

(B) Such service shall be based on the actual work performed and shall be added to the creditable service of the senior justice or judge. On July 1 of each year, the senior justice's or judge's retirement benefits shall be adjusted according to the retirement system to which the senior justice or judge belongs, as appropriate.

(3) Notwithstanding this subsection (b) to the contrary, any former judge who is a retired member of the Tennessee consolidated retirement system or of a superseded system as defined in § 8-34-101 and who is designated or redesignated as a senior justice or judge on or after July 1, 2018, shall reenroll as an active member of the retirement system, make such contributions as are required for the judge's position, and establish credit for the additional service.

(c) Senior justices and judges shall be provided with suitable office space and equipment, secretarial and research assistance and a law library similar

to that provided to active justices and judges. Local governments presently responsible for providing quarters, personnel or other support for state judges shall cooperate with and assist the administrative director of the courts in providing for the reasonable needs of the senior justices or judges assigned to work in their county.

(d) A senior justice or judge assigned to a court located outside of the justice's or judge's county of residence shall receive the same reimbursement for travel expenses that is provided to active justices and judges. The expenses shall be paid upon the presentation of an itemized statement certified by the senior justice or judge to be correct.

**17-3-301. Creation — Authority — Annual meeting.**

(a) There is created the Tennessee municipal judges conference, which shall be the official organization of the municipal judges in this state. The membership of the conference shall consist of all judges of municipal courts in the state. The judges shall annually elect a board of governors for the conference.

(b) The Tennessee municipal judges conference is authorized to adopt and, from time to time, amend rules or bylaws that it deems necessary or prudent for the conduct of its affairs. The rules or bylaws shall provide for membership on the board of governors that the conference considers advisable, for the selection of a time and place within the state for annual meetings of the conference, and for other matters consistent with the general laws of the state that the conference chooses.

(c) The conference shall meet annually for the consideration of any and all matters pertaining to the discharge of the official duties and obligations of its members, to the end that there shall be a more efficient and prompt administration of justice in the municipal courts in this state. The annual meeting shall provide educational seminars or training for the membership in addition to the business sessions.

(d)(1) It is the official duty of each member of the conference to attend the annual meeting unless unable to do so because of physical incapacity.

(2) Each member shall be compensated for the member's reasonable expenses in attending the annual meeting. The expenses shall be paid upon a verified statement of expenses being filed with the administrative office of the courts (AOC) by any member incurring such expenses. Expenses shall be paid by the AOC from funds received pursuant to § 16-18-304(a) for training and continuing education courses for municipal court judges. If the designated account fails to accrue sufficient funds to defray the expenses incurred, the member's municipality is responsible for payment of the expenses.

**22-2-317. List of disqualified or potentially disqualified prospective jurors.**

(a) The jury coordinator shall prepare or cause to be prepared a list of all persons disqualified or potentially disqualified as a prospective juror from jury service due to being a non-United States citizen, convicted of a felony, deceased, not a resident of this state, or not a resident of the county. The list must be prepared and sent to the administrator of elections according to the jury summons cycle used by the court clerk. Nothing in this section prevents the list from being sent more frequently. The list may be provided by mail,

facsimile transmission, or email.

(b) The jury coordinator shall provide the administrator of elections with the following information about the disqualified juror:

(1) The full name of the disqualified juror;

(2) Current and prior addresses, if any;

(3) Telephone number, if available;

(4) Date of birth; and

(5) The reason the prospective juror was disqualified.

(c) After verifying that the person is a registered voter, the administrator of elections shall follow the procedures listed in § 2-2-106 or § 2-2-141.

(d) In addition to the list of names, if the jury coordinator has documentation showing the person's disqualification under subsection (a), the documentation may be forwarded to the administrator of elections.

**23-3-111. Delinquency in student loan repayment. [Effective until January 1, 2019. See the version effective on January 1, 2019.]**

The supreme court is encouraged to establish guidelines to suspend, deny or revoke the license of an attorney who is delinquent or in default on a repayment or service obligation under a guaranteed student loan identified in § 63-1-141(a) or when the attorney has failed to enter into a payment plan or comply with a payment plan previously approved by TSAC or a guarantee agency.

**23-3-111. Delinquency in student loan repayment — Exception for medical hardship. [Effective on January 1, 2019. See the version effective until January 1, 2019.]**

*The supreme court is encouraged to establish guidelines to suspend, deny or revoke the license of an attorney who is delinquent or in default on a repayment or service obligation under a guaranteed student loan identified in § 63-1-141(a) or when the attorney has failed to enter into a payment plan or comply with a payment plan previously approved by TSAC or a guarantee agency. The supreme court is further encouraged to establish guidelines that would not suspend, deny, or revoke the license of an attorney if the default or delinquency is the result of a medical hardship that prevented the person from working in the person's licensed field and the medical hardship significantly contributed to the default or delinquency.*

**24-2-109. Educator as witness in domestic dispute matter.**

(a) As used in this section, "educator" means any person who is currently employed at any public or private elementary or secondary school in this state:

(1) As a teacher with an active teaching license; or

(2) As a school counselor.

(b) Notwithstanding any other law, a court shall not require an educator to be a witness in any civil hearing, deposition, mediation, arbitration, trial, or other similar proceeding involving a domestic dispute matter, including, but not limited to, domestic abuse, as defined by § 36-3-601, divorce, parentage, or child custody, if the educator is not a named party and the educator's attendance would require the educator to be absent from teaching, counseling,

or supervisory duties in a school, unless the court determines that the educator's attendance is necessary to ensure fairness in the hearing, mediation, arbitration, trial, or other similar matter.

**24-7-101. Child's out-of-court, non-testimonial statement.**

(a) An out-of-court, non-testimonial statement made by a child who is under twelve (12) years of age at the time of a criminal trial describing any sexual act performed by, with, or on the child or describing any act of physical violence directed against the child shall not be excluded from evidence at the criminal trial as hearsay if all of the following apply:

(1) The court finds that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness that make the statement at least as reliable as statements admitted pursuant to Rules 803 and 804 of the Tennessee Rules of Evidence. The circumstances shall establish that the child was particularly likely to be telling the truth when the statement was made and that the test of cross-examination would add little to the reliability of the statement. In making a determination of the reliability of the statement, the court shall consider all of the circumstances surrounding the making of the statement, including, but not limited to, the spontaneity, internal consistency of the statement, mental state of the child, child's motive or lack of motive to fabricate, child's use of terminology unexpected of a child of similar age, means by which the statement was elicited, and lapse of time between the act and the statement. In making this determination, the court shall not consider whether independent proof exists of the sexual act or act of physical violence;

(2) The child's testimony is not reasonably obtainable by the proponent of the statement;

(3) Independent proof exists of the sexual act or act of physical violence; and

(4) At least ten (10) days before the trial or hearing, a proponent of the statement has notified all other parties in writing of the content of the statement, the time and place at which the statement was made, the identity of the witness who is to testify about the statement, and the circumstances surrounding the statement that are claimed to indicate trustworthiness of the statement.

(b) The child's testimony is not reasonably obtainable by the proponent of the statement under subdivision (a)(2) only if:

(1) The child refuses to testify concerning the subject matter of the statement or claims a lack of memory of the subject matter of the statement after a person trusted by the child, in the presence of the court, urges the child to both describe the acts described by the statement and to testify;

(2) The court finds that:

(A) The child is absent from the trial or hearing;

(B) The proponent of the statement has been unable to procure the child's attendance or testimony by process or other reasonable means despite a good faith effort to do so; and

(C) It is probable that the proponent would be unable to procure the child's testimony or attendance if the trial or hearing were delayed for a reasonable time; or

(3) The court finds that:

(A) The child is unable to testify at the trial or hearing because of death or then-existing physical or mental illness or infirmity; and

(B) The illness or infirmity would not improve sufficiently to permit the child to testify if the trial or hearing were delayed for a reasonable time.

(c) The proponent of the statement fails to establish that the child's testimony or attendance is not reasonably obtainable under subdivision (a)(2) if the child's refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the statement for the purpose of preventing the child from attending or testifying.

(d) The court shall make the findings required by this section on the basis of a hearing conducted outside the presence of the jury and shall make findings of fact on the record, as to the bases for the court's ruling.

(e) Nothing in this section shall affect the admissibility of evidence admitted under § 24-7-117 or § 24-7-120.

**24-7-102. Use of statement of party given in student disciplinary proceeding concerning sexual misconduct — No right of party to be represented at public expense — Adoption of rules of evidence.**

(a) A written or oral statement of a party given in a student disciplinary proceeding concerning sexual misconduct must not be admissible in any civil or criminal trial, hearing, or proceeding for any purpose or be used for impeachment without the informed and written consent of the party if the statement was made in a student disciplinary proceeding in which the party did not have the active assistance of counsel.

(b) This section does not create a right for a party to be represented at the expense of the public, including a public institution of higher education.

(c) This section does not require a public institution of higher education to adopt formal rules of evidence in student disciplinary proceedings that are not a contested case under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) As used in this section:

(1) "Active assistance of counsel" means the right to be represented by a licensed attorney who is allowed to fully participate in the student disciplinary proceeding or an appeal of a result of a student disciplinary proceeding;

(2) "Civil or criminal trial, hearing, or proceeding" does not include any type of civil action, counterclaim, cross-claim, or third-party complaint initiated by or against a public institution of higher education;

(3) "Fully participate" means being allowed to engage in the following conduct in a student disciplinary proceeding on behalf of a party:

(A) Make arguments to the hearing officer, including opening and closing arguments during a hearing and arguments on procedural and evidentiary issues; and

(B) Examine and cross-examine witnesses, directly or indirectly, if live witness testimony is presented;

(4) "Hearing officer" means:

(A) A hearing officer, hearing panel, or hearing board in a student disciplinary proceeding other than a contested case conducted under the Uniform Administrative Procedures Act; or

(B) An administrative law judge or hearing officer under the contested case provisions of the Uniform Administrative Procedures Act;

(5) "Party" means:

(A) A student accused of sexual misconduct; or

(B) A victim of sexual misconduct;

(6) "Student disciplinary proceeding" means a hearing, proceeding, or any other non-law enforcement process, other than an investigation, that is used by a public higher education institution to determine whether sexual misconduct occurred or to impose a sanction with respect to sexual misconduct; and

(7) "Sexual misconduct" means a violation of a public higher education institution's disciplinary policies concerning sexual assault, dating violence, domestic violence, or stalking.

**24-7-103 — 24-7-105. [Reserved.]**

**24-9-101. Deponents exempt from subpoena to trial but subject to subpoena to deposition — Award of fees and expenses if court grants motion to quash.**

(a) Deponents exempt from subpoena to trial but subject to subpoena to a deposition are:

(1) An officer of the United States;

(2) An officer of this state;

(3) An officer of any court or municipality within the state;

(4) The clerk of any court of record other than that in which the suit is pending;

(5) A member of the general assembly while in session, or clerk or officer thereof;

(6) A practicing physician, physician assistant, advanced practice registered nurse, psychologist, senior psychological examiner, chiropractor, dentist or attorney;

(7) A jailer or keeper of a public prison in any county other than that in which the suit is pending;

(8) A custodian of medical records, if such custodian files a copy of the applicable records and an affidavit with the court and follows the procedures provided in title 68, chapter 11, part 4, for the production of hospital records pursuant to a subpoena duces tecum; and

(9) A licensed clinical social worker, as defined in § 63-23-105 and engaged solely in independent clinical practice, in proceedings in which the department of children's services is the petitioner or intervening petitioner.

(b) If the court grants a motion to quash a subpoena issued pursuant to subsection (a), the court may award the party subpoenaed its reasonable attorney's fees and expenses incurred in defending against the subpoena.

**26-2-216. Installment payments to obtain stay of garnishment — Service of garnishment summons.**

(a)(1) After any judgment has been rendered in any court and the time to appeal therefrom has elapsed without such an appeal having been made, the judge of the court which rendered the judgment may, either before or after the issuance and service of garnishment, upon written consent of the parties

or upon written motion of the judgment debtor, after due notice and after full hearing of such motion, enter an order requiring such judgment debtor to pay to the clerk of the court a certain sum of money weekly, biweekly or monthly to apply upon such judgment. The filing of such motion by the debtor shall stay the issuance, execution or return of any writ of garnishment against wages or salary due the judgment debtor or any other funds belonging to the judgment debtor sought to be substituted to the satisfaction or payment of or upon such judgment during the period that such judgment debtor complies with the order of the court. Such motion of the judgment debtor shall be supported by an affidavit stating the debtor's inability to pay such debt with funds other than those earned by the debtor as wages or salary, or received from other sources in such amounts as to necessitate or make equitable installment payments, the name and address of the debtor's employer, or other source of funds and amount of such wages or salary, and the date of payment thereof.

(2) Notwithstanding subdivision (a)(1), upon written consent of the parties, the hearing of the judgment debtor's motion to pay the judgment in installments may be held on the same date that such judgment is entered.

(3) The judgment debtor may file only one (1) motion to establish payments for each judgment; however, if the motion is denied, or the order establishing payments is not complied with, at the court's discretion for good cause shown, the stay order may be reinstated as provided in § 26-2-217, with the reinstated stay order to affect only pay periods subsequent to the reinstatement.

(4) Notwithstanding subdivision (a)(1), the filing of a motion by a judgment debtor who has admitted the debt and is paying the judgment by agreed installment payments shall not stay the issuance, execution or return of any writ of garnishment against wages or salary due the judgment debtor or any satisfaction or payment of or upon such judgment.

(b)(1) It is the duty of the sheriff or other officer serving the garnishment summons upon the employer garnishee to:

(A) Obtain a receipt acknowledging service of such summons signed by the employer garnishee, if a person, or signed by an officer, managing agent or designated agent for service of the employer garnishee, if a corporation, company or business entity; or

(B) Sign and return to the court a sworn statement to the effect that the summons was duly served but such employer garnishee or such officer, managing agent or designated agent of the employer garnishee refused to sign a receipt acknowledging service; and

(C) The garnishment summons served by the sheriff shall have attached a notice to the employer that the employer is required to withhold the garnishment amount from the employee's wages, that the employer is required to pay these moneys to the court, and that the employer is liable for failure to withhold from the garnishee's wages and for failure to pay these moneys to the court.

(2) The sheriff or other officer shall serve three (3) copies of the garnishment summons upon the employer garnishee, all of which shall contain a conspicuously typed or printed notice which shall read as follows:

IN THE ____ COURT FOR ____ COUNTY, TENNESSEE

_____

Plaintiff, )

vs. )

_____ CASE NO. _____

Defendant. )

NOTICE OF JUDGMENT DEBTOR (AND NOTICE TO GARNISHEE) NOTICE TO THE DEBTOR (EMPLOYEE): Your earnings have been subjected to a garnishment which has been served upon your employer. The garnishment creates a lien on a portion of your earnings until the judgment is satisfied, or for six (6) months, whichever occurs first. You have the following rights:

Some of your wages are protected by state and federal law from garnishment. See the notice below to the employer to find out how much of your wages are protected from garnishment.

IF YOUR EMPLOYER IS TAKING TOO MUCH MONEY FROM YOUR WAGES:

You may apply to the court at the clerk's office shown below within twenty (20) days from any improper withholding of your wages for a motion to stop the garnishment. The court clerk identified below shall provide you with a form for making such a motion, or may have supplied a form motion on the back of this notice. You may wish to seek the counsel of a lawyer. If you are unable to afford an attorney, you may be eligible for free legal services to assist you.

PLEASE NOTE: If you file a motion, the court must hear and decide your motion promptly, and in no event later than fourteen (14) days from filing. The clerk will notify you of the time, date, and place of hearing. The court clerk's office can provide you with forms and with information about legal services in your area, but the clerk cannot give you legal advice.

IF THE RIGHT AMOUNT OF MONEY IS BEING TAKEN FROM YOUR WAGES BUT YOU WANT TO GET THE GARNISHMENT STOPPED THROUGH A PAYMENT PLAN:

You may apply to the court for an order suspending further garnishments by the same creditor upon your paying a certain sum of money weekly, biweekly, or monthly, to pay the judgment. If you file this motion, the garnishment of your wages will stop for as long as you make the payments ordered by the court.

The court clerk shall provide you with the necessary forms to make this application, or you may seek the counsel of an attorney. If you are unable to afford an attorney, you may be eligible for free legal services to assist you.

NOTICE TO THE GARNISHEE (EMPLOYER): THE MAXIMUM PART OF THE AGGREGATE DISPOSABLE EARNINGS OF AN INDIVIDUAL FOR ANY WORK WEEK WHICH IS SUBJECTED TO GARNISHMENT MAY NOT EXCEED:

(A) Twenty-five percent (25%) of the garnishee's disposable earnings for that week, minus two dollars and fifty cents ($2.50) for each of the garnishee's dependent children under sixteen (16) years of age who resides in the state as provided in § 26-2-107; or

(B) The amount by which the garnishee's disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage at the time the earnings for any pay period become due and payable, minus two dollars and fifty cents ($2.50) for each of the garnishee's dependent children under sixteen

(16) years of age who resides in the state, whichever is less.

"Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

In the case of earnings for a pay period other than a week, the weekly formula must be changed to apply to that pay period so as to exempt an equivalent percentage of disposable earnings. For example, the calculation concerning the federal minimum wage in subsection (b) should be computed as follows: WEEKLY: 30 times the federal minimum hourly wage (fmw) at the time the earnings for any pay period become due and payable; BI-WEEKLY: two (2) times thirty (30) fmw; SEMI-MONTHLY: two and one-sixth (2 ⅙) times thirty (30) fmw; and MONTHLY: four and one-third (4⅓) times thirty (30) fmw equals the amount to be subtracted from disposable earnings for that pay period.

If the judgment orders alimony and the person in whose favor the judgment was rendered has remarried, the above exemption applies. If the judgment orders the debtor to pay support for the debtor's minor child or children, or alimony and the person in whose favor the alimony judgment was rendered has not remarried, different standards apply under 15 U.S.C. § 1672(b). If the debtor is supporting a spouse or dependent child other than those for whom the order was entered, then fifty percent (50%) of the debtor's disposable earnings may be garnished. If the debtor is not supporting such additional dependents, a maximum of sixty percent (60%) may be garnished. These figures rise to fifty-five percent (55%) and sixty-five percent (65%), respectively, if the support order is for a period more than twelve (12) weeks before the pay period to be garnished.

If the judgment is for state or federal taxes, no disposable earnings are exempt under 15 U.S.C. § 1673(b).

NAME: _____ _____
(Clerk of Court) (Judgment Debtor)

ADDRESS: _____ _____
(Provided by Creditor)

_____ _____

_____ _____

TELEPHONE: _____

**27-5-108. Appeal from general sessions court.**

(a)(1) Any party may appeal from a decision of the general sessions court to the circuit court of the county within a period of ten (10) days on complying with this chapter.

(2) In civil cases, if one (1) or more of the parties before the general sessions court, on one (1) or more warrants, perfects an appeal of a decision of the general sessions court to the circuit court, as provided in this section, then cross appeals and separate appeals are not required, and upon the filing of a notice of appeal by any party, issues may be brought up for review by any party.

(b) This provision allowing ten (10) days in which to perfect an appeal shall apply in every county of Tennessee, any provision of any private act to the contrary notwithstanding, it being the legislative intent to establish a uniform period of ten (10) days in which any such appeal may be perfected in any

county in Tennessee.

(c) Any appeal shall be heard de novo in the circuit court.

(d) If no appeal is taken within the time provided, then execution may issue.

**29-17-1005. Condemned property to be offered for sale to former owner under certain circumstances.**

(a) In any case in which a local government exercises the power of eminent domain under this chapter, chapter 16 of this title, or any other law, and the local government determines the property condemned or taken by eminent domain is not used for the purpose or purposes for which it was condemned or for some other authorized public use, or if the local government subsequently decides to sell it within ten (10) years of being condemned or taken, the property shall be first offered for sale to the former property owner or owners from whom the property was condemned or taken.

(b) An agreement to purchase the property for the lesser of the following must be signed by the former property owner or owners within thirty (30) days of receipt of the offer:

(1) The price paid to the former property owner or owners by the local government at the time the local government acquired the property through eminent domain, plus the appraised fair market value of any improvements made to the property after condemnation and an amount equal to the average amount of interest that would have accrued on the amount paid to the former property owner or owners if held in United States treasury bonds; or

(2) An amount representing not less than the fair market value of the property as of the date of the purchase agreement.

(c) If the property is not purchased by the former property owner or owners within thirty (30) days or if no former property owner can be found following a good faith effort by the local government to do so, the property shall be offered for sale in any commercially reasonable manner to the general public for an amount not less than the fair market value, together with costs.

(d)(1) In any case in which a local government exercises the power of eminent domain under this chapter, chapter 16 of this title, or any other law, for a public use, a former property owner may request from the local government a statement of intent for public use no more than once every twenty-four (24) months following the date of the condemnation.

(2) The statement of intent for public use must state the public use for which the local government intends to use the property and a description of the intended plan for any improvements to the property.

(3) Notwithstanding subdivision (d)(1), if the local government publicly discloses its decision to not use the property for a public use, then a former property owner may immediately request from the local government a new statement of intent for public use.

(e) Rights granted to a former property owner under this section do not transfer to the former property owner's heirs or transfer to any other party.

(f) This section does not apply if compliance is prohibited by federal law.

(g) As used in this section, "local government" means any incorporated city or town, county, or metropolitan government.

**29-18-115. Method of serving summons.**

(a)(1) In commencing an action under this chapter, summons may be served upon any adult person found in possession of the premises, which includes any adult person occupying the premises; and service of process upon such party in possession shall be good and sufficient to enable the landlord to regain possession of such landlord's property. In the event the summons cannot be served upon any adult person found in possession of the premises, personal service of process on the defendant is dispensed with in the following cases:

(A) When the defendant is a nonresident of this state;

(B) When, upon inquiry at the defendant's usual place of abode, the defendant cannot be found, so as to be served with process, and there is just ground to believe that the defendant has gone beyond the limits of the state;

(C) When the summons has been returned "not to be found in my county";

(D) When the name of the defendant is unknown and cannot be ascertained upon diligent inquiry;

(E) When the residence of the defendant is unknown and cannot be ascertained upon diligent inquiry; or

(F) When a domestic corporation has ceased to do business and has no known officers, directors, trustee, or other legal representatives, on whom personal service may be had.

(2) In those cases specified in subdivision (a)(1), where personal service of process on the defendant is dispensed with, the proceeding shall be governed by §§ 21-1-203 — 21-1-205, and in addition thereto, the plaintiff shall post or cause to be posted on the front door or other front portion of the premises a copy of the publication notice at least fifteen (15) days prior to the date specified therein for the defendant to appear and make a defense.

(3) In addition to the methods set out in subdivisions (a)(1) and (2), in commencing an action under this chapter, summons may be served upon a contractually named party, and service of process upon such party shall be good and sufficient to enable the landlord to regain possession of the landlord's property.

(b) In commencing an action under this chapter, service of process may be made by the plaintiff, the plaintiff's attorney, or the plaintiff's agent, in lieu of subsection (a), by lodging the original summons and a copy certified by the clerk with the sheriff or constable of the county in which suit is brought, who shall promptly send postage prepaid a certified copy by certified return receipt mail to the individual as follows:

(1) In the case of an individual defendant, to the party named;

(2) In the case of a domestic corporation or a foreign corporation doing business in this state, to an officer or managing agent thereof, or to the chief agent in the county where the action is brought or to any other agent authorized by appointment or by law to receive service on behalf of the corporation; or

(3) In the case of a partnership or an unincorporated association which is a named defendant under a common name, to a partner or managing agent of the partnership or to an officer or managing agent of the association, or to an agent authorized by appointment or by law to receive service on behalf of

the partnership or association.

(c) In any case in which such warrant or process is returned undelivered for any reason whatsoever, service of process shall then be made as otherwise provided by law.

(d)(1) The original process, endorsed as indicated below, an affidavit of the appropriate sheriff or constable setting forth the sheriff or constable's compliance with the requirements of the preceding provisions, and the return receipt signed by the defendant shall be attached together and sent to and filed by the clerk of the court of general sessions. There shall be endorsed on the original warrant by the sheriff or constable over the sheriff or constable's signature the date of the sheriff or constable's mailing the certified copy to the defendant; thereupon service of the defendant shall be consummated. An act of a deputy of the sheriff in the sheriff's behalf hereunder shall be deemed the equivalent of the act of the latter.

(2) When service of process by mail is made upon one (1) or more individual defendants, service of process shall not be complete as to any individual unless a return receipt, signed or acknowledged on its face by the individual personally, is returned to the deputy sheriff or constable.

(e)(1) In addition to the methods set out in this section, service of process for an action commenced under this chapter shall be good and sufficient to enable the landlord to regain possession of such landlord's property if a sheriff, sheriff's deputy, or constable personally serves a copy of the warrant or summons upon any one (1) named defendant who has a contractual or possessory property right in the subject premises.

(2) If, after attempting personal service of process on three (3) different dates and documenting such attempts on the face of the warrant, the sheriff, sheriff's deputy, or constable, is unable to serve any such one (1) named defendant personally, service of process for determining the right of possession of the subject premises as to all who may have a contractual or possessory property right therein may be had by the sheriff, sheriff's deputy, or constable taking the following actions at least six (6) days prior to the date specified therein for the defendant or defendants to appear and make a defense:

(A) Posting a copy of the warrant or summons on the door of the premises;

(B) Sending by United States postal service first class mail a copy of the warrant or summons to the so named defendant or defendants at the address of the subject premises or the defendants' last known address, if any; and

(C) Making an entry of this action on the face of the warrant or summons filed in the action.

(3) Subdivision (e)(2) shall apply only to the service of process in an action brought to regain possession of real property, and shall not apply to the service of process in any action seeking monetary judgment.

**29-34-103. Provision of settlement agreement concealing details relating to claim of child sexual abuse void and unenforceable.**

Notwithstanding any law to the contrary, any provision of a settlement agreement that has the purpose or effect of concealing the details relating to a claim of child sexual abuse, as defined in § 37-1-602, is void and unenforceable

as contrary to the public policy of this state; except that identifying information concerning a victim of child sexual abuse shall be deemed and maintained as confidential.

**29-40-101. Short title.**

This chapter shall be known and may be cited as the "Uniform Commercial Real Estate Receivership Act."

**29-40-102. Chapter definitions.**

As used in this chapter:

(1) "Affiliate" means:

(A) With respect to an individual:

(i) A companion of the individual;

(ii) A lineal ancestor or descendant, whether by blood or adoption, of:

*(a)* The individual; or

*(b)* A companion of the individual;

(iii) A companion of an ancestor or descendant described in subdivision (1)(A)(ii);

(iv) A sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew of the individual, whether related by the whole or the half blood or adoption, or a companion of any of them; or

(v) Any other individual occupying the residence of the individual; and

(B) With respect to a person other than an individual:

(i) Another person that directly or indirectly controls, is controlled by, or is under common control with the person;

(ii) An officer, director, manager, member, partner, employee, or trustee or other fiduciary of the person; or

(iii) A companion of, or an individual occupying the residence of, an individual described in subdivision (1)(B)(i) or (1)(B)(ii);

(2) "Companion" means:

(A) The spouse of an individual;

(B) The domestic partner of an individual; or

(C) Another individual in a civil union with an individual;

(3) "Court" means a chancery court in this state;

(4) "Executory contract" means a contract, including a lease, under which each party has an unperformed obligation and the failure of a party to complete performance would constitute a material breach;

(5) "Governmental unit" means an office, department, division, bureau, board, commission, or other agency of this state or a subdivision of this state;

(6) "Lien" means an interest in property that secures payment or performance of an obligation;

(7) "Mortgage" means a record, however denominated, that creates or provides for a consensual lien on real property or rents, even if the mortgage also creates or provides for a lien on personal property;

(8) "Mortgagee" means a person entitled to enforce an obligation secured by a mortgage;

(9) "Mortgagor" means a person that grants a mortgage or a successor in ownership of the real property described in the mortgage;

(10) "Owner" means the person for whose property a receiver is appointed;

(11) "Person" means an individual; estate; business or nonprofit entity; public corporation; government or governmental subdivision, agency, or instrumentality; or other legal entity;

(12) "Proceeds" means the following property:

(A) Whatever is acquired on the sale, lease, license, exchange, or other disposition of receivership property;

(B) Whatever is collected on, or distributed on account of, receivership property;

(C) Rights arising out of receivership property;

(D) To the extent of the value of receivership property, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the property; or

(E) To the extent of the value of receivership property and to the extent payable to the owner or mortgagee, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to the property;

(13) "Property" means all of a person's right, title, and interest, both legal and equitable, in real and personal property, tangible and intangible, wherever located and however acquired. "Property" includes proceeds, products, offspring, rents, or profits of or from the property;

(14) "Receiver" means a person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, and, if authorized by this chapter or court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership property;

(15) "Receivership" means a proceeding in which a receiver is appointed;

(16) "Receivership property" means the property of an owner which is described in the order appointing a receiver or a subsequent order. "Receivership property" includes any proceeds, products, offspring, rents, or profits of or from the property;

(17) "Record", used as a noun, means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form;

(18) "Rents" means:

(A) Sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;

(B) Sums payable to a mortgagor under a policy of rental-interruption insurance covering real property;

(C) Claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;

(D) Sums payable to terminate an agreement to possess or occupy real property of another person;

(E) Sums payable to a mortgagor for payment or reimbursement of expenses incurred in owning, operating, and maintaining real property or constructing or installing improvements on real property; or

(F) Other sums payable under an agreement relating to the real property of another person that constitute rents under the law of this state, other than this chapter;

(19) "Secured obligation" means an obligation the payment or performance of which is secured by a security agreement;

(20) "Security agreement" means an agreement that creates or provides for a lien;

(21) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process; and

(22) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

**29-40-103. Notice and opportunity for hearing.**

(a) Except as otherwise provided in subsection (b), the court may issue an order under this chapter only after notice and opportunity for a hearing, as appropriate in the circumstances.

(b) The court may issue an order under this chapter:

(1) Without prior notice if the circumstances require issuance of an order before notice is given;

(2) After notice and without a prior hearing if the circumstances require issuance of an order before a hearing is held; or

(3) After notice and without a hearing if no interested party timely requests a hearing.

**29-40-104. Scope — Exclusions.**

(a) Except as otherwise provided in subsection (b) or (c), this chapter applies to a receivership for an interest in real property and any personal property related to or used in operating the real property.

(b) This chapter does not apply to a receivership for an interest in real property improved by one (1) to four (4) dwelling units unless:

(1) The interest is used for agricultural, commercial, industrial, or mineral-extraction purposes, other than incidental uses by an owner occupying the property as the owner's primary residence;

(2) The interest secures an obligation incurred at a time when the property was used or planned for use for agricultural, commercial, industrial, or mineral-extraction purposes;

(3) The owner planned or is planning to develop the property into one (1) or more dwelling units to be sold or leased in the ordinary course of the owner's business; or

(4) The owner is collecting or has the right to collect rents or other income from the property from a person other than an affiliate of the owner.

(c) This chapter does not apply to a receivership authorized by the law of this state, other than this chapter, in which the receiver is a governmental unit or an individual acting in an official capacity on behalf of the governmental unit.

(d) This chapter does not limit the authority of a court to appoint a receiver under other state law.

(e) Unless displaced by a particular provision of this chapter, the principles of law and equity supplement this chapter.

**29-40-105. Power of court.**

The court that appoints a receiver under this chapter has exclusive juris-

diction to direct the receiver and determine any controversy related to the receivership or receivership property.

**29-40-106. Appointment of receiver.**

(a) The court may appoint a receiver:

(1) Before judgment, to protect a party that demonstrates an apparent right, title, or interest in real property that is the subject of the action, if the property or the property's revenue-producing potential:

(A) Is being subjected to or is in danger of waste, loss, dissipation, or impairment; or

(B) Has been or is about to be the subject of a voidable transaction;

(2) After judgment:

(A) To carry the judgment into effect; or

(B) To preserve nonexempt real property pending appeal or when an execution has been returned unsatisfied and the owner refuses to apply the property in satisfaction of the judgment;

(3) In an action in which a receiver for real property may be appointed on equitable grounds; or

(4) During the time allowed for redemption, to preserve real property sold in an execution or foreclosure sale and secure the property's rents to the person entitled to the property's rents.

(b) In connection with the foreclosure or other enforcement of a mortgage, a mortgagee is entitled to appointment of a receiver for the mortgaged property if:

(1) Appointment is necessary to protect the property from waste, loss, transfer, dissipation, or impairment;

(2) The mortgagor agreed in a signed record to appointment of a receiver on default;

(3) The owner agreed, after default and in a signed record, to appointment of a receiver;

(4) The property and any other collateral held by the mortgagee are not sufficient to satisfy the secured obligation;

(5) The owner fails to turn over to the mortgagee proceeds or rents the mortgagee was entitled to collect; or

(6) The holder of a subordinate lien obtains appointment of a receiver for the property.

(c) The court may condition appointment of a receiver without prior notice under § 29-40-103(b)(1) or without a prior hearing under § 29-40-103(b)(2) on the giving of security by the person seeking the appointment for the payment of damages, reasonable attorney's fees, and costs incurred or suffered by any person if the court later concludes that the appointment was not justified. If the court later concludes that the appointment was justified, the court shall release the security.

**29-40-107. Disqualification from appointment as receiver — Disclosure of interest.**

(a) The court may not appoint a person as receiver unless the person submits to the court a statement under penalty of perjury that the person is not disqualified.

(b) Except as otherwise provided in subsection (c), a person is disqualified

from appointment as receiver if the person:

(1) Is an affiliate of a party;

(2) Has an interest materially adverse to an interest of a party;

(3) Has a material financial interest in the outcome of the action, other than compensation the court may allow the receiver;

(4) Has a debtor-creditor relationship with a party; or

(5) Holds an equity interest in a party, other than a noncontrolling interest in a publicly-traded company.

(c) A person is not disqualified from appointment as receiver solely because the person:

(1) Was appointed receiver or is owed compensation in an unrelated matter involving a party or was engaged by a party in a matter unrelated to the receivership;

(2) Is an individual obligated to a party on a debt that is not in default and was incurred primarily for personal, family, or household purposes; or

(3) Maintains with a party a deposit account as defined in § 47-9-102(a).

(d) A person seeking appointment of a receiver may nominate a person to serve as receiver, but the court is not bound by the nomination.

**29-40-108. Receiver's bond — Alternative security.**

(a) Except as otherwise provided in subsection (b), a receiver shall post with the court a bond that:

(1) Is conditioned on the faithful discharge of the receiver's duties;

(2) Has one (1) or more sureties approved by the court;

(3) Is in an amount the court specifies; and

(4) Is effective as of the date of the receiver's appointment.

(b) The court may approve the posting by a receiver with the court of alternative security, such as a letter of credit or deposit of funds. The receiver may not use receivership property as alternative security. Interest that accrues on deposited funds must be paid to the receiver on the receiver's discharge.

(c) The court may authorize a receiver to act before the receiver posts the bond or alternative security required by this section.

(d) A claim against a receiver's bond or alternative security must be made not later than one (1) year after the date the receiver is discharged.

**29-40-109. Status of receiver as lien creditor.**

On appointment of a receiver, the receiver has the status of a lien creditor under:

(1) The Uniform Commercial Code — Secured Transactions, compiled in title 47, chapter 9, as to receivership property that is personal property or fixtures; and

(2) Title 66, as to receivership property that is real property.

**29-40-110. Security agreement covering after-acquired property.**

Except as otherwise provided by the law of this state, other than this chapter, property that a receiver or owner acquires after appointment of the receiver is subject to a security agreement entered into before the appointment to the same extent as if the court had not appointed the receiver.

**29-40-111. Collection and turnover of receivership property.**

(a) Unless the court orders otherwise, on demand by a receiver:

(1) A person that owes a debt that is receivership property and is matured or payable on demand or on order shall pay the debt to or on the order of the receiver, except to the extent the debt is subject to setoff or recoupment; and

(2) Subject to subsection (c), a person that has possession, custody, or control of receivership property shall turn the property over to the receiver.

(b) A person that has notice of the appointment of a receiver and owes a debt that is receivership property may not satisfy the debt by payment to the owner.

(c) If a creditor has possession, custody, or control of receivership property and the validity, perfection, or priority of the creditor's lien on the property depends on the creditor's possession, custody, or control, the creditor may retain possession, custody, or control until the court orders adequate protection of the creditor's lien.

(d) Unless a bona fide dispute exists about a receiver's right to possession, custody, or control of receivership property, the court may sanction as civil contempt a person's failure to turn the property over when required by this section.

**29-40-112. Powers and duties of receiver.**

(a) Except as limited by court order or the law of this state, other than this chapter, a receiver may:

(1) Collect, control, manage, conserve, and protect receivership property;

(2) Operate a business constituting receivership property, including preservation, use, sale, lease, license, exchange, collection, or disposition of the property in the ordinary course of business;

(3) In the ordinary course of business, incur unsecured debt and pay expenses incidental to the receiver's preservation, use, sale, lease, license, exchange, collection, or disposition of receivership property;

(4) Assert a right, claim, cause of action, or defense of the owner that relates to receivership property;

(5) Seek and obtain instruction from the court concerning receivership property, exercise of the receiver's powers, and performance of the receiver's duties;

(6) On subpoena, compel a person to submit to examination under oath, or to produce and permit inspection and copying of designated records or tangible things, with respect to receivership property or any other matter that may affect administration of the receivership;

(7) Engage a professional as provided in § 29-40-115;

(8) Apply to a court of another state for appointment as ancillary receiver with respect to receivership property located in that state; and

(9) Exercise any power conferred by court order, this chapter, or a law of this state other than this chapter.

(b) With court approval, a receiver may:

(1) Incur debt for the use or benefit of receivership property other than in the ordinary course of business;

(2) Make improvements to receivership property;

(3) Use or transfer receivership property other than in the ordinary course of business as provided in § 29-40-116;

(4) Adopt or reject an executory contract of the owner as provided in

§ 29-40-117;

(5) Pay compensation to the receiver as provided in § 29-40-121, and to each professional engaged by the receiver as provided in § 29-40-115;

(6) Recommend allowance or disallowance of a claim of a creditor as provided in § 29-40-120; and

(7) Make a distribution of receivership property as provided in § 29-40-120.

(c) A receiver shall:

(1) Prepare and retain appropriate business records, including a record of each receipt, disbursement, and disposition of receivership property;

(2) Account for receivership property, including the proceeds of a sale, lease, license, exchange, collection, or other disposition of the property;

(3) File with the county clerk of the county where the real property is located a copy of the order appointing the receiver and, if a legal description of the real property is not included in the order, the legal description;

(4) Disclose to the court any fact arising during the receivership that would disqualify the receiver under § 29-40-107; and

(5) Perform any duty imposed by court order, this chapter, or the law of this state, other than this chapter.

(d) The powers and duties of a receiver may be expanded, modified, or limited by court order.

**29-40-113. Duties of owner.**

(a) An owner shall:

(1) Assist and cooperate with the receiver in the administration of the receivership and the discharge of the receiver's duties;

(2) Preserve and turn over to the receiver all receivership property in the owner's possession, custody, or control;

(3) Identify all records and other information relating to the receivership property, including a password, authorization, or other information needed to obtain or maintain access to or control of the receivership property, and make available to the receiver the records and information in the owner's possession, custody, or control;

(4) On subpoena, submit to examination under oath by the receiver concerning the acts, conduct, property, liabilities, and financial condition of the owner or any matter relating to the receivership property or the receivership; and

(5) Perform any duty imposed by court order, this chapter, or the law of this state, other than this chapter.

(b) If an owner is a person other than an individual, this section applies to each officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over the affairs of the owner.

(c) If a person knowingly fails to perform a duty imposed by this section, the court may:

(1) Award the receiver actual damages caused by the person's failure, reasonable attorney's fees, and costs; and

(2) Sanction the failure as civil contempt.

**29-40-114. Stay — Injunction.**

(a) Except as otherwise provided in subsection (d) or ordered by the court, an order appointing a receiver operates as a stay, applicable to all persons, of

an act, action, or proceeding:

(1) To obtain possession of, exercise control over, or enforce a judgment against receivership property; and

(2) To enforce a lien against receivership property to the extent the lien secures a claim against the owner that arose before entry of the order.

(b) Except as otherwise provided in subsection (d), the court may enjoin an act, action, or proceeding against or relating to receivership property if the injunction is necessary to protect the property or facilitate administration of the receivership.

(c) A person whose act, action, or proceeding is stayed or enjoined under this section may apply to the court for relief from the stay or injunction for cause.

(d) An order under subsection (a) or (b) does not operate as a stay or injunction of:

(1) An act, action, or proceeding to foreclose or otherwise enforce a mortgage by the person seeking appointment of the receiver;

(2) An act, action, or proceeding to perfect, or maintain or continue the perfection of, an interest in receivership property;

(3) Commencement or continuation of a criminal proceeding;

(4) Commencement or continuation of an action or proceeding, or enforcement of a judgment other than a money judgment in an action or proceeding, by a governmental unit to enforce the governmental unit's police or regulatory power; or

(5) Establishment by a governmental unit of a tax liability against the owner or receivership property or an appeal of the liability.

(e) The court may void an act that violates a stay or injunction under this section.

(f) If a person knowingly violates a stay or injunction under this section, the court may:

(1) Award actual damages caused by the violation, reasonable attorney's fees, and costs; and

(2) Sanction the violation as civil contempt.

**29-40-115. Engagement and compensation of professional.**

(a)(1) With court approval, a receiver may engage an attorney, accountant, appraiser, auctioneer, broker, or other professional to assist the receiver in performing a duty or exercising a power of the receiver. The receiver shall disclose to the court:

(A) The identity and qualifications of the professional;

(B) The scope and nature of the proposed engagement;

(C) Any potential conflict of interest; and

(D) The proposed compensation.

(b)(1) A person is not disqualified from engagement under this section solely because of the person's engagement by, representation of, or other relationship with the receiver, a creditor, or a party.

(2) This chapter does not prevent the receiver from serving in the receivership as an attorney, accountant, auctioneer, or broker when authorized by law.

(c)(1) A receiver or professional engaged under subsection (a) shall file with the court an itemized statement of the time spent, work performed, and billing rate of each person that performed the work and an itemized list of

expenses.

(2) The receiver shall pay the amount approved by the court.

**29-40-116. Use or transfer of receivership property not in ordinary course of business.**

(a) As used in this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(b) With court approval, a receiver may use receivership property other than in the ordinary course of business.

(c)(1) With court approval, a receiver may transfer receivership property other than in the ordinary course of business by sale, lease, license, exchange, or other disposition.

(2) Unless the agreement of sale provides otherwise, a sale under this section is:

(A) Free and clear of a lien of the person that obtained appointment of the receiver, any subordinate lien, and any right of redemption; and

(B) Subject to a senior lien.

(d) A lien on receivership property that is extinguished by a transfer under subsection (c) attaches to the proceeds of the transfer with the same validity, perfection, and priority the lien had on the property immediately before the transfer, even if the proceeds are not sufficient to satisfy all obligations secured by the lien.

(e)(1) A transfer under subsection (c) may occur by means other than a public auction sale.

(2) A creditor holding a valid lien on the property to be transferred may purchase the property and offset against the purchase price part or all of the allowed amount secured by the lien, if the creditor tenders funds sufficient to satisfy in full the reasonable expenses of transfer and the obligation secured by any senior lien extinguished by the transfer.

(f) A reversal or modification of an order approving a transfer under subsection (c) does not affect the validity of the transfer to a person that acquired the property in good faith or revive against the person any lien extinguished by the transfer, whether the person knew before the transfer of the request for reversal or modification, unless the court stayed the order before the transfer.

**29-40-117. Executory contract.**

(a) As used in this section, "timeshare interest" means an interest having a duration of more than three (3) years that grants its holder the right to use and occupy an accommodation, facility, or recreational site, whether improved or not, for a specific period less than a full year during any given year.

(b) Except as otherwise provided in subsection (h), with court approval, a receiver may adopt or reject an executory contract of the owner relating to receivership property. The court may condition the receiver's adoption and continued performance of the contract on terms appropriate under the circumstances. If the receiver does not request court approval to adopt or reject the contract within a reasonable time after the receiver's appointment, the receiver is deemed to have rejected the contract.

(c) A receiver's performance of an executory contract before court approval under subsection (b) of its adoption or rejection is not an adoption of the contract and does not preclude the receiver from seeking approval to reject the

contract.

(d) A provision in an executory contract that requires or permits a forfeiture, modification, or termination of the executory contract because of the appointment of a receiver or the financial condition of the owner does not affect a receiver's power under subsection (b) to adopt the executory contract.

(e) A receiver's right to possess or use receivership property pursuant to an executory contract terminates on rejection of the executory contract under subsection (b). Rejection is a breach of the contract effective immediately before appointment of the receiver. A claim for damages for rejection of the contract must be submitted by the later of:

(1) The time set for submitting a claim in the receivership; or

(2) Thirty (30) days after the court approves the rejection.

(f) If at the time a receiver is appointed, the owner has the right to assign an executory contract relating to receivership property under the law of this state, other than this chapter, the receiver may assign the executory contract with court approval.

(g) If a receiver rejects under subsection (b) an executory contract for the sale of receivership property that is real property in possession of the purchaser or a real property timeshare interest, the purchaser may:

(1) Treat the rejection as a termination of the executory contract, and in that case the purchaser has a lien on the property for the recovery of any part of the purchase price the purchaser paid; or

(2) Retain the purchaser's right to possession under the executory contract, and in that case the purchaser shall continue to perform all obligations arising under the executory contract and may offset any damages caused by nonperformance of an obligation of the owner after the date of the rejection, but the purchaser has no right or claim against other receivership property or the receiver on account of the damages.

(h) A receiver may not reject an unexpired lease of real property under which the owner is the landlord if:

(1) The tenant occupies the leased premises as the tenant's primary residence;

(2) The receiver was appointed at the request of a person other than a mortgagee; or

(3) The receiver was appointed at the request of a mortgagee and:

(A) The lease is superior to the lien of the mortgage;

(B) The tenant has an enforceable agreement with the mortgagee or the holder of a senior lien under which the tenant's occupancy will not be disturbed as long as the tenant performs the tenant's obligations under the lease;

(C) The mortgagee has consented to the lease, either in a signed record or by the mortgagee's failure to timely object that the lease violated the mortgage; or

(D) The terms of the lease were commercially reasonable at the time the lease was agreed to and the tenant did not know or have reason to know that the lease violated the mortgage.

**29-40-118. Defenses and immunities of receiver.**

(a) A receiver is entitled to all defenses and immunities provided by the law of this state, other than this chapter, for an act or omission within the scope of

the receiver's appointment.

(b) A receiver may be sued personally for an act or omission in administering receivership property only with approval of the court that appointed the receiver.

**29-40-119. Interim report of receiver.**

A receiver may file or, if ordered by the court, shall file an interim report that includes:

(1) The activities of the receiver since appointment or a previous report;

(2) Receipts and disbursements, including a payment made or proposed to be made to a professional engaged by the receiver;

(3) Receipts and dispositions of receivership property;

(4) Fees and expenses of the receiver and, if not filed separately, a request for approval of payment of the fees and expenses; and

(5) Any other information required by the court.

**29-40-120. Notice of appointment — Claim against receivership — Distribution to creditors.**

(a) Except as otherwise provided in subsection (f), a receiver shall give notice of appointment of the receiver to creditors of the owner by:

(1) Deposit for delivery through first-class mail or other commercially reasonable delivery method to the last known address of each creditor; and

(2) Publication as directed by the court.

(b)(1) Except as otherwise provided in subsection (f), the notice required by subsection (a) must specify the date by which each creditor holding a claim against the owner that arose before appointment of the receiver must submit the claim to the receiver.

(2) The date specified must be at least ninety (90) days after the later of notice under subdivision (a)(1) or last publication under subdivision (a)(2).

(3) The court may extend the period for submitting the claim.

(4) Unless the court orders otherwise, a claim that is not submitted timely is not entitled to a distribution from the receivership.

(c) A claim submitted by a creditor under this section must:

(1) State the name and address of the creditor;

(2) State the amount and basis of the claim;

(3) Identify any property securing the claim;

(4) Be signed by the creditor under penalty of perjury; and

(5) Include a copy of any record on which the claim is based.

(d) An assignment by a creditor of a claim against the owner is effective against the receiver only if the assignee gives timely notice of the assignment to the receiver in a signed record.

(e)(1) At any time before entry of an order approving a receiver's final report, the receiver may file with the court an objection to a claim of a creditor, stating the basis for the objection.

(2) The court shall allow or disallow the claim according to the law of this state, other than this chapter.

(f) If the court concludes that receivership property is likely to be insufficient to satisfy claims of each creditor holding a perfected lien on the property, the court may order that:

(1) The receiver need not give notice under subsection (a) of the appointment to all creditors of the owner, but only such creditors as the court

directs; and

(2) Unsecured creditors need not submit claims under this section.

(g) Subject to § 29-40-121:

(1) A distribution of receivership property to a creditor holding a perfected lien on the property must be made in accordance with the creditor's priority under the law of this state, other than this chapter; and

(2) A distribution of receivership property to a creditor with an allowed unsecured claim must be made as the court directs according to the law of this state, other than this chapter.

**29-40-121. Fees and expenses.**

(a) The court may award a receiver from receivership property the reasonable and necessary fees and expenses of performing the duties of the receiver and exercising the powers of the receiver.

(b) The court may order one (1) or more of the following to pay the reasonable and necessary fees and expenses of the receivership, including reasonable attorney's fees and costs:

(1) A person that requested the appointment of the receiver, if the receivership does not produce sufficient funds to pay the fees and expenses; or

(2) A person whose conduct justified or would have justified the appointment of the receiver under § 29-40-106(a)(1).

**29-40-122. Removal of receiver — Replacement — Termination of receivership.**

(a) The court may remove a receiver for cause.

(b) The court shall replace a receiver that dies, resigns, or is removed.

(c) If the court finds that a receiver that resigns or is removed, or the representative of a receiver that is deceased, has accounted fully for and turned over to the successor receiver all receivership property and has filed a report of all receipts and disbursements during the service of the replaced receiver, the replaced receiver is discharged.

(d) The court may discharge a receiver and terminate the court's administration of the receivership property if the court finds that appointment of the receiver was improvident or that the circumstances no longer warrant continuation of the receivership. If the court finds that the appointment was sought wrongfully or in bad faith, the court may assess against the person that sought the appointment:

(1) The fees and expenses of the receivership, including reasonable attorney's fees and costs; and

(2) Actual damages caused by the appointment, including reasonable attorney's fees and costs.

**29-40-123. Final report of receiver — Discharge.**

(a) On completion of a receiver's duties, the receiver shall file a final report including:

(1) A description of the activities of the receiver in the conduct of the receivership;

(2) A list of receivership property at the commencement of the receiver-

ship and any receivership property received during the receivership;

(3) A list of disbursements, including payments to professionals engaged by the receiver;

(4) A list of dispositions of receivership property;

(5) A list of distributions made or proposed to be made from the receivership for creditor claims;

(6) If not filed separately, a request for approval of the payment of fees and expenses of the receiver; and

(7) Any other information required by the court.

(b) If the court approves a final report filed under subsection (a) and the receiver distributes all receivership property, the receiver is discharged.

**29-40-124. Receivership in another state — Ancillary proceeding.**

(a) The court may appoint a receiver appointed in another state, or that person's nominee, as an ancillary receiver with respect to property located in this state or subject to the jurisdiction of the court for which a receiver could be appointed under this chapter, if:

(1) The person or nominee would be eligible to serve as receiver under § 29-40-107; and

(2) The appointment furthers the person's possession, custody, control, or disposition of property subject to the receivership in the other state.

(b) The court may issue an order that gives effect to an order entered in another state appointing or directing a receiver.

(c) Unless the court orders otherwise, an ancillary receiver appointed under subsection (a) has the rights, powers, and duties of a receiver appointed under this chapter.

**29-40-125. Effect of enforcement by mortgagee.**

(a) A request by a mortgagee for appointment of a receiver, the appointment of a receiver, or application by a mortgagee of receivership property or proceeds to the secured obligation does not:

(1) Make the mortgagee a mortgagee in possession of the real property;

(2) Make the mortgagee an agent of the owner;

(3) Constitute an election of remedies that precludes a later action to enforce the secured obligation;

(4) Make the secured obligation unenforceable;

(5) Limit any right available to the mortgagee with respect to the secured obligation; or

(6) Except as otherwise provided in subsection (b), bar a deficiency judgment pursuant to the law of this state, other than this chapter, governing or relating to a deficiency judgment.

(b) If a receiver sells receivership property that pursuant to § 29-40-116(c) is free and clear of a lien, the ability of a creditor to enforce an obligation that had been secured by the lien is subject to the law of this state, other than this chapter, relating to a deficiency judgment.

**29-40-126. Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to the law's subject matter among states that enact it.

**29-40-127. Relation to electronic signatures in global and national commerce act.**

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. § 7003(b)).

**29-40-128. Transition.**

This chapter does not apply to a receivership for which the receiver was appointed before July 1, 2018.

**29-41-101. Chapter definitions.**

As used in this chapter:

(1) "Abusive civil action" means a civil action filed by a plaintiff against a defendant with whom the plaintiff shares a civil action party relationship primarily to harass or maliciously injure the defendant and at least one (1) of the following factors are applicable:

(A) Claims, allegations, and other legal contentions made in the civil action are not warranted by existing law or by a reasonable argument for the extension, modification, or reversal of existing law, or the establishment of new law;

(B) Allegations and other factual contentions made in the civil action are without the existence of evidentiary support; or

(C) Issue or issues that are the basis of the civil action have previously been filed in one (1) or more other courts or jurisdictions by the same, and the actions have been litigated and disposed of unfavorably to the plaintiff;

(2) "Abusive civil action plaintiff" means a person who files a civil action that a court of record has determined to be an abusive civil action and against whom prefiling restrictions have been imposed pursuant to this chapter;

(3) "Civil action" means a civil action, as defined in Rule 2 of the Tennessee Rules of Civil Procedure;

(4) "Civil action defendant" means a person or persons against whom a civil action has been filed that a court of record has determined to be an abusive civil action and imposed prefiling restrictions against the abusive civil action plaintiff pursuant to this chapter;

(5) "Civil action party relationship" means the plaintiff commencing a civil action and the civil action defendant fall within one (1) of the following categories:

(A) Adults who are current or former spouses;

(B) Adults who live together or who have lived together;

(C) Adults who are dating or who have dated or who have or had a sexual relationship. As used in this subdivision (5)(C), "dating" and "dated" do not include fraternization between two (2) individuals in a business or social context;

(D) Adults related by blood or adoption;

(E) Adults who are related or were formerly related by marriage; or

(F) Adult children of a person in a relationship that is described in

subdivisions (5)(A)-(E); and

(6) "Harass or maliciously injure" means the civil action determined to be an abusive civil action was filed with the intent or was primarily designed to:

(A) Exhaust, deplete, impair, or adversely impact the civil action defendant's financial resources unless:

(i) Punitive damages are requested and appropriate; or

(ii) A change in the circumstances of the parties provides a good faith basis to seek a change to a financial award, support, or distribution of resources;

(B) Prevent or interfere with the ability of the civil action defendant to raise a child or children for whom the civil action defendant has legal custody in the manner the civil action defendant deems appropriate unless the civil action plaintiff has a lawful right to interfere and a good faith basis for doing so;

(C) Force, coerce, or attempt to force or coerce the civil action defendant to agree to or make adverse concessions concerning financial, custodial, support, or other issues when the issues in question have been previously litigated and decided in favor of the civil action defendant;

(D) Force, coerce, or attempt to force or coerce the civil action defendant to alter, engage in, or refrain from engaging in conduct when the conduct is lawful and is conduct in which the civil action defendant has the right to engage;

(E) Impair, or attempt to impair the health or well-being of the civil action defendant or a dependent of the civil action defendant;

(F) Prevent, interfere, or adversely impact the ability of the civil action defendant to pursue or maintain a livelihood or lifestyle at the same or better standard as the civil action defendant enjoyed prior to the filing of the action primarily for the purpose of harassing or maliciously injuring the civil action defendant; or

(G) Impair, diminish, or tarnish the civil action defendant's reputation in the community or alienate the civil action defendant's friends, colleagues, attorneys, or professional associates by subjecting parties without knowledge of or not reasonably relevant to the civil action to unreasonably or unnecessarily complex, lengthy, or intrusive interrogatories or depositions.

**29-41-102. Applicability.**

This chapter shall only apply to a civil action filed by a plaintiff against a defendant or defendants with whom the plaintiff shares a civil action party relationship.

**29-41-103. Defendant's right to raise claim — Hearing on court's own motion.**

(a) If a civil action is filed and the defendant to the action believes it to be an abusive civil action, the claim may be raised by the defendant:

(1) In the answer to the civil action; or

(2) By motion made at any time during the civil action.

(b) The court may, on its own motion, determine that a hearing pursuant to § 29-41-104 is necessary to determine if the civil action is an abusive civil action.

**29-41-104. Hearing to determine merits of defendant's allegations.**

(a) If the defendant to a civil action alleges, either by answer to the civil action or by motion made at any time the action is pending, that the action constitutes an abusive civil action and that the person filing the action is an abusive civil action plaintiff, the court shall conduct a hearing to determine the merits of the defendant's allegations.

(b) At the time set for the hearing on the alleged abusive civil action, the court shall hear all relevant testimony and may require any affidavits, documentary evidence, or other records the court deems necessary.

**29-41-105. Evidence creating rebuttable presumption.**

At the hearing conducted pursuant to § 29-41-104, evidence of any of the following creates a rebuttable presumption that the civil action is an abusive civil action and that the person filing the action is an abusive civil action plaintiff and prefiling restrictions should be imposed upon the abusive civil action plaintiff:

(1) The same or substantially similar issues between the same or substantially similar civil action parties that are the subject of the alleged abusive civil action have been litigated against the civil action defendant within the past five (5) years in another court within the judicial district or another judicial district and the actions were dismissed on the merits or with prejudice against the civil action plaintiff;

(2) The alleged abusive civil action plaintiff has used the same or substantially similar issues that are the subject of the current civil action as the basis for an adverse complaint against the civil action defendant to a regulatory or licensing board and the regulatory or licensing board dismissed the complaint after a contested case hearing in compliance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(3) The alleged abusive civil action plaintiff has been sanctioned under Rule 11 of the Tennessee Rules of Civil Procedure or a similar rule or law in another state or the federal government for filing one (1) or more frivolous, vexatious, or abusive civil actions within the past ten (10) years of filing the current civil action alleged to be abusive and the previous frivolous, vexatious, or abusive civil actions involved the same or substantially the same issues between the same or substantially the same civil action parties; or

(4) A court of record in another judicial district has determined that a civil action filed against the civil action defendant was an abusive civil action and is under or has been under prefiling restrictions in that judicial district.

**29-41-106. Dismissal of abusive civil actions — Remedies — Costs.**

(a) If the court finds by a preponderance of the evidence that a person filing a civil action is an abusive civil action plaintiff, and that any or all civil actions filed by the abusive civil action plaintiff against the abusive civil action defendant that are pending before the court are abusive civil actions, the civil actions shall be dismissed.

(b) In addition to dismissal of any pending abusive civil action within the jurisdiction of the court, the court shall:

(1) Tax all costs of any abusive civil action pending in the court at the time of the court's finding pursuant to subsection (a) against the abusive civil

action plaintiff;

(2) Award the civil action defendant reasonable attorney fees and all reasonable costs of defending the abusive civil action; and

(3) Impose prefiling restrictions upon any civil action the abusive civil action plaintiff attempts to file for a period of not less than forty-eight (48) months nor more than seventy-two (72) months.

(c) If a civil action defendant alleges that a claim is an abusive civil action or that the plaintiff is an abusive civil action plaintiff, and the court finds by a preponderance of the evidence that the action was not an abusive civil action or that the plaintiff is not an abusive civil action plaintiff, the court may grant to the plaintiff such remedies as may be just, including granting judgment in favor of the plaintiff, granting partial judgment in favor of the plaintiff, or allowing factual interpretations in favor of the plaintiff.

(d) If a civil action defendant alleges that a claim is an abusive civil action or that the plaintiff is an abusive civil action plaintiff, and the court finds by a preponderance of the evidence that the action was not an abusive civil action or that the plaintiff is not an abusive civil action plaintiff, the court may:

(1) Tax all costs related to litigating the issue of whether the action is an abusive civil action or whether the plaintiff is an abusive civil action plaintiff, against the civil action defendant who made the claim; and

(2) Award the civil action plaintiff reasonable attorney fees and all reasonable costs of defending the claim that the action was an abusive civil action or that the plaintiff was an abusive civil action plaintiff.

**29-41-107. Restrictions on the filing of claims by plaintiff determined to be abusive civil action plaintiff.**

(a) Except as provided in this section, a person whom a court of record has determined to be an abusive civil action plaintiff and against whom prefiling restrictions have been imposed is prohibited from instituting a civil action against the abusive civil action defendant for the period of time the prefiling restrictions are in effect, or from continuing a civil action that was instituted against the same civil action defendant prior to the date the person was determined to be an abusive civil action plaintiff.

(b) Notwithstanding subsection (a) and consistent with the Constitution of Tennessee, Article I, § 17, an abusive civil action plaintiff against whom prefiling restrictions have been imposed may seek permission to file a civil action using the procedure set out in subsection (c).

(c)(1) An abusive civil action plaintiff against whom prefiling restrictions have been imposed pursuant to this chapter who wishes to institute a civil action in a court of record during the time the abusive civil action plaintiff is under filing restrictions must first appear before the judge who imposed the prefiling restrictions to make application for permission to institute the civil action.

(2)(A) The judge may examine witnesses, including the abusive civil action plaintiff and the civil action defendant, to determine if the proposed civil action is or is not an abusive civil action and if there are reasonable and legitimate grounds upon which the complaint is based.

(B) There is a rebuttable presumption that any proposed civil action is an abusive civil action if any of the defendants in the proposed action were civil action defendants in one (1) or more of the actions that were the basis

for the person being declared an abusive civil action plaintiff.

(3)(A) If the judge who imposed the prefiling restrictions believes that the civil action the abusive civil action plaintiff is making application to file will be an abusive civil action, the application shall be denied and the judge shall determine a time when the person may next make application to file a civil action.

(B) If the judge reasonably believes that the civil action the abusive civil action plaintiff is making application to file will not be an abusive civil action, the judge may grant the application and issue an order permitting the filing of the civil action. The order shall be attached to the front of the complaint when the abusive civil action plaintiff files the civil action with the clerk. The defendant to the action shall be served with a copy of the order at the same time the complaint is served.

(4) The findings of the judge shall be reduced to writing and made a part of record in the matter. If the abusive civil action plaintiff disputes the finding of the judge, the abusive civil action plaintiff may appeal to the presiding judge of the judicial district of the sanctioning judge. If the sanctioning judge is the presiding judge, the presiding judge shall randomly select two (2) other judges of courts of record in the judicial district to review the findings of the sanctioning judge. If there are not two (2) other judges in the judicial district available, the presiding judge may select a judge from an adjoining judicial district to review the findings. If the presiding judge or both reviewing other judges believe that the civil action the person is making application to file is not an abusive civil action, the findings of the sanctioning judge are overruled and both judges shall sign an order permitting the filing of the action. The order shall be entered and attached to the complaint and the defendant shall be served with a copy of the order at the same time the complaint is served.

(d) If the application for the filing of a civil action is granted pursuant to this section, the period of time commencing with the filing of the application requesting permission to file the action and ending with the issuance of an order permitting filing of the action shall not be computed as a part of an applicable period of limitations within which the civil action must be instituted.

(e) If after an abusive civil action plaintiff has made application and been granted permission to file a civil action pursuant to this section, the judge with jurisdiction over the action determines that the person is attempting to add parties, amend the complaint, or is otherwise attempting to alter the parties and issues involved in the civil action in a manner that the judge reasonably believes would make the action an abusive civil action, the judge may order a continuance or nonsuit of the action and return it to the presiding judge for further disposition.

(f)(1) If a civil action defendant is served with a complaint from an abusive civil action plaintiff who filed a civil action in a judicial district in which the person has not been determined to be an abusive civil action plaintiff, and the complaint does not have an attached order from the judge who imposed the prefiling restrictions, the civil action defendant may obtain a certified copy of the order finding the person to be an abusive civil action plaintiff in another jurisdiction and send it to the judge where the new civil action was filed and the judge who imposed the prefiling restrictions.

(2) If it is brought to the attention of the court, or on the court's own motion, that a person against whom prefiling restrictions have been imposed

has filed a civil action or continued a legal proceeding in the sanctioning judge's judicial district, or in another judicial district, without application to do so being granted by the sanctioning judge pursuant to this section, or the abusive civil action plaintiff has attempted to file an action through another party, the court in which the civil action is pending shall dismiss the action or revoke the continuance. The sanctioning judge may take whatever action against the abusive civil action plaintiff deemed necessary for a violation of the court's order.

(3) If an abusive civil action plaintiff against whom prefiling restrictions have been imposed files a civil action and the order granting permission to file the action is not attached to the complaint or served on the defendant, the defendant is under no obligation or duty to respond to the complaint, answer interrogatories, appear for depositions, or any other responsive action required by rule or statute in a civil action.

(g) If the judge who imposed the prefiling restrictions is no longer serving in the same capacity in the same judicial district where the restrictions were placed, any other judge in that judicial district may perform the review required and permitted by this section.

**33-1-401. Statewide planning and policy council created — Chair — Officers — Membership — Expenses — Meetings — Terms of service — Removal.**

(a) There is created the statewide planning and policy council for the department of mental health and substance abuse services to assist in planning a comprehensive array of high quality prevention, early intervention, treatment, and habilitation services and supports and to advise the department on policy, budget requests, and developing and evaluating services and supports.

(b)(1) The statewide planning and policy council shall be composed of not less than eleven (11) members, not including ex officio members. The governor shall appoint the chair of the council. The speaker of the senate and the speaker of the house of representatives shall each appoint one (1) legislator as a member of the council. The commissioner of mental health and substance abuse services shall serve, ex officio, as secretary to the council and, if the chair is not present at a meeting, shall designate a member to serve as chair for the meeting. The governor is ex officio a member of the council and may appoint representatives of state agencies as ex officio members of the council.

(2) The commissioner of mental health and substance abuse services shall appoint five (5) members to represent mental health, of which, two (2) shall be service recipients or members of families of service recipients, one (1) shall be a representative for children, one (1) shall be a mental health service provider, and one (1) shall represent others affected by mental health issues. Additionally, the commissioner of mental health and substance abuse services shall appoint one (1) representative for elderly service recipients, one (1) representative for military veteran recipients, and at least one (1) at-large representative. The commissioner may make additional appointments of advocates to represent children and persons affected by substance abuse.

(3) At least a majority of the council's membership shall consist of current

or former service recipients and members of service recipient families.

(c) The members of the statewide planning and policy council shall receive no compensation, but shall receive their actual traveling expenses for attendance at meetings of the council. All reimbursement for travel expenses shall be in conformity with the comprehensive travel rules.

(d) The statewide planning and policy council shall meet quarterly at a place designated by the chair and may meet more often upon the call of the chair or a majority of the members.

(e) Terms on the council shall be three (3) years except that the chair and members appointed by the speakers shall have terms of two (2) years. Vacancies of the council shall be filled by appointment for unexpired terms only.

(f) The appointing authority may remove a member for failure to attend at least one half (½) of the scheduled meetings in any one (1) year period or for other good cause.

**33-2-402. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Abuse" means the knowing infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish;

(2) "Alcohol and drug prevention and/or treatment facility" means an institution, treatment resource, group residence (boarding home, sheltered workshop, activity center), rehabilitation center, hospital, community mental health center, nonresidential office-based opiate treatment facility, nonresidential substitution-based treatment center for opiate addiction, DUI school, counseling center, clinic, halfway house, or other entity, by these or other names, providing alcohol and drug services; provided, that a DUI school operated by a state institution of higher education shall not be considered an alcohol and drug treatment facility for purposes of this chapter; provided, further, that "alcohol and drug prevention and treatment facility" does not include any facility otherwise licensed by the department or the department of health or approved by the department of education;

(3) "Alcohol and drug services" includes evaluation, treatment, residential personal care, habilitation, rehabilitation, counseling or supervision of persons who abuse or are dependent upon alcohol or drugs, or services to persons designed to prevent alcohol or drug abuse or dependence that either receive funds from the department of health or assess fees for services provided; provided, that a DUI school operated by a state institution of higher education shall not be considered alcohol and drug services for purposes of this part;

(4) "Commissioner" means the commissioner of mental health and substance abuse services, or, when applicable, the commissioner of intellectual and developmental disabilities, the commissioner's authorized representative, or in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner of mental health and substance abuse services, or, when applicable, the deputy commissioner of intellectual and developmental disabilities;

(5) "Department" means the department of mental health and substance abuse services, or, when applicable, the department of intellectual and

developmental disabilities;

(6) "Facility" means a developmental center, treatment resource, group residence, boarding home, sheltered workshop, activity center, rehabilitation center, hospital, community mental health center, counseling center, clinic, group home, halfway house or any other entity that provides a mental health, intellectual or developmental disability service or an alcohol and drug abuse prevention and/or treatment facility;

(7) "Licensee" means a proprietorship, a partnership, an association, a governmental agency, or corporation, that operates a facility or a service and has obtained a license under this part;

(8) "Misappropriation of property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of belongings or money without consent;

(9) "Neglect" means failure to provide goods or services necessary to avoid physical harm, mental anguish, or mental illness, which results in injury or probable risk of serious harm;

(10)(A) "Nonresidential office-based opiate treatment facility" includes, but is not limited to, stand-alone clinics, treatment resources, individual physical locations occupied as the professional practice of a prescriber or prescribers licensed pursuant to title 63, or other entities prescribing products containing buprenorphine, or products containing any other controlled substance designed to treat opiate addiction by preventing symptoms of withdrawal to twenty-five percent (25%) or more of its patients or to one hundred fifty (150) or more patients;

(B) For the purposes of subdivision (10)(A), "physical location" means real property on which is located a physical structure, whether or not that structure is attached to real property, containing one (1) or more units and includes an individual apartment, office, condominium, cooperative unit, mobile or manufactured home, or trailer, if used as a site for prescribing or dispensing products containing buprenorphine, or products containing any other controlled substance designed to treat opiate addiction by preventing symptoms of withdrawal;

(C) "Nonresidential office-based opiate treatment facility" does not include any facility that meets the definition of a nonresidential substitution-based treatment center for opiate addiction;

(11) "Nonresidential substitution-based treatment center for opiate addiction" or "nonresidential opioid treatment program" includes, but is not limited to, stand-alone clinics offering methadone, products containing buprenorphine such as Subutex and Suboxone, or products containing any other formulation designed to treat opiate addiction by preventing symptoms of withdrawal;

(12) "Personal support services" means nursing consultation, education services, and other personal assistance services as defined by rule, which are provided to individuals with substantial limitation in two (2) or more major life activities in either their regular or temporary residences, but does not mean direct nursing services provided in connection with an acute episode of illness or injury;

(13) "Reputable and responsible character" means that the applicant or licensee can be trusted with responsibility for persons who are particularly vulnerable to abuse, neglect, and financial or sexual exploitation; and

(14) "Service" includes any activity to prevent, treat, or ameliorate mental illness, serious emotional disturbance, alcohol and drug use, intellectual or

developmental disabilities, which includes diagnosis, evaluation, residential assistance, training, habilitation, rehabilitation, prevention, treatment, counseling, case coordination, or supervision of persons with mental illness, alcohol and drug abuse issues, serious emotional disturbances, and intellectual or developmental disabilities.

**33-2-403. Licensure of mental health, substance abuse, and intellectual and developmental disabilities services and facilities — Exemptions — Rules.**

(a) The departments have the authority to license services and facilities operated for the provision of mental health services, alcohol and drug abuse prevention or treatment, for the provision of services for intellectual and developmental disabilities, and for personal support services. The department of mental health and substance abuse services shall license services and facilities operated for persons with mental illness or serious emotional disturbance or in need of alcohol and drug abuse prevention or treatment services. Subject to subsection (c), the department of mental health and substance abuse services shall also license personal support services for the aged as well as persons with mental illness. Subject to subsection (c), services and facilities operated for persons with intellectual or developmental disabilities and personal support services for persons with intellectual or developmental disabilities shall be licensed by the department of intellectual and developmental disabilities. A personal support services agency licensed by either department may also serve individuals with physical or other disabilities. Notwithstanding any references in this part to the licensing of "facilities" or "services," only persons, proprietorships, partnerships, associations, governmental agencies, or corporations may be listed on license applications or licenses as the licensed entity.

(b) The following are exempt from licensing under this part:

(1) Private practitioners who are authorized to practice by the boards of healing arts and only in private practice in that capacity. This subdivision (b)(1) shall not apply to a private practitioner, prescriber, or prescribers operating a nonresidential office-based opiate treatment facility, as defined in § 33-2-402;

(2) A person providing personal care solely to one (1) person with mental illness, serious emotional disturbance or developmental disability, or other service recipient receiving personal support services and not in a business arrangement with any other service recipient. This exception shall not apply to an individual who holds out to the public as being in the business of personal support services for compensation;

(3) An individual providing service or support only to members of the person's own family or relatives;

(4) An individual providing service or support that is not subject to licensing under any other title of the code and doing so only on a part-time basis as defined in department rules;

(5) Foster homes that accept placements only from agencies of state government or licensed child-placing agencies;

(6) Services or facilities providing employee assistance programs;

(7) Services or facilities providing only employment placement;

(8) Facilities that are appropriately licensed by the department of health

as a:

(A) Hospital whose primary purpose is not the provision of mental health or developmental disabilities services; or

(B) Satellite hospital, as defined by rules of the department of health, whose primary purpose is the provision of mental health or developmental disabilities services, and that the department verifies to the department of health as satisfying standards under this chapter; and

(9) Facilities that are operated by state, county, or municipal departments of education, the department of correction, the department of human services, or the department of children's services and that affirmatively state that the primary purpose of the facility is other than the provision of mental health, alcohol and drug abuse prevention and/or treatment services or intellectual or developmental disabilities services.

(c)(1) A service or facility that can demonstrate compliance with rules and standards by a current personal support services license from another state agency is considered in compliance with rules and standards under this part so that duplicate licensing is not necessary. Personal support services agencies that provide services for the aged or persons with mental illness and persons with intellectual or developmental disabilities shall not be required to obtain a license from both departments. The departments shall work together to ensure that licensure standards for personal support services agencies are appropriate across all of the populations that may be served and are consistently applied.

(2) The licensing entity shall be determined based on the larger population served by the agency as of April 10, 2015, or in the case of new applicants for licensure, the larger population anticipated to be served by the agency at the time of licensure application.

(d)(1) The department shall appoint a review panel to review periodically all exclusions and waivers granted under the licensure law and perform other duties under this part. The department's legal counsel shall advise the panel.

(2) The panel's membership shall be:

(A) The commissioner or the commissioner's designee;

(B) For the mental health panel, a representative of licensed community mental health services and a representative of licensed alcohol and drug abuse prevention and/or treatment services;

(C) For the intellectual and developmental disabilities panel, a representative of licensed intellectual disability community services and a representative of licensed developmental disability community services;

(D) For the mental health panel, a representative of a licensed residential facility for persons with mental illness or serious emotional disturbance and a representative of a licensed residential facility for alcohol and drug abuse prevention and/or treatment services;

(E) For the intellectual and developmental disabilities panel, a representative of a licensed residential facility for persons with intellectual and developmental disabilities;

(F) For the mental health panel, a representative of a licensed residential mental health facility for children and youth;

(G) Five (5) service recipient representatives; and

(H) A representative of a personal support services agency.

(3) The panel shall elect a chair and vice chair and shall report any

findings directly to the commissioner.

(4) The vote of a majority binds the panel.

(5) Travel expenses for panel members shall be reimbursed. All reimbursement for travel expenses shall be in conformity with the comprehensive state travel regulations as promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(e) The license holder of a nonresidential office-based opiate treatment facility shall ensure that adequate billing records are maintained, in any format, onsite at the nonresidential office-based opiate treatment facility and shall ensure that adequate billing records are maintained for all patients and for all patient visits. Billing records shall be maintained for a period of three (3) years from the date of the patient's last treatment at the nonresidential office-based opiate treatment facility. Billing records shall be made for all methods of payment. Billing records shall be made available to the department upon request. Billing records shall include, but not be limited to, the following:

(1) The amount paid for services;

(2) Method of payment;

(3) Date of the delivery of services;

(4) Date of payment; and

(5) Description of services.

(f) The license holder of a nonresidential office-based opiate treatment facility shall ensure that records of all bank deposits of cash payments for services provided at the nonresidential office-based opiate treatment facility are maintained, in any format, at the nonresidential office-based opiate treatment facility for a period of three (3) years.

(g) The license holder of a nonresidential office-based opiate treatment facility shall ensure that patient medical records are maintained, in any format, for a period of ten (10) years from the date of the patient's last treatment at the facility.

(h) By January 1, 2019, the commissioner of mental health and substance abuse services shall revise rules for nonresidential office-based opiate treatment facilities to be consistent with state and federal law and to establish:

(1) Standards for determining what constitutes a high dose of the opioid employed in treatment at a nonresidential office-based opiate treatment facility;

(2) Protocols for initiating or switching a patient at a nonresidential office-based treatment facility to a high dose of the opioids employed in treatment; and

(3) Protocols for initiating periodic prescriber-initiated-and-led discussions with patients regarding patient readiness to taper down or taper off the opioids employed in treatment.

(i) The commissioner is authorized to use emergency rulemaking under § 4-5-208 to promulgate the rules pursuant to subsection (h). The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(j)(1) Beginning in 2020, the commissioner of mental health and substance abuse services shall review the rules for nonresidential office-based opiate treatment facilities by September 30 of each even-numbered year.

(2) The commissioner of mental health and substance abuse services shall submit the rules for nonresidential office-based opiate treatment facilities to each health-related board that licenses any practitioner authorized by the

state to prescribe the products for the treatment of an opioid use disorder as defined in the Diagnostic and Statistical Manual of Mental Disorders and to the board of pharmacy.

(3)(A) Each board shall review the rules and enforce the rules with respect to that board's licensees.

(B) When a board's licensees are subject to the rules for nonresidential office-based opiate treatment facilities, the definition of "enforce" for purposes of this subdivision (j)(3) means referring any complaints or information regarding those licensees to the department.

(4) Each board shall post the rules on the licensing board's website.

(k)(1) The commissioner of mental health and substance abuse services shall provide a copy of any emergency rule developed pursuant to subsection (h) or (i) and any revision to a rule developed pursuant to subsection (j) to the chairs of the health committee of the house of representatives and the health and welfare committee of the senate at the same time the rules are submitted to the licensing boards pursuant to subdivision (j)(2).

(2) The commissioner of mental health and substance abuse services shall provide a copy of any rule developed pursuant to subsection (h) or (j) and any revision to a rule developed pursuant to subsection (j) to the chairs of the health committee of the house of representatives and the health and welfare committee of the senate at the same time the text of the rule is made available to the government operations committees of the senate and the house of representatives for purposes of conducting the review required by § 4-5-226 in order for the health committee of the house of representatives and the health and welfare committee of the senate to be afforded the opportunity to comment on the rule.

(*l*) A violation of a rule described in subsections (h) and (j) is grounds for disciplinary action against a practitioner licensed under title 63 by the board that licensed that practitioner.

**33-2-406. Application for licensure.**

(a) A person, proprietorship, partnership, association, corporation, or any state, county or local governmental unit or any division, department, board or agency of government shall obtain a license from a department in order to lawfully establish, conduct, operate, or maintain a service or facility that provides mental health, alcohol and drug abuse prevention and/or treatment, intellectual or developmental disability, or personal support services.

(b) The applicant shall submit an application on a department's form showing that the applicant is of reputable and responsible character and able to comply with the minimum standards for a service or facility providing mental health, alcohol and drug abuse prevention and/or treatment, intellectual or developmental disability services, or personal support services. The application will also show the applicant is able to comply with the department's rules adopted under this part. The application shall contain the following additional information:

(1) The name of the applicant;

(2) The type of facility or service;

(3) The location;

(4) The name of the person or persons to be in charge; and

(5) Any other information as a department may require.

(c) The department may approve the issuance of a license upon the application without further evidence, or, in its discretion, it may conduct its own investigation.

(d)(1) Proof that a person or business has a personal or business history in any jurisdiction of:

(A) Operation of substandard services or facilities; or

(B) A felony conviction

creates a presumption that the applicant or licensee does not have reputable and responsible character.

(2) An applicant denied a license on the basis of the presumption may request a hearing for the purpose of rebutting the presumption created by this subsection (d).

(e) A license shall not be issued or renewed if the applicant, or any chief executive officer or director of the applicant, does not have reputable and responsible character.

(f) If the department determines that a license should not be granted, it shall notify the applicant. Within fifteen (15) days of notification of denial, the applicant may file a written request for review by the panel appointed under § 33-2-403(d). The review shall be at the earliest possible date, and recommendations shall be reported to the commissioner. The commissioner shall determine whether the original license denial shall remain effective and shall notify the applicant. Within fifteen (15) days of notification, the applicant may file a written request for a hearing before the department. The hearing shall be conducted under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(g) If the department determines that the applicant complies with and will in the future comply with this part and rules adopted under this title and has a reputable and responsible character, the department shall issue a license.

(h)(1) A license is valid for up to one (1) year from the date of issuance. A license may be issued only for the premises or services named in the application, must be posted in a conspicuous place at the service or facility, and may be renewed from year to year. A license is not assignable or transferable except as permitted by § 33-2-418(b)(3). The department may charge a reasonable fee for processing the application and issuance of licenses.

(2)(A) Notwithstanding this part, beginning July 1, 2018, the licensing fee for a nonresidential office-based opiate treatment facility is one thousand five hundred dollars ($1,500) per year. On or after July 1, 2019, the department may revise the fee by rule as otherwise permitted by law.

(B) Notwithstanding this part, beginning July 1, 2018, the department shall apply a reinspection fee of five hundred dollars ($500) to a nonresidential office-based opiate treatment facility. On or after July 1, 2019, the department may revise the fee by rules as otherwise permitted by law.

**33-2-413. Inspections of facilities.**

(a) The department shall make at least one (1) unannounced life safety and environmental inspection of each licensed service or facility yearly. The department shall inspect for quality standards all licensees that contract with the department as part of its contract monitoring. The department shall

inspect for quality standards all licensees that do not contract with the department. The department may deem a service or facility in compliance without inspection if the service or facility meets another government agency's certification or accreditation requirements provided for in rules of the department.

(b) With or without giving notice, the department may enter the premises and inspect any applicant or licensee when a complaint is filed with the department against the applicant or licensee or when the department otherwise deems inspection in the interest of service recipients. Inspection may include review of physical plant, program, activities, and applicant or licensee records.

(c) The department may charge a fee for any service or facility inspection in an amount not to exceed fifty dollars ($50.00).

(d) If the department finds noncompliance with life safety or food service standards relating to non-life threatening issues, the department shall refer the findings to the state or local agency responsible for life safety or food service inspection for re-inspection or review in accordance with life safety or food service standards. The department will accept the state or local agency's determination.

(e) The department shall, to the extent practicable, coordinate life safety inspections to avoid duplication without good cause in the same calendar year by other government agencies that apply substantially the same standards.

(f) The department shall include in its annual inspection of each hospital licensed under this title a determination of the hospital's compliance with the reporting requirements of § 33-3-117. The hospital must document its compliance with a record of its communication with local law enforcement with respect to the commitments. A hospital's failure to comply with the reporting requirements shall subject the hospital to civil penalties or other action against the hospital's license under § 33-2-407.

**33-2-422. Differentiation between licensed physicians based on maintenance of certification.**

(a) For purposes of this section:

(1) "Maintenance of certification" means any process requiring periodic recertification examinations or other activities to maintain specialty medical board certification; and

(2) "Organized medical staff" means an organized body composed of individuals appointed by a facility's governing board that operates under bylaws approved by the governing body and is responsible for the quality of medical care provided to patients by the facility.

(b) Except as otherwise provided by this section, facilities licensed under this title may only differentiate between licensed physicians based on a physician's maintenance of certification in medical staff privileging and credentialing when authorized through the following process:

(1) The voting members of the facility's organized medical staff vote to adopt the differentiation; and

(2) The facility's governing body reviews and approves the action of the medical staff.

(c) An authorization described by subsection (b) may:

(1) Establish terms applicable to the facility's differentiation, including:

(A) Appropriate grandfathering provisions; and

(B) Limiting the differentiation to certain medical specialties; and

(2) Be rescinded at any time when:

(A) The voting members of the facility's organized medical staff vote to rescind the differentiating action; and

(B) The facility's governing body reviews and approves the rescinding action of the organized medical staff.

(d) Nothing in this section restricts a facility's ability to differentiate between physicians in medical staff privileging and credentialing based on a physician's maintenance of certification when:

(1) The facility's designation under law or certification or accreditation by a national certifying or accrediting organization is contingent on the facility requiring a specific maintenance of certification by physicians seeking staff privileges or credentialing at the facility; and

(2) The differentiation is limited to those physicians whose maintenance of certification is required for the facility's designation, certification, or accreditation as described by subdivision (d)(1).

(e) Nothing in this section requires a facility's organized medical staff or governing body to reconsider or vote to reconsider maintenance of certification differentiation or requirements made prior to July 1, 2018.

**33-2-423. Prohibited marketing practices.**

(a) The general assembly recognizes that consumers of substance abuse treatment have disabling conditions and that consumers and their families are vulnerable and at risk of being easily victimized by fraudulent marketing practices that adversely impact the delivery of health care. To protect the health, safety, and welfare of this vulnerable population, a service provider of alcohol and drug services or an operator of an alcohol and drug treatment facility (ADTF) shall not engage in any of the following marketing practices:

(1) Making a materially false or misleading statement or providing materially false or misleading information about the provider's or operator's identity, products, goods, services, or geographical locations in its marketing, advertising materials, or media or on its website;

(2) Including on its website false information or electronic links, coding, or activation that provides false information or that surreptitiously directs the reader to another website;

(3) Soliciting, receiving, or making an attempt to solicit or receive a commission, benefit, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engaging or making an attempt to engage in a split-fee arrangement in return for a referral or an acceptance or acknowledgement of treatment from a service provider of alcohol and drug services or ADTF; or

(4) Entering into a contract with a marketing provider who agrees to generate referrals or leads for the placement of patients with a service provider of alcohol and drug services or in an ADTF through a call center or a web-based presence. This subdivision (a)(4) shall not apply if the service provider of alcohol and drug services or the operator of the ADTF discloses to the prospective patient, so that the patient can make an informed healthcare decision, in clear and concise language and instructions that allow the prospective patient to easily determine whether the marketing provider represents specific service providers or recovery residences that pay a fee to the marketing provider, and the identity of such service providers of

alcohol and drug services or ADTF.

(b) In addition to any other punishment authorized by law, a person or entity that knowingly violates this section is subject to suspension or revocation of the person's or entity's license pursuant to § 33-2-407 and the imposition of civil penalties under § 33-2-409.

**33-3-117. Reporting to local law enforcement by inpatient treatment facility of involuntary commitment of service recipient.**

(a) If a service recipient is involuntarily committed to an inpatient treatment facility under this title, the inpatient treatment facility shall report the service recipient to local law enforcement as soon as practicable, but no later than the third business day following the date of such commitment, who shall report the service recipient to the federal bureau of investigation-NICS Index and the department of safety as soon as practicable, but no later than the third business day following the date of receiving such notification, for the purposes of complying with the NICS Improvement Amendments Act of 2007, Public Law 110-180, as enacted and as may be amended in the future.

(b) If an inpatient treatment facility is required to report pursuant to subsection (a), the facility shall report the following information:

(1) Complete name of the person involuntarily committed;

(2) Date involuntary commitment was ordered;

(3) Private or state hospital or treatment resource to which the individual was involuntarily committed;

(4) Date of birth of the person involuntarily committed;

(5) Race and sex of the person involuntarily committed; and

(6) Social security number of the person involuntarily committed if available.

(c) The information in subdivisions (b)(1)-(4), the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

**33-3-210. Reporting to local law enforcement by a qualified mental health professional or behavior analyst of an actual threat of serious bodily harm or death against an identifiable victim.**

(a) If a service recipient has communicated to a qualified mental health professional or behavior analyst an actual threat of serious bodily harm or death against a reasonably identifiable victim or victims, the qualified mental health professional or behavior analyst, using the reasonable skill, knowledge, and care ordinarily possessed and exercised by the professional's specialty under similar circumstances, who has determined or reasonably should have determined that the service recipient has the apparent ability to commit such an act and is likely to carry out the threat unless prevented from doing so, shall immediately report the service recipient to local law enforcement, who shall take appropriate action based upon the information reported.

(b) If a mental health professional or behavior analyst is required to report pursuant to subsection (a), the professional or analyst shall report the following information:

(1) Complete name and all aliases of the service recipient;

(2) Name of the mental health professional or behavior analyst and the name of the private or state hospital or treatment resource from which the individual may be receiving services;

(3) Date of birth of the service recipient;

(4) Race and sex of the service recipient; and

(5) Social security number of the service recipient if available.

(c) The information in subdivisions (b)(1)-(3), the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

**33-5-112. Person on waiting list for services to be enrolled in community based services program within six months of custodial parent or caregiver attaining certain age.**

(a) An eligible person with an intellectual disability who is on the referral list for services and whose older custodial parent, or custodial caregiver, attains seventy-five (75) years of age shall be enrolled in employment and community first choices Group 5 or a similarly capped home and community based services program within six (6) months of the person's parent or caregiver attaining that age.

(b) An eligible person with a developmental disability other than an intellectual disability who is on the referral list for services and whose older custodial parent, or custodial caregiver, attains eighty (80) years of age shall be enrolled in employment and community first choices Group 5 or a similarly capped home and community based services program within six (6) months of the person's parent or caregiver attaining that age.

**34-1-101. Chapter 1-3 definitions.**

As used in this chapter and chapters 2 and 3 of this title, unless the context otherwise requires:

(1) "Adversary counsel" means a private lawyer hired by a respondent to represent the respondent's interest in any action under this chapter and chapters 2 and 3 of this title;

(2) "Attorney ad litem" means an attorney appointed by the court to act as counsel for the respondent;

(3) "Closest relative" or "closest relatives" means the person or persons who are in the level of intestate heirs nearest to the respondent under the Tennessee laws of intestate succession. If there are two (2) or more closest relatives, all such persons shall be treated equally;

(4)(A) "Conservator" or "co-conservators" means a person or persons or an entity appointed by the court to exercise the decision-making rights and duties of the person with a disability in one or more areas in which the person lacks capacity as determined and required by the orders of the court;

(B) "Conservatorship" is a proceeding in which a court removes the decision-making powers and duties, in whole or in part, in a least restrictive manner, from a person with a disability who lacks capacity to make decisions in one or more important areas and places responsibility

for one or more of those decisions in a conservator or co-conservators;

(5) "Corporate surety" means a corporation admitted to do business in the state and licensed under title 56, chapter 2;

(6) "Court" means any court having jurisdiction to hear matters concerning guardians or conservators;

(7) "Fiduciary" means a guardian, coguardian, conservator or co-conservator;

(8) "Financial institution" means a bank as defined by § 45-2-107, a savings and loan association as defined by § 45-3-104, a credit union subject to title 45, chapter 4, or a nonprofit general welfare corporation as defined in § 45-2-105;

(9) "Guardian" or "coguardian" means a person or persons appointed by the court to provide partial or full supervision, protection and assistance of the person or property, or both, of a minor;

(10) "Guardian ad litem" means a person meeting the qualifications set forth in § 34-1-107(c) appointed by the court to investigate the allegations in a petition, perform the duties set forth in § 34-1-107(d) and report to the court with recommendations as to the best interests of the respondent;

(11) "Least restrictive alternatives" means techniques and processes that preserve as many decision-making rights as practical under the particular circumstances for the person with a disability;

(12) "Minor" means any person who has not attained eighteen (18) years of age and who has not otherwise been emancipated;

(13) "Person" means any individual, nonhuman entity or governmental agency;

(14) "Person with a disability" means any person eighteen (18) years of age or older determined by the court to be in need of partial or full supervision, protection, and assistance by reason of mental illness, physical illness or injury, developmental disability, or other mental or physical incapacity;

(15) "Physician" means a medical doctor or doctor of osteopathic medicine who is licensed to practice medicine in the state of Tennessee;

(16) "Property management plan" means the plan submitted by the fiduciary for the investment and management of the property of a minor or person with a disability;

(17) "Psychologist" means a psychologist who is licensed to practice in the state of Tennessee; and

(18) "Respondent" means a person who is a minor or is alleged to be a person with a disability for whom a fiduciary is being sought.

**34-1-133. Expedited limited healthcare fiduciary.**

(a) If the respondent is under hospitalization in a hospital as those terms are defined in title 68, chapter 11, part 2, and no other person, including an agent acting under the Healthcare Decision Act, compiled in title 68, chapter 11, part 18, a person acting under the Durable Powers of Attorney for Healthcare Act, compiled in chapter 6, part 2 of this title, or a living will under title 32, chapter 11, part 1 appears to have the authority and willingness to act and is acting in the best interest of the respondent, the court on petition of a person interested in the respondent's welfare may appoint an expedited limited healthcare fiduciary whose authority is for the limited purpose of

consenting to discharge, transfer, and admission and consenting to any financial arrangements or medical care necessary to affect such discharge, transfer or admission to another healthcare facility and whose authority may not exceed sixty (60) days. Immediately upon the receipt of the petition for an expedited limited healthcare fiduciary, the court shall appoint an attorney ad litem to represent the respondent in the proceeding. In expediting the appointment of an expedited limited healthcare fiduciary, the court may vary the time periods for hearings including but not limited to the minimum number of days before a hearing under § 34-1-108 or the number of days before appointment of a guardian ad litem under § 34-1-107 or other time periods, but shall not vary requirements as necessary to determine the respondent is in need of a fiduciary.

(b) The court shall hold a hearing on the appropriateness of the appointment within five (5) days of the appointment.

(c) Appointment of an expedited limited healthcare fiduciary is not a determination of the respondent's incapacity.

(d) The court may remove an expedited limited healthcare fiduciary at any time.

(e) The time periods set forth in this section are mandatory and not directory. Failure to comply with those provisions shall void any expedited appointment and remove the authority previously granted to the expedited limited healthcare fiduciary.

**35-6-108. Total return unitrusts.**

(a) In this section:

(1) "Disinterested person" means a person who is not a "related or subordinate party," as defined in 26 U.S.C. § 672(c), with respect to the person then acting as trustee of the trust and excludes the trustor of the trust and any interested trustee;

(2) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one (1) or more persons, either in fixed proportions or in amounts or proportions determined by the trustee and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one (1) or more such persons;

(3) "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a "related or subordinate party," as defined in 26 U.S.C. § 672(c), with respect to such distributee;

(4) "Interested trustee" means an individual trustee who is a qualified beneficiary or any trustee who may be removed and replaced by an interested distributee, or an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust;

(5) "Internal Revenue Code" refers to the Internal Revenue Code of 1986, as amended from time to time, and any references to a section of such shall include any successor, substituted, or amended section of the Internal Revenue Code;

(6) "Total return unitrust" means an income trust that has been converted under this section or the laws of any other jurisdiction that permits an income trust to be converted to a trust in which a unitrust amount is treated as the net income of the trust;

(7) "Trustee" means all persons acting as trustee of the trust, except where expressly noted otherwise, whether acting in their discretion or on the direction of one (1) or more persons acting in a fiduciary capacity;

(8) "Trustor" means an individual who created an inter vivos or a testamentary trust;

(9) "Qualified beneficiaries" means those beneficiaries of a trust specified in § 35-15-103(24); and

(10) "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust.

(b) A trustee, other than an interested trustee, or where two (2) or more persons are acting as trustee, a majority of the trustees who are not an interested trustee, in either case hereafter "trustee", may, in its sole discretion and without court approval:

(1) Convert an income trust to a total return unitrust;

(2) In the case of a total return unitrust converted under this section or the laws of any other jurisdiction, reconvert a total return unitrust to an income trust; or

(3) In the case of a total return unitrust converted under this section or the laws of any other jurisdiction, change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if all of the following apply:

(A) The trustee adopts a written policy for the trust providing:

(i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(ii) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(iii) That the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

(B) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to the trustor of the trust, if living, and to all qualified beneficiaries of the trust;

(C) At least one (1) person receiving notice under subdivision (b)(3)(B) is legally competent; and

(D) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee within thirty (30) days of receipt of such notice.

(c) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two (2) or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in its sole discretion and without court approval:

(1) Convert an income trust to a total return unitrust;

(2) Reconvert a total return unitrust to an income trust; or

(3) Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if all of the

following apply:

(A) The trustee adopts a written policy for the trust providing:

(i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(ii) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(iii) That the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

(B) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee:

(i) The percentage to be used to calculate the unitrust amount;

(ii) The method to be used in determining the fair market value of the trust; and

(iii) Which assets, if any, are to be excluded in determining the unitrust amount;

(C) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, and the determinations of the disinterested person to the trustor of the trust, if living, and to all qualified beneficiaries of the trust;

(D) At least one (1) person receiving notice under subdivision (c)(3)(C), of this section is legally competent; and

(E) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action or the determinations of the disinterested person within thirty (30) days of receipt of such notice.

(d) If any trustee desires to convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under subsection (b) or (c), the trustee may petition the court for such order as the trustee deems appropriate. In the event, however, there is only one (1) trustee of such trust and such trustee is an interested trustee or in the event there are two (2) or more trustees of such trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as shall be necessary to enable the court to make its determinations hereunder.

(e) The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate. Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from fair market value for computing the unitrust amount.

(f) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent (3%) nor more than five percent (5%), taking into account the intentions of the trustor of the trust as expressed in the governing instrument,

the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

(g) Following the conversion of an income trust to a total return unitrust, the trustee:

(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income described in 26 U.S.C. § 1222(9), may consider the unitrust amount as paid from net short-term capital gain described in 26 U.S.C. § 1222(5) and then from net long-term capital gain described in 26 U.S.C. § 1222(7); and

(4) Shall then consider the unitrust amount as coming from the principal of the trust.

(h) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the governing instrument, determine:

(1) The effective date of the conversion;

(2) The timing of distributions, including, but not limited to, provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases;

(3) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;

(4) If the trust is reconverted to an income trust, the effective date of such reconversion; and

(5) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this section.

(i) Conversion to a total return unitrust under this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

(j) In the case of a trust for which a marital deduction has been taken for federal tax purposes under 26 U.S.C. § 2056 or § 2523, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during that spouse's lifetime of the trust from a total return unitrust to an income trust, notwithstanding anything in this section to the contrary.

(k)(1) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust including a trust initially converted to a total return unitrust under the laws of another jurisdiction that is administered in Tennessee under Tennessee law or to any trust, regardless of its place of administration, whose governing instrument provides that Tennessee law governs matters of construction or administration unless:

(A) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust, or gives the trustee no discretion to distribute any trust principal to the income beneficiary under any circumstances;

(B) The trust is a pooled income fund described in 26 U.S.C. § 642(c)(5) or a charitable-remainder trust; and

(C) Except for testamentary trusts established prior to July 1, 2010, the governing instrument expressly prohibits use of this section by specific reference to the section or expressly states the trustor's intent that net income not be calculated as a unitrust amount.

(2) Any of the following statements in the governing instrument, or words similar to such statements, shall be sufficient to preclude the use of this section:

The provisions of § 35-6-109, as amended, or any corresponding provision of future law, shall not be used in the administration of this trust; or

My trustee shall not determine the distributions to the income beneficiary as a unitrust amount.

(*l*) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust or to change the percentage used to calculate the unitrust amount.

(m) This section shall be available to trusts in existence on July 1, 2010, or created thereafter.

**36-1-102. Part definitions.**

As used in this part, unless the context otherwise requires:

(1)(A) For purposes of terminating the parental or guardian rights of a parent or parents or a guardian or guardians of a child to that child in order to make that child available for adoption, "abandonment" means that:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding, pleading, petition, or any amended petition to terminate the parental rights of the parent or parents or the guardian or guardians of the child who is the subject of the petition for termination of parental rights or adoption, that the parent or parents or the guardian or guardians either have failed to visit or have failed to support or have failed to make reasonable payments toward the support of the child;

(ii)*(a)* The child has been removed from the home or the physical or legal custody of a parent or parents or guardian or guardians by a court order at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and the child was placed in the custody of the department or a licensed child-placing agency;

*(b)* The juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and

*(c)* For a period of four (4) months following the physical removal, the department or agency made reasonable efforts to assist the parent

or parents or the guardian or guardians to establish a suitable home for the child, but that the parent or parents or the guardian or guardians have not made reciprocal reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date. The efforts of the department or agency to assist a parent or guardian in establishing a suitable home for the child shall be found to be reasonable if such efforts equal or exceed the efforts of the parent or guardian toward the same goal, when the parent or guardian is aware that the child is in the custody of the department;

(iii) A biological or legal father has either failed to visit or failed to make reasonable payments toward the support of the child's mother during the four (4) months immediately preceding the birth of the child; provided, that in no instance shall a final order terminating the parental rights of a parent as determined pursuant to this subdivision (1)(A)(iii) be entered until at least thirty (30) days have elapsed since the date of the child's birth;

(iv) A parent or guardian is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and either has failed to visit or has failed to support or has failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding such parent's or guardian's incarceration, or the parent or guardian has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child. If the four-month period immediately preceding the institution of the action or the four-month period immediately preceding such parent's incarceration is interrupted by a period or periods of incarceration, and there are not four (4) consecutive months without incarceration immediately preceding either event, a four-month period shall be created by aggregating the shorter periods of nonincarceration beginning with the most recent period of nonincarceration prior to commencement of the action and moving back in time. Periods of incarceration of less than seven (7) days duration shall be counted as periods of nonincarceration. Periods of incarceration not discovered by the petitioner and concealed, denied, or forgotten by the parent shall also be counted as periods of nonincarceration. A finding that the parent has abandoned the child for a defined period in excess of four (4) months that would necessarily include the four (4) months of nonincarceration immediately prior to the institution of the action, but which does not precisely define the relevant four-month period, shall be sufficient to establish abandonment; or

(v) The child, as a newborn infant aged seventy-two (72) hours or less, was voluntarily left at a facility by such infant's mother pursuant to § 68-11-255; and, for a period of thirty (30) days after the date of voluntary delivery, the mother failed to visit or seek contact with the infant; and, for a period of thirty (30) days after notice was given under § 36-1-142(e), and no less than ninety (90) days cumulatively, the mother failed to seek contact with the infant through the department or

to revoke her voluntary delivery of the infant;

(B) For purposes of this subdivision (1), "token support" means that the support, under the circumstances of the individual case, is insignificant given the parent's means;

(C) For purposes of this subdivision (1), "token visitation" means that the visitation, under the circumstances of the individual case, constitutes nothing more than perfunctory visitation or visitation of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child;

(D) For purposes of this subdivision (1), "failed to support" or "failed to make reasonable payments toward such child's support" means the failure, for a period of four (4) consecutive months, to provide monetary support or the failure to provide more than token payments toward the support of the child. That the parent had only the means or ability to make small payments is not a defense to failure to support if no payments were made during the relevant four-month period;

(E) For purposes of this subdivision (1), "failed to visit" means the failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation. That the parent had only the means or ability to make very occasional visits is not a defense to failure to visit if no visits were made during the relevant four-month period;

(F) Abandonment may not be repented of by resuming visitation or support subsequent to the filing of any petition seeking to terminate parental or guardianship rights or seeking the adoption of a child;

(G) "Abandonment" and "abandonment of an infant" do not have any other definition except that which is set forth in this section, it being the intent of the general assembly to establish the only grounds for abandonment by statutory definition. Specifically, it shall not be required that a parent be shown to have evinced a settled purpose to forego all parental rights and responsibilities in order for a determination of abandonment to be made. Decisions of any court to the contrary are hereby legislatively overruled;

(H) Every parent who is eighteen (18) years of age or older is presumed to have knowledge of a parent's legal obligation to support such parent's child or children; and

(I) For purposes of this subdivision (1), it shall be a defense to abandonment for failure to visit or failure to support that a parent or guardian's failure to visit or support was not willful. The parent or guardian shall bear the burden of proof that the failure to visit or support was not willful. Such defense must be established by a preponderance of evidence. The absence of willfulness is an affirmative defense pursuant to Rule 8.03 of the Tennessee Rules of Civil Procedure;

(2) "Abandonment of an infant" means, for purposes of terminating parental or guardian rights, "abandonment" of a child under one (1) year of age;

(3) "Adopted person" means:

(A) Any person who is or has been adopted under this part or under the laws of any state, territory, or foreign country; and

(B) For purposes of the processing and handling of, and access to, any adoption records, sealed adoption records, sealed records, post-adoption records, or adoption assistance records pursuant to this part, "adopted

person" also includes a person for whom any of those records is maintained by the court, other persons or entities or persons authorized to conduct a surrender or revocation of surrender pursuant to this part, or which records are maintained by the department, a licensed or chartered child-placing agency, a licensed clinical social worker, or the department of health or other information source, whether an adoption petition was ever filed, whether an adoption order was ever entered, whether the adoption was ever dismissed, whether the adoption was ever finalized, or whether the adoption was attempted or was otherwise never completed due to the abandonment of any necessary activity related to the completion of the adoption;

(4) "Adoption" means the social and legal process of establishing by court order, other than by paternity or legitimation proceedings or by voluntary acknowledgment of paternity, the legal relationship of parent and child;

(5) "Adoption assistance" means the federal or state programs that exist to provide financial assistance to adoptive parents to enable them to provide a permanent home to a special needs child as defined by the department;

(6) "Adoption record" means:

(A)(i) The records, reports, or other documents maintained in any medium by the judge or clerk of the court, or by any other person pursuant to this part who is authorized to witness the execution of surrenders or revocations of surrenders, which records, reports, or documents relate to an adoption petition, a surrender or parental consent, a revocation of a surrender or parental consent, or which reasonably relate to other information concerning the adoption of a person, and which information in such records, reports, or documents exists during the pendency of an adoption or a termination of parental rights proceeding, or which records, reports, or documents exist subsequent to the conclusion of those proceedings, even if no order of adoption or order of dismissal is entered, but which records, reports or documents exist prior to those records, reports, or documents becoming a part of a sealed record or a sealed adoption record pursuant to § 36-1-126; or

(ii) The records, reports, or documents maintained in any medium by the department's social services division, or by a licensed or chartered child-placing agency or licensed clinical social worker, and which records, reports, or documents contain any social, medical, legal, or other information concerning an adopted person, a person who has been placed for adoption or a person for whom adoptive placement activities are currently occurring, and which information in such records, reports, or documents exists during the pendency of an adoption or termination of parental rights proceeding, or which exists subsequent to the conclusion of those proceedings, even if no order of adoption or dismissal of an adoption has been entered, but which records, reports, or documents exist prior to those records, reports, or documents becoming sealed records or sealed adoption records pursuant to § 36-1-126;

(B) The adoption record is confidential and is not subject to disclosure by the court, by a licensed child-placing agency, by a licensed clinical social worker or by any other person or entity, except as otherwise permitted by this part; however, prior to the record's becoming a sealed record or a sealed adoption record pursuant to § 36-1-126, the adoption record may be disclosed as may be necessary for purposes directly related to the place-

ment, care, treatment, protection, or supervision by the legal custodian, legal guardian, conservator, or other legally authorized caretaker of the person who is the subject of the adoption proceeding, or as may be necessary for the purposes directly related to legal proceedings involving the person who is subject to the jurisdiction of a court in an adoption proceeding or other legal proceeding related to an adoption, including terminations of parental rights, or as may otherwise be necessary for use in any child or adult protective services proceedings concerning the person about whom the record is maintained pursuant to titles 37 and 71;

(C) The adoption record shall not, for purposes of release of the records pursuant to §§ 36-1-127 — 36-1-141, be construed to permit access, without a court order pursuant to § 36-1-138, to home studies or preliminary home studies or any information obtained by the department, a licensed or chartered child-placing agency, a licensed clinical social worker, or other family counseling service, a physician, a psychologist, or member of the clergy, an attorney or other person in connection with a home study or preliminary home study as part of an adoption or surrender or parental consent proceeding or as part of the evaluation of prospective adoptive parents, other than those studies that are expressly included in a report to the court by such entities or persons. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to § 36-1-138;

(7) "Adoptive parent or parents" means the person or persons who have been made the legal parents of a child by the entry of an order of adoption under this part or under of the laws of any state, territory or foreign country;

(8) "Adult" means any person who is eighteen (18) years of age or older. An adult may be adopted as provided in this part;

(9) "Aggravated circumstances" means abandonment, abandonment of an infant, aggravated assault, aggravated kidnapping, especially aggravated kidnapping, aggravated child abuse and neglect, aggravated sexual exploitation of a minor, especially aggravated sexual exploitation of a minor, aggravated rape, rape, rape of a child, incest, or severe child abuse, as defined at § 37-1-102;

(10) "Biological parents" means the woman and man who physically or genetically conceived the child who is the subject of the adoption or termination proceedings or who conceived the child who has made a request for information pursuant to this part;

(11) "Biological relative" means:

(A) For adopted persons for whom any adoption records, sealed adoption records, sealed records, or post-adoption records are maintained: the biological parents or child of an adopted person or person for whom any adoption record, sealed record, sealed adoption record or post-adoption record is maintained, the brothers or sisters of the whole or half blood, the blood grandparents of any degree, the blood aunts or uncles, or the blood cousins of the first degree, of such persons; and

(B) For persons about whom any background information is sought as part of the surrender or parental consent process: the biological parents of the child, the brothers or sisters of the whole or half blood, the blood grandparents of any degree, or the blood aunts or uncles;

(12) "Chartered child-placing agency" means an agency that had received a charter from the state of Tennessee through legislative action or by

incorporation for the operation of an entity or a program of any type that engaged in the placement of children for foster care or residential care as part of a plan or program for which those children were or could have been made available for adoptive placement and that may have, at sometime during its existence, become subject to any licensing requirements by the department or its predecessors;

(13) "Child" or "children" means any person or persons under eighteen (18) years of age;

(14) "Child-caring agency" means any agency authorized by law to care for children outside their own homes for twenty-four (24) hours per day;

(15) "Consent" means:

(A) The written authorization to relinquish a child for adoption, which is given by an agency such as the department or a public child care agency of another state or country or licensed child-placing agency of this or another state, which agency has the authority, by court order or by surrender or by operation of law or by any combination of these, to place a child for adoption and to give permission for the adoption of that child by other persons;

(B) The written permission of a parent pursuant to § 36-1-117(f) to permit the adoption of that parent's child by that parent's relative or by the parent's spouse who is the child's stepparent;

(C) The process as described in § 36-1-117(g) by which a parent co-signs an adoption petition, with the prospective adoptive parents, for the purpose of agreeing to make the child available for adoption by the co-petitioning prospective adoptive parents, and that permits the court to enter an order of guardianship to give the adoptive parents custody and supervision of the child pending the completion or dismissal of the adoption proceedings or pending revocation of the consent by the parent. This process shall be called a "parental consent";

(D) The permission of a child fourteen (14) years of age or older given to the court, in chambers, before the entry of an order of adoption of such child;

(E) The permission of a guardian ad litem for a disabled child or an adult permitting the adoption of those persons pursuant to the procedures of § 36-1-117(i) and (j);

(F) The sworn, written permission of an adult person filed with the court where the adoption petition is filed that seeks the adoption of the adult; or

(G) The agreement for contact by the parties to the post-adoption records search procedures that may be required in §§ 36-1-127 — 36-1-141;

(16)(A) "Court" means the chancery or circuit court; provided, that "court" includes the juvenile court for purposes of the authority to accept the surrender or revocation of surrenders of a child and to issue any orders of reference, orders of guardianship, or other orders resulting from a surrender or revocation that it accepts and for purposes of authorizing the termination of parental rights pursuant to § 36-1-113; title 37, chapter 1, part 1; and title 37, chapter 2, part 4;

(B) All appeals of any orders relative to the juvenile court's actions in taking a surrender or revocation or in terminating parental rights shall be made to the court of appeals as provided by law; or

(C) A juvenile court magistrate, appointed by the juvenile court judge pursuant to title 37, shall have authority to take a surrender of a child and to take a revocation of such surrender;

(17) "Court report" means the report to the adoption or surrender court in response to an order of reference that describes to the court the status of the child and the prospective adoptive parents or the persons to whom the child is surrendered. Such a report may be preliminary, supplementary, or final in nature. The court report shall not include the home study or preliminary home study, but instead shall include a summary of such study;

(18) "Department" means the department of children's services or any of its divisions or units;

(19) "Eligible person" means, for purposes of §§ 36-1-125 — 36-1-141, a person who is verified by the department as being in the class of individuals who is permitted by this part to receive access to records;

(20) "Final court report" means a written document completed by the department or a licensed child-placing agency or licensed clinical social worker after submission of any prior court reports in response to the court's order of reference. It gives information concerning the status of the child in the home of the prospective adoptive parents and gives a full explanation to the court of the suitability of the prospective adoptive parent or parents to adopt the child who is the subject of the adoption petition. The final court report is designed to bring the status of the proposed adoptive home and the child up to date immediately prior to finalization of the adoption and should be the last report the court receives before finalization of the adoption by entry of an order of adoption;

(21) "Financially able" means that the petitioners for adoption of a child are able, by use of any and all income and economic resources of the petitioners, including, but not limited to, assistance from public or private sources, to ensure that any physical, emotional, or special needs of the child are met;

(22) "Foster care" has the meaning given to that term in § 37-1-102; provided, that no plan or permanency plan, as defined in § 37-2-402, shall be required in the case of foster care provided by or in any agency, institution or home in connection with an adoption of a child, so long as a petition for the adoption of that child by an individual or individuals to whom care of that child has been given is filed in a court of competent jurisdiction within six (6) months of the time that child first comes into the care of the agency, institution or home;

(23) "Foster parent" has the meaning given to that term in § 37-1-102;

(24)(A) "Guardian" or "guardians" or "co-guardian" or "co-guardians" means a person or persons or an entity, other than the parent of a child, appointed by a court or defined by law specifically as "guardian" or "co-guardian" or "conservator" to provide supervision, protection for and care for the person or property, or both, of a child or adult;

(B) "Guardian" or "co-guardian" also means a person or entity appointed as guardian or guardians as the result of a surrender, parental consent, or termination of parental rights;

(C) The rights of the individual guardian or co-guardian or conservator of the person of a minor child or of an adult must be terminated by a surrender or court action before an order of adoption can be entered; provided, that an individual or individuals who receives or receive

guardianship pursuant to a surrender, parental consent, or termination of parental rights pursuant to this part or title 37 need not give consent to the adoption when that individual is the petitioner in an adoption;

(D) When the department, a licensed child-placing agency, or a child-caring agency is the guardian of the child, its rights must be terminated by court action or it must provide consent as defined in subdivision (15)(A) before an adoption can be ordered;

(25)(A) "Guardianship" or "co-guardianship" means, for purposes of subdivision (24), a person or entity having the status of being a guardian or co-guardian who or which is responsible for the provision of supervision, protection, and assistance to the person of a child under this part or under other law of this or any other jurisdiction;

(B) Guardianship as a result of a surrender, consent, or termination of parental rights pursuant to this part or title 37 or the law of any other jurisdiction may be "complete" or "partial";

(C)(i) A person or entity has "complete" guardianship for the purpose of permitting a court to order an adoption when all necessary parental or guardianship rights have been terminated by surrender, by consent, by waiver of interest, or by involuntary termination of parental rights proceedings by a court or otherwise, and the court or courts with jurisdiction to do so enters an order or orders granting guardianship status to the person or entity;

(ii) Complete guardianship pursuant to a surrender or consent under this part or pursuant to the termination of the rights of a parent or guardian of a child under this part or under title 37, and pursuant to the entry of an order of guardianship as provided in this part, shall entitle the person or entity to the right to care for the child as provided under § 37-1-140 or as otherwise provided by the court order, and shall permit the entity to place the child for adoption and to consent to the adoption, or shall permit the individual to be granted an adoption of the child, and shall authorize the court to proceed with and grant an adoption, without further termination of parental or guardian rights;

(D)(i) A person or entity has "partial guardianship" when a surrender or consent has been received from at least one (1), but not all, parents or guardians of the child, or when a court-ordered termination of parental or guardianship rights has been obtained against at least one (1), but not all, parents or guardians of the child, and the court has entered an order granting guardianship of the child to the petitioning person or entity, and the remaining parent or guardian of the child has not executed a surrender or consent or the child's parental or guardianship rights have not been terminated by waiver of interest pursuant to this part, court order, or otherwise;

(ii) Partial guardianship obtained pursuant to a surrender or consent or pursuant to an order terminating less than all parental rights, and an order of partial guardianship pursuant to this part or pursuant to title 37 shall entitle the person or entity to provide care, supervision, and protection of the child pursuant to § 37-1-140, or to the extent permitted by the court order granting partial guardianship, but it shall not be effective to allow full consent to an adoption by an entity without termination by surrender or court order or otherwise of the remaining parental or guardianship rights of other parents or guardians, and shall

not authorize the court to grant an adoption to an individual until all remaining parental or guardianship rights have been surrendered, terminated, or otherwise ended; provided, that the department or licensed child-placing entity may place a child for adoption with prospective adoptive parents and may consent to the adoption of the child by those prospective adoptive parents when the department or the licensed child-placing agency has partial guardianship, and the prospective adoptive parents then shall be required to obtain complete guardianship of the child by surrender, termination of parental rights, waiver of interest, or parental consent to effect the adoption of the child;

(26) "Home study" means the product of a preparation process in which individuals or families are assessed by themselves and the department or licensed child-placing agency, or a licensed clinical social worker as to their suitability for adoption and their desires with regard to the child they wish to adopt. The home study shall conform to the requirements set forth in the rules of the department and it becomes a written document that is used in the decision to approve or deny a particular home for adoptive placement. The home study may be the basis on which the court report recommends approval or denial to the court of the family as adoptive parents. A court report based upon any home study conducted by a licensed child-placing agency, licensed clinical social worker or the department that has been completed or updated within one (1) year prior to the date of the surrender or order of reference shall be accepted by the court for purposes of §§ 36-1-111 and 36-1-116. The home study shall be confidential, and at the conclusion of the adoption proceeding shall be forwarded to the department to be kept under seal pursuant to § 36-1-126, and shall be subject to disclosure only upon order entered pursuant to § 36-1-138;

(27) "Interstate Compact on the Placement of Children (ICPC)" means §§ 37-4-201 — 37-4-207 relating to the placement of a child between states for the purposes of foster care or adoption. The ICPC is administered in Tennessee by the department through its state office in Nashville;

(28)(A) "Legal parent" means:

(i) The biological mother of a child;

(ii) A man who is or has been married to the biological mother of the child if the child was born during the marriage or within three hundred (300) days after the marriage was terminated for any reason, or if the child was born after a decree of separation was entered by a court;

(iii) A man who attempted to marry the biological mother of the child before the child's birth by a marriage apparently in compliance with the law, even if the marriage is declared invalid, if the child was born during the attempted marriage or within three hundred (300) days after the termination of the attempted marriage for any reason;

(iv) A man who has been adjudicated to be the legal father of the child by any court or administrative body of this state or any other state or territory or foreign country or who has signed, pursuant to §§ 24-7-113, 68-3-203(g), 68-3-302, or 68-3-305(b), an unrevoked and sworn acknowledgment of paternity under Tennessee law, or who has signed such a sworn acknowledgment pursuant to the law of any other state, territory, or foreign country; or

(v) An adoptive parent of a child or adult;

(B) A man shall not be a legal parent of a child based solely on blood, genetic, or DNA testing determining that he is the biological parent of the

child without either a court order or voluntary acknowledgement of paternity pursuant to § 24-7-113. Such test may provide a basis for an order establishing paternity by a court of competent jurisdiction, pursuant to the requirements of § 24-7-112;

(C) If the presumption of paternity set out in subdivisions (28)(A)(ii)-(iv) is rebutted as described in § 36-2-304, the man shall no longer be a legal parent for purposes of this chapter and no further notice or termination of parental rights shall be required as to this person;

(29) "Legal relative" means the person who is included in the class of persons set forth in the definition of "biological relative" or "legal parent," and who, at the time a request for search services or information is made pursuant to §§ 36-1-127 — 36-1-131 and 36-1-133 — 36-1-138, is related to the adopted person by any legal relationship established by law, court order, or by marriage, but specifically includes, in addition, a step-parent or the spouse of any legal relative;

(30)(A) "Legal representative" means:

(i) The conservator, guardian, legal custodian, or other person or entity with legal authority to make decisions for an individual with a disability or an attorney-in-fact, an attorney at law representing a person for purposes of obtaining information pursuant to this part, or the legally appointed administrator, executor, or other legally appointed representative of a person's estate; or

(ii) Any person acting under any durable power of attorney for health care purposes or any person appointed to represent a person and acting pursuant to a living will;

(B) For purposes of subdivision (30)(A), "disability" means that the individual is a minor pursuant to any state, territorial, or federal law, or the law of any foreign country, or that the individual has been determined by any such laws to be in need of a person or entity to care for the individual due to that individual's physical or mental incapacity or infirmity;

(31) "Licensed child-placing agency" means any agency operating under a license to place children for adoption issued by the department, or operating under a license from any governmental authority from any other state or territory or the District of Columbia, or any agency that operates under the authority of another country with the right to make placement of children for adoption and that has, in the department's sole determination, been authorized to place children for adoption in this state;

(32) "Licensed clinical social worker" means an individual who holds a license as an independent practitioner from the board of social worker certification and licensure pursuant to title 63, chapter 23, and, in addition, is licensed by the department to provide adoption placement services;

(33) "Lineal ancestor" means any degree of grandparent or great-grandparent, either by birth or adoption;

(34) "Lineal descendant" means a person who descended directly from another person who is the biological or adoptive ancestor of such person, such as the daughter of the daughter's mother or granddaughter of the granddaughter's grandmother;

(35) "Order of reference" means the order from the court where the surrender is executed or filed or where the adoption petition is filed that directs the department or a licensed child-placing agency or licensed clinical

social worker to conduct a home study or preliminary home study or to complete a report of the status of the child who is or may be the subject of an adoption proceeding, and that seeks information as to the suitability of the prospective adoptive parents to adopt a child;

(36) "Parent" or "parents" means any biological, legal, adoptive parent or parents or, for purposes of §§ 36-1-127 — 36-1-141, stepparents;

(37) "Parental consent" means the consent described in subdivision (15)(C);

(38) "Parental rights" means the legally recognized rights and responsibilities to act as a parent, to care for, to name, and to claim custodial rights with respect to a child;

(39) "Physical custody" means physical possession and care of a child. "Physical custody" may be constructive, as when a child is placed by agreement or court order with an agency, or purely physical, as when any family, including a formal or informal foster family, has possession and care of a child, so long as such possession was not secured through a criminal act. An agency and a family may have physical custody of the same child at the same time;

(40) "Post-adoption record" means:

(A) The record maintained in any medium by the department, separately from the sealed record or sealed adoption record and subsequent to the sealing of an adoption record or that is maintained about any sealed record or sealed adoption record. The post-adoption record contains information, including, but not limited to, adopted persons or the legal or biological relatives of adopted persons, or about persons for whom sealed records or sealed adoption records are maintained, or about persons who are seeking information about adopted persons, or persons on whom a sealed record or sealed adoption record is maintained. The post-adoption record contains information concerning, but not limited to, the contact veto registry established by this part, the written inquiries from persons requesting access to records, the search efforts of the department pursuant to the requirements of the contact veto process, the response to those search efforts by those persons sought, information that has been requested to be transmitted from or on behalf of any person entitled to access to records pursuant to this part, any updated medical information gathered pursuant to this part, court orders related to the opening of any sealed adoption records or sealed records, and personal identifying information concerning any persons subject to this part;

(B) The limited record maintained by the licensed or chartered child-placing agency or a licensed clinical social worker pursuant to § 36-1-126(b)(2), that indicates the child's date of birth, the date the agency received the child for placement, from whom the child was received and such person's last known address, with whom the child was placed and such person's or entity's last known address, and the court in which the adoption proceeding was filed and the date the adoption order was entered or the adoption petition dismissed; and

(C) This record is confidential and shall be opened only as provided in this part;

(41)(A) "Preliminary home study" means an initial home study conducted prior to or, in limited situations, immediately after, the placement of a child with prospective adoptive parents who have not previously been

subject to a home study that was conducted or updated not less than six (6) months prior to the date a surrender is sought to be executed to the prospective adoptive parents or prior to the date of the filing of the adoption petition;

(B) The preliminary home study is designed to obtain an early and temporary initial assessment of the basic ability of prospective adoptive parents to provide adequate care for a child who is proposed to be adopted by those prospective adoptive parents, and is utilized only for the purpose of approval of surrenders or for purposes of responding to an order of reference pursuant to § 36-1-116(e)(2), or for purposes of entering a guardianship order under § 36-1-116(f)(3);

(C) The preliminary home study shall consist of a minimum of two (2) visits with the prospective adoptive parents, at least one (1) of which shall be in the home of the prospective adoptive parents, and the study shall support the conclusion that no apparent reason exists why the prospective adoptive parents would not be fit parents for the child who is the subject of the adoption. To be valid for use as the basis for a court report in connection with a surrender or a parental consent, the preliminary home study must have been completed or updated within thirty (30) days prior to the date the surrender is accepted or the parental consent is executed or confirmed or the guardianship order is entered. The home study shall be confidential, and, at the conclusion of the adoption proceeding, shall be forwarded to the department to be kept under seal pursuant to § 36-1-126, and shall be subject to disclosure only upon order entered pursuant to § 36-1-138;

(42) "Prospective adoptive parents" means a nonagency person or persons who are seeking to adopt a child and who have made application with a licensed child-placing agency or licensed clinical social worker or the department for approval, or who have been previously approved, to receive a child for adoption, or who have received or who expect to receive a surrender of a child, or who have filed a petition for termination or for adoption;

(43) "Putative father" means a biological or alleged biological father of a child who, at the time of the filing of a petition to terminate the parental rights of such person or, if no such petition is filed, at the time of the filing of a petition to adopt a child, meets at least one (1) of the criteria set out in § 36-1-117(c) and is not a legal parent;

(44) "Related" means grandparents or any degree of great-grandparents, aunts or uncles, or any degree of great-aunts or great-uncles, or step-parent, or cousins of the first degree, or first cousins once removed, or any siblings of the whole or half degree or any spouse of the above listed relatives;

(45)(A) "Sealed adoption record" means:

(i) The adoption record as it exists subsequent to its transmittal to the department, or subsequent to its sealing by the court, pursuant to the requirements of § 36-1-126; or

(ii) The limited record maintained by the licensed or chartered child-placing agency or a licensed clinical social worker pursuant to § 36-1-126(b)(2);

(B) This record is confidential and shall be opened only as provided in this part;

(C) The sealed adoption record shall not, for purposes of release of the records pursuant to §§ 36-1-127 — 36-1-141, be construed to permit

access, without a court order pursuant to § 36-1-138, to home studies or preliminary home studies or any information obtained by the department, a licensed or chartered child-placing agency, a licensed clinical social worker, or other family counseling service, a physician, a psychologist, or member of the clergy, an attorney or other person in connection with a home study or preliminary home study as part of an adoption or surrender or parental consent proceeding or as part of the evaluation of prospective adoptive parents, other than those studies that are expressly included in a report to the court by such entities or persons. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to § 36-1-138;

(46)(A) "Sealed record" means:

(i) Any records, reports, or documents that are maintained at any time by a court, a court clerk, a licensed or chartered child-placing agency, licensed clinical social worker, the department, the department of health, or any other information source concerning the foster care or agency care placement, or placement for adoption, of a person by any branch of the Tennessee children's home society authorized by Public Chapter 113 (1919); or

(ii) Any records, reports, or documents maintained by a judge, a court clerk, the department, a licensed or chartered child-placing agency, a licensed clinical social worker, the department of health, or any other information source that consist of adoption records or information about an adoption proceeding or a termination of parental rights proceeding about an adopted person, or that contain information about a person who was placed for adoption but for whom no adoption order was entered or for whom an adoption proceeding was dismissed or for whom an adoption was not otherwise completed, or that contain information concerning persons in the care of any person or agency, and which records have otherwise been treated and maintained by those persons or entities under prior law, practice, policy, or custom as confidential, nonpublic adoption records, sealed adoption records, or post-adoption records of the person, or that may be otherwise currently treated and maintained by those persons or entities as confidential, nonpublic adoption records, sealed adoption records or post-adoption records of the person; or

(iii) The limited record maintained by the licensed or chartered child-placing agency or a licensed clinical social worker pursuant to § 36-1-126(b)(2);

(B) This record is confidential and shall be opened only as provided in this part;

(C) The sealed record shall not, for purposes of release of the records pursuant to §§ 36-1-127 — 36-1-141, be construed to permit access, without a court order pursuant to § 36-1-138, to home studies or preliminary home studies or any information obtained by the department, a licensed or chartered child-placing agency, a licensed clinical social worker, or other family counseling service, a physician, a psychologist, or member of the clergy, an attorney or other person in connection with a home study or preliminary home study as part of an adoption or surrender or parental consent proceeding or as part of the evaluation of prospective

adoptive parents, other than those studies that are expressly included in a report to the court by such entities or persons. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to § 36-1-138;

(47) "Sibling" means anyone having a sibling relationship;

(48) "Sibling relationship" means the biological or legal relationship between persons who have a common biological or legal parent;

(49) "Surrender" means a document executed under § 36-1-111, or under the laws of another state or territory or country, by the parent or guardian of a child, by which that parent or guardian relinquishes all parental or guardianship rights of that parent or guardian to a child, to another person or public child care agency or licensed child-placing agency for the purposes of making that child available for adoption; and

(50)(A) "Surrogate birth" means:

(i) The union of the wife's egg and the husband's sperm, which are then placed in another woman, who carries the fetus to term and who, pursuant to a contract, then relinquishes all parental rights to the child to the biological parents pursuant to the terms of the contract; or

(ii) The insemination of a woman by the sperm of a man under a contract by which the parties state their intent that the woman who carries the fetus shall relinquish the child to the biological father and the biological father's wife to parent;

(B) No surrender pursuant to this part is necessary to terminate any parental rights of the woman who carried the child to term under the circumstances described in this subdivision (50) and no adoption of the child by the biological parent or parents is necessary;

(C) Nothing in this subdivision (50) shall be construed to expressly authorize the surrogate birth process in Tennessee unless otherwise approved by the courts or the general assembly.

**36-1-108. Entities authorized to place children for adoption — Advisory and agency capacity authorized — Injunction to stop illegal payments. [Effective until January 1, 2019. See the version effective on January 1, 2019.]**

(a)(1) No person, corporation, agency, or other entity, except the department or a licensed child-placing agency or licensed clinical social worker, as defined in § 36-1-102, shall engage in the placement of children for adoption; provided, that this section shall not be construed to prohibit any person from advising parents of a child or prospective adoptive parents of the availability of adoption, or from acting as an agent or attorney for the parents of a child or prospective adoptive parents in making necessary arrangements for adoption so long as no remuneration, fees, contributions, or things of value are given to or received from any person or entity for such service other than usual and customary legal and medical fees in connection with the birth of the child or other pregnancy-related expenses, or for counseling for the parents and/or the child, and for the legal proceedings related to the adoption.

(2) Only a licensed child-placing agency, as defined in § 36-1-102, a licensed clinical social worker, as defined in § 36-1-102, prospective adoptive

parents, or a lawyer who is subject to the Tennessee supreme court rules regarding lawyer advertising may advertise for the placement of children for adoption in this state. In order to advertise for the placement of children for adoption in Tennessee, out-of-state licensed child placing agencies, licensed clinical social workers or lawyers must:

(A) Be authorized to do business in this state under respective licensing laws; and

(B) Maintain a physical office within this state or incur expenses involved in the transportation of a licensing consultant to the closest physical office of the agency, social worker or lawyer.

(3) Any advertisement in this state for the placement of children for adoption in another state by an agency or individual not licensed or authorized to do such business in this state shall clearly state that the agency or individual is not licensed or authorized to do such business in this state.

(b) "Placement of a child or children for adoption" means, for purposes of this section and § 36-1-109 and for licensing purposes in title 37, chapter 5, part 5, and for § 37-5-507, that a person, corporation, agency, or other entity is employed, contracted, or engaged, in any manner for any remuneration, fee, contribution, or thing of value, of any type by, or on behalf of, any person:

(1) In the selection of prospective adoptive parents for a child by determining the relative qualifications of prospective adoptive parents in a decision by that person, corporation, agency, or other entity to place any child or children, including specifically, but not limited to, the preparation of home studies, preliminary home studies, court reports for surrenders or adoptions, or the provision of supervision of a child in an adoptive home as part of the adoptive process; or

(2)(A) In the business of arranging services or assistance directed primarily, and not as an incidental part of its primary business, toward bringing to or placing with prospective adoptive parents a child or children for the purpose of foster care leading to adoption or as an adoptive placement for a child or children, including, but not limited to, advertising for such services, accepting clients for a fee, or providing any placing services for a fee;

(B) Nothing in subdivision (b)(2)(A) shall include the provision of reasonable and necessary legal services related to the adoption proceedings, or medical or counseling services for the child or the parent in connection with the child's birth or in connection with the parent's decision to relinquish the child for adoption or for counseling services for the prospective adoptive parents.

(c)(1) Any court of competent jurisdiction, upon the filing of a sworn complaint by the department or by a licensed child-placing agency, or by any person aggrieved, may temporarily enjoin or restrain any person, corporation, agency, or other entity from engaging or attempting to engage in placing children for adoption in violation or in threatened violation of this part or title 71, chapter 3, part 5, and upon final hearing, if the court determines that there has been a violation, or threatened violation, thereof, the injunction shall be made permanent.

(2) If the court finds that any person, corporation, agency, or other entity has engaged in the illegal placement of children for adoption, that person, corporation, agency, or other entity shall be liable for all the costs of the legal

proceedings and for all attorney fees for private persons or private agencies who brought the action, or for the cost of attorney and staff time for the department, involved in the proceeding.

(d)(1) In order to allow the prospective adoptive parents to have information available to them to permit informed choices regarding the employment of persons or entities involved in the placement of children, or in counseling, or in the provision of legal services, the department shall collect the information concerning fees or other costs charged by licensed child-placing agencies, licensed clinical social workers, attorneys, and counseling services that are disclosed in accordance with §§ 36-1-116(b)(16) and 36-1-120(b).

(2) This information shall be used by the department to develop an informational database in order for the department to provide, upon request of prospective adoptive parents or other interested persons, information concerning fees charged for home studies, placement services, counseling and legal fees. Such information shall be made available by the department in written form to any person so requesting. No employee of the department shall make any recommendation regarding or comment upon any information concerning such attorney, licensed child-placing agency or licensed clinical social worker.

(3) The department is specifically authorized to promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to regulate fees charged by licensed child-placing agencies and licensed clinical social workers or their practices, if it determines that the practices of those licensed child-placing agencies or licensed clinical social workers demonstrate that the fees charged are excessive or that any of the agency's practices are deceptive or misleading; provided, that such rules regarding fees shall take into account the use of any sliding fee by an agency or licensed clinical social worker that or who uses a sliding fee procedure to permit prospective adoptive parents of varying income levels to utilize the services of such agencies or persons.

(4) The department shall promulgate rules pursuant to the Uniform Administrative Procedures Act to require that all licensed child-placing agencies and licensed clinical social workers provide written disclosures to all prospective adoptive parents of any fees or other charges for each service performed by the agency or person, and file an annual report with the department that states the fees and charges for those services, and to require them to inform the department in writing thirty (30) days in advance of any proposed changes to the fees or charges for those services.

(5) The department is specifically authorized to disclose to prospective adoptive parents or other interested persons any fees charged by any licensed child-placing agency, licensed clinical social worker, attorney or counseling service or counselor for all legal and counseling services provided by that licensed child-placing agency, licensed clinical social worker, attorney or counseling service or counselor.

### 36-1-108. Entities authorized to place children for adoption — Advisory and agency capacity authorized — Injunction to stop illegal payments. [Effective on January 1, 2019. See the version effective until January 1, 2019.]

*(a)(1) No person, corporation, agency, or other entity, except the department or a licensed child-placing agency or licensed clinical social worker, as*

*defined in § 36-1-102, shall engage in the placement of children for adoption; provided, that this section shall not be construed to prohibit any person from advising parents of a child or prospective adoptive parents of the availability of adoption, or from acting as an agent or attorney for the parents of a child or prospective adoptive parents in making necessary arrangements for adoption so long as no remuneration, fees, contributions, or things of value are given to or received from any person or entity for such service other than usual and customary legal and medical fees in connection with the birth of the child or other pregnancy-related expenses, or for counseling for the parents and/or the child, and for the legal proceedings related to the adoption.*

*(2) Only a licensed child-placing agency, as defined in § 36-1-102, a licensed clinical social worker, as defined in § 36-1-102, prospective adoptive parents, or a lawyer who is subject to the Tennessee supreme court rules regarding lawyer advertising may advertise for the placement of children for adoption in this state. In order to advertise for the placement of children for adoption in Tennessee, out-of-state licensed child placing agencies, licensed clinical social workers or lawyers must:*

*(A) Be authorized to do business in this state under respective licensing laws; and*

*(B) Maintain a physical office within this state or incur expenses involved in the transportation of a licensing consultant to the closest physical office of the agency, social worker or lawyer.*

*(3) Any advertisement in this state for the placement of children for adoption in another state by an agency or individual not licensed or authorized to do such business in this state shall clearly state that the agency or individual is not licensed or authorized to do such business in this state.*

*(b) "Placement of a child or children for adoption" means, for purposes of this section and § 36-1-109 and for licensing purposes in title 37, chapter 5, part 5, and for § 37-5-507, that a person, corporation, agency, or other entity is employed, contracted, or engaged, in any manner for any remuneration, fee, contribution, or thing of value, of any type by, or on behalf of, any person:*

*(1) In the selection of prospective adoptive parents for a child by determining the relative qualifications of prospective adoptive parents in a decision by that person, corporation, agency, or other entity to place any child or children, including specifically, but not limited to, the preparation of home studies, preliminary home studies, court reports for surrenders or adoptions, or the provision of supervision of a child in an adoptive home as part of the adoptive process; or*

*(2)(A) In the business of arranging services or assistance directed primarily, and not as an incidental part of its primary business, toward bringing to or placing with prospective adoptive parents a child or children for the purpose of foster care leading to adoption or as an adoptive placement for a child or children, including, but not limited to, advertising for such services, accepting clients for a fee, or providing any placing services for a fee;*

*(B) Nothing in subdivision (b)(2)(A) shall include the provision of reasonable and necessary legal services related to the adoption proceedings, or medical or counseling services for the child or the parent in connection with the child's birth or in connection with the parent's decision to relinquish the child for adoption or for counseling services for the prospec-*

*tive adoptive parents.*

*(c)(1) Any court of competent jurisdiction, upon the filing of a sworn complaint by the department or by a licensed child-placing agency, or by any person aggrieved, may temporarily enjoin or restrain any person, corporation, agency, or other entity from engaging or attempting to engage in placing children for adoption in violation or in threatened violation of this part or title 71, chapter 3, part 5, and upon final hearing, if the court determines that there has been a violation, or threatened violation, thereof, the injunction shall be made permanent.*

*(2) If the court finds that any person, corporation, agency, or other entity has engaged in the illegal placement of children for adoption, that person, corporation, agency, or other entity shall be liable for all the costs of the legal proceedings and for all attorney fees for private persons or private agencies who brought the action, or for the cost of attorney and staff time for the department, involved in the proceeding.*

*(d)(1) In order to allow the prospective adoptive parents to have information available to them to permit informed choices regarding the employment of persons or entities involved in the placement of children, or in counseling, or in the provision of legal services, the department shall collect the information concerning fees or other costs charged by licensed child-placing agencies, licensed clinical social workers, attorneys, and counseling services that are disclosed in accordance with §§ 36-1-111(b)(16) and 36-1-120(b).*

*(2) This information shall be used by the department to develop an informational database in order for the department to provide, upon request of prospective adoptive parents or other interested persons, information concerning fees charged for home studies, placement services, counseling and legal fees. Such information shall be made available by the department in written form to any person so requesting. No employee of the department shall make any recommendation regarding or comment upon any information concerning such attorney, licensed child-placing agency or licensed clinical social worker.*

*(3) The department is specifically authorized to promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to regulate fees charged by licensed child-placing agencies and licensed clinical social workers or their practices, if it determines that the practices of those licensed child-placing agencies or licensed clinical social workers demonstrate that the fees charged are excessive or that any of the agency's practices are deceptive or misleading; provided, that such rules regarding fees shall take into account the use of any sliding fee by an agency or licensed clinical social worker that or who uses a sliding fee procedure to permit prospective adoptive parents of varying income levels to utilize the services of such agencies or persons.*

*(4) The department shall promulgate rules pursuant to the Uniform Administrative Procedures Act to require that all licensed child-placing agencies and licensed clinical social workers provide written disclosures to all prospective adoptive parents of any fees or other charges for each service performed by the agency or person, and file an annual report with the department that states the fees and charges for those services, and to require them to inform the department in writing forty (40) days in advance of any proposed changes to the fees or charges for those services.*

*(5) The department is specifically authorized to disclose to prospective adoptive parents or other interested persons any fees charged by any licensed*

*child-placing agency, licensed clinical social worker, attorney or counseling service or counselor for all legal and counseling services provided by that licensed child-placing agency, licensed clinical social worker, attorney or counseling service or counselor.*

**36-1-111. Presurrender request for home study or preliminary home study — Surrender of child — Consent for adoption by parent — Effect of Surrender — Form of surrender — Waiver of interest — Interpreter for non-English speaking parents.**

(a)(1) Prior to receiving a surrender by a parent of a child or prior to the execution of a parental consent by a parent in a petition for adoption, the prospective adoptive parents shall request a licensed child-placing agency, a licensed clinical social worker, or, if indigent under federal poverty guidelines, the department, to conduct a home study or preliminary home study for use in the surrender, or parental consent proceeding, or in the adoption.

(2) A court report based upon the home study or preliminary home study must be available to the court or, when using a Tennessee surrender form, to the persons under subsection (h), (i), or (j), and, before the surrender to prospective adoptive parents is executed, the court report must be reviewed by the court or persons under those subsections in any surrender proceeding in which the surrender is not made to the department or a licensed child-placing agency. When a parental consent is executed, pursuant to § 36-1-117(g), the court report based upon the home study or preliminary home study must be filed with the adoption petition, and must be reviewed by the court before the entry of an order of guardianship giving the prospective adoptive parents guardianship of the child.

(3) All court reports submitted under this subsection (a) shall be confidential and shall not be open to inspection by any person except by order of the court entered on the minute book. The court shall, however, disclose to prospective adoptive parents any adverse court reports or information contained therein, but shall protect the identities of any person reporting child abuse or neglect in accordance with law.

(b)(1) All surrenders must be made in chambers before a judge of the chancery, circuit, or juvenile court except as provided herein, and the court shall advise the person or persons surrendering the child of the right of revocation of the surrender and time for the revocation and the procedure for such revocation.

(2) A surrender form shall be legally sufficient if it contains statements comparable to the "Form of Surrender" set forth in subdivision (b)(3). The information requested on the pre-surrender information forms under subdivisions (b)(4) and (5) shall be collected, to the extent that such information is known to the surrendering or accepting party respectively, on the forms provided in subdivisions (b)(4) and (5) or by a substantially similar method and shall be attached to the surrender form proffered to the judge or officiant for execution.

(3)

TENNESSEE SURRENDER FORM

I, (full name of surrendering party) _____, born (surrendering party's date of birth)_____, sign this surrender to end my parental rights

and responsibilities to (full name of child) _____, born (child's date of birth)_____ in (location of child's birth) _____. I am this child's (circle one) mother / father / possible father / guardian.

I surrender my parental rights to and request that this Court give guardianship to (a person/family with a current, approved home study, or a licensed child-placing agency)

_____.

I know I only have three (3) days to change my mind and revoke this decision after I sign this form. This decision may not be changed if I do not revoke this surrender on or before _____ (three days after today, calculated under Tennessee Rule of Civil Procedure 6.01). To revoke, I must sign a revocation form before the Judge or officiant with me now or his or her successor.

I have completed the Surrendering Party Pre-Surrender Information Form. I have provided true and complete answers to all the questions on that form to the best of my knowledge.

I know that I should only sign this form if I want my parental rights terminated. If I want to talk to my own lawyer before I sign this form, I should tell the Judge or other officiant now and this surrender process will stop. I can talk to my lawyer and then decide if I still want to end my parental rights.

If anyone is putting pressure on me to sign this surrender, or trying to make me sign against my will, or has promised me something I value in order to make me want to sign this surrender, I understand that I should tell the Judge or officiant about that before I sign the form. The Judge or officiant will not allow me to be forced to sign this surrender.

No one is pressuring, threatening, or paying me to get me to sign this form. I believe voluntary termination of my parental rights is in the best interest of my child.

By signing below I voluntarily terminate my parental rights and surrender my child to the person(s) or agency listed above.

This _____ day of _____, 20____.

_____

Surrendering Party's Signature

Judge or Officiant Attestation

I interviewed the surrendering party and witnessed execution of the foregoing surrender and as required by T.C.A. § 36-1-111. The surrendering party understands that he/she is surrendering parental rights to this child. There is no reason to believe that this is not a voluntary act.

The Surrendering Party's Pre-Surrender Information Form, the surrendering party's Social and Medical History Form, and if the surrender is to an individual, or individuals, as opposed to an agency, the individual's, or individuals', court report based upon a current and approved home study are attached to this form. The Pre-Surrender Information Form and Social and Medical History Form are properly verified by a notary or I reviewed the information with the surrendering party and he/she has attested before me to the correctness of those forms.

This _____ day of _____, 20____.

_____

Judge or Officiant's Signature

Name and Title: _____

Court or Employing Institution and Location: _____

ACCEPTANCE BY AGENCY or PROSPECTIVE ADOPTIVE PARENT(S)

I/We _____ and _____ individually or I, _____, on behalf of the licensed child-placing agency, _____, hereby accept the surrender of _____ (child) from _____ (surrendering party) and plan to adopt the surrendered child or for an agency, expect and intend to place this child for adoption with an appropriate family. I/We or the undersigned agency have physical custody of this child or will have physical custody upon discharge of this child from a healthcare facility. I/We or the undersigned agency agree(s) to assume responsibility for obtaining guardianship of the surrendered child through a court order within thirty (30) days of the date of the surrender. I/We or the undersigned agency agree(s), to be responsible for the care, custody, financial support, medical care, education, moral, and spiritual training of this child, pending an adoption.

I/We have completed the Accepting Party's Pre-Acceptance Information Form. The information provided in that form is true and to the best of my/our knowledge.

This _____ day of _____, 20____.

_____

Signature of Prospective Adoptive Parent

_____

Signature of Prospective Adoptive Parent

_____

Signature of Agency Representative and Title

_____

Judge or Officiant Attestation

I interviewed the accepting parties and witnessed execution of the foregoing acceptance.

The Accepting Party's Pre-Acceptance Information Form and any accepting individual's/individuals' court report based upon a current and approved home study are attached to this form. The Accepting Party's Pre-Acceptance Information Form is properly verified by a notary or I reviewed the information with the accepting parties and they have attested before me to the correctness of the form.

This _____ day of _____, 20____.

_____

Judge or Officiant's Signature

Name and Title: _____

Court or Employing Institution and Location: _____

(4)

SURRENDERING PARTY'S PRE-SURRENDER INFORMATION FORM

STATE OF _____

COUNTY OF _____

Being duly sworn according to law, affiant would state:

1. I am:

a. Mother:_____

(Date of Birth)_____ or

b. Father:_____

(Date of Birth)_____ or

c. Legal Guardian:_____
(Date of Birth)_____ of

2.

a. Child's Name

_____

b. Child's Date of Birth

_____

c. Child's Place of Birth

_____

d. Child's Sex

_____

e. Child's Race

_____

3. This child was born in wedlock [ ] out of wedlock [ ] in wedlock but the mother's husband is not the child's biological father [ ].

4. State the names and relationships of any other legal parents, putative fathers, and legal guardians for this child:

a.

(1) Name

_____

(2) Relationship to the child

_____

(3) Address _____

(4) City, State, Zip

_____

(5) Telephone Number: Home: ____ Work: ____

(6) Other identifying information concerning the above identified other legal or biological parent/legal guardian.

_____

b.

(1) Name

_____

(2) Relationship to the child

_____

(3) Address _____

(4) City, State, Zip

_____

(5) Telephone Number: Home: ____ Work: ____

(6) Other identifying information concerning the above identified other legal or biological parent/legal guardian.

_____

5. If the above named parties' whereabouts are unknown, please describe why that is the case: _____

6. Is the child or surrendering parent or another legal parent of the child a member of a federally recognized American Indian or Alaskan Native tribe?_____

If "yes," please provide the name and address of the tribe, all available information regarding the tribal membership, including a membership number if there is one, or the basis for the belief that one may be a tribal member. If there is a tribal membership card or tribal enrollment document please provide a copy by attaching it to this form.

_____
_____
_____

7.

a. Will this child be sent out of Tennessee to another state for adoption?

Yes [ ] No [ ]

b. If yes, name of state: _____

8. Have you been paid, received, or promised any money or other remuneration or thing of value in connection with the birth of the above-named child or placement of this child for adoption?

Yes [ ] No [ ] If no, go to #10.

If yes, please list the amount paid, to whom the payment was made, whom made the payment, when was the payment made, and for what purpose the payment was made:

_____
_____
_____

9. Does the child own any real or personal property? Yes [ ] No [ ] If yes, please describe property, its value, and any relevant circumstances:

_____
_____
_____

10.

a. I currently have (___) legal, (___) physical, or (___) legal and physical custody of the child.

b. If someone else has legal or physical custody of the child, please identify the person or agency that holds custody of the child and whether they have legal custody, physical custody, or both.

For a custodian, other than the surrendering party, please list the custodians:

Custodian(s)

_____

Street

_____

City _____, State _____, Zip_____

Telephone Number: Home: ____Work: ____

11.a. There may be state assistance- money, classes, health insurance, food aid and such, available to help you if you parent the child yourself.

b. There is counseling available if you want to talk to a counselor about your choice before you sign a surrender form.

c. You can talk to a lawyer who only represents you, if you want to, before you sign a surrender form.

Do you understand that all these things are available? Yes [ ] No [ ]

12. Contact Veto.

I understand that information about who I am, where I live, my social and medical history and other similar information will be available to the adopted person when he/she is 21 years old or older if the adopted person asks for the information. Identifying information about me will not be released if I am the victim of rape or incest and that fact is known to DCS and I have not consented

to release of the information. Even if the adopted person obtains information about me, I understand that I may direct that the adopted person not be allowed to contact me by registering a "contact veto" on this form or separately with the Tennessee Department of Children's Services at:

Contact Veto Registry
Post Adoption Unit
Tennessee Department of Children's Services
315 Deaderick Street
USB Tower, 9th Floor
Nashville, TN 37243

I may also change my previously expressed direction regarding contact at the same address. If I am contacted in violation of a contact veto, the adopted person will be guilty of a Class B misdemeanor and I can sue them for injunctive relief and compensatory and putative damages and attorney's fees.

a. Do you want to register a contact veto in order to prevent the adopted person from contacting you in the future? Yes [ ] No [ ].

b. If identifying information about you is going to be released to the adopted person do you want to be notified before the information is released? Yes [ ] No [ ].

c. Please supply a permanent address and telephone number for the Department to use to consult with you regarding release of information about you to the adopted person:

_____
_____

d. Please describe any other directions regarding future contact and or any information you want passed on to the adopted person:

_____
_____

FURTHER, AFFIANT SAITH NOT.

This _____ day of _____, 20____.

Signature: Biological [ ] Legal [ ] Mother _____
Biological [ ] Legal [ ] Father _____
Legal Guardian _____ of
_____
Name of Child
Sworn to and subscribed before me this the _____ day of _____, 20____.

_____
Notary Public
My commission expires: _____

(A notary is necessary if information on this form is not reviewed by and acknowledged before a Judge or officiant.)

(5)

ACCEPTING PARTY'S PRE-ACCEPTANCE INFORMATION FORM

STATE OF _____
COUNTY OF _____
Being duly sworn affiants would state:

1.

a. I am _____, Prospective Adoptive Parent.

b. Prospective Adoptive Parent's Date of Birth

_____

c. Prospective Adoptive Parent's Place of Birth

_____

d. Prospective Adoptive Parent's Marital Status

_____

2.

a. I am _____, Prospective Adoptive Parent.

b. Prospective Adoptive Parent's Date of Birth

_____

c. Prospective Adoptive Parent's Place of Birth

_____

d. Prospective Adoptive Parent's Marital Status

_____

3. The following costs have been paid or promised by _____ for activities involving the placement of this child. (me/us)

Please include, amount paid or promised, to whom, by whom, date paid and type of service or cost:

_____

_____

4. I am _____, representative of _____ a licensed child placing agency with offices at:

_____

5.

a. ____ I/We have physical custody of this child; or

b. ____ I/We will receive physical custody of the child from the parent or legal guardian within five (5) days of this surrender. The affidavit required by T.C.A § 36-1-111(d)(6) of the custodial parent or guardian to this effect has been presented to the court at this time; or

c. ____ I/We have the right to receive physical custody of the child upon his or her release from a hospital or health care facility, and the affidavit of the custodial parent or guardian to this effect required by T.C.A. § 36-1-111(d)(6) has been presented to the court at this time;

d. _____ Another person or agency currently has physical control of the child. I/We have presented to the court an affidavit of the person or agency required by T.C.A § 36-1-111(d)(6) which indicates their waiver of right to custody of the child upon entry of a guardianship order pursuant to T.C.A. § 36-l-136(r).

6. Yes [ ] No [ ]. I/We have presented to the court a currently effective or updated home study or preliminary home study of my/our home conducted by a licensed child-placing agency, a licensed clinical social worker, or the Tennessee Department of Children's Services as required by Tennessee law. (Not applicable for agency placements)

7.

a. If the child is to be removed from Tennessee for adoption in another state, will there be compliance with the Interstate Compact on the Placement of Children.

Yes [ ] No [ ] Not Applicable [ ].

b. If yes, who will be responsible for preparing and submitting the ICPC package? _____

FURTHER, AFFIANT SAITH NOT.

This _____ day of _____, 20____.

_____

Signature of Prospective Adoptive Parent

_____

Signature of Prospective Adoptive Parent

OR

_____

Signature of Representative of Agency

Name of Agency _____

Sworn to and subscribed before me this the ____ day of ____, 20____.

_____

Notary Public

My commission expires: _____

(A notary is necessary if information on this form is not reviewed by and acknowledged before a Judge or officiant.)

(6)

REVOCATION OF SURRENDER BY A PARENT OR GUARDIAN

STATE OF _____

COUNTY OF _____

Being duly sworn affiants would state:

1. I am:

a. Mother:_____

b. Father:_____, or

c. Legal Gaurdian:_____, of:

2.

a. Child's Name: _____

b. Child's Date of Birth: _____

c. Child's Place of Birth: _____

d. Child's Sex: _____

e. Child's Race: _____

3. On (Date) _____, I executed a surrender of my parental or guardianship rights to the child named in #2 to:

a. Prospective Adoptive Parent(s)

_____

b. Licensed Child-Placing Agency

_____

c. Tennessee Department of Children's Services

_____

4. The surrender was executed before:

_____

(Name of Judge or Officiant)

5. I hereby revoke the surrender of the above-named child.

FURTHER, AFFIANT SAITH NOT.

This _____ day of _____, 20____.

Signature:

Biological_____Legal_____Mother:

_____

Biological_____Legal_____Father:

_____

Legal Guardian:

_____

Sworn to and subscribed before me this____ day of ____, 20____.

This Revocation of Surrender was received by me on the _____ day of _____, 20____.

Please Print: _____

Signature: _____

Judge or Officiant

(c) A surrender or parental consent may be made or given to any prospective adoptive parent who has attained eighteen (18) years of age, the department, or a licensed child-placing agency in accordance with this section.

(d)(1) No surrender or any parental consent shall be valid that does not meet the requirements of subdivision (a)(2).

(2) No surrender or parental consent shall be valid that is made prior to the birth of a child, except a surrender executed in accordance with subsection (h).

(3) No surrender or parental consent shall be valid that is made within three (3) calendar days subsequent to the date of the child's birth, such period to begin on the day following the child's birth; provided, that the court may, for good cause shown, which is entered in an order in the minute book of the court, waive this waiting period.

(4) No surrender or parental consent shall be valid if the surrendering or consenting party states a desire to receive legal or social counseling until such request is satisfied or withdrawn.

(5) Unless the surrender or parental consent is made to the physical custodian or unless the exceptions of subdivision (d)(6) otherwise apply, no surrender or parental consent shall be sufficient to make a child available for adoption in any situation where any other person or persons, the department, a licensed child-placing agency, or other child-caring agency in this state or any state, territory, or foreign country is exercising the right to physical custody of the child under a current court order at the time the surrender is sought to be executed or when a parental consent is executed, or when those persons or entities have any currently valid statutory authorization for custody of the child.

(6) No surrender shall be valid unless the person or persons or entity to whom or to which the child is surrendered or parental consent is given:

(A) Has, at a minimum, physical custody of the child;

(B) Will receive physical custody of the child from the surrendering parent or guardian within five (5) days of the surrender, as evidenced by the affidavit of the person or persons receiving the surrender and by affidavit of the surrendering or consenting parent or guardian or court order;

(C) Has the right to receive physical custody of the child upon the child's release from a health care facility as evidenced by an affidavit of the person or persons or entities receiving the child and by the affidavit of the surrendering or consenting parent or guardian or court order; or

(D) Has a sworn, written statement from the person, the department, the licensed child-placing agency, or child-caring agency that has physical custody pursuant to subdivision (d)(5), which waives the rights pursuant to that subdivision (d)(5).

(e) [Deleted by 2018 amendment.]

(f) The commissioner, or the commissioner's authorized representatives, or a licensed child-placing agency, through its authorized representatives, may accept the surrender of a child and they shall be vested with guardianship or partial guardianship of the child in accordance with this section and § 36-1-102; provided, that the department or any licensed child-placing agency may refuse to accept the surrender of any child.

(g) In any surrender proceeding, the court or other person authorized herein to conduct a surrender proceeding, and when a parental consent is executed in the adoption petition, the court shall require that the person or persons surrendering the child for adoption or the person or persons giving consent and the person or persons accepting the child through the surrender or receiving parental consent to satisfactorily prove their identities before the surrender is executed or the parental consent is accepted. No surrender or parental consent may be executed in any form in which the identities of the person or persons executing the surrender or parental consent or the person or persons or agencies receiving the surrender or the identity of the child whose name is known are left blank or in any form in which those persons, the child, or agencies are given pseudonyms on the form or in the petition at the time of the execution of the surrender or parental consent.

(h) In cases where the person executing the surrender resides in another state or territory of the United States, the surrender may be made in accordance with the laws of such state or territory or may be made before the judge or chancellor of any court of record or before the clerk of any court of record of such state or territory and such surrender shall be valid for use in adoptions in this state.

(i) In cases where the surrendering person using the Tennessee form of surrender or the form provided by applicable law resides or is temporarily in a foreign country, the surrender may be made before any officer of the United States armed forces authorized to administer oaths, or before any officer of the United States foreign service authorized to administer oaths. A citizen of a foreign country may, in accordance with the law of the foreign country, execute a surrender of a child that states that all parental rights of that person are being terminated or relinquished by the execution of the document or that the child is being given to an agency or other person for the purposes of adoption.

(j) In cases where the person executing surrender is incarcerated in a state or federal penitentiary, the surrender may be executed before the warden or deputy warden of the penitentiary or a notary public.

(k)(1)(A) When a person executing a surrender is unable to read, read in the English language, see, or otherwise unable to review and comprehend the surrender form and attachments offered for the person's signature or provided on the person's behalf, the person shall be provided with appropriate and sufficient assistance to make the documents and attachments understandable to the person both before and during the surrender hearing. The accepting party shall be responsible for payment of the cost of such interpreter or assistance if the surrendering party requires such assistance.

(B)(i) The court, or other persons authorized by this part to accept surrenders, shall personally verify under oath by the surrendering or consenting person who has provided the information required surrender or parental consent process pursuant to this part, that the parent or guardian agrees with the information provided in the forms and attachments and that such person does accept the surrender of the subject child.

(ii) The pre-surrender information forms for the birth parent and accepting party and all required attachments must be attached to the surrender or parental consent when the surrender and acceptance are executed and maintained with the surrender or parental consent form by the court or the court clerk, or person authorized by this part to accept surrenders, and transmitted to the department as otherwise required by this part.

(C)(i) In all other respects, the court, or other persons authorized by this part to accept surrenders, must witness the actual act of surrender, or must confirm the parental consent, by verifying directly with the parent or guardian the parent's or guardian's understanding and willingness to terminate parental rights and, by witnessing the parent's or guardian's signature on the surrender form, or by questioning the parent on the matters required by this part before the entry of an order of confirmation of the parental consent.

(ii) The court may not accept any surrenders executed prior to its approval of the surrender that relinquish the parent's or guardian's rights, nor may it enter any orders confirming a parental consent, based upon any written statement of the parent agreeing to relinquish the parent's rights to the child, except as may be otherwise specifically provided by this part.

(iii) The execution of the surrender or parental consent shall occur in private in the chambers of the court or in another private area, and in the presence of the surrendering or consenting person's legal counsel if legal counsel has been requested by the surrendering or consenting person. In the discretion of the court or other person conducting the surrender or parental consent proceeding, the court's officer or other employee may be present.

(D) For surrenders taken pursuant to subsection (h), (i) or (j), the information required by this part to be supplied by the prospective adoptive parents, the department, or a licensed child-placing agency and the acceptance of a surrender by the prospective adoptive parents or the department or the licensed child-placing agency may be made by affidavit contained with the Tennessee surrender forms.

(2) [Deleted by 2018 amendment.]

(3) [Deleted by 2018 amendment.]

(4) [Deleted by 2018 amendment.]

(*l*)(1) In the case of a surrender directly to prospective adoptive parents, if the person surrendering the child desires to have counseling prior to execution of the surrender and the child is being surrendered directly to the prospective adoptive parents, the prospective adoptive parents shall, if so requested by the surrendering person or persons, compensate a licensed child-placing agency, a licensed clinical social worker, or the department for such counseling, which must be completed before the surrender can be

executed.

(2) If the person surrendering the child states a desire to have legal counseling prior to or during the execution of a surrender directly to the prospective adoptive parents, the prospective adoptive parents shall, if so requested by the surrendering person or persons, compensate the attorney for such counseling sought, which must be completed before the surrender can be executed.

(3) This subsection (*l*) shall also apply to the use of parental consents pursuant to § 36-1-117(g) prior to entry of the order of confirmation.

(4) The payment of compensation by the prospective adoptive parents shall not establish any professional/client relationship between the prospective adoptive parents and the counselor or attorney providing services under subdivisions (*l*)(1) and (2).

(5) The department shall, by rule, establish the form of the certification required by this section, including the counseling criteria that must be met with the surrendering parent as part of the certification.

(m) Before the surrender is received and before an order of guardianship is entered based upon a parental consent, the person or persons to whom the child is to be surrendered or the persons to whom a parental consent is given, other than the department or a licensed child-placing agency, shall present with the surrender executed in this state or on a Tennessee form at the time of the execution of the surrender or before confirmation of a parental consent by the court, a court report based upon a currently effective or updated home study or preliminary home study conducted by a licensed child-placing agency, a licensed clinical social worker, or the department.

(n) [Deleted by 2018 amendment.]

(o) [Deleted by 2018 amendment.]

(p)(1)(A) The person or persons executing the surrender and the person or persons, the local representative of the department or the local representative of the licensed child-placing agency to whom the child is surrendered shall receive certified copies of the original surrender from the clerk of the court immediately upon the conclusion of the surrender proceeding.

(B) Costs of all certified copies provided under this subdivision (p)(1) shall be taxed only to the person or persons receiving the surrender, the department, or the licensed child-placing agency.

(2)(A) The original of the surrender executed before the court shall be entered on a special docket for surrenders and shall be styled: "In Re: (Child's Name)," and shall be permanently filed by the court in a separate file designated for that purpose maintained by the judge, or the judge's court officer, who accepted the surrender and shall be confidential and shall not be inspected by anyone without the written approval of the court where the file is maintained or by a court of competent jurisdiction with domestic relations jurisdiction if the file is maintained elsewhere. There will be no court costs or litigation tax assessed for the surrender. Within five (5) days, a certified copy of the surrender shall be sent by the clerk or the court to the adoptions unit in the state office of the department in Nashville.

(B)(i) The original of the surrender executed before the persons authorized under subsections (h) and (i), or, in out-of-state correctional facilities under subsection (j), shall be maintained in a separate file designated for that purpose, which shall be confidential and shall not be inspected by anyone else without the written approval of a court with

domestic relations jurisdiction where the file is maintained.

(ii) For surrenders executed under subsection (j) in federal and state correctional facilities in Tennessee, the original shall be filed in a secure file in the office of the warden, which shall not be open to inspection by any other person, and after ten (10) days from the date of the surrender, the original shall be sent to the adoptions unit in the state office of the department in Nashville and a copy shall be maintained by the warden.

(3)(A) The clerk of the court, or the department as the case may be, upon request, shall send certified copies of the original surrender to:

(i) The court where the adoption petition or where the petition to terminate parental rights is filed;

(ii) A party who is petitioning for an adoption in cases where the child was not placed by the department or a licensed child-placing agency; provided, however, where the child was placed by the department or a licensed child-placing agency, the parties petitioning for an adoption or termination of parental rights are not entitled to copies of the surrenders made to the department or a licensed child-placing agency; and

(iii) The department's county office or a licensed child-placing agency or licensed clinical social worker that or who is performing any service related to an adoption or that has intervened in an adoption proceeding.

(B) Costs of providing certified copies under this subdivision (p)(3) may be taxed or charged to the person, the department, or the licensed child-placing agency that requests the certified copies, except where the department, the licensed child-placing agency, or licensed clinical social worker is responding to an order of reference from a court or where the department, licensed child-placing agency, or licensed clinical social worker is conducting any investigation related to the adoption or to the child's welfare.

(q)(1) The party to whom the child is surrendered pursuant to subsection (h), (i) or (j) shall file a certified copy of the surrender of a child with the chancery, circuit, or juvenile court in Tennessee where the child or the prospective adoptive parents reside, or with the court in which an adoption petition is filed in Tennessee, within fifteen (15) days of the date the surrender is actually received, or within fifteen (15) days of the date the child or the person or persons to whom the child has been surrendered becomes a resident of this state, whichever is earlier.

(2) The surrender filed pursuant to subdivision (q)(1) shall be recorded by the court and shall be processed by the clerk as required by subdivision (p)(2)(A).

(3) In cases under subdivision (q)(1), where the child is in the legal custody of the department or a licensed child-placing agency, the surrender also may be filed in the chancery, circuit, or juvenile court or other court that had placed custody of the child with the department or the licensed child-placing agency.

(4) In cases under subdivision (q)(1), and in accordance with subsection (r), the court shall enter such other orders for the guardianship and supervision of the child as may be necessary or required pursuant to this section or § 36-1-118.

(r)(1)(A)(i) A surrender, a confirmed parental consent, or a waiver of interest executed in accordance with this part shall have the effect of terminating all rights as the parent or guardian to the child who is surrendered,

for whom parental consent to adopt is given, or for whom a waiver of interest is executed. It shall terminate the responsibilities of the surrendering parent or guardian and the consenting parent. It shall terminate the responsibilities of the person executing a waiver of interest under this section for future child support or other future financial responsibilities pursuant to subsection (w) if the child is ultimately adopted; provided, that this shall not eliminate the responsibility of such parent or guardian for past child support arrearages or other financial obligations incurred for the care of such child prior to the execution of the surrender, parental consent, or waiver of interest; provided further, that the court may, with the consent of the parent or guardian, restore such rights and responsibilities, pursuant to § 36-1-118(d).

(ii) If, after determining the surrender to be in the child's best interest, the department accepts a surrender of a child, who was previously placed for adoption by the department, from the child's adoptive parent or parents, the unrevoked surrender of such child shall terminate the responsibilities of the surrendering adoptive parent or parents for future child support or other future financial responsibilities; provided, that this shall not be construed to eliminate the responsibility of such parent or parents for past child support arrearages or other financial obligations incurred for the care of such child prior to the execution of the surrender; and provided further, that the court may, with the consent of the parent or parents, restore such rights and responsibilities pursuant to § 36-1-118(d).

(B) Notwithstanding subdivision (r)(1)(A), a child who is surrendered, for whom a parental consent has been executed, or for whom a waiver of interest has been executed, shall be entitled to inherit from a parent who has surrendered the child or executed a parental consent or waiver of interest until the final order of adoption is entered.

(2)(A) Unless prior court orders or statutory authorization establishes guardianship or custody in the person or entity to whom the surrender or parental consent is executed, the surrender or parental consent alone does not vest the person, persons or entities who or that receive it with the legal authority to have custody or guardianship or to make decisions for the child without the entry of an order of guardianship or partial guardianship as provided in subdivision (r)(6)(A) or as provided in § 36-1-116(f). The court accepting the surrender or the parental consent shall not enter any orders relative to the guardianship or custody of a child for whom guardianship or custody is already established under prior court orders or statutory authorization, except upon motion under subdivision (r)(4)(D) by the person, persons or entities to whom the surrender or parental consent is executed.

(B) In order to preserve confidentiality, the court clerk or the court shall have a separate adoption order of guardianship minute book, which shall be kept locked and available for public view only upon written approval of the court.

(3)(A) Except as provided in subdivisions (r)(2) and (4), a validly executed surrender shall confer jurisdiction of all matters pertaining to the child upon the court where the surrender is executed or filed until the filing of the adoption petition, at which time jurisdiction of all matters pertaining

to the child shall transfer to the court where the adoption petition is filed; provided, that the jurisdiction of the juvenile court to adjudicate allegations concerning any delinquent, unruly, or truant acts of a child pursuant to title 37 shall not be suspended.

(B) A waiver of interest does not confer jurisdiction over the child in any court nor does it permit the entry of any order of custody or guardianship based solely upon such waiver, but shall only permit a court to find that that person's parental rights, if any, are terminated.

(4)(A) When, at the time the surrender or parental consent is executed, a prior court order is in effect that asserts that court's jurisdiction over the child who is the subject of the surrender or parental consent, the prior court order shall remain effective until, and only as permitted by this section, an alternate disposition for the child is made by the court where the surrender is executed or filed or until, and only as permitted by this section, an alternate disposition is made for the child on the basis of a termination of parental rights proceeding, or, as permitted by § 36-1-116, until an alternate disposition for the child is made by the court where the adoption petition is filed.

(B) If the prior court order under subdivision (r)(4)(A) gives the right to legal and physical custody of the child to a person, the department, a licensed child-placing agency, or other child-caring agency, a surrender or parental consent by the parent or guardian to any other person, persons or entities shall be invalid as provided under subdivision (d)(5), and any purported surrender or parental consent to such other person or persons or entities shall not be recognized to grant standing to file a motion pursuant to subdivision (r)(6) and § 36-1-116(f)(3) to such other person or persons or entities who or that received the surrender or parental consent, and no order of guardianship or partial guardianship based upon that surrender or parental consent and motion shall be effective to deprive the existing legal or physical custodians under the court's prior order of legal or physical custody of that child. Any orders to the contrary shall be void and of no effect whatsoever.

(C) If the court that has entered the prior custody order under subdivision (r)(4)(A) has subject matter jurisdiction to terminate parental or guardian rights at the time a surrender of the child who is the subject of that order is validly executed in another court pursuant to subdivision (r)(4)(D) or at the time a petition to terminate parental rights is filed pursuant to subdivision (r)(4)(E), it shall continue to have jurisdiction to complete any pending petitions to terminate parental or guardian rights that are filed prior to the execution of the surrender or prior to the filing of the petition to terminate parental rights in the other court pursuant to subdivision (r)(4)(E). The court shall not have jurisdiction to complete any pending petitions to terminate parental rights subsequent to the filing of a petition for adoption. The court may enter orders of guardianship pursuant to the termination of parental rights proceedings unless prior thereto an order of guardianship is entered by another court pursuant to subdivisions (r)(4)(D) and (E). Any orders of guardianship entered pursuant to subdivisions (r)(4)(D) and (E) or pursuant to § 36-1-116 shall have priority over the orders of guardianship entered pursuant to this subdivision (r)(4)(C); provided, that orders terminating parental rights entered pursuant to this subdivision (r)(4)(C) shall be effective to terminate

parental rights.

(D) If the person, persons or entities in subdivision (r)(4)(B) to whom the surrender is made have legal and physical custody of the child or the right to legal and physical custody of the child pursuant to a prior court order at the time the surrender is executed to them, any court with jurisdiction to receive a surrender may receive a surrender that is executed to them and shall have jurisdiction, upon their motion, to enter an order giving guardianship or partial guardianship to the person, persons or entities, and, notwithstanding subdivision (r)(4)(A), such order may make an alternate disposition for the child.

(E) Notwithstanding subdivision (r)(4)(A), a person, the department, or a licensed child-placing agency that had custody of the child pursuant to a court's prior order, may file in any court with jurisdiction to terminate parental or guardian rights, and in which venue exists, any necessary petitions to terminate the remaining parental or guardian rights of any person or persons to the child, and if they have any subsequent orders of guardianship or partial guardianship based upon an executed surrender or a termination of parental rights from the other court of competent jurisdiction, they may place the child for adoption in accordance with those subsequent orders.

(5) If multiple surrenders or parental consents are received with respect to the same child in different courts, subject to the restrictions of subdivisions (r)(2) and (4), the court that first receives a surrender or parental consent or in which the surrender is first filed pursuant to subsection (q), and that enters an order of guardianship or partial guardianship, shall have jurisdiction of the child and shall issue any necessary orders of reference required by this section. Any other court that receives a surrender or parental consent or in which a surrender or parental consent is filed pursuant to subsection (q) subsequent to the surrender shall, upon notification by the first court, send the original of the surrender or filed pleading to the first court and shall retain a certified copy of the original in a closed file, which shall not be accessed by any person without the written order of the court.

(6)(A) Subject to the restrictions of subdivisions (r)(2) and (4), a validly executed surrender under this section or a parental consent shall give to the person to whom the child is surrendered or to whom a parental consent is given standing to file a written motion for an express order of guardianship or partial guardianship, as defined in § 36-1-102, from the court where the child was surrendered or where, under subsection (q), the surrender was filed, or in the court that, pursuant to subdivision (r)(4)(A), has granted legal custody of the child to such person, or in the court in which the adoption petition is filed. A validly executed surrender shall entitle the department or the licensed child-placing agency that received the surrender to have the court enter an order of guardianship pursuant to subdivision (r)(6)(C).

(B) The motion, which may be filed by any person or by that person's attorney, shall contain an affidavit that the party seeking the order of guardianship or partial guardianship has physical custody of the child, or if filed at the time of the execution of the surrender or the filing of the adoption petition containing a parental consent, it shall contain the affidavits otherwise required by subdivision (d)(6).

(C) If the person, the department, or the licensed child-placing agency to whom the child is surrendered or to whom parental consent is given has physical custody or has otherwise complied with the requirements of subdivision (d)(6), and if there has been full compliance with the other provisions of this section, the court may, contemporaneously with the surrender or the filing of an adoption petition, immediately upon written motion by the person or the person's attorney, and the court shall, if the surrender is to a licensed child-placing agency or the department, enter an order giving the person, the licensed child-placing agency, or the department, guardianship or partial guardianship of the child.

(D) A copy of the surrender, the motion and any resulting order shall be sent by the clerk to the adoptions unit in the state office of the department in Nashville, which shall record the surrender, the motion, and the order and their dates of filing and entry for purposes of tracking the child's placement status and the status of the adoption process involving the child.

(7) If an order of guardianship is entered, the appointed guardians shall have authority to act as guardian ad litem or next friend of the child in any suit by the child against third parties while the child is in the care and custody of the petitioners. The court may appoint a special guardian for the child for such purpose upon motion by the department for a child in its guardianship.

(8) If the court grants guardianship or custody of the child upon the filing of the surrender or upon the filing of a parental consent and the child is possessed of any real or personal property to be administered, the court shall appoint a guardian of the property of the child if no guardian of the property exists, and such guardian may be the same person or persons who are guardians of the person of the child except if the child is in the guardianship of the department in which case another person or entity shall be appointed.

(s) [Deleted by 2018 amendment.]

(t)(1) Upon receipt of the surrender or upon filing a parental consent for an adoption by a person other than a related person, and if no home study had been completed or updated within six (6) months prior to the surrender or the filing of a parental consent, and no court report based upon the home study has been filed with the court, the court shall, by an order of reference issued within five (5) days, direct that a home study be conducted and filed as provided in this part.

(2) The order of reference shall be directed to a licensed child-placing agency or a licensed clinical social worker unless the prospective adoptive parents are indigent under current federal poverty guidelines, in which case the order shall be directed to the department.

(3) The court report based upon the home study shall be filed with the court within sixty (60) days of the date of the order of reference.

(4) The court shall order a licensed child-placing agency, a licensed clinical social worker, or the department, if the parents are indigent under federal poverty guidelines, to provide supervision for the child who is in the home of prospective adoptive parents pursuant to a surrender or a parental consent under this section, and to make any necessary court reports that the court should have concerning the welfare of the child pending entry of the final order in the case; provided, that this subdivision (t)(4) shall not apply when the surrender is made to related persons.

(5) If the adoption petition is filed before the home study is completed or before the court report based upon the home study is filed, and the adoption petition is filed in a court other than the one where the surrender was executed, the court where the surrender was executed shall, upon request of the court where the adoption petition is filed or upon motion of the prospective adoptive parents, send any court report it receives to the adoption court.

(6) Unless they are indigent under federal poverty guidelines, the prospective adoptive parents shall be assessed by the court the costs of the study and the supervision of the placement by the agency, and the costs shall be paid by them to the licensed child-placing agency or licensed clinical social worker that performed the home study or supervision.

(u)(1) Failure to fully comply with this section or failure to file the surrender executed pursuant to subsection (h), (i) or (j) within the fifteen-day period required by subsection (q), or failure to obtain an order of guardianship in accordance with this section within thirty (30) days of the date the surrender is executed or filed, or within thirty (30) days of the date parental consent is filed, shall be grounds for removal of the child from the physical care and control of the person, the department, or licensed child-placing agency receiving the surrender; provided, that this shall not apply when the persons, the department or the licensed child-placing agency have legal custody or partial guardianship under an order of a court entered prior to the execution of the surrender or parental consent or pursuant to any statutory authority giving custody to the department or licensed child-placing agency.

(2) A sworn complaint concerning the grounds alleged in subdivision (u)(1) and concerning the best interests of a child for whom a surrender is sought or on whom a surrender or parental consent was executed or guardianship order entered, or which complaint otherwise seeks to present proof concerning the best interests of the child, may be filed by any person, the department, a licensed child-placing agency, or a licensed clinical social worker.

(3) The complaint may be filed in the court where the surrender was executed or filed or where the adoption petition containing a parental consent was filed. If the surrender was not executed or filed in Tennessee or if the surrender was not executed before a court or if the surrender was not filed at all, then the complaint may be filed in the circuit, chancery, or juvenile court in the county where the child resides.

(v)(1)(A) Upon its own motion or upon the complaint filed pursuant to subsection (u) and subject to the restrictions concerning custody of the child who is not in the custody of the prospective adoptive parents as stated in subdivisions (r)(2) and (4) and § 36-1-116(f)(1), the court receiving the surrender or entering the order of guardianship or partial guardianship and the adoption court to which jurisdiction may be transferred may make any suitable provisions for the care of the child and, notwithstanding the restrictions of subdivisions (r)(2) and (4) and § 36-1-116(f)(1), the court shall have jurisdiction to enter any necessary orders, including any emergency ex parte orders for the child's emergency protection, care, and supervision based upon probable cause that the child's health and safety is immediately endangered; provided, that such emergency orders shall only remain effective for thirty (30) days when the restrictions of subdivisions (r)(2) and (4) and § 36-1-116(f)(1) apply.

(B) If another court has jurisdiction under a prior order because of such restrictions, upon completion of all proceedings to protect the child, the court shall then return all jurisdiction over the child to the court having jurisdiction under the prior order; provided, that the juvenile court shall maintain jurisdiction pursuant to title 37 to adjudicate allegations of delinquency, unruliness, or truancy involving the child.

(C) If the child has no legal custodian with authority to provide temporary care for the child, then, subject to the restrictions of subdivisions (r)(2) and (4) and § 36-1-116(f)(1), the court shall give temporary legal custody pursuant to § 37-1-140 to the department or a licensed child-placing agency until full compliance has been effected and until a guardianship or partial guardianship order can be entered, or until some other disposition is made for the child by the court. The court may permit the department or a licensed child-placing agency, in its discretion, to place the child with any suitable person, including the prospective adoptive parents, under the department's or the licensed child-placing agency's supervision.

(D) If an emergency ex parte order removes the child from the custody of the prospective adoptive parents or the department or licensed child-placing agency, a preliminary hearing shall be held within five (5) days, excluding Saturdays, Sundays, and legal holidays, to determine if probable cause exists for the continuance of such order.

(2) The prospective adoptive parents or entities from which the child was removed shall be necessary parties at the preliminary hearing and the final hearing, and the court may order the department or a licensed child-placing agency or licensed clinical social worker to provide any necessary information or court reports concerning the welfare of the child as it may require.

(3) A final hearing shall be held within thirty (30) days of the date of the preliminary hearing, except for good cause entered upon the record.

(4) Upon the final hearing, and based upon clear and convincing evidence that the action is in the best interests of the child, the court shall have jurisdiction to enter an order removing the child from the prospective adoptive parents or other custodian or guardian of the child, and may award temporary legal custody giving any person, the department or licensed child-placing agency, or a child-caring agency, the care and custody of the child as provided under § 37-1-140 or may enter a guardianship or partial guardianship order with the rights provided under this part, all subject to the rights of any remaining parent or guardian.

(w)(1) Notwithstanding any other law to the contrary, a waiver of interest and notice, when signed under oath by the alleged biological father, shall serve to waive the alleged biological father's interest in the child and the alleged biological father's rights to notice of any proceedings with respect to the child's adoption, custody or guardianship. The alleged biological father who executes the waiver shall not be required to be made a party to any adoption proceedings, custody or guardianship proceedings with respect to the child and shall not be entitled to receive notice thereof, and the court in any adoption proceeding, notwithstanding any law to the contrary, shall have jurisdiction to enter a final order of adoption of the child based upon the waiver, and in other proceedings to determine the child's legal custody or guardianship shall have jurisdiction to enter an order for those purposes. The waiver may not be revoked.

(2)(A) The execution of the waiver, in conjunction with a final order of adoption of the child, shall irrevocably terminate all rights the alleged biological father has or may have to the child and any rights the child has or may have relative to the alleged biological father. Upon entry of a final order of adoption of the child, the waiver, except as provided in subdivision (w)(2)(B), shall also terminate the responsibility of the alleged biological father for any future child support or other financial obligations to the child, or to the child's mother that are related to the child's support, arising after the date of the execution of the waiver.

(B) If, after execution of the waiver, a final order of adoption is not entered, and a parentage action is initiated against the alleged biological father or the alleged biological father executes a voluntary acknowledgment of paternity, the alleged biological father shall become liable for child support or other financial obligations to the child, or to the child's mother that are related to the child's support, arising after the execution of the waiver and beginning with the date of the entry of an order establishing the biological father's parentage to the child or upon the date of the biological father's execution of a voluntary acknowledgment of paternity; provided, if paternity is later established, the alleged biological father who executed the waiver shall be liable for all or a portion of the actual medical and hospital expenses of the child's birth and all or a portion of the mother's prenatal and postnatal care up to thirty (30) days following the child's birth if the parentage action is initiated or the voluntary acknowledgment of paternity is executed within two (2) years of the date of the execution of the waiver.

(3) The waiver shall not be valid for use by a legal father as defined under § 36-1-102 or for any man listed as the father of a child on the child's birth certificate.

(4) The waiver of interest and notice may be executed at any time after the biological mother executes a statement identifying such person as the biological father or possible biological father of the biological mother's child to be born, or at any time after the birth of the child.

(5) The waiver of interest and notice shall be legally sufficient if it contains a statement comparable to the following:

WAIVER OF INTEREST AND NOTICE

STATE OF _____ )
COUNTY OF _____ )

Pursuant to Tennessee Code Annotated, § 36-1-111(w), and first being duly sworn according to law, affiant would state the following:

My name is _____. I understand that I have been named by _____, the mother of a child [to be born], or a [child who was born in _____ (City) _____ (State) on the ____ day of _____, 19____ (or 20____)], as the father or possible father of that child. I further understand that the mother has placed or wishes to place this child for adoption or that the child is the subject of legal proceedings leading to the child's adoption or leading to a determination of the child's legal custody or guardianship.

I am not necessarily admitting or saying that I am the father of this child, but if I am, I do not wish to provide care for this child, and I feel it would be

in the child's best interest for this adoption to occur, or for other custody or guardianship proceedings to occur in the child's best interests. I hereby formally waive any right to notice of the legal proceedings: to adopt this child; to otherwise make this child available for adoption; or to award the child's legal custody or guardianship to other persons or agencies. I hereby formally waive any further parental rights to the child and execute this document to finally terminate my rights, if I have any rights, to this child, upon entry of a final order of adoption for this child.

If the child is not yet born:

[I have received and reviewed a copy of the sworn statement of the child's mother in which the mother identifies me as the father of the child.]

I consent to adoption of this child by any persons chosen by the child's mother or by any public or private agency, and consent to the establishment of any legal custody or guardianship arrangements for the child.

I understand that by execution of this waiver, this child may be adopted by other persons or that other custody or guardianship proceedings regarding the child's status may occur and that I will have no rights, if I have any, to act as parent, to visit with, or otherwise be involved in this child's life, unless and until a legal relationship is established between me and the child.

I further understand that I may not revoke this waiver at any time after I sign it.

I further understand that if the child is not adopted, that legal proceedings can be brought to seek to establish me as the legal father, and I may become liable for financial support or financial obligations for this child or to the child's mother that are related to the child's support, arising after I sign this waiver, and beginning on the date an order is entered that establishes me as the child's father or beginning on the date I sign a voluntary acknowledgment of paternity of the child. I also understand that if the child is not adopted and paternity is later established by legal proceedings, or if I sign a voluntary acknowledgement of paternity, I could be liable for all or a portion of the actual medical and hospital expenses of the child's birth and all or a portion of the mother's prenatal and postnatal care up to thirty (30) days following the child's birth if the legal proceeding to establish me as the child's father is brought, or the voluntary acknowledgment of paternity of the child is signed, within two (2) years of the date I sign this waiver.

FURTHER, AFFIANT SAITH NOT.

DATED: THE ____ DAY OF _____,19____ (20____ ).

_____

Alleged Father (Please Print)

_____

Signature of Alleged Father

_____

Address

Personally appeared before me the above-named _____ who is known to me and who acknowledged that he executed the above Waiver of Interest and Notice as his own free and voluntary act.

_____

Notary Public

My commission expires: _____

(x)(1) Notwithstanding any other law to the contrary, a denial of paternity and notice of a child, when signed under oath by the child's legal father claiming not to be the child's biological father, who is not the child's adoptive father, and when accompanied by credible proof that the legal father is not the father of the child, shall waive the legal father's parental rights and all parental interests with respect to the child. No further notice to the legal father or termination of the legal father's parental rights is necessary for the child to be placed in guardianship or adopted. "Credible proof" includes the written sworn statement of the child's mother.

(2) The parental rights of a man denying paternity of a child are terminated and the man's future parental responsibilities with respect to the child are terminated upon adoption of the child by other persons.

(3) The denial of paternity and notice shall not be valid for use by a legal father who is also a biological parent as defined in § 36-1-102.

(4) A denial of paternity and notice under this section may be executed at any time after conception of the child who is the subject of the denial, and may not be revoked by the father unless the adoption plan is abandoned. A father who executes a denial of paternity and notice under this section relinquishes any right to petition to have the father's legal or biological relationship to the child determined by a court.

(5) The denial of paternity and notice shall be legally sufficient if it contains a statement comparable to the following:

DENIAL OF PATERNITY AND NOTICE BY A LEGAL FATHER

STATE OF _____

COUNTY OF _____

Pursuant to Tennessee Code Annotated § 36-1-111(x), and first being duly sworn according to law, affiant would state the following:

My name is _____. I am personally acquainted with _____, the biological mother of _____, a child [to be born], or a [child who was born] in _____ (City) _____ (State) on the ____day of _____, 20 _____.

I am or I have been told that I am or may be the presumed and/or legal father of the above- named child.

**I AM CERTAIN THAT I AM NOT THE BIOLOGICAL FATHER OF THIS CHILD.**

I understand that the mother has placed or wishes to place this child for adoption, or that the child is the subject of legal proceedings leading to the child's adoption, or leading to a determination of the child's legal custody or guardianship. I do not want custody of this child. I either agree with an adoption plan or I do not wish to be involved in the decision.

**I HEREBY WAIVE MY PARENTAL RIGHTS TO THIS CHILD, IF I HAVE ANY RIGHTS, AND I WANT MY PARENTAL RIGHTS, IF ANY, TO BE TERMINATED WITHOUT FURTHER ACTION BY, OR NOTICE TO, ME.**

I formally waive my rights to notice of legal proceedings regarding the child including: adoption, custody, guardianship, and termination of other parents' rights and any other similar actions.

I understand that by my execution of this Denial of Paternity and Notice, along with the finalization of the child's adoption, I will lose any right I may have to act as parent, to visit with, or otherwise be involved in this child's life. I also relinquish any right to petition to have my legal and biological relationship to this child determined by a court.

**I FURTHER UNDERSTAND THAT I MAY NOT REVOKE THIS DENIAL AT ANY TIME AFTER I SIGN IT.**

I also understand that while this denial is not revocable, it is not effective to terminate my parental rights or responsibilities unless or until an adoption of the child is finalized. If the adoption is not finalized, I understand that I retain any rights that I otherwise had to rebut a presumption that I am the father of the child.

FURTHER AFFIANT SAITH NOT this _____ DAY OF _____, 20____.

_____
Legal Father (Please Print)

_____
Signature of Legal Father

_____
Address

_____
City, State, Zip Code

Personally appeared before me the above-named _____, who is known to me and who acknowledged that he executed the above Denial of Paternity and Notice as his own free and voluntary act.

Notary Public _____ My commission expires:

(y)(1) If a child is surrendered to a person other than a licensed child-placing agency or the department, and, after the expiration of the three-day period for revocation, the person or persons to whom the child was surrendered decide that they no longer wish to adopt the child, and if no order of guardianship has been entered by a court that gives those persons who had received the surrender the guardianship of the child, they may surrender the child to a licensed child-placing agency or the department without notice to the parent or guardians who originally had executed the surrender to them.

(2) In this event, the licensed child-placing agency or the department shall have the same rights as set forth above just as if the child had been originally surrendered to them; provided, that if the court has entered a

guardianship order as set forth above, the surrender cannot be utilized in this manner, and a motion must be made to the court to modify the existing guardianship order.

(3) Certified copies of all such surrenders and orders modifying any order of guardianship shall be sent by the clerk to the adoptions unit in the state office of the department in Nashville.

(z) [Deleted by 2018 amendment.]

**36-1-112. Revocation of surrender or parental consent — Form.**

(a)(1)(A) A person who executed a surrender may revoke the surrender at any time within three (3) calendar days of the date of the surrender. The three-day period shall be calculated using the method for computation of time established in the Tennessee Rules of Civil Procedure Rule 6.01.

(B) The surrender shall be revoked by appearing before the judge who accepted the surrender or that judge's successor or substitute, or another judge of a court with jurisdiction to accept a surrender in the absence of the judge who accepted the surrender or that judge's successor or substitute, or by appearing before the person, or that person's successor, pursuant to § 36-1-111(h), (i) or (j) before whom the surrender was executed and by executing the revocation of surrender form.

(C) The three-day period for revocation of the surrender shall not limit the court's authority to order the revocation of the surrender pursuant to § 36-1-118.

(D) The revocation of the surrender shall be executed under oath by the parent or guardian who executed the surrender of the child, and the judge or other person who accepted the surrender or the judge's successor or substitute as indicated in subdivision (a)(1)(B) shall sign and date the revocation form.

(E) In the event the person under § 36-1-111(h), (i) or (j) is unavailable or has no authorized successor, the person may apply to a court that is qualified to receive a surrender in Tennessee or a court with domestic relations jurisdiction in another state or country to execute the revocation before a judge of that court as provided herein.

(F)(i) No surrender may be revoked by the person surrendering the child or set aside by a court after the expiration of the three-day period except as the surrender may be invalidated by court order entered pursuant to a timely filed complaint filed pursuant to subsection (d) or as permitted by order of the court entered pursuant to § 36-1-118.

(ii) The execution of a revocation of a surrender within the three-day period shall be grounds for the dismissal of any adoption petition filed during that period and, upon motion of the person who revoked the surrender, the court shall dismiss the adoption petition without prejudice.

(2)(A) A parental consent may be revoked at any time prior to the entry of an order of confirmation of the parental consent by the court.

(B) The parent who executed the parental consent shall appear before the judge of the court in which the adoption petition is filed, or in the judge's absence, the judge's successor or substitute or, if no successor or substitute, any judge or a court with jurisdiction to adjudicate adoption petitions, and shall execute a revocation of the parental consent.

(b) [Deleted by 2018 amendment.]

(c)(1) The court or person receiving the revocations shall maintain the originals in the office of the clerk or the office of the person receiving the surrender, together with the original of the surrender or adoption petition containing the parental consent, if available, and shall personally give or shall send by certified mail, return receipt requested, certified copies of the revocations to the child's parents, the prospective adoptive parents, the local office of the department, or a licensed child-placing agency to whom the child had been surrendered, and if the prospective adoptive parents are represented by counsel, a certified copy of the revocation shall be forwarded to such counsel.

(2)(A) When the revocation is received, the court or the person before whom the revocation was executed shall attach a certified copy of the revocation to a certified copy of the surrender or petition for adoption containing the parental consent, and shall within three (3) days mail the copies of both documents by certified mail, return receipt requested, to the adoptions unit in the state office of the department in Nashville.

(B) If the revocation must be executed before a court or person before whom the surrender was not executed or in which the adoption petition was not filed, the original of the revocation shall be sent within three (3) days to the court or person before whom the surrender was executed or in which the adoption petition was filed, and that court or person shall be responsible for sending the forms to the department and to the persons or agencies who are entitled to copies of the revocation.

(C) The department shall record the revocation with the copies of the surrender or adoption petition containing the parental consent and the order of guardianship for purposes of tracking the adoptive placement status of the child.

(d) After the revocation period has expired or after the court has entered an order confirming a parental consent, no surrender or waiver of interest or parental consent shall be set aside by a court except upon clear and convincing evidence of duress, fraud, intentional misrepresentation or for invalidity under § 36-1-111(d), and no surrender, waiver of interest, or parental consent may be set aside for any reason under this part unless the action based on these grounds is initiated within thirty (30) days of the execution of the surrender, waiver of interest or within thirty (30) days of the date of entry of the order of confirmation of the parental consent.

(e)(1) A surrender or parental consent that is revoked shall have the effect of returning the child's legal status to that which existed before the surrender was executed, and the department, a licensed child-placing agency, or the person who or that had custody or guardianship of the child prior to the surrender pursuant to any parental status, prior court order or statutory authorization shall continue or resume custody or guardianship under that prior parental status, prior court order, or statutory authority, that had established the custodial or guardianship status of the child prior to the execution of the surrender or parental consent, unless a court of competent jurisdiction shall otherwise determine as specifically provided herein.

(2)(A) Unless they had received or maintained custody or guardianship of the child pursuant to a court order entered or pursuant to statutory authority prior to the execution of the surrender or parental consent, the

department, the licensed child-placing agency, or the person or persons to whom the child was surrendered and who has physical custody of the child, shall, within five (5) days of the receipt by such department, agency or person of the revocation, return the child to the child's parents or guardian who executed and revoked the surrender or parental consent; provided, that a sworn complaint may be filed in the court where the revocation was executed, or in the event that the surrender was executed before a person or court pursuant to § 36-1-111(h), (i) or (j), in the chancery, circuit, or juvenile court where the child resides in Tennessee, to show cause why the child would likely suffer immediate harm to the child's health and safety if returned to the child's parent or parents or guardian who had executed the surrender.

(B) If a complaint is filed pursuant to subdivision (e)(2)(A), the child shall remain in the physical and/or legal custody or guardianship of the persons or agencies to whom the child was surrendered or with respect to whom the parental consent was executed until the court makes any further orders pursuant to this section, and those persons or agencies shall have authority to provide any necessary care and supervision of the child, subject to further orders of the court.

(C)(i) The complaint filed under this subdivision (e)(2) shall name the parent or parents or guardian or guardians who executed and revoked the surrender or parental consent as defendant or defendants. Except for cause shown in an order entered on the record, the court shall hold a preliminary hearing within three (3) days of the filing of the petition to determine if there is probable cause to believe that the child will be subject to immediate harm to the child's health or safety if the child is returned to the child's parent or parents or guardian or guardians.

(ii) If probable cause is not established in the preliminary hearing, the child shall be immediately returned to the child's parent or parents or guardian who executed the surrender that has been revoked.

(iii) If probable cause is established, the court shall continue the child in the custody of the persons or the agency to whom the child was surrendered or with respect to whom a parental consent was executed, subject to further orders of the court, pending the final hearing.

(iv) The court may make any necessary orders pending the final hearing for the protection of the child.

(D) The case shall be set for a final hearing on the merits within thirty (30) days of the preliminary hearing except for cause shown in a written order of the court entered on the record.

(E) Unless clear and convincing evidence at the final hearing shows that the child's safety and health would be in immediate danger if the child is returned or remains in the custody of the parent or guardian who executed the surrender or filed the parental consent, the complaint shall be dismissed. If the child was not returned to the parent at the preliminary hearing, the child shall be immediately returned to the child's parent or guardian who had executed the surrender or filed the parental consent.

(3)(A) If no complaint is filed pursuant to subdivision (e)(2), the court where the surrender or parental consent was revoked shall enter any orders that are necessary to effect the return of the child to the parent or parents or guardian who had custody of the child prior to the execution of the surrender or prior to filing the parental consent, unless another

person, the department, or a licensed child-placing agency had custody or guardianship of the child under a prior order entered before the execution of the surrender or filing of the parental consent, or that had custody or guardianship under statutory authorization prior to the execution of the surrender or parental consent that was revoked by that parent.

(B) The court in which a surrender, revocation or parental consent is given or filed, or adoption court may not modify any prior custody or guardianship order that had given custody or guardianship of the child to the department, a licensed child-placing agency, or another person under a prior order or pursuant to any statutory authorization prior to the surrender or the filing of the parental consent, and if such order or statutory authority exists, the court's jurisdiction over the child shall terminate after the execution of the revocation of the surrender or parental consent, and the prior parental status, prior court order or prior statutory authority shall continue in effect; provided, that if for any reason, the agencies or persons who had prior custody or guardianship of the child are unable or unwilling to resume custody of the child, the court receiving the revocation shall be authorized to make a custody determination and award temporary custody of the child to any suitable person, the department, or a licensed child-placing agency with custodial authority pursuant to § 36-1-140, or it may make an order of guardianship or partial guardianship pursuant to § 36-1-102, with the right to adopt or consent to the child's adoption.

(4) In the event that the surrender was executed before a person or court under § 36-1-111(h), (i) or (j), the chancery, circuit or juvenile court where the surrender was filed pursuant to § 36-1-111(q), or in the county where the child resides in Tennessee if the surrender has not been filed, shall have jurisdiction to enter orders in compliance with this subsection (e) to effect the child's return to the child's parent or parents or guardian or to provide for the child's custody or guardianship as permitted herein.

(f) If the child is not returned to the child's parent or parents or guardian pursuant to subdivision (e)(2)(E), and unless the department, a licensed child-placing agency, or another person to whom the child was surrendered or to whom a parental consent was executed had custody or guardianship of the child pursuant to a court order entered prior to the filing of the surrender or the parental consent or pursuant to statutory authorization prior to the execution of the surrender or parental consent, the court where the revocation was executed shall have jurisdiction following a revocation of the surrender or parental consent to award temporary custody to any appropriate person, the department, or any other licensed child care agency, with the authority as legal custodian pursuant to § 37-1-140, or the court may award guardianship or partial guardianship pursuant to § 36-1-102 with the right to adopt or consent to the child's adoption.

(g) The department or a licensed child-placing agency or licensed clinical social worker shall have the right to intervene in any complaint filed pursuant to subdivision (e)(2)(A) for the purpose of introducing proof as to the child's health and safety.

**36-1-113. Termination of parental or guardianship rights.**

(a) The chancery and circuit courts shall have concurrent jurisdiction with the juvenile court to terminate parental or guardianship rights to a child in a

separate proceeding, or as a part of the adoption proceeding by utilizing any grounds for termination of parental or guardianship rights permitted in this part or in title 37, chapter 1, part 1 and title 37, chapter 2, part 4. All pleadings and records filed in the chancery and circuit courts pursuant to this section shall be placed under seal and shall not be subject to public disclosure, in the same manner as those filed in juvenile court, unless otherwise provided by court order.

(b)(1) The prospective adoptive parent or parents, including extended family members caring for a related child, any licensed child-placing agency having physical custody of the child, the child's guardian ad litem, or the department shall have standing to file a petition pursuant to this part or title 37 to terminate parental or guardianship rights of a person alleged to be a parent or guardian of the child. The child's parent, pursuant to subdivision (g)(10), (g)(11), or (g)(15), shall also have standing to file a petition pursuant to this part or title 37 to terminate parental or guardianship rights of a person alleged to be a parent or guardian of the child. The prospective adoptive parents, including extended family members caring for a related child, shall have standing to request termination of parental or guardianship rights in the adoption petition filed by them pursuant to this part.

(2) The court shall notify the petitioning parent that the duty of future child support by the parent who is the subject of the termination petition will be forever terminated by entry of an order terminating parental rights.

(c) Termination of parental or guardianship rights must be based upon:

(1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and

(2) That termination of the parent's or guardian's rights is in the best interests of the child.

(d)(1) The petition, or allegations in the adoption petition, to terminate parental rights may be made upon information and belief and shall be verified. If a parent whose parental rights are proposed for termination is the legal parent of the child, as defined in § 36-1-102, and if such parent is alleged to be deceased, then diligent efforts must be made by the petitioner to verify the death of such parent.

(2)(A) The petition, or allegations in the adoption petition, shall state:

(i) The child's birth name;

(ii) The child's age or date of birth;

(iii) The child's current residence address or county of residence or that the child is in the custody of the department or a licensed child-placing agency;

(iv) Any other facts that allege the basis for termination of parental rights and that bring the child and parties within the jurisdiction of the court;

(v) Any notice required pursuant to subdivision (d)(4) has been given; and

(vi) The medical and social history of the child and the child's biological family has been completed to the extent possible on the form promulgated by the department pursuant to § 36-1-111(k); provided, however, the absence of such completed information shall not be a barrier to termination of parental rights.

(B) Initials or pseudonyms may be used in the petition in lieu of the full names of the petitioners to promote the safety of the petitioners or of the

child, with permission of the court;

(3)(A) The petition, or allegations in the adoption petition, shall contain a verified statement that:

(i) The putative father registry maintained by the department has been consulted within ten (10) working days of the filing of the petition and shall state whether there exists any claim on the registry to the paternity of the child who is the subject of the termination or adoption petition;

(ii) Any putative father registry maintained by another state in which the child was born has been consulted within ten (10) working days of the filing of the petition and shall state whether there exists any claim on that registry to the paternity of the child who is the subject of the termination or adoption petition; and

(iii) If the petitioner knows or has reason to believe that the mother was living or present in another state at the time of the child's conception, any putative father registry maintained by that state has been consulted within ten (10) working days of the filing of the petition and shall state whether there exists any claim on that registry to the paternity of the child who is the subject of the termination or adoption petition.

(B) Any person or persons entitled to notice pursuant to § 36-1-117 shall be named as defendants in the petition to terminate parental rights or in the adoption petition and shall be served with a copy of the petition as provided by law.

(C) The petition to terminate, or the adoption petition that seeks to terminate parental rights, shall state that:

(i) The petition or request for termination in the adoption petition, if granted, shall have the effect of forever severing all of the rights, responsibilities, and obligations of the parent or parents or the guardian or guardians to the child who is the subject of the order, and of the child to the parent or parents or the guardian or guardians;

(ii) The child will be placed in the guardianship of other person, persons or public or private agencies who, or that, as the case may be, shall have the right to adopt the child, or to place the child for adoption and to consent to the child's adoption; and

(iii) The parent or guardian shall have no further right to notice of proceedings for the adoption of the child by other persons and that the parent or guardian shall have no right to object to the child's adoption or thereafter, at any time, to have any relationship, legal or otherwise, with the child.

(4) The petition, if filed separately from the adoption petition, may be filed as provided in § 36-1-114. If the petition is filed in a court different from the court where there is a pending custody, dependency, neglect or abuse proceeding concerning a person whose parental rights are sought to be terminated in the petition, a notice of the filing of the petition, together with a copy of the petition, shall be sent by the petitioner to the court where the prior proceeding is pending. In addition, the petitioner filing a petition under this section shall comply with the requirements of § 36-1-117(e).

(e) Service of process of the petition shall be made as provided in § 36-1-117.

(f) Before terminating the rights of any parent or guardian who is incarcerated or who was incarcerated at the time of an action or proceeding is initiated, it must be affirmatively shown to the court that such incarcerated parent or

guardian received actual notice of the following:

(1) The time and place of the hearing to terminate parental rights;

(2) That the hearing will determine whether the rights of the incarcerated parent or guardian should be terminated;

(3) That the incarcerated parent or guardian has the right to participate in the hearing and contest the allegation that the rights of the incarcerated parent or guardian should be terminated, and, at the discretion of the court, such participation may be achieved through personal appearance, teleconference, telecommunication or other means deemed by the court to be appropriate under the circumstances;

(4) That if the incarcerated parent or guardian wishes to participate in the hearing and contest the allegation, such parent or guardian:

(A) If indigent, will be provided with a court-appointed attorney to assist the parent or guardian in contesting the allegation; and

(B) Shall have the right to perpetuate such person's testimony or that of any witness by means of depositions or interrogatories as provided by the Tennessee Rules of Civil Procedure; and

(5) If, by means of a signed waiver, the court determines that the incarcerated parent or guardian has voluntarily waived the right to participate in the hearing and contest the allegation, or if such parent or guardian takes no action after receiving notice of such rights, the court may proceed with such action without the parent's or guardian's participation.

(g) Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The following grounds are cumulative and nonexclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan pursuant to title 37, chapter 2, part 4;

(3)(A) The child has been removed from the home or the physical or legal custody of a parent or guardian for a period of six (6) months by a court order entered at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and:

(i) The conditions that led to the child's removal still persist, preventing the child's safe return to the care of the parent or guardian, or other conditions exist that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect, preventing the child's safe return to the care of the parent or guardian;

(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent or guardian in the near future; and

(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable, and permanent home;

(B) The six (6) months must accrue on or before the first date the termination of parental rights petition is set to be heard;

(4) The parent or guardian has been found to have committed severe child abuse, as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against any child;

(5) The parent or guardian has been sentenced to more than two (2) years' imprisonment for conduct against the child who is the subject of the petition, or for conduct against any sibling or half-sibling of the child or any other child residing temporarily or permanently in the home of such parent or guardian, that has been found under any prior order of a court or that is found by the court hearing the petition to be severe child abuse, as defined in § 37-1-102. Unless otherwise stated, for purposes of this subdivision (g)(5), "sentenced" shall not be construed to mean that the parent or guardian must have actually served more than two (2) years in confinement, but shall only be construed to mean that the court had imposed a sentence of two (2) or more years upon the parent or guardian;

(6) The parent has been confined in a correctional or detention facility of any type, by order of the court as a result of a criminal act, under a sentence of ten (10) or more years, and the child is under eight (8) years of age at the time the sentence is entered by the court;

(7) The parent has been:

(A) Convicted of first degree or second degree murder of the child's other parent or legal guardian; or

(B) Found civilly liable for the intentional and wrongful death of the child's other parent or legal guardian;

(8)(A) The chancery and circuit courts shall have jurisdiction in an adoption proceeding, and the chancery, circuit, and juvenile courts shall have jurisdiction in a separate, independent proceeding conducted prior to an adoption proceeding to determine if the parent or guardian is mentally incompetent to provide for the further care and supervision of the child, and to terminate that parent's or guardian's rights to the child;

(B) The court may terminate the parental or guardianship rights of that person if it determines on the basis of clear and convincing evidence that:

(i) The parent or guardian of the child is incompetent to adequately provide for the further care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future; and

(ii) That termination of parental or guardian rights is in the best interest of the child;

(C) In the circumstances described under subdivisions (8)(A) and (B), no willfulness in the failure of the parent or guardian to establish the parent's or guardian's ability to care for the child need be shown to establish that the parental or guardianship rights should be terminated;

(9)(A) The parental rights of any person who, at the time of the filing of a petition to terminate the parental rights of such person, or if no such petition is filed, at the time of the filing of a petition to adopt a child, is the putative father of the child may also be terminated based upon any one (1) or more of the following additional grounds:

(i) The person has failed, without good cause or excuse, to pay a reasonable share of prenatal, natal, and postnatal expenses involving the birth of the child in accordance with the person's financial means promptly upon the person's receipt of notice of the child's impending birth;

(ii) The person has failed, without good cause or excuse, to make reasonable and consistent payments for the support of the child in accordance with the child support guidelines promulgated by the department pursuant to § 36-5-101;

(iii) The person has failed to seek reasonable visitation with the child, and if visitation has been granted, has failed to visit altogether, or has engaged in only token visitation, as defined in § 36-1-102;

(iv) The person has failed to manifest an ability and willingness to assume legal and physical custody of the child;

(v) Placing custody of the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child; or

(vi) The person has failed to file a petition to establish paternity of the child within thirty (30) days after notice of alleged paternity, or as required in § 36-2-318(j), or after making a claim of paternity pursuant to § 36-1-117(c)(3);

(B)(i) For purposes of this subdivision (g)(9), "notice" means the written statement to a person who is believed to be the biological father or possible biological father of the child. The notice may be made or given by the mother, the department, a licensed child-placing agency, the prospective adoptive parents, a physical custodian of the child, or the legal counsel of any of these people or entities; provided, that actual notice of alleged paternity may be proven to have been given to a person by any means and by any person or entity. The notice may be made or given at any time after the child is conceived and, if not sooner, may include actual notice of a petition to terminate the putative father's parental rights with respect to the child;

(ii) "Notice" also means the oral statement to an alleged biological father from a biological mother that the alleged biological father is believed to be the biological father of the biological mother's child;

(10)(A) The parent has been convicted of aggravated rape pursuant to § 39-13-502, rape pursuant to § 39-13-503, or rape of a child pursuant to § 39-13-522, from which crime the child was conceived. A certified copy of the conviction suffices to prove this ground;

(B) When one (1) of the child's parents has been convicted of one (1) of the offenses specified in subdivision (g)(10)(A), the child's other parent shall have standing to file a petition to terminate the parental rights of the convicted parent. Nothing in this section shall give a parent standing to file a petition to terminate parental rights based on grounds other than those listed in this subdivision (g)(10) or subdivision (g)(11) or (g)(15);

(11)(A)(i) The parent has been found to have committed severe child sexual abuse under any prior order of a criminal court;

(ii) For the purposes of this section, "severe child sexual abuse" means the parent is convicted of any of the following offenses towards a child:

*(a)* Aggravated rape, pursuant to § 39-13-502;

*(b)* Aggravated sexual battery, pursuant to § 39-13-504;

*(c)* Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004;

*(d)* Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005;

*(e)* Incest, pursuant to § 39-15-302;

*(f)* Rape, pursuant to § 39-13-503; or

*(g)* Rape of a child, pursuant to § 39-13-522;

(B) When one (1) of the child's parents has been convicted of one (1) of the offenses specified in subdivision (g)(11)(A)(ii), the child's other parent shall have standing to file a petition to terminate the parental rights of the abusive parent. Nothing in this section shall give a parent standing to file a petition to terminate parental rights based on grounds other than those listed in subdivision (g)(10), this subdivision (g)(11), or subdivision (g)(15);

(12) The parent or guardian has been convicted of trafficking for commercial sex act under § 39-13-309;

(13) The parent or guardian has been convicted on or after July 1, 2015, of sex trafficking of children or by force, fraud, or coercion under 18 U.S.C. § 1591, or a sex trafficking of children offense under the laws of another state that is substantially similar to § 39-13-309;

(14) A parent or guardian has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and placing the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child; and

(15)(A) The parent or legal guardian has been convicted of attempted first degree murder or attempted second degree murder of the child's other parent or legal guardian;

(B) When one (1) of the child's parents or legal guardians has been convicted of attempted first degree murder or attempted second degree murder of the child's other parent or legal guardian, the child's non-offending parent or legal guardian shall have standing to file a petition to terminate the parental or guardianship rights of the convicted parent or legal guardian. Nothing in this section shall give a parent or legal guardian standing to file a petition to terminate parental or guardianship rights based on grounds other than those listed in subdivision (g)(10) or (g)(11) or this subdivision (g)(15).

(h)(1) The department shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, under the following circumstances:

(A) In the case of a child who has been in foster care under the responsibility of the department for fifteen (15) of the most recent twenty-two (22) months; or

(B) If a court of competent jurisdiction has determined a child to be an abandoned infant as defined at § 36-1-102; or

(C) If a court of competent jurisdiction has made a determination in a criminal or civil proceeding that the parent has committed murder of any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home, committed

voluntary manslaughter of another such child, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter of the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home, or committed a felony assault that has resulted in serious bodily injury or severe child abuse as defined at § 37-1-102 to the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home. For the purposes of this subsection (h), such a determination shall be made by a jury or trial court judge designated by § 16-2-502 through an explicit finding, or by such equivalent courts of other states or of the United States; or

(D) If a juvenile court has made a finding of severe child abuse as defined at § 37-1-102.

(2) At the option of the department, the department may determine that a petition to terminate the parental rights of the child's parents shall not be filed (or, if such a petition has been filed by another party, shall not be required to seek to be joined as a party to the petition), if one of the following exists:

(A) The child is being cared for by a relative;

(B) The department has documented in the permanency plan, which shall be available for court review, a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(C) The department has not made reasonable efforts under § 37-1-166 to provide to the family of the child, consistent with the time period in the department permanency plan, such services as the department deems necessary for the safe return of the child to the child's home.

(i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

(1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;

(2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substance analogues as may render the parent or guardian consistently

unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

(j) In the hearing on the petition, the circuit, chancery, or juvenile court shall admit evidence, pursuant to the Tennessee Rules of Evidence, and shall recognize the exemptions to privileges as provided pursuant to §§ 37-1-411 and 37-1-614.

(k) The court shall ensure that the hearing on the petition takes place within six (6) months of the date that the petition is filed, unless the court determines an extension is in the best interests of the child. The court shall enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing. If such a case has not been completed within six (6) months from the date the petition was served, the petitioner or respondent shall have grounds to request that the court of appeals grant an order expediting the case at the trial level.

(*l*)(1) An order terminating parental rights shall have the effect of severing forever all legal rights and obligations of the parent or guardian of the child against whom the order of termination is entered and of the child who is the subject of the petition to that parent or guardian. The parent or guardian shall have no further right to notice of proceedings for the adoption of that child by other persons and shall have no right to object to the child's adoption or thereafter to have any relationship, legal or otherwise, with the child. It shall terminate the responsibilities of that parent or guardian under this section for future child support or other future financial responsibilities even if the child is not ultimately adopted; provided, that the entry of an order terminating the parental rights shall not eliminate the responsibility of such parent or guardian for past child support arrearages or other financial obligations incurred for the care of such child prior to the entry of the order terminating parental rights.

(2) Notwithstanding subdivision (*l*)(1), a child who is the subject of the order for termination shall be entitled to inherit from a parent whose rights are terminated until the final order of adoption is entered.

(m) Upon termination of parental or guardian rights, the court may award guardianship or partial guardianship of the child to a licensed child-placing agency or the department. Such guardianship shall include the right to place the child for adoption and the right to consent to the child's adoption. Upon termination of parental or guardian rights, the court may award guardianship or partial guardianship to any prospective adoptive parent or parents with the right to adopt the child, or to any permanent guardian who has been appointed pursuant to title 37, chapter 1, part 8. In any of these cases, such guardianship is subject to the remaining rights, if any, of any other parent or guardian of the child. Before guardianship or partial guardianship can be awarded to a permanent guardian, the court shall find that the department or licensed child-placing agency currently having custody of the child has made reasonable efforts to place the child for adoption and that permanent guardianship is in the best interest of the child.

(n) An order of guardianship or partial guardianship entered by the court

pursuant to this section shall supersede prior orders of custody or guardianship of that court and of other courts, except those prior orders of guardianship or partial guardianship of other courts entered as the result of validly executed surrenders or revocations pursuant to § 36-1-111 or § 36-1-112, or except as provided pursuant to § 36-1-111(r)(4)(D) and (E), or except an order of guardianship or partial guardianship of a court entered pursuant to § 36-1-116; provided, that orders terminating parental rights entered by a court under this section prior to the filing of an adoption petition shall be effective to terminate parental rights for all purposes.

(o) If the court terminates parental or guardianship rights, under this part or title 37 or a consent is given pursuant to § 36-1-117(f) or (g), or if there have been surrenders of parental or guardianship rights of all other necessary parties, then no further surrender or consent of that parent or guardian shall be necessary to authorize an adoption; provided, that the adoption court may review and confirm the validity of any denials of parentage made by persons under any statutory provisions from outside the state of Tennessee.

(p) A copy of the order or orders obtained by the prospective adoptive parents terminating parental or guardianship rights under this section shall be filed with the petition for adoption.

(q) After the entry of the order terminating parental rights, no party to the proceeding, nor anyone claiming under such party, may later question the validity of the termination proceeding by reason of any defect or irregularity therein, jurisdictional or otherwise, but shall be fully bound thereby, except based upon a timely appeal of the termination order as may be allowed by law; and in no event, for any reason, shall a termination of parental rights be overturned by any court or collaterally attacked by any person or entity after one (1) year from the date of the entry of the final order of termination. This provision is intended as a statute of repose.

**36-1-114. Venue.**

The termination or adoption petition may be filed in the county:

(1) Where the petitioners reside;

(2) Where the child resides;

(3) Where, at the time the petition is filed, any respondent resides;

(4) In which is located any licensed child-placing agency or institution operated under the laws of this state having custody or guardianship of the child or to which the child has been surrendered as provided in this part;

(5) Where the child became subject to the care and control of a public or private child-caring or child-placing agency; or

(6) Where the child became subject to partial or complete guardianship or legal custody of the petitioners as provided in this part.

**36-1-115. Persons eligible to file adoption petition — Residence requirements — Preference for foster parents.**

(a) Any person over eighteen (18) years of age may petition the chancery or circuit court to adopt a person and may request that the adopted person's name be changed.

(b) The petitioners must have physical custody or must demonstrate to the court that they have the right to receive custody of the child sought to be adopted as provided in § 36-1-111(d)(6) at the time the petition is filed, unless

they are filing an intervening petition seeking to adopt the child.

(c) If the petitioner has a spouse living, competent to join in the petition, such spouse shall join in the petition; provided, that if the spouse of the petitioner is a legal or biological parent of the child to be adopted, such spouse shall sign the petition as co-petitioner, and this shall be sufficient consent by the legal or biological parent for the petitioner's spouse to adopt the child of the legal or biological parent, and no surrender shall be necessary by such co-petitioning legal or biological parent. Such action by the legal or biological parent shall not otherwise affect the legal relationship between that parent and the child.

(d) The petitioner or petitioners shall live and maintain their regular place of abode in this state when the adoption petition is filed. Nonresidents may also file a petition to adopt a child in this state, if they file such petition in the county where a court granted the nonresidents partial or complete guardianship of the child.

(e) If one (1) or both of petitioners is an active duty service member in the United States military, the service member and any co-petitioner with the service member may file a petition for adoption in this state without actual residency in this state, if the service member has lived, or maintained a regular place of abode, within this state for six (6) consecutive months immediately prior to entering military service or if this state is the service member's state of legal residence as identified to the United States military.

(f) Where the petitioner is seeking to adopt a child that is related, the residency requirement in subsections (d) and (e) shall not apply if the petitioner is an actual resident of this state at the time the petition is filed.

(g)(1) When a child is placed in a foster home by the department or otherwise, and becomes available for adoption due to the termination or surrender of all parental or guardianship rights to the child, those foster parents shall be given first preference to adopt the child if the child has resided in the foster home for twelve (12) or more consecutive months immediately preceding the filing of an adoption petition.

(2) In becoming adoptive parents, the foster parents shall meet all requirements otherwise imposed on persons seeking to adopt children in the custody of the department, and shall be subject to all other provisions of this part.

**36-1-116. Home study — Adoption petition — Order of reference.**

(a)(1) Prior to filing a petition for the adoption of a child, the prospective adoptive parents shall, except as otherwise provided by law, contact a licensed child-placing agency, or a licensed clinical social worker, or if indigent under federal poverty guidelines, they shall, except as otherwise provided by law, contact the department, and request a home study or a preliminary home study concerning the suitability of their home and themselves as adoptive parents; provided, that the court may waive this requirement when the child is to be adopted by related persons.

(2) To be valid for use in response to the order of reference issued pursuant to subsection (e), the home study must have been completed or updated within one (1) year prior to the date of the order of reference. The preliminary home study must have been completed within thirty (30) days prior to the filing of the petition.

(b) The petition to adopt must state:

(1) The full name of the petitioners; however, initials or a pseudonym may be used to promote the safety of the petitioners or of the child, with permission of the court;

(2) The name used for the child in the proceeding. In the petition or other orders related to the custody of the child and the final order of adoption, and in all other documents related to the case, the name selected by the petitioner as the name for the child may be used as the true and legal name of the child, and the original name of the child shall not be necessary. Only in the court report required by law on the investigation of the conditions and antecedents of the child sought to be adopted and on the form requesting the new certificate of birth by adoption shall the original name of the child given by the biological or prior legal parent or parents be necessary;

(3) The birth date, state, and county or country of birth of the child, if known;

(4) The information necessary to show that the court to which the petition is addressed has jurisdiction;

(5) That the petitioners have physical custody of the child or that they meet the requirements of § 36-1-111(d)(6), and from what person or agency such custody was or is to be obtained;

(6) That it is the desire of the petitioners that the relationship of parent and child be established between them and the child;

(7) The desire of the petitioners, if they have such, that the name of the child be changed, together with the new name desired;

(8) The value of the personal and real property owned by the child or in which the child may have some legal or equitable interest;

(9) That the petitioners are fit persons to have the care and custody of the child and that it is in the best interest of the child for this adoption to occur;

(10) That the petitioners are financially able to provide for the child;

(11) That there has been full compliance with the law in regard to surrender of the child to the petitioners, or termination of parental or guardianship rights, or consent to the adoption of the child by the agency with rights to place a child for adoption, or that the petitioner intends to effect compliance with the requirements for termination of parental or guardianship rights or parental consents as part of the adoption proceeding, and how such compliance will be effected. A copy of any orders obtained by the prospective adoptive parents terminating parental or guardianship rights and copies of any surrenders that were executed to the prospective adoptive parents shall be filed with the petition;

(12)(A) Whether the biological parent is giving parental consent for the adoption of the child as defined pursuant to § 36-1-102 and as executed pursuant to § 36-1-117(g), or that the parent is signing the petition pursuant to § 36-1-117(f) and that the parent understands that the child will be adopted by the relatives or stepparent of the child and that, in the case of the adoption by relatives, the parent will have no legal rights to the custody, control, or to visitation with the child in the future;

(B) In the case of a parental consent pursuant to § 36-1-102 and § 36-1-117(g), the petition must state that the parent understands that the entry of an order confirming the parental consent, without revoking the parental consent prior to the entry of such order, will terminate that parent's parental rights to the child forever and that the parent will have no legal rights to the custody, control, or to visitation with the child in the

future;

(C) When a parent uses the procedure for a consent in the adoption of an unrelated child the parent shall also complete the information form from § 36-1-111(b)(4) no later than when the petition is signed and such form shall be filed with the court. In order to confirm a parental consent in the adoption of an unrelated child, the surrender form provided at § 36-1-111(b)(2) shall be modified to reflect applicable law and executed by the same procedure provided for execution of a surrender;

(13)(A) That the petitioner has made inquiry to the Tennessee putative father registry and the putative father registry of any other state required by § 36-1-113(d)(3)(A) within ten (10) working days prior to the filing of the petition to determine whether any person claims a paternity interest in the child who is the subject of the proceeding by having entered a claim with the registry, the result of such inquiry, and that, if the child is less than thirty (30) days old at the time the petition is filed, the petitioner provided notice of the filing of the adoption petition to the registry; and

(B) Whether there are any other persons known to the petitioner or petitioners who are entitled to notice under § 36-1-117 and the identity of such persons;

(14) Whether the child was brought into Tennessee for foster care or adoption, and, if so, that there has been full compliance with the ICPC or, if compliance has not occurred, a statement alleging good cause for such noncompliance. Evidence of compliance in the form of the ICPC Form 100A or other form from the department, if appropriate, or a sworn statement stating why such form is not required shall be included or attached as an exhibit to the petition;

(15)(A) Whether the child was brought into Tennessee for foster care or adoption from a foreign country, and, if so, evidence shall be attached to the petition showing approval of the government or legal authority in the country from which the child was brought that the child's placement with the petitioners was appropriate and that the petitioners have legal authority under that country's law to have the custody of the child;

(B) The petition shall exhibit evidence from the immigration and naturalization service, the department of justice or the department of state that the child has proper authorization to enter the United States;

(C) If a child who was the subject of an adoption decree from the foreign country must be re-adopted under Tennessee law to effect a valid adoption due to any interpretation of the United States government, the petition shall so state and state that this is necessary for the child to be legally adopted in the United States, and the court shall have jurisdiction to enter an order of adoption for this purpose;

(D) If a child is in this country and the provisions of subdivision (b)(15)(A) cannot be met, the petitioners shall file an affidavit and any other available documentary evidence satisfactory to the court that shows why there is no approval available for the child from the foreign government or legal authority in the foreign country concerning the child's placement with the petitioners;

(16)(A) Whether the petitioners have paid, or promised to pay, any money, fees, contributions, or other remuneration or thing of value in connection with the birth, placement or the adoption of the child, and if so, to or from whom, the specific amount, and the specific purpose for which these were

paid or promised;

(B) The disclosure required by this subdivision (b)(16) shall specifically include whether any attorney's fees or medical expenses or counseling fees and the other expenses permitted under §§ 36-1-108 and 36-1-109 or any other fees, remuneration, or contribution, were paid or promised in connection with the child's birth, placement, or adoption and if so, to whom, the specific amount and the specific purpose for which they were paid or promised;

(C) The disclosure required by this subdivision (b)(16) shall also specifically include the amount of fees paid to any licensed child-placing agency or licensed clinical social worker in connection with the placement of the child.

(c) The petition must be signed by each petitioner personally and must be verified and must be filed with the clerk of the court, who shall send a certified copy of the petition to the director of adoptions in the state office of the department in Nashville, and to the local office of the department or the licensed child-placing agency or licensed clinical social worker that or who has been directed to answer the order of reference issued in accordance with subsection (e) within three (3) business days after its filing.

(d) Any person who files a petition to adopt a child less than thirty (30) days old shall notify the putative father registry maintained by the department of the filing of the petition unless the known biological or legal father has:

(1) Executed a surrender or a waiver of interest in accordance with this part;

(2) Had parental rights terminated by a court of competent jurisdiction; or

(3) Been made a party to the adoption proceedings and has been served notice as required by law.

(e)(1) Upon filing the adoption petition, the prospective adoptive parents shall notify the court if they have requested a home study or preliminary home study pursuant to subsection (a) and shall file or cause to be filed a copy of the court report based upon the home study or preliminary home study with the court, under seal, unless the court waives the home study or the preliminary home study for prospective adoptive parents who are related to the child.

(2)(A) Upon filing of the petition for adoption, the petitioners also shall inform the adoption court of the name of the court in which the surrender was filed, and the adoption court shall request the court where the surrender was filed to forward a certified copy of the surrender and copies of the medical and social information obtained at the time of the surrender to the adoption court and any court reports based upon home studies that were ordered by the court. This information shall be made a part of the adoption record, but shall be confidential and shall be placed in a sealed envelope within the court file or shall be filed in a protected electronically maintained file and shall remain under seal and shall not be open to inspection by any person or agency other than the department or the licensed child-placing agency or licensed clinical social worker to which the order of reference is issued under this subsection (e), except by written order of the court or as otherwise permitted under this part.

(B) Unless waived by the court in accordance with subdivision (e)(1), the court shall order a licensed child-placing agency or licensed clinical social worker, or the department if the petitioners are indigent under

federal poverty guidelines, to conduct a preliminary home study, and a court report based upon such a study must be submitted within fifteen (15) days of the date of the order if, at the time the petition is filed, the petitioners have custody of the child, and the petitioners have not submitted to the court a court report based upon a timely home study or timely preliminary home study with the petition, and the court may enter any orders necessary for the child's care and protection as permitted by subsection (f) pending receipt of the preliminary home study.

(3) If no prior or updated home study of the prospective adoptive parents has been conducted and a court report filed with the court at the time the order of reference is issued and such home study has not been waived in accordance with subdivision (e)(1), then the court, within five (5) days of the date the petition is filed, shall direct the order of reference to a licensed child-placing agency or licensed clinical social worker chosen by the petitioners or, if the petitioners are indigent under federal poverty guidelines or if the child was placed with the petitioners by the department, to the department, to submit a preliminary court report, and any supplemental court reports as may be necessary, and a final court report concerning the circumstances of the child, the child's antecedents, and the proposed adoptive home. Except for good cause shown, the court shall issue the order of reference to the licensed child-placing agency, the licensed clinical social worker, or the department that conducted the home study pursuant to the prospective adoptive parents' request pursuant to subsection (a).

(4) The information in subdivision (e)(2) shall be made available to the licensed child-placing agency or licensed clinical social worker or the department which responds to the order of reference. If the necessary medical and social information was obtained by the court pursuant to § 36-1-111, it shall not be necessary for the department or the licensed child-placing agency or licensed clinical social worker to have any further contact with the biological parents in response to the order of reference, unless it is believed the information contained in the statements is inaccurate or incomplete, in which case the department, licensed child-placing agency, or the licensed clinical social worker may contact the biological or prior legal parents or the guardian to obtain such information.

(5)(A) A preliminary court report shall be filed by the department, the licensed child-placing agency or the licensed clinical social worker within sixty (60) days of the receipt of the order of reference and may be supplemented from time to time as the licensed child-placing agency, the licensed clinical social worker or the department determines necessary, or as ordered by the court.

(B) A final court report shall be submitted immediately prior to the finalization of the adoption upon fourteen (14) days' notice to the department, the licensed child-placing agency, or the licensed clinical social worker.

(6) Court filings in adoption actions by public or private agencies or parties, offered as proof of parentage, termination of parental rights, or related to establishment or termination of guardianship, may be reviewed by all parties to the case unless the court grants a protective order. If there is no protective order, the agency that made the filing shall, at the time of the filing, send a paper or encrypted electronic copy of the filing to the attorney for the petitioners. Petitioners' counsel and the court must

receive the submission at least two (2) business days prior to the scheduled hearing to finalize the adoption. A protective order may be requested by motion of any party or by the agency that made the filing. A protective order shall be granted upon showing of good cause to restrict the information; such cause shall be proven by a preponderance of evidence. The protective order shall be as narrow as possible while still offering the protections that the court found to be warranted.

(f)(1) Upon the filing of the petition, the court shall have exclusive jurisdiction of all matters pertaining to the child, including the establishment of paternity of a child pursuant to chapter 2, part 3 of this title, except for allegations of delinquency, unruliness or truancy of the child pursuant to title 37; provided, that, unless a party has filed an intervening petition to an existing adoption petition concerning a child who is in the physical custody of the original petitioners, the court shall have no jurisdiction to issue any orders granting custody or guardianship of the child to the petitioners or to the intervening petitioners or granting an adoption of the child to the petitioners or to the intervening petitioners unless the petition affirmatively states, and the court finds in its order, that the petitioners have physical custody of the child at the time of the filing of the petition, entry of the order of guardianship, or entry of the order of adoption, or unless the petitioners otherwise meet the requirements of § 36-1-111(d)(6).

(2) Except for proceedings concerning allegations of delinquency, unruliness, or truancy of the child under title 37, any proceedings that may be pending seeking the custody or guardianship of the child or visitation with the child who is in the physical custody of the petitioners on the date the petition is filed, or where the petitioners meet the requirement of § 36-1-111(d)(6), shall be suspended pending the court's orders in the adoption proceeding, and jurisdiction of all other pending matters concerning the child and proceedings concerning establishment of the paternity of the child shall be transferred to and assumed by the adoption court; provided, that until the adoption court enters any orders affecting the child's custody or guardianship as permitted by this part, all prior parental or guardian authority, prior court orders regarding custody or guardianship, or statutory authority concerning the child's status shall remain in effect. Actions suspended by this section, regardless of the stage of adjudication, shall not be heard until final adjudication of the action for termination of parental rights or adoption regarding the same child, even if such adjudication of the termination of parental rights or adoption will render the custody, guardianship, or visitation action moot.

(3) If no prior order of guardianship or custody has been entered giving guardianship or legal custody to the petitioners, the court may, upon receipt of a satisfactory preliminary home study or a satisfactory home study, and if the petitioners have physical custody of the child or otherwise meet the requirements of § 36-1-111(d)(6), issue an order of guardianship or custody with the same authority given to the petitioners as is provided pursuant to §§ 36-1-102 and 37-1-140 as the case may be.

(4) If an order of guardianship is entered pursuant to this part, the petitioner or petitioners shall have authority to act as guardian ad litem or next friend of the child in any suit by the child against third parties while the child is in the care and custody of the petitioners.

(g)(1) The court shall order a licensed child-placing agency or licensed clinical social worker, or the department if the parents are indigent under

federal poverty guidelines or if the child was placed with the prospective adoptive parents by the department, to provide supervision for the child who is in the home of prospective adoptive parents and to make any necessary reports that the court should have concerning the welfare of the child pending entry of the final order in the case; provided, that the court may waive this requirement when the child is to be adopted by related persons.

(2) Unless they are indigent under federal poverty guidelines, the prospective adoptive parents shall pay the costs of the home study and the supervision required by this subsection (g) and the supervision required by the court.

(h) The filing of a petition for involuntary termination of parental rights with or without an adoption shall be deemed the commencement of a custody proceeding. A petition for adoption, with or without a voluntary termination of parental rights or consent, shall not be deemed the commencement of a custody proceeding for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), compiled in chapter 6, part 2 of this title.

(i) If the court grants guardianship or custody of the child upon the filing of the petition or at any time thereafter to any person, and the child is possessed of any real or personal property to be administered, the court shall appoint a guardian of the property of the child if no guardian or trustee is currently appointed to care for the child's property.

(j) When the husband and wife are joint petitioners, the death of one (1) spouse shall not result in the dismissal of the petition for adoption for that reason alone, and the court may proceed to grant the adoption to the surviving petitioner.

(k)(1) The department, a licensed child-placing agency, or a licensed clinical social worker shall have the right to intervene in the adoption proceeding at any time to present evidence as to the best interests of the child by filing a sworn complaint in the adoption proceeding.

(2)(A) Subject to subsection (f), the court may make any necessary orders upon its own motion or upon the sworn complaint of the department, a licensed child-placing agency, or a licensed clinical social worker for the protection and welfare of the child, including emergency ex parte orders for the immediate care and protection of the child as permitted pursuant to § 36-1-111(v)(1)(A)-(C).

(B) Any emergency ex parte orders for the protection of the child may be entered if the court finds probable cause to believe that the child's immediate health or safety would be endangered. The ex parte order may direct the removal of the child from the custody of the prospective adoptive parents.

(3) If an ex parte order of protection is entered that removes the child from the custody of the prospective adoptive parents, a preliminary hearing shall be held within five (5) days, excluding Saturdays, Sundays and legal holidays, to determine the need for the continuance of such order.

(4) The prospective adoptive parents shall be necessary parties at the preliminary hearing and the court may order the department or the licensed child-placing agency or licensed clinical social worker to provide any necessary information or court reports concerning the welfare of the child as it may require.

(5) If the court determines at the preliminary hearing that there is probable cause to believe that the child's health or safety will be immediately

endangered if the child remains in or is returned to the custody of the prospective adoptive parents, or that any other orders must be entered to ensure the health and safety of the child, it shall make such orders as are necessary to protect the child and may continue or place temporary legal custody of the child with the department or a licensed child-placing agency or any other suitable persons approved by the department or a licensed child-placing agency or licensed clinical social worker.

(6) The court shall set a final hearing concerning the allegations involving the prospective adoptive parents within thirty (30) days, except for good cause shown in an order entered by the court.

(7) If the court determines upon clear and convincing evidence at a final hearing that it should make another disposition of the child, it may remove the child from the custody of the prospective adoptive parents and may make any other orders necessary for the child's welfare and best interests, including an alternate custody or guardianship order for the child, and the court may dismiss the adoption petition as provided in § 36-1-118. If the court does not find by clear and convincing evidence that it should make another disposition of the child, it shall dismiss the complaint that had made the allegations concerning the child's best interests and the adoption proceedings shall continue pending further orders of the court.

**36-1-117. Parties to proceedings — Termination of rights of putative father — Consent of parent or guardian — Service of process.**

(a) Unless the legal parent or the guardian, or, as provided in subsections (b) and (c), the putative father of the child has surrendered parental or guardianship rights to the child, has executed a parental consent that has been confirmed by the court, has waived the person's rights pursuant to § 36-1-111(w) or (x), or unless the person's rights have been terminated by the order of a court of competent jurisdiction, the legal parents, guardian of the person of the child or of an adult, the biological mother, and the established father or putative father of the child must be made parties to the adoption proceeding or to a separate proceeding seeking the termination of those rights, and their rights to the child must be terminated by a court to authorize the court to order the adoption of the child or adult by other persons.

(b)(1) If a petition has been filed to establish paternity of the child who is the subject of the adoption proceeding, the adoption court shall have exclusive jurisdiction to hear and decide any paternity petition filed in the adoption proceeding or that has been transferred to it pursuant to § 36-2-307.

(2) The paternity petition shall be heard and concluded prior to any action by the adoption court to determine whether to grant the petition for adoption.

(3)(A) The petition shall be granted if it is shown by a preponderance of the evidence that the person alleged to be the father of the child is the father of the child; provided, that the entry of such an order shall not prevent the filing and consideration of a petition pursuant to § 36-1-113.

(B) If the petition to establish paternity is granted, then the parental rights of the legal father must be terminated as provided by § 36-1-113 or as otherwise provided by law, or the legal father must execute a surrender under § 36-1-111, file a parental consent, or the legal father must co-sign the petition for adoption pursuant to subsection (f) before the court may be

authorized to order an adoption of the child.

(4) If grounds for termination of parental rights do not exist, then the child's legal father shall be granted custody of the child, unless the court determines, upon clear and convincing evidence, that the legal father is unable currently to provide proper custodial care for the child, in which case the court shall make such orders as may be necessary for the child's care and supervision pursuant to § 37-1-140; or unless the child's mother's rights have not been previously terminated, in which case the court shall make a determination of the custodial status of the child between the legal father and the mother, and the court may make such other orders as are necessary to provide for the child's care and supervision. If the court determines that neither parent is suitable to provide for the care of the child, it shall make such other orders as it may determine are necessary for the child's care and supervision.

(5) If the petition to establish paternity is not granted by the court after a hearing and determination based upon subdivision (3), then the court may enter an order to that effect specifying the basis for the determination, and may proceed with the adoption proceeding without further need to terminate the rights of that putative father.

(6) The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), compiled in chapter 6, part 2 of this title, shall govern jurisdiction of the adoption court in this state if a paternity proceeding has been filed by the putative father in another state, territory, or foreign country.

(c) The parental rights of the putative father of a child who has not filed a petition to establish paternity of the child or who has not established paternity of the child who is the subject of an adoption proceeding and who meets any of the following criteria shall be terminated by surrender, parental consent, termination of parental rights pursuant to § 36-1-113, or by waiver of interest, before the court may enter an order of adoption concerning that child:

(1) The biological father of a child has filed with the putative father registry, pursuant to § 36-2-318, as described in § 36-1-113(d)(3)(A), a statement of an intent to claim paternity of the child at any time prior to or within thirty (30) days after the child's birth and has notified the registry of all address changes;

(2) [Deleted by 2018 amendment.]

(3) The biological father has claimed to the child's biological mother, or to the petitioners or their attorney, or to the department, a licensed child-placing agency, or a licensed clinical social worker who or that is involved in the care, placement, supervision, or study of the child that the biological father believes that the biological father is the father of the child; provided, that if the biological father has previously notified the department of the biological father's claim to paternity of the child pursuant to the putative father registry, § 36-2-318(e)(3), the biological father shall be subject to all the requirements for waiver of notice provisions of § 36-2-318(f)(2) and to all requirements for filing a paternity petition;

(4) The biological father is recorded on the child's birth certificate as the father of the child;

(5) The biological father is openly living with the child at the time the adoption proceeding is commenced and is holding himself out as the father of the child; provided, that if custody of the child has been removed from the biological mother by court order, notice shall be given to any man who was

openly living with the child at time of the initiation of the custody or guardianship proceeding that resulted in the removal of the custody or guardianship of the child from the biological mother or biological father, if the man held himself out to be the father of the child at the time of the removal; or

(6) The biological father has entered a permanency plan under title 37, chapter 2, part 4, or under similar provisions of any other state or territory in which the biological father acknowledges paternity of the child.

(d)(1) Other biological or legal relatives of the child or the adult are not necessary parties to the proceeding and shall not be entitled to notice of the adoption proceedings unless they are legal guardians as defined in § 36-1-102 or legal custodians of the person of the child or adult at the time the petition is filed.

(2) The legal custodian of the child may only receive notice of the proceeding and may only present evidence as to the child's best interests.

(e) Any public or private agency that may have custody or complete or partial guardianship of the child and that has not given consent as provided under this part shall be made a defendant and given notice of the filing of the adoption or termination of parental or guardian rights petition filed under this part or under title 37, and shall be permitted to assert its rights to custody or guardianship of the child.

(f) When the child is related to one (1) of the petitioners or is the stepchild of the petitioner, and the legal or biological parent or parents or guardian or guardians of the child signs the adoption petition as a co-petitioner for the specific purpose, as stated in the petition, of giving consent to the adoption, no further surrender, parental consent, or termination of parental rights shall be required as to that parent or guardian, as the act of joining in the adoption petition shall be deemed a complete surrender, notwithstanding subsection (g), and no further notice or service of process need be made to that person; provided, that where the stepparent of a stepchild seeks to adopt a stepchild, the co-signing of the petition by the child's parent who is the spouse of the petitioner shall not affect the existing parent/child legal relationship between that parent and the parent's child who is the subject of the adoption petition by the stepparent of the child.

(g)(1) A parent may sign a petition for adoption as provided by § 36-1-102 for the purpose of giving parental consent to the adoption of the parent's child by unrelated persons. The petition must state that the parent understands that the entry of an order confirming the parental consent, without revoking the parental consent prior to the entry of such order, will terminate that parent's parental rights to the child forever and that the parent will have no legal rights to the custody, control, or to visitation with the child in the future.

(2) It is specifically and expressly declared that the act of signing the adoption petition shall not terminate the parental rights of such parent until the court where the adoption petition is filed has entered an order confirming the parental consent and until the court shall have required such parent to answer, under oath, each of the questions required of parents pursuant to § 36-1-111(b)(4).

(3) The parent signing the petition for the purpose of giving parental consent shall be provided ten (10) calendar days' written notice by the court of the appearance date for the required response to the court pursuant to

§ 36-1-111 before entry of the order confirming the parental consent is entered by the court. Unless the parent is disabled or the parent's appearance is impracticable as determined by the court, that parent must personally attend the hearing before the court in chambers. If the parent is disabled or the parent's appearance is impracticable as determined by the court, the answers shall be taken under oath at the parent's location by the court or by any person appointed by an order of the court to do so. If the parent executing the parental consent cannot be found or does not appear at the time of such hearing, the court may terminate that parent's rights upon any grounds available pursuant to § 36-1-113.

(4) Following the satisfactory completion of such questions, which shall be recorded on the forms required pursuant to § 36-1-111, the court shall enter an order that confirms the parental consent, and the court shall then, and only then, be authorized to enter an order terminating such parent's rights to the child who is the subject of the adoption petition; provided, that a parental consent may be revoked at any time prior to the entry of an order of confirmation of the parental consent by the court by executing a revocation form as provided in § 36-1-112, and such revocation shall negate and void the parental consent executed pursuant to this subsection (g).

(5) The death of the consenting parent or termination of parental rights of such parent by a validly executed surrender or by court action prior to the entry of the adoption order will make any requirements for the parental consent contained herein unnecessary.

(6) Upon entry of the order of confirmation, the clerk shall send certified copies of the order to the adoptions unit in the state office of the department in Nashville.

(h) The department, through any authorized person, or the executive head of such licensed child-placing agency may give consent to the adoption of the child by the petitioners for whom it holds complete or partial guardianship.

(i)(1) When the child who is the subject of the adoption is fourteen (14) years of age or older at any time before the granting of the petition, the adoption court must receive the sworn, written consent of such child to the adoption, which shall be filed with the record, and the consent of such minor shall be recited in the order of adoption. The court shall receive the consent and testimony from the child in chambers with only the child and a guardian ad litem if required and appointed by the court for the child present.

(2) If the child is mentally disabled, the court shall appoint a guardian ad litem to give or withhold consent for the child to the adoption and the court shall follow the procedure of subdivisions (j)(2)(B) and (C).

(j)(1) When the person sought to be adopted is eighteen (18) years of age or older, only the sworn, written consent of the person sought to be adopted shall be required and no order of reference or any home studies need be issued.

(2)(A) If the adult person to be adopted has been adjudicated incompetent, then the written consent of the adult person's guardian or conservator of the person shall be required.

(B) If the person is without a guardian or conservator and the court has reason to believe that the person is incompetent to give consent, then the court shall appoint a guardian ad litem who shall investigate the person's circumstances and that guardian ad litem shall give or withhold consent.

(C) The guardian ad litem shall file a written report stating the basis for the decision and the court shall afford a hearing to all parties to present

evidence as to the best interests of the person, and if the court determines upon clear and convincing evidence that the decision to withhold consent by the guardian ad litem is arbitrary and is not in the best interests of the incompetent person, it may proceed to make any other orders it deems necessary for the person's welfare, including granting the adoption petition.

(3) In all other situations under this subsection (j) for adult persons who are the subject of an adoption petition, no order of reference, social investigation, report to the court by a licensed child-placing agency or licensed clinical social worker or the department, or the waiting period under § 36-1-119 shall be required.

(k) When the child has been surrendered or parental rights have been relinquished to an agency operating under the laws of another state, territory, or foreign country, or such agency has received guardianship or the right to place a child for adoption pursuant to the laws of its jurisdiction, the surrender or relinquishment, or any order terminating parental rights, and the written consent of the agency pursuant to the laws of its jurisdiction or pursuant to its procedures shall be filed with the adoption petition and shall be sufficient for the purposes of providing the necessary consent required by this part.

(*l*) If a person has surrendered that parent's parental rights or guardianship rights, if a person has filed a parental consent and the consent has been confirmed as provided herein, if a person has executed a waiver of interest pursuant to this part, if a person or agency has consented to the adoption of the child who is the subject of the adoption proceeding, or if a person's parental or guardianship rights to the child have been properly terminated, no notice of the adoption proceeding or service of process shall be made to that person or agency.

(m)(1) Service of process for adoption proceedings and termination proceedings in chancery and circuit courts pursuant to this part shall be made pursuant to the Tennessee Rules of Civil Procedure and the statutes governing substituted service.

(2) Service of process for proceedings to terminate parental rights in juvenile court shall be pursuant to the Tennessee Rules of Civil Procedure, unless a finding is made pursuant to Tennessee Rules of Juvenile Procedure Rule 1 that the interests of justice require otherwise, the statutory requirements of title 37, chapter 1, part 1, where not otherwise in conflict with this part, and the statutes governing substituted service.

(3) Any motion for an order for publication in these proceedings shall be accompanied by an affidavit of the petitioners or their legal counsel attesting, in detail, to all efforts to determine the identity and whereabouts of the parties against whom substituted service is sought.

(4) Service of process for juvenile court proceedings may be completed by any individual authorized to serve process under the Tennessee Rules of Civil Procedure or the Tennessee Rules of Juvenile Procedure, including, but not limited to, a sheriff, constable, or private process server.

(n) The court may enter a default judgment against any party to the adoption or termination proceeding upon a finding that service of process has been validly made against that party in accordance with the Tennessee Rules of Civil or Juvenile Procedure and the statutes concerning substituted service; however, in termination proceedings, proof must be presented as to legal grounds and best interest pursuant to § 36-1-113.

(o) The response or answer to a petition for termination of parental rights

shall be signed by the respondent personally, sworn to and verified, and filed with the clerk of the court.

**36-1-124. Contested terminations of parental rights and adoptions — Appeals — Expedited schedule.**

(a) In all cases where the termination of parental rights or adoption of a child is contested by any person or agency, the trial court shall, consistent with due process, expedite the contested termination or adoption proceeding by entering such scheduling orders as are necessary to ensure that the case is not delayed, and such case shall be given priority in setting a final hearing of the proceeding and shall be heard at the earliest possible date over all other civil litigation other than child protective services cases arising under title 37, chapter 1, parts 1, 4 and 6.

(b) In all cases that are appealed from the decision of a trial court, the appellate court shall, consistent with its rules, expedite the contested termination of parental rights or adoption case by entering such scheduling orders as are necessary to ensure that the case is not delayed, and such case shall be given priority over all other civil litigation in reaching a determination on the status of the adoption, other than child protective services cases arising under title 37, chapter 1, parts 1, 4 and 6.

(c) It is the intent of the general assembly that the permanency of the placement of a child who is the subject of a termination of parental rights proceeding or an adoption proceeding not be delayed any longer than is absolutely necessary consistent with the rights of all parties, but that the rights of the child to permanency at the earliest possible date be given priority over all other civil litigation other than child protective services cases arising under title 37, chapter 1, parts 1, 4 and 6.

(d) [Deleted by 2018 amendment.]

**36-3-105. Minimum age of applicant for license.**

(a) It is unlawful for any county clerk or deputy clerk in this state to issue a marriage license to any person where:

(1) Either of the contracting parties is under seventeen (17) years of age; or

(2) One (1) of the contracting parties is at least seventeen (17) years of age but less than eighteen (18) years of age and the other contracting party is at least four (4) years older than the minor contracting party.

(b) Any marriage contracted in violation of subsection (a) may be annulled upon proper proceedings therefor by such person or any interested person acting in the person's behalf.

**36-3-106. Consent of parent, guardian, next of kin, agency or custodian.**

(a) When either applicant is under eighteen (18) years of age, the parents, guardian, next of kin or party having custody of the applicant shall join in the application, under oath, stating that the applicant is sixteen (16) years of age or over and that the applicant has such person's consent to marry.

(b) If the applicant is in the legal custody of any public or private agency or is in the legal custody of any person other than a parent, next of kin or

guardian, then such person or the duly authorized representative of such agency shall join in the application with the parent, guardian or next of kin stating, under oath, that the applicant is sixteen (16) years of age but less than eighteen (18) years of age and that the applicant has such person's consent to marry. This subsection (b) does not apply to applicants who are in the legal custody of the department of mental health and substance abuse services or the department of intellectual and developmental disabilities.

(c) The parents, guardian, next of kin, other person having custody of the applicant, or duly authorized representative of a public or private agency having legal custody of the applicant shall join in the application either by personal appearance before the county clerk or deputy county clerk, or by submitting a sworn and notarized affidavit.

(d) The consent of the applicant's parents, guardian, next of kin, other person having custody of the applicant, or duly authorized representative of a public or private agency having legal custody of the applicant is not required if the applicant is emancipated at the time of the application.

(e) Marriage shall remove the disabilities of minority. A minor emancipated by marriage shall be considered to have all the rights and responsibilities of an adult, except for specific constitutional or statutory age requirements, including voting, the use of alcoholic beverages, and other health and safety regulations relevant to the minor because of the minor's age.

(f) A minor shall be advised of the rights and responsibilities of parties to a marriage and of emancipated minors. The minor shall be provided with a fact sheet on these rights and responsibilities to be developed by the administrative office of the courts. The fact sheet shall include referral information for legal aid agencies in this state and national hotlines for domestic violence and sexual assault.

**36-3-107. [Repealed.]**

**36-3-108. Forced marriage prohibited — Civil action.**

(a) Marriage, at any age, that is entered into without valid, freely-given consent from both parties is contrary to the public policy of this state and shall be void and unenforceable in this state.

(b) A person who is forced, whether by violence, threats, or coercion, to marry another shall have a cause of action against any party who forced the person to marry. A claim under this section shall not be based on parental or familial guidance motivated by the person's best interest, which is expressed in a reasonable manner.

(c) Damages for a claim under this section shall include:

(1) Liquidated damages of two hundred fifty thousand dollars ($250,000);

(2) Reasonable attorneys' fees; and

(3) Court costs.

(d) Upon a finding of forced marriage, the court shall order the marriage in question void.

(e) Notwithstanding § 28-3-104, an action under this section must be commenced within ten (10) years after the cause of action accrues by solemnization of marriage.

**36-3-111. County clerk violating law — Penalty.**

Any county clerk or deputy clerk who issues a marriage license without

compliance with the last sentence in § 36-3-103(c)(1), §§ 36-3-104 — 36-3-106, § 36-3-109, § 36-3-110, or § 36-3-113, and not in good faith, commits a Class C misdemeanor.

**36-3-306. Marriage consummated by ceremony not invalidated by failure to comply with law — Restriction.**

Failure to comply with the requirements of §§ 36-3-104 — 36-3-106, 36-3-109 — 36-3-111 shall not affect the validity of any marriage consummated by ceremony. No marriage shall be valid, whether consummated by ceremony or otherwise, if the marriage is prohibited in this state.

**36-3-602. Petition — Venue.**

(a) Any domestic abuse victim, stalking victim or sexual assault victim who has been subjected to, threatened with, or placed in fear of, domestic abuse, stalking, or sexual assault, may seek relief under this part by filing a sworn petition alleging domestic abuse, stalking, or sexual assault by the respondent.

(b) Any petition filed by an unemancipated person under eighteen (18) years of age shall be signed by one (1) of that person's parents or by that person's guardian. The petition may also be signed by a caseworker at a not-for-profit organization that receives funds pursuant to title 71, chapter 6, part 2 for family violence and child abuse prevention and shelters; provided, however, that a petition signed by a caseworker may not be filed against the unemancipated minor's parent or legal guardian. In such case, unless the court finds that the action would create a threat of serious harm to the minor, a copy of the petition, notice of hearing and any ex parte order of protection shall also be served on the parents of the minor child, or if the parents are not living together and jointly caring for the child, upon the primary residential parent. In cases before the juvenile court where the department of children's services is a party or where a guardian ad litem has been appointed for the child by the juvenile court, the petition may be filed on behalf of the unemancipated person by the department or the guardian ad litem.

(c) [Deleted by 2018 amendment.]

(d) Venue for a petition for an order of protection, and all other matters relating to orders of protection, shall be in the county where the respondent resides or the county in which the domestic abuse, stalking or sexual assault occurred. If the respondent is not a resident of Tennessee, the petition may be filed in the county where the petitioner resides.

**36-3-606. Scope of protection order.**

(a) A protection order granted under this part to protect the petitioner from domestic abuse, stalking or sexual assault may include, but is not limited to:

(1) Directing the respondent to refrain from committing domestic abuse, stalking or sexual assault or threatening to commit domestic abuse, stalking or sexual assault against the petitioner or the petitioner's minor children;

(2) Prohibiting the respondent from coming about the petitioner for any purpose, from telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

(3) Prohibiting the respondent from stalking the petitioner, as defined in § 39-17-315;

(4) Granting to the petitioner possession of the residence or household to the exclusion of the respondent by evicting the respondent, by restoring possession to the petitioner, or by both;

(5) Directing the respondent to provide suitable alternate housing for the petitioner when the respondent is the sole owner or lessee of the residence or household;

(6) Awarding temporary custody of, or establishing temporary visitation rights with regard to, any minor children born to or adopted by the parties;

(7) Awarding financial support to the petitioner and such persons as the respondent has a duty to support. Except in cases of paternity, the court shall not have the authority to order financial support unless the petitioner and respondent are legally married. Such order may be enforced pursuant to chapter 5 of this title;

(8) Directing the respondent to attend available counseling programs that address violence and control issues or substance abuse problems. A violation of a protection order or part of such order that directs counseling pursuant to this subdivision (a)(8) may be punished as criminal or civil contempt. Section 36-3-610(a) applies with respect to a nonlawyer general sessions judge who holds a person in criminal contempt for violating this subdivision (a)(8);

(9) Directing the care, custody, or control of any animal owned, possessed, leased, kept, or held by either party or a minor residing in the household. In no instance shall the animal be placed in the care, custody, or control of the respondent, but shall instead be placed in the care, custody or control of the petitioner or in an appropriate animal foster situation;

(10) Directing the respondent to immediately and temporarily vacate a residence shared with the petitioner, pending a hearing on the matter, notwithstanding any provision of this part to the contrary;

(11) Directing the respondent to pay the petitioner all costs, expenses and fees pertaining to the petitioner's breach of a lease or rental agreement for residential property if the petitioner is a party to the lease or rental agreement and if the court finds that continuing to reside in the rented or leased premises may jeopardize the life, health and safety of the petitioner or the petitioner's children. Nothing in this subdivision (a)(11) shall be construed as altering the terms of, liability for, or parties to such lease or rental agreement; or

(12) Ordering a wireless service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers to a petitioner pursuant to § 36-3-621.

(b) Relief granted pursuant to subdivisions (a)(4)-(8) shall be ordered only after the petitioner and respondent have been given an opportunity to be heard by the court.

(c) Any order of protection issued under this part shall include the statement of the maximum penalty that may be imposed pursuant to § 36-3-610 for violating such order.

(d) No order of protection made under this part shall in any manner affect title to any real property.

(e) An order of protection issued pursuant to this part shall be valid and enforceable in any county of this state.

(f) An order of protection issued pursuant to this part that fully complies with 18 U.S.C. § 922(g)(8) shall contain the disclosures set out in § 36-3-625(a).

**36-3-621. Wireless telephone service for victims of domestic violence.**

(a) A petitioner may, at the time of filing a petition for an order of protection, request that the court issue an order directing a wireless telephone service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers to the petitioner if the petitioner:

(1) Is not the account holder; and

(2) Proves by a preponderance of the evidence that the petitioner and any minor children in the petitioner's care are the primary users of the wireless telephone numbers that will be ordered transferred by a court under this subsection (a).

(b)(1) An order transferring the billing responsibility for and rights to the wireless telephone number or numbers to a petitioner under subsection (a) must be a separate order that is directed to the wireless telephone service provider.

(2) The order must list:

(A) The name and billing telephone number of the account holder;

(B) The name and contact information of the petitioner to whom the telephone number or numbers will be transferred; and

(C) Each telephone number to be transferred to the petitioner.

(3) The court shall ensure that the petitioner's contact information is not provided to the account holder in proceedings held under this section.

(4) The order must be served on the wireless telephone service provider's agent for service of process.

(5) The wireless service provider shall notify the requesting party if the wireless telephone service provider cannot operationally or technically effectuate the order due to certain circumstances, including when:

(A) The account holder has already terminated the account;

(B) Differences in network technology prevent the functionality of a device on the network; or

(C) There are geographic or other limitations on network or service availability.

(c)(1) Upon a wireless telephone service provider's transfer of billing responsibility for and rights to a wireless telephone number or numbers to a petitioner under subsection (b), the petitioner shall assume:

(A) Financial responsibility for the transferred wireless telephone number or numbers;

(B) Monthly service costs; and

(C) Costs for any mobile device associated with the wireless telephone number or numbers.

(2) A transfer ordered under subsection (b) does not preclude a wireless telephone service provider from applying any routine and customary requirements for account establishment to the petitioner as part of the transfer of billing responsibility for a wireless telephone number or numbers and any devices attached to that number or numbers, including, but not limited to, identification, financial information, and customer preferences.

(d) This section does not affect the ability of the court to apportion the assets and debts of the parties as provided for in law, or the ability to determine the temporary use, possession, and control of personal property under this chapter.

(e) Notwithstanding any other law to the contrary, no cause of action shall lie in any court nor shall any civil, criminal, or administrative proceeding be commenced by a governmental entity against any wireless telephone service

provider, or its directors, officers, employees, agents, or vendors, for:

(1) Action taken in compliance with an order issued under this section;

(2) A failure to process an order issued under this section, unless the failure is the result of gross negligence, which must be shown by clear and convincing evidence; or

(3) Providing in good faith call location information or other information, facilities, or assistance in accordance with subsection (a) or any rules promulgated under this section.

(f) If an order of protection is issued, but a separate order under § 36-3-606(a)(12) did not issue at the time of the order, or if the order of protection was issued prior to the availability of the relief under § 36-3-606(a)(12), a petitioner may, at any time, petition the court issuing the order of protection to modify the order and require a wireless service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers to the petitioner pursuant to this section.

**36-3-623. Confidentiality of records of shelters, centers, providers.**

(a) The records of domestic violence shelters, rape crisis centers, and human trafficking service providers shall be treated as confidential by the records custodian of such shelters, centers, or providers unless:

(1) The individual to whom the records pertain authorizes their release; or

(2) A court approves a subpoena for the records, subject to such restrictions as the court may impose, including in camera review.

(b) As used in this section, "human trafficking service providers" means agencies or groups that are incorporated as a not-for-profit organization for at least six (6) months, are tax-exempt under § 501 of the Internal Revenue Code (26 U.S.C. § 501), and that have provided services to victims of human trafficking.

**36-5-101. Child support order — Jurisdiction — Amount of support — Enforcement — Modification — Insurance — Scientific parentage tests.**

(a)(1) Upon dissolution of a marriage, whether dissolved absolutely or by a perpetual or temporary decree of separation, the court may make an order and decree for the suitable support and maintenance of the children by either spouse or out of such spouse's property, according to the nature of the case and the circumstances of the parties, the order or decree to remain in the court's control.

(2) Courts having jurisdiction of the subject matter and of the parties are hereby expressly authorized to provide for the future support of the children, in proper cases, by fixing some definite amount or amounts to be paid in monthly, semimonthly, or weekly installments, or otherwise, as circumstances may warrant, and such awards, if not paid, may be enforced by any appropriate process of the court having jurisdiction, including levy of execution.

(3) In interstate cases, jurisdiction to modify, alter or enforce orders or decrees for the support of children shall be determined in accordance with parts 20-29 of this chapter. In intrastate cases, jurisdiction to modify, alter or enforce orders or decrees for the support of children shall be determined in

accordance with parts 30 and 31 of this chapter.

(4) As used in this chapter, "order," where the context requires, includes an order concerning child or medical support issued pursuant to an administrative proceeding in any other state.

(5) In establishing or enforcing any duty of support under this chapter, the court shall give full faith and credit to all paternity determinations of any other state or territory, made pursuant to a voluntary acknowledgment or pursuant to any administrative or judicial process.

(6) A voluntary acknowledgment of paternity that is completed under § 68-3-203(g), § 68-3-302, or § 68-3-305(b), or under similar provisions of another state or government, when certified by the state registrar or other governmental or institutional entity maintaining the record of the acknowledgment, shall be a basis for establishing a support order without requiring any further proceedings to establish paternity.

(7) The state of Tennessee, its officers, employees, agents or contractors, any counties, county officials, the clerks of any court, or any Title IV-D child support enforcement agency shall not be liable, in any case, to compensate any person for repayment of child support paid or for any other costs, as a result of the rescission pursuant to § 24-7-113 of any voluntary acknowledgment, or the rescission of any orders of legitimation, paternity, or support.

(8) When a court having jurisdiction determines child support pursuant to the Tennessee child support guidelines, based on either the actual income or the court's findings of an obligor's ability to earn income, the final child support order shall create an inference in any subsequent proceeding that the obligor has the ability to pay the ordered amount until such time as the obligor files an application with the court to modify the ordered amount.

(9) Where the lump sum amount of retirement or pension benefits or of balances in an individual retirement account, §§ 401(k), 403(b), 457 (26 U.S.C. §§ 401(k), 403(b) and 457), respectively, or any other tax qualified account has been considered by the trial court, and determined to be marital property to be divided, the distributions of such lump sum amounts necessary to complete the division of property, whether distributed in a single payment or by periodic payments, shall not be considered income for the purpose of determining a spouse or ex-spouse's right to receive alimony or child support, but the income generated by the investment of such lump sum awards shall be considered income for such purpose.

(b)(1) Notwithstanding any other law to the contrary, neither the department of human services, nor any Title IV-D child support contractor of the department, nor any recipient of public assistance in this or any other state or territory, nor any applicant for either public assistance in this or any other state or territory or for Title IV-D child support services from the department or any other Title IV-D agency in this or any other state or territory, shall be required to demonstrate to a court or administrative tribunal that the caretaker of the child for whom child support is sought is vested with any more than physical custody of the subject child or children, in order to have standing to petition for child support from the legal parent of the child or children for whom support is sought, or to seek enforcement or modification of any existing orders involving such child or children.

(2) Legal custody of a child to whom a child support obligation is owed shall not be a prerequisite to the initiation of any support action or to the

enforcement or modification of any support obligation in such cases, whether or not the obligation has been assigned to this state or any other state or territory by operation of law.

(c)(1) The court shall set a specific amount that is due each month, to be paid in one (1) or more payments as the court directs. In making any decree or order pursuant to this section, the court shall consider § 34-1-102(b). Unless the court finds otherwise, each order made under this section shall contain the current address of the parties.

(2)(A) The order or decree of the court may provide that the payments for the support of such child or children shall be paid either to the clerk of the court or directly to the spouse, or other person awarded the custody of the child or children; provided, however, that:

(i) The court shall order that all child support payments based upon an income assignment issued by the clerk be paid to the clerk of the court, except as set forth in subdivision (c)(2)(A)(ii), for child support cases that are subject to the provisions for central collection and disbursement pursuant to § 36-5-116; and

(ii) In all Title IV-D child support cases in which payment of child support is to be made by income assignment, or otherwise, and in all cases where payments made by income assignment based upon support orders entered on or after January 1, 1994, that are not Title IV-D support cases, but must be made to the central collection and disbursement unit as provided by § 36-5-116, and, except as may otherwise be allowed by § 36-5-501(a)(2)(B), the court shall only order that the support payments be made to the central collection and disbursement unit pursuant to § 36-5-116. No agreement by the parties in a parenting plan, either temporary or permanent, entered pursuant to chapter 6, part 4 of this title, or any other agreement of the parties or order of the court, except as may otherwise be allowed by § 36-5-501(a)(2)(B), shall alter the requirements for payment to the central collection and disbursement unit as required by § 36-5-116, and any provision of any parenting plan, agreement or court order providing for any other payment procedure contrary to the requirements of § 36-5-116, except as may otherwise be allowed by § 36-5-501(a)(2)(B), whether or not approved by the court, shall be void and of no effect. No credit shall be given by the court, the court clerk or the department of human services, for child support payments required by the support order that are made in contravention of such requirements; provided, however, that the department may make any necessary adjustments to the balances owed to account for changes in the Title IV-D or central collection and disbursement status of the support case.

(B)(i)*(a)* When the court enters an order in which the paternity of a child is determined or support is ordered, enforced or modified for a child, each individual who is a party to any action pursuant to this part shall be immediately required to file with the court and, if the case is a Title IV-D child support case, shall immediately file with the local Title IV-D child support office, for entry into the state registry of support cases, and shall update, as appropriate, the parties' and, for subdivisions (c)(2)(B)(i)(*a*)(*1*)-(*3*), the child's or children's:

*(1)* Full name and any change in name;

*(2)* Date and place of birth. This information shall be filed with the court as a separate document containing the parties' and the

child's or children's names, dates of birth and social security numbers. The document shall be placed in an eight and one-half inch by eleven inch (8½″ x 11″) envelope containing the style of the case and docket number of the case and the document and envelope shall be file stamped by the clerk, and filed under seal in the case file. The document shall also be provided by the parties to the Title IV-D child support office together with the other information required in subdivisions (c)(2)(B)(i)(*a*)(*1*)-(*8*). The social security numbers and other information filed with the clerk shall be available to the clerk of court for processing of documents and legal actions such as, but not limited to, divorce certificates, garnishments, and income assignments. On request, the sealed information shall be made available to the department of human services and any other agency required by law to have access to the information and to other persons or agencies as ordered by the court.

*(3)* Residential and mailing addresses;

*(4)* Home telephone numbers;

*(5)* Driver license number;

*(6)* The name, address, and telephone number of the person's employer;

*(7)* The availability and cost of health insurance for the child; and

*(8)* Gross annual income.

*(b)* The requirements of subdivision (c)(2)(B)(i)(*a*) may be included in the court's order.

(ii) Each individual who is a party must update changes in circumstances of the individual for the information required by subdivision (c)(2)(B)(i)(*a*) within ten (10) days of the date of such change. At the time of the entry of the first order pertaining to child support after July 1, 1997, clear written notice shall be given to each party of the requirements of this subsection (c), procedures for complying with this subsection (c), and a description of the effect or failure to comply. Such requirement may be noted in the order of the court.

(iii) In any subsequent child support enforcement action, the delivery of written notice as required by Rule 5 of the Tennessee Rules of Civil Procedure, to the most recent residential or employer address shown in the court's records or the Title IV-D agency's records, as required in subdivision (c)(2)(B)(i)(*a*) shall be deemed to satisfy the due process requirements for notice and service of process with respect to that party, if there is a sufficient showing and the court is satisfied that a diligent effort has been made to ascertain the location and whereabouts of the party.

(iv) Upon motion of either party, upon a showing of domestic violence or the threat of such violence, the court may enter an order to withhold from public access the address, telephone number, and location of the alleged victim or victims or threatened victims of such circumstances. The clerk of the court shall withhold such information based upon the court's specific order, but may not be held liable for release of such information.

(v) In any subsequent proceeding to modify or enforce support, there shall be a rebuttable presumption that the information provided by the parties, as required by this part, has not changed, unless a party has

complied with this section by updating the information with the court and, if the case is a Title IV-D child support case, with the local Title IV-D child support office.

(d)(1) All support payments that have been paid to the clerk of the court shall be distributed by the clerk, as provided in the order of the court, within ten (10) days; provided, that the payments made to the clerk of the court in Title IV-D child support cases shall be distributed and deposited pursuant to the operating agreements under subdivisions (d)(3) and (6), after implementation of the statewide Title IV-D child support computer system in the clerk's county, and after the appropriate notice to the clerk by the department under subdivisions (d)(3) and (6).

(2) In every child support case being processed through the state's central collection and disbursement unit, if unable to provide the information concerning an order through a computer information transfer, the clerk shall send a copy of any new order or modification of such order, prior to or along with the first payment received pursuant to such order, to the department, or its designee, within ten (10) working days.

(3) Clerks participating in the operation of the statewide Title IV-D child support computer system shall be bound by the terms of the agreement and the laws, regulations, and policies and procedures of the Title IV-D child support program for the term of the agreement, unless the agreement is canceled by the department after notice to the clerk and an opportunity to correct any deficiencies caused by failure of the clerk to comply with federal or state regulations or procedures for operation of the system within thirty (30) days of such notice. While participating in the system, the clerks shall be entitled to receive the statutory fee for the collection and handling of child support obligations under the Title IV-D program. Any child support payment subject to distribution through the state's central collection and disbursement unit that has been received by a clerk shall be sent immediately by the clerk to the department or its designee, without the necessity of a court order.

(4) The clerks of all courts involved in the collection of any child support shall cooperate with and provide any reasonable and necessary assistance to the department or its contractors in the transfer of data concerning child support to the statewide Title IV-D child support computer system.

(5) Whenever the clerk has ceased handling Title IV-D child support payments under subdivision (d)(3), and only where the context requires, all provisions in this chapter relating to the duties or actions involving the clerk shall be interpreted to substitute the department or its contractor.

(6) In all cases in which child support payments are subject to processing through the state's central collection and disbursement unit, the clerks shall, upon notice by the department, deposit all receipts of such child support payments on a daily basis to a bank account from which the state shall electronically debit those payments for the purpose of obtaining funds to distribute the child support obligations to the obligee.

(7) In all Title IV-D child support cases, child support payments shall be made by the obligor to the department. No credit shall be given to an obligor for any payments made by the obligor or by another person on behalf of the obligor, directly to an obligee or the obligor's child or children, unless the obligee remits the payment to the department. In the event that a Title IV-D case is instituted subsequent to the establishment of an order of child

support, the department shall notify the obligor and obligee and the appropriate clerk of this fact, and all payments of child support in Title IV-D cases shall be made by the obligor to the department, without further order of the court.

(8) When an order provides for the support of two (2) or more children in a case that is subject to enforcement under Title IV-D, and at least one (1) child is a public charge, based upon receipt of temporary assistance pursuant to title 71, chapter 3, part 1, TennCare-medicaid, or foster care or other custodial services from the state, the child support order shall be prorated by the department for purposes of distribution of the child support to the appropriate person or agency providing care or support for the child, without the need for modification of the child support order by the court.

(e)(1)(A) In making the court's determination concerning the amount of support of any minor child or children of the parties, the court shall apply, as a rebuttable presumption, the child support guidelines, as provided in this subsection (e). If the court finds that evidence is sufficient to rebut this presumption, the court shall make a written finding that the application of the child support guidelines would be unjust or inappropriate in that particular case, in order to provide for the best interest of the child or children, or the equity between the parties. Findings that the application of the guidelines would be unjust or inappropriate shall state the amount of support that would have been ordered under the child support guidelines and a justification for the variance from the guidelines.

(B) Notwithstanding this section or any other law or rule to the contrary, if the net income of the obligor exceeds ten thousand dollars ($10,000) per month, then the custodial parent must prove, by a preponderance of the evidence, that child support in excess of the amount provided for in the child support guidelines is reasonably necessary to provide for the needs of the minor child or children of the parties. In making the court's determination, the court shall consider all available income of the obligor, as required by this chapter, and shall make a written finding that child support in excess of the amount so calculated is or is not reasonably necessary to provide for the needs of the minor child or children of the parties. In determining each party's income for the purpose of applying the child support guidelines, the court shall deduct each party's capital losses from that party's capital gains in each year.

(C) When making retroactive support awards, pursuant to the child support guidelines established pursuant to this subsection (e), in cases where the parents of the minor child are separated or divorced, but where the court has not entered an order of child support, the court shall consider the following factors as a basis for deviation from the presumption in the child support guidelines that child and medical support for the benefit of the child shall be awarded retroactively to the date of the parents' separation or divorce:

(i) Whether the remaining spouse knew or could have known of the location of the child or children who had been removed from the marital home by the abandoning spouse; or

(ii) Whether the abandoning spouse, or other caretaker of the child, intentionally, and without good cause, failed or refused to notify the remaining spouse of the location of the child following removal of the child from the marital home by the abandoning spouse; and

(iii) The attempts, if any, by the abandoning spouse, or other caretaker of the child, to notify the remaining spouse of the location of the child following removal of the child from the marital home by the abandoning spouse.

(D) In cases in which the presumption of the application of the guidelines is rebutted by clear and convincing evidence, the court shall deviate from the child support guidelines to reduce, in whole or in part, any retroactive support. The court must make a written finding that application of the guidelines would be unjust or inappropriate, in order to provide for the best interests of the child or children or the equity between the parties.

(E) Deviations shall not be granted in circumstances where, based upon clear and convincing evidence:

(i) The remaining spouse has a demonstrated history of violence or domestic violence toward the abandoning spouse, the child's caretaker or the child;

(ii) The child is the product of rape or incest of the mother by the father of the child;

(iii) The abandoning spouse has a reasonable apprehension of harm from the remaining spouse, or those acting on the remaining spouse's behalf, toward the abandoning spouse or the child; or

(iv) The remaining spouse, or those acting on the remaining spouse's behalf, has abused or neglected the child.

(F) In making any deviations from awarding child and medical support retroactively to the date of separation or divorce of the parties, the court shall make written findings of fact and conclusions of law to support the basis for the deviation, and shall include in the order the total amount of retroactive child and medical support that would have been paid retroactively to the date of separation or divorce of the parties, had a deviation not been made by the court.

(G) Nothing in this subdivision (e)(1) shall limit the right of the state of Tennessee to recover from the father or the remaining spouse expenditures made by the state for the benefit of the child, or the right, or obligation, of the Title IV-D child support agency to pursue retroactive support for the custodial parent or caretaker of the child, where appropriate.

(H) Any amounts of retroactive support ordered that have been assigned to the state of Tennessee, pursuant to § 71-3-124, shall be subject to the child support distribution requirements of 42 U.S.C. § 657. In such cases, the court order shall contain any language necessary to allow the state to recover the assigned support amounts.

(I)(i) In any action for retroactive child support filed on or after July 1, 2017, retroactive child support shall not be awarded for a period of more than five (5) years from the date the action for support is filed unless the court determines, for good cause shown, that a different award of retroactive child support is in the interest of justice. The burden to show that a longer time period of retroactive support is in the interest of justice is on the custodial parent. Good cause includes, but is not limited to, the following:

*(a)* The noncustodial parent deliberately avoided service or knowingly impeded or delayed the imposition of a support obligation;

*(b)* The noncustodial parent used threats, intimidation, or force to prevent or delay the imposition of a support obligation; or

*(c)* The custodial parent reasonably feared that the establishment of parentage would result in domestic abuse, as defined in § 36-3-601.

(ii) The court may award retroactive child support for less than the five-year-period required by subdivision (e)(1)(I)(i) if the court determines, for good cause shown, that a different award of retroactive child support is in the interest of justice. The burden to show that a shorter time period of retroactive support is in the interest of justice is on the noncustodial parent.

(iii) Upon a finding of good cause in accordance with this subdivision (e)(1)(I), the court may order retroactive support from the date the court determines to be equitable and just.

(iv) The presumption that child support for the benefit of the child be awarded retroactively to the date of the child's birth contained in the child support guidelines shall not apply to any action in which this subdivision (e)(1)(I) is applicable.

(v) Nothing in this subdivision (e)(1)(I) limits any claim for retroactive child support owed to the department of human services.

(2) Beginning October 13, 1989, the child support guidelines promulgated by the department, pursuant to the rulemaking provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall be the guidelines that courts shall apply as a rebuttable presumption in child support cases.

(3) Child support guidelines shall be reviewed by the department of human services every three (3) years from the date of promulgation. The department shall make recommendations to the supreme court of any revisions needed in order to maintain compliance with the Family Support Act of 1988, and to ensure that application of the guidelines results in determinations of appropriate child support awards. A copy of the recommendations shall also be sent to the civil justice committee of the house of representatives and the health and welfare committee of the senate.

(4)(A) In addition to any other subtractions, calculations of net income under the guidelines shall take into consideration the support of any other children the obligor is legally responsible to provide. The court shall consider children of the obligor who are not included in a decree of child support, but for whom the obligor is legally responsible to provide support and is supporting, for the purposes of reducing the obligor's net income, in calculating the guideline amount, or as a reason for deviation from the guidelines.

(B) In calculating amounts of support for children under the guidelines, the court shall allocate an obligor's financial child support responsibility from the obligor's income among all children of the obligor for whom the obligor is legally responsible to provide support and is supporting, in a manner that gives equitable consideration as defined by the department's child support guidelines, to the children for whom support is being set in the case before the court and to any other children for whom the obligor is legally responsible and is supporting. The court shall require that payments, made out of that allocation for all children of the obligor for whom the obligor is legally responsible and is supporting, be made upon such consideration. Guidelines promulgated by the department shall be consis-

tent with this subdivision (e)(4)(B).

(f)(1)(A) Any order for child support shall be a judgment entitled to be enforced as any other judgment of a court of this state, and shall be entitled to full faith and credit in this state and in any other state. Except as provided in subdivision (f)(6), such judgment shall not be subject to modification as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties. If the full amount of child support is not paid by the date when the ordered support is due, the unpaid amount that is in arrears, shall become a judgment for the unpaid amounts, and shall accrue interest pursuant to subdivision (f)(1)(B). All interest that accumulates on arrearages shall be considered child support. Computation of interest shall not be the responsibility of the clerk.

(B)(i) Interest on unpaid child support that is in arrears shall accrue from the date of the arrearage at the rate of twelve percent (12%) per year; provided, that interest shall no longer accrue on or after April 17, 2017, unless the court makes a written finding that interest shall continue to accrue. In making such finding, the court shall set the rate at which interest shall accrue after consideration of any factors the court deems relevant; provided, that the interest rate shall be no more than four percent (4%) per year.

(ii) On or after July 1, 2018, interest on arrearages in non-Title IV-D cases shall accrue at the rate of six percent (6%) per year; provided, however, that the court, in its discretion, may reduce the rate of interest to a lower interest rate, including no interest, as deemed appropriate under the circumstances. In making its determination, the court may consider any factors the court deems relevant.

(iii) On or after July 1, 2018, interest shall not accrue on arrearages in Title IV-D cases unless the court makes a written finding that interest shall continue to accrue. In making such finding, the court shall set the rate at which interest shall accrue after consideration of any factors the court deems relevant; provided, that the interest rate shall be no more than six percent (6%) per year.

(2) In addition to the remedies provided in part 5 of this chapter, but not as an alternative to those provisions, if a parent is more than thirty (30) days in arrears, the clerk of the court may, upon written application of the obligee parent, a guardian or custodian of the children, or the department of human services or its contractors in Title IV-D support cases, issue a summons or, in the discretion of the court, an attachment for such parent, setting a bond of not less than two hundred fifty dollars ($250) or, in the discretion of the court, up to the amount of the arrears, for such other proceedings as may be held in the matter. In addition, the court may, at any time, require an obligor parent to give security by bond, with sufficient sureties approved by the court, or, alternatively, in the absence of the judge from the court, approved by the clerk of the court, for payment of past, present, and future support due under the order of support. If the obligor parent thereafter fails to appear or fails without good cause to comply with the order of support, such bonds may be forfeited and the proceeds from the bonds paid to the court clerk and applied to the order of support.

(3) Absent a court order to the contrary, if an arrearage for child support or fees due as court costs exists at the time an order for child support would

otherwise terminate, the order of support, or any then existing income withholding arrangement, and all amounts ordered for payment of current support or arrears, including any arrears due for court costs, shall continue in effect in an amount equal to the then existing support order or income withholding arrangement, until the arrearage and costs due are satisfied, and the court may enforce all orders for such arrearages by contempt.

(4) The order of any court or administrative tribunal directing that an obligor pay a sum certain to reduce any support arrearage shall not preclude the use, by the department of human services or its contractors in the Title IV-D child support program, of any other administrative means of collecting the remaining balance of the outstanding arrearage, including, but not limited to, income tax refund intercepts, financial institution collections, enforcement of liens, or any other method authorized by law. The use of any additional administrative means of collection by the department or its contractors in the Title IV-D child support program is expressly authorized to reduce any portion, or all, of the outstanding balance of support as shown by the department's records, and any order of the court or administrative tribunal to the contrary is without any effect whatsoever, except for such appeal as may lie from the implementation of the administrative procedure that is used to reduce the arrearage.

(5)(A) In enforcing any provision of child support, if an obligee, or the department or its contractor in Title IV-D cases, specifically prays for revocation of a license because an obligor is alleged to be in noncompliance with an order of support, or if the court determines on its own motion, or on motion of a party, that any individual party has failed to comply with a subpoena or a warrant in connection with the establishment or enforcement of an order of support, the court may find, specifically, in its order that the obligor is not in compliance with an order of support as defined by part 7 of this chapter, or it may find that an individual party has failed to comply with a subpoena or warrant in connection with the establishment or enforcement of an order of support, and may direct that any or all of the obligor's or individual party's licenses be subject to revocation, denial or suspension by the appropriate licensing authority, pursuant to part 7 of this chapter. The court shall direct the clerk to send a copy of that order to the department of human services to be sent by the department to each licensing authority specified in the order for processing and suspension, denial or revocation pursuant to § 36-5-706 and any other applicable provisions of part 7 of this chapter. Costs related to such order shall be taxed to the obligor or individual party.

(B) If the obligor whose license has been subject to subdivision (f)(5)(A) complies with the order of support, or if the individual party complies with the subpoena or warrant, the court shall enter an order making such a finding, and the clerk shall send an order immediately to the department of human services to be transmitted to each licensing authority specified in the order, which shall then immediately issue, renew or reinstate the obligor's or individual party's license, in accordance with § 36-5-707. Costs related to such order shall be taxed to the obligor or individual party, as the case may be, and shall be paid by the obligor or the individual party prior to sending the order to the department for transmission to the licensing authority.

(C) The department shall provide available information to the obligee, party or the court in actions under this subdivision (f)(5), concerning the

name and address of the licensing authority or authorities of the obligor or individual party, in order to enable the enforcement of this subdivision (f)(5). The obligee or individual party, as the case may be, seeking such information shall pay a fee, as established by the department for the provision of such service. These fees may be taxed as costs to the obligor whose license has been revoked pursuant to this subdivision (f)(5), or to the individual party who has failed to comply with the warrant or subpoena.

(D) If the licensing authority fails to take appropriate action pursuant to the orders of the court under this subdivision (f)(5), the party may seek a further order from the court to direct the licensing authority to take such action, and the party may seek any appropriate court sanctions against the licensing authority.

(E) For purposes of this subdivision (f)(5), "individual party" means a party to the support action who is a person, but does not include a governmental agency, or the contractor or agent of such governmental agency, that is enforcing an order of support. "Party" may include, where the context requires, an individual person, or it may include a governmental agency or contractor or agent of such governmental agency.

(6)(A) With the approval of the court, the obligor and obligee shall have the right to compromise and settle a child support arrearage balance owed directly to the obligee. The authority is given to forgive accrued principal and interest on delinquent child support with the approval of the obligee and shall not include any monies owed to this or any other state. In all Title IV-D cases, the department of human services or its contractors must be a party to the action. Both the obligee and obligor must consent to the compromise and settlement in writing in accordance with the procedures established by the child support agency or court.

(B) Prior to giving consent, the obligee shall be provided with a written explanation of the compromise and settlement and of the obligee's rights with respect to child support arrears owed to the obligee. In no event may an offer of compromise and settlement of any child support arrears owed directly to the obligee be accepted unless the obligee consents to the offer of compromise and settlement in writing.

(C) To be eligible for a compromise and settlement of the child support arrearage balance, the obligor must pay the child support obligation in full as ordered for a minimum of twelve (12) consecutive months immediately preceding the compromise and settlement between the obligor and obligee in order to compromise and settle the remaining balance. If additional child support arrears accrue after a compromise and settlement, such subsequent arrears shall be paid in full and not subject to further compromise and settlement.

(D) A compromise and settlement of a lesser amount than the total principal and interest that is owed shall not be considered against public policy if the compromise and settlement is in the best interest of the child or children.

(E) The program shall operate uniformly across this state and shall take into consideration the needs of the child or children subject to the child support order and the obligor's ability to pay.

(g)(1) Upon application of either party, the court shall decree an increase or decrease of support when there is found to be a significant variance, as

defined in the child support guidelines established by subsection (e), between the guidelines and the amount of support currently ordered, unless the variance has resulted from a previously court-ordered deviation from the guidelines and the circumstances that caused the deviation have not changed. Any support order subject to enforcement under Title IV-D may be modified in accordance with § 36-5-103(f).

(2) The necessity to provide for the child's health care needs shall also be a basis for modification of the amount of the order, regardless of whether a modification in the amount of child support is necessary.

(3) The court shall not refuse to consider a modification of a prior order and decree as it relates to future payments of child support because the party is in arrears under that order and decree, unless the arrearage is a result of intentional action by the party.

(4)(A) Notwithstanding subdivision (g)(4)(B) and § 36-5-103(f), for the purposes of this chapter, the birth or adoption of another child for whom an obligor is legally responsible to support and is supporting shall constitute a substantial and material change of circumstances for seeking a review of the existing order to determine if the addition of such child, and any credits applicable for the addition of such child under the department's child support guidelines, would result in a significant variance under such guidelines. If the significant variance is demonstrated by the review, the amount of an existing child support order may be modified by the court.

(B) For purposes of this chapter, the significant variance established by the department of human services pursuant to the child support guidelines shall provide a lower threshold for modification of child support orders for persons whose adjusted gross incomes are within low income categories established by the department's child support guidelines. The significant variance involving low income persons shall be established by rule of the department at no more than seven and one-half percent (7 ½ %) of the difference between the current child support order and the amount of the proposed child support order.

(5)(A) In Title IV-D child support cases that the department of human services is enforcing, the department shall provide a child support obligor notice ninety (90) days prior to the eighteenth birthday of a child or children for whom the obligor is paying child support, as such birthday is indicated by the department's records.

(B) If the following conditions are met, then the obligor may seek termination of the order of support and may also request that the department, as required by federal law, assist in seeking termination of the order:

(i) The department's records demonstrate that the child for whom an order of support in a Title IV-D child support case has been entered has reached eighteen (18) years of age and has graduated from high school, or that the class of which the child is a member when the child reached eighteen (18) years of age has graduated from high school, the obligor has otherwise provided the department with written documentation of such facts, or the obligor has provided the department with written documentation that a child for whom the obligor is required to pay support has died or has married;

(ii) No other special circumstances exist, including, but not limited to, the circumstances provided for in subsection (k) regarding disabled

children, that require the obligation to continue;

(iii) The obligor does not owe arrearages to the obligee parent, any guardian or custodian of the child, the department of human services, any other agency of the state, or any other Title IV-D agency of any state;

(iv) The costs of court have been paid; and

(v) There are no other children for whom the obligor is required to pay child support.

(C)(i) If the conditions of subdivisions (g)(5)(B)(i)-(v) exist in the Title IV-D case, as shown by the department's records, or such conditions exist based upon the written documentation provided by the obligor and verified by the department, then the department shall immediately temporarily suspend the order of support for the child who has reached majority. If the existing court order was the result of a deviation from the child support guidelines, the department shall immediately seek from the court termination of the support order for such child, and shall provide the obligee with notice of the filing of the petition to terminate such order.

(ii) If the existing order was not the result of a deviation from the child support guidelines, the department shall give notice to the obligee, and to the other obligor, of the temporary suspension of the order, based upon verification of the status of the case pursuant to subdivision (g)(5)(B), of its intent to permanently terminate the support order by an administrative order, which the department may issue for such purpose, and of the opportunity for a hearing upon the issue of permanent termination of the order.

(iii) If the obligee contests the temporary suspension of the order of support under the circumstances of subdivisions (g)(5)(B)(i)-(v) and prevails following entry of the court or administrative order, the obligor shall pay the support amounts and any other arrearages or court costs not paid as a result of the temporary suspension of the order. The administrative order shall be filed with the clerk of the court having jurisdiction of the case.

(D)(i) If the conditions of subdivisions (g)(5)(B)(i)-(iv) are met in the Title IV-D case, but there are other children for whom the obligor is still obligated to support, the department shall immediately conduct a review of the support order and shall seek the support order's adjustment, if appropriate under the child support guidelines for such children. The obligor shall continue to make child support payments, in accordance with the existing order, until the court or department modifies the order pursuant to this subdivision (g)(5)(D).

(ii) If the existing court order was the result of a deviation from the child support guidelines, the department shall seek modification of the support order from the court, and shall provide the obligee and the obligor with notice of the filing of the petition to modify such order.

(iii) If the existing order was not the result of a deviation from the child support guidelines, and the department reviews the order and determines that the order should be modified pursuant to such guidelines, then the department shall notify the parties of the department's intent to modify the support order by an administrative order, which the department may issue for such purpose, and shall notify the parties of

the opportunity for a hearing on the issue of modification of the order.

(iv) The support order shall be modified as established by order of the court or the department, as required pursuant to the child support guidelines. If the modified payment amount is lower than the payment amount required prior to the modification, then the obligor shall be given credit for such amount against future payments of support for the remaining children under the order. If the modified payment amount is higher than the payment amount required prior to the modification, then the obligor shall pay the higher ordered amount from the date of entry of the order. The administrative order shall be filed with the clerk of the court having jurisdiction of the case.

(E) The department's review and adjustment process, and the administrative hearing process outlined in this subdivision (g)(5), shall comply with any other due process requirements for notice to the obligor and obligee as may otherwise be required by this chapter.

(h)(1) The court may direct the acquisition or maintenance of health insurance covering each child of the marriage and may order either party to pay all, or each party to pay a pro rata share of, the healthcare costs not paid by insurance proceeds if reasonable and affordable health insurance is available.

(2) In any case in which the court enters an order of support enforced under Title IV-D of the Social Security Act (42 U.S.C. § 651 et seq.), the court shall enter an order providing for health care coverage to be provided for the child or children.

(3) Section 36-5-501(a)(3) shall apply with respect to enrollment of a child in the noncustodial parent's employer-based health care plan.

(i) The court may direct either or both parties to designate the children as beneficiaries under any existing policies insuring the life of either party, and maintenance of existing policies insuring the life of either party, or the purchase and maintenance of life insurance and designation of beneficiaries.

(j) Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties as to child support. In any such agreement, the parties must affirmatively acknowledge that no action by the parties shall be effective to reduce child support after the due date of each payment, and that they understand that court approval must be obtained before child support may be reduced, unless such payments are automatically reduced or terminated under the terms of the agreement.

(k)(1) Except as provided in subdivision (k)(2), the court may continue child support beyond a child's minority for the benefit of a child who is handicapped or disabled, as defined by the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), until such child reaches twenty-one (21) years of age.

(2) Provided, that such age limitation shall not apply if such child is severely disabled and living under the care and supervision of a parent, and the court determines that it is in the child's best interest to remain under such care and supervision and that the obligor is financially able to continue to pay child support. In such cases, the court may require the obligor to continue to pay child support for such period as it deems in the best interest of the child; provided, however, that, if the severely disabled child living with a parent was disabled prior to this child attaining eighteen (18) years of age

and if the child remains severely disabled at the time of entry of a final decree of divorce or legal separation, then the court may order child support regardless of the age of the child at the time of entry of the decree.

(3) In so doing, the court may use the child support guidelines.

(*l*)(1) The court may, in its discretion, at any time pending the suit, upon motion and after notice and hearing, make any order that may be proper to compel a spouse to pay any sums necessary to enable the other spouse to prosecute or defend the suit and to provide for the custody and support of the minor children of the parties during the pendency of the suit, and to make other orders as it deems appropriate. In making any order under this subsection (*l*), the court shall consider the financial needs of each spouse and the children, and the financial ability of each spouse to meet those needs and to prosecute or defend the suit.

(2) In any Title IV-D case, if the court grants relief, whether in whole or in part, to the department of human services or the department's Title IV-D contractor, or to any applicant for Title IV-D child support services, the court shall not tax any court costs against the department, the Title IV-D contractor or any applicant for child support services. The court shall not award attorney fees against the department, the Title IV-D contractor or any applicant for child support services, unless there is a clearly established violation of Rule 11 of the Tennessee Rules of Civil Procedure or for other contemptuous or other sanctionable conduct. This subdivision (*l*)(2) is not intended to limit the discretion of the courts to tax costs to the individual parties on non-Title IV-D issues, such as custody or visitation.

(m) No provision, finding of fact or conclusion of law in a final decree of divorce or annulment or other declaration of invalidity of a marriage that provides that the husband is not the father of a child born to the wife during the marriage or within three hundred (300) days of the entry of the final decree, or that names another person as the father of such child, shall be given preclusive effect, unless scientific tests to determine parentage are first performed and the results of the test that exclude the husband from parentage of the child or children, or that establish paternity in another person, are admitted into evidence. The results of such parentage testing shall only be admitted into evidence in accordance with the procedures established in § 24-7-112.

**36-5-103. Enforcement of decree for alimony and support.**

(a)(1) In addition to the remedies in part 5 of this chapter, the court shall enforce its orders and decrees by requiring the obligor to post a bond or give sufficient personal surety under § 36-5-101(f)(2) to secure past, present, and future support, unless the court finds that the payment record of the obligor parent, the availability of other remedies and other relevant factors make the bond or surety unnecessary.

(2) The court may enforce its orders and decrees by sequestering the rents and profits of the real estate of the obligor against whom such order or decree was issued, if such obligor has any, and such obligor's personal estate and choses in action, and by appointing a receiver thereof, and from time to time causing the same to be applied to the use of the obligee and the children, or by such other lawful means the court deems necessary to assure compliance with its orders, including, but not limited to, the imposition of a lien against

the real and personal property of the obligor.

(b) In intrastate cases, jurisdiction to modify, alter or enforce orders or decrees for the support of children shall be determined in accordance with parts 30 and 31 of this chapter.

(c) A prevailing party may recover reasonable attorney's fees, which may be fixed and allowed in the court's discretion, from the non-prevailing party in any criminal or civil contempt action or other proceeding to enforce, alter, change, or modify any decree of alimony, child support, or provision of a permanent parenting plan order, or in any suit or action concerning the adjudication of the custody or change of custody of any children, both upon the original divorce hearing and at any subsequent hearing.

(d) No state court order shall preclude the department of human services from implementing federal requirements for the interception of federal income tax refunds of an obligor for the payment of arrearages of child support.

(e)(1) The commissioner of human services is expressly authorized to issue an administrative order of income assignment to the commissioner of labor and workforce development against any wages or wage benefits to which an obligor is entitled. Such administrative order shall be based upon and issued pursuant to an order from a court of competent jurisdiction or pursuant to state or local law, shall be deemed to be legal process in the nature of a garnishment pursuant to 42 U.S.C. § 659(i)(5), and shall direct the payment of child or spousal support by an obligor parent.

(2) Administrative orders of income assignment issued pursuant to the authority of this part may, in the discretion of the commissioner of human services, be delivered to a representative of the commissioner for the purpose of execution, and such representative shall have the power and authority to levy and execute such administrative order.

(3) The administrative order of income assignment authorized by this section may be directed to, and effectively served upon, the commissioner of labor and workforce development by electronically transmitted data to compel the assignment of unemployment benefits in order to satisfy the legal obligation of obligor parents to provide child support payments. The transmission of any such order by the commissioner of human services shall be certification by the commissioner of the existence of the underlying court order and that the procedural requirements for notice to the obligor parent as required by part 5 of this chapter have been satisfied. The administrative order shall show the amount to be deducted from the obligor's unemployment compensation benefits by the department of labor and workforce development so as to comply with the underlying court order, and with any applicable statutes, rules, regulations, or inter-departmental agreements and, when necessary, the order shall contain the last known address of the obligor parent.

(4) The state child support enforcement computer system records shall be the official records of child support orders and child support-related spousal support orders and payment records for purposes of this subsection (e).

(5) If it is determined that the department of labor and workforce development has erroneously or wrongfully withheld benefits from an individual and delivered such benefits to the department of human services pursuant to a commissioner's order of income assignment, the department of human services will pay the correct amount to the individual to correct the erroneous payment.

(f)(1)(A) Every three (3) years, upon request of the custodial or noncustodial parent, or any other caretaker of the child, or, if there is an assignment of support pursuant to title 71, chapter 3, part 1, upon the request of the department or upon the request of the custodial or noncustodial parent, or of any other caretaker of the child, then, in any support order subject to enforcement under Title IV-D of the Social Security Act (42 U.S.C. § 651 et seq.), the department shall review, and, if appropriate, seek an adjustment of the order in accordance with child support guidelines established pursuant to § 36-5-101(e) without a requirement for proof or showing of any other change in circumstances. If, at the time of the review, there is a "significant variance," as defined by the department's child support guidelines, between the current support order and the amount that would be ordered under the department's child support guidelines, the department shall seek an adjustment of the order.

(B) In the case of a request for review that is made between three-year cycles, the department shall review, and, if the requesting party demonstrates to the department that there has been a substantial change in circumstances, the department shall seek an adjustment to the support order in accordance with the guidelines established pursuant to § 36-5-101(e). For purposes of this subsection (f), a "substantial change in circumstances" shall be a "significant variance," as defined by the department's child support guidelines, between the amount of the current order and the amount that would be ordered under the department's child support guidelines.

(C) The review and adjustment in subdivisions (f)(1)(A) and (B) may be conducted by the court, or by the department by issuance of an administrative order by the department or its contractors.

(2) As an alternative to the method described in subdivision (f)(1) for review and adjustment, the child support order may be reviewed, and the order may be adjusted by an administrative order issued by the department or its contractors by:

(A) Applying a cost-of-living adjustment to the order in accordance with a formula developed by the department; or

(B) Using automated methods, including automated comparisons with wage data to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment based upon a threshold developed by the department.

(3) The methods for adjustment of orders of support by issuance of an administrative order pursuant to this section shall be promulgated in the department's rules.

(4) The department shall give written notice to the obligor and obligee that a review of the order of support has been initiated.

(5) The department shall give written notice to the obligor and obligee of the review findings. If the department elects to seek the adjustment of the support order by issuance of an administrative order instead of by judicial order, notice of the proposed administrative adjustment to the order of support shall be sent to the last known addresses of the obligor and obligee thirty (30) calendar days prior to the issuance of the administrative order adjusting the order of support pursuant to the same procedures for service of administrative orders described in § 36-5-807.

(6)(A) The obligor and obligee shall have the right to contest the proposed administrative adjustment to the order of support within thirty (30) days of the mailing date of the notice of the proposed administrative adjustment to the order of support by filing a motion for a hearing on the proposed adjustment with the court having jurisdiction to modify the order of support and by providing notice of the hearing to the department by copy of such motion.

(B) The review by the court shall be completed within timeframes established by federal law.

(C) If the obligor or obligee contests the proposed administrative adjustment pursuant to the procedure in this subsection (f), no further administrative appeal to the department shall be available, and further appeal of the modified support order entered by the court shall be made pursuant to the Tennessee Rules of Appellate Procedure.

(7) If the obligor or obligee does not contest the proposed administrative adjustment to the order of support within thirty (30) calendar days of the mailing date of the notice of the proposed adjustment pursuant to subdivision (f)(6), the department shall issue the administrative order adjusting the order of support.

(8) A copy of an administrative order of adjustment of the child support order shall be sent to the clerk of the court that has jurisdiction of the child support order that has been administratively adjusted and it shall be filed in the court record. A copy of the order shall be sent to the obligor and the obligee by the department by general mail at the last known addresses shown in the department's records.

(9) If an order of support is adjusted by administrative order of the department pursuant to subdivision (f)(7), the obligor and obligee shall have the right to administratively appeal the adjustment by requesting the appeal to the department as provided in part 10 of this chapter. The obligor or obligee may request a stay of the administrative order pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The appeal from any decision resulting from the administrative appeal shall be to the court having jurisdiction of the support order and shall be subject to the scope of review as provided pursuant to § 36-5-1003.

(10) Notice of the right to request a review, and, if appropriate, adjust the child support order shall be sent to the obligor and the obligee by the department at least every three (3) years for a child subject to an order being enforced pursuant to Title IV-D of the Social Security Act. The notice may be included in the order.

(11) The requirement for review and adjustment may be delayed if the best interests of the child require. Such interests would include the threat of physical or emotional harm to the child if the review and adjustment were to occur or the threat of severe physical or emotional harm to the child's custodial parent or caretaker.

(g) Judgments for child support payments for each child subject to the order for child support pursuant to this part shall be enforceable without limitation as to time.

**36-6-108. Parental relocation.**

(a) After custody or co-parenting has been established by the entry of a permanent parenting plan or final order, if a parent who is spending intervals

of time with a child desires to relocate outside the state or more than fifty (50) miles from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail. Unless excused by the court for exigent circumstances, the notice shall be mailed not later than sixty (60) days prior to the move. The notice shall contain the following:

(1) Statement of intent to move;

(2) Location of proposed new residence;

(3) Reasons for proposed relocation; and

(4) Statement that absent agreement between the parents or an objection by the non-relocating parent within thirty (30) days of the date notice is sent by registered or certified mail in accordance with subsection (a), the relocating parent will be permitted to do so by law.

(b) Absent agreement by the parents on a new visitation schedule within thirty (30) days of the notice or upon a timely objection in response to the notice, the relocating parent shall file a petition seeking approval of the relocation. The non-relocating parent has thirty (30) days to file a response in opposition to the petition. In the event no response in opposition is filed within thirty (30) days, the parent proposing to relocate with the child shall be permitted to do so.

(c)(1) If a petition in opposition to relocation is filed, the court shall determine whether relocation is in the best interest of the minor child.

(2) In determining whether relocation is in the best interest of the minor child, the court shall consider the following factors:

(A) The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate and with the non-relocating parent, siblings, and other significant persons in the child's life;

(B) The age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;

(C) The feasibility of preserving the relationship between the non-relocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties;

(D) The child's preference, if the child is twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;

(E) Whether there is an established pattern of conduct of the relocating parent, either to promote or thwart the relationship of the child and the non-relocating parent;

(F) Whether the relocation of the child will enhance the general quality of life for both the relocating parent and the child, including, but not limited to, financial or emotional benefit or educational opportunity;

(G) The reasons of each parent for seeking or opposing the relocation; and

(H) Any other factor affecting the best interest of the child, including those enumerated in § 36-6-106(a).

(3) If, upon consideration of factors in subdivision (c)(2), the court finds that relocation is in the best interest of the minor child, the court shall modify the permanent parenting plan as needed to account for the distance

between the non-relocating parent and the relocating parent.

(4) If the court finds that relocation is not in the best interest of the minor child, the court shall deny the petition for approval and, utilizing the factors provided in § 36-6-106(a), enter a modified permanent parenting plan that shall become effective only if the parent proposing to relocate elects to do so despite the court's decision denying the parent's petition for approval.

(d) In fashioning a modified parenting plan under subdivisions (c)(3) and (4), the court shall consider and utilize available alternative arrangements to foster and continue the child's relationship with and access to the other parent. The court shall also assess the costs of transporting the child for visitation, and determine whether a deviation from the child support guidelines should be considered in light of all factors, including, but not limited to, additional costs incurred for transporting the child for visitation.

(e) Nothing in this section shall prohibit either parent from petitioning the court at any time to address issues other than a change of custody related to the move, including, but not limited to, visitation.

(f) Either parent in a parental relocation matter may recover reasonable attorney fees and other litigation expenses from the other parent in the discretion of the court.

(g) The procedure and best interest standard of this section shall also apply to a parent who is subject to an injunction pursuant to § 36-6-116(a)(4) or § 36-4-106(d)(5).

### 36-6-306. Grandparents' visitation rights with child born out of wedlock.

(a) Any of the following circumstances, when presented in a petition for grandparent visitation to the circuit, chancery, general sessions courts with domestic relations jurisdiction, other courts with domestic relations jurisdiction or juvenile court in matters involving children born out of wedlock of the county in which the petitioned child currently resides, necessitates a hearing if such grandparent visitation is opposed by the custodial parent or parents or custodian or if the grandparent visitation has been severely reduced by the custodial parent or parents or custodian:

(1) The father or mother of an unmarried minor child is deceased;

(2) The child's father or mother are divorced, legally separated, or were never married to each other;

(3) The child's father or mother has been missing for not less than six (6) months;

(4) The court of another state has ordered grandparent visitation;

(5) The child resided in the home of the grandparent for a period of twelve (12) months or more and was subsequently removed from the home by the parent, parents, or custodian (this grandparent-grandchild relationship establishes a rebuttable presumption that denial of visitation may result in irreparable harm to the child); or

(6) The child and the grandparent maintained a significant existing relationship for a period of twelve (12) months or more immediately preceding severance or severe reduction of the relationship, this relationship was severed or severely reduced by the parent, parents, or custodian for reasons other than abuse or presence of a danger of substantial harm to the child, and severance or severe reduction of this relationship is likely to

occasion substantial emotional harm to the child.

(b)(1) In considering a petition for grandparent visitation, the court shall first determine the presence of a danger of substantial harm to the child. Such finding of substantial harm may be based upon cessation or severe reduction of the relationship between an unmarried minor child and the child's grandparent if the court determines, upon proper proof, that:

(A) The child had such a significant existing relationship with the grandparent that loss or severe reduction of the relationship is likely to occasion severe emotional harm to the child;

(B) The grandparent functioned as a primary caregiver such that cessation or severe reduction of the relationship could interrupt provision of the daily needs of the child and thus occasion physical or emotional harm; or

(C) The child had a significant existing relationship with the grandparent and loss or severe reduction of the relationship presents the danger of other direct and substantial harm to the child.

(2) For purposes of this section, a grandparent shall be deemed to have a significant existing relationship with a grandchild if:

(A) The child resided with the grandparent for at least six (6) consecutive months;

(B) The grandparent was a full-time caretaker of the child for a period of not less than six (6) consecutive months; or

(C) The grandparent had frequent visitation with the child who is the subject of the suit for a period of not less than one (1) year.

(3) A grandparent is not required to present the testimony or affidavit of an expert witness in order to establish a significant existing relationship with a grandchild or that the loss or severe reduction of the relationship is likely to occasion severe emotional harm to the child. Instead, the court shall consider whether the facts of the particular case would lead a reasonable person to believe that there is a significant existing relationship between the grandparent and grandchild or that the loss or severe reduction of the relationship is likely to occasion severe emotional harm to the child.

(4) For the purposes of this section, if the child's parent is deceased and the grandparent seeking visitation is the parent of that deceased parent, there shall be a rebuttable presumption of substantial harm to the child based upon the cessation or severe reduction of the relationship between the child and grandparent.

(c) Upon an initial finding of danger of substantial harm to the child, the court shall then determine whether grandparent visitation would be in the best interests of the child based upon the factors in § 36-6-307. Upon such determination, reasonable visitation may be ordered.

(d)(1) Notwithstanding § 36-1-121, if a relative or stepparent adopts a child, this section applies.

(2) If a person other than a relative or a stepparent adopts a child, any visitation rights granted pursuant to this section before the adoption of the child shall automatically end upon such adoption.

(e) Notwithstanding any law to the contrary, as used in this part, with regard to the petitioned child, the word "grandparent" includes, but is not limited to:

(1) A biological grandparent;

(2) The spouse of a biological grandparent;

(3) A parent of an adoptive parent; or

(4) A biological or adoptive great-grandparent or the spouse thereof.

(f) For purposes of this section, "severe reduction" or "severely reduced" means reduction to no contact or token visitation as defined in § 36-1-102.

**36-7-502. Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.), but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)), or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

**37-1-101. Purpose — Jurisdiction — Ensuring compliance with the Indian Child Welfare Act.**

(a) This part shall be construed to effectuate the following public purposes:

(1) Provide for the care, protection, and wholesome moral, mental and physical development of children coming within its provisions;

(2) Consistent with the protection of the public interest, remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and substitute therefor a program of treatment, training and rehabilitation;

(3) Achieve the foregoing purposes in a family environment whenever possible, separating the child from such child's parents only when necessary for such child's welfare or in the interest of public safety;

(4) Provide a simple judicial procedure through which this part is executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced;

(5) Provide simple interstate procedures that permit resort to cooperative measures among the juvenile courts of the several states when required to effectuate the purposes of this part;

(6) Generally deinstitutionalize children who have not been found to be delinquent; and

(7) Provide developmentally appropriate interventions based on current scientific research in related fields, including neuroscience, psychology, sociology, and criminology.

(b) It is the intention of the general assembly in the passage of this part to promulgate laws relative to children that are to be uniform in application throughout the state.

(c) Each of the juvenile courts in all the counties and municipalities of the state as described in § 37-1-102 have all of the jurisdiction, authority, rights, powers and duties prescribed by this part, and any additional jurisdiction, authority, rights, powers or duties conferred by special or private act upon any of the juvenile courts in the state are not intended to be invalidated or repealed by this part, except where inconsistent or in conflict with any provisions of this part.

(d) Whenever a juvenile court conducts a child custody proceeding, as defined in § 36-6-205, the court shall ensure compliance with the Indian Child Welfare Act, compiled in 25 U.S.C. § 1901 et seq.

**37-1-102. Chapter and part definitions.**

(a) As used in this chapter, any reference to the department of correction is construed to mean the department of children's services, unless the reference is clearly intended to designate the department of correction.

(b) As used in this part, unless the context otherwise requires:

(1) "Abuse" exists when a person under the age of eighteen (18) is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker;

(2) "Administrative hearing" is an action by the judge or magistrate of the juvenile court in conformity with legislative intent in terminating the home placement of a juvenile;

(3) "Adult" means any person eighteen (18) years of age or older;

(4) "Caregiver" means any relative or other person living, visiting, or working in the child's home who supervises or otherwise provides care or assistance for the child, such as a babysitter, or who is an employee or volunteer with the responsibility for any child at an educational, recreational, medical, religious, therapeutic, or other setting where children are present. "Caregiver" may also include a person who has allegedly used the child for the purpose of commercial sexual exploitation of a minor or trafficking a minor for a commercial sex act, including, but not limited to, as a trafficker. For purposes of this chapter, "caregiver" and "caretaker" shall have the same meaning;

(5) "Child" means:

(A) A person under eighteen (18) years of age; or

(B) A person under nineteen (19) years of age for the limited purpose of:

(i) Remaining under the continuing jurisdiction of the juvenile court to enforce a non-custodial order of disposition entered prior to the person's eighteenth birthday;

(ii) Remaining under the jurisdiction of the juvenile court for the purpose of being committed, or completing commitment including completion of home placement supervision, to the department of children's services with such commitment based on an adjudication of delinquency for an offense that occurred prior to the person's eighteenth birthday; or

(iii) Remaining under the jurisdiction of the juvenile court for resolution of a delinquent offense or offenses committed prior to a person's eighteenth birthday but considered by the juvenile court after a person's eighteenth birthday with the court having the option of retaining jurisdiction for adjudication and disposition or transferring the person to criminal court under § 37-1-134;

(C) In no event shall a person eighteen (18) years of age or older be committed to or remain in the custody of the department of children's services by virtue of being adjudicated dependent and neglected, unruly or in need of services pursuant to § 37-1-175, except as provided in 37-5-106(a)(20);

(D) This subdivision (b)(5) shall in no way be construed as limiting the court's jurisdiction to transfer a person to criminal court under § 37-1-134;

(E) A person eighteen (18) years of age is legally an adult for all other purposes including, but not limited to, enforcement of the court's orders under this subsection (b) through its contempt power under § 37-1-158;

(F) No exception shall be made for a child who may be emancipated by marriage or otherwise; and

(G) A person over the age of eighteen (18) shall be allowed to remain under the continuing jurisdiction of the juvenile court for purposes of the voluntary extension of services pursuant to § 37-2-417;

(6) "Commissioner" means commissioner of children's services;

(7) "Court order" means any order or decree of a judge, magistrate or court of competent jurisdiction. A "valid court order" is one that is authorized by law, and any order entered in the minutes of a court of record is presumed to be valid;

(8) "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom temporary legal custody of the child has been given by order of a court;

(9) "Custody" means the control of actual physical care of the child and includes the right and responsibility to provide for the physical, mental, moral and emotional well-being of the child. "Custody," as herein defined, relates to those rights and responsibilities as exercised either by the parents or by a person or organization granted custody by a court of competent jurisdiction. "Custody" shall not be construed as the termination of parental rights set forth in § 37-1-147. "Custody" does not exist by virtue of mere physical possession of the child;

(10) "Delinquent act" means an act designated a crime under the law, including local ordinances of this state, or of another state if the act occurred in that state, or under federal law, and the crime is not a status offense under subdivision (b)(26)(C) and the crime is not a traffic offense as defined in the traffic code of the state other than failing to stop when involved in an accident pursuant to § 55-10-101, driving while under the influence of an intoxicant or drug, vehicular homicide or any other traffic offense classified as a felony;

(11) "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation;

(12) "Department" means the department of children's services;

(13) "Dependent and neglected child" means a child:

(A) Who is without a parent, guardian or legal custodian;

(B) Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity is unfit to properly care for such child;

(C) Who is under unlawful or improper care, supervision, custody or restraint by any person, corporation, agency, association, institution, society or other organization or who is unlawfully kept out of school;

(D) Whose parent, guardian or custodian neglects or refuses to provide necessary medical, surgical, institutional or hospital care for such child;

(E) Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law;

(F) Who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others;

(G) Who is suffering from abuse or neglect;

(H) Who has been in the care and control of one (1) or more agency or person not related to such child by blood or marriage for a continuous period of six (6) months or longer in the absence of a power of attorney or court order, and such person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child;

(I) Who is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity; or

(J)(i) Who has willfully been left in the sole financial care and sole physical care of a related caregiver for not less than eighteen (18) consecutive months by the child's parent, parents or legal custodian to the related caregiver, and the child will suffer substantial harm if removed from the continuous care of such relative;

(ii) For the purposes of this subdivision (b)(13)(J):

*(a)* A related caregiver shall include the child's biological, step or legal grandparent, great grandparent, sibling, aunt, uncle or any other person who is legally or biologically related to the child; and

*(b)* A child willfully left with a related caregiver as defined in subdivision (b)(13)(J)(ii)(*a*) because of the parent's military service shall not be subject to action pursuant to § 37-1-183;

(14) "Detention" means temporary confinement in a secure or closed type of facility that is under the direction or supervision of the court or a facility that is designated by the court or other authority as a place of confinement for juveniles;

(15) "Evidence-based" means policies, procedures, programs, and practices demonstrated by scientific research to reliably produce reductions in recidivism or has been rated as effective by a standardized program evaluation tool;

(16) "Financial obligations" means fines, fees, costs, surcharges, child support, or other monetary liabilities ordered or assessed by any court or state or county government, but does not include restitution;

(17) "Foster care" means the temporary placement of a child in the custody of the department of children's services or any agency or institution, whether public or private, for care outside the home of a parent or relative, by blood or marriage, of the child, whether the placement is by court order, voluntary placement agreement, surrender of parental rights or otherwise;

(18) "Foster parent" means, for purposes other than § 37-2-414, a person who has been trained and approved by the department or licensed child-placing agency to provide full-time temporary out-of-home care at a private residence for a child or children who have been placed in foster care, or in the case of a child or children placed for adoption, a person who has provided care for the child or children for a period of six (6) months or longer in the absence of a power of attorney or court order;

(19) "Juvenile court" means the general sessions court in all counties of this state, except in those counties and municipalities in which special juvenile courts are provided by law, and "judge" means judge of the juvenile court;

(20) "Nonjudicial days" means Saturdays, Sundays and legal holidays. Nonjudicial days begin at four thirty p.m. (4:30 p.m.) on the day preceding a weekend or holiday, and end at eight o'clock a.m. (8:00 a.m.) on the day after

a weekend or holiday;

(21) "Positive behavior" means prosocial behavior or progress in a treatment program or on supervision;

(22) "Preliminary inquiry" means the process established by the Rules of Juvenile Practice and Procedure that is used to commence proceedings and to resolve complaints by excluding certain matters from juvenile court at their inception;

(23) "Probation" means casework service as directed by the court and pursuant to this part as a measure for the protection, guidance, and well-being of the child and child's family;

(24) "Protective supervision" means supervision ordered by the court of children found to be dependent or neglected or unruly;

(25) "Restitution" means compensation that is accomplished through actual monetary payment to the victim of the offense by the child who committed the offense, or symbolically, through unpaid community service work by the child, for property damage or loss incurred as a result of the delinquent offense;

(26) "Seclusion":

(A) Means the intentional, involuntary segregation of an individual from the rest of the resident population for the purposes of preventing harm by the child to oneself or others; preventing harm to the child by others; aiding in de-escalation of violent behavior; or serving clinically defined reasons; and

(B) Does not include:

(i) The segregation of a child for the purpose of managing biological contagion consistent with the centers for disease control and prevention guidelines;

(ii) Confinement to a locked unit or ward where other children are present as seclusion is not solely confinement of a child to an area, but separation of the child from other persons;

(iii) Voluntary time-out involving the voluntary separation of an individual child from others, and where the child is allowed to end the separation at will; or

(iv) Temporarily securing children in their rooms during regularly scheduled times, such as periods set aside for sleep or regularly scheduled down time, that are universally applicable to the entire population or within the child's assigned living area;

(27) "Severe child abuse" means:

(A)(i) The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause serious bodily injury or death and the knowing use of force on a child that is likely to cause serious bodily injury or death;

(ii) "Serious bodily injury" shall have the same meaning given in § 39-15-402(c);

(B) Specific brutality, abuse or neglect towards a child that in the opinion of qualified experts has caused or will reasonably be expected to produce severe psychosis, severe neurotic disorder, severe depression, severe developmental delay or intellectual disability, or severe impairment of the child's ability to function adequately in the child's environment, and the knowing failure to protect a child from such conduct;

(C) The commission of any act towards the child prohibited by § 39-13-309, §§ 39-13-502 - 39-13-504, § 39-13-515, § 39-13-522, § 39-15-302, § 39-15-402, or § 39-17-1005 or the knowing failure to protect the child from the commission of any such act towards the child; or

(D) Knowingly allowing a child to be present within a structure where the act of creating methamphetamine, as that substance is identified in § 39-17-408(d)(2), is occurring;

(28) "Sexually explicit image" means a lewd or lascivious visual depiction of a minor's genitals, pubic area, breast or buttocks, or nudity, if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such nudity;

(29) "Shelter care" means temporary care of a child in physically unrestricted facilities;

(30) "Significant injury" means bodily injury, including a cut, abrasion, bruise, burn, or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty, involving:

(A) A substantial risk of death;

(B) Protracted unconsciousness;

(C) Extreme physical pain;

(D) Protracted or obvious disfigurement; or

(E) Protracted loss or substantial impairment of a function of a bodily member, organ, or mental faculty;

(31) "Telecommunication device" has the same meaning as defined in § 39-16-201;

(32) "Unruly child" means a child in need of treatment and rehabilitation who:

(A) Habitually and without justification is truant from school while subject to compulsory school attendance under § 49-6-3007;

(B) Habitually is disobedient of the reasonable and lawful commands of the child's parent(s), guardian or other legal custodian to the degree that such child's health and safety are endangered;

(C) Commits an offense that is applicable only to a child; or

(D) Is away from the home, residence or any other residential placement of the child's parent(s), guardian or other legal custodian without their consent. Such child shall be known and defined as a "runaway"; and

(33) "Validated risk and needs assessment" means a determination of a child's risk to reoffend and the needs that, when addressed, reduce the child's risk to reoffend through the use of an actuarial assessment tool that assesses the dynamic and static factors that predict delinquent behavior.

**37-1-105. Probation officers.**

(a) The judge has authority to appoint one (1) or more probation officers who shall receive such salary as shall be fixed by the county legislative body or as otherwise provided by law.

(b) For the purpose of carrying out the objectives and purposes of this part and subject to the limitations of this part or imposed by the court, a probation officer, or other designated officers of the court, shall:

(1) Make investigations, reports and recommendations to the juvenile court;

(2) Receive and examine complaints and charges of delinquency or unruly conduct and conduct a preliminary inquiry;

(3) Receive and examine complaints of dependency and neglect of a child for the purpose of considering the commencement of proceedings under this part;

(4) Supervise and assist a child placed on probation or in such probation officer's protective supervision or care by order of the court or other authority of law;

(5) Make appropriate referrals to other public or private agencies of the community if their assistance appears to be needed or desirable;

(6) Take into custody and detain a child who is under such probation officer's supervision or care as a delinquent, unruly, or dependent and neglected child if the probation officer, or other designated officers of the court, have reasonable cause to believe that the child's health or safety is in imminent danger, or that such child may abscond or be removed from the jurisdiction of the court, or when ordered by the court pursuant to this part. Such child may be placed in detention or shelter care only if authorized by and in accordance with §§ 37-1-114 and 37-1-115. Except as provided by this part, a probation officer, or other designated officer of the court, does not have the powers of a law enforcement officer. Such probation officer, or other designated officer of the court, shall not conduct accusatory proceedings under this part against a child who is or may be under such officer's care or supervision; and

(7) Perform all other functions designated by this part or by order of the court pursuant thereto.

(c) Any of the functions in subsection (b) may be performed in another state if authorized by the court of this state and permitted by the laws of the other state.

**37-1-106. Youth services officer.**

(a) Each county with a population of more than twenty thousand (20,000), according to the 1980 federal census or any subsequent federal census, may establish a full-time youth services officer to assist the court sitting as a juvenile court in relation to cases coming before the court. Counties with a population of twenty thousand (20,000) or less, according to the 1980 federal census or any subsequent federal census, may establish a part-time youth services officer.

(b) The youth services officer shall be paid by the county in which the officer serves and the officer's duties include, but are not limited to, the following:

(1) Intake duties including receiving and examining complaints and allegations of delinquency and unruly behavior for the purpose of conducting a preliminary inquiry;

(2) Counseling;

(3) Record keeping and transmitting information as required by this part or by law to the commission on children and youth or the office of the executive secretary of the Tennessee council of juvenile and family court judges;

(4) Make investigations, reports and recommendations to the judge having juvenile jurisdiction;

(5) Make appropriate referrals to other public or private agencies;

(6) Make predisposition studies and submit reports and recommendations to the court as required; and

(7) Perform other functions as directed by the court or by law including, but not limited to, those set out in § 37-1-105.

**37-1-110. Informal adjustment without adjudication — Pretrial diversion — No admission required.**

(a)(1) Before or after a petition is filed, a designated court officer may informally resolve a complaint containing delinquent or unruly allegations without adjudication by giving counsel and advice to the child if such informal resolution would be in the best interest of the public and the child, and the child and the child's parents, guardian, or other custodian consent to the informal adjustment with knowledge that consent is not obligatory. The informal adjustment shall not extend beyond three (3) months from the day commenced, unless extended by the court for an additional period not to exceed a total of six (6) months, and does not authorize the detention of the child if not otherwise permitted by this part.

(2) If the child and the victim agree to restitution, restitution may be paid independently of informal adjustment; however, financial obligations shall not be assessed or collected against a child as part of an informal adjustment pursuant to this section.

(b)(1) After a petition has been filed and a designated court officer determines that an unruly or delinquent case is an appropriate case for diversion from adjudication, the parties may agree to pretrial diversion that suspends the proceedings and places the child under supervision on terms and conditions agreeable to the designated court officer and approved by the court. A child may not be placed on pretrial diversion if the delinquent act alleged is an offense described in § 37-1-153(b).

(2) A pretrial diversion agreement shall remain in force for a maximum of six (6) months unless the child is discharged sooner by the court. Upon application of any party to the proceedings, made before expiration of the six-month period and after notice and a hearing, pretrial diversion may be extended by the court for an additional six (6) months.

(3) If, prior to discharge by the court or expiration of the pretrial diversion period, the child fails to fulfill the terms and conditions of the pretrial diversion agreement, the original petition may be reinstated and the case may proceed to adjudication just as if the agreement had never been entered.

(c) The petition shall be dismissed with prejudice once a child completes an informal adjustment pursuant to subsection (a) or pretrial diversion pursuant to subsection (b) without reinstatement of the original delinquent or unruly petition.

(d) No admission shall be required as part of informal adjustment or pretrial diversion, and any statements made by the child during the preliminary inquiry, informal adjustment pursuant to subsection (a), or pretrial diversion pursuant to subsection (b) are not admissible prior to a dispositional hearing.

**37-1-115. Custody — Release to proper party — Warrant for custody.**

(a) A person taking a child into custody shall within a reasonable time:

(1) Release the child to such child's parents, guardian or other custodian upon a promise by such person or persons to bring the child before the court when requested by the court unless such child's detention or shelter care is

warranted or required under § 37-1-114; or

(2) Bring the child before the court or deliver such child to a detention or shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness that requires prompt treatment. A person taking a child into custody shall give notice thereof, together with a reason for taking the child into custody, to a parent, guardian or other custodian and to the court. If the child is taken into custody pursuant to the provisions of § 37-1-113(a)(3) prior to the filing of a petition, a petition under § 37-1-120 shall be filed as soon as possible but in no event later than two (2) days after the child is taken into custody excluding Saturdays, Sundays and legal holidays.

(b) If a parent, guardian or other custodian, when requested, fails to bring the child before the court as provided in subsection (a), the court may issue its warrant directing that the child be taken into custody and brought before the court.

(c)(1) A law enforcement officer who has taken a child into custody for the commission of an offense that would be considered a misdemeanor if committed by an adult may, in that officer's professional discretion, issue a citation in lieu of continued custody of the child. In issuing a citation pursuant to this subsection (c), the officer shall:

(A) Prepare a written citation, which shall include the name and address of the cited child, the offense charged, and the time and place of appearance;

(B) Have the child sign the original and duplicate copy of the citation. The officer shall deliver one (1) copy to the child and retain the other; and

(C) Release the cited child from custody.

(2) If the law enforcement officer determines that issuing a citation is appropriate but that circumstances surrounding the issuance of a citation indicate an immediate risk to the safety of the child, the officer shall make efforts to contact a parent, guardian, or legal custodian of the child to retrieve the child in lieu of or prior to taking the child into custody.

(d) Subject to the approval of the juvenile court, each municipal or metropolitan police department or sheriff's department is authorized to create and administer its own juvenile diversion program to address citable juvenile offenses without court involvement. Each program shall be developed in consultation with the juvenile court, local school districts, and other community stakeholders, and shall be subject to the same conditions and limitations as informal adjustment pursuant to § 37-1-110.

**37-1-116. Place of detention — Escape or attempted escape — Shelter care.**

(a) A child alleged to be delinquent or unruly may be detained only in:

(1) A licensed foster home or a home approved by the court;

(2) A facility operated by a licensed child care agency;

(3) A detention home or center for delinquent children that is under the direction or supervision of the court or other public authority or of a private agency approved by the court; or

(4) Subject to subsection (e), any other suitable place or facility designated or operated by the court. The child may be detained in a jail or other facility for the detention of adults only if:

(A) Other facilities in subdivision (a)(3) are not available;

(B) The detention is in a room separate and removed from those for adults; and

(C) It appears to the satisfaction of the court that public safety and protection reasonably require detention, and it so orders.

(b) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under eighteen (18) years of age is received at the facility, and shall bring such person before the court upon request or deliver such person to a detention or shelter care facility designated by the court.

(c) If a case is transferred to another court for criminal prosecution, the child may be transferred to the appropriate officer or detention facility in accordance with the law governing the detention of persons charged with crime.

(d) A child alleged to be dependent or neglected may be detained or placed in shelter care only in the facilities stated in subdivisions (a)(1), (2) and (4), and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses or of children alleged to be delinquent.

(e) No child may be detained or otherwise placed in any jail or other facility for the detention of adults, except as provided in subsections (c) and (h).

(f) A county may contract with juvenile courts in other counties, other public authorities, or private agencies to place children in any of the facilities listed in subdivisions (a)(1)-(3) and in the first sentence of subdivision (a)(4). The payment for such placements shall be according to per diem allowances established jointly by the department of children's services and the comptroller of the treasury, or as agreed upon between the county and the juvenile court or other authority or agency operating the facility. The cost allowances established jointly by the department and the comptroller of the treasury shall take into account the actual operating costs of the facility, the costs of any special programs offered by the facility, and the cost of any transportation provided by the facility. Any and all such costs of placement and transportation may be assessed against the parents or other persons legally obligated to care for and support the child as provided in § 37-1-150(d).

(g) To the extent necessary to comply with subsection (e), counties may expend funds received from the state for the purpose of improving juvenile court services or providing community alternatives to detention to pay for the alternative placement and transportation services described in subsection (f), and to develop other alternatives to jail for children, including emergency foster homes, runaway/emergency shelters, juvenile summons, crisis intervention, home detention, attendant care and other programs.

(h) A juvenile may be temporarily detained for as short a time as feasible, not to exceed forty-eight (48) hours, in an adult jail or lockup, if:

(1) The juvenile is accused of a serious crime against persons, including criminal homicide, forcible rape, mayhem, kidnapping, aggravated assault, robbery and extortion accompanied by threats of violence;

(2) The county has a low population density not to exceed thirty-five (35) persons per square mile;

(3) The facility and program have received prior certification by the Tennessee corrections institute as providing detention and treatment with total sight and sound separation from adult detainees and prisoners,

including no access by trustees;

(4) There is no juvenile court or other public authority, or private agency as provided in subsection (f), able and willing to contract for the placement of the juvenile; and

(5) A determination is made that there is no existing acceptable alternative placement available for the juvenile.

(i)(1) Notwithstanding the provisions of this section to the contrary, in any facility that meets the following requisites of separateness, juveniles who meet the detention criteria of § 37-1-114(c) may be held in a juvenile detention facility that is in the same building or on the same grounds as an adult jail or lockup; provided, that no juvenile facility constructed or developed after January 1, 1995, may be located in the same building or directly connected to any adult jail or lockup facility complex:

(A) Total separation between juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities;

(B) Total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities;

(C) Separate juvenile and adult staff, including management, security staff and direct care staff, such as recreational, educational and counseling. Specialized services staff, such as cooks, bookkeepers and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both; and

(D) In the event that state standards or licensing requirements for secure juvenile detention facilities are established, the juvenile facility must meet the standards and be licensed or approved as appropriate.

(2) In determining whether the criteria set out in this subsection (i) are met, the following factors will serve to enhance the separateness of juvenile and adult facilities:

(A) Juvenile staff are employees of or volunteers for a juvenile service agency or the juvenile court with responsibility only for the conduct of the youth serving operations. Juvenile staff are specially trained in the handling of juveniles and the special problems associated with this group;

(B) A separate juvenile operations manual, with written procedures for staff and agency reference, specifies the function and operation of the juvenile program;

(C) There is minimal sharing between the facilities of public lobbies or office/support space for staff;

(D) Juveniles do not share direct service or access space with adult offenders within the facilities, including entrance to and exits from the facilities. All juvenile facility intake, booking and admission processes take place in a separate area and are under the direction of juvenile facility staff. Secure juvenile entrances (sally ports, waiting areas) are independently controlled by juvenile staff and separated from adult entrances. Public entrances, lobbies and waiting areas for the juvenile detention program are also controlled by juvenile staff and separated from similar adult areas. Adult and juvenile residents do not make use of common passageways between intake areas, residential spaces and program/service spaces;

(E) The space available for juvenile living, sleeping and the conduct of juvenile programs conforms to the requirements for secure juvenile detention specified by prevailing case law, prevailing professional standards of care, and by state code; and

(F) The facility is formally recognized as a juvenile detention center by the state agency responsible for monitoring, review or certification of juvenile detention facilities.

(j)(1) Any juvenile who:

(A) Is alleged or adjudicated to be delinquent;

(B) Is confined to a secure detention or correctional facility designated, operated or approved by the court; and

(C) Absconds or attempts to abscond from such facility;

may be charged with the offense of escape or attempted escape and a petition alleging such offense may be filed with the juvenile court of the county in which the alleged offense occurred. If the allegations of the petition are sustained, then the court may make any order of disposition authorized by § 37-1-131.

(2) Any juvenile who:

(A) Is alleged or adjudicated to be delinquent;

(B) Has been placed by the court in a secure detention or correctional facility designated, operated or approved by the court;

(C) Is being transported to or from such facility; and

(D) Absconds or attempts to abscond from the custody of the person responsible for such transportation;

may be charged with the offense of escape or attempted escape and a petition alleging such offense may be filed with the juvenile court of the county in which the alleged offense occurred. If the allegations of the petition are sustained, then the court may make any order of disposition authorized by § 37-1-131.

(3)(A) Any juvenile may be charged with the offense of escape or attempted escape and a petition alleging the offense may be filed with the juvenile court of the county in which the alleged offense occurred who:

(i) Is adjudicated to be delinquent;

(ii) Is placed in a place of detention other than a secure detention facility, as specified in subsection (a); and

(iii) Absconds or attempts to abscond from such facility.

(B) Escape or attempted escape from a facility listed in subdivisions (a)(1)-(3) constitutes an offense that, if committed by an adult, would be a misdemeanor. If the allegations of the petition are sustained, then the court may make any order of disposition authorized by § 37-1-131.

(4) Upon an escape by a juvenile who is alleged or adjudicated to be delinquent by virtue of an act which would be a felony if committed by an adult and who is confined to a secure detention or correctional facility designated, operated or approved by the court, the appropriate facility or departmental official shall immediately report the escape to the chief law enforcement officer of the county in which the facility is located. The report shall include the facts of the escape, the time when it occurred and the circumstances under which it occurred, together with the particular description of the escapee, the escapee's age, size, complexion, race, color of hair and eyes, and from what county committed, for what offense, and when.

(k)(1) Notwithstanding any law to the contrary, no child alleged to be delinquent and meeting any of the criteria under this subsection (k) nor any

child committed to the department of children's services as a delinquent child and meeting any of the criteria under this subsection (k) shall be held in shelter care authorized by this section with a child alleged to be dependent or neglected unless the following are satisfied:

(A) There is total separation between facility spatial areas such that there could be no haphazard or accidental contact between a child alleged to be delinquent, or committed as delinquent, who meets the criteria of this subsection (k) and a child alleged to be dependent or neglected; and

(B) There is total separation in all program activities between children alleged to be delinquent, or committed as delinquent, who meet the criteria of this subsection (k) and children alleged to be dependent or neglected, including all program activities listed in subdivision (i)(1)(B) and total separation of any staff for such children as listed in subdivision (i)(1)(C).

(2) The criteria to be used under this subsection (k), together with an allegation of delinquency or commitment to the department as delinquent, are:

(A) The child has been found to be delinquent or is alleged to be delinquent based upon a felony offense constituting a crime against a person or persons;

(B) The child has prior commitments to the department as a result of having committed a felony offense or offenses that constitute a crime against a person or persons;

(C) The child has been found to be delinquent or is alleged to be delinquent based upon a felony drug offense;

(D) The child has prior commitments to the department as a result of having committed a felony drug offense; or

(E) The child has a history of prior convictions for felony offenses that constitute crimes against persons or felony drug offenses, even though the child has never been committed to the department.

(*l*) The use of seclusion for punitive purposes pre-adjudication or post-adjudication for any child detained in any facility pursuant to § 37-1-114 is prohibited.

**37-1-117. Investigation and release or detention — Petition — Hearings.**

(a)(1) If a child alleged to have committed a delinquent or unruly act is brought before the court or delivered to a detention facility designated by the court, the intake or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that such child's detention is warranted or required under § 37-1-114.

(2) If such child is not so released, the court shall issue an order authorizing the detention of the child and a petition under § 37-1-120 shall be promptly filed with the court. The filing of a petition shall not preclude participation in informal adjustment pursuant to § 37-1-110. In the case of a child alleged to be delinquent, a detention hearing shall be held no later than seventy-two (72) hours after the child is placed in detention to determine whether such child's detention is required under § 37-1-114. In computing the time limitation for purposes of such detention hearing, nonjudicial days are excluded, but in no event shall the hearing be held later

than eighty-four (84) hours after the child is placed in detention. The court, in its discretion, may release the child on an appearance bond or on the child's own recognizance subject to a written agreement to appear in court.

(b)(1) When the court finds, based upon a sworn petition or sworn testimony containing specific factual allegations, that there is probable cause to believe that the conditions specified in § 37-1-114(a)(2) exist and a child is in need of the immediate protection of the court, the court may order that the child be removed from the custody of the child's parent, guardian, legal custodian, or the person who physically possesses or controls the child and be placed in the custody of a suitable person, persons, or agency, as specified in § 37-1-116(d), pending further investigation and hearing. When a child alleged to be dependent and neglected is removed from the custody of such child's parent, guardian, legal custodian, or the person who physically possesses or controls the child prior to a hearing on a petition, a preliminary hearing shall be held no later than seventy-two (72) hours after the child's removal to determine whether such child's continued removal is required under § 37-1-114. In computing the time limitation for purposes of such preliminary hearing, nonjudicial days are excluded, but in no event shall the hearing be held later than eighty-four (84) hours after the child is removed from the home.

(2) If a child is removed from the home prior to the filing of a petition, a petition shall be filed within forty-eight (48) hours of the removal, excluding nonjudicial days, unless the child is returned to the home within the forty-eight hour time period. In no event shall a petition be filed later than the preliminary hearing.

(3) This subsection (b) may be waived by express and knowing waiver, by the parties to an action including the parents, guardian, or legal custodian and the child or guardian ad litem for the child. Any such waiver may be revoked at any time, at which time this section shall apply. The court shall make every effort to advise the parent, guardian, or legal custodian, and the child individually, if fourteen (14) years of age or older, of the time, date, and place of the hearing and the factual circumstances necessitating the removal.

(c) If the child is not so released, and a parent, guardian, or legal custodian has not been notified of the hearing, did not appear or waived appearance at this hearing, and files an affidavit showing these facts, the court shall rehear the matter without unnecessary delay and order such child's release unless it appears from the hearing that the child's detention or shelter care is required under § 37-1-114.

**37-1-120. Contents of petition.**

(a) All petitions shall be verified and may be on information and belief.

(b) Petitions that allege a delinquent or unruly offense; educational neglect when filed on behalf of a school; child abuse prosecutions, pursuant to §§ 37-1-412 and 39-15-401; nonsupport of children, pursuant to title 39, chapter 15, part 1; contributing to the delinquency or unruly behavior of a child, pursuant to § 37-1-156; contributing to the dependency and neglect of a child, pursuant to § 37-1-157; offenses involving adults arising under title 49, chapter 6, part 30; criminal contempt, pursuant to § 29-9-102; and civil contempt, pursuant to §§ 29-9-104 and 29-9-105 shall set forth plainly and to the extent reasonably ascertainable:

(1) The facts that bring the child or person within the jurisdiction of the court, including the approximate date, manner, and place of the acts alleged, with a statement that it is in the best interest of the child and the public that the proceeding be brought;

(2) If the petition alleges delinquency or unruly conduct, the offense charged, the relevant statutes, and a statement that the child is in need of treatment or rehabilitation;

(3) The name, age, and residence address, if any, of the child on whose behalf the petition is brought;

(4) The names and residence addresses, if known to petitioner, of the legal parents, guardian, or custodian of the child;

(5) The names and residence addresses, if known to the petitioner, of any person or persons, other than the legal father, alleged to be the biological father of the child whose parental rights have not been terminated;

(6) If the child is in detention, the place of detention, and the time the child was taken into custody; and

(7) If any other court has jurisdiction over the child and the name of the court, if known to the petitioner.

(c) All other petitions shall set forth plainly and to the extent reasonably ascertainable:

(1) The facts that bring the child within the jurisdiction of the court, including the approximate date, manner, and place of the acts alleged, with a statement that it is in the best interest of the child and the public that the proceeding be brought;

(2) The name, age, and residence address, if any, of the child on whose behalf the petition is brought and the places where the child has lived for the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period;

(3) The names and residence addresses, if known to petitioner, of the legal parents, guardian, or custodian of the child and of the child's spouse, or of any person who has physical custody of the child or claims rights of legal or physical custody of, or visitation with the child;

(4) The names and residence addresses, if known to the petitioner, of any person or persons, other than the legal father, alleged to be the biological father of the child whose parental rights have not been terminated;

(5) The court, case number, and nature of any proceeding, if known to the petitioner, that could affect the current proceeding including proceedings for custody, visitation, enforcement, domestic violence, protective orders, termination of parental rights, or adoption;

(6) A statement whether the petitioner has participated as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, a statement that identifies the court, the case number, and the date of the child custody determination, if any;

(7) A statement whether or not the parents are currently serving in the armed forces; and

(8) A statement whether the child or child's parent is a member or eligible for membership in any recognized Indian tribe under the federal Indian Child Welfare Act (25 U.S.C. § 1901).

(d) If the petitioner, counter-petitioner, or child is a victim of abuse or has been placed at risk of abuse by any of the parties to the proceeding, the

petitioner may exclude the address of the petitioner or the child from the petition and file that information with the clerk in a separate document, which the clerk shall place under seal.

(e) School personnel may file a juvenile petition against a student receiving special education services only in accordance with the manifestation determination requirements of § 49-10-1304(d)(3)(B).

(f)(1) Absent serious threats to school safety or exceptional circumstances in the judgment of a law enforcement officer, when a delinquency or unruly petition is filed by school personnel based upon acts committed on school grounds or at a school-sponsored event, the school personnel shall include information in the petition that shows that:

(A) School personnel have sought to resolve the problem through available educational approaches; and

(B) Court intervention is needed in the judgment of the petitioner.

(2) School personnel shall seek to engage parents, guardians, or legal custodians in resolving the child's behavior before filing a petition where appropriate under the circumstances.

**37-1-121. Service of process.**

Service of process for juvenile court proceedings may be completed by any individual authorized to serve process under the Tennessee Rules of Civil Procedure or the Tennessee Rules of Juvenile Procedure, including, but not limited to, a sheriff, constable, or private process server.

**37-1-122. Summons — Attachment where summons ineffectual.**

(a) After the petition has been filed, the clerk shall schedule a time for a hearing and issue summonses to the parties. In case a summons cannot be served or the party served fails to obey the same, and in any case where it is made to appear to the court that such summons will be ineffectual, except as described in subsection (b), an attachment may issue, on the order of the court, against the:

(1) Parent or guardian;

(2) Person having custody of the child;

(3) Person with whom the child may be; or

(4) Child.

(b)(1) An attachment for a violation of conditions or limitations of probation pursuant to § 37-1-131 or § 37-1-132, home placement supervision pursuant to § 37-1-137, or diversion pursuant to § 37-1-110 or § 37-1-129 shall not issue unless:

(A) The child poses a significant likelihood of significant injury to another person or significant likelihood of damage to property;

(B) The child cannot be located by the supervising person, persons, or entity after documented efforts to locate the child by the supervising person, persons, or entity; or

(C) The child fails to appear for a court proceeding.

(2) If the child has an attorney of record, that attorney must be served with any attachment request made to the court.

**37-1-126. Right to counsel or guardian ad litem — Administrative fee.**

(a)(1) A child is entitled to representation by legal counsel at all stages of any delinquency proceedings or proceedings alleging unruly conduct that place the child in jeopardy of being removed from the home pursuant to § 37-1-132(b) and is entitled to a guardian ad litem for proceedings alleging a child to be dependent and neglected or abused.

(2)(A) An adult is entitled to representation by legal counsel at all stages of any proceeding under this part in proceedings involving:

(i) Child abuse prosecutions pursuant to §§ 37-1-412 and 39-15-401;

(ii) Contributing to the delinquency or unruly behavior of a child pursuant to § 37-1-156 or contributing to the dependency and neglect of a child pursuant to § 37-1-157;

(iii) Violation of compulsory school attendance pursuant to §§ 49-6-3007 and 49-6-3009; or

(iv) Criminal contempt.

(B) A parent is entitled to representation by legal counsel at all stages of any proceeding under this part in proceedings involving:

(i) Abuse, dependency or neglect pursuant to § 37-1-102; or

(ii) Termination of parental rights pursuant to § 36-1-113.

(3) If the person is indigent, the court shall provide counsel for the indigent person. If a person appears without counsel, the court shall ascertain whether the person knows of the right to counsel and of the right to be provided with counsel by the court if the person is indigent. The court may continue the proceeding to enable a person to obtain counsel and shall provide counsel for an unrepresented indigent person upon request.

(4) In all delinquency hearings or in unruly hearings in which the child may be in jeopardy of being removed from the home as specified in § 37-1-132(b), counsel must be provided for a child not represented by the child's parent, guardian, guardian ad litem or custodian or where the child's interests conflict with the parent, guardian, custodian or guardian ad litem. If the interest of two (2) or more persons conflict, separate counsel may be provided for each of them.

(b) A person is indigent if:

(1) That person does not possess sufficient means to pay reasonable compensation for the services of a competent attorney or guardian ad litem. In determining indigency, the court shall consider the financial resources of the child and the child's parents, legal custodians or guardians; or

(2) In the case of a child, if the child, the child's parents, legal custodians or guardians are financially able to defray a portion or all of the cost of the child's representation but refuse to do so timely, the court may make written findings determining this as indigency; provided, the court shall assess the administrative fee and costs pursuant to § 37-1-150(g).

(c)(1) Parents, legal custodians, or guardians, or any adult defendants or respondents whose child is provided with court-appointed counsel pursuant to this section, or who themselves are provided with court-appointed counsel pursuant to this section, may be assessed by the court at the time of appointment a nonrefundable administrative fee in the amount of fifty dollars ($50.00). The parents, legal custodians, or guardians of a child who is appointed a guardian ad litem may be assessed by the court an administrative fee as provided in this subdivision (c)(1).

(2) The administrative fee shall be assessed only one (1) time per case and shall be waived or reduced by the court upon a finding that the child and the child's parents, legal custodians, or guardians lack financial resources sufficient to pay the fee in such amount. In cases where a guardian ad litem is appointed, the financial resources of the child shall not be considered. The fee may be increased by the court to an amount not in excess of two hundred dollars ($200) upon a finding that the child's parents, legal custodians or guardians, or an adult defendant or respondent possesses sufficient financial resources to pay the fee in such increased amount. The administrative fee shall be payable, at the court's discretion, in a lump sum or in installments; provided, that the fee shall be paid prior to disposition of the case or within two (2) weeks of appointment of counsel, whichever first occurs. Prior to disposition of the case, the clerk of the court shall inform the judge whether the administrative fee has been collected. Failure to pay the administrative fee assessed by the court shall not reduce or in any way affect the rendering of services by court-appointed counsel. The administrative fee shall not be assessed against the child.

(3) The administrative fee shall be separate from, and in addition to, any other contribution or recoupment assessed pursuant to law for defrayal of costs associated with the provision of court-appointed counsel. The clerk of the court shall retain a commission of five percent (5%) of each dollar of administrative fees collected and shall transmit the remaining ninety-five percent (95%) of each such dollar to the state treasurer for deposit in the state's general fund.

(4) If the administrative fee is not paid prior to disposition of the case, then the fee shall be collected in the same manner as costs are collected; provided, that upon disposition of the case, moneys paid to the clerk, including any cash bond posted by or on behalf of a child who has been transferred or is awaiting a transfer hearing pursuant to § 37-1-134 or an adult, shall be allocated to taxes, costs, and fines and then to the administrative fee and any recoupment ordered. The administrative fee and any recoupment or contribution ordered for the services of court-appointed counsel may apply and may be collected even if the charges against the party are dismissed. The court shall have discretion to waive the administrative fee if the case is dismissed.

(5) As part of the clerk's regular monthly report, each clerk of court, who is responsible for collecting administrative fees pursuant to this section, shall file a report with the court, the administrative director of the courts, and the comptroller of the treasury. The report shall indicate the following:

(A) Number of children and adults for whom the court appointed counsel pursuant to this section;

(B) Number of children for whom the court appointed a guardian ad litem pursuant to § 37-1-149;

(C) Number of children and adults for whom the court appointed counsel and waived the administrative fee;

(D) Number of children for whom the court appointed a guardian ad litem and waived the administrative fee;

(E) Number of children and adults from, or on behalf of, whom the clerk collected administrative fees;

(F) Total amount of commissions retained by the clerk from such administrative fees; and

(G) Total amount of administrative fees forwarded by the clerk to the state treasurer.

**37-1-128. Investigations — Custody of child — Evaluation and commitment for mental illness or developmental disability.**

(a)(1) When a child alleged to be delinquent or unruly is brought before the court, the court may notify a probation officer attached to the court or any such person, persons or agencies available to the court, or to the department of children's services, and it shall be their duty to:

(A) Make an investigation of the case or conduct a preliminary inquiry if one has not already been conducted;

(B) Be present in court to report when the case is heard;

(C) Furnish such information and assistance as the court may require; and

(D) Take charge of any child before or after the hearing as may be directed by the court.

(2) A probation officer shall have, as to any child committed to such officer's care, the powers of a law enforcement officer. Subject to this part, the probation officer may bring such child before the court committing the child to the officer's care for further action as the court may deem fit and proper.

(b) [Deleted by 2016 amendment.]

(c)(1) At any time prior to a child being adjudicated unruly or dependent and neglected, or before the disposition of a child who has been adjudicated delinquent, unruly or dependent and neglected, the court may order that the department make an assessment of the child and report the findings and recommendations to the court. Such order of referral shall confer authority to the department or its designees to transport the child and to obtain any necessary evaluations of the child without further consent of the parent(s), legal custodian or guardian.

(2) If, during the evaluation or assessment, the department determines that there is a need for treatment for either the mental or physical well being of the child, consent of the parent(s), guardian or current legal custodian shall be obtained. If such consent cannot be obtained, the department may apply to the court for authorization to provide consent on behalf of the child. If a child is suspected of being in need of or is eligible for special education services, then state and federal laws governing evaluation and placement must be followed.

(3) A report to the court of the department's recommendations shall be made within fifteen (15) days, which may be extended up to thirty (30) days for good cause following the court's order of referral. The department shall include in the report a review of the child's previous records including, but not limited to, health and education records, a review of the child's family history and current family status, and a written recommendation concerning the child's status.

(4) Any order of the court that places custody of a child with the department shall empower the department to select any specific residential or treatment placements or programs for the child according to the determination made by the department, its employees, agents or contractors.

(d) During the pendency of any proceeding, the court may order the child examined at a suitable place by a physician regarding the child's medical

condition, and may order medical or surgical treatment of a child who is suffering from a serious physical condition or illness that requires prompt treatment, even if the parent, guardian or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of such person's refusal to consent to treatment.

(e)(1)(A) If, during the pendency of any proceeding under this chapter, there is reason to believe that the child may be suffering from mental illness, the court may order the child to be evaluated on an outpatient basis by a mental health agency or a licensed private practitioner designated by the commissioner of mental health and substance abuse services to serve the court. If, during the pendency of any proceeding under this chapter, there is reason to believe that the child may be suffering from a developmental disability, the court may order the child to be evaluated on an outpatient basis by a mental health agency, developmental center or a licensed private practitioner designated by the commissioner of mental health and substance abuse services to serve the court. The outpatient evaluation shall be completed no more than thirty (30) days after receipt of the order by the examining professional.

(B) If, and only if, in either of the circumstances described in subdivision (e)(1)(A) the outpatient evaluator concludes that further evaluation and treatment are needed, the court may order the child hospitalized. If the court orders the child to be hospitalized in a department of mental health and substance abuse services facility, hospital or treatment resource, the child shall be placed into the custody of the commissioner of mental health and substance abuse services at the expense of the county for not more than thirty (30) days at a facility, hospital or treatment resource with available, suitable accommodations. Prior to transporting a defendant for such evaluation and treatment in a department facility, the sheriff or other transportation agent shall determine that the receiving department facility has available, suitable accommodations.

(2) If an evaluation is ordered under this subsection (e), the evaluator shall file a complete report with the court, which shall include:

(A) Whether the child is mentally ill or developmentally disabled;

(B) Identification of the care, training or treatment required to address conditions of mental illness or developmental disability that are found, and recommendations as to resources that may be able to provide such services;

(C) Whether the child is subject to voluntary or involuntary admission or commitment for inpatient or residential services or for commitment to the custody of the department of mental health and substance abuse services for such conditions under title 33; and

(D) Any other information requested by the court that is within the competence of the evaluator.

(3) If it appears from the evaluation report and other information before the court that the child is in need of care, training or treatment for mental illness or developmental disability, the court may proceed in accordance with other provisions of this chapter or may order that proceedings be initiated before the court under § 37-1-175, § 33-5-402 or title 33, chapter 6, part 5.

(4) When transportation of the child is necessary to obtain evaluations under this subsection (e), the court may order the child transported with the cost of the transportation borne by the county from which the child is sent.

(5) If a community mental health center receives grants or contracts from the department of mental health and substance abuse services for services for mental illness or developmental disability and the commissioner has not designated another provider of outpatient evaluation for the court, the department shall contract with the center for evaluation services under this subsection (e), and the center shall provide such services ordered under this subsection (e) by courts in the center's catchment area.

(6) If a child who is alleged to be delinquent or unruly is brought before the court, and if the court determines that there is reason to believe that the child is experiencing a behavioral health emergency, then the court may request the services of a crisis response provider designated by the commissioner of mental health and substance abuse services to perform such services under title 33. For purposes of this subdivision (e)(6), "behavioral health emergency" means an acute onset of a behavioral health condition that manifests itself by an immediate substantial likelihood of serious harm as defined in § 33-6-501. If the crisis provider is unable to respond within two (2) hours of contact by the court, the crisis provider shall immediately notify the court and provide instructions for examination of the child under title 33, chapter 6, part 1.

(f) After adjudication, but prior to the disposition of a child found to be dependent and neglected, delinquent, unruly or in need of services under § 37-1-175, the court may place the child in custody of the department of children's services for the purpose of evaluation and assessment if the department has a suitable placement available for such purpose. If the department determines that there is no suitable placement available, the court shall not order the department to take custody of the child for the purpose of evaluation and assessment. Such pre-disposition custody shall last for a maximum of thirty (30) days and the court shall have a hearing to determine the appropriate disposition before the expiration of the thirty (30) days.

**37-1-134. Transfer from juvenile court.**

(a) After a petition has been filed alleging delinquency based on conduct that is designated a crime or public offense under the laws, including local ordinances, of this state, the court, before hearing the petition on the merits, may transfer the child to the sheriff of the county to be held according to law and to be dealt with as an adult in the criminal court of competent jurisdiction. The disposition of the child shall be as if the child were an adult if:

(1)(A) The child was:

(i) Less than fourteen (14) years of age at the time of the alleged conduct and charged with first degree murder or second degree murder or attempted first or second degree murder;

(ii) Fourteen (14) years of age or more but less than seventeen (17) years of age at the time of the alleged conduct and charged with the offense of first degree murder, second degree murder, rape, aggravated rape, rape of a child, aggravated rape of a child, aggravated robbery, especially aggravated robbery, aggravated burglary, especially aggravated burglary, kidnapping, aggravated kidnapping, especially aggravated kidnapping, commission of an act of terrorism, carjacking, or an attempt to commit any such offenses;

(iii) Sixteen (16) years of age or more at the time of the alleged conduct and charged with the offense of robbery or attempt to commit

robbery; or

(iv) Seventeen (17) years of age or more at the time of the alleged conduct;

(B) The district attorney general shall not seek, nor shall any child transferred under this section receive, a sentence of death for the offense for which the child was transferred;

(2) A hearing on whether the transfer should be made is held in conformity with §§ 37-1-124, 37-1-126 and 37-1-127;

(3) Reasonable notice in writing of the time, place and purpose of the hearing is given to the child and the child's parents, guardian or other custodian at least fourteen (14) days prior to the hearing; and

(4) The court finds that there is probable cause to believe that:

(A) The child committed the delinquent act as alleged;

(B) The child is not committable to an institution for the developmentally disabled or mentally ill; and

(C) The interests of the community require that the child be put under legal restraint or discipline.

(b) In making the determination required by subsection (a), the court shall consider, among other matters:

(1) The extent and nature of the child's prior delinquency records;

(2) The nature of past treatment efforts and the nature of the child's response thereto;

(3) Whether the offense was against person or property, with greater weight in favor of transfer given to offenses against the person;

(4) Whether the offense was committed in an aggressive and premeditated manner;

(5) The possible rehabilitation of the child by use of procedures, services and facilities currently available to the court in this state; and

(6) Whether the child's conduct would be a criminal gang offense, as defined in § 40-35-121, if committed by an adult.

(c) The transfer pursuant to subsection (a) terminates jurisdiction of the juvenile court with respect to any and all delinquent acts with which the child may then or thereafter be charged, and the child shall thereafter be dealt with as an adult as to all pending and subsequent criminal charges; provided, that if a child transferred pursuant to this section is acquitted in criminal court on the charge or charges resulting in such transfer, or if such charge or charges are dismissed in such court, this subsection (c) shall not apply and the juvenile court shall retain jurisdiction over such child. If a child is in the legal custody of the department at the time of transfer, such custody shall terminate at the transfer hearing, except that if a child is already committed to the department, the court may determine if it is in the best interest of the child to remain in the legal custody of the department until conviction occurs. In any case, legal custody by the department shall terminate upon any conviction in adult criminal court. If there is no conviction and charges so transferred are dismissed or acquittal occurs, the presiding trial judge shall notify the transferring juvenile court judge of such dismissal or acquittal so that the juvenile court may at its discretion set a hearing to ascertain status of the child as to the department's custody.

(d) If a person eighteen (18) years of age or older is to be charged with an offense that was alleged to have been committed prior to such person's eighteenth birthday, the petition shall be brought in the juvenile court that

would have had jurisdiction at the time of the offense. The juvenile court shall either adjudicate the case under its continuing jurisdiction authority under § 37-1-102(b)(5)(B) and (C) or undertake transfer proceedings consistent with this section.

(e) No child, either before or after reaching eighteen (18) years of age, shall be prosecuted for an offense previously committed unless the case has been transferred as provided in subsection (a).

(f)(1) Statements made by the child at the juvenile court hearing under this section are not admissible against the child, over objection, in the criminal proceedings following the transfer.

(2) In any county in which, on July 1, 1996, the general sessions court or juvenile court makes audio recordings, the court shall make or cause to be made an audio recording of each transfer hearing conducted pursuant to this section. Such recording shall include all proceedings in open court and such other proceedings as the judge may direct and shall be preserved as a part of the record of the hearing. The juvenile who is the subject of the hearing may, at the juvenile's own expense, transcribe the recording of the hearing and a transcript so prepared may be used for the purpose of an appeal as provided by law. In all other counties, transfer hearings shall be recorded using the procedure provided in title 40, chapter 14, part 3.

(g) If the case is not transferred, the judge who conducted the hearing shall not over objection of an interested party preside at the hearing on the petition. If the case is transferred to a court of which the judge who conducted the hearing is also the judge, the judge likewise is disqualified from presiding in the prosecution.

(h) After a child has been sentenced to an adult institution, the department of correction may file a petition requesting the committing court to allow the department to transfer the defendant to an institution for juvenile delinquents administered by the department of children's services. Upon the approval by such court, the defendant may be transferred by the department of correction to a child-caring institution to be held until the defendant's eighteenth birthday. At the defendant's eighteenth birthday, the defendant may be transferred to an adult institution if there is time remaining on the defendant's term. If the term expires prior to the eighteenth birthday, the defendant shall be released. Any child sentenced by a committing court pursuant to this section shall, for the purpose of parole, be treated as if such child were an adult. The provisions of this section relative to housing of juveniles who have obtained the age of eighteen (18) shall not be affected by subsections (i), (j) and (k).

(i) When a child transferred under this section is detained, the juvenile court may, in its discretion, order confinement in a local juvenile detention facility, or a juvenile detention facility with which it contracts or an adult detention facility separate and removed from adult detainees. The court having adult criminal jurisdiction may thereafter order detention in an adult detention facility separate and removed from adult detainees; provided, however, that during the period while such child is detained separately from adult detainees, such child shall otherwise abide by the same regulations and policies governing conditions of imprisonment that apply to adult detainees who are charged with similar offenses. Similar regulations and policies governing educational opportunities for adults shall be implemented for a child so detained, but such regulations and policies shall in no way affect or alter the manner in which a local education agency is required to provide educational services to a child under the federal Individuals with Disabilities Education

Act, compiled in 20 U.S.C. § 1471 et seq.

(j) Any person, who was transferred under this section and who was less than sixteen (16) years of age at the time of the offense and who is subsequently convicted and committed, shall be housed in a juvenile correctional facility until such person reaches sixteen (16) years of age, at which time such person may be transferred upon the order of the committing court to an adult facility. Any person committed to an adult facility under this section shall be housed separate and removed from adult inmates. In exercising the commissioner's discretion under § 41-1-403 to determine the institutional location of any such person, the commissioner of correction shall take into consideration the proximity of the institution to the person's home. However, during any period while such person is confined separately from adult inmates within such regional facility, such person shall otherwise abide by the same regulations and policies governing conditions of imprisonment that apply to adult inmates who are confined for similar offenses. Similar regulations and policies governing educational opportunities for adults shall be implemented for a child so detained, but such regulations and policies shall in no way affect or alter the manner in which a local education agency is required to provide educational services to a child under the federal Individuals with Disabilities Education Act, compiled in 20 U.S.C. § 1471 et seq.

(k) Any person who is transferred under this section and who was sixteen (16) years of age or older at the time of the offense and is subsequently convicted and committed shall be housed in a juvenile correctional facility unless the committing court orders commitment to an adult facility. Any person committed to an adult facility under this section shall be housed, separate and removed from adult inmates. In exercising the commissioner's discretion under § 41-1-403 to determine the institutional location of any such person, the commissioner of correction shall take into consideration the proximity of the institution to the person's home. However, during any period while such person is confined separately from adult inmates within such regional facility, such person shall otherwise abide by the same regulations and policies governing conditions of imprisonment that apply to adult inmates who are confined for similar offenses. Similar regulations and policies governing educational opportunities for adults shall be implemented for a child so detained, but such regulations and policies shall in no way affect or alter the manner in which a local education agency is required to provide educational services to a child under the federal Individuals with Disabilities Education Act, compiled in 20 U.S.C. § 1471 et seq.

(*l*) It is the intent of the general assembly that children shall not be transferred under this section due to a lack of appropriate resources for effective treatment and rehabilitation in the juvenile justice system.

**37-1-136. Assessment reports in certain counties — Confidentiality — Limited access — Destruction.**

(a) All reports and materials compiled by the juvenile court in connection with an assessment report shall be confidential, shall not be public record, and shall not be disclosed, except as specifically authorized by this section. Except for purposes directly connected with this section, a person shall not disclose, receive, make use of, authorize, or knowingly permit the use of assessment reports and related materials. Assessment reports and related

materials shall not be subject to any court subpoena.

(b) Access to assessment reports and materials shall be granted to the following people, officials, or agencies only for the following limited purposes:

(1) A court official or employee for the purpose of compiling information, administering assessment tools, preparing reports, and assisting children and families with accessing identified services and programs. The court official or employee may disclose relevant information, but not the actual assessment reports or materials, to professionals or other agency providers as needed to assist the child and family in accessing services and programs;

(2) An attorney for the child to use in representing the child or a guardian ad litem for the child for use in representing the child's best interests; or

(3) The child who is the subject of the assessment report and the child's parent or legal guardian.

(c) A juvenile court judge, magistrate, or district attorney general may be provided with a limited report concerning a child adjudicated delinquent. The limited report may contain service recommendations developed from the assessment report for the purpose of reviewing the appropriateness of the recommendations.

(d) A juvenile court judge or magistrate may hear testimony regarding the contents of an assessment report in a delinquency case for a child adjudicated delinquent for the limited purpose of determining appropriate services and programs for the child who is the subject of the assessment report. If such testimony is introduced, the actual assessment report and materials shall not be submitted to the court and shall not become part of the court record.

(e) The materials, records, and assessment reports compiled by the juvenile court for use as discussed in this section are to be maintained separately from public court records. When a child who is the subject of such an assessment report reaches an age when they are no longer under the jurisdiction of the juvenile court, the assessment report and all materials used to compile the information in the assessment report in possession of the juvenile court shall be destroyed.

(f) A violation of this section is a Class B misdemeanor.

(g) As used in this section, "assessment report" means a report compiled by the juvenile court assessment team.

(h) This section shall apply to any assessment report or materials used in the creation of an assessment report in juvenile courts located in any county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census, and this section may be adopted by the juvenile court in any county and applied to any assessment report or materials used in the creation of an assessment report in juvenile court.

**37-1-146. Juvenile traffic offenders.**

(a) All cases of alleged traffic violations by children coming within this part shall be heard and disposed of upon a traffic ticket or citation signed by a law enforcement officer that describes in general terms the nature of the violation. Such cases may be disposed of nonjudicially under the supervision of the judge; in any case, however, the child or the child's parents may request and shall be

granted a hearing before the judge.

(b) If the court finds that the child violated a traffic law or ordinance, the court may decree the child to be a traffic violator, and, in addition to any disposition provided for in this part for the disposition of a delinquent or unruly child, the judge may make one (1) or any combination of the following decisions:

(1) Suspend and hold the child's driver license for a specified or indefinite time;

(2) Limit the child's driving privileges as an order of the court;

(3) Order the child to attend traffic school, if available, or to receive driving instructions;

(4) Impose a fine of not more than fifty dollars ($50.00) against the child's parent or legal guardian; or

(5) Perform community service work in lieu of a fine.

(c) In any case or class of cases, the judge of any juvenile court may waive jurisdiction of traffic violators who are sixteen (16) years of age or older, and such cases shall be heard by the court or courts having jurisdiction of adult traffic violations, or the child's parent or legal guardian may pay the stipulated fine to a traffic bureau.

**37-1-150. Cost and expense for care of child.**

(a) The following expenses may be a charge upon the funds of the county upon certification thereof by the court:

(1) The cost of medical and other examinations and treatment of a child that is ordered by the court. The cost of outpatient mental health evaluations under § 37-1-128(e)(1) shall be the responsibility of the state;

(2) Reasonable compensation for services and related expenses of counsel appointed by the court for a party; provided, however, that in the case of indigent persons appointed counsel pursuant to § 37-1-126, the state, through the administrative office of the courts, shall pay such compensation. The supreme court shall prescribe by rule the nature of the expense for which compensation may be allowed hereunder, and such limitations and conditions for such compensation as it deems appropriate, subject to this subdivision (a)(2). Such rules shall specify the form and content of applications for compensation under this subdivision (a)(2). The court may adopt such other rules related to this subdivision (a)(2) as it deems appropriate in the public interest;

(3) Reasonable compensation for a guardian ad litem, except that in the case of indigent persons, the state, through the administrative office of the courts, shall pay for the guardian ad litem required by § 37-1-149 for proceedings alleging a child to be dependent and neglected or abused. The supreme court shall prescribe by rule the nature of the expense for which compensation may be allowed hereunder, and such limitations and conditions for such compensation as it deems appropriate, subject to the provisions of this subdivision (a)(3). Such rules shall specify the form and content of applications for compensation under this subdivision (a)(3). The court may adopt such other rules related to this subdivision (a)(3) as it deems appropriate in the public interest;

(4) The cost of any preadjudicatory placement of a child pursuant to §§ 37-1-114 and 37-1-116, including necessary transportation of the child to

such placement. A child alleged to be in violation of the conditions of home placement or charged with the commission of an offense that would be a felony if committed by an adult and eligible for secure detention as provided by § 37-1-114(c) who is taken into custody in a county that does not operate a secure juvenile detention facility may, with the approval of the court having jurisdiction in the matter, be transported to and from the nearest such facility in this state; the cost of such transportation and placement shall be paid by the state subject to appropriations to the commission on children and youth for juvenile court services. Payment may also be made from available federal funding;

(5) The expense of service of summons, notices, subpoenas, travel expense of witnesses, except as provided in subsection (b), transportation of the child, and other like expenses incurred in the proceedings under this part; and

(6) The reasonable cost of secretarial services for the court in performing its duties as a juvenile court.

(b)(1) The cost of transporting a child who has been committed to a state correctional institution on an offense that would be a felony if committed by an adult shall be paid by the state. The cost of transportation of a child for mental health examination or evaluation when the examination or evaluation has been ordered by the juvenile court judge for a child charged with commission of an offense that would be a felony if committed by an adult shall be paid by the county.

(2) The cost of an inpatient mental health examination or evaluation ordered by the juvenile court judge for a child charged with commission of an offense that would be a felony if committed by an adult, and the cost incidental to the examination or evaluation, shall be paid by the city or county.

(c) The cost of transporting a child from another state for an offense that would be a felony if the child were an adult shall be paid by the state; otherwise, the city or county will bear the cost.

(d)(1) If, after due notice to the parents, legal custodians or guardians, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in subdivisions (a)(1)-(5), the court may order them to pay the same and prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due or, if the costs and expenses have been paid by the county, to the appropriate officer of the county.

(2) If, after due notice to the parents, legal custodians or guardians, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses of the mental evaluation or examination of the child, which have been paid by the city or county pursuant to subsection (b), the court may order them to pay the costs and prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due; or if the costs and expenses have been paid by the state, to the appropriate officer of the state.

(e)(1) Attorneys appointed hereunder, other than public defenders, are entitled to reasonable compensation for their services, both prior to and at the hearing of the cause, and are entitled to reimbursement for their reasonable and necessary expenses in accordance with the rules of the

supreme court.

(2) Each attorney seeking reimbursement or compensation hereunder shall file an application with the juvenile court, stating in detail the nature and amount of the expenses claimed, supporting such claim with receipts showing payment thereof and stating the nature and extent of the attorney's services, including those in connection with any preliminary hearing.

(f) Costs for proceedings under this title or the costs of the care or treatment of any child that is ordered by the court shall be paid by the state only when specifically authorized by this title or other provisions of law.

(g)(1) In proceedings where the child is determined to be indigent pursuant to § 37-1-126 and the court appoints counsel or a guardian ad litem to represent the child, but finds the child's parents, legal custodians, or guardians are financially able to defray a portion or all of the cost of the child's representation, the court shall enter an order directing the child's parents, legal custodians, or guardians to pay into the registry of the clerk of the court any sum that the court determines the child's parents, legal custodians, or guardians are able to pay.

(2) In proceedings where an adult is determined to be indigent pursuant to § 37-1-126 and the court appoints counsel to represent the adult and finds the adult financially able to defray a portion or all of the cost of the adult's representation, the court shall enter an order directing the adult to pay into the registry of the clerk of the court any sum that the court determines the adult is able to pay.

(3) The sum to defray a portion or all of the costs shall be subject to execution as any other judgment. The court may provide for payments to be made at intervals, which the court shall establish, and upon terms and conditions as are fair and just. The court may also modify its order when there has been a change in circumstances.

(4) The clerk of the court shall collect all moneys paid pursuant to this subsection (g). The clerk shall notify the court of any failure to comply with the court's order. At the conclusion of the proceedings, the court shall order the clerk to pay to the administrative office of the courts any funds that the clerk collected. The clerk of the court shall receive a commission of five percent (5%) of the moneys collected for the clerk's services in collecting, handling and making payment pursuant to the order of the court.

(5) If the administrative office of the courts receives funds greater than the total amount which appointed counsel or the guardian ad litem has claimed and has been reimbursed pursuant to Tennessee Supreme Court Rule 13, then any such excess funds shall be paid to the appointed attorney.

### 37-1-153. Court files and records — Inspection limited — Exceptions for certain violent offenders — Confidentiality — Expunction.

(a) Except in cases arising under § 37-1-146, all files and records of the court in a proceeding under this part are open to inspection only by:

(1) The judge, officers and professional staff of the court;

(2) The parties to the proceeding and their counsel and representatives;

(3) A public or private agency or institution providing supervision or having custody of the child under order of the court;

(4) A court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in juvenile court; and

(5) With permission of the court, any other person or agency or institution having a legitimate interest in the proceeding or in the work of the court.

(b) Notwithstanding subsection (a), petitions and orders of the court in a delinquency proceeding under this part shall be opened to public inspection and their content subject to disclosure to the public if:

(1) The juvenile is fourteen (14) or more years of age at the time of the alleged act; and

(2) The conduct constituting the delinquent act, if committed by an adult, would constitute first degree murder, second degree murder, rape, aggravated rape, rape of a child, aggravated rape of a child, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping or especially aggravated kidnapping.

(c) Notwithstanding the provisions of this section, if a court file or record contains any documents other than petitions and orders, including, but not limited to, a medical report, psychological evaluation or any other document, such document or record shall remain confidential.

(d)(1) Except as otherwise permitted in this section, it is an offense for a person to intentionally disclose or disseminate to the public the files and records of the juvenile court, including the child's name and address.

(2) A violation of this subsection (d) shall be punished as criminal contempt of court as otherwise authorized by law.

(e) Notwithstanding other provisions of this section, where notice is required under § 49-6-3051, an abstract of the appropriate adjudication contained in the court file or record shall be made and provided to the parent, guardian, or other custodian of the juvenile, including the department, and this abstract shall be presented to the school in which the juvenile is, or may be, enrolled, in compliance with § 49-6-3051.

(f)(1) Notwithstanding any law to the contrary, any person who is tried and adjudicated delinquent or unruly by a juvenile court may subsequently file a motion for expunction of all court files and the juvenile records. The court may order all or any portion of the requested expunction if, by clear and convincing evidence, the court finds that the movant:

(A)(i) Is currently seventeen (17) years of age or older;

(ii) Is at least one (1) year removed from the person's most recent delinquency or unruly adjudication;

(iii) Has never been convicted of a criminal offense as an adult, has never been convicted of a criminal offense following transfer from juvenile court pursuant to § 37-1-134, and has never been convicted of a sexual offense as defined in § 40-39-202, whether in juvenile court, following transfer from juvenile court pursuant to § 37-1-134, or as an adult; and

(iv) Does not have an adjudication of delinquency for a violent juvenile sexual offense as defined in § 40-39-202;

(B) Has maintained a consistent and exemplary pattern of responsible, productive and civic-minded conduct for one (1) or more years immediately preceding the filing of the expunction motion; or

(C) Has made such an adjustment of circumstances that the court, in its discretion, believes that expunction serves the best interest of the child

and the community.

(2) Nothing in this subsection (f) shall be construed to apply to any law enforcement records, files, fingerprints or photographs pertaining to any delinquency or unruly adjudication.

(3) In any case in which there is successful completion of an informal adjustment without adjudication under § 37-1-110, the juvenile records shall be expunged by the juvenile court after one (1) year, upon the filing of a motion for expunction and without cost to the child. The court shall inform the child, at the time of the informal adjustment, of the need to file the motion for expunction after a year of successful completion of an informal adjustment and provide the child with a model expunction motion prepared by the administrative office of the courts. The administrative office of the courts shall create a motion that can be completed by a child and shall be circulated to all juvenile court clerks. All juvenile court clerks shall make this model expunction motion accessible to all movants.

(4) In any case in which there is a successful completion of a pretrial diversion pursuant to § 37-1-110, the juvenile record shall be expunged by the juvenile court after one (1) year, upon the filing of a motion for expunction and without cost to the child. The court shall inform the child, at the time of the pretrial diversion, of the need to file the motion for expunction after a year of successful completion of the pretrial diversion and provide the child with a model expunction motion prepared by the administrative office of the courts. All juvenile court clerks shall make this model expunction motion accessible to all movants.

(5) In any case in which there is a successful completion of a judicial diversion pursuant to § 37-1-129, the juvenile record shall be expunged by the juvenile court after one (1) year, upon the filing of a motion for expunction and without cost to the child. The court shall inform the child, at the time of the judicial diversion, of the need to file the motion for expunction after a year of successful completion of the judicial diversion and provide the child with a model expunction motion prepared by the administrative office of the courts. All juvenile court clerks shall make this model expunction motion accessible to all movants.

(6) In any case that is dismissed, excluding a case dismissed after successful completion of an informal adjustment, pretrial diversion, or judicial diversion, the juvenile record shall be expunged by the juvenile court as a part of the court's order of dismissal, without the filing of a pleading for expunction, and at no cost to the child.

(7) A motion for expunction may be filed prior to the one-year period outlined in subdivisions (f)(3), (f)(4), and (f)(5). If the motion is filed, the court may order all or any portion of the requested expunction if the court finds by clear and convincing evidence that the movant has successfully completed the informal adjustment or diversion and has made such an adjustment of circumstances that the court, in its discretion, determines that expunction serves the best interest of the child and the community.

(8) In any case in which a child's juvenile record contains convictions solely for unruly adjudications or delinquency adjudications for offenses that would be misdemeanors if committed by an adult, the juvenile court shall expunge all court files and records after one (1) year from the child's completion of and discharge from any probation or conditions of supervision, upon the filing of a motion by the child. The court shall inform the child, at

the time of adjudication, of the need to file a motion to expunge after a year from the successful completion of probation and provide the child with a model expunction motion prepared by the administrative office of the courts. The administrative office of the courts shall create a motion that can be completed by a child and shall circulate the motion to all juvenile court clerks. All juvenile court clerks shall make this model expunction motion accessible to all children.

(9) The order of expunction, the original delinquent or unruly petition, and the order of adjudication and disposition under subdivisions (f)(1)-(8) shall be sealed and maintained by the clerk of the court in a locked file cabinet and kept separate from all other records. In courts that maintain a case management system capable of expunging a record and only allowing access to the system administrator, paper copies need not be maintained. The sealed orders and petition shall not be released to anyone except at the written request of the person whose records are expunged or in response to an order of a court with proper jurisdiction. Any person whose records are expunged under subdivisions (f)(1)-(8) shall be restored to the status that the person occupied before arrest, citation, the filing of a juvenile petition, or referral. Once a person's juvenile record is expunged, the person shall not be held criminally liable under any provision of state law to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such record or arrest in response to any inquiry made of the person for any purpose.

(10) For purposes of this subsection (f), a juvenile record includes all documents, reports, and information received, kept, or maintained in any form, including electronic, by the juvenile court clerk or juvenile court staff relating to a delinquency or unruly case, with the exception of assessment reports under § 37-1-136.

(11) The court shall inform the child, at the time of adjudication, of the need to file a motion to expunge the child's juvenile record. The administrative office of the courts shall create a motion that can be completed by a child and shall be circulated to all juvenile court clerks. All juvenile court clerks shall make this model expunction motion accessible to all children.

(12) The court may order all or any portion of a juvenile's court files and juvenile records expunged if:

(A) The juvenile is tried and adjudicated delinquent or unruly by a juvenile court for conduct that would constitute the offense of prostitution under § 39-13-513 or aggravated prostitution under § 39-13-516 if committed by an adult;

(B) The court finds that the conduct upon which the adjudication is based was found to have occurred as a result of the person being a victim of human trafficking under § 39-13-314; and

(C) The juvenile has filed a motion for expunction of all court files and juvenile records.

**37-1-163. Financial obligations.**

(a) Financial obligations shall not be assessed against a child in a delinquent or unruly case, including in any order of disposition under § 37-1-131 or § 37-1-132, though this does not affect the assessment of restitution pursuant

to § 37-1-131(b). However, the court may order parents, legal custodians, or guardians to pay financial obligations in accordance with the provisions of this part. Restitution to any victim shall be prioritized over all financial obligations.

(b) Failure to pay or timely pay any financial obligations or restitution assessed to the child or the child's parents, guardian, or legal custodian shall not serve as a sole basis for continued court jurisdiction over or supervision of a child.

(c) Failure to pay or timely pay any financial obligations or restitution assessed to the child, child's parents, legal custodians, or guardians shall not serve as a basis for placement in the custody of the department or other removal of the child from the child's home, including the home of a parent, guardian, or legal custodian, for any length of time.

(d) The court shall consider the child's parents, legal custodians, or guardians' financial ability to pay in determining the amount of any financial obligations incurred or assessed by the state or county as described in this part. The court may decline to assess financial obligations if the court determines that assessment would pose financial hardship to the parents, legal custodians, or guardians.

(e) Any financial obligations ordered shall not be referred to any collection service as defined by § 62-20-102.

**37-1-184. Provider performance metrics.**

(a) The department shall develop a system of performance-based metrics and incentives to use with the state institutions, foster and group homes, and any other entities, public or private, that are authorized by law to receive or provide care or services for children under this part.

(b) These metrics and incentives should encourage use of graduated responses, evidence-based programming, and an intended timeline of three (3) to six (6) months for successful program completion.

**37-1-185. Report on juvenile justice data collection.**

The administrative office of the courts, the department of children's services, and the commission on children and youth shall jointly submit a report addressing statewide data collection in the juvenile justice system, on or before January 1, 2019, to the governor, speaker of the senate, and speaker of the house of representatives. Appropriate school and law enforcement personnel shall be consulted in preparing the report. This report shall include:

(1) A plan to effectuate comprehensive, accurate collection of data and performance measures from all juvenile courts in the state pursuant to § 37-1-506 and other relevant statutory provisions;

(2) Uniform definitions and criteria for data collection to ensure clear and consistent reporting across all agencies and counties;

(3) Proposed forms for future data collection from juvenile courts and county-level agencies; and

(4) Any other recommendations relevant to improving statewide data collection in the juvenile justice system.

**37-1-407. Guidelines for child safety training programs.**

By January 1, 2019, the department shall develop instructional guidelines

for child safety training programs for members of professions that frequently deal with children who may be at risk of abuse, which programs include the common signs of child abuse, human trafficking when a child is the victim, and child sexual abuse; how to identify children at risk of abuse, human trafficking, or sexual abuse; and the reporting requirements of this part. The department shall work with each licensing board to ensure that any child safety training program created by a licensing board fully and accurately reflects the best practices for identifying and reporting child abuse, human trafficking when a child is the victim, and child sexual abuse as appropriate for each profession.

**37-1-408. Development of guidelines for identifying and reporting signs of child abuse, child sexual abuse, and human trafficking of children — Annual child abuse training program for teachers.**

(a) By January 1, 2019, the department of children's services shall develop guidelines on the best practices for identifying and reporting signs of child abuse, child sexual abuse, and human trafficking in which the victim is a child. The department of education shall use the guidelines to identify child abuse training programs appropriate for teachers. The programs identified by the department of education must train teachers on the common signs of child abuse, child sexual abuse, and human trafficking in which the victim is a child; how to identify children at risk of abuse, sexual abuse, or human trafficking; maintenance of professional and appropriate relationships with students; and the requirements for reporting suspected child abuse and sexual misconduct.

(b) Beginning with the 2019-2020 school year, each LEA and each public charter school shall ensure its teachers complete a child abuse training program identified by the department of education pursuant to subsection (a), or a training program that meets the guidelines established by the department of children's services pursuant to subsection (a), as part of the teacher's annual in-service training. Each LEA and each public charter school shall annually report its compliance with this section to the department of education.

**37-1-506. Report and publishing of juvenile court information, including cases, informal adjustments, pretrial diversions and identifying information — Expungement of child's information upon order of expunction of charge that had resulted in probation or prevention services.**

(a) The clerk of each juvenile court shall, each month, report to the executive secretary such information as the council may require concerning cases handled by such court, including, but not limited to, informal adjustments, appointment of counsel, pretrial diversions, and all other dispositions made by the court. Notwithstanding § 37-1-153 or any other law to the contrary, the council may require identifying information to be reported in order that the council may more accurately track recidivism rates and other pertinent trends relating to juveniles. Notwithstanding any law to the contrary, identifying information received by the council shall be confidential; shall not be published, released, or otherwise disseminated; and shall be maintained in accordance with state and federal laws and regulations regarding confidentiality. The council shall publish data and make such data available to properly concerned agencies and individuals, or to any person upon request. Any such

publication or release of data shall be limited to nonidentifying information. The council shall develop guidelines and procedures to expunge identifying information collected on juveniles; provided, that such expunction shall occur only after the juvenile reaches the age that is beyond jurisdiction of the juvenile court.

(b) On or before September 1 of each year, the clerk of each juvenile court operating county probation programs shall furnish to the department the names and birthdates of all children receiving county probation services, and the length of probation for each child. Upon receipt of an order of expunction of the charge for which the child was placed on county probation, the department shall expunge that child's information from its records.

(c) On or before September 1 of each year, the clerk of each juvenile court receiving prevention grants or other prevention funding through the department shall furnish to the department the names and birthdates of all children receiving prevention services, the amount of time each child was provided services, and the percentage of prevention services provided that are evidence-based for the previous fiscal year. Upon receipt of an order of expunction of the charge for which the child received prevention services, the department shall expunge that child's information from its records.

(d)(1) Except as provided in subdivision (d)(2), nothing in this section shall be construed to mandate any change in a county's decision regarding the division of reporting responsibility between the juvenile court clerk and the youth services officer or any other juvenile court staff member.

(2) Notwithstanding this section to the contrary, in counties with a youth services officer, the youth services officer shall be responsible for furnishing the information to the department required by subsections (b) and (c).

**37-1-603. Comprehensive state plan.**

(a) The department shall develop a state plan that encompasses and complies with the scope of all provisions of this part for the detection, intervention, prevention and treatment of child sexual abuse. The department of education and the state board of education shall participate and fully cooperate in the development of the state plan. Furthermore, appropriate state and local agencies and organizations shall be provided an opportunity to participate in the development of the state plan. Appropriate groups and organizations shall include, but not be limited to, community mental health centers; the juvenile courts; the school boards of the local school districts; private or public organizations or programs with recognized expertise in working with children who are sexually abused, physically abused, emotionally abused, or neglected and with expertise in working with the families of such children; private or public programs or organizations with expertise in maternal and infant health care; multi-disciplinary child protection teams; child care centers; and law enforcement agencies. The state plan to be provided to the general assembly, the appropriate committees and the governor shall include, as a minimum, the information required of the various groups in subsection (b).

(b) The development of the comprehensive state plan shall be accomplished in the following manner:

(1) The department of children's services shall establish a task force composed of representatives from the department of mental health and

substance abuse services, department of intellectual and developmental disabilities, the commission on children and youth created by § 37-3-102, a child abuse agency as defined in § 37-5-501, a treatment resource as defined in § 33-1-101, and a local child service agency. Representatives of the departments of children's services, education, health, the Tennessee bureau of investigation, district attorneys general conference, Tennessee council of juvenile and family court judges, and local law enforcement agencies shall serve as ex officio members of the task force. The task force shall be responsible for:

(A) Developing a plan of action for better coordination and integration of the goals, activities, and funding of the department pertaining to the detection, intervention, prevention, and treatment of child sexual abuse in order to maximize staff and resources, including the effective utilization of licensure personnel in determining whether children are properly cared for and protected by the child care agencies licensed by the department of children's services or human services. The department shall develop ways not only to inform and instruct all personnel in the child care agencies in the detection, intervention, prevention and treatment of child sexual abuse, but shall develop ways for licensure personnel at least annually to require that all such agencies present a prevention program to the children enrolled in and cared for by the agency. Licensing staff shall provide training to such agencies if needed to assist them in presenting such a program and shall review and approve the materials to be presented. The department shall formulate an effective and efficient method for updating files of victims of child sexual abuse. The plan for accomplishing this end shall be included in the comprehensive state plan;

(B) Preparing the state plan for submission to the members of the general assembly and the governor. Such preparation shall include the cooperative plans as provided in this section and the plan of action for coordination and integration of departmental activities into one (1) comprehensive plan. The comprehensive plan shall include a section reflecting general conditions and needs, an analysis of variations based on population or geographic areas, identified problems, and recommendations for change; and

(C) Working with the specified agency in fulfilling the requirements of subdivisions (b)(2), (3), (4), (5) and (6);

(2) The department of education and the state board of education and the department of children's services shall work together in developing ways to inform and instruct appropriate school personnel and children in all school districts in the detection, intervention, prevention and treatment of child sexual abuse and in the proper action that should be taken in a suspected case of child sexual abuse. The plan for accomplishing this end shall be included in the comprehensive state plan;

(3) The departments of education and children's services, and the state board of education, shall work together on the enhancement or adaptation of curriculum materials to assist instructional personnel in providing instruction through a multi-disciplinary approach on the detection, intervention, prevention and treatment of child sexual abuse, including such abuse that may occur in the home, including, but not limited to, instruction provided as part of a family life curriculum pursuant to § 49-6-1304. The curriculum materials shall be geared toward a sequential program of instruction at progressional levels for kindergarten through grade twelve (K-12). Strate-

gies for utilizing the curriculum shall be included in the comprehensive plan;

(4)(A) The Jerry F. Agee Tennessee Law Enforcement Academy, the Tennessee peace officer standards and training commission, and the department of children's services shall work together in developing ways to inform and instruct appropriate local law enforcement personnel in the detection of child sexual abuse and in the proper action that should be taken in a suspected case of child sexual abuse:

(i) Guidelines shall be prepared establishing a standard procedure that may be followed by police agencies in the investigation of cases involving sexual abuse of children, including police response to, and treatment of, victims of such crimes;

(ii) The course of training leading to the basic certificate issued by the Tennessee peace officer standards and training commission shall include adequate instruction in the procedures described in subdivision (b)(4)(A) and shall be included as a part of the in-service training requirement to be eligible for the salary supplement authorized in § 38-8-111;

(iii) A course of study pursuant to such procedures for the training of specialists in the investigation of child sexual abuse cases shall be implemented by the Jerry F. Agee Tennessee Law Enforcement Training Academy. Officers assigned as investigation specialists for these crimes shall successfully complete their training;

(iv) The peace officers standards and training commission may authorize the certification of officers under this section if the officers have received training meeting the criteria established in subdivision (b)(4)(A) from any other approved training course at sites other than the Jerry F. Agee Tennessee Law Enforcement Training Academy; and

(v) It is the intent of the general assembly to encourage the establishment of child sex crime investigation units in sheriffs' departments and police agencies throughout the state, which units shall include investigating crimes involving sexual abuse of children;

(B) The plan for accomplishing this end shall be included in the comprehensive state plan;

(5) The department of children's services shall work with other appropriate public and private agencies to emphasize efforts to educate the general public about the problem of and ways to detect, intervene in, prevent and treat child sexual abuse, and in the proper action that should be taken in a suspected case of child sexual abuse. Such plan shall include a method for publicizing and notifying the general public of the resources and agencies available to provide help and services for victimized children and their families. The plan for accomplishing this end shall be included in the comprehensive state plan; and

(6) The department of children's services and the judicial council shall work together in developing a mechanism to inform and instruct judges with juvenile, divorce and criminal jurisdiction in the detection, intervention, prevention and treatment of child sexual abuse and in the proper action that should be taken in a known or suspected case of child sexual abuse. The plan for accomplishing this end shall be included in the comprehensive state plan.

(c)(1) All budget requests submitted by the department of children's services, the department of education, or any other agency to the general assembly for funding of efforts for the detection, intervention, prevention, and treatment of child sexual abuse shall be based on the state comprehen-

sive plan developed pursuant to this section.

(2) The department of children's services shall readdress the plan one (1) year following its initial presentation and at least biennially thereafter, and shall make necessary revisions. No later than January 31, 1987, and no later than January 31 of every uneven year thereafter, such revisions shall be submitted to the government operations committees of both houses of the general assembly and to the governor.

**37-5-121. Pilot programs — Evidence-based programs for the prevention, treatment or care of delinquent juveniles.**

(a) As used in this section, unless the context otherwise requires:

(1) "Evidence-based" means policies, procedures, programs, and practices demonstrated by scientific research to reliably produce reductions in recidivism or has been rated as effective by a standardized program evaluation tool;

(2) "Pilot program" means a temporary research-based or theory-based program or project that is eligible for funding from any source to determine whether or not evidence supports its continuation beyond the fixed evaluation period. A pilot program shall provide for and include:

(A) Development of a program manual or protocol that specifies the nature, quality, and amount of service that constitutes the program; and

(B) Scientific research using methods that meet high scientific standards for evaluating the effects of such programs must demonstrate on at least an annual basis whether or not the program improves client outcomes central to the purpose of the program;

(3) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based; and

(4) "Theory-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, may have anecdotal or case-study support, and has potential for becoming a research-based program or practice.

(b) The department of children's services, and any other state agency that administers funds related to the prevention, treatment or care of delinquent juveniles, shall not expend state funds on any juvenile justice program or program related to the prevention, treatment or care of delinquent juveniles, including any service model or delivery system in any form or by any name, unless the program is evidence-based. The department shall continue the ongoing research and evaluation of sound, theory-based and research-based programs with the goal of identifying and expanding the number and type of available evidence-based programs, and to that end the department may engage in and fund pilot programs as defined in this section.

(c) Implementation of programs shall be accompanied by monitoring and quality control procedures designed to ensure that they are delivered as prescribed in the applicable program manual or protocol and that corrective action shall be taken when those standards are not met.

(d) The department shall include in any contract with a provider of services related to prevention, treatment or care of delinquent juveniles a provision affirming that the provider shall provide only evidence-based services, except for services that are being provided pursuant to a pilot program as defined in

this section, and that the services shall be accompanied by monitoring and quality control procedures that ensure that they are delivered according to the applicable standards. The department may use performance requirements or incentives in determining the amounts payable in contracts or grants.

(e) In order to prevent undue disturbance to existing department programs, the department shall ensure that twenty-five percent (25%) of the funds expended for delinquent juveniles meet the requirements of this section during fiscal year 2009-2010, that fifty percent (50%) of such funds meet the requirements of this section during fiscal year 2010-2011, that seventy-five percent (75%) of such funds meet the requirements of this section during fiscal year 2011-2012, and that one hundred percent (100%) of such funds meet the requirements of this section during fiscal year 2012-2013 and each fiscal year thereafter.

(f) The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this section. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**37-5-132. Case managers — Caseloads — Maximum caseload ratios.**

(a) The department shall maintain staffing levels of case managers so that each region has enough case managers to allow caseloads not to exceed an average of:

(1) Twenty (20) active cases relating to initial assessments, including investigations of an allegation of child abuse or neglect; or

(2) Twenty (20) children monitored and supervised in active cases relating to ongoing services.

(b) The department shall comply with the maximum caseload ratios described in subsection (a).

**38-1-101. Reports to law enforcement officials of certain types of injuries — Immunity for reporting — Exception.**

(a)(1) All hospitals, clinics, sanitariums, doctors, physicians, surgeons, nurses, pharmacists, undertakers, embalmers, or other persons called upon to tender aid to persons suffering from any wound or other injury inflicted by means of a knife, pistol, gun, or other deadly weapon, or by other means of violence, or suffering from the effects of poison, or suffocation, or where a wound or injury is reasonably believed to have resulted from exposure to a methamphetamine laboratory or a methamphetamine related fire, explosion, or chemical release, or appears to be suffering from or to have been the victim of female genital mutilation in violation of § 39-13-110, shall report the same immediately to the chief of police, if the injured person is in or brought into or the injury occurred in an incorporated town or city, or to the sheriff if the injured person is in or brought into or the injury occurred in the county outside the corporate limits of any incorporated town or city, and shall also, in either event, report the same immediately to the district attorney general or a member of the district attorney general's staff of the judicial district in which the injured person is, or has been brought into, or the injury occurred. Such report shall state the name, residence, and employer of such person, if known, such person's whereabouts at the time the report is made, the place the injury occurred, and the character and

extent of such injuries.

(2) No later than January 15 of each year, district attorneys general shall report the number of reports of a person who appeared to be suffering from or to have been the victim of female genital mutilation in violation of § 39-13-110 received pursuant to subdivision (a)(1) to the senate judiciary committee and the criminal justice committee of the house of representatives.

(b) Injuries to minors that are required to be reported by § 37-1-403 are not required to be reported under this section.

(c)(1) Where a person acts in good faith in making a report under subsection (a), that person shall be immune from any civil liability and shall have an affirmative defense to any criminal liability arising from that protected activity.

(2) There exists a rebuttable presumption that a person making a report under subsection (a) is doing so in good faith.

(d) For purposes of this part, "person" means any individual, firm, partnership, co-partnership, association, corporation, governmental subdivision or agency, or other organization or other legal entity, or any agent, servant, or combination of persons thereof.

(e)(1) The reporting provisions in subsection (a) do not apply if the person seeking or receiving treatment:

(A) Is 18 years of age or older;

(B) Objects to the release of any identifying information to law enforcement officials; and

(C) Is a victim of a sexual assault offense or domestic abuse as defined in § 36-3-601.

(2) This exception shall not apply and the injuries shall be reported as provided in subsection (a) if the injuries incurred by the sexual assault or domestic abuse victim are considered by the treating healthcare professional to be life threatening, or the victim is being treated for injuries inflicted by strangulation, a knife, pistol, gun, or other deadly weapon.

(3) A hospital, healthcare provider or other person who is required to report under subsection (a) shall be immune from civil liability for not reporting if in good faith the hospital, healthcare provider or other person does not report the injury in order to comply with this subsection (e).

(4) If a person injured as provided in subsection (a) is first treated by an EMT, EMT-P, emergency medical or rescue worker, firefighter or other first responder, it shall not be the duty of the first responder to determine if the patient comes within the provisions of subdivision (e)(1). If the first responder transports the patient to a healthcare facility, the first responder's duty is to notify the treating physician or emergency room staff at the facility of the suspected cause of the patient's injury. If the patient is not transported to a healthcare facility, the first responder shall report the result of the call to the 911 center.

### 38-3-116. Inquiry regarding arrested person's children and whether they will be left unattended by arrest — Policies and procedures for conducting welfare checks — Liability.

(a) Each law enforcement agency shall ensure that, whenever a person is arrested and taken into custody by an officer of the agency, the person is asked

whether that person is the parent or legal custodian of any children that will be left unattended by the person's arrest. From this information, the officer shall determine whether the child or children will be endangered by the parent or legal custodian's absence following an arrest.

(b) Each law enforcement agency shall develop policies and procedures for conducting welfare checks on any child identified under subsection (a) as endangered. A welfare check may be performed by the arresting agency or another agency responsible for ensuring the safety and welfare of children.

(c) In the event the arrested person fails to inform the arresting law enforcement agency of any endangered children described in subsection (a), no arresting law enforcement agency, nor its personnel, shall be liable.

**38-3-118 — 38-3-119. [Reserved.]**

**38-6-105. Retired agents.**

Any agent or uniformed law enforcement officer of the Tennessee bureau of investigation who retires after twenty-five (25) years of honorable service shall be issued a retired commission card by the bureau. The card shall identify the agent or uniformed law enforcement officer and that the agent or uniformed law enforcement officer is retired. Cards issued under this provision shall bear the inscription, in print of equal or larger size than the rest of the printing on the card, the words "Not a handgun permit." After twenty-five (25) years of honorable service by an agent or uniformed law enforcement officer of the bureau, in recognition of the agent's or uniformed law enforcement officer's many years of good and faithful public service, the bureau shall authorize the agent or uniformed law enforcement officer to retain the agent's or uniformed law enforcement officer's service weapon.

**38-6-109. Verification of criminal violation information.**

(a) The Tennessee bureau of investigation shall process requests for criminal background checks from any authorized persons, organizations or entities permitted by law to seek criminal history background checks on certain persons, pursuant to a format and under procedures as it may require.

(b)(1) At the request of any persons, organizations or entities authorized by law to make fingerprint requests, the Tennessee bureau of investigation shall receive fingerprint samples from the persons, organizations or entities permitted by law to make those requests and shall check the prints against its records by using its computer files of criminal offenders contained in the Tennessee crime information center (T.C.I.C.) to process these requests and, to the extent permitted by federal law, shall also check the prints against records maintained by the federal bureau of investigation to determine if prior criminal history or convictions exist.

(2) Upon completion of the search, the bureau shall report its findings to the requesting persons, organizations or entities authorized by law to receive such information.

(c)(1) Agencies or organizations that have an agreement to do so with the Tennessee bureau of investigation and that have any responsibility or authority under law for conducting criminal history background reviews of persons may also access directly the computer files of the T.C.I.C. using only names or other identifying data elements to obtain available Tennessee

criminal history background information for purpose of background reviews.

(2) If review by the method permitted by subdivision (c)(1) indicates the need for further verification of the individual's criminal history, and if authorized by the requesting entity's legal authority, the requesting entity may submit fingerprint samples for a criminal history background check by the Tennessee bureau of investigation as otherwise authorized by this section.

(d) The fees for fingerprint searches shall be the same for a Tennessee search as for a federal bureau of investigation search and shall be according to the fee schedule established by the federal bureau of investigation.

(e) The instant check unit of the Tennessee bureau of investigation shall contact the agency making the entry of an order of protection into the national crime information center within one (1) day if the subject of the order of protection attempts to purchase a firearm.

(f) If a person who has been adjudicated as a mental defective or judicially committed to a mental institution attempts to purchase a firearm, and the instant check unit of the Tennessee bureau of investigation confirms the person's record by means of a record indicating the person's name, birth date, social security number, and either the person's sex or race, the unit shall contact, within twenty-four (24) hours, the chief law enforcement officer of the jurisdiction where the attempted purchase occurred for the purpose of initiating an investigation into a possible violation of law.

**38-7-105. Facility for performance of autopsies.**

(a) Except as provided in subsection (b), all autopsies must be performed at a facility accredited by the National Association of Medical Examiners (NAME). An accredited facility must maintain accreditation and operate pursuant to NAME guidelines.

(b) Autopsies may be performed at a non-accredited facility if:

(1) The facility receives provisional accreditation from NAME within two (2) years of beginning operations;

(2) The facility receives full accreditation from NAME within three (3) years of beginning operations; and

(3) The facility operates pursuant to NAME guidelines.

**38-7-201. Tennessee medical examiner advisory council — Creation — Members.**

(a)(1) There is created the Tennessee medical examiner advisory council, referred to in this section as the "council."

(2)(A) The council shall consist of fifteen (15) members, each of whom shall be a resident of this state. The membership of the council consists of:

(i)*(a)* The director of the Tennessee bureau of investigation, who shall be a permanent ex officio voting member of the council; or

*(b)* An employee of the Tennessee bureau of investigation designated by the director;

(ii) The following members appointed by the governor:

*(a)* One (1) forensic pathologist from each of the five (5) regional forensic centers;

*(b)* One (1) district attorney general;

*(c)* One (1) district public defender;

*(d)* Three (3) county medical examiners, one (1) from each grand division of Tennessee;

*(e)* One (1) administrator from a non-hospital affiliated regional forensic center;

*(f)* One (1) licensed funeral director; and

*(g)* One (1) county mayor; and

(iii) The state chief medical examiner who shall serve as an ex officio voting member of the council.

(B) All regular appointments to the council shall be for terms of three (3) years with a maximum of two (2) consecutive terms. Each member shall serve until a successor is appointed. Vacancies shall be filled by appointment of the governor for the remainder of an unexpired term.

(b) Each member of the council shall receive reimbursement for travel expenses in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(c) If an appointed administrator of the council is absent from more than half of the meetings scheduled in any calendar year without good cause, then a vacancy is created. The vacancy shall be filled by the governor.

(d) The council shall organize annually and shall meet to organize at the call of the prior year's chair. The council shall select the chair of the council. Meetings shall be held at least quarterly with additional meetings as frequently as may be required.

(e) Meetings of the council shall permit members to electronically participate in the meetings.

(f) The council shall have the power and duty to:

(1) Review candidates and make a recommendation to the commissioner of health on the appointment of the chief medical examiner and deputy state medical examiners;

(2) Assist the chief medical examiner in the development and updating of guidelines for death investigations and forensic autopsies in this state, to be promulgated as rules through the department of health;

(3) Submit an annual report on the standards and guidelines of the medical examiners system to the chairs of the health committee of the house of representatives and the health and welfare committee of the senate;

(4) Periodically review standards and guidelines promulgated by the department of health for the medical examiner system; and

(5) Provide reports and recommendations to the commissioner on causes of death which may need public health intervention, funding issues, information technology needs, and any other issues as the council sees fit.

**38-8-102. Tennessee peace officer standards and training commission — Creation and composition.**

(a) There is established the Tennessee peace officer standards and training commission, referred to in this part as the "commission."

(b)(1) The commission shall consist of:

(A) The attorney general and reporter, or the attorney general and reporter's designee;

(B) One (1) police officer below the rank of assistant chief, or equivalent rank, who shall be appointed by the governor for a term of four (4) years;

(C) Two (2) sheriffs and two (2) municipal chiefs of police, who shall be appointed by the governor and serve at the governor's pleasure;

(D) One (1) nonsupervisory police officer, who shall be appointed by the governor for a term of four (4) years;

(E) One (1) member of the senate and one (1) member of the house of representatives, who shall be appointed by the respective speakers and who shall be voting members of the commission, to serve for a term of two (2) years;

(F)(i) Two (2) citizens who are not connected with law enforcement, who shall be appointed by the respective speakers and be subject to the confirmation requirements of subdivision (b)(1)(F)(ii), to each serve for a term of two (2) years;

(ii)*(a)* Except as otherwise provided in this subdivision (b)(1)(F)(ii):

*(1)* One (1) citizen member appointed under subdivision (b)(1)(F)(i) shall be confirmed by a resolution of the house of representatives prior to beginning a term of office; and

*(2)* One (1) citizen member appointed under subdivision (b)(1)(F)(i) shall be confirmed by a resolution of the senate prior to beginning a term of office;

*(b)* If the general assembly is not in session at the time a citizen member is appointed to fill a vacancy, the new appointee shall serve for the term appointed unless such appointment is not confirmed within ninety (90) calendar days after the general assembly next convenes in regular session following such appointment; and

(G) Three (3) additional members, whom the governor shall appoint for terms of three (3) years.

(2) The commission shall include at least one (1) person who is of a racial minority.

(c) The members of the commission shall elect the chair of the commission.

(d)(1) A member of the commission who misses more than fifty percent (50%) of the scheduled meetings in a calendar year shall be removed as a member of the commission.

(2) The chair of the commission shall promptly notify the respective appointing authority of any member who fails to satisfy the attendance requirement as prescribed in subdivision (d)(1).

**39-17-1309. Carrying weapons on school property.**

(a) As used in this section, "weapon of like kind" includes razors and razor blades, except those used solely for personal shaving, and any sharp pointed or edged instrument, except unaltered nail files and clips and tools used solely for preparation of food, instruction and maintenance.

(b)(1) It is an offense for any person to possess or carry, whether openly or concealed, with the intent to go armed, any firearm, explosive, explosive weapon, bowie knife, hawk bill knife, ice pick, dagger, slingshot, leaded cane, switchblade knife, blackjack, knuckles or any other weapon of like kind, not used solely for instructional or school-sanctioned ceremonial purposes, in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field or any other property owned, operated, or while in use by any board of education, school, college or university board of trustees, regents or directors for the administration of

any public or private educational institution.

(2) A violation of this subsection (b) is a Class E felony.

(c)(1)(A) It is an offense for any person to possess or carry, whether openly or concealed, any firearm, not used solely for instructional or school-sanctioned ceremonial purposes, in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field or any other property owned, operated, or while in use by any board of education, school, college or university board of trustees, regents or directors for the administration of any public or private educational institution.

(B) It is not an offense under this subsection (c) for a nonstudent adult to possess a firearm, if the firearm is contained within a private vehicle operated by the adult and is not handled by the adult, or by any other person acting with the expressed or implied consent of the adult, while the vehicle is on school property.

(2) A violation of this subsection (c) is a Class B misdemeanor.

(d)(1) Each chief administrator of a public or private school shall display in prominent locations about the school a sign, at least six inches (6″) high and fourteen inches (14″) wide, stating:

FELONY. STATE LAW PRESCRIBES A MAXIMUM PENALTY OF SIX (6) YEARS IMPRISONMENT AND A FINE NOT TO EXCEED THREE THOUSAND DOLLARS ($3,000) FOR CARRYING WEAPONS ON SCHOOL PROPERTY.

(2) As used in this subsection (d), "prominent locations about a school" includes, but is not limited to, sports arenas, gymnasiums, stadiums and cafeterias.

(e) Subsections (b) and (c) do not apply to the following persons:

(1) Persons employed in the army, air force, navy, coast guard or marine service of the United States or any member of the Tennessee national guard when in discharge of their official duties and acting under orders requiring them to carry arms or weapons;

(2) Civil officers of the United States in the discharge of their official duties;

(3) Officers and soldiers of the militia and the national guard when called into actual service;

(4) Officers of the state, or of any county, city or town, charged with the enforcement of the laws of the state, when in the discharge of their official duties;

(5) Any pupils who are members of the reserve officers training corps or pupils enrolled in a course of instruction or members of a club or team, and who are required to carry arms or weapons in the discharge of their official class or team duties;

(6) Any private police employed by the administration or board of trustees of any public or private institution of higher education in the discharge of their duties;

(7) Any registered security guard/officer who meets the requirements of title 62, chapter 35, and who is discharging the officer's official duties;

(8)(A) Persons possessing a handgun, who are authorized to carry the handgun pursuant to § 39-17-1351, while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway, or other similar public place;

(B) Subdivision (e)(8)(A) shall not apply if the permit holder:

(i) Possessed a handgun on property described in subdivision (e)(8)(A) that is owned or operated by a board of education, school, college, or university board of trustees, regents, or directors unless the permit holder's possession is otherwise excepted by this subsection (e); or

(ii) Possessed a handgun in the immediate vicinity of property that was, at the time of possession, in use by any board of education, school, college or university board of trustees, regents, or directors for the administration of any public or private educational institution for the purpose of conducting an athletic event or other school-related activity on an athletic field, permanent or temporary, including but not limited to, a football or soccer field, tennis court, basketball court, track, running trail, Frisbee field, or any similar multi-use field; and

(iii) Knew or should have known that:

*(a)* An athletic event or school-related activity described in subdivision (e)(8)(B)(ii) was taking place on the property at the time of the possession; or

*(b)* The property on which the possession occurred was owned or operated by a school entity described in subdivision (e)(8)(B)(ii); or

(iv) Failed to take reasonable steps to leave the area of the athletic field or school-related activity or the property after being informed or becoming aware of:

*(a)* Its use for athletic or school-related purposes; or

*(b)* That it was, at the time of the possession, owned or operated by a school entity described in (e)(8)(B)(ii);

(9) Persons permitted to carry a handgun on the property of private K-12 schools by § 49-50-803, and persons permitted to carry a handgun on the property of private for-profit or nonprofit institutions of higher education pursuant to § 49-7-161; provided, that this subdivision (e)(9) shall apply only:

(A) To the school or institution where the person is located, when that school or institution has adopted a handgun carry policy pursuant to § 49-50-803 or § 49-7-161;

(B) While the person is on the property or grounds covered by the private school or institution's policy; and

(C) When the person is otherwise in compliance with the policy adopted by the private school or institution;

(10) Persons carrying a handgun pursuant to § 49-6-809, § 49-6-815, or § 49-6-816; provided, that this subdivision (e)(10) shall apply only within and on the grounds of the school for which the person is authorized;

(11)(A) Employees authorized to carry a handgun pursuant to § 39-17-1351 on property owned, operated, or controlled by the public institution of higher education at which the employee is employed;

(B)(i) Any authorized employee who elects to carry a handgun pursuant to this subdivision (e)(11) shall provide written notification to the law enforcement agency or agencies with jurisdiction over the property owned, operated, or controlled by the public institution of higher education that employs the employee;

(ii) The employee's name and any other information that might identify the employee as a person who has elected to carry a handgun pursuant to this subdivision (e)(11) shall be confidential, not open for

public inspection, and shall not be disclosed by any law enforcement agency with which an employee registers; except that the employee's name and other information may be disclosed to an administrative officer of the institution who is responsible for school facility security; provided, however, that the administrative officer is not the employee's immediate supervisor or a supervisor responsible for evaluation of the employee. An administrative officer to whom such information is disclosed shall not disclose the information to another person. Identifying information about the employee collected pursuant to this subdivision (e)(11) shall not be disclosed to any person or entity other than another law enforcement agency and only for law enforcement purposes; and

(iii) Law enforcement agencies are authorized to develop and implement:

*(a)* Policies and procedures designed to implement the notification and confidentiality requirements of this subdivision (e)(11)(B); and

*(b)* A voluntary course or courses of special or supplemental firearm training to be offered to the employees electing to carry a handgun pursuant to this subdivision (e)(11). Firearm safety shall be a component of any firearm course;

(C) Unless carrying a handgun is a requirement of the employee's job description, the carrying of a handgun pursuant to this subdivision (e)(11) is a personal choice of the employee and not a requirement of the employer. Consequently, an employee who carries a handgun on property owned, operated, or controlled by the public institution of higher education at which the employee is employed is not:

(i) Acting in the course of or scope of their employment when carrying or using the handgun;

(ii) Entitled to workers' compensation benefits under § 9-8-307(a)(1)(K) for injuries arising from the carrying or use of a handgun;

(iii) Immune from personal liability with respect to use or carrying of a handgun under § 9-8-307(h);

(iv) Permitted to carry a handgun openly, or in any other manner in which the handgun is visible to ordinary observation; or

(v) Permitted to carry a handgun at the following times and at the following locations:

*(a)* Stadiums, gymnasiums, and auditoriums when school-sponsored events are in progress;

*(b)* In meetings regarding disciplinary matters;

*(c)* In meetings regarding tenure issues;

*(d)* A hospital, or an office where medical or mental health services are the primary services provided; and

*(e)* Any location where a provision of state or federal law, except the posting provisions of § 39-17-1359, prohibits the carrying of a handgun on that property;

(D) Notwithstanding any other law to the contrary, a public institution of higher education shall be absolutely immune from claims for monetary damages arising solely from or related to an employee's use of, or failure to use, a handgun; provided the employee is employed by the institution against whom the claim is filed and the employee elects to carry the handgun pursuant to this subdivision (e)(11). Nothing in this section shall expand the existing conditions under which sovereign immunity is waived

pursuant to § 9-8-307; and

(E) As used in subdivisions (e)(11)-(13):

(i) "Employee" includes all faculty, staff, and other persons who are employed on a full-time basis by a public institution of higher education; and

(ii) "Employee" does not include a person who is enrolled as a student at a public institution of higher education, regardless of whether the person is also an employee;

(12)(A) Any employee of the University of Tennessee institute of agriculture or a college or department of agriculture at a campus in the University of Tennessee system when in the discharge of the employee's official duties and with prior authorization from the chancellor of the University of Tennessee institute of agriculture; or

(B) Any employee of the University of Tennessee institute of agriculture or a college or department of agriculture at a campus in the University of Tennessee system, and any member of the employee's household, living in a residence owned, used, or operated by the University of Tennessee, if the employee has prior authorization from the chancellor of the University of Tennessee institute of agriculture and the employee and household members are permitted to possess firearms in their residence under Tennessee and federal law; and

(13)(A) Any employee of the university's college or department of agriculture when in the discharge of the employee's official duties and with prior authorization from the president of a university in the board of regents system;

(B) Any employee of the university's college or department of agriculture, and any member of the employee's household, living in a residence owned, used, or operated by the university, if the employee has prior authorization from the president of a university in the board of regents system and the employee and household members are permitted to possess firearms in their residence under Tennessee and federal law; or

(C) Any employee, with prior authorization of the president of a university in the board of regents system, who is engaged in wildlife biology or ecology research and education for the purpose of capture or collection of specimens.

**40-35-122. Sentencing alternatives for defendants who commit non-violent property offenses.**

(a) Notwithstanding any law to the contrary, except as provided in subsection (b), the judge sentencing a defendant who commits a non-violent property offense, as defined in subsection (c), on or after July 1, 2010, shall not be authorized to impose the sentencing alternatives of continuous confinement in a local jail or the department of correction as authorized by § 40-35-104(c)(5), (c)(6), or (c)(8). However, the judge may sentence the defendant to any of the other sentencing alternatives authorized by § 40-35-104(c), which include, but are not limited to, periodic confinement, work release, community corrections, probation, or judicial diversion.

(b)(1) A defendant convicted of an offense set out in subsection (c) may be sentenced to any of the sentencing alternatives authorized by § 40-35-104(c), including a period of continuous confinement, if the sentencing judge

determines the defendant:

(A) Has at least one (1) prior conviction at the time the subsection (c) offense is committed; or

(B) Violated the terms and conditions of the alternative sentence originally imposed upon the defendant pursuant to subsection (a).

(2) As used in this subsection (b):

(A)(i) "Prior conviction" means that the defendant serves and is released or discharged from, is serving, or is on escape status from a separate period of incarceration or supervision for the commission of a felony offense prior to or at the time of committing an offense on or after July 1, 2010, listed in subsection (c);

(ii) "Prior conviction" includes convictions under the laws of any other state, government or country that, if committed in this state, would constitute a felony. If an offense in a jurisdiction other than Tennessee is not identified as a felony in this state, it shall be considered a prior conviction if the elements of the offense are the same as the elements for a felony offense in this state; and

(B) "Separate period of incarceration or supervision" includes a sentence to any of the sentencing alternatives set out in § 40-35-104(c)(3)-(9).

(c) As used in this section, a "non-violent property offense" is:

(1) Forgery under § 39-14-114, where the amount of the forgery is less than one thousand dollars ($1,000);

(2) Attempted forgery under §§ 39-12-101 and 39-14-114, where the amount of the forgery is one thousand dollars ($1,000) or more, but less than ten thousand dollars ($10,000);

(3) Criminal simulation under § 39-14-115, where the amount is less than one thousand dollars ($1,000);

(4) Attempted criminal simulation under §§ 39-12-101 and 39-14-115, where the amount is one thousand dollars ($1,000) or more, but less than ten thousand dollars ($10,000);

(5) Facilitating criminal simulation under §§ 39-11-403 and 39-14-115, where the amount is one thousand dollars ($1,000) or more, but less than ten thousand dollars ($10,000);

(6) Theft of services under § 39-14-104, where the amount of the theft is less than one thousand dollars ($1,000);

(7) Shoplifting under §§ 39-14-103 or 39-14-146, where the amount taken is less than one thousand dollars ($1,000);

(8) Fraudulent use of a credit card under § 39-14-118, where the amount of the theft is less than one thousand dollars ($1,000);

(9) Passing worthless checks under § 39-14-121 where the amount of the check is less than one thousand dollars ($1,000);

(10) Passing forged checks under § 39-14-114, where the amount of the forgery is less than one thousand dollars ($1,000);

(11) Theft of property under § 39-14-103, where the amount of the theft is less than one thousand dollars ($1,000);

(12) Attempted theft of property under §§ 39-12-101 and 39-14-103, where the amount of the attempted theft is one thousand dollars ($1,000) or more, but less than ten thousand dollars ($10,000);

(13) Facilitating the theft of property under §§ 39-11-403 and 39-14-103, where the amount of the property is one thousand dollars ($1,000) or more, but less than ten thousand dollars ($10,000);

(14) Conspiracy to commit theft of property under §§ 39-12-103 and 39-14-103, where the amount of the property is one thousand dollars ($1,000) or more, but less than ten thousand dollars ($10,000);

(15) Vandalism under § 39-14-408, where the amount of the vandalism is less than one thousand dollars ($1,000);

(16) Fraudulent transfer of a motor vehicle under § 39-14-147;

(17) Attempted burglary other than a habitation under §§ 39-12-101 and 39-14-402(a)(1), (a)(2) or (a)(3);

(18) Burglary of an auto under § 39-14-402(a)(4); and

(19) Burning personal property under § 39-14-303.

**40-35-217. Sentence conditioned or based upon defendant submitting to birth control, sterilization, or family planning services prohibited.**

(a) As used in this section, "sterilization" means the process of rendering an individual incapable of sexual reproduction by castration, vasectomy, salpingectomy, or some other procedure and includes endoscopic techniques for female sterilization that can be performed outside of a hospital without general anesthesia such as culdoscopic, hysteroscopic, and laparoscopic sterilization.

(b) No guilty plea agreement or plea of nolo contendere shall be accepted by the court nor shall any criminal sentence be imposed by a judge if any part of the plea or sentence is in whole or in part conditioned or based upon the criminal defendant submitting to any form of temporary or permanent birth control, sterilization, or family planning services, regardless of whether the defendant's consent is voluntarily given.

(c) A sentencing court shall not make a sentencing determination that is based in whole or in part on the defendant's consent or refusal to consent to any form of temporary or permanent birth control, sterilization, or family planning services, regardless of whether the defendant's consent is voluntarily given.

(d) This section shall not apply to the provision of educational services on the matters of temporary or permanent birth control, sterilization, or family planning services.

**40-35-302. Misdemeanor sentencing — Rehabilitative program credits — Probation — Supervision of defendants on probation.**

(a) In imposing a sentence for a misdemeanor, the court may conduct a separate sentencing hearing. If the court does not conduct a separate sentencing hearing, the court shall allow the parties a reasonable opportunity to be heard on the question of the length of any sentence and the manner in which the sentence is to be served.

(b) In imposing a misdemeanor sentence, the court shall fix a specific number of months, days or hours, and the defendant shall be responsible for the entire sentence undiminished by sentence credits of any sort except for credits authorized by § 40-23-101, relative to pretrial jail credit, or §§ 33-5-406 and 33-7-102, relative to mental examinations and treatment, and credits awarded in accordance with either, but not both, § 41-2-111 or § 41-2-147. The court shall impose a sentence consistent with the purposes and principles of this chapter.

(c) When a defendant is serving a misdemeanor sentence, the defendant

shall be continuously confined for the duration of the sentence except as provided in subsections (d) and (e); provided, that nothing in this section shall be construed as prohibiting a defendant, in the discretion of the workhouse superintendent or sheriff, from participating in work crews during the time the defendant is to be continuously confined.

(d) In imposing a misdemeanor sentence, the court shall fix a percentage of the sentence that the defendant shall serve. After service of such a percentage of the sentence, the defendant shall be eligible for consideration for work release, furlough, trusty status and related rehabilitative programs. The percentage shall be expressed as zero percent (0%), ten percent (10%), twenty percent (20%), thirty percent (30%), forty percent (40%), fifty percent (50%), sixty percent (60%), seventy percent (70%) but not in excess of seventy-five percent (75%). If no percentage is expressed in the judgment, the percentage shall be considered zero percent (0%). When the defendant has served the required percentage, the administrative authority governing the rehabilitative program shall have the authority, in its discretion, to place the defendant in the programs as provided by law. In determining the percentage of the sentence to be served in actual confinement, the court shall consider the purposes of this chapter, the principles of sentencing and the enhancement and mitigating factors set forth in this chapter and shall not impose such percentages arbitrarily.

(e) The court has authority to place the defendant on probation either:

(1) After service of a portion of the sentence in periodic confinement or continuous confinement; or

(2) Immediately after sentencing.

(f)(1) The general sessions courts shall not place a defendant who is convicted of a misdemeanor on probation under the supervision of the state department of correction. Nothing in this subsection (f) is intended to restrict the use, where necessary, of any county or public probation service or private probation company established for the purpose of supervising defendants convicted of misdemeanors, unless the offender is currently being supervised by the state department of correction on a felony offense.

(2) When a person employed to provide probation services to defendants convicted of a misdemeanor, whether employed by a municipality, county, public or a private probation company, is first assigned a new probationer, the person shall conduct a search of the Tennessee bureau of investigation's sexual offender and violent sexual offender registration, verification and tracking database to determine if the probationer is a sexual offender or violent sexual offender. If so, the probation officer shall inform the sentencing judge of the probationer's status, if the status is not already known. If the probationer remains on probation, the officer shall also monitor the probationer's compliance with the requirements of § 40-39-211.

(g)(1) Except as provided in subdivision (g)(2):

(A) A private entity that provides probation supervisory services shall be required to perform all of the following:

(i) Provide a report to the clerk of the criminal court and general sessions court in each judicial district in which the entity proposes to provide misdemeanor probation services on a quarterly basis in a form and manner as is specified by the clerk; provided, that the report shall contain all of the information required in subdivision (g)(1)(G);

(ii) Provide an application form to all of the criminal court and general sessions court judges in each judicial district in which the entity

proposes to provide misdemeanor probation services. The application shall be on a form and in a manner specified by the judges and shall contain all of the information required by subdivision (g)(1)(E);

(iii) Supervise all misdemeanor defendants sentenced by a proper order of probation to be supervised by the entity and to assist the defendants so sentenced in completing all court-ordered conditions of probation;

(iv) Maintain documentation on all misdemeanor defendants sentenced to be supervised by the entity. All books, records and documentation maintained by the entity relating to work performed or money received for the supervision of misdemeanor defendants so sentenced shall be maintained for a period of three (3) full years from the date of the final payment or audit. The records shall be subject to audit, both fiscal and performance, at any reasonable time and upon reasonable notice by the court or courts in which the entity operates or their duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles; and

(v) Any additional duties that the judge or judges of the courts for which the entity provides misdemeanor probation supervisory services may in writing require;

(B) The following minimum education standards are required for certain employees of an entity established for the purpose of supervising misdemeanor probationers:

(i) The chief executive officer of an entity offering probation supervision shall have a bachelor's degree from an accredited university in any of the following fields: criminal justice, administration, social work or the behavioral sciences and two (2) years of experience in criminal justice or social work; provided, that four (4) years of professional administrative experience with an organization providing services in criminal justice or social work may be substituted for the bachelor's degree; and

(ii) An employee responsible for providing probation supervision and employed by an entity shall have at least four (4) years of experience in a criminal justice or a social services agency providing counseling services or shall have a bachelor's degree or associate's degree from an accredited college or university;

(C) Any entity providing probation supervisory services shall post a liability insurance policy and a performance bond in the amounts stated:

(i) A liability insurance policy in an amount at least equal to the limits of governmental liability established in the Governmental Tort Liability Act, compiled in title 29, chapter 20, that is in effect on the date the services are provided. Nothing in this subdivision (g)(1)(C)(i) shall be construed as prohibiting the entity from carrying a liability insurance policy in excess of the limits of liability provided in the Governmental Tort Liability Act. The policy shall be for the purpose of reimbursing an injured or aggrieved party for any damages or expenses for which the entity providing probation supervisory services is found liable by a court of competent jurisdiction;

(ii) A performance bond issued by a corporate surety in the amount of twenty-five thousand dollars ($25,000). The bond shall be to provide recourse to the governmental entity for which the entity is providing probation supervisory services in the event of nonperformance, default,

bankruptcy or failure of the entity to perform the required services;

(iii) The comptroller of the treasury shall design a uniform performance bond form to be used by all private entities providing misdemeanor probation supervisory services in this state;

(iv) A copy of the liability insurance policy and the performance bond shall be filed with the clerk of all courts in each county in which the entity proposes to provide probation supervisory services;

(D) Any entity providing or proposing to provide misdemeanor probation services shall investigate the criminal record for each employee and shall include in its application form any criminal conviction of each employee;

(E) The application form required by subdivision (g)(1)(A)(ii) shall contain the following information:

(i) The title of the entity;

(ii) Its form of business organization;

(iii) The office and mailing address of the entity;

(iv) The names of the employees who will provide services and their position with the entity and their credentials;

(v) A sworn statement that the credentials of all employees meet the minimum standards under subdivision (g)(1)(B);

(vi) A sworn statement that a criminal record search has been conducted and, if a criminal conviction has been discovered, the name of the employee and the criminal conviction;

(vii) A credit history of the entity including any judgments or lawsuits; and

(viii) A description of the services to be provided by the entity and the fee structure for the services to be provided;

(F) The application required by subdivision (g)(1)(A)(ii) shall also contain an affidavit filed under penalties of perjury that it is complete and accurate and contains all of the information required by subdivision (g)(1)(E). The application with the affidavit shall be filed with the clerk of the criminal court and general sessions court in each judicial district in which the entity proposes to provide misdemeanor probation services;

(G) The quarterly report required to be filed pursuant to subdivision (g)(1)(A)(i) shall include the following information:

(i) The caseload for the entity;

(ii) The number of contact hours with offenders;

(iii) The services provided;

(iv) The number of filings for probation revocation and their dispositions;

(v) A financial statement including administrative costs and service costs; and

(vi) Contributions, if any, to the criminal injuries compensation fund;

(H)(i) It is an offense for a governmental employee, including a judge, or the employee's immediate family, to have a direct or indirect personal interest in a private entity that provides probation supervisory services or to receive anything of value in an individual capacity from the entity;

(ii) It is an offense for a private entity that provides probation supervisory services to give or offer to give anything of value to a governmental employee, including a judge, or the employee's immediate family, in the employee's individual capacity;

(iii) A violation of subdivision (g)(1)(H)(i) or (g)(1)(H)(ii) is a Class C misdemeanor; and

(iv) This section shall not be construed to amend or abridge any contract or operating agreement between any court or county government and any agency or individual presently supplying probation supervisory services to a court or county government pursuant to this chapter;

(I) No private corporation, enterprise, or agency contracting to provide probation services under this section shall engage in any of the following:

(i) Any employment, business or activity that interferes or conflicts with the duties and responsibilities under the contracts authorized by this section;

(ii) No corporation, enterprise or agency shall have personal business dealings, including, but not limited to, lending money, with probationers under its supervision; and

(iii) No corporation, enterprise or agency shall permit any person to supervise a probationer who is a member of the supervisory personnel's immediate family;

(J) As used in this subdivision (g)(1), "immediate family" means and includes the supervisor's mother, father, siblings, adult children or maternal and paternal grandparents.

(2) Subdivision (g)(1) does not apply in counties having a population, according to the 1990 federal census or any subsequent federal census, of:

| not less than | nor more than |
|---|---|
| 4,700 | 4,750 |
| 7,100 | 7,175 |
| 27,500 | 27,750 |
| 31,500 | 31,800 |
| 31,900 | 32,200 |
| 34,500 | 34,730 |
| 40,200 | 40,500 |

(h) As used in this section, the term "governmental employee" means employees and officials of the state and its political subdivisions who are employed as law enforcement employees or officials, probation and parole employees or officials, judicial employees or officials or correctional employees or officials, including employees and officials of jails and workhouses.

(i)(1) As used in this subsection (i), "sterilization" means the process of rendering an individual incapable of sexual reproduction by castration, vasectomy, salpingectomy, or some other procedure and includes endoscopic techniques for female sterilization that can be performed outside of a hospital without general anesthesia such as culdoscopic, hysteroscopic, and laparoscopic sterilization.

(2) A sentencing court shall not make a sentencing determination that is based in whole or in part on the defendant's consent or refusal to consent to any form of temporary or permanent birth control, sterilization, or family planning services, regardless of whether the defendant's consent is voluntarily given.

(3) This subsection (i) shall not apply to the provision of educational services on the matters of temporary or permanent birth control, sterilization, or family planning services.

**40-35-303. Probation — Eligibility — Terms.**

(a) A defendant shall be eligible for probation under this chapter if the sentence actually imposed upon the defendant is ten (10) years or less; however, no defendant shall be eligible for probation under this chapter if convicted of a violation of § 39-13-213(a)(2), § 39-13-304, § 39-13-402, § 39-13-504, § 39-13-532, § 39-15-402, § 39-17-417(b) or (i), § 39-17-1003, § 39-17-1004 or § 39-17-1005. A defendant shall also be eligible for probation pursuant to § 40-36-106(e)(3).

(b) A court shall have authority to impose probation as part of its sentencing determination at the conclusion of the sentencing hearing. There shall be no petition for probation filed by the defendant and probation shall be automatically considered by the court as a sentencing alternative for eligible defendants; provided, that nothing in this chapter shall be construed as altering any provision of present statutory or case law requiring that the burden of establishing suitability for probation rests with the defendant.

(c)(1) If the court determines that a period of probation is appropriate, the court shall sentence the defendant to a specific sentence but shall suspend the execution of all or part of the sentence and place the defendant on supervised or unsupervised probation either immediately or after a period of confinement for a period of time no less than the minimum sentence allowed under the classification and up to and including the statutory maximum time for the class of the conviction offense.

(2)(A) Except as provided in subdivision (c)(2)(B), if probation is to be granted to a defendant convicted of any of the misdemeanor offenses set out in subdivision (c)(2)(C), the provisions of subdivision (c)(1) shall govern the length of the term of probation.

(B) Notwithstanding subdivision (c)(2)(A), the judge may sentence a defendant convicted of any of the misdemeanor offenses set out in subdivision (c)(2)(C) to a period of probation not to exceed two (2) years, if the judge finds that the period of probation is necessary:

(i) For the defendant to complete any appropriate treatment program or programs, including, but not limited to, a sanctioned batterer's intervention program, an anger management program or any court-ordered drug or alcohol treatment program;

(ii) To make restitution to the victim of the offense;

(iii) To otherwise effect a change in the behavior of the defendant, including, but not limited to, imposing any of the conditions set forth in subsection (d); or

(iv) To protect and better ensure the safety of the victim or any other member of the victim's family or household, as set out in subsections (m) and (n).

(C) The offenses to which this subdivision (c)(2) applies are:

(i) Domestic assault, as prohibited by § 39-13-111;

(ii) Assault as prohibited by § 39-13-101, vandalism as prohibited by § 39-14-408, or false imprisonment as prohibited by § 39-13-302, where the victim of the offense is a person identified in § 36-3-601(5);

(iii) Violation of a protective order, as prohibited by § 36-3-612;

(iv) Stalking, as prohibited by § 39-17-315; and

(v) A second or third violation of § 55-10-401 if the judge orders a substance abuse treatment program as a condition of probation pursu-

ant to § 55-10-402(a)(2)(B) or (a)(3)(B).

(d) Whenever a court sentences an offender to supervised probation, the court shall specify the terms of the supervision and may require the offender to comply with certain conditions that may include, but are not limited to:

(1) Meet the offender's family responsibilities;

(2) Devote the offender to a specific employment or occupation;

(3) Perform, without compensation, services in the community for charitable or governmental agencies;

(4) Undergo available medical or psychiatric treatment and enter and remain in a specified institution whenever required for that purpose by voluntary self-admission to the institution pursuant to § 33-6-201;

(5) Pursue a prescribed secular course of study or vocational training;

(6) Refrain from possessing a firearm or other dangerous weapon;

(7) Remain within prescribed geographical boundaries and notify the court or the probation officer of any change in the offender's address or employment;

(8) Submit to supervision by an appropriate agency or person and report as directed by the court;

(9) Satisfy any other conditions reasonably related to the purpose of the offender's sentence and not unduly restrictive of the offender's liberty or incompatible with the offender's freedom of conscience, or otherwise prohibited by this chapter;

(10) Make appropriate and reasonable restitution to the victim or the family of the victim involved pursuant to § 40-35-304;

(11)(A) Undergo an alcohol and drug assessment or treatment, or both an assessment and treatment, if the court deems it appropriate and licensed treatment service is available;

(B) Unless the court makes a specific determination that the person is indigent, the expense of the assessment and treatment shall be the responsibility of the person receiving it. If the court finds that the person is indigent under the same standards as used in § 55-10-402(j), the expense or some portion of the expense may be paid from the alcohol and drug addiction treatment fund provided in § 40-33-211, pursuant to a plan and procedures developed by the department of mental health and substance abuse services; or

(12)(A) Use a transdermal monitoring device or other alternative monitoring device if the court determines that the defendant's use of alcohol or drugs was a contributing factor in the defendant's unlawful conduct and the defendant is granted probation on or after July 1, 2014. If the defendant is granted probation on or after July 1, 2016, and the court orders a monitoring device but determines that the person is indigent, the court shall order that the portion of the costs of the device that the person is unable to pay be paid by the electronic monitoring indigency fund, established in § 55-10-419;

(B) As used in this subdivision (d)(12), "transdermal monitoring device" means any device or instrument that is attached to the person, designed to automatically test the alcohol or drug content in a person by contact with the person's skin at least once per one-half (½) hour regardless of the person's location, and which detects the presence of alcohol or drugs and tampering, obstructing, or removing the device.

(e) Probation shall be granted, if at all, at the time of the sentencing hearing

except for sentences served in a local jail or workhouse, or except during the time a defendant sentenced to the department of correction is being housed in a local jail or workhouse awaiting transfer to the department as provided in § 40-35-212(d).

(f) The trial judge shall not have the authority to require that the defendant either secure or pay the costs accrued in the case at the instance of the state as a condition of conducting a hearing on the defendant's request for suspension of sentence and probation.

(g) The powers granted in this section shall be exercised by the judge of the trial court presiding at the trial of original conviction or by any successor judge holding court in that jurisdiction.

(h) No probationer shall be allowed to leave the jurisdiction of the probationer's probation officer without the express permission of the trial judge.

(i)(1) In misdemeanor cases, as a condition precedent, the defendant must pay not less than ten dollars ($10.00) nor more than forty-five dollars ($45.00) per month as part payment of expenses incurred by the agency, department, program, group or association in supervising the defendant. The payment shall be made to the clerk of the court in which proceedings against the defendant were pending, to be sent to the agency, department, program, group or association responsible for the supervision of the defendant, unless the defendant is found to be indigent and without anticipated future funds with which to make the payment. The clerk of the court collecting the payment is permitted to retain five percent (5%) of the proceeds collected for the handling and receiving of the proceeds. The court may order the payments to be made directly to the agency, department, program, group or association responsible for the supervision of the defendant in lieu of making the payments to the clerk of the court.

(2) In addition to the costs imposed by subdivision (i)(1), the court may require the defendant to pay any or all costs for the defendant's supervision, counseling or treatment in a specified manner, based on the defendant's ability to pay.

(3) Willful failure to pay the supervision fee imposed by this subsection (i) to the supervising entity shall be grounds for revocation of probation and the supervising entity shall report all instances of nonpayment to the sentencing court.

(j) The provisions of this section relative to the payment of a supervision fee shall not apply to any person subject to chapter 28, part 2 of this title.

(k) The commissioner of correction, sheriff, warden, superintendent or other official having authority and responsibility for convicted defendants may contract with any appropriate public or private agency not under the commissioner's, sheriff's, warden's, superintendent's or other official's control for custody, care, subsistence, education, treatment or training of the defendants. The cost of the contract services shall be paid by the appropriate state or local entity to the department or the local jail or workhouse.

(*l*) A probation officer shall make reasonable and diligent effort to notify a victim of any felony that involved violence or the threat of violence that the defendant convicted of that offense is statutorily eligible for probation and that a hearing will be held to determine whether the defendant should be granted probation. The notice shall be given at least three (3) days prior to the hearing. If the victim is less than eighteen (18) years of age or is otherwise unavailable, the probation officer shall make all reasonable and diligent efforts to so notify

the family, if any, of the victim.

(m) In determining whether a person convicted of the offense of stalking, aggravated stalking or especially aggravated stalking, as defined in § 39-17-315, or any criminal offense defined in title 39, chapter 13, in which the victim falls within the definition set forth in § 36-3-601(5), should be granted probation, the court shall consider the safety and protection of the victim of the offense and of any other member of the victim's family or household.

(n) If the court grants probation to a person convicted of an offense specified in subsection (m), it may condition the probation on compliance with one (1) or more orders of the court, including, but not limited to:

(1) Enjoining the perpetrator from threatening to commit or committing acts of violence against the victim or other household members;

(2) Prohibiting the perpetrator from harassing, annoying, telephoning, contacting or otherwise communicating, either directly or indirectly, with the victim;

(3) Requiring the perpetrator to stay away from the residence, school, place of employment or a specified place frequented regularly by the victim and by any designated family or household member;

(4) Prohibiting the perpetrator from possessing or consuming alcohol, controlled substances or controlled substance analogues; and

(5) Prohibiting the perpetrator from using or possessing a firearm or any other specified weapon and requiring the perpetrator to surrender and forfeit any weapon currently possessed.

(o)(1) Probation officers meeting the requirements of this subsection (o) shall have the authority to serve warrants and make arrests solely relating to their duties as probation officers. A probation officer shall also have the authority to bring probationers before the court when directed by the court to do so. While acting in the performance of their duties as probation officers, the probation officers shall have the same authority as a peace officer while serving warrants and making arrests that relate solely to their duties as probation officers.

(2) The provisions of subdivision (o)(1) shall only apply to a probation officer:

(A) In any county having a charter form of government with a population of less than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(B) Employed by a probation office operated by a governmental entity;

(C) Who has completed training equal to the training required by the standards of the peace officer's standards and training commission (POST); and

(D) Who successfully completes at least forty (40) hours of appropriate in-service training each year.

(3) Because a probation officer meets the standards and requirements of subdivision (o)(2) does not mean the officer is eligible for the pay supplement for state certified officers authorized in § 38-8-111.

(4) This subsection (o) shall not apply to a state probation officer employed by the department of correction and paid by the state of Tennessee.

(p)(1) If a defendant is granted probation pursuant to this section and is released to the department charged by law with the supervision of probationers, the department may contract with an approved private probation provider to furnish probation supervision and services to such defendant if:

(A) The defendant's conviction offense was for a Class E felony; and

(B) The caseloads of state probation officers where the defendant is being supervised are high, resulting in the likelihood that the probationer may receive increased supervision and services from a private probation provider; or

(C) The private probation provider offers specialized services, treatment or training that would be beneficial to a probationer but would not be available if the probationer is supervised by the department.

(2) To contract with the department for the supervision of felons described in subdivision (p)(1)(A), a private probation provider shall:

(A) Meet all qualifications established by the private probation council for entities providing misdemeanor probation services;

(B) Keep all records in an electronic format that is accessible upon demand by an approved state agency;

(C) Maintain professional liability insurance of not less than one million dollars ($1,000,000) in addition to a general liability policy; and

(D)(i) Have been a private provider of misdemeanor probation services for courts exercising criminal jurisdiction in this state for at least fifteen (15) years; or

(ii) Have been a private provider of misdemeanor probation services for courts exercising criminal jurisdiction in this state for at least two (2) years and a state probation officer for at least thirteen (13) years.

(3)(A) A private probation provider who meets the requirements of subdivision (p)(2) and who wants to contract with the department to provide probation services to felons described in subdivision (p)(1)(A), may register with the department and the private probation council.

(B) At the time of registration, the private provider shall submit to the department and council:

(i) Such documentation as is necessary to demonstrate that it meets the requirements of subdivision (p)(2); and

(ii) A specific plan demonstrating how the use of such provider to supervise and provide services to felons described in subdivision (p)(1)(A), who have been granted probation will further the overall goal of reducing the recidivism rate of probationers. Such plan shall also contain statistics for misdemeanor probation services provided by the private provider for the previous ten (10) years. At a minimum, the statistics contained in the plan shall contain the same information required to be maintained by subdivision (p)(5).

(C) If the documentation and recidivism rate reduction plan presented by the private provider demonstrates that it meets the requirements of subdivision (p)(2), the department and council shall approve the private provider and place such provider on a list of companies eligible to contract with the department pursuant to this subsection (p).

(4) A supervision contract authorized by this section shall be between the private provider and the department. Once the court grants a person's petition for probation, the department shall be the sole entity that determines who supervises the probationer. No probationer meeting the criteria set out in subdivision (p)(1)(A) shall be placed under the supervision of or supervised by a private provider that has not contracted with the department and is not on the list of companies approved by the department and the council.

(5) Any private provider who contracts with the department pursuant to this subsection (p) shall maintain statistics on the probationers supervised pursuant to this subsection (p) and shall submit a quarterly report of such statistics to the person or agency designated by the department. The statistics shall include, but not be limited to:

(A) The number of felony probationers described in subdivision (p)(1)(A) the private provider has contracted to supervise;

(B) The style of the case which resulted in the defendant being placed on probation;

(C) The number of felons described in subdivision (p)(1)(A), whose probation was revoked prior to the end of supervision; and

(D) The recidivism rate of the felony probationers supervision by the private provider under a contract authorized by this subsection (p).

(6)(A) A private provider contracting to supervise felons described in subdivision (p)(1)(A) may charge a supervision fee not to exceed sixty dollars ($60.00) per month. However, if a probationer cannot afford all or part of the supervision fee, the probationer may go before the court placing the defendant on probation and petition that it be waived or reduced. For good cause shown, the court may waive or reduce the supervision fee in appropriate cases.

(B) Willful nonpayment of the supervision fee to the private probation provider shall be grounds for revocation and the provider shall report instances of nonpayment to the department in the manner specified in the contract.

(7) No employee of a private provider of probation services shall supervise a felon described in subdivision (p)(1)(A) unless the employee has a bachelor of science degree from an accredited college or university or at least two (2) years of related work experience.

(8) This subsection (p) shall not apply to offenders who are governed by the Interstate Compact for Supervision of Adult Offenders, codified in § 40-28-401. The supervision of those offenders shall be controlled by the compact.

**40-35-313. Probation — Conditions — Discharge and dismissal — Expunction from official records — Fee. [Effective until January 1, 2019. See version effective on January 1, 2019.]**

(a)(1)(A) The court may defer further proceedings against a qualified defendant and place the defendant on probation upon such reasonable conditions as it may require without entering a judgment of guilty and with the consent of the qualified defendant. The deferral shall be for a period of time not less than the period of the maximum sentence for the misdemeanor with which the person is charged or not more than the period of the maximum sentence of the felony with which the person is charged. The deferral is conditioned upon the defendant paying an amount to be determined by the court of not less than ten dollars ($10.00) nor more than thirty-five dollars ($35.00) per month as part payment of expenses incurred by the agency, department, program, group or association in supervising the defendant, and upon the defendant paying any or all additional costs of the defendant's supervision, counseling or treatment in a specified manner, based upon the defendant's ability to pay. The

payments shall be made to the clerk of the court in which proceedings against the defendant were pending, who shall send the payments to the agency, department, program, group or association responsible for the supervision of the defendant, unless the defendant is found to be indigent and without anticipated future funds with which to make the payment. The clerk of the court collecting the payment is permitted to retain five percent (5%) of the proceeds collected for the handling and receiving of the proceeds as provided in this subdivision (a)(1)(A).

(B)(i) As used in this subsection (a), "qualified defendant" means a defendant who:

*(a)* Is found guilty of or pleads guilty or nolo contendere to the offense for which deferral of further proceedings is sought;

*(b)* Is not seeking deferral of further proceedings for any offense committed by any elected or appointed person in the executive, legislative or judicial branch of the state or any political subdivision of the state, which offense was committed in the person's official capacity or involved the duties of the person's office;

*(c)* Is not seeking deferral of further proceedings for a sexual offense, a violation of § 39-15-502, § 71-6-117, or § 71-6-119, driving under the influence of an intoxicant as prohibited by § 55-10-401, vehicular assault under § 39-13-106 prior to service of the minimum sentence required by § 39-13-106, or a Class A or B felony;

*(d)* Has not previously been convicted of a felony or a Class A misdemeanor for which a sentence of confinement is served; and

*(e)* Has not previously been granted judicial diversion under this chapter or pretrial diversion.

(ii) As used in subdivision (a)(1)(B)(i)(*c*), "sexual offense" means conduct that constitutes:

*(a)* Aggravated prostitution, as described in § 39-13-516;

*(b)* Aggravated rape, as described in § 39-13-502;

*(c)* Aggravated sexual battery, as described in § 39-13-504;

*(d)* Aggravated sexual exploitation of a minor, as described in § 39-17-1004;

*(e)* Attempt, as described in § 39-12-101, solicitation, as described in § 39-12-102 or conspiracy, as described in § 39-12-103, to commit any of the offenses enumerated in this subdivision (a)(1)(B)(ii);

*(f)* Especially aggravated sexual exploitation of a minor, as described in § 39-17-1005;

*(g)* Rape, as described in § 39-13-503;

*(h)* Rape of a child, as described in § 39-13-522;

*(i)* Sexual battery by an authority figure, as described in § 39-13-527;

*(j)* Sexual exploitation of a minor, as described in § 39-17-1003;

*(k)* Statutory rape by an authority figure, as described in § 39-13-532; or

*(l)* Incest, as described in § 39-15-302.

(iii)*(a)* As used in this subsection (a), "reasonable conditions" includes, but is not limited to, the use of a transdermal monitoring device or other alternative monitoring device for all qualified defendants granted deferral pursuant to this section on or after July 1, 2014, if the court determines that the defendant's use of alcohol or

drugs was a contributing factor in the defendant's unlawful conduct. If the court requires a qualified defendant to use a transdermal monitoring device or other alternative monitoring device on or after July 1, 2016, as a condition of the defendant's release, and the court determines the defendant is indigent, the court shall order that the portion of the costs of the device that the person is unable to pay be paid by the electronic monitoring indigency fund, established in § 55-10-419. "Transdermal monitoring device" means any device or instrument that is attached to the person, designed to automatically test the alcohol or drug content in a person by contact with the person's skin at least once per one-half (½) hour regardless of the person's location, and which detects the presence of alcohol or drugs and tampering, obstructing, or removing the device.

*(b)* As used in this subsection (a), "reasonable conditions" also includes, but is not limited to, the requirement that a qualified defendant serve a period or periods of confinement in the local jail or workhouse not to exceed a total of thirty (30) days.

(2) The provisions of this subsection (a) relative to the payment of a supervision fee shall not apply to any person subject to the provisions of chapter 28, part 2 of this title. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. If, during the period of probation, the person does not violate any of the conditions of the probation, then upon expiration of the period, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this subsection (a) is without court adjudication of guilt, but a nonpublic record of the discharge and dismissal is retained by the court solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, the person qualifies under this subsection (a) or for the limited purposes provided in subsections (b) and (c). The discharge and dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose, except as provided in subsections (b) and (c). Discharge and dismissal under this subsection (a) may occur only once with respect to any person.

(3)(A) No order deferring further proceedings and placing the defendant on probation as authorized by this subsection (a) may be entered by the court on or after July 1, 1998, unless there is attached to it a certificate from the Tennessee bureau of investigation stating that the defendant does not have a prior felony or Class A misdemeanor conviction. No order deferring further proceedings and placing the defendant on probation as authorized by this subsection (a) may be entered by the court if the defendant was charged with a violation of a criminal statute the elements of which constitute abuse, neglect or misappropriation of the property of a vulnerable person as defined in § 68-11-1002 on or after July 1, 2004, unless the order contains a provision that the defendant agrees without contest or any further notice or hearing that the defendant's name shall be permanently placed on the registry governed by § 68-11-1003 a copy of which shall be forwarded to the department of health.

(B) The certificate provided by the bureau pursuant to subdivision (a)(3)(A) is only a certification that according to its expunged criminal offender and pretrial diversion database the defendant is not disqualified

from deferral and probation under this section by virtue of a prior felony or Class A misdemeanor conviction. The certificate is not a certification that the defendant is eligible for the deferral and probation, and it shall continue to be the duty of the district attorney general, and judge to make sufficient inquiry into the defendant's background to determine eligibility.

(b) Upon the dismissal of the person and discharge of the proceedings against the person under subsection (a), the person may apply to the court for an order to expunge from all official records, other than the nonpublic records to be retained by the court under subsection (a) and the public records that are defined in § 40-32-101(b), all recordation relating to the person's arrest, indictment or information, trial, finding of guilty and dismissal and discharge pursuant to this section; provided, that no records of a person who is dismissed from probation and whose proceedings are discharged pursuant to this section shall be expunged if the offense for which deferral and probation was granted was a sexual offense as defined by § 40-39-202. Each application shall contain a notation by the clerk evidencing that all court costs are paid in full, prior to the entry of an order of expunction. If the court determines, after hearing, that the person was dismissed and the proceedings against the person discharged, it shall enter the order. The effect of the order is to restore the person, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information. No person as to whom the order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge the arrest, or indictment or information, or trial in response to any inquiry made of the person for any purpose, except when the person who has been availed of the privileges of expunction then assumes the role of plaintiff in a civil action based upon the same transaction or occurrence as the expunged criminal record. In that limited situation, notwithstanding any provision of this section or § 40-32-101(a)(3)-(c)(3) to the contrary, the nonpublic records are admissible for the following purposes:

(1) A plea of guilty is admissible into evidence in the civil trial as a judicial admission; and

(2) A verdict of guilty by a judge or jury is admissible into evidence in the civil trial as either a public record or is admissible to impeach the truthfulness of the plaintiff. In addition, the nonpublic records retained by the court, as provided in subsection (a), shall constitute the official record of conviction and are subject to the subpoena power of the courts of civil jurisdiction.

(c) Notwithstanding the provisions of this section or § 40-32-101(a)(3)-(c)(3) to the contrary, a plea of guilty or a verdict of guilty by a judge or jury for a criminal felony offense involving an act of terrorism or any other felony offense involving violence, coercion, dishonesty or the disruption of the operations of a state or local government is admissible into evidence in a civil action for the purpose of impeaching the truthfulness, veracity or credibility of a witness if the plea or verdict occurred within ten (10) years of the date the evidence is sought to be admitted and the witness is a party to the civil action. The plea or verdict is admissible for the purposes set out in this subsection (c) notwithstanding the fact that the public records of the plea or verdict have been expunged pursuant to this section either prior to or after the commencement of the civil action at which the plea or verdict is sought to be admitted. In addition, the nonpublic records retained by the court, Tennessee bureau of investigation or a local law enforcement agency shall constitute official records of plea or verdict and are subject to the subpoena power of the courts of civil

jurisdiction.

(d)(1) Any court dismissing charges against a person and ordering the expunction of a person's public records following the discharge of proceedings pursuant to this section after October 1, 1998, shall send or cause to be sent a copy of the dismissal and expunction order to the Tennessee bureau of investigation for entry into its expunged criminal offender and pretrial diversion database; provided, however, that the court shall not be required to send to the bureau a copy of any dismissal and expunction order dated on or after July 1, 1999, if the charge dismissed is classified as a Class B or C misdemeanor. The order shall contain the name of the person seeking dismissal and expunction, the person's date of birth and social security number, the offense that was dismissed and the date the dismissal and expunction order is entered.

(2) Beginning July 1, 2012, a defendant applying to a court for expunction of the defendant's records following successful completion of the diversion program authorized by this section shall be assessed a three-hundred-fifty-dollar fee. The fee shall be transmitted by the clerk of the court to the state treasurer for deposit in the special fund established in § 40-32-101(d)(2).

**40-35-313. Probation — Conditions — Discharge and dismissal — Expunction from official records — Fee. [Effective on January 1, 2019. See version effective until January 1, 2019.]**

*(a)(1)(A) The court may defer further proceedings against a qualified defendant and place the defendant on probation upon such reasonable conditions as it may require without entering a judgment of guilty and with the consent of the qualified defendant. The deferral shall be for a period of time not less than the period of the maximum sentence for the misdemeanor with which the person is charged or not more than the period of the maximum sentence of the felony with which the person is charged. The deferral is conditioned upon the defendant paying an amount to be determined by the court of not less than ten dollars ($10.00) nor more than thirty-five dollars ($35.00) per month as part payment of expenses incurred by the agency, department, program, group or association in supervising the defendant, and upon the defendant paying any or all additional costs of the defendant's supervision, counseling or treatment in a specified manner, based upon the defendant's ability to pay. The payments shall be made to the clerk of the court in which proceedings against the defendant were pending, who shall send the payments to the agency, department, program, group or association responsible for the supervision of the defendant, unless the defendant is found to be indigent and without anticipated future funds with which to make the payment. The clerk of the court collecting the payment is permitted to retain five percent (5%) of the proceeds collected for the handling and receiving of the proceeds as provided in this subdivision (a)(1)(A).*

*(B)(i) As used in this subsection (a), "qualified defendant" means a defendant who:*

***(a)** Is found guilty of or pleads guilty or nolo contendere to the offense for which deferral of further proceedings is sought;*

***(b)** Is not seeking deferral of further proceedings for any offense committed by any elected or appointed person in the executive, legis-*

*lative or judicial branch of the state or any political subdivision of the state, which offense was committed in the person's official capacity or involved the duties of the person's office;*

***(c)*** *Is not seeking deferral of further proceedings for a sexual offense, a violation of § 39-15-502, § 71-6-117, § 71-6-119, or § 39-15-508, driving under the influence of an intoxicant as prohibited by § 55-10-401, vehicular assault under § 39-13-106 prior to service of the minimum sentence required by § 39-13-106, or a Class A or B felony;*

***(d)*** *Has not previously been convicted of a felony or a Class A misdemeanor for which a sentence of confinement is served; and*

***(e)*** *Has not previously been granted judicial diversion under this chapter or pretrial diversion.*

*(ii) As used in subdivision (a)(1)(B)(i)(**c**), "sexual offense" means conduct that constitutes:*

***(a)*** *Aggravated prostitution, as described in § 39-13-516;*

***(b)*** *Aggravated rape, as described in § 39-13-502;*

***(c)*** *Aggravated sexual battery, as described in § 39-13-504;*

***(d)*** *Aggravated sexual exploitation of a minor, as described in § 39-17-1004;*

***(e)*** *Attempt, as described in § 39-12-101, solicitation, as described in § 39-12-102 or conspiracy, as described in § 39-12-103, to commit any of the offenses enumerated in this subdivision (a)(1)(B)(ii);*

***(f)*** *Especially aggravated sexual exploitation of a minor, as described in § 39-17-1005;*

***(g)*** *Rape, as described in § 39-13-503;*

***(h)*** *Rape of a child, as described in § 39-13-522;*

***(i)*** *Sexual battery by an authority figure, as described in § 39-13-527;*

***(j)*** *Sexual exploitation of a minor, as described in § 39-17-1003;*

***(k)*** *Statutory rape by an authority figure, as described in § 39-13-532; or*

***(l)*** *Incest, as described in § 39-15-302.*

*(iii)**(a)*** *As used in this subsection (a), "reasonable conditions" includes, but is not limited to, the use of a transdermal monitoring device or other alternative monitoring device for all qualified defendants granted deferral pursuant to this section on or after July 1, 2014, if the court determines that the defendant's use of alcohol or drugs was a contributing factor in the defendant's unlawful conduct. If the court requires a qualified defendant to use a transdermal monitoring device or other alternative monitoring device on or after July 1, 2016, as a condition of the defendant's release, and the court determines the defendant is indigent, the court shall order that the portion of the costs of the device that the person is unable to pay be paid by the electronic monitoring indigency fund, established in § 55-10-419. "Transdermal monitoring device" means any device or instrument that is attached to the person, designed to automatically test the alcohol or drug content in a person by contact with the person's skin at least once per one-half (½) hour regardless of the person's location, and which detects the presence of alcohol or drugs and tampering, obstructing, or removing the device.*

***(b)*** *As used in this subsection (a), "reasonable conditions" also includes, but is not limited to, the requirement that a qualified defendant serve a period or periods of confinement in the local jail or workhouse not to exceed a total of thirty (30) days.*

*(2) The provisions of this subsection (a) relative to the payment of a supervision fee shall not apply to any person subject to the provisions of chapter 28, part 2 of this title. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. If, during the period of probation, the person does not violate any of the conditions of the probation, then upon expiration of the period, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this subsection (a) is without court adjudication of guilt, but a nonpublic record of the discharge and dismissal is retained by the court solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, the person qualifies under this subsection (a) or for the limited purposes provided in subsections (b) and (c). The discharge and dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose, except as provided in subsections (b) and (c). Discharge and dismissal under this subsection (a) may occur only once with respect to any person.*

*(3)(A) No order deferring further proceedings and placing the defendant on probation as authorized by this subsection (a) may be entered by the court on or after July 1, 1998, unless there is attached to it a certificate from the Tennessee bureau of investigation stating that the defendant does not have a prior felony or Class A misdemeanor conviction. No order deferring further proceedings and placing the defendant on probation as authorized by this subsection (a) may be entered by the court if the defendant was charged with a violation of a criminal statute the elements of which constitute abuse, neglect or misappropriation of the property of a vulnerable person as defined in § 68-11-1002 on or after July 1, 2004, and prior to July 1, 2018, or charged with a violation of § 39-15-507 or § 71-6-117 on or after July 1, 2018, unless the order contains a provision that the defendant agrees without contest or any further notice or hearing that the defendant's name shall be permanently placed on the registry governed by § 68-11-1003 a copy of which shall be forwarded to the department of health.*

*(B) The certificate provided by the bureau pursuant to subdivision (a)(3)(A) is only a certification that according to its expunged criminal offender and pretrial diversion database the defendant is not disqualified from deferral and probation under this section by virtue of a prior felony or Class A misdemeanor conviction. The certificate is not a certification that the defendant is eligible for the deferral and probation, and it shall continue to be the duty of the district attorney general, and judge to make sufficient inquiry into the defendant's background to determine eligibility.*

*(b) Upon the dismissal of the person and discharge of the proceedings against the person under subsection (a), the person may apply to the court for an order to expunge from all official records, other than the nonpublic records to be retained by the court under subsection (a) and the public records that are defined in § 40-32-101(b), all recordation relating to the person's arrest, indictment or information, trial, finding of guilty and dismissal and discharge*

*pursuant to this section; provided, that no records of a person who is dismissed from probation and whose proceedings are discharged pursuant to this section shall be expunged if the offense for which deferral and probation was granted was a sexual offense as defined by § 40-39-202. Each application shall contain a notation by the clerk evidencing that all court costs are paid in full, prior to the entry of an order of expunction. If the court determines, after hearing, that the person was dismissed and the proceedings against the person discharged, it shall enter the order. The effect of the order is to restore the person, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information. No person as to whom the order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge the arrest, or indictment or information, or trial in response to any inquiry made of the person for any purpose, except when the person who has been availed of the privileges of expunction then assumes the role of plaintiff in a civil action based upon the same transaction or occurrence as the expunged criminal record. In that limited situation, notwithstanding any provision of this section or § 40-32-101(a)(3)-(c)(3) to the contrary, the nonpublic records are admissible for the following purposes:*

*(1) A plea of guilty is admissible into evidence in the civil trial as a judicial admission; and*

*(2) A verdict of guilty by a judge or jury is admissible into evidence in the civil trial as either a public record or is admissible to impeach the truthfulness of the plaintiff. In addition, the nonpublic records retained by the court, as provided in subsection (a), shall constitute the official record of conviction and are subject to the subpoena power of the courts of civil jurisdiction.*

*(c) Notwithstanding the provisions of this section or § 40-32-101(a)(3)-(c)(3) to the contrary, a plea of guilty or a verdict of guilty by a judge or jury for a criminal felony offense involving an act of terrorism or any other felony offense involving violence, coercion, dishonesty or the disruption of the operations of a state or local government is admissible into evidence in a civil action for the purpose of impeaching the truthfulness, veracity or credibility of a witness if the plea or verdict occurred within ten (10) years of the date the evidence is sought to be admitted and the witness is a party to the civil action. The plea or verdict is admissible for the purposes set out in this subsection (c) notwithstanding the fact that the public records of the plea or verdict have been expunged pursuant to this section either prior to or after the commencement of the civil action at which the plea or verdict is sought to be admitted. In addition, the nonpublic records retained by the court, Tennessee bureau of investigation or a local law enforcement agency shall constitute official records of plea or verdict and are subject to the subpoena power of the courts of civil jurisdiction.*

*(d)(1) Any court dismissing charges against a person and ordering the expunction of a person's public records following the discharge of proceedings pursuant to this section after October 1, 1998, shall send or cause to be sent a copy of the dismissal and expunction order to the Tennessee bureau of investigation for entry into its expunged criminal offender and pretrial diversion database; provided, however, that the court shall not be required to send to the bureau a copy of any dismissal and expunction order dated on or after July 1, 1999, if the charge dismissed is classified as a Class B or C misdemeanor. The order shall contain the name of the person seeking dismissal and expunction, the person's date of birth and social security number, the offense that was dismissed and the date the dismissal and*

*expunction order is entered.*

*(2) Beginning July 1, 2012, a defendant applying to a court for expunction of the defendant's records following successful completion of the diversion program authorized by this section shall be assessed a three-hundred-fifty-dollar fee. The fee shall be transmitted by the clerk of the court to the state treasurer for deposit in the special fund established in § 40-32-101(d)(2).*

**40-35-323. Grants to fund reentry programs — Grant proposals.**

(a) The department of correction shall make four (4) grants in the amount of two hundred fifty thousand dollars ($250,000) each to local county sheriff or probation departments to fund reentry programs that reduce recidivism and probation revocations. The department shall set the guidelines for the request for grant proposals. Priority shall be given to grant proposals that include one (1) or more of the following characteristics:

(1) Programs that seek a targeted reduction in recidivism or probation revocations;

(2) Programs that identify potential participants by use of a validated risk assessment tool designed for its intended use and target the most intensive supervision and treatment for people at a high risk of reoffending;

(3) Programs that use evidence-based rehabilitative services designed to address primarily criminogenic needs;

(4) Programs that must be evaluated annually for effectiveness using a nationally recognized assessment, such as the correctional program checklist and correctional program assessment inventory; and

(5) Programs that advance interventions that are tailored to fit the learning styles, motivation, and strengths of individual participants.

(b) No more than seventy-five percent (75%) of available grant funds shall be provided upfront to the recipient to continue or establish a program that meets the requirements of this section. The remaining amount of grant funds shall be awarded only if the recipient meets clearly measurable outcomes aimed at reducing recidivism or probation revocations as agreed upon between the department and the grant recipient.

(c)(1) For county sheriff department recipients, the measureable outcomes shall include a percentage reduction in recidivism among those who are incarcerated in the county jail at the time the grant is awarded.

(2) For purposes of this section, "recidivism" means the percentage of convicted misdemeanants who are incarcerated in any state or local facility within three (3) years of the year in which they were released from incarceration from the recipient's facility.

(3) The baseline for this rate shall be an average of the three (3) fiscal years immediately preceding the fiscal year in which the grant is awarded.

(d)(1) For county probation department recipients, the measureable outcomes shall include a percentage reduction in probation revocations among those persons under the probation department's supervision at the time the grant is awarded.

(2) For purposes of this subsection, "percentage reduction in probation revocations" means the percentage of people on supervised probation in the county who are subsequently admitted to the local jail or state department of correction after revocation of their supervision.

(3) The baseline for this rate shall be an average of the three (3) fiscal

years immediately preceding the fiscal year in which the grant is awarded.

(e) The monies appropriated to fund this section shall be used to supplement, not supplant, any other state or county appropriation for the recipient.

(f) No later than December 31 of each year, the department of correction shall report to the speaker of the house of representatives and speaker of the senate the grants awarded pursuant to this section and the results of the measurable outcomes agreed upon between the department and recipients for the previous fiscal year. The report shall be made available publicly on the department of correction's website.

(g) For the purposes of this section, "probation department" does not mean the department of correction probation department or its offices.

**40-38-103. Rights of crime victims — Generally.**

(a) All victims of crime shall, upon their request, have the right to:

(1) Be fully informed orally, in writing or by video tape by the office of the district attorney general, acting through the appropriate victim-witness coordinator, of the following:

(A) The various steps and procedures involved in the criminal justice system;

(B) The procedure and basis for continuances in the proceedings;

(C) The procedure involved in the plea-bargaining process and how to request input into the process;

(D) The times, dates and locations of all pertinent stages in the proceedings following presentment or indictment by the grand jury;

(E) The methods by which the victim may have input into a convicted defendant's sentence, including the presentence report and the sentencing hearing;

(F) The stages in the appellate process and how to obtain information concerning appellate action that has an effect on the defendant's conviction or sentence and the date a defendant's sentence becomes final;

(G) How to obtain pertinent information relating to the possible release of an appropriate inmate, including notification of any department of correction decision permitting the inmate's release into the community or any scheduled hearing by the board of parole concerning the inmate's parole or application for executive clemency;

(H) The methods by which the victim may obtain restitution directly from the defendant and information about obtaining assistance in obtaining restitution; and

(I) The methods by which the victim may obtain a monetary award or other benefits from the criminal injuries compensation fund and information about obtaining assistance in securing the award or benefits;

(2) Whenever possible, be advised and informed of plea bargaining discussions and agreements prior to the entry of any plea agreement where the victim is a victim of violent crime involving death of a family member or serious bodily injury, speak at parole hearings, submit a victim impact statement to the courts and the board of parole and give impact testimony at court sentencing hearings;

(3) Be informed that § 41-21-240 requires the department to notify them, upon their request, at least ninety (90) days prior to the date an inmate with a sentence of two (2) years or more is scheduled to be released by reason of expiration of the inmate's sentence and be informed how the request of the

department is made; and

(4) Be compensated for expenses actually and reasonably incurred as the result of traveling to and from the trial of the defendant or defendants and traveling to and from appellate, postconviction or habeas corpus proceedings resulting from the trial of the defendant or defendants alleged to have committed a compensable offense subject to the provisions of title 29, chapter 13, part 1, and the availability of funds in the criminal injuries compensation fund.

(b) Upon the request of a victim of violent crime involving serious bodily injury or death of a relative, the victim shall be supplied information and a request form by the law enforcement agency responsible for the investigation of the crime or the arrest of the defendant, the sheriff or other custodian of the defendant, or the victim-witness coordinator as to how the victim or relative of a victim may request and secure notification of the release from custody of an offender from a jail or detention facility prior to trial. The jailer, sheriff, or other custodian of criminal offenders shall maintain a physical or electronic record or file of the victim's request for notification and, prior to the release of an offender about whom a notification request has been made, give immediate and prompt notice of the release to the requesting victim or family member of a victim by the most direct means available, including telephone, messenger, or telegram; provided, that if the victim or family member of a victim is registered with the state's electronic victim notification system, the notice required by this section shall be communicated by the method or methods indicated by the registration in the system. Any identifying information contained in the request forms shall be confidential. For purposes of this subsection (b), "identifying information" means the name, home and work addresses, telephone numbers, email address, and social security number of the person being notified or requesting that notification be provided.

(c) In a prosecution for any criminal homicide, an appropriate photograph of the victim while alive shall be admissible evidence when offered by the district attorney general to show the general appearance and condition of the victim while alive.

**40-38-601. Part definitions. [Effective on March 1, 2019.]**

*As used in this part:*

*(1) "Address confidentiality program" or "program" means the program created under this part to protect the confidentiality of the confidential address of a relocated victim of domestic abuse, stalking, human trafficking, rape, sexual battery, or any other sexual offense;*

*(2) "Administrator of elections" means the chief county election administrative officer appointed by the county election commission;*

*(3) "Application" means the form or forms submitted, in the manner prescribed by the secretary of state, by an individual requesting certification for the address confidentiality program;*

*(4) "Application assistant" means an employee or volunteer at an agency or organization that serves victims of domestic abuse, stalking, human trafficking, rape, sexual battery, or any other sexual offense, who has received training and certification from the secretary of state to help individuals complete applications to be program participants;*

*(5) "Confidential address" means the actual address of a program participant's residence, school, institution of higher education, business, or place of employment, as specified on an application to be a program participant or on a notice of change of address filed under this part;*

*(6) "Coordinator of elections" means the official appointed by the secretary of state in accordance with § 2-11-201 as the chief administrative election officer of the state and such official's designee or designees;*

*(7) "Domestic abuse" has the same meaning as defined in § 36-3-601;*

*(8) "Domestic abuse victim" has the same meaning as defined in § 36-3-601;*

*(9) "Fiduciary" has the same meaning as defined in § 34-1-101;*

*(10) "Governmental entity" means the state, a political subdivision of the state, or any department, agency, board, commission, or other instrumentality of the state or a political subdivision of the state;*

*(11) "Human trafficking" has the same meaning as used in § 39-13-314;*

*(12) "Minor" has the same meaning as defined in § 34-1-101;*

*(13) "Parent" includes biological and adoptive parents, as defined in § 36-1-102;*

*(14) "Person with a disability" has the same meaning as defined in § 34-1-101;*

*(15) "Process" means judicial process and all orders, demands, notices, or other papers required or permitted by law to be served on a program participant;*

*(16) "Program participant" means a person who is certified by the secretary of state as a program participant;*

*(17) "Secretary of state" or "secretary" means the secretary of state of Tennessee and any designee of the secretary;*

*(18) "Sexual offender" has the same meaning as defined in § 40-39-202;*

*(19) "Sexual offense" means a sexual offense or violent sexual offense as defined in § 40-39-202;*

*(20) "Stalking" has the same meaning as defined in § 39-17-315; and*

*(21) "Substitute address" means an address designated by the secretary of state under the address confidentiality program that is used instead of a confidential address as set forth by this part.*

**40-38-602. Crime victim address confidentiality program. [Effective on March 1, 2019.]**

*(a) The secretary of state shall establish a crime victim address confidentiality program, which shall be open to a victim of domestic abuse, stalking, human trafficking, rape, sexual battery, or any other sexual offense who satisfies the requirements of this part, at no cost to the program participant.*

*(b) This program shall provide the participant with the use of a substitute address for the participant and the participant's minor children and shall not disclose the participant's name, confidential address, phone number, or any other information contained within the program participant's file except as otherwise provided by this part.*

*(c) Whenever a program participant is required by law to swear to or affirm the participant's address, the participant may use the participant's substitute address. Wherever a program participant is required by law to establish residency, the participant may present evidence of program participation and*

*use the participant's substitute address. Where residency must be verified in order to establish eligibility for public benefits, the governmental entity requiring verification shall submit a written request to the secretary of state, on a form prescribed by the secretary of state, whereby the secretary of state shall provide the governmental entity with a statement as to whether the program participant, or the program participant's minor child, or a person with a disability on whose behalf the person is applying, is eligible for benefits, based on the information known to the secretary of state.*

*(d) The substitute address shall not be used:*

*(1) For purposes of listing, appraising, or assessing property taxes and collecting property taxes; or*

*(2) On any document related to real property recorded with a county clerk and recorder.*

*(e) Notwithstanding any other applicable law, the substitute address may be used for motor vehicle records and may be printed on a person's driver or photo identification license.*

*(f) Except as otherwise provided in this part, a program participant's confidential address, and any other information contained within a program participant's file, maintained by a state or local government agency, or disclosed by the secretary of state under this part, is not a public record. This subsection (f) shall not apply:*

*(1) To any public record created more than thirty (30) days prior to the date that the program participant applied to be certified in the program; or*

*(2) If a program participant voluntarily requests that a state or local government agency use the participant's confidential address or voluntarily gives the confidential address to the state or local government agency, except voter registration records and absentee ballot requests shall be confidential for purposes of this part.*

*(g) For any public record created within thirty (30) days prior to the date that a program participant applied to be certified in the program, a state or local governmental agency shall redact the confidential address from a public record or change the confidential address to the substitute address in the public record, if a program participant presents evidence of program certification and requests the agency that maintains the public record to use the substitute address instead of the confidential address on the public record.*

*(h) Except as provided in this part, where a program participant has provided evidence of program participation to a governmental entity, any record that includes a program participant's confidential address pursuant to this part shall be confidential and not available for inspection by anyone other than the program participant.*

*(i) Notwithstanding any other applicable law, documentation concerning any tool of designation or identification or internal processes implemented by a governmental entity in documenting program participation within the governmental entity's records shall be confidential and not available for inspection.*

*(j) An application or voter registration form completed under this part, along with any supporting materials, is not a public record that is subject to inspection and shall be kept confidential.*

**40-38-603. Eligibility to participate in address confidentiality program. [Effective on March 1, 2019.]**

*A person who is required by law to be registered under any of the following is*

*not eligible to participate in the address confidentiality program:*

*(1) Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004, compiled in chapter 39, part 2 of this title;*

*(2) Tennessee Animal Abuser Registration Act, compiled in chapter 39, part 1 of this title;*

*(3) Registry of persons who have abused, neglected, or misappropriated the property of vulnerable individuals, compiled in title 68, chapter 11, part 10; or*

*(4) Drug offender registry under § 39-17-436.*

**40-38-604. Application for substitute address. [Effective on March 1, 2019.]**

*(a) Except for a person described in § 40-38-603, an adult person, or a parent or fiduciary acting on behalf of a minor or person with a disability, may apply to the secretary of state with the assistance of an application assistant to have an address designated by the secretary of state serve as the person's substitute address, or the substitute address of the minor or person with a disability on whose behalf the application is filed, where the applicant, or the individual on whose behalf the application is filed, has either relocated to a new residence within the preceding thirty (30) calendar days or presently intends to relocate to a new residence within ninety (90) calendar days from the date of the application. The application shall be made on a form prescribed by the secretary of state and filed in the office of the secretary of state in the manner prescribed by the secretary of state.*

*(b) The application must contain all of the following:*

*(1) The mailing address and telephone number or numbers at which the secretary of state may contact the applicant;*

*(2) The address or addresses of the applicant's residence, school, institution of higher education, business, or place of employment that the applicant requests not be disclosed for the reason that disclosure will increase the risk that the applicant, or the minor or person with a disability on whose behalf the application is made, will be threatened or physically harmed by another person;*

*(3) Documentary evidence that, either:*

*(A) There exists an ongoing criminal case that may result or a criminal case that has resulted in a conviction by a judge or jury or by a defendant's guilty plea, in which the applicant, or the minor or person with a disability on whose behalf the application was filed, was a victim of domestic abuse, stalking, human trafficking, rape, sexual battery, or any other sexual offense; or*

*(B) A court of competent jurisdiction has granted an order of protection to the applicant, or the minor or person with a disability on whose behalf the application is made, and which is in effect at the time of application;*

*(4) In the absence of an ongoing criminal case that may result or has resulted in a conviction or an order of protection or an ex parte protection order granted by a court of competent jurisdiction within this state which is in effect at the time of application, a notarized statement by a licensed professional with knowledge of the circumstances, such as an attorney, social worker, or therapist, confirming that such individual believes that the applicant, or the minor or person with a disability on whose behalf the*

*application is made, is in danger of further harm;*

*(5) A sworn statement by the applicant that disclosure of the confidential address or addresses would endanger the safety of the applicant or the minor or person with a disability on whose behalf the application is made;*

*(6)(A) Documentary evidence, in the form and manner prescribed by rule by the secretary of state, that the applicant, or the minor or person with a disability on whose behalf the application is made, has moved to a new residence unknown to the offender within the previous thirty (30) calendar days; or*

*(B) A sworn statement by the applicant that the applicant, or the minor or person with a disability on whose behalf the application is made, has the present intent to move to a new address unknown to the offender within the following ninety (90) calendar days. If the applicant does not move to a new address within the following ninety (90) calendar days or fails to provide documentary evidence of the new residence address to the secretary of state within this time frame, in the form and manner prescribed by rule by the secretary of state, the program participant's certification shall be cancelled;*

*(7) A voter registration form to be completed if the applicant is eligible to vote and wishes to register to vote or update a current voter registration;*

*(8) A sworn statement that the program participant understands all of the following:*

*(A) That during the time the program participant chooses to have a confidential voter registration record, the program participant may vote only by absentee ballot;*

*(B) That the program participant may provide a program participant identification number instead of the residence address on an application for an absentee ballot or on an absentee voter's ballot identification envelope statement of voter with the applicant's signature;*

*(C) That casting any ballot in person will reveal the program participant's precinct and residence address to precinct election officials and employees of the county election commission and may reveal the program participant's precinct or residence address to members of the public; and*

*(D) That if the program participant signs an election petition, the program participant's residence address will be made available to the public;*

*(9) A knowing and voluntary designation of the secretary of state as the agent for the purposes of receiving service of process and the receipt of mail;*

*(10) A knowing and voluntary release and waiver of all future claims against the state for any claim that may arise from participation in the address confidentiality program, except for a claim based on the performance or nonperformance of a public duty that was manifestly outside the scope of the officer's or employee's office or employment or in which the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner;*

*(11) The notarized signature of the applicant, the name and notarized signature of the application assistant who assisted the applicant, and the date on which the applicant and the application assistant signed the application; and*

*(12) If at the time of application, the applicant, or the minor or person with a disability on whose behalf the application is made, is subject to a court order or is involved in court action related to the dissolution of marriage*

*proceedings, child support, or the allocation of parental responsibilities or parenting time, the name of the court, contact information for the court, and the case number associated with those proceedings.*

*(c) Upon receiving a properly completed application under subsection (a), the secretary of state shall:*

*(1) Certify the applicant, or the minor or person with a disability on whose behalf the application is filed, as a program participant and provide evidence of such certification to the program participant;*

*(2) Designate each eligible address listed in the application as a confidential address;*

*(3) Issue the program participant a unique substitute address;*

*(4) Issue the program participant a unique program participant identification number;*

*(5) Provide information to the program participant concerning the manner in which the program participant may use the secretary of state as the program participant's agent for the purposes of receiving mail and receiving service of process;*

*(6) Provide information to the program participant concerning the process to vote as a program participant, if the program participant is eligible to vote; and*

*(7) Forward all first class mail, legal documents, and certified mail received by the secretary of state to the program participant.*

**40-38-605. Notification of change of program participant's address — Renewal of certification. [Effective on March 1, 2019.]**

*(a) A program participant shall notify the office of the secretary of state of any change in the participant's residence address and application information within thirty (30) days after any change has occurred by submitting a notice of change to the office of the secretary of state on a form prescribed by the secretary of state. If registered to vote, the applicant shall also complete a change of address form for voter registration purposes.*

*(b) The certification of a program participant shall be valid for four (4) years after the date of the filing of the application for the program participant, unless the certification is withdrawn or invalidated before the end of that four-year period.*

*(c) A program participant who continues to be eligible to participate in the program may renew the program participant's certification by submitting a renewal application to the secretary of state with the assistance of an application assistant. The renewal application shall be on a form prescribed by the secretary of state and shall contain all of the information described in § 40-38-604.*

*(d) When a program participant renews the program participant's certification, the program participant shall continue to use the program participant's original program participant identification number and substitute address.*

**40-38-606. Request that governmental and private entities use substitute address — Registration as voter — Service of process. [Effective on March 1, 2019.]**

*(a) A program participant may request that a governmental entity use the address designated by the secretary of state as the program participant's*

*substitute address. Except as otherwise provided by this part, if the program participant requests that a governmental entity use the substitute address and provides evidence of certification as a program participant, the governmental entity shall accept the substitute address.*

*(b) If a program participant's employer, school, or institution of higher education is not a governmental entity, the program participant may request that the employer, school, or institution of higher education use the substitute address designated by the secretary of state as the program participant's address.*

*(c) The program participant may also request that private businesses and other non-governmental entities use the substitute address designated by the secretary of state as the program participant's address.*

*(d) Program participants shall not be required to provide their confidential address to any public school for purposes of enrollment for themselves or their minor children, but rather shall be permitted to provide the public school with evidence of certification as a program participant and the participant's substitute address. Where residency must be verified in order to enroll a student in a public school, the individual responsible for verifying eligibility for enrollment shall submit a written request to the secretary of state, on a form prescribed by the secretary of state, whereby the secretary of state shall provide that individual with a statement as to whether the program participant, or the program participant's minor child, is eligible for enrollment, based on the information known to the secretary of state.*

*(e) A program participant may be required to provide the program participant's residence address for purposes of obtaining utility services. Notwithstanding any contrary law, and except as otherwise provided by this part, if a program participant provides a utility service provider with evidence of certification as a program participant, the utility service provider shall treat the program participant's residence address and identifying information as confidential in accordance with the procedures established at § 10-7-504(a)(15). In such instances, the program participant may also request that the utility service provider use the substitute address.*

*(f) Except as otherwise provided in this part, it shall be the responsibility of the program participant to provide the program participant's substitute mailing address to all governmental and private entities to ensure the confidentiality of the program participant's confidential address.*

*(g) A participant shall be registered as a voter of the precinct in which the person is a resident.*

*(h)(1) The office of the secretary of state shall place all first class mail, legal documents, and certified mail received by the secretary of state on behalf of a program participant into an envelope or package and mail that envelope or package to the program participant at the mailing address the program participant provided to the secretary of state for that purpose within three (3) business days of receipt. The secretary of state may contract with the United States postal service to establish special postal rates for the envelopes or packages used in mailing a program participant's first class mail, legal documents, and certified mail under this section.*

*(2)(A) Upon receiving service of process on behalf of a program participant, the office of the secretary of state shall immediately forward the process by certified mail, return receipt requested, to the program participant at the mailing address the program participant provided to the secretary of state*

*for that purpose. Service of process upon the office of the secretary of state on behalf of a program participant shall constitute service upon the program participant under the Rules of Civil Procedure.*

*(B) The secretary of state may prescribe by rule the manner in which process may be served on the secretary of state as the agent of a program participant.*

*(C) Upon request by a person who intends to serve process on an individual, the secretary of state shall confirm whether the individual is a program participant but shall not disclose any other information concerning a program participant.*

**40-38-607. Confidentiality of program participant's voter registration record — Voter registration and absentee deadlines applicable — Exemption from jury duty. [Effective on March 1, 2019.]**

*(a) The coordinator of elections and the administrator of elections shall keep a program participant's voter registration record confidential.*

*(b) The form shall be stored in a secure manner and the coordinator of elections and administrator of elections shall have access to the form and to the residence address contained in the form.*

*(c) The coordinator of elections and administrator of elections shall record the program participant's program participant identification number in a separate voter registration database with the participant's name, residence address, and precinct. This list shall be confidential. Only the participant identification number shall be included in the statewide official voter registration list, which contains all active and inactive voters.*

*(d) The coordinator of elections and administrator of elections shall, as appropriate, direct that the program participant's name, address, and precinct information, as well as any other contact information, be removed from the program participant's voter registration record, voter registration databases, and the official registration list, as well as any pollbook, poll list, or signature pollbook in which it appears and from any publicly available registration list in which it appears.*

*(e) If the program participant is registered to vote in another state, the coordinator of elections or administrator of elections shall notify the appropriate authority in that state to cancel the program participant's voter registration.*

*(f) The coordinator of elections shall inform the program participant:*

*(1) That the program participant is being placed on the absentee list pursuant to § 40-38-602;*

*(2) That if the program participant wishes to vote in an election and keep their residence address confidential, the program participant shall cast an absentee ballot by mail;*

*(3) Of the procedure for the program participant to cast an absentee ballot;*

*(4) That appearing in person will reveal the program participant's precinct and residence address to precinct election officials and employees of the election commission and may reveal the program participant's precinct or residence address to members of the public; and*

*(5) That if the program participant appears in person, the individual must cast a provisional ballot.*

*(g) If the program participant submits an absentee ballot, such ballot shall be processed by the administrator of elections in order to ensure the highest level*

*of confidentiality and protection of the voting process.*

*(h) All applicable voter registration and absentee deadlines shall apply. The coordinator of elections may establish procedures for the submission and processing of absentee ballots for such participants in accordance with this part and other applicable law.*

*(i) Program participants will be exempt from selection for state and municipal jury duty.*

**40-38-608. Cancellation of program participant's certification — Notice of cancellation — Request to withdraw from program — Responsibility to notify others that substitute address is no longer valid. [Effective on March 1, 2019.]**

*(a) The secretary of state shall cancel the certification of a program participant if any of the following are true:*

*(1) The program participant's application contained one or more false statements;*

*(2) The program participant failed to relocate to a new address or failed to provide documentary evidence of the new residence address to the secretary of state, in the form and manner prescribed by the secretary of state, within ninety (90) days from the date of application as sworn on the application;*

*(3) The program participant obtains a name change, unless the program participant provides the secretary of state with documentation of a legal name change within ten (10) business days of the name change;*

*(4) The program participant's certification has expired and the program participant has not renewed the certification in accordance with § 40-38-605;*

*(5) The program participant is found by the secretary of state, after proper notice, to be unreachable for a period of sixty (60) days or more, as defined by rules promulgated by the secretary of state;*

*(6) The secretary of state becomes aware that circumstances have changed such that the participant no longer meets the criteria set forth under this part that would allow participation in the program; or*

*(7) The participant submits to the secretary of state a written, notarized request to cease being a program participant on a form prescribed by the secretary of state.*

*(b) The secretary of state shall send notice of certification cancellation to the program participant setting out the reasons for cancellation. The program participant has the right to appeal the cancellation and request, within thirty (30) days from the date of the notice of cancellation, a contested case hearing before an administrative law judge, in accordance with rules promulgated by the secretary of state and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

*(c) A program participant may request to withdraw the program participant's participation in the program by submitting a written, notarized request, on a form prescribed by the secretary of state that includes all of the following:*

*(1) The person's program participant identification number;*

*(2) A statement that the participant wishes to cease being a program participant;*

*(3) An acknowledgement that by withdrawing their participation, the person's address will no longer be kept confidential, the secretary of state will no longer accept or process mail received on the person's behalf, and the*

*person's voter registration will no longer be kept confidential; and*

*(4) A statement that the administrator of elections will either:*

*(A) Treat the person's existing voter registration form in the same manner as other voter registration forms; or*

*(B) Purge the participant's voter registration.*

*(d) If an individual ceases to be a program participant, by reason of either cancellation or withdrawal, it shall be the responsibility of the individual to notify persons and entities that use the substitute address that the substitute address is no longer valid.*

**40-38-609. Disclosure of substitute address or other information by secretary of state — Requests for disclosure. [Effective on March 1, 2019.]**

*(a) Except as otherwise provided by this part, the secretary of state shall not disclose the confidential address or any other information contained within a program participant's file, other than the substitute address designated by the secretary of state, except under the following circumstances:*

*(1) If directed by a court order signed by a judge of a court of competent jurisdiction;*

*(2) Upon written request, on a form prepared by the secretary of state, by the chief law enforcement officer of a county or municipality, or an authorized representative of the Tennessee bureau of investigation, Tennessee highway patrol, or a federal law enforcement agency, if related to an ongoing official investigation; or*

*(3) Upon written request, on a form prepared by the secretary of state, by a director of a state or federal agency, if the secretary of state determines that there exists a bona fide legal or administrative requirement of the use of the program participant's confidential address such that the director is unable to fulfill legal duties and obligations without the confidential address.*

*(b) Upon written request by the director of a state or federal agency, the chief law enforcement officer of a county or municipality, or an authorized representative of the Tennessee bureau of investigation, Tennessee highway patrol, or a federal law enforcement agency who intends to request access to an individual's confidential address under this section, or any other information contained within a program participant's file, the secretary of state shall confirm whether the individual is a program participant but shall not disclose any additional information concerning the program participant until such time as a written request for disclosure as described in this section is granted. Subject to subsections (d) and (e), a determination regarding such a written request shall be made by the secretary within three (3) business days following receipt of a completed request for disclosure.*

*(c) When making a request for the disclosure of the program participant's confidential address, or any other information contained within a program participant's file, whether before a court of law or by written request to the secretary of state, the party or parties requesting the disclosure must show by clear and convincing evidence that the disclosure of the confidential address or other records is necessary for a legitimate governmental purpose that cannot otherwise be accomplished and which outweighs the risk of harm to the program participant.*

*(d) Written requests for disclosure of the program participant's confidential*

*address, or any other information contained within a program participant's file, shall be submitted to the office of the secretary of state, on a form prescribed by the secretary of state, for consideration by the secretary or the secretary's designee. Except for a request from a law enforcement agency under subdivision (a)(2), the secretary shall provide the program participant with notice of the requested disclosure and an opportunity to respond in writing to the request stating any objections to the disclosure. The secretary shall issue a determination in writing, which shall be provided to both the requesting party and the program participant, setting out the information that is to be disclosed and the reason for the disclosure.*

*(e) Any party may, within ten (10) business days of the date of the secretary's decision, appeal the secretary's decision by filing with the office of the secretary of state a written request for a contested case hearing before an administrative law judge under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, on a form prescribed by the secretary of state. The program participant, or the program participant's parent or fiduciary if applicable, shall have an opportunity to present evidence at the contested case hearing regarding the potential harm to the safety of the program participant if the program participant's confidential address, or any other information contained in the program participant's file, is disclosed. If no request for appeal is filed within ten (10) business days of the secretary's decision, then the secretary's decision shall be implemented according to its terms.*

*(f) Disclosure of a participant's confidential address, or any other information contained within a program participant's file, under this section shall be limited under the terms of the court's order or the secretary's determination to ensure that the disclosure and dissemination of the confidential address will be no greater than necessary for the specific purpose for which it was requested.*

*(g) Individuals granted access to the program participant's confidential information, whether by court order or by virtue of the individual's position as an employee of a governmental entity, are prohibited from knowingly disclosing such information to unauthorized individuals, except as otherwise required by law.*

*(h) No person shall knowingly obtain a program participant's confidential address or telephone number from any governmental agency knowing that the person is not authorized to obtain the address information.*

*(i) Nothing in this section shall be construed as to prevent the secretary of state from granting a request for disclosure to a state or local government agency pursuant to this part upon receipt of a program participant's written and notarized consent to do so.*

**40-38-610. Unlawful acts. [Effective on March 1, 2019.]**

*(a) A person who falsely attests in an application that disclosure of the confidential address would endanger the safety of the applicant, or the minor or person with a disability on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application commits perjury.*

*(b) Any individual who knowingly discloses a program participant's confidential address, or any other confidential information belonging to a program participant, in violation of this part commits a Class A misdemeanor. Where the disclosure resulted in harm to the program participant, the resulting harm shall be considered an enhancement factor when determining any punishment*

*imposed.*

*(c) Any individual who knowingly obtains a program participant's confidential address, or any other confidential information belonging to a program participant, in violation of this part, knowing that the individual is not authorized to obtain the information, commits a Class A misdemeanor. Where the disclosure resulted in harm to the program participant, the resulting harm shall be considered an enhancement factor when determining any punishment imposed.*

**40-38-611. List of agencies that provide services to victims of domestic abuse or a sexual offense to assist persons applying to be program participants. [Effective on March 1, 2019.]**

*(a) The secretary of state shall establish a list of state and local agencies and nonprofit agencies that provide counseling and shelter services to victims of domestic abuse or a sexual offense to assist persons applying to be program participants.*

*(b) Notwithstanding any contrary law, a state, local, or nonprofit agency or application assistant that provides counseling, shelter, or any other services to a program participant shall not be required to disclose the confidential address or any other information concerning the program participant for any reason.*

*(c) The secretary of state is authorized to promulgate rules under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, pertaining to application assistants and shall provide training and certification as application assistants to representatives of state, local, and nonprofit agencies that provide counseling and shelter services to victims of domestic abuse or a sexual offense. The secretary of state may partner with nonprofit agencies, or other governmental agencies, to provide training or other services in connection with the program.*

*(d) Any assistance or counseling rendered to an applicant by the office of the secretary of state shall in no way be construed as legal advice.*

**40-38-612. Effect of program participation on custody or visitation orders. [Effective on March 1, 2019.]**

*(a) Nothing in this part, including participation in the program created by this part, shall affect custody or visitation orders in effect prior to or during program participation.*

*(b) Program participation does not constitute evidence of domestic abuse, stalking, human trafficking, or any sexual offense and shall not be considered for purposes of making an order allocating parental responsibilities or parenting time, except that a court may consider practical measures to keep a program participant's confidential address confidential when making an order allocating parental responsibilities or parenting time.*

**40-38-613. Effect of negligent disclosure of program participant's confidential address — Notification of disclosure. [Effective on March 1, 2019.]**

*(a) No actionable duty or any right of action shall accrue against the state, a county, a municipality, an agency of the state or county or municipality, or an employee of the state or county or municipality in the event of negligent*

*disclosure of a program participant's confidential address.*

*(b) In the event that the state, a county, a municipality, an agency of the state or county or municipality, or an employee of the state or county or municipality negligently or otherwise unlawfully discloses the program participant's confidential address, such entity must immediately upon learning of the disclosure notify the program participant of the disclosure and the full extent of the disclosure.*

**40-39-202. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Conviction" means a judgment entered by a Tennessee court upon a plea of guilty, a plea of nolo contendere, a finding of guilt by a jury or the court notwithstanding any pending appeal or habeas corpus proceeding arising from the judgment. "Conviction" includes, but is not limited to, a conviction by a federal court or military tribunal, including a court-martial conducted by the armed forces of the United States, and a conviction, whether upon a plea of guilty, a plea of nolo contendere or a finding of guilt by a jury or the court in any other state of the United States, other jurisdiction or other country. A conviction, whether upon a plea of guilty, a plea of nolo contendere or a finding of guilt by a jury or the court for an offense committed in another jurisdiction that would be classified as a sexual offense or a violent sexual offense if committed in this state shall be considered a conviction for the purposes of this part. An adjudication in another state for a delinquent act committed in another jurisdiction that would be classified as a violent juvenile sexual offense under this section, if committed in this state, shall be considered a violent juvenile sexual offense for the purposes of this part. "Convictions," for the purposes of this part, also include a plea taken in conjunction with § 40-35-313 or its equivalent in any other jurisdiction. "Conviction" also includes a juvenile delinquency adjudication for a violent juvenile sexual offense if the offense occurs on or after July 1, 2011;

(2) "Designated law enforcement agency" means any law enforcement agency that has jurisdiction over the primary or secondary residence, place of physical presence, place of employment, school or institution of higher education where the student is enrolled or, for offenders on supervised probation or parole, the department of correction or court ordered probation officer;

(3) "Employed or practices a vocation" means any full-time or part-time employment in the state, with or without compensation, or employment that involves counseling, coaching, teaching, supervising, volunteering or working with minors in any way, regardless of the period of employment, whether the employment is financially compensated, volunteered or performed for the purpose of any government or education benefit;

(4) "Institution of higher education" means a public or private:

(A) Community college;

(B) College;

(C) University; or

(D) Independent postsecondary institution;

(5) "Law enforcement agency of any institution of higher education" means any campus law enforcement arrangement authorized by § 49-7-118;

(6) "Local law enforcement agency" means:

(A) Within the territory of a municipality, the municipal police department;

(B) Within the territory of a county having a metropolitan form of government, the metropolitan police department; or

(C) Within the unincorporated territory of a county, the sheriff's office;

(7) "Minor" means any person under eighteen (18) years of age;

(8) "Month" means a calendar month;

(9) "Offender" means sexual offender, violent sexual offender and violent juvenile sexual offender, unless otherwise designated. An offender who qualifies both as a sexual offender and a violent sexual offender or as a violent juvenile sexual offender and as a violent sexual offender shall be considered a violent sexual offender;

(10) "Offender against children" means any sexual offender, violent sexual offender or violent juvenile sexual offender if the victim in one (1) or more of the offender's crimes was a child of twelve (12) years of age or less;

(11) "Parent" means any biological parent, adoptive parent or step-parent, and includes any legal or court-appointed guardian or custodian; however, "parent" shall not include step-parent if the offender's victim was a minor less than thirteen (13) years of age;

(12) "Primary residence" means a place where the person abides, lodges, resides or establishes any other living accommodations in this state for five (5) consecutive days;

(13) "Register" means the initial registration of an offender, or the re-registration of an offender after deletion or termination from the SOR;

(14) "Registering agency" means a sheriff's office, municipal police department, metropolitan police department, campus law enforcement agency, the Tennessee department of correction, a private contractor with the Tennessee department of correction or the board;

(15) "Relevant information deemed necessary to protect the public" means that information set forth in § 40-39-206(d)(1)-(15);

(16) "Report" means appearance before the proper designated law enforcement agency for any of the purposes set out in this part;

(17) "Resident" means any person who abides, lodges, resides or establishes any other living accommodations in this state, including establishing a physical presence in this state;

(18) "Secondary residence" means a place where the person abides, lodges, resides or establishes any other living accommodations in this state for a period of fourteen (14) or more days in the aggregate during any calendar year and that is not the person's primary residence; for a person whose primary residence is not in this state, a place where the person is employed, practices a vocation or is enrolled as a student for a period of fourteen (14) or more days in the aggregate during any calendar year; or a place where the person routinely abides, lodges or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and that is not the person's primary residence, including any out-of-state address;

(19) "Sexual offender" means a person who has been convicted in this state of committing a sexual offense or has another qualifying conviction;

(20) "Sexual offense" means:

(A) The commission of any act that, on or after November 1, 1989, constitutes the criminal offense of:

(i) Sexual battery, under § 39-13-505;

(ii) Statutory rape, under § 39-13-506, if the defendant has one (1) or more prior convictions for mitigated statutory rape under § 39-13-506(a), statutory rape under § 39-13-506(b) or aggravated statutory rape under § 39-13-506(c), or if the judge orders the person to register as a sexual offender pursuant to § 39-13-506(d);

(iii) Aggravated prostitution, under § 39-13-516, provided the offense occurred prior to July 1, 2010;

(iv) Sexual exploitation of a minor, under § 39-17-1003;

(v) False imprisonment where the victim is a minor, under § 39-13-302, except when committed by a parent of the minor;

(vi) Kidnapping, where the victim is a minor, under § 39-13-303, except when committed by a parent of the minor;

(vii) Indecent exposure, under § 39-13-511, upon a third or subsequent conviction;

(viii) Solicitation of a minor, under § 39-13-528 when the offense is classified as a Class D felony, Class E felony or a misdemeanor;

(ix) Spousal sexual battery, for those committing the offense prior to June 18, 2005, under former § 39-13-507 [repealed];

(x) Attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (20)(A);

(xi) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (20)(A);

(xii) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (20)(A);

(xiii) Criminal responsibility, under § 39-11-402(2), to commit any of the offenses enumerated in this subdivision (20)(A);

(xiv) Facilitating the commission, under § 39-11-403, to commit any of the offenses enumerated in this subdivision (20)(A);

(xv) Being an accessory after the fact, under § 39-11-411, to commit any of the offenses enumerated in this subdivision (20)(A);

(xvi) Aggravated statutory rape, under § 39-13-506(c);

(xvii) Soliciting sexual exploitation of a minor — exploitation of a minor by electronic means, under § 39-13-529;

(xviii) Promotion of prostitution, under § 39-13-515;

(xix) Patronizing prostitution where the victim is a minor, under § 39-13-514;

(xx) Observation without consent, under § 39-13-607, upon a third or subsequent conviction;

(xxi) Observation without consent, under § 39-13-607 when the offense is classified as a Class E felony;

(xxii) Unlawful photographing under § 39-13-605 when the offense is classified as a Class E or Class D felony;

(xxiii) Sexual contact with inmates, under § 39-16-408; or

(xxiv) Unlawful photographing, under § 39-13-605, when convicted as a misdemeanor if the judge orders the person to register as a sexual offender pursuant to § 39-13-605;

(B) The commission of any act, that prior to November 1, 1989, constituted the criminal offense of:

(i) Sexual battery, under § 39-2-607 [repealed];

(ii) Statutory rape, under § 39-2-605 [repealed], only if the facts of

the conviction satisfy the definition of aggravated statutory rape;

(iii) Assault with intent to commit rape or attempt to commit sexual battery, under § 39-2-608 [repealed];

(iv) Incest, under § 39-4-306 [repealed];

(v) Use of a minor for obscene purposes, under § 39-6-1137 [repealed];

(vi) Promotion of performance including sexual conduct by a minor, under § 39-6-1138 [repealed];

(vii) Criminal sexual conduct in the first degree, under § 39-3703 [repealed];

(viii) Criminal sexual conduct in the second degree, under § 39-3704 [repealed];

(ix) Criminal sexual conduct in the third degree, under § 39-3705 [repealed];

(x) Kidnapping where the victim is a minor, under § 39-2-303 [repealed], except when committed by a parent of the minor;

(xi) Solicitation, under § 39-1-401 [repealed] or § 39-118(b) [repealed], to commit any of the offenses enumerated in this subdivision (20)(B);

(xii) Attempt, under § 39-1-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], to commit any of the offenses enumerated in this subdivision (20)(B);

(xiii) Conspiracy, under § 39-1-601 [repealed] or § 39-1104 [repealed], to commit any of the offenses enumerated in this subdivision (20)(B); or

(xiv) Accessory before or after the fact, or aider and abettor, under title 39, chapter 1, part 3 [repealed], to any of the offenses enumerated in this subdivision (20)(B);

(21) "Social media" means web sites and other online means of communication that are usually used by large groups of people to share information, to develop social and professional contacts, and that customarily require an identifying password and user identification to participate;

(22) "SOR" means the TBI's centralized record system of offender registration, verification and tracking information;

(23) "Student" means a person who is enrolled on a full-time or part-time basis in any public or private educational institution, including any secondary school, trade or professional institution or institution of higher learning;

(24) "TBI" means the Tennessee bureau of investigation;

(25) "TBI registration form" means the Tennessee sexual offender registration, verification and tracking form;

(26) "TDOC" means the Tennessee department of correction;

(27) "TIES" means the Tennessee information enforcement system;

(28)(A) "Violent juvenile sexual offender" means a person who is adjudicated delinquent in this state for any act that constitutes a violent juvenile sexual offense; provided, that the person is at least fourteen (14) years of age but less than eighteen (18) years of age at the time the act is committed;

(B) Upon an adjudication of delinquency in this state for an act that constitutes a violent juvenile sexual offense, the violent juvenile sexual offender shall also be considered a violent sexual offender under this part, unless otherwise set out in this part;

(29)(A) "Violent juvenile sexual offense" means an adjudication of delinquency, for any act committed on or after July 1, 2011, that, if committed by an adult, constitutes the criminal offense of:

(i) Aggravated rape, under § 39-13-502;

(ii) Rape, under § 39-13-503;

(iii) Rape of a child, under § 39-13-522, provided the victim is at least four (4) years younger than the offender;

(iv) Aggravated rape of a child, under § 39-13-531; or

(v) Criminal attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (28)(A);

(B) "Violent juvenile sexual offense" also means an adjudication of delinquency, for any act committed on or after July 1, 2014, that, if committed by an adult, constitutes the criminal offense of:

(i) Aggravated sexual battery, under § 39-13-504;

(ii) Criminal attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (28)(B);

(30) "Violent sexual offender" means a person who has been convicted in this state of committing a violent sexual offense or has another qualifying conviction;

(31) "Violent sexual offense" means the commission of any act that constitutes the criminal offense of:

(A) Aggravated rape, under § 39-2-603 [repealed] or § 39-13-502;

(B) Rape, under § 39-2-604 [repealed] or § 39-13-503;

(C) Aggravated sexual battery, under § 39-2-606 [repealed] or § 39-13-504;

(D) Rape of a child, under § 39-13-522;

(E) Attempt to commit rape, under § 39-2-608 [repealed];

(F) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(G) Especially aggravated sexual exploitation of a minor under § 39-17-1005;

(H) Aggravated kidnapping where the victim is a minor, under § 39-13-304, except when committed by a parent of the minor;

(I) Especially aggravated kidnapping where the victim is a minor, under § 39-13-305, except when committed by a parent of the minor;

(J) Sexual battery by an authority figure, under § 39-13-527;

(K) Solicitation of a minor, under § 39-13-528 when the offense is classified as a Class B or Class C felony;

(L) Spousal rape, under § 39-13-507(b)(1) [repealed];

(M) Aggravated spousal rape, under § 39-13-507(c)(1) [repealed];

(N) Criminal exposure to HIV, under § 39-13-109(a)(1);

(O) Statutory rape by an authority figure, under § 39-13-532;

(P) Criminal attempt, under § 39-12-101, § 39-12-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], to commit any of the offenses enumerated in this subdivision (31);

(Q) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (31);

(R) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (31);

(S) Criminal responsibility, under § 39-11-402(2), to commit any of the offenses enumerated in this subdivision (31);

(T) Facilitating the commission, under § 39-11-403, to commit any of

the offenses enumerated in this subdivision (31);

(U) Being an accessory after the fact, under § 39-11-411, to commit any of the offenses enumerated in this subdivision (31);

(V) Incest, under § 39-15-302;

(W) Aggravated rape of a child under § 39-13-531;

(X) Aggravated prostitution, under § 39-13-516; provided, that the offense occurs on or after July 1, 2010;

(Y) Trafficking for a commercial sex act, under § 39-13-309;

(Z) Promotion of prostitution, under § 39-13-515, where the person has a prior conviction for promotion of prostitution; or

(AA) Continuous sexual abuse of a child, under § 39-13-518; and

(32) "Within forty-eight (48) hours" means a continuous forty-eight-hour period, not including Saturdays, Sundays or federal or state holidays.

**40-39-211. Residential and work restrictions.**

(a)(1) While mandated to comply with the requirements of this chapter, no sexual offender, as defined in § 40-39-202, or violent sexual offender as defined in § 40-39-202, shall knowingly establish a primary or secondary residence or any other living accommodation or knowingly accept employment within one thousand feet (1,000') of the property line of any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center, or public athletic field available for use by the general public.

(2) For purposes of this subsection (a), "playground" means any indoor or outdoor facility that is intended for recreation of children and owned by the state, a local government, or a not-for-profit organization, and includes any parking lot appurtenant to the indoor or outdoor facility.

(b) No sexual offender, violent sexual offender, or violent juvenile sexual offender, as those terms are defined in § 40-39-202, shall knowingly:

(1) Reside within one thousand feet (1,000′) of the property line on which the offender's former victims or the victims' immediate family members reside;

(2) Come within one hundred feet (100′) of any of the offender's former victims, except as otherwise authorized by law; or

(3) Contact any of the offender's former victims or the victims' immediate family members without the consent of the victim or consent of the victim's parent or guardian if the victim is a minor being contacted by telephone, in writing, by electronic mail, Internet services or any other form of electronic communication, unless otherwise authorized by law.

(c) While mandated to comply with the requirements of this part, no sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, whose victim was a minor, shall knowingly reside with a minor. Notwithstanding this subsection (c), the offender may reside or be alone with a minor if the offender is the parent of the minor, unless one (1) of the following conditions applies:

(1) The offender's parental rights have been or are in the process of being terminated as provided by law; or

(2) Any minor or adult child of the offender was a victim of a sexual offense or violent sexual offense committed by the offender.

(d)(1) No sexual offender, as defined in § 40-39-202, or violent sexual

offender, as defined in § 40-39-202, shall knowingly:

(A) Be upon or remain on the premises of any building or grounds of any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center or public athletic field available for use by the general public in this state when the offender has reason to believe children under eighteen (18) years of age are present;

(B) Stand, sit idly, whether or not the offender is in a vehicle, or remain within one thousand feet (1,000′) of the property line of any building owned or operated by any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center or public athletic field available for use by the general public in this state when children under eighteen (18) years of age are present, while not having a reason or relationship involving custody of or responsibility for a child or any other specific or legitimate reason for being there; or

(C) Be in any conveyance owned, leased or contracted by a school, licensed day care center, other child care facility or recreation center to transport students to or from school, day care, child care, or a recreation center or any related activity thereof when children under eighteen (18) years of age are present in the conveyance.

(2) Subdivision (d)(1) shall not apply when the offender:

(A) Is a student in attendance at the school;

(B) Is attending a conference with school, day care, child care, park, playground or recreation center officials as a parent or legal guardian of a child who is enrolled in the school, day care center, other child care center or of a child who is a participant at the park, playground or recreation center and has received written permission or a request from the school's principal or the facility's administrator;

(C) Resides at a state licensed or certified facility for incarceration, health or convalescent care; or

(D) Is dropping off or picking up a child or children and the person is the child or children's parent or legal guardian who has provided written notice of the parent's offender status to the school's principal or a school administrator upon enrollment.

(3) The exemption provided in subdivision (d)(2)(B) shall not apply if the victim of the offender's sexual offense or violent sexual offense was a minor at the time of the offense and the victim is enrolled in the school, day care center, recreation center or other child care center that is participating in the conference or other scheduled event.

(e) Changes in the ownership or use of property within one thousand feet (1,000′) of the property line of an offender's primary or secondary residence or place of employment that occur after an offender establishes residence or accepts employment shall not form the basis for finding that an offender is in violation of the residence restrictions of this section.

(f) A violation of this part is a Class E felony. No person violating this part shall be eligible for suspension of sentence, diversion or probation until the minimum sentence is served in its entirety.

(g)(1) The first violation of this part is punishable by a fine of not less than three hundred fifty dollars ($350) and imprisonment for not less than ninety (90) days.

(2) A second violation of this part is punishable by a fine of not less than six hundred dollars ($600) and imprisonment for not less than one hundred eighty (180) days.

(3) A third or subsequent violation of this part is punishable by a fine of not less than one thousand one hundred dollars ($1,100) and imprisonment for not less than one (1) year.

(4) A violation of this part due solely to a lack of the written permission required pursuant to subdivision (d)(2) shall be punishable by fine only.

(h)(1)(A) While mandated to comply with the requirements of this part, it is an offense for three (3) or more sexual offenders, as defined in § 40-39-202, or violent sexual offenders, as defined in § 40-39-202, or a combination thereof, to establish a primary or secondary residence together or inhabit the same primary or secondary residence at the same time.

(B) Each sexual offender or violent sexual offender who establishes or inhabits a primary or secondary residence in violation of subdivision (h)(1)(A) commits a violation of this section.

(C) Subdivision (h)(1)(A) shall not apply if the residence is located on property that is, according to the relevant local, county, or municipal zoning law, zoned for a use other than residential or mixed-use.

(2)(A) No person, corporation, or other entity shall knowingly permit three (3) or more sexual offenders, as defined in § 40-39-202, violent sexual offenders, as defined in § 40-39-202, or a combination thereof, while such offenders are mandated to comply with the requirements of this part, to establish a primary or secondary residence in any house, apartment or other habitation, as defined by § 39-14-401(1)(A), owned or under the control of such person, corporation, or entity.

(B) Subdivision (h)(2)(A) shall not apply if the residence is located on property that is, according to the relevant local, county, or municipal zoning law, zoned for a use other than residential or mixed-use.

(3) This subsection (h) shall not apply to any residential treatment facility in which more than three (3) sexual offenders, as defined in § 40-39-202, violent sexual offenders, as defined in § 40-39-202, or combination thereof, reside following sentencing to such facility by a court or placement in such facility by the board of parole for the purpose of in-house sexual offender treatment; provided, the treatment facility complies with the guidelines and standards for the treatment of sexual offenders established by the sex offender treatment board pursuant to § 39-13-704.

(i) The restrictions set out in subsections (a)-(d) and (k) shall not apply to a violent juvenile sexual offender required to register under this part unless otherwise ordered by a court of competent jurisdiction.

(j) Notwithstanding any law to the contrary, a violent juvenile sexual offender who knowingly violates this section commits a delinquent act as defined by the juvenile code.

(k)(1) As used in this subsection (k), unless the context otherwise requires:

(A)(i) "Alone with" means one (1) or more offenders covered by this subsection (k) is in the presence of a minor or minors in a private area; and

*(a)* There is no other adult present in the area;

*(b)* There is another adult present in the area but the adult is asleep, unconscious, or otherwise unable to observe the offender and the minor or minors;

*(c)* There is another adult present in the area but the adult present is unable or unwilling to come to the aid of the minor or minors or contact the proper authorities, if necessary; or

*(d)* There is another adult present in the area but the adult is also a sexual offender or violent sexual offender mandated to comply with the requirements of this part;

(ii) If the offender is in a private area where the offender has the right to be, the offender is not "alone with" a minor or minors if the offender is engaged in an otherwise lawful activity and the presence of the minor or minors is incidental, accidental, or otherwise unrelated to the offender's lawful activity; and

(B)(i) "Private area" means in or on any real or personal property, regardless of ownership, where the conduct of the offender is not readily observable by anyone but the minor or minors alone with the offender;

(ii) If the private area contains multiple rooms, such as a hotel, motel, or other place of temporary lodging, any room, rooms, or other area that the offender occupies with a minor or minors and that otherwise meets the requirements of this definition shall be considered a private area.

(2) Unless otherwise permitted by subsection (c), while mandated to comply with the requirements of this part, no sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, shall be alone with a minor or minors in a private area.

**41-1-127. Survey evaluating employment conditions and factors relating to retention of correction officers — Annual report.**

In addition to other reports required by this part, the commissioner shall develop and administer a survey of each correction officer who resigns, is terminated, or is transitioned to a position other than correction officer for the purpose of evaluating employment conditions and factors that contribute to or impede the retention of correction officers. The commissioner shall submit an annual report to the governor and the chair of the state and local government committee of the senate and the chair of the state government committee of the house of representatives on or before December 1 on the results of the surveys in a manner that ensures the confidentiality of the name and other personally identifiable information of each correction officer.

**41-4-121. Safekeeping of prisoners — Sufficient jails. [Effective until January 1, 2019. See version effective on January 1, 2019.]**

(a) The sheriff has the authority, when the jail of the county is insufficient for the safekeeping of a prisoner, to convey the prisoner to the nearest sufficient jail in the state.

(b) In all cases where it is shown to the committing magistrate, judge or court that the jail of the county in which the commitment should be made is insufficient for the safekeeping of the prisoner, the commitment shall be by mittimus or warrant stating the fact to the nearest sufficient county jail.

(c) In all cases where the jail in which a prisoner is confined becomes insufficient from any cause, any circuit or criminal judge, upon the application of the sheriff and proof of the fact, may order the prisoner, by mittimus or warrant, to be removed to the nearest sufficient jail.

(d) Notwithstanding this section, if the prisoner is a juvenile:

(1) The sheriff has the authority, when the jail of the county is insufficient for the safekeeping of a juvenile prisoner, to convey the prisoner to the nearest sufficient juvenile detention facility in the state;

(2) The court may order commitment of a juvenile prisoner to the nearest sufficient juvenile detention facility in all cases where it is shown to the committing court that the jail of the county in which the commitment should be made is insufficient for the safekeeping of a juvenile prisoner;

(3) Any circuit, criminal, or general sessions judge, upon the application of the sheriff and proof of the fact, may order a juvenile prisoner to be removed to the nearest sufficient juvenile detention facility in all cases where the jail in which a juvenile prisoner is confined becomes insufficient for any cause; and

(4) An order issued under this subsection (d) shall be reviewed by the issuing court at least once every thirty (30) days. In conducting the review, the court shall determine whether the order needs to remain in place, be terminated, or be modified to place conditions on the order. In evaluating whether the order needs to remain in place, the court shall consider the jail or juvenile detention facilities' obligations relative to the use of restrictive housing. If the order is terminated, the prisoner shall be returned to the county jail or juvenile detention facility, as appropriate.

(e) Nothing in this section authorizes a non-adjudicated juvenile, or a non-adjudicated juvenile who has been transferred to criminal court in accordance with title 37, chapter 1, to be committed or removed to the state penitentiary or a branch prison for safekeeping.

**41-4-121. Safekeeping of prisoners — Sufficient jails. [Effective on January 1, 2019. See version effective until January 1, 2019.]**

*(a)(1) The sheriff has the authority, when the jail of the county is insufficient for the safekeeping of a prisoner, to convey the prisoner to the nearest sufficient jail in the state or, if the prisoner is a juvenile, to the nearest sufficient juvenile detention facility in the state.*

*(2) In all cases where it is shown to the committing court that the jail of the county in which the commitment should be made is insufficient for the safekeeping of the prisoner, the court may order commitment of the prisoner to the nearest sufficient county jail or, if the prisoner is a juvenile, to the nearest sufficient juvenile detention facility.*

*(3) In all cases where the jail in which a prisoner is confined becomes insufficient for any cause, any circuit, criminal, or general sessions judge, upon the application of the sheriff and proof of the fact, may order the prisoner to be removed to the nearest sufficient jail or, if the prisoner is a juvenile, to the nearest sufficient juvenile detention facility.*

*(b)(1) An order issued under this section shall be reviewed by the issuing court at least once every thirty (30) days. In conducting the review, the court shall determine whether the order needs to remain in place, be terminated, or be modified to place conditions on the order. In evaluating whether the order needs to remain in place, the court shall consider the jail or juvenile detention facilities' obligations relative to the use of restrictive housing. If the order is terminated, the prisoner shall be returned to the county jail or juvenile detention facility, as appropriate.*

*(2) Nothing in this section authorizes a non-adjudicated juvenile, or a non-adjudicated juvenile who has been transferred to criminal court in accordance with title 37, chapter 1, to be committed or removed to the state penitentiary or a branch prison for safekeeping.*

**41-21-236. Sentence reduction credits.**

(a)(1) Those persons committed to the custody of the department of correction shall be assigned to work, educational and/or vocational training programs when positions in those programs are available.

(2)(A) Each inmate who exhibits good institutional behavior or who exhibits satisfactory performance within a program may be awarded time credits toward the sentence imposed, varying between one (1) day and sixteen (16) days for each month served, with not more than eight (8) days for each month served for good institutional behavior and not more than eight (8) days for each month served for satisfactory program performance in accordance with the criteria established by the department.

(B)(i) In addition to the time program performance credit awarded pursuant to subdivision (a)(2)(A), the department shall provide an educational good time credit of sixty (60) days to any qualifying prisoner who successfully receives a high school equivalency credential or a high school diploma, a two-year or four-year college degree, or a two-year or four-year certification in applied sciences, or who receives a vocational education diploma as provided and defined by the department. No credit shall be given for any diploma, degree or certification unless the particular course of study, including the institution or entity through which it is offered, has received the prior approval of the department. A qualifying prisoner may receive no more than one (1) credit of sixty (60) days, regardless of the number of programs completed.

(ii) It is the legislative intent that this credit be implemented by the department in a manner that maximizes the potential of prisoners who will return to the community to become working and productive members of society through the benefit of their educational diploma or certificate. It is further the legislative intent that existing educational and vocational programs offered by the department shall not be increased in size as a result of this subdivision (a)(2). Priority in enrollment in existing educational and vocational programs shall be given to prisoners who will be eligible for parole or release upon completion of their sentence and who can reasonably be expected to re-enter the workforce. Priority in enrollment shall also be given to prisoners who will be incarcerated by the department for such period of time that they will receive the full credit for sentence reduction provided in this subdivision (a)(2). Once these priorities have been met, enrollment in educational and vocational programs by other prisoners shall be available on a space-available basis, without any sentence reduction credit for any diploma or certification received.

(iii) The provisions of this subdivision (a)(2)(B) permitting an additional sixty (60) days of educational credit for obtaining a diploma shall not apply to any prisoner convicted of an offense that requires service of at least eighty-five percent (85%) of the sentence under § 40-35-501(i) or one hundred percent (100%) of the sentence under § 39-13-523.

(iv) The sixty (60) days of educational good time credit authorized by subdivision (a)(2)(B) shall also apply to any inmate who successfully received one (1) of the degrees specified in subdivision (a)(2)(B) prior to July 1, 2006, as well as those receiving degrees after July 1, 2006.

(C)(i) In addition to the credits authorized by subdivisions (a)(2)(A) and (B), the department shall provide a credit of sixty (60) days to any qualifying prisoner who successfully completes an evidence-based, intensive residential substance use disorder treatment therapeutic community program of at least nine (9) months in the department.

(ii) It is the legislative intent that this credit be implemented by the department in a manner that maximizes the potential of prisoners who have a history of substance use disorders returning to the community to become working and productive members of society by breaking the cycle of substance use and criminal behavior through successful completion of intensive substance use disorder treatment.

(iii) The provisions of this subdivision (a)(2)(C) permitting an additional sixty (60) days of credit for successful completion of the intensive substance use disorder treatment program shall not apply to any prisoner convicted of an offense that requires service of at least eighty-five percent (85%) of the sentence under § 40-35-501(i) or one hundred percent (100%) of the sentence under § 39-13-523 or § 40-35-501(l).

(iv) The sixty (60) days of credit authorized by this subdivision (a)(2)(C) shall apply to any inmate who successfully completes an evidence-based, intensive residential substance use disorder treatment therapeutic community program of at least nine (9) months in the department on or after July 1, 2018.

(D) No inmate shall have the right to any such time credits, nor shall any inmate have the right to participate in any particular program, and may be transferred from one (1) assignment to another without cause. This section shall also apply to any inmate sentenced to the department of correction who is being held on a contract basis by a private correctional corporation.

(3) Sentence credits shall not be earned or credited automatically, but rather shall be awarded on a monthly basis to an inmate at the discretion of the responsible warden in accordance with the criteria established by the department, and only after receipt by the warden of written documentation evidencing the inmate's good institutional behavior or satisfactory program performance or both.

(4) Sentence credits may not be awarded toward a period of less than one (1) calendar month or for any month in which an inmate commits a Class A disciplinary offense of which the inmate is found guilty. No sentence credits for good institutional behavior may be awarded for any month in which an inmate commits any disciplinary offense of which the inmate is found guilty.

(5) An inmate may be deprived of those sentence credits previously awarded pursuant to this section only for the commission of any major infraction designated by the department as a Class A disciplinary offense, including, but not limited to, rape, arson, riot, escape or assault with a deadly weapon, or refusal to participate in an assignment.

(6) The refusal of an inmate to participate in any assigned work, educational or vocational training program shall constitute a disciplinary offense for which the inmate can be penalized by the loss of sentence credits

previously awarded.

(7) Sentence credits shall not be earned or credited to any inmates classified as maximum security or being held in punitive segregation.

(b) The allowances that can be awarded pursuant to this section shall be referred to as inmate sentence reduction credits and shall affect release eligibility and sentence expiration dates in the same manner as time credits affected parole eligibility and sentence expiration dates prior to September 1, 1980.

(c)(1) Any provision of title 40, chapter 35 to the contrary notwithstanding, persons convicted under that chapter may be awarded sentence reduction credits as set forth in this section.

(2) Any provision of titles 39 and 40 to the contrary notwithstanding, all persons who commit Class X felonies on or after December 11, 1985, shall be eligible for the sentence reduction credits authorized by this section.

(3) Any person who committed a felony, including any Class X felony, prior to December 11, 1985, may become eligible for the sentence reduction credits authorized by this section by signing a waiver, in writing, of the right to serve the sentence under the law in effect at the time the crime was committed. However, sentence reduction credits authorized by this section may be awarded only for conduct or performance from and after the date a person becomes eligible under this subsection (c).

(d) Sentence reduction credits for good institutional behavior as authorized by this section shall likewise apply in accordance with the terms of this section, and under the criteria, rules and regulations established by the department, to all felony offenders serving sentences of one (1) or more years in local jails or workhouses and to all inmates serving time in county jails or workhouses because the inmate's commitment to the department has been delayed due to invocation of the governor's emergency overcrowding powers or through an injunction from a federal court restricting the intake of inmates into the department. When this section is applied to those offenders, references to "warden" in this part shall be deemed references to the superintendent or jailer, as appropriate. Such felony offenders shall not be eligible to receive any other sentence credits for good institutional behavior; provided, that, in addition to the sentence reduction credits for good institutional behavior as authorized by this section, such felony offenders may receive any credits for which they are eligible under chapter 2 of this title for work performed or satisfactory performance of job, educational or vocational programs.

(e)(1) Sentence reduction credits for good institutional behavior as authorized by this section shall also be awarded to all convicted felons for the time incarcerated prior to the imposition of sentence. The total credit to which a convicted felon may be entitled shall be calculated by determining the number of days actually served in jail prior to imposition of sentence and by adding to that number the sentence reduction credits awarded for good institutional behavior, if any, based upon the number of days served.

(2) The sentence reduction credits authorized by subdivision (e)(1) shall be awarded at the rate of eight (8) days for each month served prior to imposition of sentence unless there is an objection filed by the superintendent or jailer. If the superintendent or jailer objects to the number of sentence reduction credits awarded to a particular felon, the superintendent or jailer shall provide written documentation to the department stating the objection and the number of sentence credits, if any, the felon should be

awarded. If an objection is filed in accordance with this subdivision (e)(2), the department shall adjust the number of sentence reduction credits awarded to conform to the number recommended in the superintendent's or jailer's written objection.

(3) Notwithstanding the fact that in the absence of an objection from the superintendent or jailer the sentence reduction credits authorized by this subsection (e) are awarded automatically, no convicted felon shall have a right to the credits nor shall the felon have a right to appeal the superintendent's or jailer's determination concerning the number of sentence reduction credits a particular felon should be awarded as set out in the superintendent's or jailer's written objection to the department.

(f)(1) Except as provided in subdivision (f)(2), an inmate serving a misdemeanor sentence in a county jail, workhouse or other local facility who exhibits good institutional behavior or who exhibits satisfactory performance within a program shall be awarded inmate sentence reduction credits toward the inmate's release and expiration dates at the same rate and in the same manner as is provided in this section for inmates serving felony sentences.

(2) If an inmate is serving a misdemeanor sentence in a local facility that awards sentence credits at a different rate than provided by this section for felons, the inmate may elect to receive the sentence credits either under the system provided in this section for felons or under the system in effect at the local facility.

(3) In no event may an inmate receive credits cumulatively under both systems or receive credits at a rate that is less than that provided by this section for felons.

(4) In imposing a misdemeanor sentence, the court shall fix a percentage of the sentence that an inmate shall serve before release from confinement. After service of that percentage and allowance for credits authorized in this section, the defendant shall be released from confinement. The percentage shall be expressed as thirty percent (30%), forty percent (40%), fifty percent (50%), sixty percent (60%), seventy percent (70%), eighty percent (80%), ninety percent (90%) or one hundred percent (100%). In no event shall the application of sentence credits result in more than a twenty-five percent (25%) reduction in the inmate's release percentage.

(g) The department is authorized to continue the application of the previously enacted sentence credit systems formerly codified in §§ 41-21-212 [repealed], 41-21-213 [repealed], 41-21-214 [repealed], 41-21-215 [repealed], 41-21-228 [repealed], 41-21-229 [repealed], 41-21-230 [repealed], 41-21-231 [repealed], 41-21-232 [repealed] and 41-21-233 [repealed], to any inmates to whom they currently apply and who do not sign written waivers as provided in subsection (c). Any sentence credits earned or awarded under previously enacted systems shall continue to remain in full force and effect unless and until they are taken away in accordance with the procedures established by the previously enacted systems.

(h) Nothing in this section shall operate to reduce the minimum sentence of a person convicted of the offense of driving under the influence of an intoxicant as prohibited by §§ 55-10-401 and 55-10-402.

(i) Notwithstanding any other law to the contrary, no sentence credits authorized by this section or any other law, nor a sentence contract authorized by §§ 40-28-115, 40-28-116, 40-34-103 and 40-35-501 or any other law, shall

have the effect of reducing the amount of time an inmate must serve before the inmate's earliest release eligibility date, undiminished by any sentence credits, by more than thirty-five percent (35%). For inmates sentenced for offenses committed on or after January 1, 1988, no sentence credits or sentence contract shall have the effect of reducing the amount of time an inmate must serve before the inmate's earliest release eligibility date, undiminished by the sentence credits, by more than thirty percent (30%).

(j) As used in this section, "sentence credits" includes any credit, whether called that or not, that results in a reduction of the amount of time an inmate must serve on the original sentence or sentences. This section shall not be applicable when the powers granted pursuant to this title are in effect to reduce prison overcrowding.

**41-21-240. Notification to victims of inmate's release.**

(a) At least ninety (90) days prior to the date an inmate serving a felony sentence of two (2) or more years in a facility operated by or under contract with the department of correction is scheduled to be released by reason of expiration of that inmate's sentence, any victim or victim's representative who complies with subsection (b) shall be given notice by the department of the tentative date of the inmate's scheduled release and that the date is subject to change as a result of the award or loss of sentence credits and other factors. The notice required by this section shall be in writing, unless the victim or victim's representative is registered with the state's electronic victim notification system, in which case the notice shall be communicated to the victim or victim's representative by the method or methods indicated by the registration in the system. The department's responsibility to provide this notice at least ninety (90) days prior to the tentative date of the inmate's scheduled release upon expiration is contingent upon the department's receipt of all relevant sentencing information within that time period.

(b) In order for a victim or victim's representative to be notified as provided in subsection (a), the victim or victim's representative must either send the department a written statement requesting notification and providing the address at which notification is to be made or register with the state's electronic victim notification system and specify the method or methods available within the system for communication of the notice. At any time a victim or victim's representative may withdraw a request for notification by sending the department a written notarized statement that the request for notification is withdrawn or, if the victim or victim's representative is registered with the state's electronic victim notification system, by cancelling that registration in the system.

(c) Pursuant to subsection (b), the notification required by subsection (a) shall be sent to the address provided by the victim or victim's representative if the notification is requested by written statement, or shall be communicated to the victim or victim's representative by the method or methods indicated by the registration in the state's electronic victim notification system if the victim or victim's representative is registered with that system. It is the responsibility of the victim or the victim's representative to provide the department with a current mailing address or other means of communication indicated in the electronic victim notification system registration.

(d)(1) Any identifying information concerning a crime victim or a crime victim's representative who has been notified or requested that notification be provided to the victim or the victim's representative pursuant to this section shall be confidential.

(2) For purposes of subdivision (d)(1), "identifying information" means the name, home and work addresses, telephone numbers and social security number of the person being notified or requesting that notification be provided.

**43-8-302. Powers and duties of commissioner.**

The commissioner has and shall exercise the following powers and duties:

(1) Promulgate rules and regulations that the commissioner determines are necessary to implement and supplement this part and provide for its orderly administration;

(2) Prescribe qualifications for applicants for licenses to engage in the custom application of pesticides and render such tests as are necessary to determine whether the applicant meets the qualifications;

(3) Obtain the advice of members of the commercial aerial applicators industry before issuing rules, regulations, or qualifications for applicants for licenses;

(4) Issue licenses to qualified applicants and collect the appropriate fees;

(5) Hold hearings to determine whether or not any violation of this part or rules and regulations issued pursuant thereto has taken place, and transmit any information or material to the local district attorney general for prosecution if the commissioner determines that a violation has occurred;

(6) Suspend or revoke any permit following a hearing as provided for in § 43-8-305;

(7) Declare states of emergency and issue temporary permits as provided for in § 43-8-309;

(8) Require that licensees maintain records and submit reports as necessary to show the nature and extent of their operation and any other information necessary to carry out the provisions and intent of this part;

(9) Impose such limitations on the licenses granted to pilots, particularly with respect to compliance with the Tennessee Insecticide, Fungicide and Rodenticide Act, compiled as parts 1 and 2 of this chapter, as the commissioner may find necessary after determination of the applicant's qualifications;

(10) Promulgate rules and regulations as required by the environmental protection agency;

(11) Inspect periodically the operation and conduct of licensees; and

(12) Implement an online reporting system for aerial applicators of pesticides to make the reports required by § 43-8-312. The commissioner may disclose information that is reported under § 43-8-312 to local law enforcement agencies.

**43-8-312. Notification of application.**

Prior to making an aerial application of a pesticide or no later than the day of the application, aerial applicators applying pesticides in this state shall report to the department the name of the landowner and the location of each intended pesticide application as well as the name or names of the pesticide or pesticides to be sprayed.

**43-29-103. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Case of eggs" means a standard thirty (30) dozen egg case;

(2) "Commissioner" means the commissioner of agriculture;

(3) "Commodity" means beef, corn, pork, and eggs, produced on a commercial basis;

(4) "Corn" means all kinds of varieties of corn except popcorn, sweet corn, and ornamental corns;

(5) "Department" means the department of agriculture;

(6) "Egg" means a pullet egg or a hen egg and excludes all other types of eggs;

(7) "Egg handler" or "egg dealer" means any person engaged as a wholesale distributor in the business of distributing or marketing eggs in Tennessee, regardless of where the eggs are produced;

(8) "Person" means any individual, corporation, partnership, association, cooperative or other business;

(9) "Processor" means any person engaged in the business of processing commodity products;

(10) "Producer" means any person who produces a commodity and thereafter causes the commodity to be marketed;

(11) "Purchaser" means any dealer or processor who purchases or receives such commodity from producers on a commercial basis;

(12) "Qualified producer organization" means any agricultural organization, federation, or association that is organized as a "not for profit" organization under the laws of the state of Tennessee, and whose membership is fairly representative of farmers who are active producers of one (1) or more agricultural commodities covered under this chapter;

(13) "Referendum" means any voting procedure under which affected producers may, by secret ballot, vote for or against an assessment authorized by this chapter; and

(14) "Vote" means to cast a ballot on a referendum.

**43-29-105. Referendum on assessment for promotion and research.**

It is further declared to be in the public interest and highly advantageous to the agricultural economy of the state that producers of beef, corn, pork, and eggs on a commercial basis shall be permitted, by referendum, to be among such respective producers and subject to this chapter, levy upon themselves an assessment on these products and provide for the collection of the assessment, for the purpose of financing or contributing towards the financing of a program of promotion, advertising and research designed to increase the consumption, use and sale of agricultural commodities in domestic as well as foreign markets.

**43-29-106. Application for referendum.**

(a) Any qualified producer organization of beef, pork, and eggs may make application to the commissioner requesting a referendum of beef, pork, or egg producers, on forms prescribed by the commissioner, for the purpose of determining whether an assessment of a specified amount can be levied, collected, and disbursed under this chapter, or whether a prior assessment

should be amended or terminated. The application shall state the amount of the assessment that is to be proposed in the referendum and a brief statement of the purposes for which the funds collected are proposed to be spent.

(b) Any qualified producer organization of corn may make application to the commissioner requesting a referendum of corn producers, on forms prescribed by the commissioner, for the purpose of determining whether an assessment of one cent ($0.01) per bushel of corn sold can be levied, collected, and disbursed under this chapter, or whether a prior assessment should be terminated. The application shall briefly state the purposes for which the funds collected are proposed to be spent.

**43-29-108. Conducting referendum — Eligibility — Voting.**

(a) Any referendum held under this chapter shall be conducted statewide, under the control and direction of the commissioner. The polling place in each county shall be the offices of the University of Tennessee agriculture extension service. All ballots shall be provided at the polling place. All voting shall be by secret ballot.

(b) Each person seeking to vote in the referendum shall be required to file an affidavit stating that such person is a producer. Upon signing an affidavit, such person shall be eligible to vote.

(1) The question to be decided at the first referendum for an assessment on beef, pork, or eggs shall be in the following form:

Shall the producers of _____ assess themselves at the rate of ____ cents per ____ of ____ sold, and use the funds so collected by the department of agriculture, or the department's contractor or designee, and paid over to the Tennessee _____ promotion board to finance a program of research, education, market development, marketing, advertising, and other methods designed to promote the increased production, consumption, use, and sale of _____ products?

(2) The question to be decided at the first referendum for an assessment on corn shall be in the following form:

Shall the producers of corn assess themselves at the rate of one cent ($0.01) per bushel of corn sold, and use the funds so collected by the department of agriculture, or the department's contractor or designee, and paid over to the Tennessee corn promotion board to finance a program of research, education, market development, marketing, advertising, and other methods designed to promote the increased production, consumption, use, and sale of corn products?

(3) The affirmative vote of the majority of the number of votes cast shall adopt the proposed assessment.

(c) Within ten (10) days after the referendum, the commissioner shall canvass the votes and publicly announce the result of the referendum.

(d) The expenses of a referendum held under this chapter shall be paid by the department until an assessment is levied. Expenses of subsequent referenda shall be paid from the promotion funds collected under this chapter.

(e) No referendum pursuant to this chapter shall be held within one (1) year of any preceding referendum for that particular commodity except as provided in § 43-29-112.

**43-29-122. Corn promotion board.**

(a) The Tennessee corn promotion board shall be composed of nine (9) members to be appointed by the commissioner to serve for terms of three (3) years, as provided in this section. All of the nine (9) members of the board shall be producers of corn in this state.

(b) Within ten (10) days following the effective date of an assessment on corn levied pursuant to this chapter, the Tennessee Farm Bureau Federation, the Tennessee Farmers Cooperative, and the Tennessee Corn Growers Association shall each submit the names of corn producers to the commissioner, and the commissioner shall appoint three (3) members from the nominees of each organization to serve on the board for rotating three-year terms.

(c) The original board shall be appointed with members from each of the organizations appointed as follows: one (1) for one (1) year, one (1) for two (2) years, and one (1) for three (3) years. Each year thereafter, not less than thirty (30) days prior to the expiration of board members' terms, each organization shall submit the names of three (3) nominees to the commissioner, and succeeding boards shall be appointed by the commissioner in the same manner, giving equal representation to each organization.

(d) Vacancies that occur shall be filled in the same manner as the original appointments were made. Persons who are appointed to the board shall serve no more than two (2) consecutive terms. The commissioner or a designee from the commissioner's staff shall serve as an advisor to the board.

(e) The members of the board shall meet and organize within thirty (30) days of their appointment, and shall elect a chair, vice chair, and secretary-treasurer from the membership of the board, each to serve for one-year terms, whose duties shall be those customarily exercised by such officers or specifically designated by the board.

(f) The board may establish rules for its own government and for the administration of the board's affairs.

(g) The initial chair of the board elected pursuant to subsection (e) shall notify the government operations committee of the senate and the government operations committee of the house of representatives of the board's existence within thirty (30) days of the date of the initial chair's election.

**44-6-103. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Brand name" means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others;

(2) "Commercial feed" means all materials except unmixed seed, whole and unprocessed, when not adulterated within the meaning of this chapter, that are offered for sale as feed or mixing for feed; provided, that the commissioner by regulation may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls, industrial hemps, and individual compounds or substances, when those commodities, compounds, or substances are not intermixed or mixed with other materials and, except for industrial hemp, are not adulterated within the meaning of this chapter;

(3) "Commercial feed facility" or "licensed commercial feed facility" means a facility that manufactures or distributes commercial feed in this state and

that is subject to licensure pursuant to this chapter;

(4) "Commissioner" means the commissioner of agriculture, or the commissioner's authorized agent;

(5) "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract, whereby the commercial feed is supplied, furnished, or otherwise provided to the person and whereby the person's remuneration is determined all or in part by feed, consumption, mortality, profits, or amount or quality of product;

(6) "Customer-formula feed" means commercial feed that consists of a mixture of two (2) or more commercial feeds or a mixture of one (1) or more commercial feeds and one (1) or more feed ingredients or a mixture of two (2) or more feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser;

(7) "Distribute" means to offer for sale, sell, exchange, or barter commercial feed or customer-formula feed;

(8) "Distributor" means any person who distributes;

(9) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than humans, and articles other than feed intended to affect the structure or function of any part of the animal body;

(10) "Feed ingredient" means each of the constituent materials making up a commercial feed;

(11) "Industrial hemp" has the same meaning as defined in § 43-26-102;

(12) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed;

(13) "Labeling" means all labels and other written, printed, or graphic matter:

(A) Upon commercial feed or any of its containers or wrapper; or

(B) Accompanying commercial feed;

(14) "Manufacture" means to grind, mix or blend, or further process a commercial feed for distribution;

(15) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients;

(16) "Official sample" means a sample of feed taken by the commissioner or the commissioner's agent in accordance with § 44-6-111(c), (e) or (f);

(17) "Percent" or "percentage" means percentage by weight;

(18) "Person" includes individual, partnership, corporation, association, or other legal entity;

(19) "Pet" means any domesticated animal normally maintained in or near the household of its owner;

(20) "Pet food" means any commercial feed prepared and distributed for consumption by pets;

(21) "Product name" means the name of the commercial feed that identifies it as to kind, class, or specific use;

(22) "Quantity statement" means the net weight (mass), net volume (liquid or dry) or count;

(23) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacines, birds, mynahs, finches, tropical fish, goldfish, snakes and turtles;

(24) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets; and

(25) "Ton" means a net weight of two thousand pounds (2,000 lbs.) avoirdupois.

**44-17-503. Deposit — Forfeiture of deposit — Use of forfeited deposits.**

(a) If the dog or cat being adopted has not been spayed or neutered, the agency shall require a deposit of not less than twenty-five dollars ($25.00) from the new owner prior to the adoption in order to ensure that the dog or cat is spayed or neutered. The new owner may request and shall receive a refund of the deposit from the agency upon providing confirmation of the spaying or neutering.

(b)(1) If the new owner fails to have the dog or cat spayed or neutered within the time frame established by § 44-17-502, or if the spaying or neutering is timely performed, but the new owner fails to request the return of the deposit within an additional ten (10) days after the date by which the spaying or neutering is required to be performed, the deposit shall be forfeited to the agency holding the deposit and shall be used by the agency to conduct programs to spay or neuter dogs and cats in the community where the agency is located.

(2) The forfeited deposit may also be used to defray operational expenses of the programs, including, but not limited to, costs for purchasing food, medications, tests, upgrades for the animal housing areas, or any other supplies or products which would improve the quality of life for dogs or cats in such programs.

(3) No forfeited deposit may be used to pay salaries of persons employed by any agency located within the county.

(4) Before the forfeited deposits may be used by an agency for the purposes set out in this subsection (b), the agency shall maintain a minimum balance in the forfeited deposit fund of no less than the total amount of unclaimed deposits collected during the previous six-month period.

**45-2-1901. Part definitions. [Amendments effective until July 1, 2020. See subdivision (3)(C).]**

As used in this part, unless the context otherwise requires:

(1) "Control" has the meaning set forth in 12 U.S.C. § 1841(a)(2);

(2) "Credit card state bank" means a state bank chartered under the laws of Tennessee and whose principal office is in this state and the activities of which are limited to those permitted under § 45-2-1902;

(3)(A) **[Amendments effective until July 1, 2020. See subdivision (3)(C).]** "Domestic holding company" means a company, itself or through its parent company, subsidiary, or other affiliate, that either:

(i) Controls a domestic or foreign lender and has its principal place of business in this state; or

(ii) **[Effective until July 1, 2020. See subdivision (3)(C).]** Controls a company, or is a company, that:

*(a)* Is licensed pursuant to chapter 7 of this title;

*(b)* Has a consolidated net worth of not less than twenty-five million dollars ($25,000,000); and

*(c)* Has had its principal place of business in this state for at least five (5) consecutive years, including the company's predecessor by

merger;

(B) **[Effective until July 1, 2020. See subdivision (3)(C).]** "Domestic holding company" also means a company that is controlled by, or under common control with, a company described in subdivision (3)(A)(ii). For purposes of this subdivision (3)(B), "under common control" means no less than fifty percent (50%) ownership;

(C) Effective July 1, 2020, subdivisions (3)(A)(ii) and (3)(B) are hereby deleted. Also effective July 1, 2020, the language ", itself or through its parent company, subsidiary, or other affiliate," in subdivision (3)(A) is hereby deleted. However, any company that organized pursuant to subdivision (3)(A)(ii) or (3)(B), and this part prior to July 1, 2020, and that continues to own or control a credit card state bank after July 1, 2020, shall retain authority to own or control a credit card state bank under the terms and conditions provided in this part;

(4) "Domestic lender" means any bank, savings and loan association, savings bank, or credit union organized and supervised under the laws of this state or the United States, that has its principal place of business in this state or any other business organization that is authorized by law to accept deposits and make loans and has its principal place of business in this state;

(5) "Foreign lender" means any bank, savings and loan association, savings bank, credit union, organized or chartered under the laws of the United States, or any state other than this state, or the District of Columbia, that has its principal place of business outside this state, or any other business organization that is authorized by law to accept deposits and make commercial loans and has its principal place of business outside this state;

(6) "Holding company" means any company that controls a domestic or foreign lender; and

(7) "Qualifying organization" means a corporation, partnership, or other entity that at all times maintains an office in the state of Tennessee, at which it employs at least one hundred (100) persons residing in this state, and that is directly engaged in providing the following services, either for the qualifying organization or on behalf of other domestic or foreign lenders or credit card state banks:

(A) The distribution of credit cards or other devices designed and effective to access credit card accounts;

(B) The preparation of periodic statements of amounts due under credit card accounts;

(C) The receipt from credit card holders of amounts paid on or with respect to the accounts; and

(D) The maintenance of financial records reflecting the status of the accounts from time to time. "Qualifying organization" also includes any domestic bank or credit card bank satisfying the employment and activities requirements set forth in this subdivision (7)(D).

**45-2-1902. Organization — Filing fees — Authorized activities. [Amendments effective until July 1, 2020. See subdivisions (a)(2) and (d)(1)(B).]**

(a)(1) **[Amended effective July 1, 2020. See subdivision (a)(2).]** Subject to this chapter and to the approval of the commissioner, any domestic lender, foreign lender, or holding company, including a domestic holding company,

may organize, own, and control a credit card state bank on the terms and conditions provided in this part. Notwithstanding § 45-2-607(11), a state bank may own up to one hundred percent (100%) of the shares of a credit card state bank.

(2) Effective July 1, 2020, the language ", including a domestic holding company," in subdivision (a)(1) is hereby deleted. However, any company that organized pursuant to such language, § 45-2-1901(3)(A)(ii) or (3)(B), and this part prior to July 1, 2020, and that continues to own or control a credit card state bank after July 1, 2020, shall retain authority to own or control a credit card state bank under the terms and conditions provided in this part.

(b) If the credit card bank is to be organized under the laws of this state, the bank shall be organized as provided in this chapter, and the commissioner shall supervise, regulate, examine, and exercise enforcement authority as provided for in this chapter and chapter 1 of this title, and all applicable rules and regulations, to the extent the commissioner deems applicable to the entities. The credit card state bank shall at all times maintain capital stock and paid-in surplus of not less than two million dollars ($2,000,000).

(c) In connection with the application to organize, own, and control a credit card state bank, the applicant shall pay a filing fee in an amount determined by rule by the commissioner.

(d) A credit card state bank shall:

(1)(A) **[Amended effective July 1, 2020. See subdivision (d)(1)(B).]** Engage only in credit or debit, including prepaid debit, card operations or the making of loans;

(B) Effective July 1, 2020, the language "or debit, including prepaid debit," in subdivision (d)(1)(A) is hereby deleted. However, any company that organized pursuant to such language, § 45-2-1901(3)(A)(ii) or (3)(B), and this part prior to July 1, 2020, and that continues to own or control a credit card state bank after July 1, 2020, shall retain authority to own or control a credit card state bank under the terms and conditions provided in this part;

(2) Not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;

(3) Not accept any savings or time deposits of less than one hundred thousand dollars ($100,000);

(4) Maintain only one (1) office that accepts deposits; and

(5)(A) If in existence on May 17, 1999, not engage in the business of making commercial loans, unless the charter is amended to include a provision electing to engage in commercial lending; or

(B) If organized on or after May 17, 1999, not engage in the business of making commercial loans, unless the charter contains a provision or is subsequently amended to include a provision electing to engage in commercial lending.

(e) A credit card state bank, unless the subsidiary of a domestic lender or domestic holding company, shall either:

(1) Have, within one (1) year of the date it commences operations, fifty (50) employees located in this state devoted to the credit card activities contemplated by this part; or

(2) Contract with a qualifying organization for the performance of the services.

(f) A credit card state bank may issue credit in accordance with §§ 45-2-

1903 — 45-2-1908.

(g) A domestic lender is not required to establish a credit card state bank in order to issue credit cards, create credit card accounts and make loans, but may itself issue credit cards, create credit card accounts and make loans in accordance with §§ 45-2-1903 — 45-2-1908, or as otherwise permitted by law.

**45-2-2001. Private trust company.**

(a) A private trust company acting as a fiduciary in this state is a company that does not transact a trust business with the general public. All individuals who control the private trust company, who establish trusts or charitable organizations controlling the private trust company, or who control corporations, sole proprietorships, partnerships, joint ventures, associations, trusts, estates, business trusts, limited liability companies, or other companies controlling the private trust company must be family members. The company shall comply with this chapter and chapter 1 of this title, and the rules of this chapter and chapter 1 of this title applicable to a public trust company unless expressly exempted therefrom in writing by the commissioner pursuant to this part or by rule adopted by the department.

(b)(1) A private trust company or proposed private trust company may request in writing that it be exempted from any provision of the Banking Act or the rules thereof. The commissioner may grant the exemption in whole or in part if the commissioner finds that the private trust company does not and will not transact business with the general public.

(2) As used in this part, unless the context requires otherwise:

(A) "Collateral kinship" means a relationship that is not lineal, but stems from a common ancestor;

(B) "Designated ancestor" means one (1) or more ancestors of the family designated as such in the application submitted under this part. A designated ancestor may be either living or deceased. If two (2) designated ancestors are designated, they must be or have been spouses to each other, and if more than such first two (2) designated ancestors are designated, each such additional designated ancestor must be or have been a spouse of either of the first two (2) designated ancestors;

(C) "Family affiliate" means a company or other entity in which one (1) or more family members, directly or indirectly, through ownership of voting securities or equity, by contract, through power of direction, through beneficial or other ownership in one (1) or more other entities, or otherwise:

(i) Owns a majority interest; or

(ii) May direct or cause the direction of the management and policies of the company or other entity, whether alone or in combination with others;

(D) "Family client" means:

(i) A family member;

(ii) An organization, foundation, or trust:

*(a)* Whose primary purpose is not-for-profit or charitable, whether or not tax-qualified; and

*(b)* Of which one (1) or more family clients is an organizer, incorporator, officer, member of the governing board, trustee, or donor, alone or in combination with other family clients, of a substantial

portion of its assets;

(iii) The officers, directors, individual trustees and managers of the entity defined in subdivision (b)(2)(D)(ii), and their immediate family;

(iv) An estate of a family client;

(v) An inter vivos or testamentary trust established by one (1) or more family clients, whether or not in combination with a third party;

(vi) An inter vivos or testamentary trust if the noncharitable beneficiaries with vested interests consist of one (1) or more family clients;

(vii) A family affiliate, its directors, officers, managers, or trustees and their immediate family;

(viii) A family services provider; and

(ix) A maximum of thirty-five (35) individuals designated by the private trust company if each individual is a full-time employee of a family affiliate. Any individual described in subdivisions (b)(2)(D)(i)-(viii) does not count against the maximum number of individuals established by this subdivision (b)(2)(D)(ix);

(E) "Family member" means a designated ancestor and:

(i) An individual within the twelfth degree of lineal kinship of a designated ancestor;

(ii) An individual within the eleventh degree of collateral kinship of a designated ancestor;

(iii) A spouse or former spouse of a designated ancestor or of an individual defined as a family member in subdivision (b)(2)(E)(i) or (ii); and

(iv) An individual who is a relative of a spouse or former spouse specified in subdivision (b)(2)(E)(iii) who is within the fifth degree of lineal or collateral kinship of the spouse or former spouse;

(F) "Family services provider" means:

(i) A full-time employee of the private trust company; or

(ii) A full-time employee of a family member providing personal services to the family member, including, but not limited to, household, legal, or accounting services;

(G) "Foster child" means an individual raised or being raised by someone who is not the individual's natural or adoptive parent;

(H) "Immediate family" means an individual's spouse or former spouse, any descendant of that individual, and any relative living in the same residence as that individual;

(I) "Lineal kinship" means the direct ancestors and descendants of an individual; and

(J) "Transact a trust business with the general public" means any sale, solicitation, arrangement, agreement, or transaction to provide fiduciary services as described in § 45-2-1002, whether or not for a fee, commission, or any other type of remuneration, with any client that is not a family client.

(3) For purposes of this part:

(A) A legally adopted person shall be treated as a natural child of the adoptive parents;

(B) A stepchild shall be treated as a natural child of the individual who is or was the stepparent of that child;

(C) A foster child, or an individual who was a minor when an adult became the individual's legal guardian, shall be treated as a natural child

of the adult appointed as foster parent or guardian;

(D) A child of a spouse or former spouse of an individual shall be treated as a natural child of that individual;

(E) Degrees are calculated by adding the number of steps from a relevant designated ancestor through each individual to the family member either directly, in case of lineal kinship, or through a designated ancestor, in the case of collateral kinship; and

(F) A person who was a family client at the time of becoming a client of the private trust company shall not cease to be a family client solely due to a death, divorce, retirement, or other similar event.

(c) At the expense of the private trust company, the commissioner may examine or investigate the private trust company in connection with an application for exemption. Unless the application presents novel or unusual questions, the commissioner shall approve the application for exemption not later than the sixty-first day after the date the commissioner considers the application complete and accepted for filing. Otherwise, the application shall be deemed approved unless the commissioner extends the time for review by requiring the submission of additional information as considered necessary to an informed decision.

(d) Any exemption granted under this section may be made subject to conditions or limitations imposed by the commissioner consistent with this chapter.

(e) The department may adopt rules defining other circumstances that do not constitute transaction of business with the public, specifying the provisions of the Banking Act that are subject to an exemption request, and establishing procedures and requirements for obtaining, maintaining, or revoking exempt status.

**45-2-2005. Modification or revocation of exemption — Commissioner's authority — Notice — Hearing.**

(a) The commissioner shall not modify or revoke any exemption granted to a private trust company under § 45-2-2001 unless:

(1) The commissioner determines that, based upon the safety and soundness of the private trust company or any action that the private trust company has taken or proposes to take, modification or revocation is necessary to protect the viability of the private trust company; or

(2) The private trust company fails to comply with any conditions or limitations imposed by the commissioner in connection with granting the exemption.

(b) The commissioner's authority to modify an exemption under subsection (a) includes the authority to impose conditions or limitations with respect to the exemption.

(c)(1) The commissioner must provide notice in writing to the private trust company at least thirty (30) days prior to the effective date of the proposed modification or revocation of an exemption.

(2) Within thirty (30) days following receipt of the notice provided pursuant to subdivision (c)(1), the private trust company may request in writing that the commissioner hold a hearing for the private trust company to show cause as to why the proposed modification or revocation of an exemption should not become effective.

(3) If a hearing is requested within the time period set forth in subdivision (c)(2), the commissioner shall schedule and conduct the hearing, and the proposed modification or revocation shall not become effective until the commissioner's final determination following the hearing.

(4) If a hearing is not requested within the time period set forth in subdivision (c)(2), the proposed modification or revocation shall become effective without further notice or hearing on the date specified in the notice provided pursuant to subdivision (c)(1).

(d) This section does not modify, limit, or repeal § 45-2-2003.

**45-5-102. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Actuarial method" means the method of allocating payments made on a debt between the principal and interest pursuant to which payment is applied first to accumulated interest and any remainder is subtracted from, or any deficiency is added to, the unpaid principal balance of the debt;

(2) "Affiliated lender" means any industrial loan and thrift company or industrial investment company or industrial bank under common control with another registrant, or working together with another registrant, so as to effect for each other a greater volume of business;

(3) "Amount financed" means the amount financed as disclosed under the federal Truth in Lending Act, which is contained in Title I of the Consumer Credit Protection Act (15 U.S.C. § 1601 et seq.) and Regulation Z (12 CFR Part 226);

(4) "Commissioner" means the commissioner of financial institutions;

(5) "Control" means possession, direct or indirect, of the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities by contract or otherwise; provided, that no individual shall be deemed to control a person solely on account of being a director, officer, or employee of the person. For purposes of this section, a person who, directly or indirectly, owns, controls, holds the power to vote, or holds proxies representing twenty-five percent (25%) or more of the then outstanding voting securities issued by another person is presumed to control the person. For purposes of this section, the commissioner may determine whether a person, in fact, controls another person;

(6) "Controlling person" means any person in control of a registrant;

(7) "Effective rate of interest" means the simple rate of interest, including the result of converting discount or other nominal rates of interest into simple rates of interest;

(8) "Endorsement company" is any person engaged in the business of arranging for the making of loans, other than a residential mortgage loan, for a fee, consideration or charge, by endorsement or by providing security for loans or otherwise, even though the person does not actually make the loan; provided, however, that for loans, other than a residential mortgage loan, a natural person may refer a potential borrower to a registrant and receive a fee or consideration from the registrant without being deemed an "endorsement company," so long as the natural person does not claim to be a loan broker or "endorsement company";

(9) "Industrial bank" means a person organized and registered as an industrial bank pursuant to this chapter, engaged in the business of making

loans and imposing the interest and loan charges authorized under this chapter, that issues thrift certificates and that is also examined, supervised and liquidated as a state bank under this title;

(10) "Industrial investment company" means a person organized and registered as an industrial investment company pursuant to this chapter, engaged in the business of making loans and imposing the interest and loan charges authorized under this chapter, that issues investment certificates subject to the Tennessee Securities Act, compiled in title 48, chapter 1, part 1, and that is also examined, supervised and liquidated as a state bank under this title;

(11) "Industrial loan and thrift company" means a person engaged in the business of making loans and imposing the interest and loan charges authorized under this chapter, and includes persons engaged in business as endorsement companies;

(12) "Interest" means compensation for the use, detention or forbearance to collect money over a period of time, and does not include compensation for other purposes, including, but not limited to:

(A) Time-price differentials;

(B) Loan charges as provided in § 45-5-403; and

(C) Insurance charges as provided in § 45-5-305;

(13)(A) "Investment certificate" means a writing by which an industrial investment company evidences its receipt of money from a natural person and its obligation to repay the money, with interest, in accordance with the provisions of the writing, which certificates are not insured by an agency of the United States government;

(B) "Investment certificate" does not include:

(i) Promissory notes, bonds, debentures, commercial paper and the like issued by an industrial loan and thrift company or industrial investment company or industrial bank to a bank, insurance company, or other commercial lender; or

(ii) A promissory note — provided, that the note is nonnegotiable to a natural person and includes a provision to the effect that any attempt at its assignment to any person other than the maker, a bank, insurance company, or other commercial lender shall be null, void and of no effect — issued by an industrial loan and thrift company to the following:

*(a)* A bona fide executive officer who works at least thirty (30) hours per week at the company, or to members of the executive officer's immediate family;

*(b)* A voting member of the board of directors of the company, or to members of the voting member's immediate family; or

*(c)* To a shareholder, including a beneficial owner, of the company where the shareholder and members of the shareholder's immediate family own at least twenty-five percent (25%) of the outstanding voting shares of the company;

(C) For purposes of subdivision (13)(B)(ii), "immediate family" includes a note payee, and the payee's parents, grandparents, siblings, children and grandchildren; and

(D) The burden of demonstrating to the commissioner that an obligation is not an "investment certificate" shall be on the registrant, and the registrant shall file its reports under this chapter in a manner that clearly reflects that exempt status is being claimed;

(14) "Loan charges" means compensation to a registrant for services, expenses, detriments or commitments directly incident to a loan, and does not include compensation for other purposes, including, but not limited to, time-price differentials, interest or insurance charges;

(15)(A) In general, "loan processor or underwriter" means an individual who performs clerical or support duties as an employee, not an independent contractor, at the direction of and subject to the supervision and instruction of a registrant authorized to make residential mortgage loans;

(B) For purposes of subdivision (15)(A), "clerical or support duties" may include, subsequent to the receipt of an application for a residential mortgage loan:

(i) The receipt, collection, distribution and analysis of information common for the processing or underwriting of the loan; and/or

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of the loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms;

(16) "Mortgage loan originator" means:

(A) An individual who, for compensation or gain or in the expectation of compensation or gain:

(i) Takes a residential mortgage loan application; or

(ii) Offers or negotiates terms of a residential mortgage loan;

(B) "Mortgage loan originator" does not include an individual engaged solely as a loan processor or underwriter for a registrant, unless that individual is an independent contractor and not an employee;

(17) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators;

(18) "Nominal rate of interest" means a stated rate of interest, other than simple interest, including, but not limited to, discount interest;

(19) "Person" means an individual, corporation, firm, trust, estate, partnership, joint venture or association, as the context may require;

(20) "Principal" means the total of money paid to, received by, or paid or credited to the account of the borrower, including loan charges as provided in § 45-5-403(a)(1)-(3), as applicable, and including insurance charges for which the borrower contracts to pay pursuant to § 45-5-305;

(21) "Registrant" means any person registered as an industrial loan and thrift company, industrial investment company or industrial bank under this chapter;

(22) "Residential mortgage loan" means any loan, including an extension of credit, primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling, as defined in § 103(v) of the federal Truth in Lending Act, codified in 15 U.S.C. § 1602(v), or residential real estate upon which is constructed or intended to be constructed a dwelling, as so defined;

(23) "Residential real estate" means any real property located in this state upon which is constructed or intended to be constructed a dwelling;

(24) "Simple rate of interest" means the ratio between the interest payable on an obligation and the principal for a period of time, expressed as

a percentage for a period such as a year or a month;

(25) "Thrift certificate" means a writing by which an industrial bank evidences its receipt of money from a natural person and its obligation to repay the money, with interest in accordance with the provisions of the writing, that is insured by an agency of the United States government. "Thrift certificate" does not include investment certificate, and does not include commercial paper or other evidence of indebtedness issued by an industrial bank to a bank, insurance company or other commercial lender;

(26) "Total amount of the loan" means the aggregate amount of money scheduled to be paid by a borrower to a registrant to repay a loan, including principal and any interest precomputed and deducted in advance; and

(27) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

**45-5-301. General powers of registrants.**

Any registrant under this chapter has the power to:

(1) Lend money, with or without security, and to take as security real or personal property, or both;

(2)(A) Charge interest:

(i) On loans where the amount financed is less than one hundred dollars ($100), at a nominal rate not in excess of seven and one-half percent (7.5%) per annum, deducted in advance, on the principal for the full term thereof without regard to the payment schedule; but no interest shall be charged on the loans in excess of a maximum effective rate of eighteen percent (18%) per annum;

(ii) On loans where the amount financed is one hundred dollars ($100) or more, up to five thousand dollars ($5,000), on the principal at any rate not in excess of a maximum effective rate of thirty percent (30%) per annum;

(iii) On loans where the amount financed is more than five thousand dollars ($5,000), on the principal at any rate not in excess of the maximum effective rate of twenty-four percent (24%) per annum; and

(iv) On loans made under open-end credit plans, which are plans under which a registrant contemplates repeated loans that may be without fixed maturities or limitation as to the length of term, and that are subject to prepayment at any time, at any rate not in excess of a maximum effective rate of twenty-four percent (24%) per annum;

(B) All the interest shall be contracted for and computed in accordance with § 45-5-401;

(3) Charge loan charges, but subject to the limitations provided in § 45-5-403; provided, that no loan charge shall be imposed unless a loan is made or an open-end credit plan is established or renewed for a term of not less than three (3) years;

(4) Require, at the expense of the borrower, insurance against the hazards to which any collateral used to secure the loan is subject; and upon the failure of the borrower to supply the same to procure the same, subject to § 45-5-305;

(5) Accept, but not require, as additional collateral at the expense of the borrower or borrowers, insurance against the hazards of death, or disability, or involuntary unemployment, or any combination thereof, of the borrower

or borrowers, subject to § 45-5-305;

(6) Engage in the purchase, discount and rediscount of notes, security agreements or security interests or other indicia of security originating from the sale or purchase of property or services;

(7) Make loans to dealers in motor vehicles, appliances and other chattels for the purpose of acquiring, stocking and offering for sale the merchandise and to take appropriate security therefor;

(8) Purchase or otherwise acquire and sell and negotiate drafts and acceptances drawn in connection with the sale of personal property on account of the purchase price thereof and take from the acceptors or holders of the drafts and acceptances as security for the drafts and acceptances, with or without other collateral, choses in action or other evidences of indebtedness issued by it and to be paid in uniform monthly, weekly or other periodical installments;

(9) If an industrial investment company, not insured by an agency of the United States government, issue investment certificates subject to the provisions of this chapter;

(10) If an industrial bank, insured by an agency of the United States government, issue thrift certificates subject to the provisions of this chapter;

(11) Have any and all powers not specifically defined in this chapter that are granted by the laws of this state to corporations generally, except powers that are inconsistent with the provisions of this chapter; provided, that nothing in this chapter shall be construed as limiting the power of registrants to make loans, charge interest and other charges consistent with the powers of corporations generally and subject to the limitations provided by title 47, chapters 14 and 15;

(12)(A) Subject to § 45-5-305(b), accept or sell, but not require, at the expense of the borrower or borrowers, one (1) or more credit-related insurance products.

(B) As used in subdivision (12)(A) and § 45-5-305(b), "credit-related insurance products" is limited to individual term life or individual accidental death and dismemberment insurance sold by a registrant where the:

(i) Beneficiary named by the debtor is a person other than the creditor;

(ii) Insurance is purchased by the debtor and financed as part of the credit transaction; and

(iii) Premium for the insurance is included in the principal of the loan; and

(13) Make any change among the president, chief executive officer, treasurer, or chief financial officer, or among the general partner or partners; provided that the registrant gives written notice to the commissioner within fourteen (14) days of the change and furnishes other information that the commissioner may require.

**45-5-401. Contracts for interest — Computation.**

(a)(1) With respect to loans where the amount financed is less than one hundred dollars ($100), this chapter permits, but does not require, interest to be contracted for by way of discount. Interest may also be contracted for at an effective rate that results in the same amount being paid as if interest

had been contracted by way of discount at a nominal rate not in excess of the maximum nominal rate specified in § 45-5-301(2) for loans of this category, always subject to the maximum effective rate provided in § 45-5-301(2) for loans of this category.

(2) With respect to loans where the amount financed is one hundred dollars ($100) or more, this chapter does not limit or restrict the manner or method of contracting for interest, whether by way of add-on, discount, or otherwise, so long as the maximum effective rate of interest for loans of this category does not exceed that authorized by § 45-5-301(2) for the loans.

(3) With respect to loans made under open-end credit plans, interest shall be computed on the principal balance unpaid from time to time, always subject to the maximum effective rate provided in § 45-5-301(2) for loans of this category.

(b) In any event, the maximum effective rate of interest on a loan shall:

(1) Be determined in accordance with the actuarial method;

(2) In the case of precomputed interest, be calculated and determined as of the date of the loan on the assumption that all scheduled payments will be made as contracted; and

(3) Not be affected by the prepayment of the loan, in whole or in part.

(c) Interest may be contracted for on the unpaid balance due after the maturity date of the loan:

(1) Where the amount financed is less than one hundred dollars ($100), at an effective rate not to exceed eighteen percent (18%) per annum;

(2) Where the amount financed is one hundred dollars ($100) or more, up to five thousand dollars ($5,000), at an effective rate not to exceed thirty percent (30%) per annum;

(3) Where the amount financed is more than five thousand dollars ($5,000), at an effective rate not to exceed twenty-four percent (24%) per annum; and

(4) Where the loan is made under an open-end credit plan, at an effective rate not to exceed twenty-four percent (24%) per annum.

(d) The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded and, for any period less than a month, each day may be counted as one thirtieth ($^1/_{30}$) of a month.

**45-11-102. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Capital stock financial institution" means a financial institution, the ownership of which rests in the holders of shares of capital stock, who may receive dividends on their shares, and who have the sole right to vote on matters affecting the financial institution;

(2) "Converting institution" means a financial institution converting to another type of financial institution;

(3) "Financial institution" means a savings and loan association, bank, savings bank, credit union, or trust company organized under the laws of any state or organized under the laws of the United States;

(4) "Mutual financial institution" means an association or savings bank or credit union, the ownership of which rests in members who receive interest on their deposit accounts, and who have the sole right to vote on all matters

affecting the financial institution; and

(5) "Resulting financial institution" means the financial institution resulting from a conversion and having its principal place of business in this state.

**46-4-103. Suits for termination of use of land, removal and reinterment and for disposal of land — Municipal authority extended.**

(a) Any interested person or persons, and/or any county in this state in which a burial ground is situated, and/or any municipality in this state if the burial ground is situated in the municipality or within one (1) mile of the lawful corporate limits of the municipality and not beyond the limits of the county in which any part of the municipality is situated and not within the lawful corporate limits of any other municipality in Tennessee, may bring or join in a suit in the chancery court of the county in which the burial ground is situated, for the following purpose or purposes:

(1) To have the remains of all deceased persons buried in the burial ground removed from the burial ground and reburied in a suitable repository to be obtained for that purpose before their removal from the burial ground;

(2) To terminate the use of, and all rights and easements to use, the ground as a burial ground, and all rights and easements incident or appurtenant to the ground as a burial ground; and

(3) Thereupon, to partition or sell for partition the ground if the court finds that it belongs to two (2) or more persons and if any one (1) or more of the owners applies for partition. The authority of all municipalities in the state of Tennessee is extended, for the sole purpose of bringing or joining in the suit by the municipality, but for no other purpose, to a distance of one (1) mile from the lawful corporate limits of the municipality but not beyond the limits of the county in which any part of the municipality is situated and not so as to come within the lawful corporate limits of any other municipality of the state of Tennessee.

(b) In the suit, all interested persons who are not complainants shall be made defendants, and the owner or owners of the land or of any right of reversion or other right or interest in the land, if the owner or owners shall be or include other than the interested persons, shall also be made defendants. Interested persons who are minors or otherwise incompetent or under disability may become complainants by guardian or next friend. All known defendants who are minors or otherwise incompetent or under disability shall be represented by guardian ad litem. Nonresident and unknown defendants may be proceeded against by order of publication, and publication, in the manner provided by law.

(c)(1) At least thirty (30) days prior to any hearing on a suit initiated pursuant to this section, the complainant shall file notice with the Tennessee historical commission. The notice shall include the approximate age of the burial ground and either:

(A) The name of the complainant, the location of the burial ground, and, if discernable, the name of any person interred at the burial ground; or

(B) An exact copy of the complaint filed in the chancery court.

(2) The Tennessee historical commission shall post filed notices on its website. Notices shall be posted in chronological order by county and updated at least monthly. The Tennessee historical commission may archive

notices annually.

(3) Notwithstanding subdivisions (c)(1) and (2), any notice concerning the removal of Native American Indian human remains shall be filed according to title 11, chapter 6, and must not be posted on the website of the commission.

**46-6-107. Fees.**

(a) The department of veterans' affairs shall not charge a fee for the interment of a veteran who is eligible for interment in a Tennessee veterans' cemetery under the department's guidelines.

(b) The department shall not charge a fee that exceeds three hundred dollars ($300) for the interment of an eligible veteran's spouse.

**47-10-201. Part definitions.**

As used in this part:

(1) "Distributed ledger technology" means any distributed ledger protocol and supporting infrastructure, including blockchain, that uses a distributed, decentralized, shared, and replicated ledger, whether it be public or private, permissioned or permissionless, and which may include the use of electronic currencies or electronic tokens as a medium of electronic exchange; and

(2) "Smart contract" means an event-driven computer program, that executes on an electronic, distributed, decentralized, shared, and replicated ledger that is used to automate transactions, including, but not limited to, transactions that:

(A) Take custody over and instruct transfer of assets on that ledger;

(B) Create and distribute electronic assets;

(C) Synchronize information; or

(D) Manage identity and user access to software applications.

**47-10-202. Cryptographic signature — Electronic records and forms.**

(a) A cryptographic signature that is generated and stored through distributed ledger technology is considered to be in an electronic form and to be an electronic signature.

(b) A record or contract that is secured through distributed ledger technology is considered to be in an electronic form and to be an electronic record.

(c) Smart contracts may exist in commerce. No contract relating to a transaction shall be denied legal effect, validity, or enforceability solely because that contract is executed through a smart contract.

(d) Notwithstanding any other law, a person that, in or affecting interstate or foreign commerce, uses distributed ledger technology to secure information that the person owns or has the right to use retains the same rights of ownership or use with respect to that information as before the person secured the information using distributed ledger technology. This subsection (d) does not apply to the use of distributed ledger technology to secure information in connection with a transaction to the extent that the terms of the transaction expressly provide for the transfer of rights of ownership or use with respect to that information.

(e) No implication is made by, and no inference may be drawn from, the enactment of this part as to whether technologies not defined in § 47-10-201

that secure signatures, records, or contracts are considered to be in an electronic form or to be an electronic signature or electronic record, as applicable.

**47-18-104. Unfair or deceptive acts prohibited.**

(a) Unfair or deceptive acts or practices affecting the conduct of any trade or commerce constitute unlawful acts or practices and are Class B misdemeanors.

(b) The following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part:

(1) Falsely passing off goods or services as those of another;

(2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services. This subdivision (b)(2) does not prohibit the private labeling of goods and services;

(3) Causing likelihood of confusion or misunderstanding as to affiliation, connection or association with, or certification by, another. This subdivision (b)(3) does not prohibit the private labeling of goods or services;

(4) Using deceptive representations or designations of geographic origin in connection with goods or services;

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship approval, status, affiliation or connection that such person does not have;

(6) Representing that goods are original or new if they are deteriorated, altered to the point of decreasing the value, reconditioned, reclaimed, used or secondhand;

(7) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

(8) Disparaging the goods, services or business of another by false or misleading representations of fact;

(9) Advertising goods or services with intent not to sell them as advertised;

(10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(11) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(12) Representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law;

(13) Representing that a service, replacement or repair is needed when it is not;

(14) Causing confusion or misunderstanding with respect to the authority of a salesperson, representative or agent to negotiate the final terms of a consumer transaction;

(15) Failing to disclose that a charge for the servicing of any goods in whole or in part is based on a predetermined rate or charge, or guarantee or warranty, instead of the value of the services actually performed;

(16) Disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge,

except as provided for in § 39-14-132(b);

(17) Advertising of any sale by falsely representing that a person is going out of business;

(18) Using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement or agreement in which the buyer or prospective buyer is offered the opportunity to purchase goods or services and, in connection with the purchase, receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if the receipt of compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(19) Representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve; provided, that nothing in this subdivision (b)(19) shall be construed to alter the implied warranty of merchantability as defined in § 47-2-314;

(20) Selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a pyramid distributorship. As used in this subdivision (b)(20), a "pyramid distributorship" means any sales plan or operation for the sale or distribution of goods, services or other property wherein a person for a consideration acquires the opportunity to receive a pecuniary benefit, which is not primarily contingent on the volume or quantity of goods, services or other property sold or delivered to consumers, and is based upon the inducement of additional persons, by such person or others, regardless of number, to participate in the same plan or operation;

(21) Using statements or illustrations in any advertisement which create a false impression of the grade, quality, quantity, make, value, age, size, color, usability or origin of the goods or services offered, or which may otherwise misrepresent the goods or services in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised goods or services to other goods or services;

(22) Using any advertisement containing an offer to sell goods or services when the offer is not a bona fide effort to sell the advertised goods or services. An offer is not bona fide, even though the true facts are subsequently made known to the buyer, if the first contact or interview is secured by deception;

(23) Representing in any advertisement a false impression that the offer of goods has been occasioned by a financial or natural catastrophe when such is not true, or misrepresenting the former price, savings, quality or ownership of any goods sold;

(24) Assessing a penalty for the prepayment or early payment of a fee or charge for services by a utility or company which has been issued a franchise license by a municipal governing body to provide services. Nothing in this subdivision (b)(24) shall be construed to prohibit a discount from being offered for early payment of the applicable fee or charge for services. This subdivision (b)(24) does not apply to a utility or company whose billing statement reflects charges both for service previously rendered and in advance of services provided;

(25) Discriminating against any disabled individual, as defined by §§ 47-18-802(b) and 55-21-102(3), in violation of the Tennessee Equal Consumer Credit Act of 1974, compiled in part 8 of this chapter. This subdivision (b)(25)

does not apply to any creditor or credit card issuer regulated by the department of financial institutions. The division shall refer any complaint against such a creditor or credit card issuer involving the Equal Consumer Credit Act to such department for investigation and disposition;

(26) Violating § 65-5-106;

(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person; provided, however, that enforcement of this subdivision (b)(27) is vested exclusively in the office of the attorney general and reporter and the director of the division;

(28)(A)(i) Failing of a motor vehicle repair facility to return to a customer any parts which were removed from the motor vehicle and replaced during the process of repair if the customer, at the time repair work was authorized, requested return of such parts; provided, that any part retained by the motor vehicle repair facility as part of a trade-in agreement or core charge agreement for a reconditioned part need not be returned to the customer unless the customer agrees to pay the facility the additional core charge or other trade-in fee; and provided further, that any part required to be returned to a manufacturer or distributor under a warranty agreement or any part required by any federal or state statute or rule or regulation to be disposed of by the facility need not be returned to the customer; or

(ii) Failing of a motor vehicle repair facility to permit inspection of any parts retained by the repair facility if the customer, at the time repair work was authorized, expressed the customer's desire to inspect such parts; provided, that if, after inspection, the customer requests return of such parts, the restrictions set forth in subdivision (b)(28)(A)(i) shall apply;

(B)(i) Failing of a motor vehicle repair facility to post in a prominent location notice of the provisions of this subdivision (b)(28); or

(ii) Failing of a motor vehicle repair facility to print on the repair contract notice of the provisions of this subdivision (b)(28);

(C) The motor vehicle repair facility need not retain any parts not returned to the customer after the motor vehicle has been returned to the customer;

(29) Advertising that a business is "going out of business" more than ninety (90) days before such business ceases to operate;

(30) Failing to comply with §§ 6-55-401 — 6-55-413, where a municipality has adopted the regulations of liquidation sales pursuant to § 6-55-413;

(31) Offering lottery winnings in exchange for making a purchase or incurring a monetary obligation pursuant to § 47-18-120;

(32)(A) The act of misrepresenting the geographic location of a person through a business name or listing in a local telephone directory or on the Internet is an unfair or deceptive act or practice affecting the conduct of trade or commerce, if:

(i) The name misrepresents the person's geographic location; or

(ii) The listing fails to clearly and conspicuously identify the locality and state of the person's business;

(iii) Calls to the listed telephone number are routinely forwarded or otherwise transferred to a person's business location that is outside the calling area covered by the local telephone directory, or that is outside the local calling area for the telephone number that is listed on the

Internet;

(iv) The person's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory, or is located in a county that is not contiguous to a county in the local calling area for the telephone number that is listed on the Internet; and

(v) The person does not have a business location or branch, or an affiliate or subsidiary of the person does not have a business location or branch, in the calling area or county contiguous to the local calling area.

(B) This subdivision (b)(32) shall not apply:

(i) To a telecommunications service provider, an Internet service provider, or to the publisher or distributor of a local telephone directory unless the act is on behalf of the Internet or telecommunications service provider or on behalf of the publisher or distributor of the local telephone directory; or

(ii) To the act of listing a number for a call center. For purposes of this subdivision (b)(32)(B)(ii), "call center" means a location that utilizes telecommunication services for activities related to an existing customer relationship, including, but not limited to, customer services, reactivating dormant accounts or receiving reservations.

(C) Notwithstanding any other law to the contrary, and without limiting the scope of § 47-18-104, a violation of this subdivision (b)(32) shall be punishable by a nonremedial civil penalty of a minimum of one thousand dollars ($1,000) to a maximum of five thousand dollars ($5,000) per violation. Civil penalties assessed under this subdivision (b)(32) are separate and apart from the remedial civil penalties authorized in § 47-18-108(b)(3).

(D) This subdivision (b)(32) applies only to information supplied to a telephone directory published after July 1, 2008, information that is published on the Internet after July 1, 2008, or to information supplied for entry into a directory assistance database after July 1, 2008;

(33) Advertising that a person is an electrician for hire when such person has not been licensed by a local jurisdiction to perform electrical work within such jurisdiction or by the state as a limited licensed electrician or contractor, as appropriate or, if no such licenses are then available, such person is not registered with the state;

(34) Unreasonably raising prices or unreasonably restricting supplies of essential goods, commodities or services in direct response to a crime, act of terrorism, war, or natural disaster, regardless of whether such crime, act of terrorism, war, or natural disaster occurred in the state of Tennessee;

(35) Representing that a person is a licensed contractor when such person has not been licensed as required by § 62-6-103 or § 62-6-502; or, acting in the capacity of a contractor as defined in § 62-6-102(4)(A), § 62-6-102(7) or § 62-6-501, and related rules and regulations of the state of Tennessee, or any similar statutes, rules and regulations of another state, while not licensed;

(36)(A) Using any advertisement for a workshop, seminar, conference, or other meeting that contains a reference to a living trust or a revocable living trust, or that otherwise offers advice or counsel on estate taxation unless such advertisement also includes the information required in this subdivision (b)(36);

(B) An advertisement as provided in this subdivision (b)(36) shall, at a minimum, include the following:

(i) The maximum exclusion for federal estate tax purposes and the maximum exemption for state inheritance tax purposes for the year in which the advertisement appears;

(ii) Includes a statement that certain property, including real property, insurance proceeds, deposit accounts, stocks and retirement fund, may be taxable or not taxable, depending on how legal title is held or beneficiary designation is made, or both;

(iii) Includes a statement that certain property may be transferred through several different means including, but not limited to, joint ownership of property with rights of survivorship, joint deposit accounts, beneficiary designations or elections permitted under retirement plans, insurance policies, trusts, or wills; and

(iv) A statement that before creating any transfer through a living trust, revocable living trust, or otherwise, the individual should seek advice from an attorney, accountant or other tax professional to determine the true tax impact and ensure that assets are properly transferred into any trust;

(C) The disclosure required in this subdivision (b)(36) shall be printed in not less than 10-point type;

(D) This subdivision (b)(36) shall not apply to an advertisement by any attorney, law firm, bank, savings institution, trust company, or registered securities broker-dealer which is directed to clients or customers of such person with whom such person has had a client or customer relationship within the prior two (2) years. This subdivision (b)(36) shall also not apply to any continuing education seminars or conferences conducted for the benefit of bankers, attorneys, accountants, or other professional financial advisors;

(37) Refusing to accept the return of clothing or accessories sold at retail directly to a purchaser, who seeks to return the same for any reason for refund or credit; provided, that:

(A) The purchaser presents the clothing or accessories within the retailer's prescribed period for return of merchandise;

(B) The purchaser presents satisfactory proof of purchase;

(C) The merchandise is, in no way, damaged and exhibits no sign of wear or cleaning;

(D) All tags and stickers affixed or attached to the merchandise at the time of sale remain affixed or attached at the time of return; and

(E) The sale of the merchandise was not marked, advertised or otherwise characterized as "final", "no return", "no refunds", or in any manner reasonably indicating that the merchandise would not be accepted for return;

(38)(A) Requiring the purchaser to present that purchaser's driver license as a prerequisite for accepting the return of clothing or accessories for refund or credit, notwithstanding compliance with the conditions set forth in subdivision (b)(37), unless such a requirement is for the purpose of preventing fraud and abuse;

(B) Notwithstanding any provision of subdivision (b)(37) or (b)(38)(A) to the contrary, return denials are permitted for the purpose of preventing fraud and abuse;

(39) Representing that a person, or such person's agent, authorized designee or delegee for hire, has conducted a foreclosure on real property, when such person knew or should have known that a foreclosure was not actually conducted on the real property;

(40)(A) Selling or offering to sell a secondhand mattress in this state or importing secondhand mattresses into this state for the purpose of resale in violation of § 68-15-203(b);

(B) Subdivision (b)(40)(A) shall apply to a mattress manufacturer, wholesaler or retailer. Subdivision (b)(40)(A) shall not apply to an institution or organization that has received a determination of exemption from the internal revenue service under 26 U.S.C. § 501(c)(3), and as described in § 67-6-348. The exemption provided in this subdivision (b)(40)(B) shall be limited to institutions or organizations that are not organized or operated for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(41)(A) Knowingly advertising or marketing for sale a newly constructed residence as having more bedrooms than are permitted by the newly constructed residence's subsurface sewage disposal system permit, as defined in § 68-221-402, unless prior to the execution of any sales agreement the permitted number of bedrooms is disclosed in writing to the buyer. The real estate licensee representing the owner may rely upon information furnished by the owner;

(B) If a newly constructed residence is marketed for sale as having more bedrooms than are permitted by the subsurface sewage disposal system permit and no disclosure of the actual number of bedrooms permitted occurs prior to the execution of a sales agreement, then the buyer shall have the right to rescind the sales agreement and may recover treble damages as provided in § 47-18-109;

(C) A subsurface sewage disposal system permit issued in the name of the owner of a newly constructed residence shall serve as constructive notice to that owner of the newly constructed residence for the purpose of establishing knowledge as to the number of bedrooms of the newly constructed residence for the purpose of finding a violation of this subdivision (b)(41). A real estate licensee representing the owner must have actual knowledge transmitted from the owner to the real estate licensee to be in violation of this subdivision (b)(41);

(42) Offering, through the mail or by other means, a check that contains an obligation to advertise with a person upon the endorsement of the check. The obligation is effective upon the check being signed and deposited into the consumer's bank account;

(43) The act or practice of directly or indirectly:

(A) Making representations that a person will pay or reimburse for a motor vehicle traffic citation for any person who purchases a device or mechanism, passive or active, that can detect or interfere with a radar, laser or other device used to measure the speed of motor vehicles;

(B) Advertising, promoting, selling or offering for sale any radar jamming device that includes any active or passive device, instrument, mechanism, or equipment that interferes with, disrupts, or scrambles the radar or laser that is used by law enforcement agencies and officers to measure the speed of motor vehicles; or

(C) Advertising, promoting, selling or offering for sale any good or

service that is illegal or unlawful to sell in the state;

(44) Violating § 47-18-5402;

(45)(A) Installing, offering to install, or making available for installation, reinstallation or update a covered file-sharing program onto a computer without being an authorized user of that computer or without first providing clear and conspicuous notice to the authorized user of the computer that the files on that computer will be made available to the public, obtaining consent of the authorized user to installation of the program, and requiring affirmative steps by the authorized user to activate any feature on the program that will make files on that computer available to the public; or

(B) Preventing reasonable efforts to disable or remove, or to block the installation or execution of, a covered file-sharing program on a computer;

(46)(A) The act or practice of directly or indirectly advertising, promoting, selling, or offering for sale international driver's licenses. It is a per se violation of this subdivision (b)(46) to:

(i) Misrepresent that any international driver's license sold or offered for sale confers a privilege to operate a motor vehicle on the streets and highways in this state; or

(ii) Represent that any international driver's license sold or offered for sale is of a particular standard, quality or grade;

(B) For purposes of this subdivision (b)(46), unless the context otherwise requires:

(i) "International driver's license" means a document that purports to confer a privilege to operate a motor vehicle on the streets and highways in this state and is not issued by a governmental entity. Such document may be an imitation of an international driving permit; and

(ii) "International driving permit" means the document issued by a duly authorized automobile association to a holder of a valid driver license which grants such holder the privilege to operate a motor vehicle in countries or international bodies that are signatory parties to Article 24 of the 1949 United Nations Convention on Road Traffic, pursuant to 3 U.S.T. § 3008;

(C) Notwithstanding any other law to the contrary, and without limiting the scope of this section, a violation of this subdivision (b)(46) shall be punishable by a non-remedial civil penalty of a minimum of one thousand dollars ($1,000) to a maximum of three thousand dollars ($3,000) per violation. Civil penalties assessed under this subdivision (b)(46) are separate and apart from the remedial civil penalties authorized in § 47-18-108(b)(3);

(47) A home improvement services provider:

(A) Entering into a contract for home improvement services without providing to the residential owner in written form:

(i) That it is a criminal offense for the person entering into the contract for home improvement services with a residential owner to do any of the prohibited acts set out in § 39-14-154(b), by writing out the text of each prohibited act, and providing the penalty and available relief for such; and

(ii) The true and correct name, physical address and telephone number of the home improvement services provider; or

(B) Having complied with subdivision (b)(47)(A), failing to provide to the residential owner in written form a correct current or forwarding

address if the person changes the physical address initially provided to the residential owner and any or all work to be performed under the contract has not been completed;

(48) Failing to comply with title 62, chapter 6, part 6;

(49) Engaging in a Ponzi scheme, defined as a fraudulent investment scheme in which money placed by later investors pays artificially high dividends to the original investor, thereby attracting even larger investments;

(50) Making fraudulent statements or intentional omissions in order to induce a consumer to sell securities or other things of value to fund an investment;

(51) Advertising services for the provision of a warranty for a motor vehicle, as defined in § 55-8-101, in a deceptive manner that is likely to cause the owner of the motor vehicle to believe that the advertisement originated from the original manufacturer of the motor vehicle or from the dealer that sold the motor vehicle to the owner; and

(52) Uses the trade name or trademark, or a confusingly similar trade name or trademark of any place of entertainment, or the name of any event, person, or entity scheduled to perform at a place of entertainment in the domain of a ticket marketplace URL. It is not a violation of this subdivision (b)(52) if the ticket marketplace obtained written authorization from the place of entertainment, event, person, or entity scheduled to perform at a place of entertainment to use the trade name, trademark, or name in the domain of the URL prior to the use. For purposes of this subdivision (b)(52):

(A) "Domain" means the portion of text in a URL that is to the left of the top-level domains such as .com, .net, or .org;

(B) "Place of entertainment" means an entertainment facility in this state, such as a theater, stadium, museum, arena, amphitheater, racetrack, or other place where performances, concerts, exhibits, games, athletic events, or contests are held;

(C) "Ticket" means a printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at, to enter, or to attend a place of entertainment, even if not evidenced by any physical manifestation of the right, option, or opportunity; and

(D) "Ticket marketplace" means a website that provides a forum for or facilitates the buying and selling, or reselling, of a ticket.

(c) The following are among the acts or practices which will be considered in determining if an offer to sell goods or services is not bona fide:

(1) Refusal to reasonably show, demonstrate or sell the goods or services offered in accordance with the terms of the offer;

(2) Disparagement by acts or words of the advertised goods or services or disparagement with respect to the guarantee, credit terms, availability of service, repairs or parts, or in any other respect, in connection with the advertised goods or services;

(3) Failure to make available at all outlets listed in the advertisement a sufficient quantity of the advertised goods or services to meet reasonably expectable public demand, unless the advertisement clearly and conspicuously discloses that the availability of a particular good is limited and/or the goods or services are available only at designated outlets, or unless the advertisement discloses that a particular good is to be closed out or offered for a limited time. In the event of an inadequate inventory, issuing of "rain

checks" for goods or offering comparable or better goods at the sale price may be considered a good faith effort to make the advertised goods available, unless there is a pattern of inadequate inventory or unless the inadequate inventory was intentional. If rain checks are offered, the goods must be delivered within a reasonable time;

(4) Refusal to take orders or give rain checks for the advertised goods or services, when the advertisement does not disclose their limited quantity or availability to be delivered within a reasonable period of time;

(5) Showing or demonstrating goods or services which are defective, unusable or impractical for the purpose represented or implied in the advertisement when such defective, unusable or impractical nature is not fairly and adequately disclosed in the advertisement; and

(6) Use of a sales plan or method of compensating or penalizing salespersons designed to prevent or discourage them from selling the advertised goods or services. This does not prohibit compensating salespersons by use of a commission.

(d) The fact that a seller occasionally sells the advertised goods or services at the advertised price does not constitute a defense when the seller's overall purpose is to engage in bait and switch tactics.

(e) Nothing in § 47-18-103(1) or subdivisions (b)(21)-(23) and subsections (c) and (d) shall prevent a seller from advertising goods and services with the hope that consumers will buy goods or services in addition to those advertised.

(f) For the purposes of subsection (b), investment does not include a security defined in § 48-1-102 or any insurance or annuity contract.

**47-18-201. [Repealed.]**

**47-18-202. [Repealed.]**

**47-18-203. [Repealed.]**

**47-18-204. [Repealed.]**

**47-18-205. [Repealed.]**

**47-18-206. [Repealed.]**

**47-18-207. [Repealed.]**

**47-18-208. [Repealed.]**

**47-18-209. [Repealed.]**

**47-18-210. [Repealed.]**

**47-18-2108. Security freeze at the request of the consumer.**

(a) A Tennessee consumer may place a security freeze on the consumer report of the Tennessee consumer by making a request in writing by certified mail. Beginning on January 31, 2009, a credit reporting agency shall make available an electronic method for requesting a security freeze. A security freeze shall prohibit the consumer reporting agency from releasing the

requesting party's consumer report or credit score relating to the extension of credit without the express authorization of the Tennessee consumer. Nothing in this section shall prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to a particular consumer report.

(b) A consumer reporting agency shall place a security freeze on a consumer report no later than three (3) business days after receiving the written or electronic request from the Tennessee consumer.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the Tennessee consumer within ten (10) business days of placing the security freeze on the consumer report, and shall provide the Tennessee consumer with a unique personal identification number or password, other than the Tennessee consumer's federal social security number, to be used by the Tennessee consumer when providing authorization for the release of the consumer report for a specific period of time or for permanently removing the security freeze.

(d) If the Tennessee consumer wishes to allow the consumer report to be accessed for a specific period of time while a freeze is in place, the Tennessee consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(1) Proper identification;

(2) The unique personal identification number or password provided by the consumer reporting agency to the Tennessee consumer pursuant to this section; and

(3) The information requested by the consumer reporting agency about the period for which the consumer report is to be available.

(e) A consumer reporting agency shall develop procedures involving the use of telephone, the Internet, or other electronic method to receive and process a request from a Tennessee consumer to temporarily lift a freeze on a credit report pursuant to this section in an expedited manner. A consumer reporting agency may develop procedures involving the use of facsimile for this purpose.

(f) A consumer reporting agency shall comply with a request to temporarily lift a freeze previously placed on a consumer report no later than fifteen (15) minutes after receiving the request through an electronic contact method in accordance with this section and the request is received between six o'clock a.m. (6:00 a.m.) and nine-thirty p.m. (9:30 p.m.), seven (7) days per week, eastern or central standard or daylight time as applicable to the consumer. In requesting a temporary removal of the security freeze, a Tennessee consumer shall provide both of the following:

(1) Proper identification; and

(2) The unique personal identification number or password provided by the consumer reporting agency to the Tennessee consumer pursuant to this section.

(g) A consumer reporting agency is not required to temporarily lift a security freeze within the time provided in subsection (f) if:

(1) The consumer fails to meet the requirements of subsection (d); or

(2) The consumer reporting agency's ability to temporarily lift the security freeze within fifteen (15) minutes is prevented by:

(A) An act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomenon;

(B) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations,

or similar occurrence;

(C) Operational interruption including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption;

(D) Governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives;

(E) Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems; or

(F) Commercially reasonable maintenance of or repair to, the consumer reporting agency's systems that is unexpected or unscheduled.

(h) If a third party requests access to a consumer report on which a security freeze is in effect and the Tennessee consumer does not allow the third party access to the consumer report, the third party may treat any applicable credit application made by the consumer as incomplete.

(i) If a Tennessee consumer requests a security freeze pursuant to this section, the consumer reporting agency shall disclose to the Tennessee consumer the process of placing and temporarily lifting a security freeze and the process for allowing access to information from the consumer report for a specific period of time while the security freeze is in place.

(j) Except as provided in subsections (d), (e), and (f), a security freeze shall remain in place until the Tennessee consumer requests that the security freeze be removed permanently. A consumer reporting agency shall permanently remove a security freeze no later than two (2) business days from the receipt of a request by the agency when a Tennessee consumer makes the request by means involving the use of telephone, the Internet, or other electronic media as provided by the consumer reporting agency. In making the request, the Tennessee consumer shall provide both of the following:

(1) Proper identification; and

(2) The unique personal identification number or password provided by the consumer reporting agency to the Tennessee consumer pursuant to this section.

(k) If a security freeze is in place, a consumer credit reporting agency shall not change any of the following official information in a consumer credit report without sending a written confirmation of the change to the consumer not later than thirty (30) days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

(*l*) A consumer report agency shall not charge a Tennessee consumer to place, temporarily lift, or permanently remove a security freeze.

(m) This section, including the security freeze, does not apply to the use of a consumer report by the following:

(1) A person, or that person's subsidiary, affiliate, agent or assignee, if the Tennessee consumer has an account, contract, or debtor-creditor relationship with that person, for the purposes of reviewing the account, collecting the financial obligation of the consumer, fraud control or extending additional credit to the Tennessee consumer. For purposes of this subdivision (m)(1), "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and

enhancements;

(2) A subsidiary, affiliate, agent or assignee of a party or parties for whom a security freeze has been temporarily lifted pursuant to this section for the purpose of facilitating the extension of credit or other permissible use;

(3) Any person, including, but not limited to, a law enforcement entity, collections officer or private collection agency, acting pursuant to a court order, warrant or subpoena authorizing the use of the consumer report, or acting pursuant to a civil investigative demand or request for consumer protection information;

(4) Any department or division of the state that is acting to investigate a child support case, medicaid or TennCare fraud, delinquent taxes or assessments, unpaid court orders or settlements of any sort or type, or to fulfill any of their statutory or other duties;

(5) For the purposes of prescreening as provided by the federal Fair Credit Reporting Act, codified in 15 U.S.C. § 1681;

(6) Any person for the purpose of providing a credit file monitoring subscription service to which the Tennessee consumer has subscribed;

(7) A consumer reporting agency for the sole purpose of providing a Tennessee consumer with a copy of the consumer report upon the Tennessee consumer's request;

(8) Any person or entity for the purpose of setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes;

(9) A pension plan acting to determine the Tennessee consumer's eligibility for plan benefits or payments authorized by law or to investigate fraud;

(10) Any law enforcement entity or its agent acting to investigate a crime or civil law violation, conduct a criminal background check, conduct a presentence investigation in a criminal matter or use the information for supervision of a paroled offender;

(11) A licensed hospital with which the Tennessee consumer has or had a contract or a debtor-creditor relationship for the purpose of reviewing the account or collecting the financial obligation owing for the contract, account, or debt; or

(12) An attorney at law duly licensed in Tennessee representing any person, subsidiary, affiliate, agent, assignee, department, division, or other entity to whom this section does not apply.

(n) The following entities are not subject to the requirements of this section; provided, however, that each such entity shall be subject to any security freeze placed on a consumer report by a consumer reporting agency from which it obtains information:

(1) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer credit reporting agencies, and does not maintain a permanent data base of credit information from which new consumer credit reports are produced; however, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a consumer credit report by another consumer reporting agency;

(2) A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments;

(3) A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a Tennessee consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution; and

(4) A consumer reporting agency's database or file that consists of information concerning, and used for, one (1) or more of the following: criminal record information, fraud prevention or detection, personal loss history information, and employment, tenant, or individual background screening.

(o) Exclusive of all other private and nongovernmental remedies that may be imposed, any person who fails to comply with any requirement imposed under this section with respect to any Tennessee consumer is liable to that Tennessee consumer in an amount equal to the sum of:

(1)(A) Any ascertainable losses sustained by the Tennessee consumer as a result of the failure, or damages of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), whichever is greater, in addition to any other governmental remedies available at law; or

(B) In the case of liability of a natural person for obtaining a consumer report under false pretenses without a permissible purpose, ascertainable losses sustained by the consumer as a result of the failure or one thousand dollars ($1,000), whichever is greater, in addition to any other governmental remedies available at law;

(2) An amount of punitive damages that the court may allow in a private right of action or other nongovernmental action; and

(3) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

(p) Any person who obtains a consumer report, requests a security freeze, requests the temporary lift of a freeze, or the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law shall be liable to the consumer reporting agency for ascertainable losses sustained by the consumer reporting agency or one thousand dollars ($1,000), whichever is greater, in addition to any other governmental remedies available at law.

(q) In addition to any other governmental remedies available at law, any person who is negligent in failing to comply with any requirement imposed under this section with respect to any Tennessee consumer is liable to that Tennessee consumer in an amount equal to the sum of:

(1) Any ascertainable losses sustained by the Tennessee consumer as a result of the failure; and

(2) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

(r) Upon a finding by the court that an unsuccessful, nongovernmental pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorneys' fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

(s) Notwithstanding any other provision of this section, the sole power to

enforce violations of subsection (f) shall be with the attorney general and reporter.

**47-18-2109. Notice to consumer regarding security freeze.**

At any time that a Tennessee consumer is required to receive a summary of rights required by 15 U.S.C. § 1681g(d) of the federal Fair Credit Reporting Act, the Tennessee consumer shall also be provided with the following prominent, clear and conspicuous notice in at least twelve (12) point type:

TENNESSEE CONSUMERS HAVE THE RIGHT TO OBTAIN A SECURITY FREEZE

You have a right to place a "security freeze" on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail or by electronic means as provided by a consumer reporting agency. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. If you are actively seeking a new credit, loan, utility, or telephone account, you should understand that the procedures involved in lifting a security freeze may slow your applications for credit. You should plan ahead and lift a freeze in advance of actually applying for new credit. When you place a security freeze on your credit report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or authorize the release of your credit report for a period of time after the freeze is in place. To provide that authorization you must contact the consumer reporting agency and provide all of the following:

(1) The personal identification number or password;

(2) Proper identification to verify your identity; and

(3) The proper information regarding the period of time for which the report shall be available.

A consumer reporting agency must authorize the release of your credit report no later than fifteen (15) minutes after receiving the above information.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests information in your credit report for the purposes of fraud control, or reviewing or collecting the account. Reviewing the account includes activities related to account maintenance.

You should consider filing a complaint regarding your identity theft situation with the federal trade commission and the Tennessee department of commerce and insurance, division of consumer affairs, either in writing or via their web sites.

You have a right to bring civil action against anyone, including a consumer reporting agency, who improperly obtains access to a file, misuses file data, or fails to correct inaccurate file data.

**47-18-5002. Powers and duties.**

The division of consumer affairs has the power to employ such personnel as may be approved by the commissioners of commerce and insurance and finance and administration, and shall:

(1) Enforce part 1 of this chapter and this section throughout the state of

Tennessee;

(2) Employ within budgetary limitations the necessary professional, investigative, and clerical staff needed to effectuate part 1 of this chapter and this section;

(3) Promulgate reasonable procedural rules and regulations needed to carry out part 1 of this chapter and this section. These rules shall be adopted in accordance with the Uniform Administrative Procedure Act, compiled in title 4, chapter 5. Prior to the promulgation of any rule or regulation having the force or effect of law, such rule or regulation must be submitted to the commerce and labor committee of the senate and to the consumer and human resources committee of the house of representatives for their concurrence. Any rule or regulation which is not acted upon by such committees within thirty (30) days after notice of the filing thereof is given to the chairs of the committees shall become effective notwithstanding subsequent action by the committees;

(4) Conduct investigations and research, hold public hearings, or conduct and publish studies relating to the distribution or furnishing of goods or services to or for the use of consumers when the division or the attorney general and reporter has reason to believe that there are or have been persistent or consistent violations of part 1 of this chapter and this section; provided, that § 47-18-106 shall not be applicable to this subdivision (4);

(5) Serve as the central coordinating agency and clearinghouse for receiving complaints by Tennessee consumers of illegal, fraudulent, deceptive or dangerous practices;

(6) Report annually to the general assembly on the activities of the division. The report shall include, but not be limited to, a statement of the investigatory and enforcement procedures and policies of the division, as well as a statement of the number of complaints filed and of investigations or enforcement proceedings instituted and of their disposition. The report shall not identify any person who has not been otherwise publicly identified in enforcement proceedings unless such person consents to identification. The report may include recommendations for proposed legislation designed to remedy specific unfair or deceptive acts or practices. Pursuant to the reporting requirements of this subdivision (6), the director of consumer affairs appointed pursuant to § 47-18-5001 shall provide a written report and testify annually to the commerce and labor committee of the senate and the consumer and human resources committee of the house of representatives. The reports made pursuant to this subdivision (6) must be submitted no later than February 1 of each year;

(7) Lend assistance to any district attorney general who elects to criminally prosecute any person for any criminal act or practice directed against the consuming public; and

(8) Promote consumer education and inform the public of policies, decisions, and legislation affecting consumers.

**47-18-5101. Legislative intent.**

The general assembly finds and declares that:

(1) The threats of terrorism are real and could impose horrific social and economic damage on Tennessee;

(2) Terrorist attacks can dismantle the stability of markets and free trade;

(3) Pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, but when an abnormal economic disruption for goods and services results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of consumer goods and services should be discouraged;

(4) Because of the September 11, 2001, terrorist attacks that took place in New York and Arlington, Virginia, some businesses across Tennessee engaged in the economic practice commonly known as price-gouging;

(5) Protecting the public from price-gouging is a vital function of state government in providing for the health, safety, and welfare of consumers;

(6) The intent of the general assembly in enacting this part is to protect citizens from excessive and unjustified increases in the prices charged during or shortly after an abnormal economic disruption for goods and services that are vital or necessary for the consumer. Further, it is the intent of the general assembly that this part be liberally construed so that its beneficial purposes may be served.

**47-18-5102. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Abnormal economic disruption" means a disruption or anticipated disruption to usual business conditions caused by a natural or man-made disaster or emergency resulting from a terrorist attack, war, strike, civil disturbance, tornado, earthquake, fire, flood, or any other natural disaster or man-made disaster;

(2) "Building materials" means lumber, construction tools, windows, and anything else used in the building or rebuilding of property;

(3) "Consumer food item" means any article that is used or intended for use for food, drink, confection, or condiment by a person or animal;

(4) "Costs" means any expense or expenditure directly or indirectly related to the sale of a good or provision of a service or the operation of the person's business;

(5) "Emergency supplies" includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, soap, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers;

(6) "Gasoline" means any fuel used to power any motor vehicle or power tool;

(7) "Goods" has the same meaning as provided in § 47-18-103;

(8) "Housing" means any rental housing leased on a month-to-month term;

(9) "Medical supplies" includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products;

(10) "Person" has the same meaning as provided in § 47-18-103;

(11) "Repair or reconstruction services" means services performed by any person for repairs to residential or commercial property of any type that is damaged as a result of a disaster or terrorist attack;

(12) "Services" has the same meaning as provided in § 47-18-103; and

(13) [Deleted by 2018 amendment.]

(14) "Transportation, freight, and storage services" means any service that is performed by any company that contracts to move, store, or transport personal or business property or rents equipment for those purposes.

**47-18-5103. Prohibited acts during declaration of abnormal economic disruption.**

(a)(1) Upon the declaration of an abnormal economic disruption by the governor by proclamation or executive order, and continuing for a maximum of fifteen (15) calendar days, unless extended by a subsequent declaration in any county or municipality covered by the abnormal economic disruption, a person is prohibited from charging any other person a price for the following goods or services that is grossly in excess of the price generally charged for the same or similar goods or services in the usual course of business:

(A) Consumer food items;

(B) Repair or construction services;

(C) Emergency supplies;

(D) Medical supplies;

(E) Building materials;

(F) Gasoline;

(G) Transportation, freight, and storage services; or

(H) Housing.

(2) A declaration of an abnormal economic disruption by the governor may specify that only certain goods or services are covered by the prohibition described in subdivision (a)(1).

(b) A price increase is not grossly excessive if the increase was directly attributable to:

(1) Price increases in applicable regional, national, or international commodity markets;

(2) Pricing set forth in any pre-existing agreement, including stored and in-transit inventory;

(3) Additional costs imposed on the person by the supplier of the goods or services; or

(4) Additional costs for labor, services, or materials used to provide the goods or services, including costs of replacement inventory, additional costs to transport goods or services, and additional labor charges.

**47-18-5104. Violation — Unfair or deceptive act or practice — Penalties cumulative.**

(a) Violation of any provision of this part, or any rules and regulations promulgated hereunder, constitutes an unfair or deceptive act or practice under § 47-18-104(a); provided, that no criminal penalty shall be incurred for violation of this part. A civil action for violation of this part may be brought under part 1 of this chapter.

(b) The remedies and penalties provided in this section are cumulative. This part preempts any local ordinance prohibiting the same or similar conduct or imposing a more severe penalty for the same or similar conduct prohibited in this part.

**47-18-5506. Application for registration — Required information.**

An application for registration must be signed under oath and include:

(1) The applicant's name, principal business address and telephone number, and all other business addresses in this state, electronic-mail addresses and Internet web site addresses;

(2) All names under which the applicant conducts business;

(3) The address of each location in this state at which the applicant will provide debt-management services or a statement that the applicant will have no such location;

(4) The name and home address of each officer and director of the applicant and each person that owns at least ten percent (10%) of the applicant;

(5) Identification of every jurisdiction in which, during the five (5) years immediately preceding the application:

(A) The applicant or any of its officers or directors has been licensed or registered to provide debt-management services; or

(B) Individuals have resided when they received debt-management services from the applicant;

(6) A statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to have access to the trust account required by § 47-18-5522;

(7) The applicant's financial statements, reviewed by a licensed accountant, for each of the two (2) years immediately preceding the application or, if it has not been in operation for the two (2) years preceding the application, for the period of its existence. If the applicant claims nonprofit or tax exempt status, or if the applicant's business practices involve holding, accessing or directing the funds of an individual, the financial statements required by this part shall be audited by a licensed accountant;

(8) Evidence of accreditation or certification by an independent accrediting or certifying organization approved by the administrator;

(9) Evidence that, within twelve (12) months after initial employment, each of the applicant's counselors becomes certified as a certified counselor or certified debt specialist;

(10) A description of the three (3) most commonly used educational programs that the applicant provides or intends to provide to individuals who reside in this state and a copy of any materials used or to be used in those programs;

(11) A description of the applicant's financial analysis and initial budget plan, including any form or electronic model, used to evaluate the financial condition of individuals;

(12) A copy of each form of agreement that the applicant will use with individuals who reside in this state;

(13) The schedule of fees and charges that the applicant will use with individuals who reside in this state;

(14)(A) At the applicant's expense, the results of a state and national fingerprint-based criminal history records check conducted by the federal bureau of investigation (FBI) or the Tennessee bureau of investigation (TBI), covering every officer of the applicant and every employee or agent of the applicant who is authorized to have access to the trust account required by § 47-18-5522;

(B) The applicant shall obtain electronically-scanned fingerprints placed on standard FBI or TBI applicant cards through a company that has contracted with the state to provide a fingerprinting service; provided,

however, that the administrator may allow the applicant to instead provide the administrator with three (3) sets of classifiable fingerprints on standard FBI or TBI applicant cards for processing by the FBI or TBI for good cause;

(C) In the event the state no longer contracts with any company to provide an electronic fingerprinting service, the applicant shall submit three (3) classifiable TBI and FBI fingerprint cards to be processed at the applicant's expense;

(15) The names and addresses of all employers of each director during the ten (10) years immediately preceding the application;

(16) A description of any ownership interest of at least ten percent (10%) by a director, owner or employee of the applicant in:

(A) Any affiliate of the applicant; or

(B) Any entity that provides products or services to the applicant or any individual relating to the applicant's debt-management services;

(17) If an applicant claims nonprofit or tax exempt status, or if an applicant's business practices involve holding, accessing or directing the funds of an individual, a statement of the amount of compensation of the applicant's five (5) most highly compensated employees for each of the three (3) years immediately preceding the application or, if the applicant has not been in operation for the three (3) years preceding the application, for the period of the applicant's existence;

(18) The identity of each director who is an affiliate, as defined in § 47-18-5502(2)(A) or (2)(B)(i), (ii), (iv), (v), (vi) or (vii), of the applicant; and

(19) Any other information that the administrator reasonably requires to perform the administrator's duties under § 47-18-5509.

**47-25-512. Infringement.**

Subject to § 47-25-516, any person who:

(1) Uses, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this part in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, mistake or deception as to the source of origin of such goods or services;

(2) Reproduces, counterfeits, copies, or colorably imitates any such mark and applies such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of such goods or services;

(3) Uses the trade name or trademark, or a confusingly similar trade name or trademark, of any bank, savings and loan association, savings bank or subsidiary or affiliate of any bank, saving and loan association, saving bank or subsidiary in a solicitation for the offering of services or products if such use is likely to cause confusion, mistake or deception as to the source of origin, affiliation or sponsorship of such products or services; or, uses the trade name or trademark, or confusingly similar trade name or trademark, of any bank, savings and loan association, savings bank or subsidiary or affiliate of any bank, saving and loan association, saving bank or subsidiary in any manner in a solicitation for the offering of services or products, unless the solicitation clearly and conspicuously states the following in bold-face

type on the front page of the solicitation:

(A) The name, address and telephone number of the person making the solicitation;

(B) A statement that the person making the solicitation is not affiliated with the bank, savings and loan association, savings bank or subsidiary or affiliate of any bank, saving and loan association, saving bank or subsidiary; and

(C) A statement that the solicitation is not authorized or sponsored by the bank, savings and loan association, savings bank or subsidiary or affiliate of any bank, saving and loan association, saving bank or subsidiary; or

(4) Uses the trade name or trademark, or a confusingly similar trade name or trademark of any place of entertainment, or the name of any event, person, or entity scheduled to perform at a place of entertainment in the domain of a ticket marketplace URL. It is not a violation of this subdivision (4) if the ticket marketplace obtained written authorization from the place of entertainment, event, person, or entity scheduled to perform at a place of entertainment to use the trade name, trademark, or name in the domain of the URL prior to the use. For purposes of this subdivision (4):

(A) "Domain" means the portion of text in a URL that is to the left of the top-level domains such as .com, .net, or .org;

(B) "Place of entertainment" means an entertainment facility in this state, such as a theater, stadium, museum, arena, amphitheater, racetrack, or other place where performances, concerts, exhibits, games, athletic events, or contests are held;

(C) "Ticket" means a printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at, to enter, or to attend a place of entertainment, even if not evidenced by any physical manifestation of the right, option, or opportunity; and

(D) "Ticket marketplace" means a website that provides a forum for or facilitates the buying and selling, or reselling, of a ticket;

shall be liable in a civil action by the registrant for any and all of the remedies provided in § 47-25-514, except that under subdivision (2) the registrant shall not be entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion, mistake or deception.

**47-25-1902. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "All-terrain vehicle" means a motorized vehicle with no less than four (4) non-highway tires, but no more than six (6) non-highway tires, that is limited in total dry weight to less than two thousand five hundred pounds (2,500 lbs.), and is eighty inches (80″) or less in width;

(2) "Attachment" means a machine or part of a machine designed to be used on and in conjunction with a motorcycle or off-road vehicle;

(3) "Current model" means a model listed in the supplier's, wholesaler's, manufacturer's or distributor's current sales manual or any supplements to the manual;

(4) "Current net price" means the price listed in the supplier's price list or catalogue in effect at the time the contract is canceled or discontinued, less any applicable trade and cash discounts;

(5) "Dealer" means any person engaged in the business of selling and retailing inventory, who enters into a retail agreement, and who, under the terms of the agreement receives inventory from the supplier. "Dealer" also includes a franchisee who otherwise meets the requirements of a dealer;

(6) "Franchise" or "franchise agreement" means a written or oral agreement for a definite or indefinite period, in which a person grants to another person authority to use a trade name, trademark, service mark or related characteristic within an exclusive territory, or to sell or distribute goods or services, within an exclusive territory, at wholesale, retail, by lease agreement or otherwise; provided, that a franchise is not created by a lease, license or concession granted by a dealer to sell goods or furnish services on or from premises that are occupied by the dealer-grantor primarily for its own merchandising activities;

(7) "Franchisee" means a person to whom a franchise is offered or granted;

(8) "Franchisor" means a person who grants a franchise to another person;

(9) "Inventory" means motorcycles, off-road vehicles, attachments and repair parts;

(10) "Motorcycle" means a motorcycle as defined in § 55-1-103;

(11) "Net cost" means the price the dealer actually paid to the supplier for the inventory, less any applicable trade, volume, or cash bonus discounts, plus freight and set-up expense;

(12) "Off-road vehicle" means any off-road motorcycle, all-terrain vehicle, utility vehicle or dune buggy;

(13) "Person" means a sole proprietor, partnership, corporation, or any other form of business organization;

(14) "Retail agreement" means an agreement, including a franchise agreement that meets the requirements of a retail agreement, whether express, implied, oral, or written, between two (2) or more persons:

(A) By which a person receives the right to:

(i) Sell or lease inventory or services at retail or wholesale; or

(ii) Use a trade name, trademark, service mark, logotype, advertising, or other commercial symbol; and

(B) In which the parties to the agreement have a joint interest, whether equal or unequal, in the offering, selling, or leasing of the inventory or services;

(15) "Superseded part" means any part that will provide the same function as a currently available part as of the date of cancellation;

(16) "Supplier" means a person who enters into a retail agreement and who, under the terms of the agreement, provides inventory or services to a dealer. "Supplier" includes a:

(A) Wholesaler;

(B) Manufacturer;

(C) Franchisor;

(D) Person that is a parent corporation or an affiliated corporation of a person identified in this subdivision (16); and

(E) A field representative, an officer, an agent, or another direct or indirect representative of a person identified in this subdivision (16); and

(17) "Terminate" includes the failure to renew.

**48-53-201. Short title.**

This part shall be known and may be cited as the "Nonprofit Fair Asset Protection Act."

**48-53-202. Nonprofit fair asset protection.**

Notwithstanding any provision of law to the contrary, it is unlawful for:

(1) A national nonprofit corporation that has received a charter under 36 U.S.C. Subt. II, Pt. B, to terminate, revoke, suspend, or fail to renew a license or charter affiliating a Tennessee nonprofit corporation with the national nonprofit corporation absent good cause;

(2) A national nonprofit corporation that has received a charter under 36 U.S.C. Subt. II, Pt. B, to discriminate against a licensed or chartered affiliated Tennessee nonprofit corporation by imposing requirements not imposed on other similarly situated affiliates of the national nonprofit corporation; or

(3) A national nonprofit corporation that has received a charter under 36 U.S.C. Subt. II, Pt. B, to act indirectly to accomplish what would be otherwise prohibited under this part.

**48-53-203. "Good cause" defined.**

For the purpose of this part, "good cause" means to exclude any refusal or failure by the Tennessee nonprofit corporation to make purchases of or to contract to make purchases of goods or services where the board of directors of the Tennessee nonprofit corporation determines, according to the standards set forth in § 48-58-301, that making a purchase or contracting to make a purchase is not in the best interest of the Tennessee nonprofit corporation or is commercially unreasonable.

**48-53-204. Violations — Remedies.**

(a) Any condition, stipulation, provision, or term of any agreement that is in conflict with this part or that would purport to waive or restrict the application of any provision of this part is void and unenforceable.

(b) Nothing in this part abrogates or amends the standards for directors set forth in § 48-58-301.

(c) In addition to any other remedies or rights of actions, a Tennessee nonprofit corporation that is injured by a violation or threatened violation of this part may bring a private right of action for injunctive relief and to recover costs and reasonable attorneys' fees if the Tennessee nonprofit corporation is the prevailing party in the action.

(d) All ordinances, resolutions, rules, or requirements of any type that are in conflict with this part are void and unenforceable.

**48-249-309. Series of members, holders, managers, directors, membership interests or financial rights.**

(a) **Establishment of series.** The LLC documents may establish, or provide for the establishment of, one (1) or more designated series of members, holders, managers, directors, membership interests or financial rights having separate rights, powers or duties, with respect to specified property or obligations of the LLC, or profits and losses associated with specified property

or obligations, and any such series may have a separate business purpose or investment objective.

(b) **Separateness of series.**

(1) Notwithstanding anything to the contrary set forth in this chapter, or under other applicable law, the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing, with respect to a particular series established under subsection (a), shall be enforceable against the assets of such series only, and not against the assets of the LLC generally, or any other series of the LLC, and, unless otherwise provided in the LLC documents, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the LLC generally, or any other series of the LLC, shall be enforceable against the assets of such series, in the event that:

(A) The LLC documents establish or provide for the establishment of one (1) or more series;

(B) Separate and distinct records are maintained for any such series, and the assets associated with any such series are reflected and held in such separate and distinct records, directly or indirectly, including through a nominee or otherwise, and accounted for in such separate and distinct records separately from the other assets of the LLC and the assets of any other series of the LLC; and

(C) Notice of the limitation on liabilities of a series, as referenced in this subsection (b) is set forth in the articles of the LLC.

(2) Notice in the articles of the limitation on liabilities of a series as provided in this subsection (b) shall be sufficient for all purposes of this chapter, whether or not the LLC has established any series, when such notice is included in the articles, and there shall be no requirement that any specific series of the LLC be referenced in such notice. The fact that articles that contain the notice of the limitation on liabilities of a series is on file with the secretary of state shall constitute notice of such limitation on liabilities of a series.

(c) **Voluntary personal liability.** Notwithstanding § 48-249-114(a), a member may agree to be liable for all of the debts, liabilities and obligations of one (1) or more specified series of an LLC, by provision in the articles with respect to such specified series in the manner set forth in § 48-249-114(f). Such provision in the articles with respect to one (1) or more specified series of an LLC shall not cause the member to be liable for the debts, liabilities and obligations of any of the other series of the LLC.

(d) **Classification of interests and voting rights.** The LLC documents may include the provisions authorized under § 48-249-303(a) or (b), or both, as to the directors, members, managers or holders of financial rights associated with a particular series, as if the series were a separate LLC.

(e) **Distributions.** Sections 48-249-304 — 48-249-306 shall apply to a series of an LLC, as if the series were a separate LLC.

(f) **Management duties; admission of members; transfer.** Parts 4 and 5 of this chapter shall apply to a series of an LLC, as if the series were a separate LLC.

(g) **Termination.** A series of an LLC may be terminated and its affairs wound up without causing the dissolution of the LLC or the termination of any other series of the LLC and without affecting the limitation on liability of the terminated series or any other series of the LLC. All provisions of this chapter

regarding dissolution or winding up of an LLC, including the rights of members, directors or managers to cause a dissolution of an LLC, shall apply to a series of an LLC, as if the series were a separate LLC.

(h) **Events of termination.** A series of an LLC shall be terminated and its affairs shall be wound up upon the occurrence of the same events or reasons as are provided in this chapter for an LLC.

(i) **Series of foreign LLCs.** If a foreign LLC that is applying for a certificate of authority to transact business in this state, or is authorized to transact business in this state, is governed by articles, an operating agreement or similar equivalent documents that establish or provide for the establishment of designated series of members, directors, managers or interests having separate rights, powers or duties with respect to specified property or obligations of the foreign LLC or profits and losses associated with specified property or obligations, that fact shall be so stated in the foreign LLC's application for a certificate of authority to transact business in this state, or an amendment of such certificate of authority. In addition, the foreign LLC shall state in such application or amendment, as applicable, whether the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of such series only, and not against the assets of the foreign LLC generally or any other series of the foreign LLC, and, unless otherwise provided in such application or amendment, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign LLC generally, or any other series of the foreign LLC, shall be enforceable against the assets of such series.

(j) Notwithstanding any provision of this chapter to the contrary, a series of an LLC may, in its own name:

(1) Contract;

(2) Hold title to assets, including real, personal, and intangible property;

(3) Grant liens and security interests; and

(4) Sue and be sued.

**49-1-104. Maximum class size — Waiver — Split-grade classes.**

(a) It is the intent of the general assembly that every LEA move expeditiously and promptly toward the goals established in this section, and to that end, neither the commissioner nor the state board of education shall grant waivers from the maximum class sizes established in this section. Every public local school system shall have as a policy that pupil-teacher ratios should not exceed the averages prescribed in this section. In no school building shall the average size of any grade level unit prescribed in this section exceed the stated average, though any individual class within that unit may exceed the average; provided, that no class shall exceed the prescribed maximum size.

| Grade Level | Average | Maximum Class Size |
|---|---|---|
| K-3 | 20 | 25 |
| 4-6 | 25 | 30 |
| 7-12 | 30 | 35 |
| Career and Technical Education | 20 | 25 |

(b) The state board of education, in consultation with the state department of education, shall establish class size standards and case load standards for instructional personnel and teachers having the primary responsibility for the development, implementation and updating of a student's individualized education plan (IEP). In addition to case load requirements, these standards shall address class size in all classrooms that include students with disabilities and students eligible for special education services.

(c) The average pupil/teacher ratios in this section shall establish the minimum number of regular classroom teaching positions in a school exclusive of the principal, assistant principal, counselor, elementary art, elementary music, elementary physical education, librarian, special education or other specialized positions.

(d) Class size limits may be exceeded in such areas as typewriting, junior reserve officers' training corps (JROTC) and instrumental and vocal music classes; provided, that the effectiveness of the instructional program in these areas is not impaired.

(e)(1) No local school system shall establish split-grade classes for the purpose of complying with this section. This subsection (e) does not prevent school systems from using transitional, ungraded or unstructured classes.

(2) No local school system shall establish split-grade classes for any purpose without the approval of the local board of education.

(3) The average size specified for the grade levels involved in split-grade classes will be the maximum size allowed in such classes, notwithstanding the maximum size otherwise allowed by this section.

(f) In the event of a natural disaster that results in the enrollment of displaced students, the commissioner of education may grant a waiver from the maximum class sizes established in this section.

(g)(1) LEAs that use the career academy or small learning community model may extend class sizes in career and technical education (CTE) classes in grades nine through twelve (9-12); provided, that the CTE class sizes do not exceed the maximum class size set for general education classes in grades seven through twelve (7-12).

(2) LEAs may seek a waiver from the commissioner of education to extend the CTE class size average in grades nine through twelve (9-12); provided, that the CTE class sizes do not exceed the maximum class size set for CTE classes.

(h) Any LEA operating a virtual school or virtual education program shall not exceed the teacher/pupil ratio for virtual schools set by the state board of education.

**49-1-107. Best practices clearinghouse.**

(a) The general assembly finds and declares that teaching practices in educational institutions that receive public funding for kindergarten through grade twelve (K-12) education should embrace and implement the best practices of models of K-12 education reform including those developed by charter schools, virtual schools, schools participating in voucher programs and other reform models that may arise. Such best practices should be implemented to:

(1) Encourage the use of different and innovative teaching methods proven to be effective through education reform models;

(2) Improve learning opportunities for all students; and

(3) Close the achievement gap between high-performing and low-performing students.

(b) In order to effectively identify and disseminate best practices of education reform, the state board of education, the department of education and the office of research and education accountability in the office of the comptroller of the treasury, shall confer with other education stakeholders and determine the best means of organizing and operating a best practices clearinghouse.

(c) The purpose of the best practices clearinghouse shall be to collaborate and cooperate with schools using models of education reform to identify their best practices, to implement a system for dissemination of such practices, to permit all public schools to learn from these best practices, and to assist public schools in the use of best practices. The best practices clearinghouse shall be charged with studying models of education reform to identify, develop and share best practices of these models with public schools.

(d) [Deleted by 2016 amendment.]

**49-1-201. Powers and duties of the commissioner.**

(a) The commissioner of education is responsible for the implementation of law or policies established by the general assembly or the state board of education.

(b) The commissioner shall attend all meetings of the state board of education and may speak at the meetings and make recommendations. Any recommendations made by the commissioner shall be made a part of the minutes of the meeting.

(c) The commissioner shall provide direction through administrative and supervisory activities designed to build and maintain an effective organization as follows:

(1) Employ and supervise the personnel within the department;

(2) Collect and publish, in accordance with the rules, regulations, policies and procedures of the state publications committee, statistics and other information relative to the public school system;

(3) Make tours of inspection and survey among the public schools throughout the state and to direct supervision through the divisions of the department;

(4) Require all teachers to attend county institutes or educational meetings on the date, at the hour and place designated by the county director of schools; provided, that schools shall not be suspended for more than ten (10) days in one (1) year; and provided further, that the place of the meeting shall be in the county where the school is located;

(5) See that the school laws and the regulations of the state board of education are faithfully executed;

(6) Prepare and distribute blank forms for all reports required by law or by the commissioner to be made by teachers, boards of education, directors of schools, county trustees and all other state, county and city officers;

(7) Distribute in electronic format to the local boards of education, at the conclusion of each regular session of the general assembly, copies of newly enacted public chapters pertaining to public education;

(8) Require all state and local public school officers and heads of state educational institutions under the department or the state board of educa-

tion to submit detailed reports annually; and, in case of emergency, the commissioner may require special reports at any time of any officer connected with the public school system;

(9) Appoint someone to make reports required to be made by the state or local public school officers and heads of state institutions named in this section when such officers fail to make full and accurate reports at the time designated, and to allow the appointee compensation not to exceed five dollars ($5.00) per day for the time actually employed in making the reports for the appointee's service, which shall be paid by the delinquent public school officer or the head of the state educational institution. Upon the refusal of the delinquent officer or head of the state educational institution to pay the compensation, the commissioner shall deduct that amount out of the state supplement to the delinquent officer's or head's salary or compensation and require the county trustee or other custodian of public school funds to withhold that amount out of any salary that may be due the delinquent officer;

(10) Preserve in the commissioner's office all official documents and matters in relation to educational subjects that may come into it;

(11) Report to the comptroller of the treasury, on July 1 of each year, the average daily attendance of the preceding year, as determined and taken from the daily attendance reports of the teachers and other officers of the various cities and counties, and on July 1 of odd years, biennially, the school census, as determined by the scholastic census enumeration;

(12) Submit annually to the governor a detailed report of the commissioner's official acts for the year ending June 30 preceding, exhibiting a full statistical account of the receipts and disbursements of the public school funds, the condition and progress of the public schools and making recommendations for improvements of the public school system;

(13) Prepare and furnish high school diplomas for graduates of senior, public high schools, approved by the state board of education;

(14) Revoke, when charges are made and approved by the director of schools and local board of education upon sufficient evidence, the license of any teacher, principal, supervisor or other school official who is guilty of immoral conduct; provided, that the teacher, principal, supervisor or other official shall be given ten (10) days' notice in writing and an opportunity to appear in defense;

(15)(A) Whenever it appears to the commissioner from the report of any school official or from any other reliable source that any portion of the school fund has been lost, misappropriated or in any way illegally disposed of or not collected, or is in danger of loss, misappropriation, illegal disposition or failure of collection, the commissioner may call upon the district attorney general, the county mayor or the county attorney to protect, recover or force collection of the funds; provided, that the governor shall first give approval to such action. This subdivision (c)(15)(A), however, shall not prohibit suits by one political subdivision against another political subdivision in the same county, or against the county, when the consent of the commissioner and the governor has not been obtained. The commissioner, with the consent of the governor and with the approval of the attorney general and reporter, is authorized to employ private legal counsel in order to protect, recover or force collection of any school funds; and

(B) The commissioner has authority to send a supervisor or supervisors, as provided for in this section, to any local school system to make investigation of public school accounts, records and files of any official handling the school funds or administering the public school system, and to enforce all school laws and regulations of the commissioner; provided, that the duty of the commissioner shall not be exercised until the local board of education has requested the investigation;

(16) Supervise high schools and furnish blank forms in accord with this title;

(17) Prescribe regulations regarding the display of flags on public school buildings;

(18) Require the heads of divisions under the commissioner's direction who handle state funds to give bonds sufficient to cover any liability to the state;

(19) Inspect, approve and classify such private schools of grades one through twelve (1-12), as well as nursery schools or kindergartens, or any combination of these, as shall request such inspection, approval and classification; provided, that the same standards as are used for the approval and classification of the public schools shall be used for such inspection, approval and classification;

(20)(A) Prepare and present to the state board of education for its approval, disapproval or amendment rules and regulations that are necessary to implement the policies, standards or guidelines of the state board or the education laws of the state;

(B) In the absence of the state board, the commissioner shall have, if necessary, the emergency rulemaking authority provided for in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; and

(C) The commissioner may prepare and promulgate, without board approval, rules and regulations that are solely necessary for the administrative operation and functions of the department; however, this authority shall not supersede the powers of the state board in policy matters and may be used only in performance of the commissioner's administrative responsibilities;

(21) Conduct, subject to approval of the state board of education, a program of public information concerning public schools, kindergarten through grade twelve (K-12);

(22) Approve evaluation plans developed by LEAs;

(23) [Deleted by 2018 amendment.]

(24) Inspect and approve child care centers operated by church-related schools, as defined by § 49-50-801, in accordance with the same health, fire and safety standards as are used in inspecting and approving child care centers operated in public schools;

(25) [Deleted by 2018 amendment.]

(26) [Deleted by 2018 amendment.]

(27) Authorize and administer a contract between the department of education and Miss Tennessee regarding safe and drug-free schools, subject to availability of federal funds that may be used for this purpose;

(28) Authorize and approve cooperative career and technical training programs, including work experience and career exploration programs, meeting the policies and guidelines of the state board for career and technical education that LEAs or public charter schools propose to operate.

The commissioner shall monitor the operation of the programs and shall require periodic reporting by the LEAs or public charter schools conducting the programs as the commissioner deems appropriate, reasonable and necessary to evaluate the operation and the effectiveness of the programs; and

(29) [Deleted by 2018 amendment.]

(30) Require each LEA's director of schools to submit to the department of education an annual personnel report, which shall include all noncertificated personnel, part-time or full-time, employed by the school system. The report shall contain, but not be limited to, name, work location, level of education, level of experience, highly qualified status, hourly wage, number of contract days, number of paid holidays, hours per day worked, paid leave accumulation and annual salary.

(d)(1) Upon application by the LEA for one (1) or more of its schools, the commissioner of education may waive any state board rule or statute that inhibits or hinders the LEA's ability to meet its goals or comply with its mission. However, the commissioner may not waive regulatory or statutory requirements related to:

(A) Federal and state civil rights;

(B) Federal, state and local health and safety;

(C) Federal and state public records;

(D) Immunizations;

(E) Possession of weapons on school grounds;

(F) Background checks and fingerprinting of personnel;

(G) Federal and state special education services;

(H) Student due process;

(I) Parental rights;

(J) Federal and state student assessment and accountability;

(K) Open meetings;

(L) Educators' due process rights;

(M) Reductions in teachers' salaries;

(N) Employee rights, salaries and benefits; and

(O) Licensure of employees.

(2) No provisions of subdivision (d)(1) shall be construed to impact memoranda of understanding under the Professional Educators Collaborative Conferencing Act of 2011, compiled in chapter 5, part 6 of this title.

(e) Notwithstanding any law to the contrary, the commissioner shall assist the council on children's mental health care in developing a plan that will establish demonstration sites in certain geographic areas where children's mental health care is child-centered, family-driven and culturally and linguistically competent and that provides a coordinated system of care for children's mental health needs in this state.

(f)(1) The commissioner of education, in collaboration with the state-level school safety team established under § 49-6-802, shall develop guidelines and training for all public school administrators and human resource personnel regarding the prevention of workplace violence. Such guidelines and training shall include outlines and related materials for use in the delivery of in-service training activities for teachers and other school personnel, and to further include materials and training or recognizing and responding to employee alcohol and substance abuse.

(2) The commissioner is authorized to direct up to five percent (5%) of the funds appropriated for the Safe Schools Act of 1998, codified in § 49-6-

4302(c), to the Tennessee school safety center for the development and delivery of training materials and guidelines as specified under § 49-6-4302(a).

**49-1-208. [Repealed.]**

**49-1-217. [Repealed.]**

**49-1-221. Policy on use of Internet — Filing of policy — Contents.**

(a)(1) Each LEA shall adopt an internet acceptable use policy. At a minimum, the policy shall contain provisions that:

(A) Are designed to prohibit certain inappropriate use by school district employees and students of the school district's computers via the Internet;

(B) Seek to prevent access by students to material that the school district deems to be harmful to juveniles;

(C) Select a technology for the school district's computers having Internet access to filter or block Internet access through the computers to child pornography and obscenity;

(D) Establish appropriate measures to be taken against persons who violate the policy;

(E) Include a component on Internet safety for students that is integrated in a school district's instructional program; and

(F) Encourage communications with parents that raise awareness about Internet safety using existing avenues of communication, such as parent-teacher conferences.

(2) The policy may include such other terms, conditions and requirements as deemed appropriate, such as requiring written parental authorization for Internet use by juveniles or differentiating acceptable uses among elementary, middle and high school students.

(b) The director of schools shall take such steps as appropriate to implement and enforce the school district's policy.

(c) [Deleted by 2018 amendment.]

(d) [Deleted by 2018 amendment.]

(e) [Deleted by 2018 amendment.]

(f) [Deleted by 2018 amendment.]

(g) [Deleted by 2018 amendment.]

**49-1-222. [Repealed.]**

**49-1-224. Education Pays Act — Award of rewards — Funding.**

(a) As used in this section, "education pays reward" means a reward of cash or other thing of value given to either an individual student or the student's custodial parent or guardian, or both, in recognition of academic achievement.

(b) Each LEA is encouraged to develop an education pays pilot program for at-risk students to encourage student academic achievement through the award of education pays rewards.

(c) An education pays pilot program may be funded through private donations. Any LEA for which a private foundation or other organization expresses willingness to fund an education pays pilot program shall work with such organization in developing an education pays pilot program in order to encourage at-risk students to achieve greater academic success through

participation in the program.

(d) [Deleted by 2018 amendment.]

**49-1-225. [Repealed.]**

**49-1-226. Adoption of core standards in subjects beyond math and English language arts prohibited.**

(a) [Deleted by 2018 amendment.]

(b) [Deleted by 2018 amendment.]

(c) The state shall not adopt common core state standards in any subject matter beyond math and English language arts.

**49-1-228. School grading system — State report card — Implementation — Notice.**

(a) The department of education shall develop a school grading system that annually assigns A, B, C, D, and F letter grades to schools based on:

(1) Student performance on the Tennessee comprehensive assessment program (TCAP) tests or end-of-course exams;

(2) Student growth as indicated by Tennessee Value-Added Assessment System (TVAAS) data or data from other measures of student growth; and

(3) Other outcome indicators of student achievement that the department finds to be reliable measures of school performance.

(b) The department of education shall include each school's A, B, C, D, or F grade on the state report card.

(c) Implementation of the school grading system shall begin in the 2017-2018 school year; provided, however, prior to implementation, the state board shall review the grading scale developed by the department.

(d) The department shall provide notice of the adopted grading scale to each LEA prior to the start of the 2017-2018 school year.

(e) Notwithstanding subsection (a), student performance and student growth data from the TNReady assessments administered in the 2017-2018 school year shall not be used to assign a letter grade to a school pursuant to this section.

**49-1-230. Development of training programs for adverse childhood experiences.**

(a) As used in this section, "adverse childhood experiences" or "ACEs" mean stressful or traumatic events experienced by a minor child. ACEs include, but are not limited to, a child witnessing, or being the victim of, physical abuse, sexual abuse, emotional abuse, physical neglect, emotional neglect, domestic violence, substance abuse, mental illness, parental separation or divorce, and incarceration.

(b) The department of education shall develop an evidence-based training program on ACEs for school leaders and teachers. The training may be delivered through the trainer of trainers model under § 49-1-213, and shall include:

(1) The effects of ACEs on a child's mental, physical, social, behavioral, emotional, and cognitive development;

(2) ACEs as a risk factor for the development of substance abuse disorders and other at-risk health behaviors;

(3) Trauma-informed principles and practices for classrooms; and

(4) How early identification of children exposed to one (1) or more ACEs may improve educational outcomes.

(c) An LEA may develop its own ACEs training program to make available to the LEA's school personnel.

**49-1-231. Student support collaborative.**

The department of education shall establish a student support collaborative to review and define the roles and responsibilities for school social workers, school counselors, school psychologists, and school nurses. The collaborative shall identify available resources and areas that school social workers, school counselors, school psychologists, and school nurses can collaborate on to provide high quality support to students. The collaborative shall include, at a minimum, representatives from the following organizations:

(1) The department of education;

(2) Local education agencies (LEAs);

(3) The National Association of Social Workers, Tennessee Chapter;

(4) The Tennessee Association of School Social Workers;

(5) The Tennessee Association of School Counselors;

(6) The Tennessee Association of School Nurses;

(7) The Tennessee Association of School Psychologists; and

(8) The Tennessee Commission on Children and Youth.

**49-1-301. Composition — Chair — Meetings. [Effective until January 1, 2019. See the version effective on January 1, 2019.]**

(a)(1) The state board of education shall be composed of nine (9) appointed members, one (1) public high school student member and one (1) ex officio member. One (1) appointed member shall be appointed from, and represent, each congressional district. The member shall reside within the congressional district from which the member is appointed as such district is apportioned at the time of the member's appointment. The position of any member shall become vacant when the member ceases to reside in such district. Appointments from reapportioned congressional districts shall be made as vacancies occur. No incumbent member shall be removed from the incumbent member's seat prior to the expiration of the incumbent member's current term as a result of changes in congressional districts occasioned by reapportionment. The position of any member shall become vacant when the member misses, without cause, more than two (2) consecutive meetings within any twelve-month period. Cause shall be determined by the board.

(2) The terms for all members shall begin April 1, 1984. The terms of the initial nine (9) appointments shall be three (3) years for three (3) members, six (6) years for three (3) members, and nine (9) years for three (3) members as designated by the governor in the governor's appointments. As the terms expire, successors shall be appointed for five-year terms. Vacancies shall be filled for the remainder of the unexpired term. At least three (3) members shall be appointed from both the majority and minority parties, as defined in § 2-1-104. At least one (1) member shall be a member of the minority race. Board members may be reappointed. In making appointments to the board, the governor shall strive to ensure that at least one (1) person appointed to serve on the board is sixty (60) years of age or older. Appointments made

after January 1, 1995, shall alternate such that every other appointment of a new member to the board shall be a female until the membership of the board reflects the percentage of females in the population generally, after which this sentence shall cease to be effective.

(3) All appointive members shall be appointed by the governor subject to confirmation by the senate and house of representatives, but appointments shall be effective until adversely acted upon by the senate and house of representatives. Members of the existing board of education shall continue to serve until their successors are appointed and confirmed.

(4) No appointed member of the board shall be an elected official or employee of the federal, state or a local government. Beginning with appointments made on or after January 1, 2004, at least one (1), but not more than one (1), appointed member of the board shall be employed, at the time of the appointment, as a kindergarten through grade twelve (K-12) public school teacher.

(5) The executive director of the higher education commission shall be an ex officio, nonvoting member of the board.

(6) The high school student shall be of superlative standing and shall serve for a one-year term in an ex officio capacity. The student member shall be appointed each year from nominees chosen by the local board of education in each school system at each board's discretion, with no more than one (1) student from each school system being nominated, and with the students having reached their junior or senior year in high school.

(b) The chair of the board shall be elected by the members of the board for a term of four (4) years. A chair may be reelected. The chair of the board shall appoint the chair and members of any committee of board members.

(c) Each member shall be reimbursed for travel expenses in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d)(1) The board shall meet at least quarterly, with at least two (2) meetings held in Nashville. Other meetings may be held at the capital, or at such other location within the state as the board may determine.

(2) The chair may call special meetings whenever necessary for the transaction of urgent business. The chair of the board shall notify each member of the board and the commissioner of education of any special meeting before the time fixed for the special meeting.

(3) A majority of the board may petition the chair to call a special meeting in accordance with subdivision (d)(2).

(4) Meetings of the board shall be made available for viewing by the public over the Internet by streaming video accessible from the board's web site. Archived videos of the board's meetings shall also be available to the public through the board's web site.

(e) For administrative purposes, the board shall be housed in the department of education, but this shall not allow the commissioner of education any administrative or supervisory authority over the board or its staff.

**49-1-301. Composition — Chair — Meetings. [Effective on January 1, 2019. See the version effective until January 1, 2019.]**

*(a)(1) The state board of education shall be composed of nine (9) appointed members, one (1) public high school student member and one (1) ex officio*

*member. One (1) appointed member shall be appointed from, and represent, each congressional district. The member shall reside within the congressional district from which the member is appointed as such district is apportioned at the time of the member's appointment. The position of any member shall become vacant when the member ceases to reside in such district. Appointments from reapportioned congressional districts shall be made as vacancies occur. No incumbent member shall be removed from the incumbent member's seat prior to the expiration of the incumbent member's current term as a result of changes in congressional districts occasioned by reapportionment. The position of any member shall become vacant when the member misses, without cause, more than two (2) consecutive meetings within any twelve-month period. Cause shall be determined by the board.*

*(2) The terms for all members shall begin April 1, 1984. The terms of the initial nine (9) appointments shall be three (3) years for three (3) members, six (6) years for three (3) members, and nine (9) years for three (3) members as designated by the governor in the governor's appointments. As the terms expire, successors shall be appointed for five-year terms. Vacancies shall be filled for the remainder of the unexpired term. At least three (3) members shall be appointed from both the majority and minority parties, as defined in § 2-1-104. At least one (1) member shall be a member of the minority race. Board members may be reappointed. In making appointments to the board, the governor shall strive to ensure that at least one (1) person appointed to serve on the board is sixty (60) years of age or older. Appointments made after January 1, 1995, shall alternate such that every other appointment of a new member to the board shall be a female until the membership of the board reflects the percentage of females in the population generally, after which this sentence shall cease to be effective.*

*(3) All appointive members shall be appointed by the governor subject to confirmation by the senate and house of representatives, but appointments shall be effective until adversely acted upon by the senate and house of representatives. Members of the existing board of education shall continue to serve until their successors are appointed and confirmed.*

*(4) No appointed member of the board shall be an elected official or employee of the federal, state or a local government. Beginning with appointments made on or after January 1, 2004, at least one (1), but not more than one (1), appointed member of the board shall be employed, at the time of the appointment, as a kindergarten through grade twelve (K-12) public school teacher.*

*(5) The executive director of the higher education commission shall be an ex officio, nonvoting member of the board.*

*(6) The high school student shall be of superlative standing and shall serve for a one-year term in an ex officio capacity. The student member shall be appointed each year from nominees chosen by the local board of education in each school system at each board's discretion, with no more than one (1) student from each school system being nominated, and with the students having reached their junior or senior year in high school.*

*(b) The chair of the board shall be elected by the members of the board for a term of two (2) years. A chair may be reelected. The chair of the board shall appoint the chair and members of any committee of board members.*

*(c) Each member shall be reimbursed for travel expenses in accordance with the comprehensive travel regulations as promulgated by the department of*

*finance and administration and approved by the attorney general and reporter.*

*(d)(1) The board shall meet at least quarterly, with at least two (2) meetings held in Nashville. Other meetings may be held at the capital, or at such other location within the state as the board may determine.*

*(2) The chair may call special meetings whenever necessary for the transaction of urgent business. The chair of the board shall notify each member of the board and the commissioner of education of any special meeting before the time fixed for the special meeting.*

*(3) A majority of the board may petition the chair to call a special meeting in accordance with subdivision (d)(2).*

*(4) Meetings of the board shall be made available for viewing by the public over the Internet by streaming video accessible from the board's web site. Archived videos of the board's meetings shall also be available to the public through the board's web site.*

*(e) For administrative purposes, the board shall be housed in the department of education, but this shall not allow the commissioner of education any administrative or supervisory authority over the board or its staff.*

**49-1-302. Powers and duties of board — Confidentiality of records — Standards, policies, recommendations and actions subject to appropriations — Duty-free teacher time — Confidentiality and integrity of statewide tests — Ungraded and unstructured classes — Limits on local costs of special education — Recruitment, employment and retention of African-American teachers — Uniform clothing — Railroad crossing safety — Standards of care and other educational endeavors.**

(a) It is the duty of the board, and it has the power to:

(1)(A) Study programs of instruction in public schools, kindergarten through grade twelve (K-12);

(B) Analyze the needs of such public schools;

(C) Study the use of public funds for such public schools;

(D) Include the conclusions of the studies and analyses in its annual recommendations to the governor and general assembly for the funding of public education; and

(E) Issue professional licenses upon the work done in standard teacher-training institutions, colleges and universities that shall be approved by the state board of education after inspection as may be provided by the board;

(2) Set policies for:

(A) The completion of elementary, middle, junior high and senior high schools as structured in each school district;

(B) Evaluating individual student progress and achievement;

(C) Evaluating individual teachers; and

(D) Measuring the educational achievement of individual schools;

(3) Develop and maintain current a master plan for the development of public education, kindergarten through grade twelve (K-12), and provide recommendations to the executive branch, the general assembly and the local boards of education and directors of schools regarding the use of public funds for education;

(4)(A) Develop and adopt policies, formulas and guidelines for the fair and equitable distribution and use of public funds among public schools and for the funding of all requirements of state laws, rules, regulations and other required expenses, and to regulate expenditures of state appropriations for public education, kindergarten through grade twelve (K-12). The policies, formulas and guidelines may be changed as necessary, but not more often than once per appropriation period, and shall not be considered rules subject to promulgation under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The policies, formulas and guidelines adopted by the board shall consider and include provisions for current operation and maintenance, textbooks and instructional materials, school food services, pupil transportation, career and technical education, number of programs of pupils served, measurable pupil improvement, reduction of pupil dropouts, teacher training, experience and certification, pupil-teacher ratio, substitute teacher reimbursement, requirements prescribed by state laws, rules, regulations or other required costs, and inflation, and may include other elements deemed by the board to be necessary. Any changes in the basic education program components of the formula as approved by the board for the 1992-1993 fiscal year must first be approved by the commissioners of education and finance and administration;

(B) The board shall establish a review committee for the Tennessee basic education program (BEP). The committee shall include the executive director of the state board of education, the commissioner of education, the commissioner of finance and administration, the comptroller of the treasury, the director of the Tennessee advisory commission on intergovernmental relations, the chair of the education committee of the senate, the chair of the education administration and planning committee of the house of representatives, and the director of the office of legislative budget analysis, or their designees. The board shall appoint at least one (1) member from each of the following groups: teachers, school boards, directors of schools, county governments, municipal governments that operate LEAs, finance directors of urban school systems, finance directors of suburban school systems, and finance directors of rural school systems. The BEP review committee shall meet at least four (4) times a year and shall regularly review the BEP components, as well as identify needed revisions, additions, or deletions to the formula. The committee shall annually review the BEP instructional positions component, taking into consideration factors including, but not limited to, total instructional salary disparity among LEAs, differences in benefits and other compensation among LEAs, inflation, and instructional salaries in states in the southeast and other regions. The committee shall prepare an annual report on the BEP and shall provide the report on or before November 1 of each year, to the governor, the state board of education, the finance, ways and means committees of the senate and the house of representatives, the education committee of the senate, and the education administration and planning committee of the house of representatives. This report shall include recommendations on needed revisions, additions, and deletions to the formula, as well as an analysis of instructional salary disparity among LEAs, including an analysis of disparity in benefits and other compensation among LEAs;

(5)(A) Adopt policies governing:

(i) The qualifications, requirements and standards of and provide the licenses and certificates for all public school teachers, principals, assistant principals, supervisors and directors of schools;

(ii) Evaluation of teachers, principals, assistant principals, supervisors and directors of schools;

(iii) Retraining and professional development; and

(iv) Discipline of licensed personnel for misconduct by formal reprimand or by the suspension and revocation of licenses and certificates;

(B) The board may adopt a policy establishing levels of compensation that are correlated to levels and standards of teacher competency approved by the board;

(6) Set policies for graduation requirements in kindergarten through grade twelve (K-12);

(7) Set policies for the review, approval or disapproval and classification of all public schools, kindergarten through grade twelve (K-12), or any combination of these grades;

(8) Set policies governing all academic standards and courses of study in the public schools;

(9) Prescribe the use of textbooks and other instructional materials, based on recommendations of the state textbook and instructional materials quality commission, for the various subjects taught or used in conjunction with the public schools;

(10) Meet jointly with the higher education commission and the commissioner of education at least annually for the purpose of reviewing the expenditures and programs of public education;

(11) Approve, disapprove or amend rules and regulations prepared by the commissioner to implement policies, standards or guidelines of the board in order to effectuate this section;

(12) Determine the ways and means of improving teacher, student and school performances, and to set policies to accomplish such improvements;

(13) Provide, in association with the commissioner, an annual report, no later than February 1, on teacher, student and school performance to the governor and to the general assembly;

(14) Prescribe rules and regulations to establish a program whereby a local school may withhold all grade cards, diplomas, certificates of progress or transcripts of a student who has incurred a debt to the school or a student who has taken property that belongs to a local school or any agency of the school until the student makes restitution to the school for the debt. The rules and regulations shall not permit the imposition of sanctions against a student who is without fault;

(15)(A) Develop a professional credentialing program for school principals that includes professional training and testing components. LEAs shall have the option of participating in the program; provided, that all school principals employed for the first time by LEAs for the 1994-1995 school year shall have attended the program and shall have received the full credential offered through the program;

(B) Persons having an endorsement in administration/supervision, supervisor of instruction or principal on August 31, 1994, shall maintain that credential and shall not be required to complete the professional credentialing program as provided in this subdivision (a)(15);

(C) Any person who performs the duties of a supervisor of instruction, regardless of the title of the person's position, must have the credential required for a supervisor of instruction;

(D) Persons having an endorsement as a supervisor of instruction on August 31, 1994, shall maintain the credential and shall not be required to complete the professional credentialing program as provided in this subdivision (a)(15);

(16) [Deleted by 2018 amendment.]

(17) The general assembly finds that, given the fact that the state provides substantial financial academic assistance to students of the state based on cumulative grade point averages and the fact that LEAs currently use a variety of grading scales, it is in the best interest of the students of the public schools that a uniform grading system be developed and adopted by the state board of education to be implemented in all public schools of the state. The state board of education is authorized to promulgate rules and regulations for the administration of this subdivision (a)(17);

(18) Develop guidelines for the establishment by LEAs of differentiated pay plans, including plans that offer bonuses, including performance bonuses, that are supplemental to the salary schedules required under § 49-3-306. The plans shall address additional pay for teaching subjects or teaching in schools for which LEAs have difficulty hiring and retaining highly qualified teachers;

(19) [Deleted by 2018 amendment.]

(20) Develop guidelines for the use of LEAs to strengthen personal finance standards, based on recommendations by the financial literacy commission pursuant to § 49-6-1704, and require that certain financial literacy concepts are included as a part of the standards for social studies approved by the board.

(b) All records, reports, studies, statistics and other information and materials of the department relative to the public school system shall be available upon request to the board and its executive director and other staff personnel, except such records as may be confidential by law.

(c) Standards, policies, recommendations and actions of the board shall be subject in all cases to availability of funds as appropriated by law.

(d)(1) There is hereby created the teacher evaluation advisory committee. The committee shall consist of fifteen (15) members. The commissioner of education, the executive director of the state board of education and the chairpersons of the education committees of the senate and the house of representatives shall be members. One (1) member shall be a kindergarten through grade twelve (K-12) public school teacher appointed by the speaker of the house of representatives and one (1) member shall be a kindergarten through grade twelve (K-12) public school teacher appointed by the speaker of the senate. The remaining nine (9) members shall be appointed by the governor and shall consist of three (3) public school teachers, two (2) public school principals, one (1) director of a school district and three (3) members representing other stakeholders' interests; provided, that at least one (1) member of the committee shall be a parent of a currently enrolled public school student. The membership of the committee shall appropriately reflect the racial and geographic diversity of this state. The commissioner of education shall serve as the chairperson of the committee. All appointments to the teacher evaluation advisory committee shall be made within thirty

(30) days of January 16, 2010. If the commissioner of education who is initially appointed to the committee as chairperson ceases to be the commissioner of education because of resignation or retirement, then such former commissioner shall remain a member of the committee until the committee ceases to exist. The total number of members of the committee shall thereby be increased to sixteen (16).

(2)(A) The committee shall develop and recommend to the board guidelines and criteria for the annual evaluation of all teachers and principals employed by LEAs, including a local level evaluation grievance procedure. This grievance procedure shall provide a means for evaluated teachers and principals to challenge only the accuracy of the data used in the evaluation and the adherence to the evaluation policies adopted pursuant to this subdivision (d)(2). Following the development of these guidelines and criteria, the board shall adopt guidelines and criteria. The evaluations shall be a factor in employment decisions, including, but not necessarily limited to, promotion, retention, termination, compensation and the attainment of tenure status; however, nothing in this subdivision (d)(2)(A) shall require an LEA to use student achievement data based on state assessments as the sole factor in employment decisions.

(B)(i) Fifty percent (50%) of the evaluation criteria developed pursuant to this subdivision (d)(2) shall be comprised of student achievement data.

(ii) Thirty-five percent (35%) of the evaluation criteria shall be student achievement data based on student growth data as represented by the Tennessee Value-Added Assessment System (TVAAS), developed pursuant to part 6 of this chapter, or some other comparable measure of student growth, if no such TVAAS data is available.

(iii) Fifteen percent (15%) shall be based on other measures of student achievement selected from a list of such measures developed by the teacher evaluation advisory committee and adopted by the board. For each evaluation, the teacher or principal being evaluated shall mutually agree with the person or persons responsible for conducting the evaluation on which such measures are employed. If the teacher or principal being evaluated and the person or persons responsible for conducting the evaluation do not agree on the measures that are to be used, the teacher or principal shall choose the evaluation measures. The evaluation measures shall be verified by the department of education to ensure that the evaluations correspond with the teaching assignment of each individual teacher and the duty assignments of each individual principal.

(iv) Notwithstanding subdivisions (d)(2)(B)(ii) and (iii), if a particular teacher's or principal's student growth data, as described in subdivision (d)(2)(B)(ii), reflects attainment of a specific achievement level, to be recommended by the teacher evaluation advisory committee and adopted by the board, then such student growth data may, at the choice of the individual being evaluated, comprise fifty percent (50%) of their evaluation.

(v) Notwithstanding subdivision (d)(2)(B)(iv), if an individual teacher's student growth data, as described in subdivision (d)(2)(B)(ii), reflects attainment of an achievement level demonstrating an effectiveness level of above expectations or significantly above expectations as

provided in the evaluation guidelines adopted by the board pursuant to this subdivision (d)(2), then such student growth data may, at the discretion of the LEA and upon request of the teacher, comprise one hundred percent (100%) of the teacher's final evaluation score. If the LEA chooses to implement this subdivision (d)(2)(B)(v), it must do so for all teachers with individual growth data who request its implementation.

(vi) For teachers without access to individual growth data representative of student growth as specified in subdivision (d)(2)(B)(ii), thirty percent (30%) of the evaluation criteria shall be comprised of student achievement data with fifteen percent (15%) of the evaluation criteria based on student growth as specified in subdivision (d)(2)(B)(ii) and represented by TVAAS evaluation composites; however, in the 2015-2016 school year, none of the evaluation criteria representative of student growth as specified in subdivision (d)(2)(B)(ii) shall be based on TVAAS unless the inclusion of such data results in a higher evaluation score for the teacher. In the 2016-2017 school year, no more than ten percent (10%) of the evaluation criteria shall be based on TVAAS data. The qualitative portion of the evaluation shall be increased to account for any necessary reduction to the student growth measure.

(vii) The board shall have the ultimate authority to determine, identify and adopt measures of student growth that are comparable to the TVAAS.

(viii) By the 2019-2020 school year, in order to provide individual growth scores to teachers in non-tested grades and subjects, LEAs shall use at least one (1) appropriate alternative growth model that has been approved by the state board of education.

(ix) The department of education shall work to develop valid and reliable alternative student growth models for the grade levels and subjects that do not have models as of March 14, 2018.

(C) Other mandatory criteria for the evaluations shall include, but not necessarily be limited to, the following:

(i) Review of prior evaluations;

(ii) Personal conferences to include discussion of strengths, weaknesses and remediation;

(iii) Relative to teachers only, classroom or position observation followed by written assessment; and

(iv) Relative to principals only, additional criteria pursuant to § 49-2-303(a)(1).

(D) No rules, policies, or guidelines shall be established that require the classroom or position observation results pursuant to subdivision (d)(2)(C) to be aligned with TVAAS data.

(E) For teachers with access to individual data representative of student growth as specified in subdivision (d)(2)(B)(ii), the following provisions shall apply:

(i) In the 2016-2017 school year, the evaluation criteria identified in subdivision (d)(2)(B)(ii) shall be adjusted so that student growth data generated by assessments administered in the 2016-2017 school year shall account for ten percent (10%) of the overall evaluation criteria identified in subdivision (d)(2)(B);

(ii) In the 2017-2018 school year, the evaluation criteria identified in subdivision (d)(2)(B)(ii) shall be adjusted so that student growth data

generated by assessments administered in the 2016-2017 and 2017-2018 school years shall account for twenty percent (20%) of the overall evaluation criteria identified in subdivision (d)(2)(B);

(iii) In the 2018-2019 school year and thereafter, the student growth component of the evaluation criteria shall be determined under subdivision (d)(2)(B)(ii);

(iv) The most recent year's student growth evaluation composite shall account for the full thirty-five percent (35%) of growth data required in a teacher's evaluation if such use results in a higher evaluation score;

(v) For the 2015-2016 through 2017-2018 school years, student growth evaluation composites generated by assessments administered in the 2015-2016 school year shall be excluded from the student growth measure as specified in subdivision (d)(2)(B)(ii) if such exclusion results in a higher evaluation score for the teacher or principal. The qualitative portion of the evaluation shall be increased to account for any necessary reduction to the student growth measure.

(3) The policies adopted pursuant to subdivision (d)(2) shall be effective no later than July 1, 2011, in order to be implemented prior to the 2011-2012 academic year. Prior to the implementation of these policies, the existing guidelines and criteria for the evaluation of certificated persons employed by LEAs shall continue to be utilized.

(4) The evaluation procedure created by this subsection (d) shall not apply to teachers who are employed under contracts of duration of one hundred twenty (120) days per school year or less or who are not employed full-time.

(5) The committee shall be subject to the governmental entity review law, compiled in title 4, chapter 29, and shall terminate on July 1, 2011.

(6) If an LEA determines that it is necessary to assign an individual to teach in an area for which the individual is not endorsed, any evaluation conducted for the course outside the area of endorsement shall relate only to the improvement of teaching skills and strategies and not a determination of competency. The board shall include as a part of its evaluation guidelines a specific reference to this use of its evaluation procedures.

(7) Pursuant to state board of education rules and policies, an LEA may utilize either the state board adopted model plan for the qualitative portion of teacher evaluation or an evaluation model that has been proposed by the LEA and approved by the state board of education. Evaluation models approved by the state board of education may, with local board approval, be utilized in any LEA.

(e)(1) The board shall develop and adopt rules and regulations to achieve a duty-free lunch period for all teachers, kindergarten through grade twelve (K-12), of at least the length of the student lunch period, during which time the teacher has no other assigned responsibilities.

(2) The board shall develop and adopt rules and regulations providing teachers in kindergarten through grade twelve (K-12) with individual duty-free planning periods during the established instructional day. The rules shall provide for annual reporting to the state department of LEA compliance by board policy or negotiations with a recognized professional employees' organization. At least two and one half (2 ½) hours of individual planning time shall be provided each week during which teachers have no other assigned duties or responsibilities, other than planning for instruction. The two and one half (2 ½) hours may be divided on a daily or other basis.

Duty-free planning time shall not occur during any period that teachers are entitled to duty-free lunch. Any LEA that is providing a duty-free planning period by extending the school day by thirty (30) minutes as of the beginning of the 2000-2001 school year may continue that practice and satisfy the requirements of this section.

(f) All statewide tests developed or provided by the department to measure individual student progress and achievement, all banks of questions, all field testing documents used as background for the development of the tests, and all answers shall be kept confidential when and for so long as is necessary to protect the integrity of the tests.

(g) The commissioner shall recommend, and the board shall adopt, rules permitting local boards of education to operate ungraded or unstructured classes in the primary grades, kindergarten through grade three (K-3). Operation of such classes under board rules shall not impair the LEA's participation in the basic education program.

(h) [Deleted by 2018 amendment.]

(i) The commissioner shall recommend, and the board shall adopt, rules urging each local board of education to establish reasonable, incremental goals for recruitment, employment and retention of African-American teachers in numbers that at least reflect the percentage of African-Americans within the community served by the LEA. The rules shall also urge each local board of education to develop and implement a reasonable plan of action for attaining such goals, and shall further urge that a copy of the plan be timely filed with the commissioner for evaluation and approval. The rules shall also urge periodic filing of progress reports to indicate the level of success in attaining the goals.

(j) The board shall develop guidelines and criteria for local adoption and enforcement of uniform clothing for public school students. These guidelines and criteria shall require that uniform clothing be simple, appropriate, readily available and inexpensive. The board shall disseminate these guidelines and criteria to LEAs. These guidelines and criteria can be used as a tool for LEAs that may adopt uniform clothing policies. Adoption of uniform clothing policies shall be at the discretion of the local board of education.

(k) [Deleted by 2018 amendment.]

(*l*)(1) The board, through the state department of education, shall enforce standards for:

(A) Care of children in any before or after school child care programs operated pursuant to § 49-2-203(b)(11);

(B) Child care provided by church affiliated schools as defined by § 49-50-801;

(C) Public school administered early childhood education programs;

(D) Child care provided in federally regulated programs including Title I preschools, all school administered head start and even start programs;

(E) State approved Montessori school programs; and

(F) Programs operated by private schools as defined by § 49-6-3001(c)(3).

(2)(A) The board shall promulgate regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2, to establish standards for those programs described in subdivision (*l*)(1).

(B) The regulations shall provide equivalent protection for the health, safety and welfare of children, and shall use the same criteria for

development of such protection as are used by the department of human services and that are set forth in § 71-3-502(a)(3). Although the standards and regulations need not be identical in all respects, the standards and regulations shall parallel, in a substantial manner, the child care standards and regulations promulgated by the department of human services for child care agencies that the department of human services licenses.

(3) Certificates of approval shall be issued pursuant to those regulations by the commissioner of education, pursuant to part 11 of this chapter, to those child care programs that meet the standards as adopted by the board.

(4)(A) There is established a child care advisory council, which shall advise the state board of education regarding the establishment of child care standards and regulations for child care programs subject to the board's jurisdiction and to act as a hearing tribunal for appeals from actions of the state department of education regarding the certificate of approval issued to child care programs.

(B)(i) The council shall consist of a director of a local school system, a representative of a private, church related school organization as defined in § 49-50-801, a representative from an institution of higher education with expertise in early childhood development, a parent of a child in a child care program, a coordinator of child care programs, a representative of the department of education, a representative from the child care services staff of the department of human services as designated by the state board of education, and four (4) other members as may be designated by the board of education. The council shall fairly represent the racial and ethnic composition of the state. Members shall serve until replaced by the board. The representative of the department of education shall serve as chair of the council until the council elects a chair. The chair shall sign the orders of the council regarding certificate actions taken by the council.

(ii) The council shall elect a vice chair who shall serve in the absence of the chair. If the chair resigns, is unable to perform the duties of the chair, is removed or the chair's term on the council expires, the chair of the state board of education shall appoint a new chair until the board can elect a chair. The vice chair shall have authority to sign all orders of the council in the absence of the chair and for actions of the panels under subdivision (*l*)(4)(E)(iii).

(C) The members of the council shall serve without reimbursement except for their travel expenses as may be established by state travel regulations.

(D) The council shall act as an advisory council to the state board of education regarding the development of child care standards for child care programs subject to the board's jurisdiction and shall review the standards on a formal basis at least every four (4) years, but may be requested more frequently by the board to conduct such further reviews as may be necessary or to otherwise provide periodic advice to the board regarding child care programs subject to the board's jurisdiction.

(E)(i) The council shall act as a hearing tribunal for all actions of the department of education regarding the denial or revocation of a certificate of approval for the operation of a child care program under the jurisdiction of the state board of education; provided, that the council shall not hear issues regarding the summary suspension of a certificate

of approval, which shall be heard by a department hearing officer.

(ii) For purposes of acting as a hearing tribunal, a quorum for the hearing shall consist of a majority of the members of the council.

(iii) In order to complete the work of the council, the chair may appoint one (1) or more panels of the council with a quorum of five (5) members, at least one (1) of whom shall be randomly selected at-large members selected by the chair. The chair of the council shall appoint the chair of the panel. The panel shall have complete authority to hear any case under the council's jurisdiction and shall have complete authority to enter any necessary orders concerning certificate actions conducted before the council. Any orders of the panel shall be signed by the chair of the panel or by the council chair or vice chair.

(F) Rules for its operation as a hearing tribunal shall be adopted by the state board of education in accordance with the Uniform Administrative Procedures Act.

(G) An existing member of the professional staff of the department of education shall serve as recording secretary of the council and shall assist in the arrangement of meetings of the council and the setting and processing of appeal hearings regarding certificates of approval for child care programs.

(m) [Deleted by 2018 amendment.]

(n) The board shall develop guidelines, criteria and administrative rules as necessary to assure the payment of career ladder supplements to eligible recipients so long as they remain in positions in the public schools that qualify for such supplements. The board shall notify the commissioner of finance and administration at such time as the last eligible recipient separates from service to a local board of education. At the time of the notice to the commissioner of finance and administration, all rules, regulations and policies pertaining to the career ladder program shall become void and of no effect.

(o) The state board of education shall create an endorsement in computer science for all teachers who demonstrate sufficient content knowledge in the course material, as determined by the state board of education.

(p) The state board of education shall develop policies concerning the transmittal of final disciplinary actions taken by the board on educator licenses to the national clearinghouse administered by the National Association of State Directors of Teacher Education and Certification (NASDTEC).

(q) The state board of education shall post on its website all final disciplinary actions taken by the board on educator licenses. No final disciplinary action shall be removed from the state board's website except for actions in which the state board or a court of competent jurisdiction determines a mistake has been made.

**49-1-307. [Repealed.]**

**49-1-308. [Repealed.]**

**49-1-311. Appointment of standards review and development committees and advisory teams — Web site for public comment — Recommendations.**

(a) As required by the current established process:

(1) The state board shall appoint two (2) standards review and development committees. One (1) committee shall be an English language arts standards review and development committee, and one (1) committee shall be a mathematics standards review and development committee. Each committee shall be composed of two (2) representatives from institutions of higher education located in the state and six (6) educators who reside in the state and work in grades kindergarten through twelve (K-12);

(2) The state board shall also appoint six (6) advisory teams. Three (3) advisory teams shall advise and assist the English language arts standards review and development committee, and three (3) advisory teams shall advise and assist the mathematics standards review and development committee. The advisory teams shall be structured by grade levels, so that one (1) advisory team reviews standards for kindergarten through grade five (K-5), one (1) for grades six through eight (6-8), and one (1) for grades nine through twelve (9-12) in each subject. Each advisory team shall be composed of one (1) representative from an institution of higher education located in the state and six (6) educators who reside in the state and work in the appropriate grade levels and subject;

(3) The public's assistance in reviewing the current standards and suggesting changes to the current standards shall be elicited through a web site that shall allow comment by the public, as well as by educators, on the current standards. A third-party, independent educational resource, selected by the state board, shall collect all of the data and transmit all of the information gathered to the state board for dissemination to the appropriate advisory team for review and consideration;

(4) Each advisory team shall review the current standards for its subject matter and grade level together with the comments and suggestions gathered from the public and educators. After an advisory team has conducted its review, the team shall make recommendations for changes to the current standards to the appropriate standards review and development committee; and

(5) Each standards review and development committee shall review its advisory teams' reports and make recommendations for the new set of standards to the standards recommendation committee created in § 49-1-312(a).

(b) Beginning in 2018, the state board shall ensure that the standards review and development committees and advisory teams review the standards for English language arts, mathematics, science, and social studies pursuant to §§ 49-1-311 — 49-1-313 at least once every six (6) years from the last adoption. The standards review and development committees and advisory teams shall make recommendations for adoption of new standards in these subject areas to the state board, and the state board shall vote on whether to adopt the recommended standards.

(c) Any unexpended funds appropriated for the purposes of this section shall not revert to the general fund, but shall be carried forward into the subsequent fiscal year to effectuate the purposes of this section.

**49-1-501. [Repealed.]**

**49-1-502. [Repealed.]**

**49-1-503. [Repealed.]**

**49-1-504. [Repealed.]**

**49-1-505. [Repealed.]**

**49-1-506. [Repealed.]**

**49-1-507. [Repealed.]**

**49-1-508. [Repealed.]**

**49-1-509 — 49-1-519. [Repealed.]**

**49-1-520. [Repealed.]**

**49-1-602. Placement in improvement status for schools and LEAs.**

(a)(1) The state board of education, in consultation with the commissioner of education, shall establish appropriate performance goals and measures for schools and local education agencies (LEAs). The performance goals and measures shall include, at a minimum, student achievement, student growth, and other appropriate indicators of performance.

(2) Each year, the department of education shall recommend and the state board shall approve performance designations for LEAs based on the established performance goals and measures. If an LEA receives the highest performance determination in the accountability model as approved by the state board, it shall:

(A) Be identified by the department on a public list of LEAs earning the highest accountability determination; and

(B) When permissible by law, rule or regulation, be granted increased latitude in funding flexibility by the department.

(3) If an LEA receives the lowest performance determination in the accountability model as approved by the state board, the LEA shall be subject to the following:

(A) Placement on a public list of LEAs earning the lowest accountability determination; and

(B) Creation of an aggressive plan for corrective action that includes a detailed analysis of its student achievement results, and submission of such plan to the commissioner for approval.

(4) Notwithstanding any provision of this part to the contrary, student performance and student growth data from the TNReady assessments administered in the 2017-2018 school year shall not be used to identify a school as a priority school or to assign a school to the achievement school district.

(b)(1) By September 1, 2012, and at a minimum every three (3) years thereafter, based on an evaluation of all schools' performance data, the commissioner of education shall recommend for approval to the state board

a listing of all schools to be placed in priority, focus or reward status pursuant to the rules, regulations and performance standards of the state board. Once approved by the state board, priority, focus and reward schools shall be publicly identified by the commissioner.

(2) Schools identified as priority schools shall include the bottom five percent (5%) of schools in performance, all public high schools failing to graduate one-third (⅓) or more of their students, and schools with chronically low-performing subgroups that have not improved after receiving additional targeted support, pursuant to applicable laws, rules, and regulations. Priority schools shall be subject to one (1) of the following interventions as determined by the commissioner:

(A) Turnaround through an LEA-led intervention or other school improvement process, subject to approval by the commissioner;

(B) School turnaround under the governance of an LEA innovation zone pursuant to subsection (c); or

(C) Placement in the achievement school district as defined in § 49-1-614; provided, however, that no school identified as a priority school shall be placed in the achievement school district if, after the school is identified as a priority school, but before the commissioner determines that the school should be assigned to the achievement school district, the school demonstrates student achievement growth at a level of "above expectations" or greater, as represented by the Tennessee Value-Added Assessment System (TVAAS) developed pursuant to this part.

(3) By October 1 of the year prior to the public identification of priority schools pursuant to subdivision (b)(1), the commissioner shall notify any school and its respective LEA if the school is among the bottom ten percent (10%) of schools in overall achievement as determined by the performance standards and other criteria set by the state board.

(4) An LEA with a school or schools identified as focus schools shall submit a plan to the commissioner, subject to the commissioner's approval, outlining how the LEA shall address the factors leading the school or schools to be placed in focus status.

(5) Reward schools shall be recognized by the department for outstanding achievement or progress and provided opportunities to serve as strategic partners with the department to raise student achievement levels throughout the state by analyzing and sharing best practices.

(6) Upon receiving notice that a school has been identified as a priority school, the LEA or authorizing entity shall, for each school identified, develop and implement a comprehensive support and improvement plan for the school to improve student outcomes. The comprehensive support and improvement plan shall at a minimum:

(A) Be based on a school-level needs assessment;

(B) Include evidence-based interventions;

(C) Include a plan for notifying the parents of each student enrolled in the school of its priority status and a plan for stakeholder engagement;

(D) Include a review of LEA and school-level resources;

(E) Be developed by the school and LEA and approved by the commissioner; and

(F) Be monitored and evaluated annually by the department.

(c) An LEA may develop a plan for the creation of an LEA innovation zone for the purpose of monitoring, overseeing and improving schools within the

LEA that are designated as priority schools pursuant to subsection (b) and approved for inclusion in the innovation zone by the commissioner. Upon approval of such plan by the commissioner, an LEA innovation zone may be established. Notwithstanding any other provision to the contrary, an LEA creating an LEA innovation zone shall:

(1) Establish an innovation zone office; appoint a leader for such office; and provide such leader with sufficient management authority to appoint and dismiss staff for the office as well as appoint a leader for each school placed in the innovation zone; and

(2) Allow schools under the governance of the innovation zone office to have maximum autonomy over financial, programmatic and staffing decisions.

(d) The department of education, when publishing the list of priority schools, shall:

(1) List all schools in the state in order by success rate from the highest to the lowest; and

(2) List all schools in each county and each LEA in order by success rate from the highest to the lowest.

**49-1-610. New tests to be used.**

All tests used in accordance with this part shall be equivalent tests. Each year, at least thirty percent (30%) of items on each test must be fresh, nonredundant items that did not appear on that test in the previous two (2) years. The commissioner shall ensure that assessments used to measure academic progress required by this chapter meet acceptable standards of reliability and appropriately measure students at all levels of achievement.

**49-1-616. [Repealed.]**

**49-1-617. Development of policy by which student scores on achievement tests comprise percentage of final grade in certain subjects in grades three through eight — Optional policy for grades nine through twelve.**

(a) Each local board of education shall develop a policy by which student scores on the Tennessee comprehensive assessment program's grades three through eight (3-8) achievement tests shall comprise a percentage of the student's final grade for the spring semester in the subject areas of mathematics, English language arts, science, and social studies. In the 2017-2018 school year and each school year thereafter, the local board shall determine the percentage within a range of zero percent (0%) to no more than twenty-five percent (25%) for grades three through five (3-5), and within a range of no less than ten percent (10%) to no more than twenty-five percent (25%) for grades six through eight (6-8).

(b) Notwithstanding subsection (a), if an LEA does not receive its students' TCAP scores, including all achievement test and end-of-course examination scores for grades nine through twelve (9-12), at least five (5) instructional days before the end of the course, then the LEA may choose not to include its students' TCAP scores, including all achievement test and end-of-course examination scores for grades nine through twelve (9-12), in the students' final grades in the subject areas of mathematics, English language arts, science,

and social studies.

(c) Notwithstanding subsection (a), each local board of education may choose the percentage within the range of zero percent (0%) to fifteen percent (15%) that scores from the TNReady assessments administered in the 2017-2018 school year shall count on a student's final grade for the spring semester.

**49-1-618. Establishment of review period for verification of accountability data files and determinations prior to public release.**

The department of education shall develop, and the state board shall adopt, a policy establishing a review period for LEAs to review and verify accountability data files and determinations before data files and determinations are released publicly by the department. The policy shall include, at a minimum:

(1) The length of the review period; provided, that no review period shall be less than ten (10) business days;

(2) Identification of specific data that shall not be released during the review period; and

(3) A process for the LEA to verify the accuracy of the data.

**49-1-801. [Repealed.]**

**49-1-802. [Repealed.]**

**49-1-803. [Repealed.]**

**49-1-804. [Repealed.]**

**49-2-118. Conflict resolution intervention programs.**

(a) Each LEA shall implement for grades one through six (1-6) an intervention program that utilizes conflict resolution and decision-making strategies aimed at preventing occurrences of disruptive acts by students within the school and on school property.

(b) [Deleted by 2018 amendment.]

**49-2-122. Placement of automated external defibrillator (AED) devices in schools.**

(a)(1) All public high schools shall have automated external defibrillator (AED) devices placed within the school.

(2) All public middle and elementary schools are encouraged, within existing budgetary limits, to place AED devices within the school.

(b) All schools required, or electing, pursuant to subsection (a) to place AED devices in schools, shall comply with all provisions of title 68, chapter 140, part 4, relative to:

(1) Training;

(2) Establishment of a written plan that complies with § 68-140-404;

(3) Notification;

(4) Maintenance and testing of the AEDs to ensure that the devices are in optimal operating condition in compliance with § 68-140-404; and

(5) Any other requirements.

(c) Each placement of an AED shall be supervised and endorsed by a

physician with an unrestricted license to practice medicine or osteopathy in this state. When a school receives its first AED, it shall place the AED in a location that may be accessed readily from any area of the school, which may include those areas of the school that are used for physical education or activity. Subsequently, additional AEDs shall be placed in locations that are accessible during emergency situations. AEDs shall not be placed in an office that is not accessible to any person who might need to use the AED or in any location that is locked during times that students, parents or school employees are present at school or school events.

(d) AEDs placed in schools shall be registered with local emergency medical services providers as required by §§ 68-140-403(2) and 68-140-404(6).

(e) LEAs and schools responsible for an AED program pursuant to § 68-140-404(1) shall not be liable for any civil liability for any personal injury that results from an act or omission that does not amount to willful or wanton misconduct or gross negligence if the applicable provisions and program established under § 68-140-404 and the rules adopted by the department pursuant to § 68-140-405 have been met by the LEA and school and have been followed by the individuals using the AED.

(f) A teacher, school employee or other person employed by the LEA responsible for an AED program pursuant to § 68-140-404(1) shall not be liable for any civil liability for any personal injury that results from an act or omission that does not amount to willful or wanton misconduct or gross negligence if the applicable provisions and program established under § 68-140-404 and the rules adopted by the department pursuant to § 68-140-405 have been met by the LEA and school and have been followed by the individuals using the AED.

(g) Misuse or abuse of any AED device on school property by a student is disorderly conduct and the student shall be subject to disciplinary action.

**49-2-124. Universal mental health or socioemotional screening.**

(a) As used in this section:

(1) "Mental health screening" or "socioemotional screening" means, for the purposes of this chapter, the use of one (1) or more brief, structured questionnaires designed to identify the possibility that an individual has a mental health problem;

(2) "Psychotropic medication" means a drug that exercises a direct effect upon the central nervous system and that is capable of influencing and modifying behavior. Psychotropic medication includes, but is not limited to:

(A) Antipsychotics;

(B) Antidepressants;

(C) Agents for control of mania and depression;

(D) Antianxiety agents;

(E) Psychomotor stimulants; and

(F) Hypnotics; and

(3) "Universal mental health or socioemotional screening" means, for the purposes of this chapter, any mental health screening program in which a group of individuals is automatically screened without regard to whether there was a prior indication of a mental health problem.

(b) Universal mental health or socioemotional screening is only permitted under the following circumstances:

(1) A parent, guardian, legal custodian or caregiver under the Power of Attorney for Care of a Minor Child Act, compiled in title 34, chapter 6, part 3, of a child under sixteen (16) years of age has provided written, active, informed and voluntarily signed consent that may be withdrawn at any time by the parent, guardian, legal custodian or caregiver under the Power of Attorney for Care of a Minor Child Act;

(2) A court requires the mental health evaluation, examination or testing;

(3) Emergency screening, evaluation, examination or testing of an individual under the Power of Attorney for Care of a Minor Child Act or screening done in connection with a disaster or epidemic; or

(4) Screening required pursuant to the early periodic screening, diagnosis, and treatment (EPSDT) program with active, written, informed, voluntarily signed consent as outlined in subdivision (b)(1) that may be withdrawn at any time by the parent, legal guardian, custodian or caregiver under the Power of Attorney for Care of a Minor Child Act who gave the consent.

(c) Notwithstanding any law to the contrary, a local education agency (LEA) may not use the parent's refusal to consent to administration of a psychotropic medication to a student or to a mental health screening, evaluation, testing or examination of a child or student as grounds for prohibiting the child from attending class or participating in a school-related activity or as the basis of reporting or charging child abuse, child neglect, educational neglect or medical neglect. An LEA shall not use nor threaten use of school sanctions to a student to coerce parental consent to a mental health screening, evaluation, testing or examination. A person employed by an LEA may not require that a student be evaluated or treated with any psychotropic medication or for a particular mental health diagnosis. Only the following LEA personnel may perform an evaluation for psychiatric diagnosis or treatment, or both, with written, informed, voluntarily signed consent as outlined in subdivision (b)(1) that may be withdrawn at any time by the parent, legal guardian, custodian or caregiver under the Power of Attorney for Care of a Minor Child Act who gave the consent:

(1) A psychiatrist;

(2) A physician with expertise in psychiatry as determined by training, education or experience;

(3) An advanced practice registered nurse with special certification in mental health or psychiatric nursing;

(4) An advanced practice registered nurse with expertise in mental health or psychiatric nursing as determined by training, education or experience;

(5) A psychologist with health service provider designation;

(6) A senior psychological examiner;

(7) A licensed professional counselor;

(8) A licensed clinical social worker; or

(9) A school psychologist.

(d) Written, informed, active, voluntary consent as outlined in subdivision (b)(1) that may be withdrawn at any time by the parent, legal guardian, custodian or caregiver under the Power of Attorney for Care of a Minor Child Act must also be obtained before proceeding with any psychiatric treatment recommendations resulting from any mental health screening, evaluation, testing or examination.

(e) Subsections (b) and (c) shall not be construed to:

(1) Prevent an appropriate referral under the child find system required under 20 U.S.C. § 1412, with appropriate parental consent procedures as

required under 20 U.S.C. § 1414(a)(1)(D)(i);

(2) Prohibit an LEA employee from discussing any aspect of a child's behavior or academic progress with the child's parent or guardian or another appropriate school district employee, consistent with federal and state law, including the requirement of prior parental consent for the disclosure of any education records. Nothing in this subdivision (e)(2) shall be construed to modify or affect parental notification requirements for programs authorized under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Public Law 107-110;

(3) Prohibit an LEA employee from referring a child to LEA personnel specified in subsection (c);

(4) Prohibit referrals, counseling or support in the event of an emergency or urgent situation to include, but not be limited to, the death, suicide, attempted suicide, murder, attempted murder, serious injury or serious illness of a student, teacher, staff, member of the administration, director of schools or any other school personnel or significant individual; or

(5) Prohibit testing that is a part of a course of treatment, rehabilitation or service plan for children in the legal custody of a state agency or required by federal law applicable to such children, or as otherwise authorized under title 37, including, but not limited to, child protective services assessments or evaluations.

(f) Each LEA shall inform each parent, legal guardian, custodian or caregiver of their rights pursuant to this section and shall provide a copy of the LEA policy on the rights of parents and students as required in § 49-2-211 and a copy of the Protection of Pupil Rights (20 U.S.C. § 1232h), commonly referred to as the Tiahrt Amendment, as amended by the Parents Rights Restoration Amendment to Goals 2000, March 31, 1994, Public Law 103-227, § 1017, and included in the No Child Left Behind Law (20 U.S.C. § 6301 et seq.).

(g) The local board of education of each LEA shall adopt policies that may be reasonable and necessary to ensure implementation and enforcement of this section.

(h) An LEA or school shall notify parents or legal guardians prior to any student participating in any mental health screening. The written notice shall include:

(1) The purpose for the mental health screening;

(2) The provider or contractor providing the mental health screening;

(3) The date and time at which the mental health screening is scheduled; and

(4) The length of time the mental health screening may last.

(i) Pursuant to § 49-1-704, a parent or legal guardian has a right to inspect and review the parent or guardian's child's education records.

### 49-2-131. Non-disclosure agreement during settlement for act of sexual misconduct prohibited — Assistance in obtaining new job prohibited.

(a) An LEA is prohibited from entering into, or requiring an opposing party to enter into, a non-disclosure agreement during a settlement, or as a prerequisite to settlement, for any act of sexual misconduct, including, but not limited to, sexual harassment or sexual assault.

(b) Except as provided by subsection (c), other than the routine transmis-

sion of administrative and personnel files, LEA employees are prohibited from assisting a school employee, contractor, or agent in obtaining a new job if the employee knows, or has probable cause to believe, that the person seeking a job change engaged in sexual misconduct regarding a minor or student.

(c) Subsection (b) shall not apply if:

(1) The information giving rise to probable cause to believe sexual misconduct has occurred has been reported to the appropriate law enforcement agency; and

(2) The matter has been officially closed in one (1) of the following ways:

(A) The prosecutor or police have investigated the allegations and notified school officials that there is insufficient information to establish probable cause;

(B) The employee, contractor, or agent has been charged and either acquitted or exonerated; or

(C) The case remains open, and there have been no charges or indictment filed within four (4) years of the date the information was reported to the law enforcement agency.

(d) For the purposes of determining if sexual misconduct has occurred, an LEA may request a personnel file regarding any person seeking employment in the LEA from any LEA in which the person seeking employment worked previously. An LEA receiving such request shall provide the file to the requesting LEA within ten (10) business days.

(e) The director of schools shall develop procedures to enforce this section.

**49-2-132. Membership in association that regulates interscholastic athletics prohibited unless compliant with open meetings laws — Closed meetings.**

(a) Public schools, including public charter schools, shall not use public funds to join, become members of, or maintain membership in an association that regulates interscholastic athletics unless the association's governing board voluntarily complies with the open meetings laws, compiled in title 8, chapter 44, part 1.

(b) Notwithstanding subsection (a), an association that regulates interscholastic athletics may conduct a closed meeting, or close a portion of an otherwise open meeting, if confidential information protected by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), § 10-7-504, or any other relevant privacy law or privilege, must be discussed. No other business, other than the business to which the confidential information relates, shall be addressed during such a closed meeting.

**49-2-133. Development of policy to implement program to reduce potential sources of lead contamination in drinking water in public schools — Periodic testing. [Effective January 1, 2019.]**

*(a)(1) Each local board of education shall develop a policy to implement a program to reduce the potential sources of lead contamination in drinking water in public schools that incorporates, at a minimum, periodic, not to exceed biennial, testing of lead levels in drinking water sources at school facilities that were constructed prior to January 1, 1998, utilizing samples consisting of the first two hundred fifty milliliters (250 mL) drawn of water*

*that has been standing in plumbing overnight to identify lead levels. School facilities that were constructed on or after January 1, 1998, may conduct periodic testing under this section.*

*(2) If the result of a lead level test conducted under subdivision (a)(1) exceeds fifteen parts per billion (15 ppb) but is less than twenty parts per billion (20 ppb), the school shall conduct lead level tests on an annual basis until retesting confirms that the level is less than fifteen parts per billion (15 ppb).*

*(3) If the result of a lead level test conducted under subdivision (a)(1) is equal to or exceeds twenty parts per billion (20 ppb), the school shall:*

*(A) Immediately remove the drinking water source from service. The drinking water source shall remain unavailable for use until subsequent retesting under subdivision (a)(3)(C) confirms the lead level of water from the source does not exceed twenty parts per billion (20 ppb);*

*(B) Notify:*

*(i) The commissioner of environment and conservation, the commissioner of health, the local department of health, the local governing body, and the department of education within twenty-four (24) hours of the test result; and*

*(ii) The parents and guardians of students enrolled at the school, in accordance with a notification policy developed by the local board of education, within five (5) business days of the test result; and*

*(C) Retest the lead level of the drinking water source within ninety (90) days of any corrective action.*

*(b) Each LEA shall comply with the policy created by its local board of education under subsection (a).*

**49-2-1304. Joint action — Agreements — State approval and monitoring.**

(a)(1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the same powers, privileges or authority.

(2) Any agency of the state government when acting jointly with any like public agency may exercise and enjoy all of the powers, privileges and authority conferred by this part upon a like public agency.

(3) The authority for joint or cooperative action of political subdivisions shall apply only to such powers, privileges or authority vested in their governing bodies, and no joint or cooperative agreement shall be entered into affecting or relating to the constitutional or statutory powers, privileges or authority of officers of political subdivisions, or of agencies of political subdivisions having powers granted by statute independent of the governing body.

(b)(1) Any two (2) or more public agencies may enter into agreements with one another for joint or cooperative action in accordance with this part.

(2) Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of such participating public agencies shall be necessary before any such agreement may become effective.

(c) Any such agreement shall specify the following:

(1) Its duration;

(2) The precise organization, composition and nature of any separate legal or administrative entity created by the agreement, together with the powers delegated to such entity;

(3) The purpose or purposes of the joint or cooperative action;

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget for the joint or cooperative undertaking;

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and

(6) Any other necessary and proper matters.

(d) If the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to the information required by subsection (c), contain the following:

(1) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking;

(A) In the case of a joint board, all public agencies party to the agreement shall be represented.

(B)(i) The administration of any schools, facilities and services may be placed under a board of control created pursuant to the terms of the agreement;

(ii) If such a board of control is created, it shall elect its own chair and secretary;

(iii) The board of control shall exercise all the administrative powers and functions with respect to the school facility or service that county boards of education are authorized to perform and exercise with respect to the operation of county schools;

(iv) However, the schools, facilities or services may be administered by such other persons and in such other manner as the terms of the agreement may provide; and

(2) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking.

(e) No agreement made under this part shall relieve any public agency of any obligation or responsibility imposed upon it by law, except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made under this part, the performances may be offered in satisfaction of the obligation or responsibility.

(f)(1) Every agreement made under this part shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general and reporter and to the commissioner of education who shall determine whether the agreement is in proper form and compatible with the laws of this state.

(2) The attorney general and reporter and the commissioner shall each approve any agreement submitted to them under this part, unless they shall find that it does not meet the conditions set forth in this part and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law.

(3) Failure to disapprove an agreement submitted under this part within forty-five (45) days of its submission shall constitute approval of the agreement by the individual who fails to disapprove.

(g) Financing of joint projects by agreement shall be as provided by law.

(h)(1) The governing body of any such joint or cooperative entity of any two (2) or more political subdivisions as provided by subsections (b) and (c) with respect to funds under its control shall cause an annual audit to be made of the books and records of the organization.

(2) It is the duty of the governing body to order and pay for the audit, and to contract with certified public accountants, public accountants or the department of audit to make the audit.

(3) The comptroller of the treasury, when the comptroller of the treasury deems it necessary, may require the audit to be conducted by the department of audit, the cost of the audit to be paid by the governing body.

(4) The comptroller of the treasury, through the department of audit, shall be responsible for determining that the audit is prepared in accordance with generally accepted governmental auditing standards and that the audit meets the minimum standards prescribed by the comptroller of the treasury.

(5) The comptroller of the treasury shall prepare a uniform audit manual as is required to assure that the books and records are kept in accordance with generally accepted accounting principles and that audit standards prescribed by the comptroller of the treasury are met.

(i)(1) The department of education shall monitor educational cooperatives.

(2) The department may enjoin the participating school district from expending state funds on the cooperatives if deemed necessary by the commissioner.

(3) The department may withhold funds from school districts that continue to expend funds on educational cooperatives that, in the commissioner's opinion, are not providing an adequate and economic service to the school districts.

(4) [Deleted by 2018 amendment.]

**49-3-308. Allocation of funds by LEA to educational facility — Prorated daily basis for student's length of stay.**

(a) As used in this section, "educational facility" or "facility" means:

(1) A facility that operates as a Category I special purpose school pursuant to state board of education rules;

(2) The facility provides a minimum of thirty-two (32) hours per week of educational instructional services to students admitted pursuant to this section; and

(3) The facility is a recipient of a juvenile justice prevention grant.

(b) An LEA shall allocate funding to an educational facility in an amount equal to the per pupil state and local funds received by the LEA on a prorated daily basis for the student's length of stay; provided, that:

(1) The student admitted to the facility was enrolled in an LEA in the academic year immediately preceding admission to the facility and is enrolled at the time of admittance;

(2) The student is admitted to the facility under a signed, written order of a qualified juvenile judge or magistrate of a juvenile court in this state, such order being based upon the juvenile judge or magistrate of a juvenile court's assessment that admittance is in the best interest of the student and the community; and

(3) The student is not in the custody of the department of children's

services.

(c) An LEA may require a juvenile court order including the student's name, the dates of admission, and the signature of the juvenile judge or the magistrate of the juvenile court to be submitted to the LEA prior to disbursement of funds to the facility.

(d) The funding specified in subsection (b) shall be in addition to funds allocated pursuant to federal law and regulation, including, but not limited to, Title I and ESEA funds.

(e) This section shall not be used or construed to circumvent the requirements of Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 – 1482).

(f) The state board of education shall promulgate rules that provide for the determination of the allocation of funding as provided in this section. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**49-3-310. Textbooks and other instructional materials.**

Funding for textbooks and other instructional materials shall be provided through the BEP, subject to the following minimum amounts and conditions:

(1)(A) It is the legislative intent that the board shall purchase the necessary textbooks, instructional materials and kindergarten materials early enough that the students shall have the textbooks, instructional materials and kindergarten materials available to them when the schools open. The board shall furnish the textbooks and instructional materials that are listed by the state textbook and instructional materials quality commission for adoption and that have been adopted by the board as are required for the use of students by the board.

(B) All textbooks and instructional materials purchased with state school funds under this section are, and shall remain, the property of the board purchasing them. The board shall establish policies it deems necessary for the care and protection of its textbooks and instructional materials. The policies may include any of the following sanctions against a pupil who fails or refuses to pay for a lost or damaged textbook and instructional materials at the replacement cost less reasonable depreciation:

(i) Refusal to issue any additional textbooks and instructional materials until restitution is made;

(ii) Withholding of all grade cards, diplomas, certificates of progress or transcripts until restitution is made;

(iii) Not allowing the pupil to take interim or final examinations or to earn course credit in the course for which the textbook and instructional materials are prescribed until restitution is made; or

(iv) Reducing the pupil's grade in the course for which the textbook and instructional materials are prescribed by one (1) letter grade or ten (10) percentage points until restitution is made.

(C) No board of education of any public school system shall require any pupil or parent to purchase any textbook or instructional materials except in cases where the pupil or parent damages, loses or defaces the textbook or instructional materials either through willful intent or neglect. Nothing in this section shall prohibit any pupil or parent from voluntarily purchasing textbooks and instructional materials. The commissioner may collect

from LEAs the data needed to administer this section effectively.

(2) For the purpose of this part or chapter 6, part 22 of this title, "textbook and instructional materials" mean any medium or manual of instruction that contains a systematic presentation of the principles of a subject and that constitutes a major instructional vehicle for that subject.

**49-3-368. Funds for Internet funding or connectivity — Administration — Eligibility — Rules and regulations.**

(a) Beginning with the 2008-2009 fiscal year, all funds appropriated for Internet funding or Internet connectivity funding shall be administered by the department of education and shall be distributed to LEAs pursuant to an equitable formula adopted by the department that recognizes the impact of federal E-Rate funding. This formula shall be used to distribute all funds designated for Internet services in lieu of the BEP funding formula.

(b) LEAs shall have the authority to expend the funds authorized by this part for services provided by any qualified vendor properly selected in accordance with local procurement regulations.

(c) [Deleted by 2018 amendment.]

(d) To be eligible for any funding distributed under this part, technology, Internet, Internet connectivity, or e-learning services shall be purchased pursuant to a competitive process prescribed by a request for proposal (RFP).

(e) The state board of education is authorized to promulgate rules and regulations to effectuate the purposes of this part. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**49-3-403. Establishment of fund — Deposits, investments and expenditures.**

(a) There is established within the state treasury a special trust fund for education.

(b)(1) The state treasurer is authorized to accept funds from any person, association or corporation wishing to contribute voluntarily to the special trust fund for education.

(2) [Deleted by 2018 amendment.]

(c) Funds in the special trust fund for education established by this part shall be invested by the state treasurer pursuant to policy guidelines, established by resolution of the funding board established by § 9-9-101, within the laws, guidelines and policies that govern investments of the Tennessee consolidated retirement system.

(d) Income from the investment of the special trust fund for education shall be expended solely in accordance with §§ 49-3-404 and 49-3-405, except that reasonable expenses for the administration and investment of the trust may be deducted from income. The principal, as set forth in § 49-3-405, may not be expended for any purpose.

**49-3-404. Duties of commissioner of education and state treasurer.**

(a) The commissioner of education and the state treasurer shall establish operational guidelines for the expenditure of the income from the special trust fund for education. The operational guidelines shall include, but not be limited

to, special projects or programs that would not otherwise be funded that are deemed by the commissioner of education and the state treasurer to improve the overall quality of the total educational program and provisions for participation in the programs funded by the trust fund by all LEAs participating in the basic education program.

(b) The commissioner of education and the state treasurer shall develop and promote campaigns for contributions to the trust fund and promotional programs to make the public aware of the purpose and operation of the volunteer public education trust fund.

(c) The commissioner of education and the state treasurer may, from time to time, request the assistance of the Tennessee Education Association and other persons or organizations in an ongoing effort to effectuate the intent of this part.

(d) The commissioner of education and the state treasurer shall develop a written plan to implement this part.

(e) [Deleted by 2018 amendment.]

(f) Under no circumstances shall any of the funds of the volunteer public education trust fund be used for any purpose other than public education.

(g) The commissioner of education and state treasurer are authorized to expend income from the fund in accordance with this part.

**49-3-405. Contributions — Minimum trust fund amount.**

The state treasurer shall add all voluntary contributions, constituting principal, to the special trust fund for education. Income accruing on voluntary contributions shall be deposited in the special trust fund by the state treasurer until the minimum trust fund amount is met. For the purposes of this part, the "minimum trust fund amount" is the threshold amount of principal that must be accumulated in the trust until income may be disbursed. For the purposes of this part, "income" means the income from the fund's investment portfolio from whatever source derived, including, but not limited to, interest, dividends, and realized capital gains and losses. Once the minimum trust fund amount is met, the commissioner of education and the state treasurer may allow the income on the minimum trust fund amount to be available for disbursement from the fund pursuant to the plan required by § 49-3-404. The commissioner of education and the state treasurer shall establish a minimum trust fund amount pursuant to the plan required by § 49-3-404. The state treasurer is authorized to establish separate accounting for the fund's principal and income.

**49-3-406. Rules.**

The state treasurer, in consultation with the commissioner of education, is authorized to promulgate rules necessary to perform their responsibilities under this part. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**49-3-408. Nonprofit corporation for administrative services.**

(a) The commissioner of education and the state treasurer are authorized to create a nonprofit corporation in accordance with the laws of this state and applicable federal law.

(b) The corporation shall have such powers as are necessary to carry out the

intent of this part, including, though not limited to, the solicitation of contributions and disbursement of funds.

**49-4-301. Program established — Eligibility.**

(a) There is established the Tennessee student assistance program, which shall be administered by the Tennessee student assistance corporation, referred to in this part as TSAC, under the following terms and conditions:

(1) TSAC shall make awards of nonrepayable financial assistance, from funds appropriated for that purpose, directly to needy undergraduate students who:

(A) Are residents of this state, as defined by regulations promulgated by the board of regents for the state university and community college system, under the authority of § 49-8-104 where applicable;

(B) Are enrolled or intend to enroll as full-time or part-time students in an institution of postsecondary education in this state that is either:

(i) A public college or university;

(ii) A public vocational or technical institute;

(iii) A nonprofit institution of higher education in this state as defined under regulations promulgated by TSAC; or

(iv) Are enrolled in a private business, trade, or technical school that is located in this state, accredited by a regional accrediting association, the Council on Occupational Education, or the Accrediting Commission of Career Schools and Colleges, and authorized to operate by the Tennessee higher education commission pursuant to the Tennessee Higher Education Authorization Act of 2016, compiled in chapter 7, part 20 of this title. A school that, on July 1, 2016, was accredited by the Accrediting Council for Independent Colleges and Schools and whose students received an award under this part shall remain eligible for the Tennessee student assistance award; provided, that the school receives accreditation by an accrediting agency recognized by the United States department of education, remains accredited by such an accrediting agency, and is authorized to operate by the Tennessee higher education commission. No award under this part shall be made retroactively for any period in which a postsecondary institution has not attained accreditation from an accrediting agency recognized by the United States department of education. If a school is organized as a profit-making entity, it shall comply with the terms and conditions that the TSAC board of directors determines to be necessary to ensure that the availability of assistance under this program to students has not and will not cause an increase in tuition, fees, or other charges assessed by the school;

(C) Have complied with the applicable provisions of parts 2-7 of this chapter and the rules and regulations adopted by TSAC; and

(D) Are not incarcerated;

(2) Awards of student assistance shall be available for residents of the state generally, without regard to county or other area of residence, race, color, creed, sex or national origin or ancestry; and

(3) Students who are citizens of the United States shall receive priority in the making of awards of student assistance.

(b) If subdivision (a)(1)(D) is in conflict with federal law to the extent that

subdivision (a)(1)(D) would jeopardize the receipt of federal funds, subdivision (a)(1)(D) is void.

**49-4-708. Tennessee Promise Scholarship Act of 2014.**

(a) This section shall be known and may be cited as the "Tennessee Promise Scholarship Act of 2014".

(b) As used in this section:

(1) "Continuous enrollment" has the same meaning as defined in § 49-4-902; except that a student enrolled in a Tennessee college of applied technology shall be enrolled in accordance with the institution's requirements;

(2) "Eligible high school" has the same meaning as defined in § 49-4-902;

(3) **[Effective until August 1, 2023.]** "Eligible postsecondary institution" means a postsecondary institution that was:

(A) Eligible for the Tennessee education lottery scholarship, as defined in § 49-4-902, on July 1, 2013, and remains eligible thereafter; or

(B) Eligible for the Tennessee education lottery scholarship, as defined in § 49-4-902(11)(D), on July 1, 2013, and thereafter, that:

(i) Develops an eligible postsecondary program leading to an associate degree; and

(ii) Is a member of an accrediting agency that is recognized by the United States department of education and the Council on Higher Education Accreditation;

(3) **[Effective on August 1, 2023.]** "Eligible postsecondary institution" means a postsecondary institution that was eligible for the Tennessee education lottery scholarship, as defined in § 49-4-902, on July 1, 2013, and remains eligible thereafter;

(4) "Eligible postsecondary program" means a curriculum of courses leading to a certificate, diploma, or associate degree at an eligible postsecondary institution. Courses taken at a four-year postsecondary institution prior to admission in, or that fulfill prerequisite requirements for, an eligible postsecondary program shall not be considered part of the eligible postsecondary program;

(5) "Full-time student" means a student who is enrolled in a minimum of twelve (12) semester hours, or a student who is enrolled in a full-time program at a Tennessee college of applied technology. "Full-time student" includes a student with a documented learning disability who receives accommodations because of the student's disability and who is unable to take twelve (12) semester hours per semester as a direct result of the student's disability; provided, that the student takes the maximum number of semester hours that is established by the eligible postsecondary institution as feasible for the student to attempt;

(6) "Gift aid" means financial aid received from the federal Pell grant, the Tennessee education lottery scholarship, or the Tennessee student assistance award;

(7) "Home school student" means a student who completed high school in a Tennessee home school associated with a church-related school as defined by § 49-50-801, or an independent home school student whose parent or guardian has given notice to the local director of a Tennessee school district under § 49-6-3050(b)(1) of intent to conduct a home school;

(8) "Resident" means a student as defined by regulations promulgated by the board of regents under § 49-8-104;

(9) "Semester" has the same meaning as defined in § 49-4-902;

(10) "Tennessee Promise scholarship student" means a student admitted to and enrolled in an eligible postsecondary program; and

(11) "TSAC" means the Tennessee student assistance corporation.

(c) TSAC shall administer the Tennessee Promise scholarship program for Tennessee residents seeking an associate's degree, certificate or diploma from an eligible postsecondary institution under the following terms and conditions:

(1)(A) To be eligible for the scholarship a student shall be admitted to, and enrolled full-time in, an eligible postsecondary program in the fall term following:

(i) Graduation from an eligible high school;

(ii) Completion of high school as a Tennessee home school student;

(iii) Obtaining a GED® or HiSET® diploma; provided, that the student obtains the GED® or HiSET® diploma prior to the student reaching nineteen (19) years of age; or

(iv) Graduation from an out-of-state secondary school operated by the government of the United States, accredited by the appropriate regional accrediting association for the state in which the school is located, or accredited by an accrediting association recognized by the foreign nation in which the school is located. This subdivision (c)(1)(A)(iv) shall apply only to a dependent child of a military parent, as defined in § 49-4-926. Notwithstanding the definition of resident in subdivision (b)(8), this subdivision (c)(1)(A)(iv) shall apply to dependent children as described in § 49-4-926(c); and

(B) Exceptions to initial enrollment may be made for extenuating circumstances as provided in rules promulgated by TSAC;

(2) Students applying for the scholarship shall complete the Tennessee Promise scholarship application for their initial year of enrollment in accordance with the schedule determined by TSAC. Students shall complete the free application for federal student aid (FAFSA) each academic year in which they seek to receive the Tennessee Promise scholarship;

(3) To continue to receive a Tennessee Promise scholarship at an eligible two-year or four-year postsecondary institution, a student shall maintain a minimum cumulative grade point average of 2.0 as set forth in the rules promulgated by TSAC. To continue to receive a Tennessee Promise scholarship at a Tennessee college of applied technology, a student shall maintain satisfactory academic progress as determined by the institution;

(4) Scholarship recipients shall participate in mentoring and community service programs under the rules promulgated by TSAC. TSAC shall develop the selection and renewal criteria for students and shall have the authority to work with outside organizations to develop the most effective means for delivering the scholarships. In selecting outside organizations for participation in the Tennessee Promise scholarship program, TSAC shall give preference to locally established entities that meet designated standards specified by the program's promulgated rules;

(5) A Tennessee Promise scholarship at a Tennessee public two-year postsecondary institution or Tennessee college of applied technology shall be the cost of tuition and mandatory fees at the eligible postsecondary institution attended less all other gift aid. Gift aid shall be credited first to the

student's tuition and mandatory fees;

(6) Notwithstanding subdivision (c)(5), the amount of the Tennessee Promise scholarship at an eligible four-year public postsecondary institution or an eligible private institution shall be the average cost of tuition and mandatory fees at the public two-year postsecondary institutions less all other gift aid. Gift aid shall be credited first to the average tuition and mandatory fees as described in subdivision (c)(5);

(7) A Tennessee Promise scholarship student who has an approved medical or personal leave of absence from an eligible postsecondary institution may continue to receive the scholarship upon resuming the student's education at an eligible postsecondary institution so long as the student continues to meet all applicable eligibility requirements. The sum of all approved leaves of absence shall not exceed six (6) months, except as provided for in rules promulgated by TSAC;

(8)(A) A student shall be eligible for the Tennessee Promise scholarship until the occurrence of the first of the following events:

(i) The student has earned a diploma or associate degree; or

(ii) The student has attended an eligible postsecondary institution as a Tennessee Promise scholarship student for five (5) semesters if the institution is on a semester system, or its equivalent if the institution is on a system other than a semester system. Such semester limit shall not include an approved leave of absence;

(B) A student with a documented learning disability shall be eligible for the Tennessee Promise scholarship until the occurrence of the first of the following events:

(i) The student has earned a diploma or associate degree; or

(ii) The student has attended an eligible postsecondary institution as a Tennessee Promise scholarship student for the minimum number of semesters the eligible postsecondary institution establishes as feasible for the student to complete the course work for the diploma or degree the student is attempting to obtain, if the institution is on a semester system, or its equivalent if the institution is on a system other than a semester system. Such semester limit shall not include an approved leave of absence;

(9)(A) To be eligible for a Tennessee Promise scholarship, a student shall maintain continuous enrollment as a full-time student in each semester while receiving the scholarship;

(B) The requirement of subdivision (c)(9)(A) that a Tennessee Promise scholarship student maintain continuous enrollment does not apply to a Tennessee Promise scholarship student who is on a medical or personal leave, as approved by the student's eligible postsecondary institution;

(10) Notwithstanding the requirement of subdivisions (c)(1) and (9)(A) that a Tennessee Promise scholarship student maintain full-time enrollment, a student who does not have a documented learning disability may enroll in fewer than twelve (12) semester hours if required by the academic program in which the student is enrolled. A student with a documented learning disability shall enroll each semester in the maximum number of semester hours that is established by the eligible postsecondary institution as feasible for the student to attempt; and

(11) TSAC is authorized to promulgate rules to establish deadlines for applications, and appeal procedures for the denial or revocation of the

scholarship, and to otherwise effectuate the purposes of this part. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) The Tennessee Promise scholarship endowment fund is created. The Tennessee Promise scholarship endowment fund shall be established and funded under the following terms and conditions:

(1) This fund shall be an irrevocable trust that the state treasurer shall administer. The attorney general and reporter shall approve the terms of the trust instrument. The trust shall consist of the Tennessee Promise endowment account and the Tennessee Promise scholarship special reserve account;

(2) The trustees of the trust shall be as follows:

(A) The governor, or a member of the governor's cabinet or a cabinet-level staff member who is designated by the governor;

(B) The state treasurer or the treasurer's designee;

(C) The comptroller of the treasury or the comptroller's designee;

(D) The secretary of state or the secretary's designee;

(E) The commissioner of finance and administration or the commissioner's designee;

(F) The chair of the finance, ways and means committee of the house of representatives or the chair's designee;

(G) The chair of the finance, ways and means committee of the senate or the chair's designee; and

(H) One (1) member appointed by the governor who shall serve at the pleasure of the governor;

(3) The state treasurer shall serve as the chair of the trustees and shall preside over all meetings and proceedings of the trustees;

(4) The trust may invest in any security or investment in which the Tennessee consolidated retirement system is permitted to invest; provided, that investments by the trust shall be governed by the investment policies and guidelines adopted by the trustees of the trust in accordance with this part. The state treasurer shall be responsible for the investment and reinvestment of trust funds in accordance with the policies and guidelines established by the trustees;

(5) The trust shall be initially funded in fiscal year 2014-2015 by a deposit of:

(A) The program-generated revenues of TSAC invested as a part of the chairs of excellence endowment fund established by § 49-7-501 and pursuant to Chapter 98 of the Public Acts of 2013, and any income earned from the investment of such funds; and

(B) The balance of the lottery for education account established in accordance with § 4-51-111(b), but excluding the general shortfall reserve subaccount provided in § 4-51-111(b)(3) and the sum of ten million dollars ($10,000,000);

(6) The initial deposit shall constitute the principal of the trust. Subsequent transfers to the trust and trust income, as defined in this section, shall not increase, or constitute an addition to, the principal of the trust, but shall be placed in the Tennessee Promise scholarship special reserve account provided in subdivision (d)(9);

(7) Beginning in fiscal year 2014-2015, all funds in the lottery for education account, established in § 4-51-111(b), in excess of the sum of the

general shortfall reserve subaccount provided in § 4-51-111(b)(3) and ten million dollars ($10,000,000), shall be transferred on at least an annual basis to the Tennessee Promise scholarship special reserve account, or more frequently as determined by the state treasurer and the commissioner of finance and administration. Such transfers shall occur after all required expenditures have been made for Tennessee education lottery scholarship programs, Tennessee student assistance awards, and administrative expenses, and after any required deposits into the general shortfall reserve subaccount have been made. The Tennessee Promise scholarship special reserve account shall be a part of the trust, and the funds in the special reserve account may be commingled with, co-invested with, and invested or reinvested with the other assets of the trust;

(8) The principal of the trust shall not be expended for any purpose. Trust income shall be expended only to fund the Tennessee Promise scholarship program and pay expenses incurred in administering and investing the trust assets. Trust income means the income from the trust's investment portfolio from whatever source derived, including, but not limited to, interest, dividends, and realized capital gains or losses;

(9) Any trust income not allocated or distributed to the beneficiaries of the Tennessee Promise scholarship program shall be maintained in a Tennessee Promise scholarship special reserve account and may be subject to future allocations and distributions in accordance with this section;

(10) Any funds transferred for the Tennessee Promise scholarship program after the initial deposit in subdivision (d)(5), including matching funds or future appropriations made by the general assembly, shall be placed in the Tennessee Promise scholarship special reserve account of the trust. Unexpended funds remaining in the trust in any fiscal year, whether principal or funds in the Tennessee Promise scholarship special reserve account shall not revert to the general fund;

(11) The funds transferred to this trust may be commingled with, co-invested with, and invested or reinvested with other assets transferred to the trust. All or a portion of the trust may be invested, reinvested and co-invested with other funds, not a part of the trust, which are held by the state treasurer, including, but not limited to, assets of the Tennessee consolidated retirement system and the state pooled investment fund established pursuant to title 9, chapter 4, part 6. The state treasurer shall account for such trust funds in one (1) or more separate accounts in accordance with this section and other law;

(12) Notwithstanding any law to the contrary, all funds placed in the Tennessee Promise scholarship special reserve account shall be available for allocation and distribution as authorized herein only to the extent that funds are available in the Tennessee Promise scholarship special reserve account, and the state shall not be liable for any amount in excess of such sum. All requests for withdrawals for the payment of program funding that are presented to the state treasurer shall be used only to fund the Tennessee Promise scholarship program. Such requests for withdrawals shall not be commingled with requests for withdrawals presented to the state treasurer for any other purpose, and the individual or entity requesting the withdrawal of funds shall attest to the same upon presentation of the request for withdrawal to the state treasurer; and

(13) The provisions of the irrevocable trust are provided in this subsection (d), but the trust shall not include the provisions contained in other subsections of this section, which shall be subject to amendment by legislative enactment.

(e) TSAC and the Tennessee higher education commission shall provide assistance to the general assembly by researching and analyzing data concerning the scholarship program created under this part, including, but not limited to, student success and scholarship retention. TSAC shall report its findings annually to the education committee of the senate and the education administration and planning committee of the house of representatives by March 15.

(f) The comptroller of the treasury, through the comptroller's office of research and education accountability, shall review and study the Tennessee Promise scholarship program to determine the effectiveness of the program. The study shall be done in the third year of the program and every four (4) years thereafter. The comptroller of the treasury shall report the findings and conclusions of the study to the speakers of the senate and house of representatives and the members of the education committee of the senate and the education administration and planning committee of the house of representatives.

(g) The TSAC board of directors shall appoint a special advisory committee comprised of representatives from existing college access programs in the state. The committee shall take steps necessary to eliminate barriers to access to scholarships and hold mentoring organizations to the highest standard in serving the students receiving the scholarship. Members of the committee shall serve without compensation.

(h)(1) To encourage public school teachers to volunteer to be mentors in the Tennessee Promise scholarship program, teachers may be granted credit for up to one (1) day of in-service each year for becoming mentors and completing all required mentorship tasks. The one (1) day of credit for mentoring shall count as one (1) day of in-service for those days in which a teacher is permitted to choose the in-service activity.

(2)(A) To encourage retired teachers to volunteer to be mentors in the Tennessee Promise scholarship program, participation in the Tennessee state employee discount program, except for the tuition waivers granted to state employees under § 8-50-114 and tuition discounts granted to children of state employees under § 8-50-115, shall be granted to retired teachers who become mentors and complete all required mentorship tasks.

(B) Retired teachers who mentor Promise recipients shall be eligible for the Tennessee state employee discount program, as provided in subdivision (2)(A), for one (1) year following the completion of all required mentorship tasks for an academic year.

**49-4-902. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Academic requirement" means a requirement of a specified grade point average, ACT or SAT score or cumulative grade point average that determines either initial or continuing eligibility for postsecondary financial assistance from net lottery proceeds;

(2) "Academic year" means:

(A) For students who first received the Tennessee HOPE scholarship, the Tennessee HOPE access grant or Tennessee HOPE scholarship for

nontraditional students in the fall semester 2009 or thereafter, three (3) consecutive semesters beginning with a fall semester and including the immediately following spring and summer semesters. This definition shall apply to the award of the Tennessee HOPE scholarship, the Tennessee HOPE access grant or Tennessee HOPE scholarship for nontraditional students beginning with the fall semester 2011 for students;

(B) For students who first received the Tennessee HOPE scholarship, the Tennessee HOPE access grant or Tennessee HOPE scholarship for nontraditional students prior to the fall semester 2009, a period of time, typically nine (9) months, in which a full-time student is expected to complete the equivalent of at least two (2) semesters of academic work;

(3) "ACT" means the ACT assessment administered by ACT;

(4) "Adjusted gross income attributable to the student" or "student's adjusted gross income" means:

(A) The adjusted gross income of the student's parent or parents as reported on the student's FAFSA and used by TSAC in determinations of eligibility for federal or state financial aid, if the student is a dependent of a parent or parents; or

(B) The adjusted gross income of the student and, if applicable, the student's spouse as reported on the student's FAFSA and used by TSAC in determinations of eligibility for federal or state financial aid, if the student is financially independent of parents;

(5) "Advanced degree" means a master's degree, a doctorate or other degree conferred by an eligible postsecondary institution upon completion of a unified program of study at the graduate level;

(6) "Certificate" or "diploma" means a credential, other than a degree, the receipt of which indicates satisfactory completion of training in a program of study offered by a Tennessee college of applied technology operated by the board of regents of the state university and community college system;

(7) "Continuous enrollment" means a student is enrolled in the fall and spring semesters of a single academic year. Enrollment in summer semester or inter-session terms is not required;

(8) "Cost of attendance" means the combined cost of tuition, mandatory fees, room and board, books and other educational expenses as determined by the financial aid office of the eligible postsecondary institution;

(9) "Dual enrollment grant" means a grant for study at an eligible postsecondary institution that is funded from net proceeds of the state lottery and awarded to students who are attending high school and who are also enrolled in college courses at eligible postsecondary institutions for which they will receive college credit;

(10) "Eligible high school" means:

(A) A Tennessee public secondary school;

(B) A private secondary school that is located in this state and is approved by the state board of education as a Category 1, 2 or 3 secondary school in accordance with the applicable rules and regulations;

(C) A secondary school operated by the United States department of defense on a military base that is located in whole or in part in this state;

(D) An out-of-state public secondary school located in a county bordering this state that Tennessee residents are authorized to attend under § 49-6-3108; or

(E) An out-of-state boarding school attended by a bona fide Tennessee

resident that is accredited by:

(i) A regional accrediting association; or

(ii) A member of the National Association of Independent Schools Commission on Accreditation;

(11) "Eligible independent postsecondary institution" means:

(A) An institution created by testamentary trust for which the state acts by statute as trustee and for which the governor is authorized to appoint commissioners with the advice and consent of the senate and that offers courses leading to undergraduate degrees;

(B)(i) A private postsecondary institution accredited by a regional accrediting association that has its primary campus domiciled in this state; provided, however, that a postsecondary institution that was an eligible independent postsecondary institution and whose students received funds from the Tennessee education lottery scholarships prior to the amendment of this subdivision (11)(B) by the enactment of chapter 1142 of the Public Acts of 2008 shall remain an eligible postsecondary institution, until June 30, 2016, so long as the institution remains accredited by the Southern Association of Colleges and Schools;

(ii) A postsecondary institution that, pursuant to this subdivision (11)(B), shall cease to be an eligible independent postsecondary institution after June 30, 2016, shall include on its web site and in any literature for students or prospective students a statement that students attending the institution after June 30, 2016, shall not be able to receive Tennessee HOPE scholarships for study at the institution. TSAC shall include the same information on its web site and in any Tennessee HOPE scholarship informational brochures in which the eligible postsecondary institutions are listed. Such information shall be posted on the institution's web site and on TSAC's web site within thirty (30) days of May 21, 2012, and in any literature published by the institution or in any brochure with a list of eligible postsecondary institutions published by TSAC after May 21, 2012;

(C) A private, four-year or two-year postsecondary institution that:

(i) Has been chartered in this state as a not-for-profit entity for at least thirty (30) consecutive years;

(ii) Has had its primary campus domiciled in this state for at least thirty (30) consecutive years;

(iii) Is a member of an accrediting agency that is recognized by the United States department of education and the Council on Higher Education Accreditation;

(iv) Awards associate or baccalaureate degrees; and

(v) Has an articulation agreement with an institution of the state university and community college system or the University of Tennessee system; or

(D) A private four-year postsecondary institution that:

(i) Has been chartered in this state as a not-for-profit entity for at least one hundred (100) years;

(ii) Has had its primary campus domiciled in this state for at least one hundred twenty-five (125) years;

(iii) Awards baccalaureate degrees; and

(iv) Requires all students to participate in a four-level college work program in which students provide services to the institution and to the

community;

(12) "Eligible postsecondary institution" means an eligible independent postsecondary institution or an eligible public postsecondary institution;

(13) "Eligible public postsecondary institution" means:

(A) An institution operated by the board of regents of the state university and community college system; or

(B) An institution in the University of Tennessee system;

(14) "Entering freshman" means a student entering a postsecondary institution who has not attempted any semester hours at any postsecondary institution after graduating from high school, completing high school in a home school program or obtaining a GED® or HiSET®;

(15) "FAFSA" means the Free Application for Federal Student Aid;

(16) "Freshman student" means a student at a postsecondary institution who is in the first two (2) semesters of full-time attendance or the equivalent, if the student attends part-time;

(17) "Full-time equivalent semester" means any semester in which a student is enrolled full-time and receives a Tennessee HOPE scholarship. A semester in which a part-time student attempts six (6), seven (7) or eight (8) semester hours and receives a Tennessee HOPE scholarship shall be counted as one-half (½) of a full-time equivalent semester. A semester in which a part-time student attempts nine (9), ten (10), or eleven (11) semester hours and receives a Tennessee HOPE scholarship shall be counted as three-fourths (¾) of a full-time equivalent semester;

(18) "Full-time student" means a student attending a postsecondary educational institution and enrolled for at least twelve (12) semester hours during each semester of attendance;

(19) "GED®" means a general educational development credential awarded by a state-approved institution or organization;

(20) "General assembly civic education scholarship" means the scholarship funded from net lottery proceeds and awarded under § 49-4-939 to meet the goals of the general assembly to promote and encourage civic learning and participation in community and government by high school students;

(21) "General assembly merit scholarship" means the scholarship that is awarded for academic excellence under § 49-4-916. A "General assembly merit scholarship" consists of two (2) parts, a Tennessee HOPE scholarship and a general assembly merit scholar supplemental award;

(22) "Gift aid" means scholarships and grants from any source that do not require repayment, including funds provided through the federal Foster Care Independence Act of 1999, compiled generally in title 42 U.S.C., and other similar programs. Student loans and work-study awards shall not be considered gift aid;

(23) "Grade point average" means the numbered grade average calculated using a 4.0 scale;

(24) "HiSET®" means the High School Equivalency Test credential awarded by a state-approved institution or organization;

(25) "Home school student" means a student who completed high school in a Tennessee home school program meeting the requirements of § 49-6-3050(a)(2) or (a)(3) or § 49-6-3050(b). For one (1) year immediately preceding completion of high school as a home school student, the student shall have been a student in a home school;

(26) "Middle college" means a program operated by an eligible public two-year postsecondary institution in partnership with an LEA that permits students in the fall semester of their junior year in high school to enter the eligible public two-year postsecondary institution and to earn both a high school diploma and an associate degree in two (2) years;

(27) "Nonacademic requirement" means any scholarship eligibility requirement other than an academic requirement;

(28) "Nontraditional student" means a student who:

(A)(i) Is at least twenty-five (25) years of age; and

(ii) Enrolls in an eligible postsecondary institution prior to August 1, 2018:

*(a)* As an entering freshman; or

*(b)* At least two (2) years after last attending any postsecondary institution;

(B)(i) Is at least twenty-five (25) years of age; and

(ii) Enrolls in a baccalaureate degree program at an eligible four-year postsecondary institution on or after August 1, 2018:

*(a)* As an entering freshman; or

*(b)* At least two (2) years after last attending any postsecondary institution; or

(C) Enrolls in a baccalaureate degree program at an eligible four-year postsecondary institution on or after August 1, 2018, while maintaining continuous enrollment following completion of an associate degree under the Tennessee reconnect grant, established under § 49-4-944;

(29) "Parent" means the parent or guardian of a student;

(30) "Part-time student" means a student attending a postsecondary educational institution and enrolled for at least six (6) semester hours, but less than twelve (12) semester hours, during a semester of attendance;

(31) "Regional accrediting association" means:

(A) The Middle States Association of Colleges and Schools;

(B) The New England Association of Schools and Colleges;

(C) The North Central Association of Colleges and Schools;

(D) The Northwestern Association of Schools and Colleges;

(E) The Southern Association of Colleges and Schools; or

(F) The Western Association of Schools and Colleges;

(32) "SAT" means the Scholastic Aptitude Test administered by the College Board;

(33) "Scholarship" means a Tennessee HOPE scholarship or a Tennessee HOPE access grant;

(34) "Semester" means fall, spring, or summer semester at a postsecondary institution, if the institution is on a semester system, or the equivalent, if the institution is on a system other than a semester system;

(35) "Semester hour" means the credit hour used by a postsecondary institution, if the institution is on a semester system, or its equivalent, if the institution is on a system other than a semester system. "Semester hour" includes each semester hour attempted, whether remedial or for credit toward a degree, but shall not include any semester hour attempted before graduating from high school or earning a GED® or HiSET®;

(36) "Student who has obtained a GED® or HiSET®" means a student who was a Tennessee resident for at least one (1) year prior to obtaining a GED® or HiSET®;

(37) "Tennessee HOPE access grant" means a grant for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution that is funded from net proceeds of the state lottery and awarded to freshman students meeting the requirements of § 49-4-920;

(38) "Tennessee HOPE scholarship" means a scholarship for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution that is funded from net proceeds of the state lottery and awarded under this part;

(39) "THEC" means the Tennessee higher education commission;

(40) "Title IV" means Title IV of the Higher Education Act of 1965, 20 U.S.C. § 1070 et seq.;

(41) "TSAC" means the Tennessee student assistance corporation;

(42) "Unweighted grade point average" means grade point average on a 4.0 scale calculated without additional points awarded for advanced placement, honors or other similar courses;

(43) "Weighted grade point average" means grade point average on a 4.0 scale calculated with additional points awarded for advanced placement, honors or other similar courses, according to the uniform system of weighting of courses adopted by the state board of education, under § 49-1-302(a)(17); and

(44) "Wilder-Naifeh technical skills grant" means a grant for study in pursuit of a certificate or diploma at a Tennessee college of applied technology operated by the board of regents of the state university and community college system that is funded from net proceeds of the state lottery and awarded under this part.

**49-4-903. Administration of scholarship and grant programs.**

(a) The scholarship and grant programs established by this part shall be administered by TSAC, which shall be responsible for determination of eligibility of students and for the distribution of funds appropriated by the general assembly for scholarships and grants awarded under the program. In the event net proceeds from lottery revenues are insufficient to fund fully the scholarships and grants created by this part, then TSAC is authorized to review and reduce the amounts to be awarded for such scholarships and grants pro rata.

(b) THEC shall provide assistance to the general assembly and to TSAC by researching and analyzing data concerning the scholarship and grant programs created under this part, including, but not limited to, student success and scholarship retention. THEC shall report its findings annually to the education committee of the senate and the education committees of the house of representatives by October 1.

(c) Postsecondary educational institutions that enroll students receiving scholarships or grants under this part shall provide all information required by TSAC and THEC that is necessary for administering, reviewing, and evaluating such programs. TSAC and THEC may choose to collect data from higher education institutions or through the University of Tennessee system, board of regents or the Tennessee Independent Colleges and Universities Association. TSAC and THEC shall maintain confidentiality of individual student records in accordance with the Family Educational Right to Privacy Act (20 U.S.C. § 1232g).

(d) THEC shall study and include in its report required under subsection (b)

an analysis of the general assembly merit scholarship program and its success in promoting exceptional academic achievement in college. Specifically, THEC shall report the number of students in each class who retain general assembly merit scholarships throughout their college careers and the number of students who do not retain general assembly scholarships and the reasons therefore. THEC shall analyze whether the retention standards for general assembly scholarships should be increased to promote further exceptional academic achievement in college.

(e) [Deleted by 2016 amendment].

**49-4-914. Scholarships awards.**

(a) Subject to the amounts appropriated by the general assembly and any provision of law relating to a shortfall in funds available for postsecondary financial assistance from the net proceeds of the state lottery, the amount of a Tennessee HOPE scholarship and Tennessee HOPE scholarship for nontraditional students awarded to a student attending an eligible four-year postsecondary institution while enrolled in a baccalaureate degree program shall be one thousand seven hundred fifty dollars ($1,750) for full-time attendance for each semester. This award amount shall apply to each entering freshman in the fall term of 2015, and thereafter, and shall continue through the final semester of such student's sophomore year. The determination of a student's status as a freshman or sophomore shall be made by the postsecondary institution attended.

(b) Subject to the amounts appropriated by the general assembly and any provision of law relating to a shortfall in funds available for postsecondary financial assistance from the net proceeds of the state lottery, for a student described in subsection (a) the award amount shall increase to two thousand two hundred fifty dollars ($2,250) per semester beginning in the student's junior year, as determined by the postsecondary institution attended, and shall continue until the student is no longer eligible for a Tennessee HOPE scholarship under § 49-4-913(b) and (c).

(c) Subject to the amounts appropriated by the general assembly and any provision of law relating to a shortfall in funds available for postsecondary financial assistance from the net proceeds of the state lottery, a Tennessee HOPE scholarship awarded to a student attending an eligible two-year postsecondary institution shall be one thousand five hundred dollars ($1,500) for full-time attendance for each semester. This award amount shall apply to the initial entering freshman class beginning in the fall term of 2015 and to each entering class thereafter.

(d) A student who first received the Tennessee HOPE scholarship, Tennessee HOPE access grant or Tennessee HOPE scholarship for nontraditional students in the fall semester of 2009 or later may receive such scholarship or grant in the summer semester of an academic year as defined in § 49-4-902(2)(A) in addition to the receipt of the scholarship or grant in the fall and spring semesters of an academic year.

(e) The amount of a Tennessee HOPE scholarship awarded to a student attending an eligible two-year postsecondary institution that provides on-campus housing shall be the same as the amount provided in subsection (a).

(f) Subject to the amounts appropriated by the general assembly and any provision of law relating to a shortfall in funds available for postsecondary

financial assistance from the net proceeds of the state lottery, the amount of a Tennessee HOPE scholarship for a nontraditional student enrolled full time in an associate degree program shall be one thousand five hundred dollars ($1,500) per semester at a two-year postsecondary institution and one thousand seven hundred fifty dollars ($1,750) per semester at a four-year postsecondary institution. These amounts shall apply to students who received a HOPE scholarship for nontraditional students beginning in the fall term of 2015 and prior to the fall term of 2018, and shall continue until reaching a terminating event described in § 49-4-931.

(g) Subject to the amounts appropriated by the general assembly and any law relating to a shortfall in funds available for postsecondary financial assistance from the net proceeds of the state lottery, the amount of a Tennessee HOPE scholarship and Tennessee HOPE scholarship for nontraditional students, who enroll in an eligible postsecondary institution prior to the fall term of 2015, shall be determined in accordance with § 4-51-111 and shall be set in the general appropriations act.

**49-4-931. HOPE scholarship — Nontraditional students.**

(a) To be eligible for a Tennessee HOPE scholarship, a nontraditional student shall:

(1) Not be ineligible for the scholarship under § 49-4-904;

(2) Meet the requirements of § 49-4-905(a). Section 49-4-905(b) shall not apply to nontraditional students seeking Tennessee HOPE scholarships;

(3) Meet the requirements of § 49-4-915(a)(2);

(4)(A) Have attempted at least twelve (12) semester hours and received a Tennessee HOPE scholarship as a nontraditional student while enrolled in an associate degree program at an eligible postsecondary institution prior to August 1, 2018; or

(B) Enroll in a baccalaureate degree program at an eligible four-year postsecondary institution and attempt at least twelve (12) semester hours;

(5) Maintain satisfactory progress in a course of study, in accordance with the standards and practices used for federal Title IV programs at the postsecondary institution attended;

(6) Subject to § 49-4-919, maintain continuous enrollment at the eligible postsecondary institution attended as a nontraditional student; and

(7) Apply for a Tennessee HOPE scholarship.

(b) A nontraditional student shall be eligible for the award of a Tennessee HOPE scholarship at the end of the semester in which the student has attempted a total of twelve (12) semester hours if the student has a cumulative grade point average of at least 2.75. A nontraditional student who does not achieve a cumulative grade point average of at least 2.75 at the end of the semester in which the student has attempted a total of twelve (12) semester hours shall be eligible for a Tennessee HOPE scholarship if the student achieves a cumulative grade point average of at least 2.75 at the end of the semester in which the student has attempted a total of twenty-four (24) semester hours. A nontraditional student who does not have a cumulative grade point average of at least 2.75 at the end of the semester in which the student has attempted a total of twelve (12) semester hours or twenty-four (24) semester hours shall be eligible for a Tennessee HOPE scholarship if the student meets the requirements of § 49-4-911(a)(1) at the end of a subsequent

semester at which continuing eligibility for a Tennessee HOPE scholarship is reviewed under § 49-4-911(a)(1) or the requirements of § 49-4-911(a)(2) at the end of any semester after the student has attempted forty-eight (48) or more semester hours.

(c) To continue to receive a Tennessee HOPE scholarship, the student shall meet the applicable requirements of § 49-4-911.

(d) A student may receive a Tennessee HOPE scholarship for nontraditional students under this section until the first of the following events:

(1) The student has earned a baccalaureate degree;

(2) If the student previously received a Tennessee HOPE scholarship, the sum of the number of years during which the nontraditional student has received a Tennessee HOPE scholarship for nontraditional students and a Tennessee HOPE scholarship equals five (5) years; or

(3) Five (5) years have passed since the student enrolled in an eligible postsecondary institution as a nontraditional student.

(e) A nontraditional student shall not be eligible for an ASPIRE award for need under § 49-4-915 or a general assembly merit scholar supplemental award under § 49-4-916.

(f) No retroactive award of a Tennessee HOPE scholarship shall be made under this section.

(g) Notwithstanding the provisions of subsection (d) to the contrary, a student who first receives a Tennessee HOPE scholarship for nontraditional students in the fall semester of 2009 or thereafter may receive the scholarship for nontraditional students until the first of the applicable events as outlined in § 49-4-913 occurs.

**49-4-944. Tennessee reconnect grant.**

(a) This section shall be known and may be cited as the "Tennessee reconnect grant."

(b) Except for the definitions provided in this subsection (b), the definitions in § 49-4-902 shall apply to this section:

(1) "Academic year" means three (3) consecutive semesters beginning with a fall semester and including the immediately following spring and summer semesters;

(2) "Eligible postsecondary institution" means a postsecondary institution that is eligible for the Tennessee education lottery scholarship, as defined in § 49-4-902, on July 1, 2013, and remains eligible thereafter;

(3) "Eligible program of study" means a federal Title IV-eligible curriculum of courses leading to a certificate or associate degree; and

(4) "Gift aid" means financial aid received from the federal Pell grant, the Tennessee education lottery scholarship, or the Tennessee student assistance award.

(c) To be eligible for a Tennessee reconnect grant, a student must:

(1) Not have previously earned an associate or baccalaureate degree;

(2) Not be ineligible for the grant under § 49-4-904;

(3) Have been a Tennessee resident as required by § 49-4-905(a)(1);

(4) Complete the FAFSA for each academic year in which the Tennessee reconnect grant is received in accordance with the schedule determined by TSAC;

(5) Be an independent student as determined by the FAFSA;

(6) Be admitted to an eligible postsecondary institution and enrolled in courses leading to completion of an eligible program of study; and

(7) Participate in a college success program through the Tennessee reconnect community initiative as created by the Tennessee higher education commission.

(d) To continue to be eligible for a Tennessee reconnect grant, a student shall:

(1) Enroll in classes at an eligible postsecondary institution that lead to completion of an eligible program of study;

(2) Maintain a minimum cumulative grade point average of 2.0 at the end of each academic year as determined by the institution attended;

(3) Maintain continuous enrollment at an eligible postsecondary institution;

(4) Complete the renewal FAFSA each academic year as specified by TSAC;

(5) Attend at least as a part-time student; and

(6) Participate in a college success program through the Tennessee reconnect community initiative as created by the Tennessee higher education commission.

(e) If a student ceases to be eligible for the Tennessee reconnect grant at any time, then the student shall not be eligible to regain the grant.

(f)(1) A student may receive a Tennessee reconnect grant under this section until the occurrence of the first of the following events:

(A) The student has attained a degree or certificate in an eligible program of study; or

(B) Five (5) years have passed since the date of initial enrollment as a Tennessee reconnect grant student, exclusive of any approved leaves of absence.

(2) Notwithstanding subdivision (f)(1)(A), a student may continue to receive a Tennessee reconnect grant for an associate degree following completion of a certificate that directly leads to the associate degree program.

(3) A student who has an approved medical or personal leave of absence from the eligible postsecondary institution may continue to receive the grant upon resuming the eligible program of study at an eligible postsecondary institution so long as the student continues to meet all applicable eligibility requirements.

(g) A student who receives a Tennessee reconnect grant may transfer from one eligible postsecondary institution to another eligible postsecondary institution without loss of the grant so long as the student continues to meet all eligibility requirements for the grant.

(h) Subject to the amounts appropriated by the general assembly, the amount of a Tennessee reconnect grant shall not exceed the cost of tuition and mandatory fees charged to all students for coursework leading to completion of the eligible program of study at the eligible postsecondary institution attended less all other gift aid, which shall be credited first to tuition and mandatory fees.

(i) Notwithstanding subsection (h), the amount of the Tennessee reconnect grant at an eligible four-year public postsecondary institution or an eligible private institution shall be the average cost of tuition and mandatory fees at the public two-year postsecondary institutions less all other gift aid. Gift aid shall be credited first to the average tuition and mandatory fees as described

in subsection (h).

(j) This section shall apply beginning with the fall semester of 2018 for independent students who enroll in an eligible postsecondary institution.

(k) The comptroller of the treasury, through the comptroller's office of research and education accountability, shall review and study the Tennessee reconnect grant program to determine the effectiveness of the program. The study shall be done in the third year of the program and every four (4) years thereafter. The office of research and education accountability shall report its findings and conclusions to the speakers of the senate and house of representatives and the education committees of the senate and house of representatives by December 31 each year a report is prepared.

**49-5-101. Basic requirements.**

(a) No person shall be employed as principal, teacher or supervisor of any public elementary or high school by any local school district, or receive any pay for such services out of the public school funds of the local school district until the person presents to the director of schools a valid license as prescribed in this part. It is unlawful for any board of education to issue any warrant or check to such persons for services as principal, teacher or supervisor until the person has presented for record a license valid for the term of employment.

(b) As used in this part, "employ," and all derivatives of "employ," mean to put to work in a position compensated from public funds and are not to be construed to preclude election by the local board of education of a teacher prior to the teacher's having received a license, in accordance with the rules and regulations of the state board of education.

(c) No person under eighteen (18) years of age shall receive a license to teach in the public schools; and no one who has less than eight (8) months of experience as a teacher or who is under eighteen (18) years of age shall receive pay out of the public school funds as the principal of any school having more than one (1) teacher.

(d) No person shall receive a license to teach unless the person has a good moral character and under no circumstances shall licenses be granted to persons addicted to the use of intoxicants or narcotics. All applicants for licenses shall satisfy the state board of education that they meet the requirements of this part.

(e) The state board of education shall not issue professional licenses upon the work done in any college or university, except from a list of standard teacher-training institutions, colleges and universities that shall be approved by the state board of education after inspection as may be provided by the board.

(f)(1) Licenses to teach shall be uniform for all the local school systems and shall be issued by the state board of education in accordance with the requirements set out in this part.

(2) Credits earned through correspondence work or class extension work from the University of Tennessee and other colleges, with approval by the state board of education to offer correspondence and extension credits, shall be accepted as credit for licensing of directors of schools, supervisors, high school principals and teachers and elementary school principals and teachers in the same manner and to the same extent as such credits are accepted towards degrees in the University of Tennessee and other approved Tennes-

see colleges. In computing credits for a license, one (1) quarter hour of credit earned through correspondence work or class extension work shall connote a credit of one (1) week of residence.

(g) Nothing in this part shall be construed to render void, alter or change any valid license in force September 1, 1951, issued under the Code of Tennessee of 1932.

(h)(1) The state board of education, in consultation with the department of education, is directed to review current policies, rules and regulations pertaining to transitional licensure options and make recommendations relative to the following:

(A) The clarification of provisions applicable to transitional license education providers affiliated with Tennessee institutions of higher education and providers that are not affiliated with a Tennessee institution of higher education, such as out-of-state or online education-related organizations;

(B) The process by which providers or transitional licensure programs receive approval by the state, and specifically such process for those providers that have been approved for an existing partnership with an LEA; and

(C) Informing LEAs of the availability of transitional licensure options, including the feasibility of higher education institutions providing information relative to the requirements, cost and performance of transitional licensure programs.

(2) [Deleted by 2018 amendment.]

**49-5-108. Jurisdiction of state board of education. [Effective until January 1, 2019. See version effective on January 1, 2019.]**

(a)(1) Complete jurisdiction over the issuance and administration of licenses for supervisors, principals and public school teachers for kindergarten through grade twelve (K-12), including teachers in preschools operated under the authority of chapter 6, part 1 of this title, shall be vested in the state board of education.

(2) Notwithstanding subdivision (a)(1), the state board of education shall not deny instructional leader licensure based solely on the applicant completing a leadership preparation program located outside of this state.

(b) The licenses shall be uniform for all the school systems in the state.

(c) The state board of education is authorized, empowered and directed to set up rules and regulations governing the issuance of licenses for supervisors, principals and public school teachers. These rules and regulations shall prescribe standards controlling the issuance and renewal of all licenses and permits; provided, that:

(1) If a license is issued, it shall not be to an applicant who has less than four (4) years of general or technical and professional training beyond the twelfth grade;

(2) No increase in the minimum requirements for licenses shall become effective until at least one (1) year after promulgation of the increase by the state board of education;

(3) Vocational or trades teachers shall be certified on the basis of qualifications prescribed in the state plan for vocational education prepared by the state board for vocational education and approved by the United States

department of education;

(4) Active or retired military personnel who seek to serve as junior reserve officers' training corps (JROTC) instructors shall be licensed to teach JROTC and military science in grades nine through twelve (9-12) based on documented military JROTC certification issued upon successful completion of all JROTC preparation requirements specific to the person's branch of military service. JROTC instructors so licensed shall not be licensed to teach courses other than JROTC and military science, and LEAs shall not employ persons licensed only as JROTC instructors to teach courses other than JROTC or military science. Such restrictions to licensure, however, shall not impinge the granting of state-approved equivalency credits received through a JROTC or military science course;

(5) A supervisor's, principal's or teacher's license shall not be nonrenewed or revoked by the department of education based on student growth data as represented by the Tennessee value-added system (TVAAS), developed pursuant to chapter 1, part 6 of this title, or some other comparable measure of student growth, if no such TVAAS data is available; and

(6) Notwithstanding any other law, a supervisor, principal, or public school teacher shall not be required to take an assessment to advance or renew a license if:

(A) At the time of application for an initial license, the supervisor, principal, or public school teacher possessed an active professional license in a state that has a reciprocal agreement with the state board of education pursuant to § 49-5-109;

(B) At the time of application for advancement or renewal of a license, the supervisor, principal, or public school teacher is employed to serve or teach courses in the individual's area of endorsement in a public school in this state; and

(C) The supervisor, principal, or public school teacher earned an overall performance effectiveness level of "above expectations" or "significantly above expectations" as provided in the evaluation guidelines adopted by the state board of education pursuant to § 49-1-302 in each of the first two (2) years immediately following the issuance of the individual's initial license.

(d)(1) The state board of education has the authority to promulgate rules and regulations prescribing minimum standards for licenses and certificates differing from the requirements prescribed in this chapter.

(2) The state board of education shall establish guidelines, through the promulgation of rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to suspend, deny or revoke the license or certificate of a teacher who is delinquent or in default on a repayment or service obligation under a guaranteed student loan or if such teacher has failed to enter into a payment plan or comply with a payment plan or service obligation previously approved by TSAC or a guarantee agency. This subdivision (d)(2) shall apply to any federal family education loan program, the federal Higher Education Act of 1965 (20 U.S.C. § 1001 et seq.), a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.

(e) The department of education shall encourage institutions with authorized teacher training programs to evaluate all the teacher training programs to assure that persons seeking licensure in this state will have had appropriate

instruction in the teaching of reading.

(f)(1) The state board of education, with the assistance of the department of education and the Tennessee higher education commission, shall develop a report card or assessment on the effectiveness of teacher training programs. The state board of education shall annually evaluate performance of each institution of higher education providing an approved program of teacher training and other state board approved teacher training programs. The assessment shall focus on the performance of each institution's graduates and shall include, but not be limited to, the following areas:

(A) Placement and retention rates;

(B) Performance on PRAXIS examinations or other tests used to identify teacher preparedness; and

(C) Teacher effect data created pursuant to § 49-1-606.

(2) Each teacher training institution and each LEA shall report all data as requested by the state board of education that the board needs to make the evaluation. The report card or assessment shall be issued no later than February 15 of each year.

**49-5-108. Jurisdiction of state board of education. [Effective on January 1, 2019. See the version effective until January 1, 2019.]**

*(a)(1) Complete jurisdiction over the issuance and administration of licenses for supervisors, principals and public school teachers for kindergarten through grade twelve (K-12), including teachers in preschools operated under the authority of chapter 6, part 1 of this title, shall be vested in the state board of education.*

*(2) Notwithstanding subdivision (a)(1), the state board of education shall not deny instructional leader licensure based solely on the applicant completing a leadership preparation program located outside of this state.*

*(b) The licenses shall be uniform for all the school systems in the state.*

*(c) The state board of education is authorized, empowered and directed to set up rules and regulations governing the issuance of licenses for supervisors, principals and public school teachers. These rules and regulations shall prescribe standards controlling the issuance and renewal of all licenses and permits; provided, that:*

*(1) If a license is issued, it shall not be to an applicant who has less than four (4) years of general or technical and professional training beyond the twelfth grade;*

*(2) No increase in the minimum requirements for licenses shall become effective until at least one (1) year after promulgation of the increase by the state board of education;*

*(3) Vocational or trades teachers shall be certified on the basis of qualifications prescribed in the state plan for vocational education prepared by the state board for vocational education and approved by the United States department of education;*

*(4) Active or retired military personnel who seek to serve as junior reserve officers' training corps (JROTC) instructors shall be licensed to teach JROTC and military science in grades nine through twelve (9-12) based on documented military JROTC certification issued upon successful completion of all JROTC preparation requirements specific to the person's branch of military service. JROTC instructors so licensed shall not be licensed to teach courses*

*other than JROTC and military science, and LEAs shall not employ persons licensed only as JROTC instructors to teach courses other than JROTC or military science. Such restrictions to licensure, however, shall not impinge the granting of state-approved equivalency credits received through a JROTC or military science course;*

*(5) A supervisor's, principal's or teacher's license shall not be nonrenewed or revoked by the department of education based on student growth data as represented by the Tennessee value-added system (TVAAS), developed pursuant to chapter 1, part 6 of this title, or some other comparable measure of student growth, if no such TVAAS data is available; and*

*(6) Notwithstanding any other law, a supervisor, principal, or public school teacher shall not be required to take an assessment to advance or renew a license if:*

*(A) At the time of application for an initial license, the supervisor, principal, or public school teacher possessed an active professional license in a state that has a reciprocal agreement with the state board of education pursuant to § 49-5-109;*

*(B) At the time of application for advancement or renewal of a license, the supervisor, principal, or public school teacher is employed to serve or teach courses in the individual's area of endorsement in a public school in this state; and*

*(C) The supervisor, principal, or public school teacher earned an overall performance effectiveness level of "above expectations" or "significantly above expectations" as provided in the evaluation guidelines adopted by the state board of education pursuant to § 49-1-302 in each of the first two (2) years immediately following the issuance of the individual's initial license.*

*(d)(1) The state board of education has the authority to promulgate rules and regulations prescribing minimum standards for licenses and certificates differing from the requirements prescribed in this chapter.*

*(2)(A) The state board of education shall establish guidelines, through the promulgation of rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to suspend, deny or revoke the license or certificate of a teacher who is delinquent or in default on a repayment or service obligation under a guaranteed student loan or if such teacher has failed to enter into a payment plan or comply with a payment plan or service obligation previously approved by TSAC or a guarantee agency. This subdivision (d)(2) shall apply to any federal family education loan program, the federal Higher Education Act of 1965 (20 U.S.C. § 1001 et seq.), a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.*

*(B) Notwithstanding subdivision (d)(2)(A), the state board of education may elect not to suspend, deny, or revoke the license or certificate of a teacher if the default or delinquency is the result of a medical hardship that prevented the person from working in the person's licensed field and the medical hardship significantly contributed to the default or delinquency.*

*(e) The department of education shall encourage institutions with authorized teacher training programs to evaluate all the teacher training programs to assure that persons seeking licensure in this state will have had appropriate instruction in the teaching of reading.*

*(f)(1) The state board of education, with the assistance of the department of education and the Tennessee higher education commission, shall develop a*

*report card or assessment on the effectiveness of teacher training programs. The state board of education shall annually evaluate performance of each institution of higher education providing an approved program of teacher training and other state board approved teacher training programs. The assessment shall focus on the performance of each institution's graduates and shall include, but not be limited to, the following areas:*

*(A) Placement and retention rates;*

*(B) Performance on PRAXIS examinations or other tests used to identify teacher preparedness; and*

*(C) Teacher effect data created pursuant to § 49-1-606.*

*(2) Each teacher training institution and each LEA shall report all data as requested by the state board of education that the board needs to make the evaluation. The report card or assessment shall be issued no later than February 15 of each year.*

**49-5-413. Investigation of applicants for teaching or child care positions.**

(a) Except as provided by subsection (f), and in addition to the requirements of § 49-5-406, a local board of education, charter school, or any child care program as defined in § 49-1-1102, shall require that prior to employment, and at least every five (5) years thereafter, any person applying for or holding a position as a teacher or any other position requiring proximity to school children or to children in a child care program to:

(1) Agree to the release of all investigative records to the board or child care program for examination for the purpose of verifying the accuracy of criminal violation information as required by § 49-5-406(a)(1)(A); and

(2) Supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee bureau of investigation and the federal bureau of investigation.

(b) Any retired teacher applying for a position as a teacher in accordance with title 8, chapter 36, part 8 shall not be required to comply with this section if the application is being made to the local board of education from which the teacher retired.

(c) Any reasonable costs incurred by the Tennessee bureau of investigation in conducting the investigation of an applicant shall be paid by the applicant the first time the applicant applies for a position with a local board of education or a child care program. The applicant shall be provided a copy of all criminal history records check documentation provided to the local board of education or child care program to which the applicant first applies. In lieu of additional criminal history records checks for subsequent applications, the applicant may submit copies of the applicant's initial criminal history records check documentation and shall not be required to pay any additional costs. Any local board of education or child care program may reimburse the applicant for the costs of the investigation if the applicant accepts a position as a teacher or any other position requiring proximity to school children or children in a child care program. Any local board of education or child care program may establish a policy authorizing payments for investigations of an applicant who provides school maintenance, clean up, food service and other such functions other than administrative or teaching functions or duties. A local board of education or child care program may pay for an investigation of the applicant regardless of whether the applicant accepts an offer for employment with the board of

education or child care program.

(d)(1)(A) Any person, corporation or other entity that enters into or renews a contract, or contracts with any person, corporation, or other entity that enters into or renews a contract, with a school, local board of education or child care program as defined in § 49-1-1102, on or after May 30, 2008, shall be required to comply with this subsection (d) if the contract requires:

(i) The person or an employee of the person, corporation or other entity to have direct contact with school children or to children in a child care program; or

(ii) The person or employee to have access to the grounds of a school or child care center when children are present.

(B) Any person, corporation or other entity that, on or after September 1, 2007, but prior to May 30, 2008, entered into or renewed an applicable contract or contracts with a school, local board of education or child care program as defined in § 49-1-1102, and the contract remains in effect on May 30, 2008, shall be governed by this subsection (d) as it existed prior to May 30, 2008. However, all parties to any such contract may agree to come within subsection (d), even if the contracts were entered into or renewed prior to May 30, 2008.

(2)(A) It is the duty of the person, corporation or other entity that employs a person described in subdivision (d)(1) to require the applicant to supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee bureau of investigation and the federal bureau of investigation prior to permitting the person to have contact with the children or enter school grounds.

(B) If the person, corporation or other entity is an out-of-state employer, the requirements of subdivision (d)(2)(A) are satisfied if the employer presents proof that a criminal history records check that is comparable to that required by subdivision (d)(2)(A) has been conducted on the employee described in subdivision (d)(1). To qualify as a comparable criminal history records check, it must include a fingerprint-based criminal history records check that is conducted by the federal bureau of investigation.

(C) Notwithstanding subdivision (d)(2)(A), a person, corporation or entity that, for one (1) employee, satisfies the requirements of this subsection (d) for one (1) school, one (1) local board of education or one (1) child care program shall be deemed to have satisfied the requirements for any other school, board of education or child care program, as long as the employee remains in the continuous employment of the same person, corporation or entity.

(D) Notwithstanding subdivision (d)(2)(A), a person, corporation or other entity that, for one (1) contract, satisfies the requirements of this subsection (d) shall be deemed to have satisfied the requirements of this subsection (d) for any subsequent contract, as long as the employee servicing or working on that contract remains in the continuous employment of the same person, corporation or entity.

(3)(A) No employer, or employee of the employer to whom this subsection (d) applies, shall come in direct contact with school children or with children in a child care program or enter the grounds of a school or child care center when children are present until the criminal history records check has been conducted on the person.

(B) No employer, or employee of the employer to whom this subsection (d) applies, shall come in direct contact with school children or with children in a child care program or enter the grounds of a school or child care center when children are present if the criminal history records check indicates that the employer or employee has ever been convicted of any of the following offenses, or the same or similar offense in any jurisdiction, including convictions for the solicitation of, attempt to commit, conspiracy, or acting as an accessory to:

(i) A sexual offense or a violent sexual offense as defined in § 40-39-202;

(ii) Any offense in title 39, chapter 13;

(iii) §§ 39-14-301 and 39-14-302;

(iv) §§ 39-14-401 — 39-14-404;

(v) §§ 39-15-401 and 39-15-402;

(vi) § 39-17-417;

(vii) § 39-17-1320; or

(viii) Any other offense in title 39, chapter 17, part 13.

(C)(i) If an employee is convicted of any of the offenses in subdivision (d)(3)(B) after the employer has conducted a criminal history records check on the employee, the employee shall notify the employer of the conviction within seven (7) days from the date of conviction.

(ii) An employee commits a Class A misdemeanor, punishable by fine only, who knowingly fails to disclose to the employer within seven (7) days as required under subdivision (d)(3)(C)(i) that the employee has been convicted of an offense specified in subdivision (d)(3)(B).

(4) This subsection (d) shall only apply if the employer or employee of the employer comes in direct contact with school children, children in a child care program or enters the grounds of a school or child care center when children are present during the ordinary course of performing a function required or permitted by the terms of the contract. Any action involving direct contact or entry by an employee that is outside the ordinary course of performing a function required or permitted by the terms of the contract shall not in any way be deemed to be authorized or approved by the employer and the employer shall not in any way be deemed to be liable for the contact or entry, vicariously or otherwise. However, nothing in this subsection (d) shall authorize contact or entry by an employer or employee of the employer if contact or entry is prohibited by any other law; provided, that, with respect to the contact or entry, the person, corporation or other entity that employs a person described in subdivision (d)(1) shall not in any way be deemed to be liable, vicariously or otherwise, for any actions taken by the employee, unless the employer has actual knowledge that the other law prohibits contact or entry by an employee.

(5)(A) This subsection (d) shall not apply to:

(i) Government personnel engaged in law enforcement, medical or emergency health services;

(ii) Utility personnel, where utility means any entity created or authorized by law to provide electricity, gas, water, wastewater services or telecommunications services or any combination of these services;

(iii) Delivery or pick-up service providers where those services involve only scheduled visits under the supervision of school personnel; or

(iv) A person whose contract is for the performance of a service at a school-sponsored activity, assembly, or event at which school officials or

employees are present when the service is performed and where the activity, assembly, or event is conducted under the supervision of school officials or employees; provided, however, that this exception shall not apply to persons engaged or contracted to referee or officiate an interscholastic athletic event unless said person has undergone a satisfactory background check as a condition of registration for work as an official for interscholastic athletic contests.

(B) Nothing in this subsection (d) shall be construed to prevent any person, corporation or other entity that employs a person described in subdivision (d)(1) from directly receiving, upon payment of the appropriate fee, information indicating whether the employee meets or does not meet the criteria set out in this subsection (d).

(e)(1) The department of education, the state board of education, local boards of education, and LEAs are prohibited from hiring or retaining any individual whom the department of children's services has found to have committed child abuse, severe child abuse, child sexual abuse, or child neglect pursuant to title 37, except that no individual or employee shall be reported as a perpetrator by the department of children's services unless the department of children's services has determined that the due process rights of the individual or employee were either offered but not accepted, or were fully concluded, pursuant to the department of children's services rules and regulations and state and federal law.

(2) Any individual who is currently employed with, or has been conditionally offered employment with, the department of education, any local board of education, or any LEA, and has ever been found by the department of children's services to have committed child abuse, severe child abuse, child sexual abuse, or child neglect, shall be offered due process rights. Once the due process rights of the individual or employee have either been offered but not accepted, or have been fully concluded and the finding upheld, the department of children's services shall disclose such finding to the department of education, local board of education, or LEA.

(3) If an individual is currently employed with, or has been conditionally offered employment with, the department of education, any local board of education, or any LEA, and the department of children's services has ever found the individual to have committed child abuse, severe child abuse, child sexual abuse, or child neglect, but the due process rights of the individual or employee have not yet been offered or are still pending, the department of children's services shall conduct an emergency file review to determine if the individual poses an immediate threat to the health, safety, or welfare of children. If the emergency file review results in a finding that the individual poses an immediate threat to the health, safety or welfare of children, the department of children's services shall disclose the threat to the department of education, local board of education, or LEA.

(4) If an individual is currently employed with, or has been conditionally offered employment with, the department of education, any local board of education, or any LEA, and the department of children's services has commenced an investigation of the individual that has not yet been concluded, the department of children's services shall conduct an emergency file review to determine if the individual poses an immediate threat to the health, safety, or welfare of children. If the emergency file review results in a finding that the individual poses an immediate threat to the health, safety or welfare of children, the department of children's services shall disclose the

threat to the department of education, local board of education, or LEA.

(5) If due process proceedings have been stayed due to a pending criminal charge against an individual who is currently employed or has been conditionally offered employment by the department of education, any local board of education, or any LEA, the department of children's services shall notify the department of education, local board of education, or LEA of the pending criminal charge.

(6) The department of education, the state board of education and the department of children's services, in consultation, shall develop a procedure whereby local boards of education or LEAs may submit to the department of children's services the names of current employees and individuals who have been conditionally offered employment with the local board of education or LEA, to determine if the employee or individual has been found by the department of children's services to have committed child abuse, severe child abuse, child sexual abuse, or child neglect, or to pose an immediate threat to the health, safety, or welfare of children. Upon submission by the local board of education or LEA of the names of current employees and individuals who have been conditionally offered employment, the department of children's services shall timely provide the local board of education or LEA with the information in subdivisions (e)(2)-(5).

(7) The department of education, local board of education, and LEAs shall not hire or retain any individual whose name has been placed on the state's vulnerable person's registry or the state's sex offender registry.

(8) The department of children's services shall have authority to promulgate as emergency rules the procedures described in subdivisions (e)(2)-(5) and shall promulgate such rules within sixty (60) days of May 14, 2013.

(f) Upon Tennessee's acceptance into the federal bureau of investigation rap back program, local boards of education, charter schools, and any child care programs, as defined in § 49-1-1102, shall conduct state and national criminal history record checks on the personnel identified in subsection (a) and shall participate in the rap back program to determine suitability or fitness for employment. Local boards of education, charter schools, and child care programs shall notify applicants and employees who are subject to a criminal history record check pursuant to this section that the Tennessee bureau of investigation may charge a reasonable fee for the criminal history record checks performed and that applicant and employee fingerprints will be retained by the Tennessee bureau of investigation and the federal bureau of investigation for all purposes and uses authorized for fingerprint submissions. The criminal history record check shall include the submission of fingerprints to:

(1) The federal bureau of investigation for a national criminal history record check; and

(2) The Tennessee bureau of investigation for a state criminal history record check that shall include nonconviction data.

(g) Each local board of education and each governing body of a charter school shall adopt a policy governing background check procedures for contract workers and volunteers. Upon Tennessee's acceptance into the federal bureau of investigation rap back program, local boards of education, charter schools, and any child care program, as defined in § 49-1-1102, may require state and national criminal history record checks to be conducted on contract workers and school volunteers, and may participate in the rap back program, for the

purpose of determining suitability or fitness for contract workers and volunteers to work with children or to be on school grounds when children are present.

**49-5-417. Automatic revocation of licensure for certain criminal offenses.**

(a) The state board of education shall automatically revoke the license of a licensed teacher or administrator without the right to a hearing upon receiving verification of the identity of the teacher or administrator together with a certified copy of a criminal record showing that the teacher or school administrator has been convicted of any offense listed in § 39-13-532, § 39-17-417, or § 40-35-501(i)(2).

(b) The board shall notify persons whose licenses are subject to automatic revocation at least thirty (30) days prior to the board meeting at which the revocation shall occur.

(c)(1) A director of schools, director of a public charter school, or director of a nonpublic school who learns of the conviction of a licensed educator employed by the LEA, charter school, or nonpublic school, respectively, for any offense listed in § 39-13-532, § 39-17-417, and § 40-35-501(i)(2) must report the conviction to the state board. The state board shall set the time frame within which the director shall report a conviction of a licensed educator. The state board may specify other offenses that a director is required to report upon learning of a conviction of a licensed educator for such offense.

(2) A director of schools, director of a public charter school, or director of a nonpublic school shall report to the state board licensed educators employed by the LEA, charter school, or nonpublic school, respectively, who have been suspended or dismissed, or who have resigned, following allegations of conduct, including sexual misconduct, which, if substantiated, would warrant consideration for license suspension or revocation under state board of education rule.

(3)(A) The department of education, in consultation with the state board, shall develop forms to be used by directors of schools, directors of charter schools, and directors of nonpublic schools for reporting offenses and instructions and procedures to be used in filling out and filing the forms. The department shall provide the form, instructions, and procedures at least annually at the beginning of each school year. The department may provide the forms, instructions, and procedures electronically.

(B) The forms and instructions shall state when the directors have a duty to report under this subsection and the time frame in which the required report is to be filed pursuant to state board rule.

(4) The state board may issue a public reprimand if a director fails to make a report as required by this part or by the state board. The state board shall send a copy of the reprimand to the director and a copy to the local board of education, charter school governing body, or nonpublic school governing body as applicable.

(5) As used in this section, "sexual misconduct" means any sexually related behavior with a child or student, regardless of the age of the child or student, whether verbal, nonverbal, written, physical, or electronic that is designed to establish a sexual relationship with the child or student,

including, but not limited to, behaviors such as:

(A) Making sexual jokes, sexual remarks, or sexually suggestive comments;

(B) Engaging in sexual kidding, sexual teasing, sexual innuendo, or sexualized dialog;

(C) Dating or soliciting dates or sexual favors;

(D) Engaging in inappropriate physical contact or touching, groping, grabbing, or kissing; or

(E) Committing an offense under title 39, chapter 13, part 5, against a child or student.

**49-5-1003. Educator's obligations to students.**

(a) An educator shall strive to help each student realize the student's potential as a worthy and effective member of society. An educator therefore works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals.

(b) In fulfillment of this obligation to the student, an educator shall:

(1) Abide by all applicable federal and state laws;

(2) Not unreasonably restrain the student from independent action in the pursuit of learning;

(3) Provide the student with professional education services in a nondiscriminatory manner and in consonance with accepted best practices known to the educator;

(4) Respect the constitutional rights of the student;

(5) Not unreasonably deny the student access to varying points of view;

(6) Not deliberately suppress or distort subject matter relevant to the student's progress;

(7) Make reasonable effort to protect the student from conditions harmful to learning or to health and safety;

(8) Make reasonable effort to protect the emotional well-being of the student;

(9) Not intentionally expose the student to embarrassment or disparagement;

(10) Not on the basis of race; color; creed; disability; sex; national origin; marital status; political or religious beliefs; family, social, or cultural background; or sexual orientation, unfairly:

(A) Exclude the student from participation in any program;

(B) Deny benefits to the student; or

(C) Grant any advantage to the student;

(11) Not use the educator's professional relationship with the student for private advantage;

(12) Not disclose information about the student obtained in the course of the educator's professional service, unless disclosure of the information is permitted, serves a compelling professional purpose, or is required by law;

(13) Not knowingly make false or malicious statements about students or colleagues;

(14) Ensure interactions with the student take place in transparent and appropriate settings;

(15) Not engage in any sexually related behavior with the student, whether verbal, written, physical, or electronic, with or without the stu-

dent's consent. Sexually related behavior includes, but is not limited to, behaviors such as making sexual jokes or sexual remarks; engaging in sexual kidding, sexual teasing, or sexual innuendo; pressuring the student for dates or sexual favors; engaging in inappropriate physical touching, groping, or grabbing; kissing; rape; threatening physical harm; and committing sexual assault;

(16) Not furnish alcohol or illegal or unauthorized drugs to the student;

(17) Strive to prevent the use of alcohol or illegal or unauthorized drugs by the student when the student is under the educator's supervision on school or LEA premises, during school activities, or in any private setting;

(18) Refrain from the use of alcohol while on school or LEA premises or during a school activity at which students are present; and

(19) Maintain a professional approach with the student at all times.

**49-5-1004. Educator's obligations to the education profession.**

(a) The education profession is vested by the public with a trust and responsibility requiring the highest ideals of professional service. In the belief that the quality of the services of the education profession directly influences the nation and its citizens, the educator shall exert every effort to raise professional standards, to promote a climate that encourages the exercise of professional judgment, to achieve conditions which attract persons worthy of the trust to careers in education, and to assist in preventing the practice of the profession by unqualified persons.

(b) In fulfillment of this obligation to the profession, an educator shall not:

(1) Deliberately make a false statement or fail to disclose a material fact related to competency and qualifications in an application for a professional position;

(2) Misrepresent the educator's professional qualifications;

(3) Assist entry into the profession of a person known to be unqualified in respect to character, education, or other relevant attribute;

(4) Knowingly make a false statement concerning the qualifications of a candidate for a professional position;

(5) Assist a noneducator in the unauthorized practice of teaching;

(6) Disclose information about colleagues obtained in the course of professional service unless the disclosure serves a compelling professional purpose or is required by law;

(7) Knowingly make false or malicious statements about a colleague;

(8) Accept any gratuity, gift, or favor that might impair or appear to influence professional decisions or actions; and

(9) Use illegal or unauthorized drugs.

(c) In fulfillment of this obligation to the profession, educators shall:

(1) Administer state-mandated assessments fairly and ethically; and

(2) Conduct themselves in a manner that preserves the dignity and integrity of the education profession.

**49-5-1006. Report of breach of teacher code of ethics — Failure to report.**

(a) An educator who has personal knowledge of a breach by another educator of the teacher code of ethics prescribed in §§ 49-5-1003 and 49-5-1004 shall report the breach to the educator's immediate supervisor, director of schools, or local board of education within thirty (30) days of discovering the

breach.

(b) Failure to report a breach of the teacher code of ethics, or to file a report of any criminal activity or other misconduct that is required by federal or state law, is a breach of the teacher code of ethics.

**49-5-1007. Professional development training concerning teacher code of ethics.**

LEAs must conduct annual professional development training concerning the teacher code of ethics and its requirements. The professional development training shall address what constitutes unethical conduct.

**49-5-5604. Student teaching requirements. [Effective until January 1, 2019. See the version effective on January 1, 2019.]**

A student shall spend a significant portion of three (3) academic quarters involved in classroom observation and teaching. The observation shall begin in the sophomore year, unless the student has transferred from a two (2) year institution with which the teacher training institution has a transfer agreement, but which two (2) year junior or community college has no programs of classroom observation or student teaching. Each student shall be assigned to a tenured teacher for guidance, evaluation and instruction.

**49-5-5604. Clinical experiences required — Assignment to educator. [Effective on January 1, 2019. See the version effective until January 1, 2019.]**

*In order to gain experience in a school and demonstrate readiness for teaching, educator preparation providers shall require clinical experiences, including field experiences and clinical practice, as defined by the state board of education. During the clinical practice, each candidate shall be assigned to an effective educator for guidance, evaluation, and instruction.*

**49-5-5607. State board review of teacher training institutions — Revocation and reinstitution of certificates. [Effective until January 1, 2019. See the version effective on January 1, 2019.]**

(a) The state board of education shall review the scores on the state teachers examination from each public and private teacher training institution. Any institution that had thirty percent (30%) or more of its students fail the examination in the previous year shall be informed and placed on temporary probation. Any institution that has thirty percent (30%) or more of its students fail in two (2) consecutive years shall have its state certification revoked by the state board of education. Any institution may regain its certification when seventy percent (70%) of those students taking the examination in an academic year achieve a passing score.

(b) Notwithstanding subsection (a), the state board of education may continue to place on temporary probation any institution that has thirty percent (30%) or more of its students fail in two (2) consecutive years when there are fewer than ten (10) students taking any single initial licensing examination for a reporting year. In determining whether to continue temporary probation for an institution, the state board shall consider action taken by

the teacher training institution to improve candidates' passage rate on state teachers' examinations.

**49-5-5607. State board review of teacher training institutions — Probation — Revocation of state approval — Annual performance reports — Promulgation of rules. [Effective on January 1, 2019. See the version effective until January 1, 2019.]**

*(a) The state board of education shall review the scores on the state teachers examination from each public and private teacher training institution. Any institution that had thirty percent (30%) or more of its students fail the examination in the previous year shall be informed and placed on probationary status. Any institution that has thirty percent (30%) or more of its students fail in two (2) consecutive years shall have its state approval revoked by the state board of education.*

*(b) The department of education shall develop annual performance reports for all approved educator preparation providers.*

*(c) The state board of education shall promulgate rules necessary to effectuate this section. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

**49-5-5615. Training on teacher code of ethics required.**

State-approved teacher preparation programs shall require all teacher candidates to complete training on the teacher code of ethics found in part 10 of this chapter as part of the program.

**49-5-5616. Report of state-board-of-education approved teacher preparation program. [Effective January 1, 2019.]**

*(a) Each state-board-of-education approved teacher preparation program shall report for each school year:*

*(1) The number of its program completers who, in the completer's first year of service as a teacher of record, received a score of "below expectations" or "significantly below expectations" on the completer's overall evaluation. The report shall be filed with the Tennessee higher education commission, the state board of education, and the chairs of the education committees of the senate and house of representatives. The state board of education may include this information in its annual teacher preparation report card prepared pursuant to § 49-5-108; and*

*(2) The estimated cost to the institution of providing remediation to a teacher who completed its state-board-of-education approved teacher preparation program and who, in the teacher's first year of service as a teacher of record, received a score of "below expectations" or "significantly below expectations" on the teacher's overall evaluation and who has been recommended for remediation by the teacher's director of schools, or the director's designee. The report shall detail the estimated costs of providing remediation in person, remotely, or online.*

*(b) Notwithstanding subsection (a), if a state-board-of-education approved teacher preparation program reports, for any school year, no more than ten (10) program completers who, in the completer's first year of service as a teacher of*

*record, receive a score of "below expectations" or "significantly below expectations" on the completer's overall evaluation, then that data shall not be made publicly available in order to safeguard the privacy of individual teacher data.*

*(c) The general assembly encourages each state-board-of-education approved teacher preparation program to collaborate with the program's primary partnership local education agencies to support its program completers who are in the completers' first year of service as a teacher of record in kindergarten through grade twelve (K-12) schools.*

**49-5-5617 — 49-5-5620. [Reserved.]**

**49-5-5631. Teacher training faculty involvement in kindergarten through grade twelve. [Effective on January 1, 2019. See the version effective until January 1, 2019.]**

*(a) All full-time educator preparation program faculty members, including academic deans or executive leaders of such educator preparation programs, who are involved in the preparation of teachers, shall further their professional development through direct personal involvement in the public school or local education agency setting of pre-kindergarten through grade twelve (pre-K-12) on an annual basis.*

*(b) The faculty involvement must include:*

*(1) Professional learning targeted to or led by pre-k through grade twelve (pre-K-12) educators;*

*(2) Professional learning focused on local education agency specific educational initiatives;*

*(3) Direct instruction to pre-k through grade twelve (pre-K-12) students;*

*(4) Curriculum development;*

*(5) District level strategic partnerships; or*

*(6) Direct observation of pre-k through grade twelve (pre-K-12) classrooms.*

*(c) In accordance with state board of education policy, all preparation providers shall establish state-recognized partnerships with each local education agency where enrolled candidates will complete any aspect of clinical practice.*

*(d) Primary partnership agreements must detail how the college of education faculty detailed in subsection (a) shall engage with at least one (1) local education agency and describe faculty involvement activities listed in subsection (b).*

*(e) After implementation, the state board of education shall meet at least annually for structured meetings to coordinate policy on educator preparation, including, but not limited to, collaboration between colleges of education, colleges of education faculty, and local education agencies. The Tennessee higher education commission, the state's educator preparation programs, and the Tennessee Independent Colleges and Universities Association shall be invited to participate.*

*(f) The state board of education may review educator preparation programs for noncompliance with this section.*

*(g) This section shall not apply to a solely online college or university.*

**49-6-105. Application for funding and approval — Collaborative agreements.**

(a) LEAs may apply to the department of education for funding and approval of one (1) or more pre-kindergarten programs. LEAs may contract and enter into collaborative agreements for operation of these programs with nonschool system entities in the geographical area served by the LEA, including, but not limited to, nonprofit and for-profit child care providers and Head Start programs. LEAs shall not contract or collaborate with any child care provider licensed by the department of human services, unless that provider has attained the highest designation under the rated licensing system administered by the department of human services, pursuant to title 71, chapter 3, part 5.

(b) As part of the application process, the LEA shall include a statement that it has given consideration to how to serve all children four (4) years of age within the geographical area served by the LEA, in the event programs are later authorized for all children, regardless of at risk status. The long range plan shall include the proposed sources of local matching funds required under §§ 49-6-103 — 49-6-110. Where applicable, the LEA is encouraged to include a resolution of support from the local governing body indicating intent to appropriate the required local matching funds. Applications that target establishing programs for at-risk children not served by an existing program shall be given preference in the application process. Documentation of local financial support shall also be considered as a factor in the application process. LEAs are encouraged to collaborate with nonschool system entities where such collaboration provides an efficient means for expansion of pre-kindergarten classrooms authorized under §§ 49-6-103 — 49-6-110.

(c) The commissioner of education shall establish the system for submitting applications and, subject to available funding, programs shall be approved on a competitive basis.

(d) An LEA shall include as part of its application:

(1) A plan for ensuring coordination between voluntary pre-kindergarten classrooms and elementary schools within the LEA, with the goal of ensuring that elementary grade instruction builds upon pre-kindergarten classroom experiences;

(2) A plan for engaging parents and families of voluntary pre-kindergarten students throughout the school year; and

(3) A plan for delivering relevant and meaningful professional development to voluntary pre-kindergarten teachers, specific to ensuring a high quality pre-kindergarten experience.

(e) LEAs that receive pre-kindergarten program approval under §§ 49-6-103 — 49-6-110 shall utilize the pre-k/kindergarten growth portfolio model approved by the state board of education in the evaluation of pre-kindergarten and kindergarten teachers pursuant to § 49-1-302; provided, however, that for the 2017-2018 school year, employment termination and compensation decisions for pre-kindergarten or kindergarten teachers shall not be based solely on data generated by the portfolio model.

(f) Each LEA shall notify all teachers evaluated using a growth portfolio model of training and professional development opportunities available on growth portfolio models.

(g) Prior to the 2018-2019 school year, the department of education shall

study the pre-k/kindergarten growth portfolio model, including the portfolio rubric, the method for the collection and submission of student work artifacts, and scoring. The study shall include feedback from pre-kindergarten and kindergarten teachers, as well as other teachers using other growth portfolio models.

**49-6-306. Scholars Summer Guide.**

(a) Each student in grades kindergarten through eight (K-8) shall be given a Scholars Summer Guide prior to the last day of the school year.

(b) The Scholars Summer Guide shall be created by teachers, as determined by the school, who are familiar with future academic challenges facing students and shall provide each student with information regarding:

(1) Curriculum covered during the previous year that requires continued retention and repetition for students;

(2) Curriculum for the upcoming school year of which students should be aware, and areas that might be a challenge for students, with suggestions on how students can prepare for the upcoming year; and

(3) Summer reading and assignments.

(c) The Scholars Summer Guide may be personalized for students by teachers who are familiar with the student's current academic standing and potential future academic challenges.

**49-6-308. Pilot program to improve parent-teacher engagement.**

(a) The department of education shall establish in no less than two (2) public schools a three-year pilot program to improve parent-teacher engagement in any grade from kindergarten through grade two (K-2). Public schools interested in participating in the program shall apply with the department. The department shall strive to select public schools that satisfy the following criteria:

(1) One (1) school from each grand division of the state;

(2) At least one (1) urban, one (1) rural, and one (1) suburban school;

(3) At least one (1) school that primarily serves a minority population; and

(4) At least one (1) school in which eighty percent (80%) or more of the school's student population is eligible for free or reduced price lunch.

(b) The program shall begin with the 2018-2019 school year. Each school selected by the department to participate in the program shall be trained using a best practices model in the summer before any school selected to participate in the program is scheduled to begin classes for the 2018-2019 school year. The department shall organize a meeting with administrators from each of the schools selected to participate in the program, at which time the schools shall agree on the criteria to be used for the program from the chosen best practices model.

(c) Teachers participating in the program shall not be required to use the teacher's individual planning time or duty-free lunch or planning periods provided by § 49-1-302(e) for any duties or activities associated with the program.

(d) The department is authorized and empowered to contract with one (1) or more entities to provide parent-teacher engagement training to the teachers and principals of each school selected by the department to participate in the program.

(e) Throughout the program, the department shall collect and analyze:

(1) The number and percentage of parents who participated in the program and how many steps of the best practices model criteria they completed;

(2) The number and percentage of students meeting any academic goals established by the student, parent, and teacher as part of an initial parent-teacher conference or meeting;

(3) The academic performance goals met by students in any grade from kindergarten through grade two (K-2) whose parents and teachers participated in the program compared with the academic performance goals met by students in any grade from kindergarten through grade two (K-2) whose parents and teachers did not participate in the program;

(4) Data collected from a parent survey designed to gauge parent satisfaction with the program and to obtain suggestions from parents for ways to improve the program or to improve parent-teacher engagement in any grade from kindergarten through grade two (K-2); and

(5) Data collected from a teacher and principal survey designed to gauge teacher and principal satisfaction with the program and to obtain suggestions from teachers and principals for ways to improve the program or to improve parent-teacher engagement in any grade from kindergarten through grade two (K-2).

(f) The department shall submit an annual report on the outcomes of the pilot program to the education committee of the senate and to the education administration and planning committee of the house of representatives no later than July 31, 2019, for the first year of the pilot program, and no later than July 31 of each remaining year.

**49-6-407. Uniform grading system.**

(a) Each LEA shall adopt and use the uniform grading system developed by the state board of education for students enrolled in grades nine through twelve (9-12). Students' grades shall be reported for the purposes of application for postsecondary financial assistance administered by the Tennessee student assistance corporation using the uniform grading system.

(b) The state board of education shall develop a uniform grading system for students enrolled in grades kindergarten through eight (K-8) that LEAs may adopt and implement.

(c) An LEA that uses the uniform grading system as required for purposes of student application for postsecondary financial assistance administered by the Tennessee student assistance corporation, but for other purposes adopts another grading system based on quality points, shall assign additional quality points in the other grading system for the completion of honors and early postsecondary courses, including, but not limited to, national industry certification, statewide dual credit, Advanced Placement (AP), Cambridge, International Baccalaureate (IB), and dual enrollment as follows:

(1) One-half (½) quality point shall be added to the numerical quality point value corresponding to the letter grade received for an honors course; and

(2) One (1) quality point shall be added to the numerical quality point value corresponding to the letter grade received in early postsecondary courses recognized by the state board of education and department of education.

**49-6-415. Recovery high schools.**

(a) As used in this section:

(1) "Home district" means the LEA in which a student is enrolled full-time prior to enrollment in a recovery high school; and

(2) "Recovery high school" means a public school:

(A) For students who have a primary or secondary alcohol or other drug abuse or dependency diagnosis or co-occurring substance use and psychiatric diagnosis, as defined by the American Society of Addiction Medicine (ASAM) or the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM);

(B) That provides a high school education that leads to a diploma in compliance with the rules of the state board of education; and

(C) With a structured plan of recovery for the students.

(b) Local boards of education may establish recovery high schools to serve eligible students in grades nine through twelve (9-12). In providing recovery high schools, any two (2) or more boards may join together and establish a recovery high school.

(c) Recovery high schools shall be operated pursuant to rules of the state board of education promulgated pursuant to this section.

(d) Enrollment in a recovery high school shall be voluntary.

(e) Recovery high schools may establish admissions requirements so long as the requirements are in accordance with state and federal law and the rules of the state board of education.

(f) A recovery high school may enroll students residing outside the LEA in which the recovery high school is located pursuant to the LEA out-of-district enrollment policy.

(g) If an out-of-district student enrolls in a recovery high school, the per pupil state and local funds generated and required through the basic education program for the student's home district shall follow the student into the LEA in which the recovery high school is located.

(h) Tuition may be charged by a school district to out-of-district students enrolling in a recovery high school in accordance with § 49-6-3003 and with state and federal law.

(i) If a student enrolled in a recovery high school transfers to another public school, all course work completed and credits earned in the recovery high school shall be transferred.

(j) A student who graduates from a recovery high school shall receive a high school diploma from the high school that the student attended prior to enrolling in the recovery high school. If the student did not previously attend a high school prior to enrolling in the recovery high school, then such student shall receive a high school diploma from the school in which the student is zoned to attend.

(k) Recovery high schools shall provide special education services for students as provided in federal law, chapter 10 of this title, and in accordance with the rules of the state board of education.

(*l*) The administrator of a recovery high school shall provide a comprehensive annual report to the commissioner of education, the commissioner of mental health and substance abuse services, and the commissioner of health on each student's recovery, as allowed by federal and state law, including length of sobriety, whether the student is enrolled in a treatment program or attending recovery meetings, weekly urine screenings, behavior patterns, and

attendance patterns.

(m) The administrator of a recovery high school shall provide the department of education and the state board of education with an annual report of the following:

(1) An analysis of the recovery high school's educational outcomes;

(2) The overall high school graduation rate;

(3) The retention rate of teachers and students;

(4) Student performance in courses required to graduate, as determined by the state board of education;

(5) Student achievement data based on state assessments; and

(6) The number of students attending a postsecondary institution.

(n) The state board of education, in consultation with the department of education, the department of health, and the department of mental health and substance abuse services, is authorized to promulgate rules and to adopt policies to effectuate the purpose of this section. Any rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**49-6-416. Audit of voluntary association that establishes and enforces bylaws or rules for interscholastic sports competition for public secondary schools.**

Any voluntary association that establishes and enforces bylaws or rules for interscholastic sports competition for public secondary schools in this state shall be subject to an annual audit by the comptroller of the treasury. At the discretion of the comptroller of the treasury, the audit may be prepared by a certified public accountant, a public accountant, or by the department of audit. The comptroller of the treasury may accept the association's own audit prepared by a certified public accountant that has been filed with the secretary of state to satisfy the requirements of this section. If the association fails or refuses to have the audit prepared, then the comptroller of the treasury may appoint a certified public accountant or public accountant or direct the department to prepare the audit. The association shall bear the full costs of any audit prepared.

**49-6-417 — 49-6-450. [Reserved.]**

**49-6-703. [Repealed]**

**49-6-809. Policy authorizing off-duty law enforcement officers to serve as armed school security officers —Memorandum of understanding — List of qualified officers — Funding — Report.**

(a) For purposes of this section, "law enforcement officer" means the sheriff, sheriff's deputies, or any police officer employed by the state, a municipality, county, or political subdivision of the state certified by the peace officer standards and training (POST) commission; any commissioned member of the Tennessee highway patrol; and any Tennessee county constable authorized to carry a firearm and who has been certified by the POST commission.

(b)(1) To increase the protection and safety of students and school personnel, local boards of education may adopt a policy authorizing off-duty law

enforcement officers to serve as armed school security officers during regular school hours when children are present on the school's premises, as well as during school-sponsored events.

(2) Nothing in this section shall require a local board of education to adopt a policy permitting an off-duty law enforcement officer to serve as an armed school security officer.

(c)(1) If a local board of education adopts a policy authorizing off-duty law enforcement officers to serve as armed school security officers, the LEA shall execute a written memorandum of understanding (MOU) with each law enforcement agency that employs the law enforcement officers selected by the chief law enforcement officer of the law enforcement agency to serve as armed school security officers.

(2) Any MOU entered into pursuant to subdivision (c)(1) shall contain the following:

(A) A provision that prescribes the types of firearms that may be carried by an armed school security officer on school premises and the manner in which the armed school security officer's firearm may be carried; provided, that the MOU shall not prohibit an off-duty law enforcement officer who is serving as an armed school security officer from carrying a loaded handgun on school premises;

(B) A provision limiting the role of armed school security officers to that of maintaining safety in the school and prohibiting armed school security officers from addressing routine school discipline issues that do not constitute crimes or that do not impact the immediate health or safety of the students or staff of the school;

(C) Provisions stipulating that off-duty officers serving as armed school security officers are required to follow the policies of the officer's employing law enforcement agency;

(D) Procedures for communication among the LEA, armed school security officers, school resource officers, and local law enforcement agencies;

(E) A description of any policies, procedures, or other requirements that the armed school security officers must follow when responding to an emergency on school grounds;

(F) A statement requiring that armed school security officers comply with all state and federal laws regarding the confidentiality of personally identifiable student information;

(G) Procedures for addressing complaints against armed school security officers;

(H) A provision detailing how liability will be provided for any acts or omissions of the armed school security officer within the scope of the armed school security officer's duties, except for willful, malicious, or criminal acts or omissions or for acts or omissions done for personal gain;

(I) A provision detailing how scheduling will be determined; and

(J) The hours and wages of each armed school security officer assigned to a school in the LEA.

(3) Any MOU entered into pursuant to subdivision (c)(1) may prescribe:

(A) Whether an armed school security officer is required to be uniformed while on school premises; or

(B) Other means for proper identification of the armed school security officer.

(4)(A) If a MOU entered into pursuant to this subsection (c) would permit law enforcement officers to serve as armed school security officers at a

school that is located within the jurisdictional boundaries of another law enforcement agency that is not the law enforcement officers' employing agency, then the MOU shall not take effect until approved in writing by the chief law enforcement officer of the law enforcement agency with law enforcement jurisdiction for the school.

(B) Notwithstanding title 6, chapter 54, part 3, or any other law to the contrary, a law enforcement officer who is serving as an armed school security officer pursuant to this section for a school located outside of the jurisdictional boundaries of the officer's employing agency shall, while acting within the scope of the officer's employment as an armed school security officer, have the jurisdiction and authority to enforce all laws of this state and of the county or municipality in which the school at which the officer is serving as an armed school security officer is located.

(d)(1) The chief law enforcement officer of each law enforcement agency in this state shall prepare and distribute a list of its law enforcement officers who the chief law enforcement officer deems qualified and who are interested in serving as armed school security officers pursuant to this section to each LEA that is located within the law enforcement agency's jurisdictional boundaries and with which a MOU has been entered into in accordance with the provisions of this section. The chief law enforcement officer shall consider the federal Fair Labor Standards Act when considering an officer's qualification to serve as an armed school security officer.

(2) The chief law enforcement officer of a law enforcement agency may prohibit a law enforcement officer employed by another law enforcement agency from serving as an armed school security officer at a school located within the chief law enforcement officer's jurisdiction for reasons the chief law enforcement officer deems sufficient, including, but not limited to, if the law enforcement officer has received a disciplinary action within the last five (5) years that resulted in, at a minimum, a written reprimand. The chief law enforcement officer shall notify any such officer the chief prohibits from serving as an armed school security officer by sending a written notice of the prohibition to the law enforcement officer and the law enforcement officer's employing agency. The law enforcement officer is entitled to compensation pursuant to this section for any service as an armed school security officer performed by the officer prior to receipt of the written notice by the earlier of the law enforcement officer or the law enforcement officer's employing agency.

(e) If an LEA adopts a policy authorizing the use of armed school security officers, then funding for the armed school security officers may come from a law enforcement agency or from the LEA, including, but not limited to, local, state, or federal funds received by the LEA, for which purpose such funds may be lawfully expended.

(f)(1) Nothing in this section shall be construed to require an LEA or a law enforcement agency of the county to assign or provide funding for an armed school security officer.

(2) Nothing in § 49-3-315 shall be construed to require an LEA or a law enforcement agency of the county to assign or provide funding for an armed school security officer as defined in this section to any school system within that county on the basis of the WFTEADA, as defined by § 49-3-302. The provision of armed school security officers by local law enforcement agencies shall be considered a law enforcement function and not a school operation or maintenance purpose that requires the apportionment of funds pursuant to

§ 49-3-315.

(g) The use of armed school security officers shall be supplemental to school resource officers and school safety measures adopted by an LEA and shall not supplant school resource officers or other school security measures. An LEA shall not replace a school resource officer or other school security measure with an armed school security officer. A law enforcement agency shall not terminate a MOU for the provision of school resource officers based solely upon an LEA's adoption of a policy authorizing the use of armed school security officers.

(h) Following the conclusion of the 2020-2021 school year, the chief law enforcement officer of each law enforcement agency with law enforcement jurisdiction for a school that has utilized armed school security officers pursuant to this section shall submit a report to the governor, the chair of the education administration and planning committee of the house of representatives, the chair of the education committee of the senate, and the commissioner of education on or before September 1, 2021, that details any school security deficiencies and that provides recommendations for security improvements for each such school. If the report requirement of this subsection (h) affects more than one (1) law enforcement agency within any one (1) county, then the affected chief law enforcement officers shall submit a single, consolidated report covering the schools that have utilized armed school security officers pursuant to this section.

**49-6-1003. Safety instruction.**

(a) Whenever any state funds are used in any of the public schools of the state, it is the duty of the principal of the school or schools, including all subprincipals and teachers, to instruct pupils in the art of safety against injury on the public thoroughfares, highways and streets of the state and other places where the students may come in contact with, or be in danger of, bodily injury, for at least fifteen (15) minutes in each week during the time the school is in session.

(b) It is the duty of the school board, school commissioners or other persons who have power to regulate and control the schools to make rules and regulations with reference to the teaching of the art of safety to the pupils of the schools as they deem wise and prudent from time to time, and transmit the rules and regulations to the principals or teachers in charge of the schools, so that the teaching of the art of safety on the public thoroughfares, highways and other places may be taught and carried out according to the rules and regulations.

(c) [Deleted by 2018 amendment.]

**49-6-1006. Black history and culture.**

(a) The course of instruction in all public schools should include, at some appropriate grade level or levels, as determined by the local board of education, courses and content designed to educate children in black history and culture and the contribution of black people to the history and development of this country and of the world. The general assembly finds that the goal of curriculum shall include the history, heritage, culture, experience and ultimate destiny of all social, ethnic, gender and national groups and individuals, and that such are represented as interdependent, interactive and complementary. The state board of education shall include multicultural diversity when developing frameworks and curricula to be taught at appropriate grade levels

kindergarten through grade twelve (K-12).

(b) [Deleted by 2018 amendment.]

(c) [Deleted by 2018 amendment.]

**49-6-1007. Character education.**

(a) The course of instruction in all public schools shall include character education to help each student develop positive values and improve student conduct as students learn to act in harmony with their positive values and learn to become good citizens in their school, community and society. Public schools are urged to include the use of nonviolence as a means of conflict resolution within character education.

(b)(1) The department of education shall provide the appropriate method of instruction in kindergarten through grade twelve (K-12), in conformity with the elementary school curriculum provided for in subsection (c).

(2) Local boards of education may implement additional courses and materials in character education at their discretion.

(c) Each LEA shall provide the character education curriculum set forth in the curriculum provided by the department or a comparable program approved by the department.

(d) [Deleted by 2018 amendment.]

(e) Human resource agencies created pursuant to title 13, chapter 26 may serve as the service delivery system for the character education program.

(f) Local education agencies are authorized and encouraged to adopt as their course of instruction in character education the Congressional Medal of Honor Character Development Program. This program may be adopted for the appropriate grade levels and integrated into a number of academic subjects, including, but not limited to, government, contemporary issues, history, sociology, psychology, language arts, leadership, and mathematics.

**49-6-1012. [Repealed.]**

**49-6-1014. Celebrate Freedom Week.**

(a)(1) As used in this section, "Constitution Day" means a federal observance that recognizes the adoption of the United States Constitution and those who have become United States citizens that is normally observed on September 17, the day in 1787 that delegates to the Constitutional Convention signed the document in Philadelphia, unless the day falls on a weekend or on another holiday, in which schools observe the holiday during the week of classes in which the seventeenth day of such month falls.

(2) For purposes of subdivision (a)(1), Sunday shall be considered the first day of the week.

(b) To educate students in grades kindergarten through twelve (K-12) about the sacrifices made for freedom in the founding of this country and the values upon which this country was founded, the week of September 17, 2018, and annually thereafter, is designated as Celebrate Freedom Week to honor Constitution Day in all public schools.

(c) The department of education shall promote Celebrate Freedom Week.

(d) During Celebrate Freedom Week, all students in grades kindergarten through twelve (K-12) shall receive instruction on Celebrate Freedom Week topics, including the resources and materials in subsection (f) to be determined

by each school.

(e) Each topic of Celebrate Freedom Week shall be taught in compliance with § 49-6-1011.

(f) No later than December 31, 2017, the department of education shall provide each LEA with a variety of age and grade appropriate internet resources and materials for instructional use for Celebrate Freedom Week. The resources and materials shall be provided to aid educators and curriculum coordinators in creating programs and lesson plans for Celebrate Freedom Week. The department and LEA shall post information about Constitution Day and Celebrate Freedom Week, as well as the recommended resources and materials on their respective websites.

(g) Schools are encouraged to:

(1) Create materials and resources for the week in accordance with this section;

(2) Study the meaning and importance of the Declaration of Independence and the United States constitution with an emphasis on the preamble and the bill of rights; and

(3) Provide for the study of the Declaration of Independence to include study of the relationship between ideas expressed in that document and subsequent American history, including:

(A) The rich diversity of American people as a nation of immigrants;

(B) The American revolution;

(C) The formulation of the United States constitution; and

(D) The abolitionist movement, including the emancipation proclamation and the women's suffrage movement.

(h) During Celebrate Freedom Week, all students are encouraged to study and recite the following language from the Declaration of Independence that sum up the American philosophy of freedom:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.

**49-6-1015. Senator Douglas Henry Tennessee History Act.**

(a) This section shall be known and may be cited as the "Senator Douglas Henry Tennessee History Act."

(b) The general assembly finds that:

(1) It is essential for all citizens to know and understand the unique heritage and history of the state of Tennessee;

(2) A clear and full understanding of Tennessee's history is fundamental to understanding Tennessee's place in the United States and the world; and

(3) Providing and promoting Tennessee history should be a core mission of our system of education.

(c) Beginning with the 2019-2020 school year, the state board of education shall require a course in Tennessee history for students.

**49-6-1016. Noncompulsory gun safety class or program for elementary school students.**

An LEA may offer a noncompulsory gun safety class or program for students in elementary school. If an LEA offers a gun safety class or program, then the

LEA may incorporate, in the class or program, the rules and principles of gun safety developed by an organization specializing in firearms training and safety that the local board of education finds appropriate to incorporate. The course of instruction shall not permit the use or presence of live ammunition or live fire.

**49-6-1023. [Repealed.]**

**49-6-1026. Approval for elective state funded course for nonsectarian, nonreligious academic study of the Bible — Course requirements.**

(a) The state board of education is authorized to approve academic standards for an elective state-funded course consisting of a nonsectarian, nonreligious academic study of the Bible. The course may include the impact of the Bible on literature, art, music, culture and politics. The curriculum and associated textbooks and instructional materials shall meet academic rigor and standards of the state board of education in the same manner as required for approval of any other elective course, textbook and instructional materials approved by the state board and shall meet the requirements of the constitutions of the United States and of this state. The course provided for in this section shall:

(1) Be taught in an objective and nondevotional manner with no attempt made to indoctrinate students;

(2) Not include teaching of religious doctrine or sectarian interpretation of the Bible or of texts from other religious or cultural traditions; and

(3) Not disparage or encourage a commitment to a particular set of religious beliefs.

(b) All courses that were taught in the 2007-2008 school year under a special course number in any LEA in the state for an elective course consisting of an academic study of the Bible shall be an approved curriculum by the department of education.

(c)(1) Any course for an academic study of the Bible using a curriculum developed by an LEA that has been approved by the department of education may be adopted by another LEA without further approval by the department.

(2) The department of education shall make available on its website:

(A) A list identifying each LEA that has developed a Bible course curriculum that has been approved by the department and that is available for adoption by another LEA pursuant to subdivision (c)(1);

(B) All Bible course curricula developed by LEAs that have been approved by the department and that are available for adoption by another LEA pursuant to subdivision (c)(1);

(C) The academic standards for a Bible course that have been approved by the state board of education under subsection (a); and

(D) Instructions on how an LEA may submit its own Bible course curriculum for approval.

(3) The state board of education shall include on its list of approved high school courses the elective Bible course developed pursuant to subsection (a).

(4) The department shall notify each LEA in writing, no later than July 1 of each year, of the LEA's ability to offer an elective state-funded Bible course

consisting of a nonsectarian, nonreligious academic study of the Bible in accordance with this section, and the ability of each LEA to develop its own Bible course curriculum.

(d) An LEA that elects to offer a course and utilize an associated textbook or instructional materials approved in accordance with subsection (a) shall implement the course in accordance with the constitutions of the United States and of this state, including the manner in which the course is taught in the classroom and the assignment by the LEA of the individual teaching the course. The individual assigned to teach the course shall meet all certification requirements and all other provisions of this chapter relating to personnel employed by local units of administration. In addition, no person shall be assigned to teach the course based in whole or in part on any religious test, profession of faith or lack of faith, prior or present religious affiliation or lack of affiliation, or criteria involving particular beliefs or lack of beliefs about the Bible or in violation of § 49-6-2906 or part 80 of this chapter.

(e) Nothing in this section shall be construed as mandating that an LEA use the curriculum developed under subsection (a) for an academic study of the Bible or prohibiting an LEA from adopting its own curriculum for an academic study of the Bible; provided, that any academic study of the Bible so offered shall be approved as a special course according to the rules of the state board of education and in compliance with the constitutions of the United States and of this state.

**49-6-1027. [Repealed.]**

**49-6-1304. Family life instruction.**

(a) A family life curriculum shall, to the extent that the topic and the manner of communication is age-appropriate:

(1) Emphatically promote only sexual risk avoidance through abstinence, regardless of a student's current or prior sexual experience;

(2) Encourage sexual health by helping students understand how sexual activity affects the whole person including the physical, social, emotional, psychological, economic and educational consequences of nonmarital sexual activity;

(3) Teach the positive results of avoiding sexual activity, the skills needed to make healthy decisions, the advantages of and skills for student success in pursuing educational and life goals, the components of healthy relationships, and the social science research supporting the benefits of reserving the expression of human sexual activity for marriage;

(4) Provide factually and medically-accurate information;

(5) Teach students how to form pro-social habits that enable students to develop healthy relationships, create strong marriages, and form safe and stable future families;

(6) Encourage students to communicate with a parent, guardian, or other trusted adult about sex or other risk behaviors;

(7) Assist students in learning and practicing refusal skills that will help them resist sexual activity;

(8) Address the benefits of raising children within the context of a marital relationship and the unique challenges that single teen parents encounter in relation to educational, psychological, physical, social, legal, and financial

factors;

(9) Discuss the interrelationship between teen sexual activity and exposure to other risk behaviors such as smoking, underage drinking, drug use, criminal activity, dating violence, and sexual aggression;

(10) Educate students on the age of consent, puberty, pregnancy, childbirth, sexually transmitted diseases, including but not limited to HIV/AIDS, and the financial and emotional responsibility of raising a child;

(11) Teach students how to identify and form healthy relationships, and how to identify and avoid unhealthy relationships;

(12) Notwithstanding § 49-6-1302(a)(1), inform students, in all LEAs, concerning the process of adoption and its benefits. The state board of education, with the assistance of the department of education, shall develop guidelines for appropriate kindergarten through grade twelve (K-12) instruction on adoption, what adoption is, and the benefits of adoption. The guidelines shall be distributed by the department of education to each LEA by the start of the 2015-2016 school year; and

(13) Provide instruction on the detection, intervention, prevention, and treatment of child sexual abuse, including such abuse that may occur in the home, in accordance with the declarations and requirements of §§ 37-1-601(a) and 37-1-603(b)(3).

(b) Instruction of the family life curriculum shall not:

(1) Promote, implicitly or explicitly, any gateway sexual activity or health message that encourages students to experiment with noncoital sexual activity;

(2) Provide or distribute materials on school grounds that condone, encourage or promote student sexual activity among unmarried students;

(3) Display or conduct demonstrations with devices specifically manufactured for sexual stimulation; or

(4) Distribute contraception on school property; provided, however, that medically-accurate information about contraception and condoms may be provided so long as it is presented in a manner consistent with the preceding provisions of this part and clearly informs students that while such methods may reduce the risk of acquiring sexually transmitted diseases or becoming pregnant, only abstinence removes all risk.

### 49-6-1306. Complaint by parent or legal guardian — Cause of action by parent or guardian.

(a) Notwithstanding any other law to the contrary, a parent or legal guardian of a student enrolled in family life may file a complaint with the director of schools if the parent or legal guardian believes that a teacher, instructor, or representative of an organization has not complied with the requirements of this part. The director shall investigate the complaint and report such director's findings, along with any recommendations for disciplinary action, to the local board for further action. The local board shall file, in a timely manner, a report with the commissioner regarding any action or inaction taken. On an annual basis, the commissioner shall transmit those filings to the chair of the education committee of the senate and the chair of the education instruction and programs committee of the house of representatives.

(b)(1) If a student receives instruction by an instructor or organization that promotes gateway sexual activity or demonstrates sexual activity, as pro-

hibited under this part, then the parent or legal guardian shall have a cause of action against that instructor or organization for actual damages plus reasonable attorney's fees and court costs; provided, however, that this subsection (b) shall not apply to:

(A) Instruction provided by teachers employed by the LEA; or

(B) Instruction provided by instructors employed by an LEA-approved organization, or by LEA-approved instructors, that is limited to the detection, intervention, prevention, and treatment of child sexual abuse, including such abuse that may occur in the home, in accordance with §§ 37-1-601(a), 37-1-603(b)(3), and 49-6-1303(b). Any LEA-approved organization, instructor employed by an LEA-approved organization, or LEA-approved instructor who promotes any gateway sexual activity, demonstrates sexual activity, or teaches student nonabstinence as an appropriate or acceptable behavior, as prohibited under this part, shall be subject to a cause of action by a parent or legal guardian pursuant to this subdivision (b)(1).

(2) If the parent or legal guardian is the prevailing party to the action, the court may impose a civil fine in an amount not to exceed five hundred dollars ($500).

(3) An action brought under this subsection (b) shall be commenced within one (1) year after the alleged violation occurred.

(c) This section shall not apply to instruction by any teacher, instructor, or organization, who, with respect to a course or class otherwise offered in accordance with the requirements of this part, verbally answers in good faith any question, or series of questions, germane and material to the course, asked of the instructor and initiated by a student or students enrolled in the course.

**49-6-2201. State textbook and instructional materials quality commission.**

(a)(1) There is created a state textbook and instructional materials quality commission composed of ten (10) members, nine (9) of whom shall be appointed as follows:

(A) The speaker of the senate shall appoint a:

(i) Director of schools; and

(ii) Teacher or instructional supervisor in the intermediate grades, grades four through eight (4-8);

(B) The speaker of the house of representatives shall appoint a:

(i) Director of schools; and

(ii) Teacher or instructional supervisor in the lower grades, grades kindergarten through three (K-3);

(C) The governor shall appoint a:

(i) Principal; and

(ii) Teacher or instructional supervisor in the upper grade subjects, grades nine through twelve (9-12);

(D)(i) The three (3) remaining members shall be citizens of this state who are not employed in the public kindergarten through grade twelve (K-12) educational system but who are knowledgeable of education issues in this state;

(ii) The citizen members listed in subdivision (a)(1)(D)(i) shall be appointed as follows:

*(a)* The governor shall appoint a person who resides in the western grand division of the state;

*(b)* The speaker of the senate shall appoint a person who resides in the eastern grand division of the state; and

*(c)* The speaker of the house of representatives shall appoint a person who resides in the middle grand division of the state; and

(E) If a member's initial qualification changes, the member shall be allowed to complete such member's term of appointment.

(2) The commissioner of education, or a deputy or assistant commissioner of education serving as the commissioner's designee, shall be an ex officio secretary of the commission, with the right to vote, and shall serve without additional compensation for such service.

(3) In making appointments pursuant to subdivisions (a)(1)(A)-(C), the appointing authorities shall strive to ensure that a proportionate number of persons are appointed to the commission from each grand division of the state.

(b)(1) Except as otherwise provided in subdivisions (b)(2) and (3), each appointed member shall be confirmed by joint resolution of the general assembly upon the recommendation of the education committee of the senate and the education administration and planning committee of the house of representatives in the legislative session immediately following appointment.

(2) If the general assembly is not in session at the time a member is appointed to fill a vacancy, the new appointee shall serve for the term appointed unless such appointment is not confirmed within ninety (90) calendar days after the general assembly next convenes in regular session following such appointment.

(3) If the general assembly is not in session when initial appointments are made, all initial appointments shall serve the terms prescribed pursuant to subdivision (d)(2), unless such appointments are not confirmed within ninety (90) days after the general assembly next convenes in regular session following such appointments.

(c) Except as provided in subsection (d) for initial appointments, the terms of the members of the commission shall be three (3) years.

(d)(1) The entire membership of the commission as comprised on June 30, 2018, shall be vacated on July 1, 2018, and new members shall be appointed and confirmed in accordance with subsections (a) and (b).

(2) In order to stagger the terms of the newly appointed commission members, initial appointments shall be made as follows:

(A) The persons appointed pursuant to subdivision (a)(1)(D)(ii) shall serve an initial term of one (1) year, which shall expire on June 30, 2019;

(B) The persons appointed pursuant to subdivisions (a)(1)(A)(i), (a)(1)(B)(i), and (a)(1)(C)(i) shall serve an initial term of two (2) years, which shall expire on June 30, 2020; and

(C) The persons appointed pursuant to subdivisions (a)(1)(A)(ii), (a)(1)(B)(ii), and (a)(1)(C)(ii) shall serve an initial term of three (3) years, which shall expire on June 30, 2021.

(e)(1) Following the expiration of members' initial terms as prescribed in subdivision (d)(2), all three-year terms shall begin on July 1 and terminate on June 30, three (3) years thereafter.

(2) In the event of a vacancy, the respective appointing authority shall fill

the vacancy for the unexpired term.

(f) At the first regular meeting in each calendar year, the members of the commission shall elect a chair for a one-year term or until a successor is elected.

(g)(1) Before members of the commission begin to discharge their duties, they shall take and subscribe to the following oath: "I do hereby declare that I am not now directly or indirectly financially interested in, or employed by, any textbook or instructional materials publisher or agency, and that I will not become directly or indirectly financially interested in any of the proposed contracts, nor in any book or instructional materials, nor in any publishing concern handling or offering any books or other publications to the commission, of which I am a member, for listing and adoption, and I do hereby promise that I will act honestly, faithfully, and conscientiously, and in all respects will discharge my duty as a member of this commission to the best of my skill and ability."

(2) A violation of the oath taken pursuant to subdivision (g)(1) as determined by the department of education, in consultation with the commission, shall be grounds for the removal of a member by the respective appointing authority. A violation of the oath taken pursuant to subdivision (g)(1) may subject the commission member to criminal prosecution pursuant to applicable criminal statutes.

(h) The department of education shall assist the commission by providing mandatory training to newly appointed members on the textbook and instructional materials review process and the completion of their assigned tasks, including, but not limited to, the following:

(1) The delivery of quality textbook and instructional materials programs to the LEAs of the state, as fulfilled through the development of rules for the bidding and contracting of textbook and instructional materials programs;

(2) The adoption of physical standards and specifications that assure suitable durability of the textbooks, instructional materials, and supplemental materials;

(3) The review of programs bid against the academic standards approved by the state board of education;

(4) The establishment of contracts that guarantee the availability of adopted programs to all LEAs at the lowest price;

(5) The authority, responsibility, and duties of the commission, which include a review of the statutes and rules that govern the commission and the textbook and instructional materials review process;

(6) The time frame for the textbook and instructional materials review process;

(7) The process of appointing members to the advisory panels and expectations of the members of the panels;

(8) The First Amendment to the United States Constitution as it applies to the textbook and instructional materials adoption process; and

(9)(A) The goals of the textbook and instructional materials book review process. The commission shall not approve a textbook or instructional materials for adoption by LEAs unless the textbook or instructional materials:

(i) Conform to the standards for its subject area or grade level;

(ii) Are free of any clear, substantive, factual, or grammatical error; and

(iii) Comply with and reflect the values expressed in § 49-6-1028(b), if the textbook or instructional materials are being considered for adoption as a textbook or instructional materials for education of students in general studies and specifically in United States history and this nation's republican form of government;

(B) Nothing in this part prohibits the use of or applies to supplemental instructional materials.

(i)(1) No member of the commission shall receive any gift, reward, present, or emolument from any author, publisher, or distributor of textbooks or instructional materials, except copies of textbooks and instructional materials offered for listing and adoption.

(2) No member or employee of the commission shall accept any employment as agent, attorney, subagent, employee, or representative of any author, publisher, or distributor of textbooks or instructional materials during the person's term of service on the commission, nor within twelve (12) months after the expiration of the person's term of office.

(3)(A) No author, publisher, agent, attorney, employee, or representative of any author, publisher, or distributor shall give any gift, reward, present, or emolument to any member of the commission nor make any offer of employment to a member of the commission during the member's term of service whereby the member is to become the agent, employee, attorney, or representative of the author or publisher.

(B) Any contract, expressed or implied, made by any person, firm, or corporation in violation of subdivision (i)(3)(A) is declared to be illegal and void and no recovery thereon shall be had.

(4) A commission member who knowingly violates subdivision (i)(1) or (i)(2) may be subject to criminal prosecution pursuant to applicable criminal statutes.

(j) Members of the commission shall not be compensated for their services but may be reimbursed for travel expenses in accordance with the comprehensive travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(k)(1) Six (6) members of the commission shall constitute a quorum for the purpose of meeting and conducting business.

(2) No action of the commission shall be valid unless authorized by the affirmative vote of a majority of the members of the commission.

(3) The commission shall have two (2) regular meetings each school year to be held on the dates determined and announced by the commission. Notice of each regular meeting of the commission shall be posted on the department's website within three (3) full business days of the setting of the meeting dates.

(4) The commission may have as many special meetings as it deems necessary; provided, that in no case shall any member or members of this commission receive traveling expenses for more than three (3) special meetings in one (1) school year.

(5) Public notice of the call for the special meetings shall be made by the secretary of the commission at least ten (10) business days in advance of the date set for the special meeting and shall be posted within one (1) full business day of the call.

(6) All meetings shall be held in the office of the commissioner of education or at such place as designated by the commission.

(7) Meetings of the commission shall be made available for viewing by the public over the internet by streaming video accessible from the website of the department of education. Archived videos of the commission's meetings shall also be available to the public through the department's website.

(*l*)(1)(A) The commission, through its chair, may recruit and appoint an advisory panel of expert teachers and other experts in each subject area or grade level to advise the commission on textbook and instructional material selections.

(B) At least one (1) teacher shall be appointed to each advisory panel. Teachers appointed to the advisory panels shall possess a license to teach with an endorsement in the subject area or grade level for which they shall review textbooks or instructional materials.

(C) Experts, who are not public school teachers, may include college professors and credentialed subject matter specialists.

(D) All members of advisory panels must have a specific knowledge of and expertise in the content of the subject matter contained in the textbooks or instructional materials they review.

(2) The department of education shall assist the commission by providing mandatory training to members of advisory panels on the review process and the completion of their assigned tasks. The mandatory training shall include:

(A)(i) The requirements for performing a thorough review of all textbooks or instructional materials assigned to a member for review. The review shall include an examination as to whether the textbooks or instructional materials:

*(a)* Conform to the standards for their subject areas or grade levels;

*(b)* Are free of any clear, substantive, factual, or grammatical errors; and

*(c)* Comply with and reflect the values expressed in § 49-6-1028(b), if the textbook or instructional materials are being considered for adoption as a textbook or instructional materials for education of students in general studies and specifically in United States history and this nation's republican form of government; and

(ii) Nothing in this part prohibits the use of or applies to supplemental instructional materials;

(B) The use of any forms developed by the commission for making a review; and

(C) The time frame for completing their tasks.

(3) The advisory panelists shall individually make their recommendations and shall not be convened except upon the call of the chair of the commission. If convened, the panelists may be reimbursed from funds available to the commission for travel expenses in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(4) The names of the reviewers, their positions, employers, and the panels on which they serve shall be identified on the department's website. The reviews of the members of an advisory panel shall be posted on the department's website without any information that would identify the reviewers.

(5) Each textbook or any instructional materials proposed for approval

shall be reviewed by multiple members of the panel.

(6) Before issuing a recommendation on a textbook or on instructional materials, each advisory panelist shall review the public comments on the textbook or instructional materials posted on the department's website, pursuant to § 49-6-2203(d)(4). Each advisory panelist shall consider the public comments in making the panelist's recommendation.

(7) The commission shall evaluate all reviews submitted by the members of the advisory panel for each textbook or any instructional materials proposed for approval. The commission shall also review the public comments posted on the department's website, pursuant to § 49-6-2203(d)(4). If the reviews by the members of the advisory panel for a specific textbook or instructional materials do not lead to a clear recommendation as to the approval or rejection of the textbook or instructional materials or if the commission finds that the public comments indicate that further review of a textbook or any instructional materials is called for, then the commission shall conduct a public hearing as to whether the textbook or instructional materials should be approved. Notice of the public hearing shall be prominently posted on the home page of the department's website at least thirty (30) days prior to the meeting of the commission at which the textbook or instructional materials are to be considered.

(8) The commission is authorized to promulgate rules and regulations for the recruitment and appointment of members to the advisory panels and the process by which the members review their assigned texts.

**49-6-2202. List of approved textbooks and instructional materials.**

(a) It is the duty of the commission to prepare a list of standard editions of textbooks and instructional materials that cover a complete program of study for approval by the state board of education for use in the public schools of the state. The commission shall prepare a list of at least four (4) books or sets of instructional materials in each subject and grade for which textbooks or instructional materials are to be adopted, if four (4) or more textbooks or sets of instructional materials in that subject or grade are available and of sufficient merit to warrant being listed. The list shall be published in accordance with the rules, regulations, policies and procedures of the state publications committee. The proposed textbook and instructional materials list shall also be posted on the web site of the department of education.

(b)(1) The commission has the authority to recommend to the state board of education which textbooks and instructional materials may be added to the list for adoption.

(2) The commission shall only recommend textbooks and instructional materials that comply with and reflect the values expressed in § 49-6-1028(b), if the textbook or instructional materials are being considered for adoption as a textbook or instructional materials for education of students in general studies and specifically in United States history and this nation's republican form of government.

(3) Nothing in this part shall prohibit the use of or apply to supplemental instructional materials.

(4) In recommending textbooks and instructional materials for use in social studies, Tennessee history, American history or any related subject, the commission shall strive to recommend textbooks and instructional

materials that accurately and comprehensively portray the full range of diversity and achievement of racial and ethnic minorities as well as the role and importance of religion in history.

(c) A publisher submitting a textbook or instructional materials for possible approval shall execute an agreement:

(1) Ensuring the book's or the materials' accuracy;

(2) Certifying that the textbook or the instructional materials have been thoroughly examined and reviewed by qualified content experts for factual accuracy. The publisher shall also list the professional credentials for at least three (3) content review experts who have thoroughly examined the textbook or instructional materials for content accuracy;

(3) Certifying that the textbook or instructional materials have been thoroughly examined and reviewed by qualified editors for typographical errors and errors in grammar, written expression, spelling, formatting and other substantive elements that may affect student learning; and

(4) Agreeing to correct all factual and editing errors found in a textbook or instructional materials, at the publisher's expense. The publisher shall submit a corrective action plan to the department, for review and approval by the state board, within thirty (30) days of the department's notification of the existence of errors in the textbook or instructional materials.

(d) The commission shall not proceed with undue haste to accomplish the work of the commission, but, with the assistance of the state board and the department, shall establish appropriate deadlines for the review of textbooks and instructional materials by advisory panels and for its own review of textbooks and instructional materials. Upon the appropriate approval of the state board, the commission shall publish the list of textbooks and instructional materials that may be adopted by local boards of education for use in the schools of this state. The list shall contain the title of the textbooks and instructional materials listed for adoption, the names of the publishers and the prices at which the books and materials are available, as provided for in this chapter.

(e) As used in this part or elsewhere in this title, "textbook" or "textbooks" includes "electronic textbook" or "electronic textbooks," which means computer software, interactive videodisc, magnetic media, CD-ROM, computer courseware, local and remote computer assisted instruction, online service, electronic medium or other means of conveying information to the student or otherwise contributing to the learning process through electronic means. Electronic textbooks may be recommended, adopted and purchased in the same fashion as provided for textbooks in this part.

(f) [Deleted by 2018 amendment.]

**49-6-2203. Contracts with publishers.**

(a) The commission may promulgate rules establishing minimum manufacturing standards and specifications for textbooks and instructional materials and establishing the conditions under which it contracts with publishers. The commission may make contracts with the publishers for a period of no less than thirty-six (36) months nor more than seventy-three (73) months. The commission may extend any existing contracts entered after April 27, 1984, for one (1) additional year if it notifies the affected publishers at least one (1) year prior to the beginning of the extension period. With the advice and consent of

the state board of education, in order to implement the board's standards and courses of study, the commission may prescribe minimum content and reading level of textbooks and instructional materials.

(b) No less than thirty (30) days prior to the deadline for receipt of bids, the commission shall give notice to school book publishers when bids must be received on all books to be listed, the contracts of which expire or are to be terminated on June 30 of the succeeding year and when it will meet to consider the bids received. The commission shall meet on the day designated to consider the bids received, shall read them publicly and shall then proceed to select books for the approved lists on which bids have been requested. The commission shall promulgate rules and regulations governing bids and any additional information that will be required to be submitted with the bids.

(c) All bids shall be made on uniform blanks, which are to be supplied by the commission and shall be filed with the secretary of the commission on or before ten o'clock a.m. (10:00 a.m.) on the day designated for the call of bids. Each bid shall be accompanied by a certified check of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), the amount of the check to be determined at the rate of one thousand dollars ($1,000) for each book bid, but in no event to exceed ten thousand dollars ($10,000) for any one (1) bidder. The checks shall be payable to the state treasurer and shall be forfeited to the state if the bidder, whose bid or part of the bid is accepted, fails, within thirty (30) days after the award, to execute the contract and bond, as provided in this part. The checks of unsuccessful bidders shall be returned immediately after the listing. The checks of successful bidders shall be returned upon proper execution of the contract and bond. An acceptable performance bond may be filed with the commission in lieu of a certified check.

(d)(1) Copies of all textbooks and instructional materials bid shall be filed with the secretary of the commission on or before a date specified by the commission, but no later than the date of the start of the review by the advisory panels. A publisher shall not submit draft copies of textbooks, instructional materials or other ancillary materials. All textbooks, instructional materials and accompanying manuals, workbooks and other ancillary materials shall be submitted in finished form no later than the start of the review period. If a complete copy of any textbooks, instructional materials or any of their ancillary materials is not filed prior to the date specified by the commission, then the textbook or instructional materials shall not be considered for adoption. The textbooks and instructional materials shall be accompanied by a list stating the edition, title and author of each textbook or any instructional materials offered.

(2) No textbook or instructional materials shall be listed for adoption unless they have been filed as provided in subdivision (d)(1). Textbooks and instructional materials listed for adoption shall be retained by the commissioner for the period of the adoption.

(3) In addition to the finished textbooks and instructional materials required to be filed with the secretary of the commission, publishers shall make all textbooks and instructional materials proposed for adoption available for inspection online by LEAs and the public. The online inspection shall allow inspection of both the textbook or instructional materials and all accompanying manuals, workbooks and other ancillary materials. The commission shall require that a publisher in its bid document agree to

provide complete online copies of the textbooks or instructional materials bid during the review process by the advisory panels, but in no case shall the textbooks or instructional materials be available for less than ninety (90) days.

(4) The department shall develop a procedure by which members of the public may comment on the books proposed for adoption. Comments shall be accepted by regular mail, email or in another electronic format as determined by the department. Public comments received by the department shall be posted on the department's web site; provided, that any comment posted shall pertain only to the review of a textbook or any instructional materials being proposed for adoption. The department shall distribute the public comments on a textbook or any instructional materials to the advisory panelists prior to the making of their recommendations on the textbook or instructional materials and to the commission before its approval of the textbook or instructional materials for inclusion on the textbook list.

(e) In all future contracts entered into on behalf of the state with publishers and distributors of approved elementary and high school textbooks and instructional materials, provision shall be made, at the discretion of the governor or the adopting authority, for the establishment, maintenance and operation of at least one (1) depot or distributing agency in each of the three (3) grand divisions, which shall be located as near the center of each grand division as is practical.

(f) It shall be a part of the terms and conditions of every contract made under this part that the state shall not be liable to any contractor or the contractor's agent in any manner or for any sum whatever. The contractors and agents shall receive their pay and compensation solely and exclusively from the proceeds of the sale of books under their contract.

(g) In the adoption of textbooks and instructional materials by boards of education as provided in this part, the committees appointed by these respective boards of education shall first determine, from the published list of textbooks and instructional materials provided for in § 49-6-2202(a), what book or books shall be changed and request samples of the various publishers for books only that are to be changed, the samples to remain property of the respective publishers, who shall have the right to claim the books within thirty (30) days after any adoption. Books not claimed within thirty (30) days by the publishers shall become the property of the respective boards of education and shall be used for library purposes only.

(h) Contracts for the books listed shall be executed in duplicate by the commissioner as secretary of the commission, on forms prepared and approved by the attorney general and reporter. One (1) copy of the contract shall be retained by the publisher and one (1) copy shall be kept on file in the office of the secretary of the commission. Each contract shall state that the prices contained in the contract do not exceed prices offered currently elsewhere.

(i) The commission may require the publisher to print or affix in each book the retail price of the book as fixed by the commission.

(j) The contractor shall file with the contract a good and sufficient bond with a surety company authorized to do business in this state in the sum to be determined by the commission but no less than two thousand dollars ($2,000) nor more than ten thousand dollars ($10,000) and conditioned upon the faithful performance of all conditions of the contract and this part.

**49-6-2304. Review of compliance with laws and regulations.**

(a) Within thirty (30) days prior to the beginning of the school year, the commissioner shall review each plan and subsequent modifications submitted under § 49-6-2303(7) and determine whether the plan complies with this part.

(b) The commissioner shall investigate and promptly act upon any allegation of noncompliance within this part or the rules and regulations established under this part.

(c) [Deleted by 2018 amendment.]

**49-6-2405. Board and department to support and encourage LEAs in creation of community schools — Funding — Qualifications for community school grant — Duties of grant recipients.**

(a) The state board of education and the department shall support and encourage LEAs in the creation of community schools. All policies, guidelines, and rules and regulations adopted by the state board pursuant to this part shall actively foster the formation, development and operation of community schools. Such policies, guidelines, or rules and regulations shall permit teachers to receive in-service credit for teaching classes for parents, such as parenting classes, at the community school outside of normal school hours.

(b)(1) The department may seek funds from private donors and through grants to fund LEAs' efforts to create community schools and to support the schools.

(2) The department shall assist LEAs and schools in writing grants for funding of community schools by providing technical assistance directly or through a resource and referral directory established and maintained by the department.

(c)(1) Subject to the availability of funding from private sources for creation and support of community schools, the department shall make community school grants available to fund community schools and to enhance programs at community schools. If funding is available for community school grants, then a request-for-proposal process shall be used in awarding the grants. Proposals may be submitted on behalf of a school, an LEA, or a consortium of two (2) or more schools or LEAs. Proposals shall be evaluated and scored on the basis of criteria consistent with this part and other factors developed and adopted by the state board.

(2) No funds shall be appropriated for the 2014-2015 fiscal year for the creation and support of community schools. However, nothing in this part shall prohibit the general assembly from appropriating funds in fiscal years subsequent to the 2014-2015 fiscal year for creation and support of community schools.

(d) In order to qualify for a community school grant under this section, a school shall have, at a minimum, the following components:

(1) Before and after-school programming each school day to meet the identified needs of students;

(2) Weekend programming;

(3) Four (4) weeks of summer programming, which may be conducted during consecutive or nonconsecutive weeks;

(4) A local advisory group comprised of school leadership, parents, and community stakeholders that establishes school-specific programming goals, assesses program needs, and oversees the process of implementing expanded

programming;

(5) A program director or resource coordinator who is responsible for establishing the local advisory group, assessing the needs of students and community members, identifying programs to meet those needs, developing the before and after-school, weekend and summer programming and overseeing the implementation of programming to ensure high quality, robust participation;

(6) Programming that includes academic excellence aligned with the curriculum, life skills, healthy minds and bodies, parental support and community engagement and that promotes staying in school, nonviolent behavior and nonviolent conflict resolution;

(7) Maintenance of attendance records in all programming components;

(8) Maintenance of measurable data showing annual participation and the impact of programming on the participating children and adults;

(9) Documentation of true collaboration between the school and community stakeholders, including local governmental units, civic organizations, families, businesses, and social service providers; and

(10) A nondiscrimination policy ensuring that the community school does not condition participation upon race, ethnic origin, religion, sex, or disability.

(e) Each grant recipient under subsection (c) shall:

(1) Conduct periodic evaluations of the progress achieved with funds allocated under a grant, consistent with the purposes of this part;

(2) Use the evaluations to refine and improve activities conducted with the grant and the performance measures for the activities;

(3) Make the results of the evaluations publicly available, including providing public notice of the availability; and

(4) Identify best practices and lessons learned for the purpose of helping other LEAs and schools in the formation of community schools and to revise the community school policies of the state board and the department.

**49-6-2501. Short title.**

This part shall be known and may be cited as the "National Motto in the Classroom Act."

**49-6-2502. "In God We Trust" national motto to be displayed in prominent school location.**

(a) Beginning in the 2018-2019 school year, an LEA shall require all schools within the LEA to display the national motto of the United States, "In God We Trust," in a prominent location in each school.

(b) The display required in subsection (a) may take the form of, but is not limited to, a mounted plaque or student artwork.

(c) For purposes of this section, "prominent location" means a school entry way, cafeteria, or common area where students are likely to see the national motto display.

**49-6-3004. School term.**

(a) Each public school system shall maintain a term of no less than two hundred (200) days, divided as follows:

(1) One hundred eighty (180) days for classroom instruction;

(2) Ten (10) days for vacation with pay for a two hundred-day term, eleven (11) days for vacation with pay for a two hundred twenty-day term, and twelve (12) days for vacation with pay for a two hundred forty-day term;

(3) Five (5) days for in-service education;

(4) One (1) day for teacher-parent conferences;

(5) Four (4) other days as designated by the local board of education upon the recommendation of the director of schools; and

(6) In the event of a natural disaster or serious outbreaks of illness affecting or endangering students or staff during a school year, the commissioner of education may waive for that school year the requirement under subdivision (a)(1) of one hundred eighty (180) days of classroom instruction, if a request is submitted to the commissioner by the director of schools. The waiver request may be for the entire LEA or for individual schools within the LEA.

(b) Vacation days shall be in accordance with policies recommended by the local director of schools and adopted by the local board of education.

(c)(1) In-service days shall be used according to a plan recommended by the local director of schools in accordance with this section and other applicable statutes and adopted by the local board of education, a copy of which plan shall be filed with the commissioner of education on or before June 1 of the preceding school year and approved by the commissioner. The commissioner shall require that in-service training include the teaching of the components of the Juvenile Offender Act, compiled in title 55, chapter 10, part 7, to all teachers and principals in grades seven through twelve (7-12). The commissioner shall require that in-service training include at least two (2) hours of suicide prevention education for all teachers and principals each school year. This education may be accomplished through self-review of suitable suicide prevention materials. The commissioner shall also encourage the use of two (2) of the in-service training days to provide training to teachers, principals and other school personnel, and, to the extent possible, school board members, on issues of prevention and intervention strategies for students in the area of behavioral/emotional disorders. The training shall place an emphasis on understanding the warning signs of early-onset mental illness in children and adolescents and may be conducted by school counseling personnel, such as psychologists, social workers, guidance counselors or health faculty, by mental health clinicians or by approved personnel from mental health advocacy organizations using curricula approved by the departments of education and mental health and substance abuse services. In addition to other training and resources authorized by this chapter, the department of education shall, within available resources, collaborate with institutions of higher education to formally address dyslexia and similar reading disorders by providing kindergarten through twelfth grade (K-12) educators and teachers web-based or in-person training providing effective instruction for teaching students with dyslexia using appropriate scientific research and brain-based multisensory intervention methods and strategies.

(2) The needs of apprentice teachers shall be given priority in the planning of in-service activities. Apprentice teachers shall be assisted by supervising teachers in the development of competencies required by the local board of education.

(3) The plan shall also give priority to staff development activities. Staff development activities shall include an assessment of teacher and adminis-

trator evaluations made previously by the local school system. Career level III teachers and career level III supervisors shall be assigned to aid those teachers seeking to improve teaching competencies.

(d) The state board of education shall develop a policy governing professional development activities during in-service education within the guidelines adopted by the general assembly.

(e)(1) A local board of education or private or church-related school that exceeds the full six and one half (6½) hours instructional time required by law by one half (½) hour daily for the full academic year shall be credited with the additional instructional time. The excess instructional time shall be accumulated in amounts up to, but not exceeding, thirteen (13) instructional days each year, and applied toward meeting instructional time requirements missed due to dangerous or extreme weather conditions. Upon approval by the commissioner, the excess instructional time may be used in case of natural disaster, serious outbreaks of illness affecting or endangering students or staff or dangerous structural or environmental conditions rendering a school unsafe for use. This excess accumulated instructional time may be used for early student dismissal for faculty professional development under rules promulgated by the board of education. Such time may be used in whole day (six and one-half (6½) hour) increments and may be used for faculty professional development, individualized education program (IEP) team meetings, school-wide or system-wide instructional planning meetings, parent-teacher conferences, or other similar meetings. The board shall consult with the commissioner in developing the rules. All proposals for use of excess time for professional development and instructional planning meetings shall be approved by the commissioner. Additionally, the commissioner is authorized to approve directly proportional variations from the one-half-hour extension of the school day and the corresponding accumulation of thirteen (13) days of adjustments to the instructional time requirements.

(2) Any unused accumulated days for excess instructional time shall not carry over to a school year other than the year in which the time was accumulated.

(f) Beginning with the 2010-2011 school year and every year thereafter, LEAs shall commence the school year no earlier than August 1 unless the LEA's board of education votes by a majority of its membership to establish a year-round or alternative calendar for all or any of the schools within its jurisdiction in accordance with department of education attendance policies.

(g) The length of term selected by a local board, and the length of the school day corresponding to that term, shall not affect either the amount or timing of payments made to the LEA under the basic education program (BEP) or otherwise, if the LEA operates for the full chosen term. Equally, the length of term and the length of day shall not affect the compensation of any teacher employed for the length of that term.

(h) Any LEA operating a virtual school or virtual education program shall make available the same length of time for learning opportunities per academic year as required under this section to any student participating in its program. The LEA shall, however, also permit a student to move at the student's own pace. The student shall demonstrate mastery, competency and completion of a course or subject area to be given credit for the course or subject area. If a student successfully completes a course or grade level more than

thirty (30) days before the end of the term, the student shall begin work in the next appropriate course or grade. The academic program shall continue until the end of the academic year.

**49-6-3006. Attendance supervisor.**

(a) The sole responsibility and authority for the enforcement of the compulsory attendance laws, compiled in this part, are placed in the local board of education and its designated employees and officers.

(b) To facilitate the enforcement of the compulsory attendance laws, the director of schools shall designate at least one (1) qualified employee who shall be identified as the LEA attendance supervisor. The duties of an attendance supervisor include, but are not limited to, assisting the local board, under the direction of the director of schools, with the enforcement of the compulsory attendance laws of the state and to discharge other duties that are necessary to effectuate enforcement of laws and local policies related to absenteeism and truancy. The attendance supervisor may also be directed to devise and recommend to the director of schools, for board approval, a progressive truancy intervention plan consistent with § 49-6-3009.

(c) The state board of education is authorized to promulgate rules regarding training, licensure, and employment qualifications of attendance supervisors.

**49-6-3007. List of students — Reports of attendance — Enforcement of compulsory attendance — List of truant students.**

(a) By the beginning of each school year, the director of schools shall furnish, or cause to be furnished through the attendance supervisor, to the principal of each school a list of students who will attend the school together with the names of the students' parents or guardians. The lists must be taken from the census enumeration on file in the office of the director of schools or from any other available and reliable source.

(b) After the opening of school, each principal of a public school must report to the director of schools the names of all students on the list furnished to the principal who have not appeared for enrollment.

(c) A principal or head of school of a public, nonpublic, or church-related school must report to the director of schools of the LEA in which the school is located the names, ages, and residences of all students in attendance at the school within thirty (30) days after the beginning of the school year. The principal or head of school of a public, nonpublic, or church-related school must make other reports of attendance in the school, including transfers of students, as may be required by the local board of education, the state board of education, or the department of education. Notwithstanding subsection (f), this subsection (c) applies to any student less than six (6) years of age who is enrolled in kindergarten in any school to which this subsection (c) is applicable.

(d) All public, nonpublic, and church-related schools shall keep daily reports of attendance, verified by the teacher making the record, that shall be open to inspection at all reasonable times by the director of schools of the LEA in which the school is located, or the director's duly authorized representative. Notwithstanding subsection (f), this subsection (d) applies to any child less than six (6) years of age who is enrolled in kindergarten in any school to which this subsection (d) is applicable.

(e)(1) By the beginning of each school year, the principal or head of school of a public, nonpublic, or church-related school shall give written notice to the

parent, guardian, or person having control of a student subject to compulsory attendance that the parent, guardian, or other person having control of the student must monitor the student's school attendance and require the student to attend school. The written notice must inform the parent, guardian, or other person having control of a student that a student who accumulates five (5) days of unexcused absences during the school year is subject to the LEA's progressive truancy interventions and that continued unexcused absences may result in a referral to juvenile court. The five (5) days of unexcused absences need not be five (5) consecutive days of unexcused absences.

(2) The principal of a public school must report promptly to the director of schools, or to the attendance supervisor, the names of all students who have withdrawn from school or who have accumulated three (3) days of unexcused absences. Upon a student's accumulation of three (3) days of unexcused absences, the director of schools or the attendance supervisor may serve, or cause to be served, upon the parent, guardian, or other person having control of a child subject to compulsory attendance who is unlawfully absent from school, written notice that the child's attendance at school is required by law.

(3) Additionally, the principal of a public school must report promptly to the director of schools, or to the attendance supervisor, the names of all students who have withdrawn from school or who have accumulated five (5) days of unexcused absences. Each successive accumulation of five (5) days of unexcused absences by a student must also be reported.

(4)(A) When a student accumulates five (5) days of unexcused absences, the director of schools or attendance supervisor shall serve, or cause to be served, upon the parent, guardian, or other person having control of a child subject to compulsory attendance who is unlawfully absent from school written notice that the child's attendance at school is required by law. The director of schools or attendance supervisor shall send a new notice after each successive accumulation of five (5) unexcused absences.

(B) After the child has accumulated five (5) unexcused absences, and after given adequate time, as determined by director of schools or attendance supervisor, the child's parent, guardian, or other person having control of the child has failed to turn in documentation to excuse those absences, the director of schools or attendance supervisor shall implement the first tier of the progressive truancy intervention requirements as described in § 49-6-3009.

(C) Nothing in this section shall prohibit a local board of education from adopting a truancy intervention plan that includes intervention actions to be taken before those required by this subsection (e).

(f) Except as otherwise provided by § 49-6-3001 or § 49-6-3005, this section is applicable to a child less than six (6) years of age and the child's parent, guardian, or other person having control of a child, when such person has enrolled the child in a public school; provided, that a child may be withdrawn within six (6) weeks of initial enrollment without penalty.

(g) For the purposes of this part, for recording and coding student absences from school because of disciplinary actions, the following definitions apply:

(1) "Expulsion" means removal from attendance for more than ten (10) consecutive days or more than fifteen (15) days in a month of school attendance. Multiple suspensions that occur consecutively constitute expulsion. The LEA is not eligible to receive funding for an expelled student;

(2) "Remand" means assignment to an alternative school. The student so assigned shall be included in average daily attendance and average daily membership and shall continue to be counted as present for funding purposes. The department of education shall establish a set of codes to be used for reporting reasons that students are remanded to an alternative school; and

(3) "Suspension" means dismissal for any reason from attendance at school not exceeding ten (10) consecutive days. Multiple suspensions shall not run consecutively, nor shall multiple suspensions be applied to avoid expulsion from school. The LEA remains eligible to receive funding for a suspended student.

(h)(1)(A) An LEA may enter into an agreement with the local law enforcement agency serving the LEA's area and the appropriate local government in that area to assist in the enforcement of compulsory attendance upon complying with the following conditions:

(i) Creation by the local board of education of an advisory council to assist the board in formulating the agreement. The board must include representatives of teachers, parents, administrators, and other community representatives;

(ii) Receipt of input from neighborhood groups and other interested parties; and

(iii) At least one (1) public hearing on the proposed agreement prior to its adoption by the board.

(B) The agreement must provide for:

(i) Training teachers, principals, social workers, and other school personnel concerning truancy issues;

(ii) Training of involved law enforcement personnel in the truancy law, including categories of students to which the law does not apply, such as nonpublic school students or home school students; and

(iii) Safeguards to protect students from discriminatory or selective enforcement and to protect the civil rights of students and parents.

(C) If an LEA enters into an agreement, then every public school principal or teacher employed by the LEA must report promptly to the director of schools, or the director's designated representative, the names of all students who accumulated five (5) days of unexcused absences and continue to report each subsequent unexcused absence. The five (5) days of unexcused absences need not be five (5) consecutive days of unexcused absences.

(2) If a student accumulates five (5) days of unexcused absences, the director of schools shall serve, or cause to be served, upon the parent, guardian, or other person having control of the student written notice that the student's attendance at school is required. The notice must inform the parent, guardian, or other person having control of the student of this subsection (h).

(3) Under the agreement, and for purposes of this section and § 37-1-102(b)(32)(A), a student who accumulates three (3) days of unexcused absences may be deemed habitually truant.

(4) The director of schools or the director's representative may issue a list of truant students to the local law enforcement agency for the purpose of allowing the law enforcement agency to take the student into temporary custody when the student is found away from the school premises, without

adequate excuse, during school hours, in a public place, in any public or private conveyance, or in any place of business open to the public, unless accompanied by a parent, guardian, or other person having control of the student. The agreement shall specify that the law enforcement officer's sole function is to deliver the student to:

(A) The parent, guardian, or other person having control of the student;

(B) The principal of the school in which the student is enrolled;

(C) A truancy center established by the LEA; or

(D) The juvenile court, if the juvenile court and the local law enforcement agency have entered into a local interagency agreement.

(5) The powers conferred under such agreements may be exercised without warrant and without subsequent legal proceedings.

(6) This subsection (h) does not apply to students enrolled in nonpublic schools, home schools under § 49-6-3050, or church-related schools under § 49-50-801.

(7) Upon issuance of a standing order by the juvenile court, LEA officials shall be allowed to release student record information to local law enforcement agencies and to juvenile justice system officials to assist the officials in effectively serving the student whose record is released. Officials and authorities receiving the information shall not disclose the information to any other party without prior written consent of the parent. Release of a student record must comply with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g), § 10-7-504, and other relevant state and federal privacy laws.

**49-6-3009. Educational neglect — Progressive truancy intervention plans — Referral to juvenile court.**

(a) Any parent, guardian, or other person who has control of a child, and who violates this part commits educational neglect, which is a Class C misdemeanor.

(b) Each day's unlawful absence constitutes a separate offense.

(c) A director of schools or attendance supervisor shall devise and recommend, and the local board of education shall adopt, a progressive truancy intervention plan for students who violate compulsory attendance requirements prior to the filing of a truancy petition or a criminal prosecution for educational neglect. These interventions must be designed to address student conduct related to truancy in the school setting and minimize the need for referrals to juvenile court.

(d) Progressive truancy intervention plans adopted by local boards of education pursuant to subsection (c) must be applied prior to referral to juvenile court as described in § 49-6-3007(e)(1). Progressive truancy intervention plans must meet the following requirements:

(1) Tier one of the progressive truancy intervention plan must include, at a minimum:

(A) A conference with the student and the parent, guardian, or other person having control of the student;

(B) A resulting attendance contract to be signed by the student, the parent, guardian, or other person having control of the student, and an attendance supervisor or designee. The contract must include:

(i) A specific description of the school's attendance expectations for

the student;

(ii) The period for which the contract is in effect; and

(iii) Penalties for additional absences and alleged school offenses, including additional disciplinary action and potential referral to juvenile court; and

(C) Regularly scheduled follow-up meetings, which may be with the student and the parent, guardian, or other person having control of the student to discuss the student's progress;

(2) Tier two must be implemented upon a student's accumulation of additional unexcused absences in violation of the attendance contract required under tier one. Tier two must include an individualized assessment by a school employee of the reasons a student has been absent from school, and if necessary, referral of the child to counseling, community-based services, or other in-school or out-of-school services aimed at addressing the student's attendance problems; and

(3) Tier three must be implemented if the truancy interventions under tier two are unsuccessful. Tier three may consist of one (1) or more of the following:

(A) School-based community services;

(B) Participation in a school-based restorative justice program;

(C) Referral to a school-based teen court; or

(D) Saturday or after school courses designed to improve attendance and behavior.

(e) In-school suspension or out-of-school suspension must not be used as part of the progressive truancy intervention plans adopted by schools for unexcused absence from class or school.

(f) Notwithstanding subsections (d) and (g), if the progressive truancy intervention plan is unsuccessful with a student and the school can document that the student's parent or guardian is unwilling to cooperate in the truancy intervention plan, the director of schools or designee may report the student's absences to the appropriate judge pursuant to subsection (g).

(g) If an LEA has applied a progressive truancy intervention plan that complies with subsection (d) and interventions under the plan have failed to meaningfully address the student's school attendance, the director of schools, after written notice to the parent, guardian, or other person having control of the student, shall report the student who is unlawfully absent from school to the appropriate judge having juvenile jurisdiction in that county. Each case must be dealt with in such manner as the judge may determine to be in the best interest of the student, consistent with §§ 37-1-132, 37-1-168, and 37-1-169. In the event a student in kindergarten through grade twelve (K-12) is adjudicated to be unruly because the student has accumulated five (5) days or more of unexcused absences during any school year, the judge may assess a fine of up to fifty dollars ($50.00) or five (5) hours of community service, in the discretion of the judge, against the parent or legal guardian of the student.

(h) Each referral to juvenile court for conduct described in subsection (g) and § 49-6-3007(h)(4)(D) must be accompanied by a statement from the student's school certifying that:

(1) The school applied the progressive truancy intervention plan adopted under subsection (d) for the student; and

(2) The progressive truancy interventions failed to meaningfully address the student's school attendance.

(i) A court shall dismiss a complaint or referral made by an LEA under this

section that is not made in compliance with subsection (h).

(j) Notwithstanding any other law, each LEA having previously adopted an effective progressive truancy intervention program that substantially conforms to this section may present the intervention program to the commissioner of education for approval in lieu of strict compliance with this section. If the commissioner does not approve the intervention plan, the LEA shall modify the plan according to the commissioner's recommendations and resubmit the revised plan for approval by the commissioner.

(k) Each head of school of a nonpublic or church-related school shall recommend, and the governing board of the school shall adopt, a policy addressing compulsory attendance and truancy that describes the interventions that the school will employ for violations of the compulsory attendance laws. The policy shall provide that the director of schools or the attendance supervisor in the LEA where the student's home of record is located will be notified in the event that a student at a nonpublic or church-related school is expelled or withdraws from school.

(*l*) Parents, guardians, or other persons having control of a student who is required to attend remedial instruction under § 49-6-3021 commit educational neglect, as defined in subsection (a), if the student is truant from the instruction.

**49-6-3110. Limits on class size.**

(a) It is the purpose and intent of the general assembly to provide for a standardized and efficient administration of the public school systems throughout this state.

(b) [Deleted by 2018 amendment.]

(c) The director of each school district shall submit to the commissioner requests for waivers on class size limits before November 15 of the school year.

(d) Following November 15, if monthly attendance reports reveal that additional classrooms do not comply with state class size maximum limits, the directors shall request from the commissioner a waiver on class size limits by the fifteenth day of the next calendar month.

(e) [Deleted by 2018 amendment.]

**49-6-3401. Suspension of students — Expulsion of students — Exception for self-defense.**

(a) Any principal, principal-teacher or assistant principal of any public school in this state is authorized to suspend a pupil from attendance at the school, including its sponsored activities, or from riding a school bus, for good and sufficient reasons. Good and sufficient reasons for suspension include, but are not limited to:

(1) Willful and persistent violation of the rules of the school;

(2) Immoral or disreputable conduct or vulgar or profane language;

(3) Violence or threatened violence against the person of any personnel attending or assigned to any public school;

(4) Willful or malicious damage to real or personal property of the school, or the property of any person attending or assigned to the school;

(5) Inciting, advising or counseling of others to engage in any of the acts enumerated in subdivisions (a)(1)-(4);

(6) Marking, defacing or destroying school property;

(7) Possession of a pistol, gun or firearm on school property;

(8) Possession of a knife and other weapons, as defined in § 39-17-1301 on school property;

(9) Assaulting a principal, teacher, school bus driver or other school personnel with vulgar, obscene or threatening language;

(10) Unlawful use or possession of barbital or legend drugs, as defined in § 53-10-101;

(11) One (1) or more students initiating a physical attack on an individual student on school property or at a school activity, including travel to and from school or a school activity;

(12) Making a threat, including a false report, to use a bomb, dynamite, any other deadly explosive or destructive device, including chemical weapons, on school property or at a school sponsored event;

(13) Any other conduct prejudicial to good order or discipline in any public school; and

(14) Off campus criminal behavior that results in the student being legally charged with an offense that would be classified as a felony if the student was charged as an adult or if adjudicated delinquent for an offense that would be classified as a felony if the student was an adult, or if the student was convicted of a felony, and the student's continued presence in school poses a danger to persons or property or disrupts the educational process. Notwithstanding § 37-1-131 or any other law to the contrary, the principal of the school in which the student is enrolled and the director of schools shall determine the appropriate educational assignment for the student released for readmission.

(b)(1) Any principal, principal-teacher or assistant principal may suspend any pupil from attendance at a specific class, classes or school-sponsored activity without suspending the pupil from attendance at school pursuant to an in-school suspension policy adopted by the local board of education. Good and sufficient reasons for in-school suspension include, but are not limited to, behavior:

(A) That adversely affects the safety and well-being of other pupils;

(B) That disrupts a class or school sponsored activity; or

(C) Prejudicial to good order and discipline occurring in class, during school-sponsored activities or on the school campus.

(2) In-school suspension policies shall provide that pupils given an in-school suspension in excess of one (1) day from classes shall attend either special classes attended only by students guilty of misconduct or be placed in an isolated area appropriate for study. Students given in-school suspension shall be required to complete academic requirements.

(c)(1) Except in an emergency, no principal, principal-teacher or assistant principal shall suspend any student until that student has been advised of the nature of the student's misconduct, questioned about it and allowed to give an explanation.

(2) Upon suspension of any student other than for in-school suspension of one (1) day or less, the principal shall, within twenty-four (24) hours, notify the parent or guardian and the director of schools or the director of schools' designee of:

(A) The suspension, which shall be for a period of no more than ten (10) days;

(B) The cause for the suspension; and

(C) The conditions for readmission, which may include, at the request of either party, a meeting of the parent or guardian, student and principal.

(3) If the suspension is for more than five (5) days, the principal shall develop and implement a plan for improving the behavior, which shall be made available for review by the director of schools upon request.

(4)(A) If, at the time of the suspension, the principal, principal-teacher or assistant principal determines that an offense has been committed that would justify a suspension for more than ten (10) days, the person may suspend a student unconditionally for a specified period of time or upon such terms and conditions as are deemed reasonable.

(B) The principal, principal-teacher or assistant principal shall immediately give written or actual notice to the parent or guardian and the student of the right to appeal the decision to suspend for more than ten (10) days. All appeals must be filed, orally or in writing, within five (5) days after receipt of the notice and may be filed by the parent or guardian, the student or any person holding a teaching license who is employed by the school system if requested by the student.

(C) The appeal from this decision shall be to the board of education or to a disciplinary hearing authority appointed by the board. The disciplinary hearing authority, if appointed, shall consist of at least one (1) licensed employee of the LEA, but no more than the number of members of the local board.

(D) The hearing shall be held no later than ten (10) days after the beginning of the suspension. The local board of education or the disciplinary hearing authority shall give written notice of the time and place of the hearing to the parent or guardian, the student and the school official designated in subdivision (c)(4)(A) who ordered the suspension. Notice shall also be given to the LEA employee referred to in subdivision (c)(4)(B) who requests a hearing on behalf of a suspended student.

(5) After the hearing, the board of education or the disciplinary hearing authority may affirm the decision of the principal, order removal of the suspension unconditionally or upon such terms and conditions as it deems reasonable, assign the student to an alternative program or night school or suspend the student for a specified period of time.

(6) If the decision is determined by a disciplinary hearing authority, a written record of the proceedings, including a summary of the facts and the reasons supporting the decision, shall be made by the disciplinary hearing authority. The student, principal, principal-teacher or assistant principal may, within five (5) days of the decision, request review by the board of education; provided, that local school board policy may require an appeal to the director of schools prior to a request for review to the board. Absent a timely appeal, the decision shall be final. The board of education, based upon a review of the record, may grant or deny a request for a board hearing and may affirm or overturn the decision of the hearing authority with or without a hearing before the board; provided, that the board may not impose a more severe penalty than that imposed by the hearing authority without first providing an opportunity for a hearing before the board. If the board conducts a hearing as a result of a request for review by a student, principal, principal-teacher or assistant principal, then, notwithstanding any provision of the open meetings laws compiled in title 8, chapter 44, or other law to the contrary, the hearing shall be closed to the public, unless the student

or student's parent or guardian requests in writing within five (5) days after receipt of written notice of the hearing that the hearing be conducted as an open meeting. If the board conducts a hearing as a result of a request for review by a student, principal, principal-teacher, or assistant principal that is closed to the public, then the board shall not conduct any business, discuss any subject or take a vote on any matter other than the appeal to be heard. Nothing in this subdivision (c)(6) shall act to exclude the department of children's services from the disciplinary hearings when the department is exercising its obligations under § 37-1-140. The action of the board of education shall be final.

(d) In the event the suspension occurs during the last ten (10) days of any term or semester, the pupil may be permitted to take final examinations or submit required work that is necessary to complete the course of instruction for that semester, subject to the action of the principal, or the final action of the board of education upon any appeal from an order of a principal continuing a suspension.

(e) Students under in-school suspension shall be recorded as constituting a part of the public school attendance in the same manner as students who attend regular classes.

(f) Nothing in this title shall require an LEA to enroll a student who is under suspension or expelled in an LEA either in Tennessee or another state. The director of schools for the school system in which the suspended student requests enrollment shall make a recommendation to the local board of education to approve or deny the request. The recommendation shall occur only after investigation of the facts surrounding the suspension from the former school system. If the recommendation is to deny admission and if the local board approves the director of schools' recommendation, the director of schools shall, on behalf of the board of education, notify the commissioner of the decision. Nothing in this subsection (f) shall affect children in state custody or their enrollment in any LEA. Any LEA that accepts enrollment of a student from another LEA may dismiss the student if it is determined subsequent to enrollment that the student had been suspended or expelled by the other LEA.

(g)(1) It is the legislative intent that if a rule or policy is designated as a zero tolerance policy, then violations of that rule or policy must not be tolerated and violators shall receive certain, swift, and proportionate punishment.

(2) Notwithstanding other provisions of this section or any other law, a student shall be considered in violation of a zero tolerance offense and shall be expelled for a period of not less than one (1) calendar year, except that the director of schools may modify this expulsion on a case-by-case basis for the following:

(A) A student brings to school or is in unauthorized possession on school property of a firearm, as defined in 18 U.S.C. § 921;

(B) A student commits aggravated assault as defined in § 39-13-102 or commits an assault that results in bodily injury as defined in § 39-13-101(a)(1) upon any teacher, principal, administrator, any other employee of an LEA, or a school resource officer; or

(C) A student is in unlawful possession of any drug, including any controlled substance, as defined in §§ 39-17-402 — 39-17-415, controlled substance analogue, as defined by § 39-17-454, or legend drug, as defined by § 53-10-101, on school grounds or at a school-sponsored event.

(3) Nothing in this section prohibits the assignment of students who are

subject to expulsion from school to an alternative school.

(4) Disciplinary policies and procedures for all other student offenses, including terms of suspensions and expulsions, must be determined by local board of education policy.

(5) For purposes of this subsection (g):

(A) "Expelled" means removal from the student's regular school program at the location where the violation occurred or removal from school attendance altogether, as determined by the school official; and

(B) "Zero tolerance offense" means an offense committed by a student requiring the student to be expelled from school for at least one (1) calendar year that can only be modified on a case-by-case basis by the director of schools or the head of a charter school.

(h) The commissioner of education shall report on an annual basis to the education committee of the senate and the education administration and planning committee of the house of representatives regarding disciplinary actions in Tennessee schools. The reports must include the reason for the disciplinary action, the number of students suspended or expelled, the number of students who committed zero tolerance offenses pursuant to subsection (g), the number of students who have been placed in an alternative educational setting, and the number of students suspended, expelled, or otherwise dismissed from an alternative school. Data must be sorted by school as well as by various demographic factors, including grade, race, and sex.

(i) Notwithstanding subsection (a) or (b) or any other law to the contrary, if a pupil is determined, via a fair and thorough investigation made by the principal or the principal's appointed representative, to have acted in self-defense under a reasonable belief that the student, or another to whom the student was coming to the defense of, may have been facing the threat of imminent danger of death or serious bodily injury, which the student honestly believed to be real at that time, then, at the principal's recommendation, the student may not face any disciplinary action.

**49-6-3501. [Repealed.]**

**49-6-3502. [Repealed.]**

**49-6-3503. [Repealed.]**

**49-6-3504. [Repealed.]**

**49-6-4002. Discipline policy — Code of conduct.**

(a) Each local board of education and charter school governing body shall adopt a discipline policy to apply to the students in each school operated by the LEA or charter school governing body.

(b) The director of schools or head of the charter school is responsible for overall implementation and supervision, and each school principal is responsible for administration and implementation of a code of conduct within the principal's school.

(c) In developing a discipline policy, the local board of education or charter school governing body shall seek recommendations from parents, employees of the LEA or charter school, law enforcement personnel, and youth-related

agencies in the community.

(d) Each discipline policy or code of conduct must contain the type of behavior expected from each student, the consequences of failure to obey the standards, and the importance of the standards to the maintenance of a safe learning environment where orderly learning is possible and encouraged. Each policy must address:

(1) Language used by students;

(2) Respect for all school employees;

(3) Fighting, threats, bullying, cyberbullying, and hazing by students;

(4) Possession of weapons on school property or at school functions;

(5) Transmission by electronic device of any communication containing a credible threat to cause bodily injury or death to another student or school employee;

(6) Damage to the property or person of others;

(7) Misuse or destruction of school property;

(8) Sale, distribution, use, or being under the influence of drugs, alcohol, or drug paraphernalia;

(9) Student conduct on school property, conduct in classes, and conduct on school buses; and

(10) Other subjects that a local board of education or a charter school governing body chooses to include.

(e) Each local discipline policy must indicate that the following offenses are zero tolerance offenses:

(1) Unauthorized possession on school property of a firearm, as defined in 18 U.S.C. § 921;

(2) Aggravated assault as defined in § 39-13-102 upon any teacher, principal, administrator, any other employee of an LEA, or a school resource officer;

(3) Assault that results in bodily injury as defined in § 39-17-101(a)(1) upon any teacher, principal, administrator, any other employee of an LEA, or a school resource officer; and

(4) Unlawful possession of any drug, including any controlled substance, as defined in §§ 39-17-402 — 39-17-415, controlled substance analogue, as defined by § 39-17-454, or legend drug, as defined by § 53-10-101 on school grounds or at a school-sponsored event.

(f) Each local board of education and charter school governing body may adopt a discipline policy that promotes positive behavior and includes evidence-based practices to respond effectively to misbehavior and minimize a student's time away from school.

(g) Each discipline policy or code of conduct must state that a teacher, principal, school employee, or school bus driver may use reasonable force in compliance with § 49-6-4107.

**49-6-4003. [Repealed.]**

**49-6-4004. Uniform and fair application of code of conduct.**

The principal of each school shall apply the code of conduct uniformly and fairly to each student at the school without partiality or discrimination.

**49-6-4005. Adoption of different but consistent discipline policies or codes of conduct applicable to different classes of schools.**

Each local board of education or charter school governing body may choose to adopt different but consistent discipline policies or codes of conduct to apply to different classes of schools, such as elementary, middle, junior high, and senior high schools, under its jurisdiction. The policies and codes of conduct must be uniform to the extent of maximum consideration for the safety and well-being of students and employees.

**49-6-4007. Posting and distribution of discipline policy or code of conduct.**

When a discipline policy or code of conduct has been adopted by a local board of education or charter school governing body, a copy must be posted on the LEA or school website. A copy must also be supplied to all school counselors, teachers, administrative staff, students, and parents.

**49-6-4103. Corporal punishment.**

(a) Any teacher or school principal may use corporal punishment in a reasonable manner against any pupil for good cause in order to maintain discipline and order within the public schools.

(b)(1) Notwithstanding subsection (a), teachers, school principals, or other school personnel are prohibited from using corporal punishment against any student who has a disability; unless an LEA's discipline policy permits the use of corporal punishment and a parent of a child who has a disability permits, in writing, the use of corporal punishment against the parent's child. The written permission must state the type of corporal punishment that may be used and the circumstances in which the use of corporal punishment is permitted. The school's principal must keep the written permission on file at the school. The school's principal must notify the parent any time corporal punishment is used. The school's principal must inform the parent, when the written permission for the use of corporal punishment is submitted, that the parent may revoke the permission to use corporal punishment at any time by giving written notice to the school's principal that corporal punishment may no longer be used against the parent's child who has a disability.

(2) As used in this subsection (b):

(A) "School personnel" includes all individuals employed on a full-time or part-time basis by a public school; and

(B) "Student who has a disability" means a student who has an individualized education program (IEP) under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), or a Section 504 plan under the Rehabilitation Act (29 U.S.C. § 701 et seq.).

(3) This subsection (b) does not authorize the use of corporal punishment by a person who is not permitted to administer corporal punishment under subsection (a).

**49-6-4108. Report detailing use of corporal punishment required.**

(a) Beginning with the 2018-2019 school year, each LEA shall submit, at least annually, a report to the department of education detailing the LEA's use

of corporal punishment. The report shall include, at a minimum:

(1) The school at which each instance of corporal punishment occurred;

(2) Information regarding the reason for each instance of corporal punishment;

(3) Whether an instance of corporal punishment involved a student with an active individualized education program, and if so, the primary disability category for which the student has an individualized education program; and

(4) Whether an instance of corporal punishment involved a student with an active 504 plan under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and if so, the reason for which the student has a 504 plan.

(b) The report submitted pursuant to this section shall exclude any personally identifiable information and shall be created in accordance with the Family Education Rights and Privacy Act (FERPA), (20 U.S.C. § 1232g), § 10-7-504, and any other relevant state or federal privacy law.

(c) The department shall report on its website the number of instances of corporal punishment in each LEA and the number of instances involving a student with an active individualized education program or an active 504 plan under Section 504 of the Rehabilitation Act of 1973.

**49-6-4402. Corporal punishment.**

(a) The chief administrative officer, or the chief administrative officer's designee, of any institution in which the schools are located, may use corporal punishment in a reasonable manner and in accordance with this part against any pupil for good cause in order to maintain discipline and order within such schools.

(b) Corporal punishment may be administered only in a classroom situation and only in the presence of the director of schools or chief administrative officer of the school and one (1) other faculty witness.

(c)(1) Notwithstanding subsection (a), the chief administrative officer, or the chief administrative officer's designee, is prohibited from using corporal punishment against any student who has a disability; unless an LEA's discipline policy permits the use of corporal punishment and a parent of a child who has a disability permits, in writing, the use of corporal punishment against the parent's child. The written permission must state the type of corporal punishment that may be used and the circumstances in which the use of corporal punishment is permitted. The school's chief administrative officer must keep the written permission on file at the school. The school's chief administrative officer must notify the parent any time corporal punishment is used. The school's chief administrative officer must inform the parent, when the written permission for the use of corporal punishment is submitted, that the parent may revoke the permission to use corporal punishment at any time by giving written notice to the school's chief administrative officer that corporal punishment may no longer be used against the parent's child who has a disability.

(2) As used in this subsection (c), "student who has a disability" means a student who has an individualized education program (IEP) under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), or a Section 504 plan under the Rehabilitation Act (29 U.S.C. § 701 et seq.).

**49-6-6001. Graduation requirements.**

(a) To receive a full diploma upon graduation from high school, a student must meet requirements as set forth by the state board of education.

(b)(1) As a strategy for assessing student readiness for postsecondary education, every public school student shall take an examination at grade eleven (11). This assessment shall be approved by the commissioner of education and provide information to assist in developing interventions for the purpose of improving student preparation for postsecondary achievement.

(2)(A) If an assessment required under subdivision (b)(1) is misadministered by fault of the assessment provider, as determined by the department of education, then the assessment provider must respond as follows:

(i) An incident report on the misadministration must be provided to the department of education and the LEA or LEAs in which the misadministration occurred. The incident report shall provide remediation plans that will result in reportable scores, if possible;

(ii) The assessment provider shall reimburse the LEA or LEAs in which the misadministration occurred for any exam that does not result in a reportable score for the student; and

(iii) The assessment provider shall provide an opportunity for any student impacted by the misadministration to take the assessment again at no charge.

(B) Failure to respond as required in subdivision (b)(2)(A) shall result in the state not continuing to use the assessment and shall be considered a breach of contract by the assessment provider.

(3) Subject to available appropriations each year, each student participating in the assessment pursuant to subdivision (b)(1) shall have the opportunity to retake the assessment one (1) additional time prior to graduation.

(c) All tests developed or used to implement this section, all banks of questions, all field testing documents used as background for the development of the tests and all answers shall be kept confidential when and for as long as necessary to protect the integrity of the tests, and accordingly, are exempt from the requirements of § 10-7-503.

(d) The board shall require each LEA to provide remediation services to any student who fails a portion of any examination required under this section for the portion of the examination that the student failed.

(e) [Deleted by 2018 amendment.]

(f) [Deleted by 2018 amendment.]

(g) In addition to a full diploma, a certificate of attendance, or a special education diploma, the board shall adopt an occupational diploma for students with disabilities. The board shall set appropriate standards and benchmarks of attendance, academic achievement, and job readiness skills for the occupational diploma. A student is not required to comply with the testing requirements of subdivision (a)(1) in order to receive an occupational diploma.

(h) The commissioner of education is directed to establish dates for the administration of assessments required for graduation that provide the maximum instructional days possible prior to testing while maintaining compliance with all relevant federal law.

(i) Students who, in lieu of graduating from high school, obtain a general equivalency development credential (GED®) shall be counted as a high school

graduate of the high school that they attended or were eligible to attend for the purpose of calculating graduation rates; provided, however, that such students shall not be counted as graduates for purposes pursuant to which such inclusion in a graduation rate calculation is prohibited by federal law.

(j) No LEA shall require any enrolling or transferring student, who is in grade eleven (11) or higher and in the custody of the department of children's services or exiting its custody, to meet more than the minimum requirements for graduation set forth by the state board of education. The LEA shall issue a full diploma to any such student who meets the minimum requirements.

(k) The state board of education shall adopt an alternate academic diploma for students with the most significant cognitive disabilities who are assessed with the alternate assessment under § 49-1-612. The board shall ensure the diploma is aligned with the requirements for a regular high school diploma.

**49-6-6011. Limitations on new statewide assessments.**

(a) Notwithstanding any other law, the department of education and the state board of education are prohibited from mandating any statewide assessments for any grades or subjects beyond those assessments required as of the 2016-2017 school year until the 2020-2021 school year. The department shall ensure all data associated with existing assessments is accurate and timely.

(b) This section does not apply to assessments required by federal law, assessments required for the implementation of response to instruction and intervention, or to required field tests, or prohibit LEAs from voluntarily participating in assessments developed by the department of education or prohibit LEAs from requiring district-approved assessments.

(c) The department of education shall report to the education committee of the senate and the education instruction and programs committee of the house of representatives all actions or procedures that have been implemented to ensure all data associated with existing assessments is accurate and timely.

**49-6-6012. Adverse action based on student achievement data generated from 2017-2018 TNReady assessments prohibited.**

Notwithstanding any law to the contrary, no adverse action may be taken against any student, teacher, school, or LEA based, in whole or in part, on student achievement data generated from the 2017-2018 TNReady assessments. For purposes of this section, "adverse action" includes, but is not limited to, the identification of a school as a priority school and the assignment of a school to the achievement school district.

**49-6-7004. Parental involvement contracts.**

(a) As used in this section, "parent" means the parent, guardian or person who has custody of the child or individual who has caregiving authority under § 49-6-3001.

(b) LEAs are encouraged to develop and implement parental involvement contracts with parents of students. These parental involvement contracts will be voluntary and should be designed to encourage and facilitate a parent's involvement with the parent's child's education.

(c) The department of education shall develop a model parental involvement contract that may be used by LEAs. The model parental involvement contract

shall provide that a parent will commit to do at least the following:

(1) Review homework assignments and offer assistance when needed;

(2) Sign report cards;

(3) Ensure that the student gets to school each day, on time and ready to learn;

(4) Demonstrate interest in the student's well-being by attending school functions and supporting the student's school activities; and

(5) Make every effort to attend parent-teacher conferences.

(d) In signing a contract, the parent shall agree to maintain within the parent's best efforts involvement with the parent's child's education to the extent required by the contract. The contract should include a means for a parent to explain any obstacles that may prevent the parent from complying with the contract. If a contract includes an explanation of obstacles that may prevent the parent from complying with the contract, then school employees shall consider accessing possible resources to help overcome the obstacles identified.

(e) [Deleted by 2018 amendment.]

**49-6-7006. [Repealed.]**

**49-7-104. Deferred payments by students receiving assistance.**

(a)(1) The board of trustees of the University of Tennessee, the board of regents, and each state university board shall adopt procedures whereby a Tennessee resident who is enrolled at an institution of higher education within their jurisdictions under educational assistance benefits administered and provided by the United States department of veterans affairs or under other governmentally funded educational assistance benefits may elect, upon formal application to the institution, to defer payment of the required tuition and fees until the student's monetary benefits from the department or other governmental agency have been received. Application for deferment shall be made by the student prior to the commencement of the academic term for which deferment is being requested; however, if the student can prove to the institution that the student could not have reasonably made application prior to the commencement of the academic term, application for deferment may be made no later than fourteen (14) days following the start of the term.

(2) Deferment shall not extend beyond the final day of the term for which the educational assistance benefits are being provided or until all monetary benefits are received from the department or other governmental agency, whichever occurs first; however, a further extension may be granted upon a finding of extenuating circumstances related to the delay of delivery of benefits through no fault of the student. In no instance shall deferment be extended for more than one (1) academic term after the academic term in which deferment was initially granted, if the student receiving the deferment has an outstanding balance of unpaid tuition or fees from the academic term in which deferment was initially granted.

(3) The amount of tuition and fees deferred shall not exceed the total anticipated monetary benefits to be received by the student from the department or other governmental agency for the term.

(4) Eligibility for deferment shall terminate if the student fails to abide by any applicable rule or regulation or fails to act in good faith in the timely payment of required tuition and fees that have been deferred pursuant to this section.

(5) Except as provided by subdivisions (a)(2)-(4), deferment shall not be grounds for a state institution of higher education to:

(A) Deny or otherwise encumber a student's request for academic transcripts or term grade reports;

(B) Prohibit or otherwise encumber a student from registering for courses at the institution for the academic term immediately following the deferment or extension of deferment or from reenrolling at the institution at a subsequent date; or

(C) Prohibit or otherwise encumber a student from graduating from the institution or from participating in graduation ceremonies conducted by the institution; provided, that all degree requirements have been met.

(6) No additional fees or service charges shall be imposed against a student by a state institution of higher education for deferred payments of tuition and fees made pursuant to this section; however, all other policies and procedures relevant to the payment of fees and tuition and refunds of fees and tuition shall be applicable to a student who is deferring payment.

(7) A student veteran classified as a resident for tuition and fee purposes under the Academic Common Market Agreement, as codified in § 49-7-301, is eligible for deferment of tuition and fees under this section.

(8) A student veteran cannot be in an overpayment status to the United States department of veterans affairs to an extent of such that the student cannot be expected to receive the amount of tuition and fees due.

(b) All procedures adopted pursuant to this section are subject to the approval of the commissioner of finance and administration and shall be filed with the comptroller of the treasury.

(c)(1) All public institutions of higher education shall publish notice of entitlement to veterans' educational benefits in their catalogues and schedules of classes.

(2) Inclusion of the information shall be subject to review by the veterans' education division of the Tennessee higher education commission.

**49-7-107. Establishment of foundations — Code of ethics.**

(a) The board of regents, the board of trustees of the University of Tennessee, and state university boards are authorized and empowered to take such steps, to enter into such agreements, and to do whatever they deem necessary to the establishment of foundations for the state institutions of higher education under their control.

(b) All annual reports and all books of accounts and financial records of a foundation created for the benefit of a public institution of higher education shall be subject to audit by the comptroller of the treasury.

(c) Any foundation created pursuant to this section shall establish and adopt a code of ethics that shall apply to and govern the conduct of all members of the foundation board.

(d)(1) Notwithstanding any other law to the contrary, by a two-thirds (⅔) vote of its membership, the foundation board may remove any appointed member of the foundation board for a material violation of the code of ethics.

(2) A foundation board vote to remove a member shall only be taken after the accused member has been afforded an opportunity to address the board in connection with the alleged violation.

(3) If a member is removed in accordance with this subsection (d), the position shall be considered vacant and the vacancy shall be filled as provided by the foundation's bylaws.

**49-7-117. Child sexual abuse courses.**

The state university boards, the board of regents, and the board of trustees of the University of Tennessee shall require that courses in the detection and treatment of child sexual abuse be included in the curriculum of disciplines that include the training of physicians, pediatricians, psychiatrists, nurses, psychologists, and sociologists.

**49-7-122. Annual training required for employee who investigates sexual misconduct.**

(a) An employee of a public institution of higher education who investigates sexual misconduct shall complete the following at least one (1) time each year:

(1) Training that satisfies the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (compiled in 20 U.S.C. § 1092(f)), and the federal regulations implementing the statutes, as amended, all of which may be satisfied by the training in subdivision (a)(2); or

(2) Training developed or conducted by the Tennessee Law Enforcement Innovation Center for investigators who perform investigations of sexual misconduct.

(b) As used in this section, "sexual misconduct" means an alleged violation of a public higher education institution's policies concerning sexual assault, dating violence, domestic violence, or stalking.

**49-7-128. Fulfillment of obligations as president emeritus.**

Notwithstanding § 8-36-714 to the contrary, upon mutual agreement between the Tennessee higher education commission and the board of trustees of the University of Tennessee, the board of regents, or a state university board, as appropriate, an individual holding the title of president emeritus may apply service to the Tennessee higher education commission toward fulfillment of the individual's obligations as president emeritus.

**49-7-130. Reimbursement for airplane travel limited to standard coach fare.**

No official, officer, or employee of a state university board, the board of regents, or the board of trustees of the University of Tennessee, or any institution under their control, shall be reimbursed for airplane travel in an amount in excess of standard coach fare for the applicable flight. Unless an emergency situation arises and the purchase or reimbursement for the purchase of tickets for travel by air in excess of the standard coach fare for the emergency situation is approved by the comptroller, no state appropriated or institution funds shall be otherwise used to purchase air travel at rates in excess of standard coach fare for the applicable flight.

**49-7-134. Reduction in work force.**

The board of regents, the state university boards, and the board of trustees of the University of Tennessee shall adopt policies to govern reductions in force that could result in employee layoffs or terminations at their respective institutions of higher education. The policies shall provide a consistent and equitable method of reducing the work force when a reorganization or curtailment of operations becomes necessary. The policies shall, at a minimum:

(1) Apply to regular, nonfaculty employees;

(2) Provide for a written rationale for any reduction in the work force;

(3) Include identification of functional areas affected, a review of the budget implications involved and the development of specific written criteria to be used in identifying duties that will be reassigned or eliminated;

(4) Provide for the application of such factors as length of service in the position and at the institution, functional needs of the unit in selecting the affected employees and the qualifications needed to perform the remaining duties of the affected unit;

(5) Require written notification to the affected employees of a reduction in force as far in advance as possible; and

(6) Provide an opportunity for affected employees to receive notification when vacancies for similar positions at their former campuses occur.

**49-7-136. Emergency keyed lock boxes in all student dormitories and other university housing next to functioning elevators.**

(a) The board of trustees of the University of Tennessee, the board of regents, and the state university boards shall adopt uniform rules requiring the placement of an emergency keyed lock box in all student dormitories and other campus housing with functioning elevators. The emergency keyed lock box must be installed by each bank of elevators in student dormitories and other campus housing. The lock boxes shall be permanently mounted seventy-two inches (72″) from the floor to the center of the box, be operable by a universal key, no matter where the box is located, and shall contain only fire service keys and drop keys to the appropriate elevators. General standards for the design of the boxes shall be approved by the department of labor and workforce development; provided, however, that the standards must be consistent with all applicable building and life safety standards governing student dormitories.

(b) Failure to comply with this section shall be a Class C misdemeanor and shall be punishable by a fine only of not more than two hundred fifty dollars ($250).

**49-7-143. Information in student directories — Solicitations and issuance of credit cards.**

(a) Any public institution of higher education that collects personal information from students, including, but not limited to, names, campus or home addresses, telephone numbers, or other identifying information, for the purpose of using this information in student or campus directories shall include on forms used for such purposes a provision whereby the student may indicate that the student does not wish to receive solicitations, offers, or other advertisements by mail or otherwise based on the directory listing. If a student

indicates that the student does not wish to receive solicitations or other such offers, then the student's preference shall be marked by the student's name and the directory shall contain an explanation of the marking.

(b) It is unlawful for any credit card issuer to recruit potential student cardholders or customers for credit card business on campus or at college or university facilities, or through student organizations; provided, however, that colleges and universities may allow recruitment on days when there are athletic events, so long as the recruitment is in accordance with college or university policies.

(c) It is unlawful to knowingly offer gifts or any other promotional incentives to students on campus or at college or university facilities in order to entice the students to apply for credit cards.

(d) Any public institution of higher education that receives funds from the distribution of credit cards to students or any percentage from the use of cards bearing the college or university name or logo shall report the amount of such funds or percentage that it received as well as how the funds were expended during the previous fiscal year to the education committee of the senate and the education administration and planning committee of the house of representatives by October of each year.

(e) Nothing in this section is intended to or shall impair the obligations, terms, conditions, or value of contracts between credit card companies and public colleges or universities that exist on July 1, 2008.

**49-7-154. Confidentiality of application and materials submitted with application for position of chief executive officer of public institution of higher education — Records of finalists.**

(a) Notwithstanding any law to the contrary, an application for a position of chief executive officer of a public institution of higher education, materials submitted with an application, letters of recommendation or references concerning an applicant, and any other records or information relating to or arising out of the process of searching for and selecting an individual for a position of chief executive officer of a public institution of higher education shall be treated as confidential and shall not be open for public inspection, if the records could be used to identify a candidate for the position; provided, however, that after a search committee has selected candidates as finalists for a position of chief executive officer of a public institution of higher education, which shall occur no later than fifteen (15) calendar days before the final vote of the governing board to appoint or elect a person to fill the position, a record relating exclusively to the candidates selected as finalists shall not be confidential and shall be open for public inspection, except for a record otherwise confidential under state or federal law. This section shall not apply to information relating to a candidate who did not expressly request that the candidate's information be kept confidential.

(b) As used in this section:

(1) "Chief executive officer of a public institution of higher education" includes:

(A) The president of the University of Tennessee system;

(B) The chancellor of the state university and community college system;

(C) A chancellor of a University of Tennessee campus or institute; and

(D) A president or director of an institution of the state university and community college system; and

(2) "Finalists" means no less than three (3) candidates selected by a search committee as the group from which one (1) or more candidates shall be recommended to the governing board of the public institution of higher education.

(c) **[Repealed effective July 1, 2021.]**

(1) Notwithstanding subsections (a) and (b), a search committee may select up to three (3) candidates to be recommended to the governing board of the public institution of higher education for the following positions:

(A) A president of a locally governed state university;

(B) The president of the University of Tennessee system;

(C) A president of a community college; or

(D) A president or director of a Tennessee college of applied technology.

(2) Prior to initiating a search to fill a position listed in subdivision (c)(1), a meeting that is open to the public and subject to the requirements of title 8, chapter 44, part 1, shall be held by the governing board to establish the search process, a timeline, and a statement of qualifications for the position.

(3) No later than fifteen (15) calendar days before the final vote of the governing board to appoint or elect a person to fill a position listed in subdivision (c)(1), records relating exclusively to the candidates identified pursuant to subdivision (c)(1) shall not be treated as confidential and shall be open for public inspection, except for a record otherwise confidential under state or federal law.

(4) No later than seven (7) calendar days before a meeting at which the governing board will vote to appoint or approve the appointment of a candidate to fill a position listed in subdivision (c)(1), the governing board shall hold at least one (1) public forum with the candidate.

(5) A meeting at which the governing board will vote to appoint or approve the appointment of an individual to fill a position identified in subdivision (c)(1) shall be open to the public and subject to the requirements of title 8, chapter 44, part 1.

(6) No later than November 1, 2020, the advisory committee on open government shall submit a report to the governor, the speaker of the senate, and the speaker of the house of representatives evaluating the impact and effectiveness of this subsection (c) and identifying considerations and recommendations relative to its continuation, revision, or expiration.

(7) This subsection (c) shall be repealed on July 1, 2021.

**49-7-166. Satisfaction of student debts and obligations required.**

(a) As used in this section, "college system of Tennessee" means the community colleges and colleges of applied technology governed by the board of regents.

(b) As used in this section, "state universities" means:

(1) The University of Tennessee and all its several branches;

(2) The University of Memphis;

(3) Tennessee State University;

(4) Austin Peay State University;

(5) Middle Tennessee State University;

(6) Tennessee Technological University; and

(7) East Tennessee State University.

(c) The state universities and the college system of Tennessee are authorized to issue diplomas, certificates of credit, or official transcripts only after the student involved has satisfied all debts or obligations owed to the college or university, including, but not limited to, its bookstores, libraries, food service centers, dormitories, infirmaries, or hospitals. The limitation of this subsection (c) shall not apply to debts of less than one hundred dollars ($100).

(d) The limitation in subsection (c) does not apply to debts or obligations evidenced by notes or other written contracts providing for future payment, such as, but not limited to, loans authorized under federal or state education or student assistance acts.

(e) Notwithstanding the limitation in subsection (c), the colleges in the college system of Tennessee shall issue a certificate of credit or official transcript for a student seeking admission to any college in that system if the student has entered a written agreement to satisfy the outstanding debt or obligation owed to the college issuing the certificate of credit or official transcript. Any certificate of credit or official transcript issued under this subsection (e) shall indicate that it is subject to an outstanding debt owed to the issuing college. The college receiving a certificate of credit or official transcript issued under this subsection (e) shall not subsequently issue a diploma, certificate of credit, or official transcript to that student until it receives proof that the student has satisfied the outstanding debt to the college that issued the certificate of credit or official transcript.

### 49-7-167. Appointment of administrative judges and hearing officers to conduct contested cases — Training — Waiver of right to contested case hearing.

(a) Public institutions of higher education are authorized to appoint the following persons as administrative judges and hearing officers to conduct contested cases under the Uniform Administrative Procedures Act:

(1) A person who is licensed to practice law and who is not employed as an attorney for the institution;

(2) A former state, county, or municipal judge or a former federal judge or magistrate;

(3) An employee of the institution who has been trained to conduct contested cases, including the training in subsection (c), but who does not provide legal representation to the institution; or

(4) An employee of another public institution of higher education who has been trained to conduct contested cases, including the training in subsection (c).

(b) An administrative judge or hearing officer appointed by a public institution of higher education pursuant to subsection (a) is subject to:

(1) The disqualification provisions of § 4-5-302; and

(2) The conflict of interest provisions of § 4-5-303.

(c) No earlier than twelve (12) months prior to hearing a contested case under the Uniform Administrative Procedures Act that involves sexual assault, dating violence, domestic violence, or stalking, an administrative judge or hearing officer shall complete training that satisfies the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. § 1092(f)), and the federal regulations implementing those statutes,

as amended.

(d) In lieu of appointing an administrative judge or hearing officer to conduct a contested case pursuant to subsection (a), a public institution of higher education may make a request to the office of the secretary of state to have the contested case heard by an administrative judge or hearing officer employed in the office of the secretary of state pursuant to § 4-5-301(d).

(e) Nothing in this section is intended to prohibit a student charged with a student disciplinary offense, or any other individual who has the right to a contested case hearing, from waiving the right to the hearing of a contested case under the Uniform Administrative Procedures Act; provided, that prior to waiving that right, the individual is informed in writing of the individual's rights under this section.

(f) As used in this section:

(1) "Contested case" has the meaning ascribed to that term by the Uniform Administrative Procedures Act; and

(2) "Uniform Administrative Procedures Act" means the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and rules of procedure for hearing contested cases promulgated in accordance with applicable rulemaking provisions.

**49-7-204. Composition.**

(a)(1)(A) The commission shall consist of a total of ten (10) appointed voting members.

(B) The governor shall appoint six (6) voting members, the speaker of the senate shall appoint one (1) voting member, the speaker of the house of representatives shall appoint one (1) voting member, and the speakers shall jointly appoint one (1) voting member.

(C)(i) In addition, the governor shall appoint one (1) voting student member each year, from a list of three (3) nominees selected and submitted by the commission no later than April 15. The student member shall serve for a term of one (1) year, commencing on July 1 and concluding on June 30.

(ii) The student member must remain enrolled in good standing at a public institution of higher education in this state for the duration of the student's term on the commission, except that a student member who graduates during the student's term on the commission may complete that term.

(iii) The student member shall be a resident of this state.

(iv) The chancellor of the board of regents and the president of the University of Tennessee system may each submit no more than two (2) qualified candidates, and the presidents of the state universities may each submit one (1) qualified candidate, to the commission for consideration each year. All candidates shall be submitted to the executive director no later than November 15.

(v) The chancellor and presidents are encouraged to facilitate the participation of campus student government associations in the candidate selection process.

(vi) Nothing in this section shall be construed to terminate a student member who was appointed prior to March 23, 2018.

(D) The comptroller of the treasury, the secretary of state, and the state treasurer shall serve as ex officio, voting members of the commission. The executive director of the state board of education shall serve as an ex officio, nonvoting member of the commission.

(2)(A) Except for ex officio members and student members, membership shall be for a six-year term.

(B) To transition from appointment of all members by the governor to appointment of members by the governor, the speaker of the senate, and the speaker of the house of representatives, when the first vacancy occurs or the first term expires after July 1, 2016, the speaker of the senate shall appoint the member to fill the vacancy. When the second vacancy occurs or the next term expires, the speaker of the house of representatives shall appoint the member to fill the vacancy. When the third vacancy occurs or the next term expires, the speaker of the senate and the speaker of the house of representatives shall jointly appoint the member to fill the vacancy.

(3)(A) As the governor, speaker of the senate, and speaker of the house of representatives appoint voting members, other than the student members, the governor, the speaker of the senate, and the speaker of the house of representatives shall appoint the voting members so that the three (3) grand divisions of the state are represented equally.

(B) No member of the commission serving on July 1, 2016, shall have the member's term cut short because of subdivision (a)(3)(A).

(4) When the nine (9) voting members, other than the student member, have been appointed so that the three (3) grand divisions are represented equally, the appointing authorities, in filling vacancies, shall subsequently appoint a person from the grand division in which the member who previously filled the position resided.

(5) Members shall be eligible for reappointment.

(6) The appointing authorities shall strive to appoint members to the commission in a manner that is representative of the diversity of the citizens of the state.

(b)(1) Except as provided in subdivision (a)(2)(B), any vacancy on the commission shall be filled by appointment of the authority who originally made the appointment.

(2) Vacancies, except for expiration of a term, shall be filled for the unexpired term only.

(3) Except for members appointed before July 1, 2016, the place of any member on the commission shall be vacated at such time as the member ceases to reside in the grand division in which the member resided at the time of appointment.

(c) [Deleted by 2018 amendment.]

(d) [Deleted by 2018 amendment.]

(e) Except as provided in subsection (a), no commission member shall be an elected or appointed official or employee of the state, nor a trustee, officer or employer of a public institution of higher learning in this state while a member of the commission. A student member is exempt from this subsection (e).

(f)(1) The commission's first meeting after all members have been appointed shall be upon the call of the governor.

(2) The commission thereafter shall meet at least four (4) times each year.

(3) Meetings of the commission shall be made available for viewing by the public over the internet by streaming video accessible from the commission's website. Archived videos of the commission's meetings shall also be available to the public through the commission's website.

(g) The commission shall elect from its number a chair and such other officers as it deems appropriate, shall determine their terms as officers of the commission and shall adopt rules for its organization and the conduct of its business.

(h) Commission members shall receive no compensation for their services, but shall be reimbursed for travel expenses in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

**49-7-205. Staff. [Effective until January 1, 2019. See the version effective on January 1, 2019.]**

(a)(1) The governor shall appoint an executive director.

(2) The executive director shall serve at the pleasure of the governor.

(3) The governor may define the executive director's duties and, within budgetary limitations, fix the executive director's compensation.

(4) The executive director must have the educational preparation and experience that qualifies the executive director, in the governor's judgment, to understand and evaluate the problems and needs of the state's institutions of higher learning and to direct the studies of the commission.

(b) Within budgetary limitations, and subject to the approval of the commissioner of human resources, the executive director may employ other professional and staff employees necessary to efficiently discharge the duties of the agency.

(c) The executive director and all other employees shall be reimbursed for travel expenses in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

**49-7-205. Staff. [Effective on January 1, 2019. See the version effective until January 1, 2019.]**

*(a)(1) The commission is empowered to employ an executive director, define the executive director's duties and, within budgetary limitations, fix the executive director's compensation.*

*(2) The executive director shall serve at the pleasure of the commission.*

*(3) The executive director shall have the educational preparation and experience that qualifies the executive director, in the commission's judgment, to understand and evaluate the problems and needs of the state's institutions of higher learning and to direct the studies of the commission.*

*(b) Within budgetary limitations, and subject to the approval of the commissioner of human resources, the executive director may employ other professional and staff employees necessary to efficiently discharge the duties of the agency.*

*(c) The executive director and all other employees shall be reimbursed for travel expenses in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.*

**49-7-206. Rights and status of other bodies preserved.**

(a)(1) The University of Tennessee shall retain its identity and status as a legal entity, a body politic and corporate and as one of the state's federal land-grant institutions.

(2) Except as expressly provided in this part, its board of trustees shall retain and exercise all the authority, rights, powers and duties, express or implied, vested in it by legislative charter and enactments and other applicable laws. Nothing in this part shall be construed to deprive the board of the authority, rights, powers and duties conferred upon it by law in the government of the institutions, branches, colleges, divisions and departments now under its control, except those duties that by this part are expressly vested in the commission.

(b) Except for the powers that are vested in the commission by this part, nothing in this part shall be construed to deprive the board of regents and the state university boards of the authority, rights, powers, and duties conferred upon them by law, express or implied, in the government, control, and operation of their respective institutions.

**49-7-207. Committee on postsecondary educational institutions.**

(a) There is created, under the auspices of the Tennessee higher education commission, a committee on postsecondary educational institutions, which shall have responsibility for oversight and regulation of institutions pursuant to part 20 of this chapter. The committee shall be composed of the executive director of the Tennessee higher education commission, who shall serve as chair, and twelve (12) persons appointed by the commission. Persons appointed by the commission shall be broadly representative of the geographical characteristics of the state. Six (6) members of the committee shall be employed by, hold an ownership interest in, or otherwise be affiliated with an institution or other entity subject to the committee's supervision and oversight. Four (4) members shall be representative of the public interest and shall have no association or relationship with the institutions. Two (2) members shall be representative of community based organizations that have an interest in postsecondary occupational education. The commission may receive lists of nominees from the postsecondary institutions or from other sources to fill vacancies on the committee, who shall be considered by the commission in making its appointments.

(b) Members of the committee shall serve three-year terms, or until their successors are appointed. Members may be reappointed. A member may be removed without cause by the commission if removal is required to avoid having more than six (6) members of the committee who are affiliated with an institution subject to the committee's supervision and oversight. Members may also be removed by the commission for failure to attend official meetings of the committee, for failure to perform duties related to their position or for other reasonable cause.

(c) The committee shall hold its first meeting prior to September 1, 1992, at the call of the chair. At its first meeting, and annually thereafter, the committee shall elect from its members such other officers as it deems necessary. The committee shall from time to time promulgate bylaws or other rules of procedure that are proper to effectively discharge its duties, including the time and frequency of its regular meetings. Special meetings of the

committee may be convened at the call of the chair.

(d) The committee shall exercise the powers and undertake the obligations that are delegated to it by the commission under part 20 of this chapter. The delegations shall include the authority to initiate and conduct on-site institutional reviews and investigations and the formulation of rules of procedure and performance standards for authorization and institutional performance, which actions shall be subject to review, approval or disapproval by the commission. Committee members shall receive no compensation for their services, but shall be reimbursed for travel expenses in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(e) Neither the committee nor the commission is required to approve any institution or program submitted to them for approval under part 20 of this chapter, if, in their judgment, adequate provisions for the institution or program exists within the proposed service area. Furthermore, except with regard to regionally accredited, degree granting institutions, neither the committee nor the commission is required to approve any institution or program, if, in their judgment, there is insufficient evidence that adequate employment opportunities exist in the related occupations for persons successfully completing the program and that the costs of the program are reasonable in relation to the reasonably expected earnings in occupations for which the program is designed. Institutions whose primary campus is located in this state and that have been domiciled in this state for at least ten (10) consecutive years and that are accredited by the commission on colleges of the Southern Association of Colleges and Schools at the baccalaureate level shall be exempt from this subsection (e).

(f) When the committee or the commission receives a request for initial authorization of an institution or approval of a new program under part 20 of this chapter, it shall provide timely notice of the application and the programs that are proposed to be offered to state institutions of higher education within whose service area the proposed institution or program is to be located. Any affected state institution may comment on the proposal to the committee or commission.

(g) Institutions issued annual optional expedited authorization from the commission under part 20 of this chapter shall be exempt from subsections (e) and (f).

**49-7-211. Financial disclosure of student activity fees.**

(a) Each institution of higher education shall report to the Tennessee higher education commission, on an annual basis, an accounting of student activity fees.

(b) The Tennessee higher education commission shall publish, as part of the Tennessee Postsecondary Education Fact Book, a financial disclosure statement for student activity fees.

(c) The financial disclosure statement shall account for the student activity fees on a campus-by-campus basis. At a minimum the following information shall also be included with the financial disclosure statement:

(1) The number of undergraduate and graduate students enrolled;

(2) Source of any student activity fees according to the number of students enrolled as undergraduate or graduate students;

(3) The expenditure of the student activity fees; and

(4) Funds not expended during the disclosure period.

(d) This section shall only apply to public institutions of higher education.

**49-7-214. [Repealed.]**

**49-7-808. Educational investment plan.**

(a) An educational investment plan is established whereby an account owner may participate to create an account in such plan and shall allow any contributor to make contributions to such an account intending for such contributions and any earnings thereon to be applied toward the qualified higher education expenses of a beneficiary.

(b) The account owner retains ownership of all amounts on deposit in such account unless otherwise provided herein. Earnings accrued to the account shall be considered to be held in trust in the same manner as contributions. Amounts on deposit therein shall be available for expenses and penalties imposed by the plan. An educational investment trust account created on behalf of a beneficiary under this part shall entitle the beneficiary to an amount equal to the funds on deposit in the account during the academic term in which the funds are needed to cover the beneficiary's tuition and other qualified higher education expenses at the eligible educational institution at which the beneficiary is enrolled, not to exceed the redemption value of the account.

(c) The board may develop one (1) or more plans for offering educational investment trust accounts. The plans shall include, but shall not be limited to, the investment vehicles for investing the contributions made to such accounts. The board may cause the imposition and collection of reasonable administrative fees and charges in connection with the creation and maintenance of such educational investment trust accounts.

(d) The funds from the small and minority-owned business assistance program that are transferred to the board pursuant to § 65-5-113(c) shall be used for the administration and marketing of the program, including, but not limited to, the establishment, marketing, and administration of an incentive plan or plans for the benefit of low-income individuals as authorized in § 49-7-805(4). The board shall have the authority to promulgate rules relative to the implementation and administration of the incentive plan or plans. The state treasurer shall be responsible for the day-to-day administration of such incentive plan or plans as established by the board.

**49-7-1003. Part incorporated in policies and procedures of board of regents.**

For the purpose of fulfilling the requirements of § 49-7-1002(a) and (b), it is the intent of the legislature that this part shall be made a formal part of the policies and procedures of the board of regents, the board of trustees of the University of Tennessee, and the state university boards.

**49-7-1105. Notification of parents' rights to view student records.**

Each state institution of higher education shall notify parents of enrolled students of the parents' rights to view student records under the federal

Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S.C. § 1232g) on the institution's website.

**49-7-1601. Short title.**

This part shall be known and may be cited as the "Tuition Transparency and Accountability Act."

**49-7-1602. Part definitions.**

As used in this part:

(1) "Board" means the trustees of the University of Tennessee or a state university board, as applicable;

(2) "Cost of attendance" means the combined cost of tuition, mandatory fees, room and board, books, and other educational expenses as determined by the financial aid office of the postsecondary institution;

(3) "Predictive cost estimate" means a non-binding estimated cost of attending an undergraduate program at the postsecondary institution based on a student's chosen field of study over a four-year period. A predictive cost estimate may include, but is not limited to, potential tuition and mandatory fee increases, projected increases in tuition based on a student's chosen field of study, and historical trend data; and

(4) "Tuition and mandatory fees" means the charges imposed to attend the relevant institution of higher education as an in-state undergraduate student and all fees required as a condition of enrollment as determined by the board. "Tuition and mandatory fees" does not include fees charged to out-of-state students by institutions of higher education, room and board, or other non-mandatory fees and charges.

**49-7-1603. Public notice of proposed tuition and mandatory fee increase.**

(a) At least fifteen (15) days prior to holding a meeting to adopt an increase in tuition and mandatory fees, a board shall give public notice of the proposed tuition and mandatory fee increase as an action item on the board's meeting agenda. Individuals shall be permitted to provide comments during the fifteen-day period. The public notice of the proposed tuition and mandatory fee increase shall, at a minimum, include:

(1) An explanation for the proposed tuition and mandatory fee increase;

(2) A statement specifying the purposes for which revenue derived from the tuition and mandatory fee increase will be used; and

(3) A description of the efforts to mitigate the effect of the tuition and mandatory fee increase on students.

(b)(1) By January 1, 2019, each board shall develop a list of factors that shall be considered when developing recommendations to increase tuition and mandatory fees. The factors shall include, at a minimum, the level of state support; total cost of attendance; and efforts to mitigate the financial effect on students.

(2) Each state university and each campus in the University of Tennessee system shall post on its website a summary of the recommendations pursuant to subdivision (b)(1).

**49-7-1604. Report regarding expenditures of revenues derived from tuition and fee increases.**

By February 1 of each year, each governing board shall provide a report to the office of legislative budget analysis, for distribution to the general assembly, with information regarding expenditures of revenues derived from any tuition and fees increase in the previous full academic year. The report shall include how revenues were used, the effect on student financial aid, and the effect on the average total cost of attendance per student.

**49-7-1605. Predictive cost estimate to accompany student's letter of acceptance.**

Beginning August 1, 2019, each state university and each campus in the University of Tennessee system shall provide, with a student's letter of acceptance, a predictive cost estimate for students applying for undergraduate degree programs for the 2020-2021 academic year and for academic years thereafter.

**49-7-1701. Applicability of part.**

This part shall apply to all public higher education institutions located in this state.

**49-7-1702. Part definitions.**

As used in this part, unless the context requires otherwise:

(1) "Institution" means any public institution of higher education located within this state;

(2) "Notice" means written information sent to a student by the institution transmitted by:

(A) United States mail, courier service, or hand delivery to the permanent or local address the institution has on file for the student; or

(B) Email to the student's institution-provided email account, but only if the institution has adopted and published a written policy establishing an institution-provided email account as a method of communication by which students should expect to receive communications from the institution about student conduct matters;

(3) "Sexual misconduct" means a violation of an institution's disciplinary policies concerning sexual assault, dating violence, domestic violence, or stalking; and

(4) "Student disciplinary proceeding" means a hearing, proceeding, or any other non-law enforcement process other than an investigation that is used by an institution to determine whether sexual misconduct occurred or impose a sanction with respect to sexual misconduct, including a contested case hearing conducted under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**49-7-1703. Notice required to be given student accused of sexual misconduct — Temporary suspension not prohibited.**

(a) An institution shall provide a student accused of sexual misconduct with notice of the extent to which the institution may allow a licensed attorney or other advisor to represent or advise the student in an investigation or student

disciplinary proceeding.

(b) At least seventy-two (72) hours prior to a student disciplinary proceeding concerning charges of sexual misconduct, an institution shall provide a student accused of sexual misconduct with notice of the following:

(1) The time, place, and date of the student disciplinary proceeding;

(2) The name of each witness the institution expects to present at the student disciplinary proceeding and those the institution may present if the need arises;

(3) The student's right to request a copy of the institution's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and

(4) The student's right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the institution has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment.

(c) When notice is sent pursuant to this section by United States mail or courier service, the notice is effective on the date that the notice is mailed or delivered to the courier service. When notice is hand delivered to the student from the institution, notice is effective on the date that the notice is delivered to the student to whom the notice is addressed. When notice is sent by email, the notice is effective on the date that the email is sent to the student's institution-provided email account.

(d) Nothing in this part is intended to prohibit a student charged with sexual misconduct from waiving the student's right to a contested case hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; provided, that prior to waiving that right the student is informed in writing of the rights provided in this part.

(e) Nothing in this part prohibits the temporary suspension of a student during an institution's pending investigation of student misconduct; provided, that the terms of temporary suspension do not violate the student's constitutional right to due process of law.

**49-7-1704. Policy requiring that process of disciplining student for sexual misconduct be free from conflicts of interest — Legal advice to multiple institutional employees not prohibited — Equivalent rights of alleged victim.**

(a) An institution must adopt a policy requiring that the process of disciplining a student for sexual misconduct be carried out in a manner that is free from conflicts of interest consistent with due process of law.

(b) With respect to student disciplinary hearings other than contested cases under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the policy must provide for protections for a student accused of sexual misconduct analogous to, and no less protective than, the conflict of interest provisions of § 4-5-303.

(c) Nothing in this part prohibits an attorney for the institution from providing legal advice to multiple institutional employees who serve in different roles in the process of disciplining a student for sexual misconduct.

(d) Nothing in this part prohibits an institution from providing an alleged victim of sexual misconduct with equivalent rights as the student accused of

sexual misconduct in an investigation, student disciplinary proceeding, or appeal.

**49-7-2004. Exempt institutions.**

(a) The following education and educational institutions are exempted from this part:

(1) Institutions exclusively offering instruction at any or all levels from preschool through the twelfth grade;

(2) Education sponsored by a bona fide trade, business, professional or fraternal organization, so recognized by the commission, solely for that organization's membership or offered on a no-fee basis;

(3) Education solely avocational or recreational in nature, as determined by the commission, and institutions offering such education exclusively;

(4) Education offered by eleemosynary institutions, organizations or agencies, so recognized by the commission; provided, that the education is not advertised or promoted as leading toward educational credentials;

(5) Postsecondary educational institutions established, operated, and governed by this state or its political subdivisions, including approved postsecondary training schools, academies, or facilities established, operated, and governed by this state or its political subdivisions and the colleges of applied technology under the exclusive control and jurisdiction of the board of regents;

(6) Any postsecondary educational institution that:

(A) Has had its primary campus domiciled in the same state for at least twenty (20) consecutive years and continues to have its primary campus domiciled in that state;

(B) Is accredited by an accrediting agency recognized by the United States department of education and has been accredited by a recognized accreditor for at least twenty (20) consecutive years;

(C) Is chartered where its primary campus is domiciled as a not-for-profit entity and has continuously been so chartered for at least twenty (20) consecutive years;

(D) Meets and maintains financial standards deemed acceptable by the accreditor for the purpose of maintaining accreditation or the United States department of education for the purpose of being a Title IV eligible institution; and

(E) Completes an information request form under subdivision (b)(3);

(7)(A) Institutions operated solely as auction schools, barber schools, schools of cosmetology, or schools of electrology; provided, that any barber school or school of cosmetology licensed or registered with the board of cosmetology and barber examiners that is eligible for or chooses to seek eligibility for federal student financial aid programs under the Higher Education Act of 1965, as amended (20 U.S.C. §§ 1001-1161aa-1) shall be subject to all requirements of this part;

(B) Any authorization to engage in postsecondary education issued by the board of cosmetology and barber examiners, or any predecessor board, shall be null and of no effect upon the granting of authorization by the commission or after June 30, 2016, whichever is earlier;

(8) Institutions operated solely as schools for the study of law and subject to the approval of the board of law examiners for this state;

(9) Educational programs conducted by state-licensed health care institutions;

(10) Educational instruction that:

(A) Does not lead to a degree;

(B) Is regulated by the federal aviation administration; and

(C) Is offered by a postsecondary educational institution that does not require students receiving the instruction to enter into written or oral contracts of indebtedness;

(11) A nonprofit, regionally accredited educational institution:

(A) Offering online, competency-based education to adult students;

(B) Led by a chief executive or chancellor domiciled in Tennessee; and

(C) With activities and operations limited to the scope of a memorandum of understanding executed with the state of Tennessee in 2013; and

(12) Education offered as intensive review courses designed solely to prepare students for graduate or professional school entrance examinations and professional licensure examinations. For the purposes of this subdivision (a)(12), "professional licensure examinations" includes, but is not limited to:

(A) Certified public accountancy tests;

(B) Examinations for insurance or securities licensure and registration;

(C) Examinations for a professional practice in psychology; and

(D) Bar examinations.

(b)(1) Any postsecondary educational institution exempt from this part by virtue of subdivision (a)(6) or (a)(11) shall lose the exemption upon the occurrence of one (1) of the following events, subject to appeal to the commission as provided at § 49-7-2010:

(A) Loss or failure to meet any of the listed criteria for exemption;

(B) Loss of Title IV federal student aid funding; or

(C) A three-year federal financial aid cohort default rate of thirty percent (30%) or higher for three (3) consecutive years or any single year over forty percent (40%) as reported by the United States department of education, office of postsecondary educational institutional data system.

(2) Any institution deemed to be exempt under subdivision (a)(6) as it existed prior to May 1, 2014, shall continue to be exempt as long as the institution registers with the commission under subdivision (b)(3).

(3) Postsecondary educational institutions that are exempt under subdivision (a)(6) shall annually complete an information request form. The information request form shall be created by the commission and shall require, at a minimum:

(A) The name of a contact person and related information such as an email address and telephone number;

(B) A description of the complaint process used by the postsecondary educational institution and the related complaint contact information;

(C) A brief description of the postsecondary educational institution's activities in Tennessee, including enrollment or recruitment;

(D) The number of Tennessee residents enrolled during the past fiscal year; and

(E) If applicable, documentation demonstrating that the postsecondary educational institution meets the exemption requirements of subdivision (a)(6).

(c) Notwithstanding any provision of this section to the contrary, an insti-

tution that has lost its exemption due to the occurrence of one (1) of the conditions listed in subdivisions (b)(1)(A)-(C) shall not be required to reestablish the twenty (20) consecutive year standards in order to regain its exempt status. Instead, the commission shall have the authority to reinstate the exemption once the condition that caused the loss of exemption has, in the opinion of the commission, been remedied.

(d) The commission shall establish and ensure that all postsecondary institutions in this state cooperatively provide for an integrated system of postsecondary education. The general assembly recognizing that any institution meeting the requirements of subdivisions (a)(6) and (11) is established by name as an educational institution and authorized to operate educational programs beyond secondary education, directs the commission to maintain and publish on its website a list of postsecondary educational institutions meeting the requirements of subdivision (a)(6) with its primary campus domiciled in this state or subdivision (a)(11). The commission shall guard against inappropriate and unnecessary conflict and duplication by promoting transferability of credits and easy access of information among institutions.

**49-7-2008. Authorization to operate.**

(a)(1) Each postsecondary educational institution desiring to operate in this state shall make application to the commission, upon forms to be provided by the commission.

(2) The application shall be accompanied by a catalog or brochure published, or proposed to be published, by the institution, containing the information specified in § 49-7-2006(a)(1)(D), including information required by rules and regulations of the commission.

(3) The application shall also be accompanied by evidence of a surety bond as required by this part and payment of the fees specified in the bond.

(b)(1) Following review of the application and any further information submitted by the applicant, or required by the commission, and the investigation of the applicant as the commission deems necessary or appropriate, the commission shall either grant or deny authorization to operate to the applicant.

(2) A grant of authorization to operate may be on the terms and conditions that the commission specifies. In the case of initial applications for new institutions, a temporary authorization of up to two (2) years may be issued. In the case of applications or reapplications for institutions or programs that were previously authorized but have lapsed or are deficient, a probationary authorization may be granted until the deficiencies are corrected.

(c) The authorization to operate shall be in a form recommended and approved by the commission and shall state in a clear and conspicuous manner at least the following information:

(1) The date of issuance, effective date and term of approval;

(2) The correct name and address of the institution so authorized;

(3) The authority for approval and conditions of approval; and

(4) Any limitation of the authorization, as deemed necessary by the commission.

(d) The term for which authorization is given shall not extend for more than six (6) years, and may be issued for a lesser period of time as provided in subdivision (b)(2) or as otherwise determined by the commission.

(e)(1) The authorization to operate shall be issued to the owner, or governing body, of the applicant institution and shall be nontransferable.

(2) In the event of a change in ownership of the institution, a new owner or governing body must, within five (5) business days after the change in ownership, apply for a new authorization to operate as provided for by the commission; and in the event of failure to do so, the institution's authorization to operate shall terminate.

(3) Application for a new authorization to operate by reason of change in ownership of the institution shall for purposes of § 49-7-2010(a)(2) be deemed an application for renewal of the institution's authorization to operate.

(4) "Ownership," for purposes of this section, means ownership of a controlling interest in the institution, or in the event the institution is owned or controlled by a corporation or other legal entity other than a natural person or persons, ownership of a controlling interest in the legal entity owning or controlling the institution.

(f)(1) Prior to the expiration of an authorization to operate, the institution shall complete and file with the commission an application form for renewal of its authorization to operate.

(2) A renewal application for authorization shall be acted on by the commission under the same procedures used in initial applications; but before any renewal is authorized, an institutional self-study using the standards of an appropriate accrediting authority shall be performed and the results filed with the commission. During the authorization period, with annual reports and fee payment, there shall be an on-site visit of the institution by at least one (1) external authority on that type of institution and a staff member of the commission. The self-study and site visit may be conducted in conjunction with a normally scheduled accreditation visit, but, in any event, the institution shall pay the reasonable honorarium compensation and travel expenses of the external authority, if requested.

(3) The commission may require an institution to publish placement rates and other information indicating actual employment and earnings in relevant occupations post successful completion of offered programs.

(g)(1) An institution not yet in operation when its application for authorization to operate is filed may not begin operation until receipt of authorization.

(2) An institution in operation when its application for authorization to operate is filed may continue operation until its application is acted upon by the commission, and thereupon its authority to operate shall be governed by the action of the commission.

(3) In any event, the commission may issue provisional authorization to operate, containing limitations as to time, procedures, functions or other conditions that the commission deems necessary.

**49-7-2013. Bond requirements.**

(a)(1) At the time application is made for authorization to operate, or for renewal of the authorization, the commission may require the postsecondary educational institution making the application to file with the commission a good and sufficient surety bond in a penal sum in the amount of ten thousand dollars ($10,000) for in-state institutions and twenty thousand dollars

($20,000) for out-of-state postsecondary educational institutions that provide all or part of their instruction in this state, including out-of-state institutions that begin operation of branch campuses in this state after July 1, 1989, or such other sum as may be provided by the commission. Institutions providing primarily religious instruction or not organized as private postsecondary educational institutions shall maintain a ten thousand dollar ($10,000) institutional surety bond. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state.

(2) A cash surety bond in the amount of ten thousand dollars ($10,000) or twenty thousand dollars ($20,000), as applicable, on deposit in this state in a bank or savings and loan association that is federally insured may be filed instead of the corporate bond, subject to approval by the commission. This cash surety bond shall be payable upon demand by the commission under the same conditions specified in this section for corporate bonds and not subject to withdrawal without the approval of the commission.

(3) The bond shall be conditioned to:

(A) Initially provide indemnification to any student or enrollee or the student's or enrollee's parents or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice that is a violation of this part by the postsecondary educational institution, and that the bonding company shall pay any final, nonappealable judgment rendered by the commission or any court of this state having jurisdiction, upon receipt of written notification of the judgment; and

(B) Pay, from any remaining funds to the special agency account established pursuant to § 49-7-2014, an amount to be assessed by the commission for the administrative costs associated with maintaining academic records pursuant to § 49-7-2016, including the collection, conversion, and retention of all academic records.

(4) Regardless of the number of years that the bond is in force, the aggregate liability of the surety on the bond shall in no event exceed the penal sum of the bond.

(5) The bond may be continuous.

(b)(1) An application for each agent's permit for an out-of-state institution shall be accompanied by a good and sufficient surety bond in the penal sum of five thousand dollars ($5,000) for each agent. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond may be in blanket form to cover more than one (1) agent for a postsecondary educational institution, but it shall cover each agent for the institution in a penal sum of five thousand dollars ($5,000), or other sum that may be provided by the commission.

(2) A cash surety bond in the amount of five thousand dollars ($5,000) for each agent of an out-of-state institution on deposit in this state in a bank or savings and loan association that is federally insured may be filed instead of the corporate bond, subject to approval by the commission. This bond shall be payable upon demand by the commission under the same conditions specified in this section for corporate bonds and not subject to withdrawal without the approval of the commission.

(3) The bond shall be conditioned to provide indemnification to any student, enrollee, or the student's or enrollee's parents or guardian, or class

thereof, determined to have suffered loss or damage as a result of any act or practice that is a violation of this part by the agent, and that the bonding company shall pay any final, nonappealable judgment rendered by the commission or any court of this state having jurisdiction, upon receipt of written notification of the judgment.

(4) Regardless of the number of years that the bond is in force, the aggregate liability of the surety on the bond shall in no event exceed the penal sum of the bond.

(5) The bond may be continuous.

(c)(1) The corporate surety bond to be filed under this section shall cover the period of the authorization to operate or the agent's permit, as appropriate, except when a surety shall be released as provided in this section.

(2) A surety on any bond filed under this section may be released from the bond after the surety serves written notice of the release to the commission sixty (60) days prior to the release. The release shall not discharge or otherwise affect any claim theretofore or thereafter filed by a student or enrollee or the student's or enrollee's parents or guardian for loss or damage resulting from any act or practice that is a violation of this part alleged to have occurred while the bond was in effect, nor for an institution's ceasing operations during the term for which tuition has been paid while the bond was in force.

(3) A cash surety bond shall remain on file for one (1) year after the expiration of the period of authorization to operate or the agent's permit, as appropriate. The expiration or withdrawal of the cash bond shall not serve to diminish or nullify the rights of claimants. The claimants shall have the same rights as claimants have against a postsecondary educational institution or agent that filed a corporate bond that was subsequently released, as described in this section.

(d) Authorization for an institution to operate and an agent's permit shall be suspended by operation of law when the institution or agent is no longer covered by a surety bond as required by this section. The commission shall cause the institution or agent, or both, to receive at least thirty (30) days' written notice prior to the release of the surety, to the effect that the authorization or permit shall be suspended by operation of law until another surety bond is filed in the same manner and like amount as the bond being terminated.

**49-7-2016. Closing of institution.**

(a) In the event any postsecondary educational institution now or hereafter operating in this state proposes to discontinue its operation, the chief administrative officer, by whatever title designated, of the institution shall cause to be filed with the commission the original or legible true copies of all academic records of the institution as specified by the commission.

(b) The academic records shall include, at a minimum, the transcripts or certificates in a format that is customarily required by postsecondary educational institutions when considering students for transfer or advanced study, or by other third parties, such as employers.

(c) In the event it appears to the commission that the academic records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the commission, the commission may seize and take possession of the records, on its own motion,

and without order of court.

(d) The commission shall maintain, or cause to be maintained, a permanent file of the transcripts or certificates provided by subsection (b) that come into its possession.

(e) As an alternative to the deposit of the records with the commission, the institution may propose to the commission a plan for permanent retention of the records. The plan shall be put into effect only with the approval of the commission.

(f) When a postsecondary educational institution now or hereafter operating in this state proposes to discontinue its operation, the institution shall cause to be created a teachout plan, acceptable to the commission, by which its educational obligations to its students can be fulfilled.

**49-7-2018. Tuition guaranty fund — Establishment — Board — Fees.**

(a) The general assembly recognizes:

(1) The need to establish a fund from which reimbursement can be made to students who reside in Tennessee or attend an authorized location with a Tennessee address, or an entity making loans to those students at postsecondary educational institutions that close without earning tuition collected from enrollees; and

(2) That the moneys for the fund can be most properly raised based on the level of tuition collections at each such educational institution.

(b) There is established the tuition guaranty fund, which is established in the state treasury as a separate, revolving, nonreverting agency account for the purpose of receiving fees and paying claims authorized by this section. The moneys in the fund shall be invested by the state treasurer, as are other state funds, and any interest so obtained shall be added to the fund. Payments out of the fund shall be made by warrant of the state treasurer, as directed by the board of directors of the tuition guaranty fund.

(c) There is established the board of directors of the tuition guaranty fund, which shall be composed of the comptroller of the treasury, the commissioner of finance and administration, the state treasurer, the executive director of the Tennessee higher education commission, a member of the committee on postsecondary educational institutions named by the chair of the commission, and a representative of the private postsecondary education industry named by the chair of the commission, or their designees, so designated in writing. The state treasurer or the state treasurer's designee shall be chair. The board is authorized to take any actions necessary to administer the fund, including promulgation of rules and bylaws. The board shall report annually to the general assembly and governor on the condition of the fund.

(d)(1) There is imposed on each postsecondary educational institution authorized under this part, unless exempt under § 49-7-2004, a tuition guaranty fund fee in accordance with the schedule set out in the administrative rules under this chapter.

(2) The fee shall be based on tuition collections, however described, in the previous academic year, unless the board determines a different time measure is more appropriate for an institution. The fee shall be paid to the tuition guaranty fund at least thirty (30) days before the beginning of a new academic year; provided, that the board may establish alternate dates to account for variations in institutional programs and schedules. The board

may also establish late payment penalties by regulation.

(e) At such time as the board, in its discretion, determines that the fund is adequately funded to insure against institutional closure, it may suspend collection of the fee, but may institute it at such time as the fund balance drops below a predetermined minimum balance. For a new postsecondary educational institution that begins operation in this state after July 1, 2006, the institution must meet bonding requirements as specified in § 49-7-2013, and pay guaranty fund assessments as specified in subsection (d) for at least six (6) years.

(f) In the event an institution participating in the fund goes into bankruptcy, or ceases operations without completing its educational obligations or reimbursing its students, the board may reimburse valid claims of students for tuition paid to that institution, in accordance with guidelines and regulations established by the board. If a student is attending on a loan, the board shall direct reimbursement to that lender rather than to the student. As a condition of receiving reimbursement from the fund, a student or lender shall agree to subrogate the person's right of recovery against the institution to the board.

(g) The board is authorized to audit the accounts of any institution covered under this section to ascertain the correctness of any tendered fee and to take appropriate actions, through the attorney general and reporter, to enforce its rights and responsibilities under this section.

**49-7-2022. Authorization to operate — Optional expedited authorization.**

(a) No entity shall operate in this state a postsecondary educational institution, not exempted from this part, unless the institution has a current and valid authorization from the commission to operate.

(b) Degree-granting postsecondary educational institutions accredited by a regional or national institutional accrediting agency recognized by the United States department of education may apply annually for an eligibility review and an optional expedited authorization by the commission.

(c) Eligibility for optional expedited authorization is available annually to degree-granting postsecondary educational institutions that submit the following documentation to the commission:

(1) Evidence of good-standing and valid institutional accreditation from a regional or national institutional accrediting agency recognized by the United States department of education;

(2) Documentation evidencing an established, clearly articulated, and comprehensive process for the resolution of consumer complaints;

(3) If the institution is not authorized in this state, documentation evidencing that the institution is authorized or exempt from authorization in the state where it is primarily located;

(4) A signed and notarized application for optional expedited authorization on a form provided by the commission;

(5) If applicable, documentation evidencing all requisite program approvals from other state licensing boards or commissions; and

(6) Documentation evidencing that the institution meets and maintains financial standards and institutional stability acceptable by the accreditor for the purpose of maintaining accreditation or the United States department of education for the purpose of being a Title IV eligible institution.

(d) Upon receipt of an institution's application, the commission shall con-

duct a detailed review and verification and, upon satisfactory examination of all submitted documentation, shall issue this annual optional expedited authorization subject to this section.

(e) If the commission, upon review and consideration of the application, determines the applicant is not eligible and fails to meet the optional expedited authorization criteria established in this section, the commission shall notify the applicant of its decision to deny the application and set forth the reasons for the denial in writing.

(f) Issuance of an annual optional expedited authorization shall demonstrate full compliance with the minimum standards established under this part and fulfill all requirements for the institution's state authorization.

(g) Institutions satisfying the requirements of this section and receiving optional expedited authorization shall not be subject to any other authorization requirements under this part, but shall remain subject to §§ 49-7-2012, 49-7-2014, 49-7-2015, 49-7-2016, and 49-7-2018.

(h) To assist the commission with its duty of consumer protection, any institution receiving optional expedited authorization under this section shall:

(1) Timely report to the commission any illegal or unethical conduct by employees, agents, contractors, or third-party service providers related to the delivery of educational programs and services to students, including any corrective action and remedies taken by the institution;

(2) Notify the commission, within five (5) business days, of the following:

(A) Action by an accrediting agency in regard to the institution's accreditation status, including revocation, suspension, probation, warning, or similar action;

(B) Notice of legal action involving the institution, or its parent entity if applicable, and Tennessee students, related to the delivery of educational programming or student or consumer practices, including class action lawsuits;

(C) Utilization by the institution of a letter of credit or a cash management agreement with the United States department of education;

(D) Public announcement of investigation by any governmental agency. The institution shall notify the commission whether the investigation is related to the institution's academic quality, financial stability, or student or consumer practices;

(E) A change of ownership; or

(F) A change of institutional director;

(3) Provide any information requested by the commission necessary to monitor the institution's eligibility for optional expedited authorization;

(4) Provide complaint resolution policies and procedures to the institution's students and cooperate with the commission in the investigation or resolution of student complaints; and

(5) Provide the following data, subject to the commission's requirements:

(A) Student-level data on enrollment and credential attainment;

(B) Job placement data;

(C) Costs of attendance;

(D) Federal student cohort default rates; and

(E) A comprehensive list of all programs offered at the institution.

(i) Optional expedited authorization shall remain available only to those institutions maintaining the eligibility standards required under this section, as submitted in the documentation accompanying the institution's annual

optional expedited authorization application. Optional expedited authorization shall be issued to the owner or governing body of the applicant institution and shall be nontransferable. In the event of a change of ownership, the new owner or governing body must apply for a new authorization to operate as provided for by the commission; failure to do so shall result in termination of the institution's authorization to operate.

(j) The commission may revoke or make conditional an issued optional expedited authorization for:

(1) Loss of or failure to meet any of the listed criteria for authorization in subsection (c);

(2) Just cause; or

(3) Failure to fulfill the requirements in subsection (h).

(k) Upon the commission's revocation of any institution's optional expedited authorization, the institution shall then immediately be subject to all remaining provisions of this part, applicable administrative rules and procedures for issuance of authorization, and shall reapply for commission authorization under § 49-7-2008. Any institution whose optional expedited authorization is revoked by the commission shall be ineligible to reapply for optional expedited authorization for no less than twenty-four (24) months from the date of revocation.

(*l*) The commission may investigate any signed student complaint involving institutions authorized under this section; however, initial responsibility for the investigation and resolution of complaints shall reside with the institution against which the complaint is made. For complaints not resolved at the institutional level, the commission may investigate and coordinate resolution of any student complaint with the assistance of other government agencies, as necessary.

(m) Institutions receiving optional expedited authorization are subject to the provisions and requirements of the tuition guaranty fund, under § 49-7-2018.

(n) Institutions receiving optional expedited authorization shall be subject to a flat annual fee, as established by the commission. Institutions receiving optional expedited authorization shall not be subject to any other authorization fees under this part.

(o) The commission may develop agency policies and promulgate administrative rules and regulations, as necessary, to effectuate the provisions of this section.

(p) No later than June 30, 2018, the commission shall develop, and make available on its website, graduation rates and statistics on credential attainment for institutions authorized under this section and a hyperlink to the institutions' website.

(q)(1) Any person aggrieved by a decision of the commission with respect to denial of, revocation of, or making conditional an optional expedited authorization to operate as provided by subsection (j) shall have the right to a hearing and review of the decision by the commission as provided by this subsection (q).

(2) If, upon written notification of any such action taken by the commission, the aggrieved party desires a hearing and review, the party shall notify the commission, in writing, within ten (10) days after the giving of notice of the action, otherwise the action shall be deemed final.

(3) Upon receiving notice from the aggrieved party, the commission shall fix the time and place for a hearing, and shall notify the aggrieved party of

the time and place of the hearing.

(4) At the hearing, the party may employ counsel, shall have the right to hear the evidence upon which the action is based and present evidence in opposition or in extenuation. Any member of the commission may preside except when a clear conflict of interest may be demonstrated.

(5) A decision of the commission following a hearing, or the failure of a party to give written notice of the desire for a hearing and review within ten (10) days, shall be deemed final and subject to the right of judicial review provided in § 49-7-2012. All matters presented by hearing as provided in this subsection (q) shall be acted upon promptly by the commission. The commission shall notify all parties in writing of its decision, which shall include a statement of findings and conclusions upon all material issues of fact, law or discretion presented at the hearing and the appropriate rule, order, sanction, relief, or denial thereof.

(r) Institutions authorized under this section shall develop and make available to the public on the institutions' websites the most current version of the following information:

(1) Costs of attendance;

(2) Information on whether academic credits attained are transferable to other institutions operating in Tennessee;

(3) Executed articulation and transfer of credit agreements with other institutions operating in Tennessee, if applicable; and

(4) Federal student cohort default rates.

**49-7-2125. Student loan default—Suspension, denial, and revocation of registration. [Effective on January 1, 2019. See the version effective until January 1, 2019.]**

*(a) As used in this section, unless the context otherwise requires:*

*(1) "Guarantee agency" means a guarantor of student loans that has an agreement with the United States secretary of education; and*

*(2) "TSAC" means the Tennessee student assistance corporation.*

*(b)(1) Upon receiving a copy of a final order as provided in subsection (c) from TSAC or a guarantee agency, the secretary of state shall suspend, deny, or revoke the registration of any athlete agent or applicant who has defaulted on a repayment or service obligation under any federal family education loan program, the federal Higher Education Act of 1965 (20 U.S.C. § 1001 et seq.), a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.*

*(2) Notwithstanding subdivision (b)(1), the secretary of state may elect not to suspend, deny, or revoke the registration of an athlete agent or applicant if the default or delinquency is the result of a medical hardship that prevented the person from working in the person's licensed field and the medical hardship significantly contributed to the default or delinquency.*

*(c)(1) The secretary of state shall accept any determination of default from TSAC or a guarantee agency, after TSAC or the guarantee agency has afforded a debtor an opportunity to be heard in accordance with subdivision (c)(2); and the secretary of state shall rescind any disciplinary action and restore any registration upon receiving notice from TSAC or the guarantee agency that the debtor has agreed to serve the debtor's obligation or is in compliance with an approved repayment plan.*

*(2)(A) Unless a debtor has made satisfactory arrangements according to the lender, TSAC or the guarantee agency, which may include administrative wage garnishment, voluntary payment arrangements, deferment or forbearance, the debtor shall be regarded as delinquent or in default. If a debtor is delinquent or in default on a repayment or service obligation under a guaranteed student loan identified in subsection (b), or the debtor has failed to enter into a payment plan, agreed to a service obligation or complied with a payment plan previously approved by TSAC or the guarantee agency, TSAC or the guarantee agency shall issue to the debtor a notice of intent to file an order with the secretary of state to seek to suspend, deny, or revoke the debtor's registration. The notice shall:*

*(i) Be served upon the debtor personally or by certified mail with return receipt requested; and*

*(ii) State that the debtor's registration shall be suspended, denied, or revoked ninety (90) days after service unless within that time the debtor:*

***(a)** Pays the entire debt stated in the notice;*

***(b)** Enters into a payment plan, service obligation, or complies with a payment plan previously entered into and approved by TSAC or the guarantee agency;*

***(c)** Requests and qualifies for deferment, forbearance, or other satisfactory compliance; or*

***(d)** Requests a hearing before TSAC or the guarantee agency.*

*(B) The hearing request by the debtor shall be made in writing and must be received by TSAC or the guarantee agency within twenty (20) days of the date the notice is served.*

*(C) TSAC or the guarantee agency, upon receipt of a request for a hearing from the debtor, shall schedule a hearing to determine whether determination of delinquency or default, that could result in suspension, denial, or revocation of the debtor's registration. The debtor's registration may not be suspended, denied, or revoked until a determination is reached following the hearing. The issues that may be determined in the hearing are:*

*(i) The amount of the debt, if any;*

*(ii) Whether the debtor is delinquent or in default;*

*(iii) Whether the debtor:*

***(a)** Has entered into a payment plan or service obligation approved by TSAC or the guarantee agency;*

***(b)** Is willing to enter into a payment plan or service obligation approved by TSAC or the guarantee agency; or*

***(c)** Is willing to comply with a payment plan or service obligation previously entered into and approved by TSAC or the guarantee agency;*

*(iv) Whether the debtor is eligible for deferment, forbearance, or other satisfactory compliance; and*

*(v) Whether the debtor's default or delinquency is the result of a medical hardship that prevented the debtor from working in the debtor's licensed field and the medical hardship significantly contributed to the default or delinquency.*

*(D) If a debtor, without good cause, fails to respond to the notice of intent, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the debtor's defenses, objections, or request for a payment plan or*

*compliance with a payment plan may be determined to be without merit; and TSAC or the guarantee agency shall enter a final decision and order, requesting suspension, denial, or revocation and further requesting the secretary of state to order the debtor to refrain from engaging in athlete agent activities. TSAC or the guarantee agency shall send a copy of the order to the secretary of state and the debtor.*

*(E) The administrative hearings under this section shall be conducted in accordance with rules adopted under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

*(F)(i) When TSAC or the guarantee agency determines that the debt is paid in full or the debtor has entered into a payment plan, has entered into a service obligation, is otherwise in satisfactory compliance or has complied with a payment plan previously approved by TSAC or the guarantee agency, TSAC or the guarantee agency shall enter an order requesting that the secretary of state terminate the order suspending, denying, or revoking the registration. TSAC or the guarantee agency shall send a copy of the order to the secretary of state and the debtor. Notwithstanding any other law, or rule to the contrary, when the registration is reinstated, the secretary of state shall not impose a reinstatement fee that exceeds fifty dollars ($50.00).*

*(ii) Entry of an order seeking to terminate suspension, denial, or revocation of a registration does not limit the ability of TSAC or the guarantee agency to issue a new order which seeks to suspend, deny, or revoke the registration of the same debtor in the event of another delinquency or default.*

*(G) TSAC is authorized to promulgate necessary rules and regulations to effectuate the purposes of this subsection (c). All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act.*

*(d) The secretary of state is authorized to promulgate rules to effectuate the purposes of this section. All such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act.*

**49-7-2301. Military reserve and national guard personnel.**

(a) A state institution of higher education shall permit military reserve and national guard personnel who are attending the institution and are called to active duty the option to withdraw, even if the deadline to withdraw from courses has passed, or to receive a grade of incomplete in any course in which a service member is enrolled. The withdrawal or the grade of incomplete shall be reflected on the service member's transcript. A service member who withdraws from a course shall be eligible for a tuition credit or refund under subsection (c).

(b) If a service member is called to active duty and must withdraw from a course or receive a grade of incomplete, then the withdrawal or grade of incomplete that is related to the service absence shall not affect eligibility or continuing eligibility for state or institutional financial aid, including scholarships or grants, upon reenrollment at the institution. The semester hours attempted for courses from which the military service member withdrew or received a grade of incomplete shall not count against any limitation or receipt of state or institutional financial aid, including scholarships or grants. Future

consideration for state or institutional financial aid, scholarships, or grants shall not be affected by the withdrawal from a course or the receipt of a grade of incomplete due to mandatory service obligations.

(c) Military reserve and national guard personnel who are students attending a state college or university located in this state and whose active military service occurring after August 1, 1990, mandates that they be away from the college or university during a school term shall be entitled to a credit for tuition or a refund for each credit hour paid by or on behalf of the student for that school term. Credit shall be given only if the reserve or national guard student did not receive a final grade in the class or course for which tuition credit is sought.

**49-7-2305. Excused absences for documented mandatory military service.**

Military reserve and national guard personnel who are students attending a state institution of higher education shall receive excused absences for classes missed for documented mandatory military service in the same manner as the institution would excuse attendance from a class for an official school function or other unavoidable event.

**49-8-101. System established.**

(a)(1) There is established a state university and community college system, to be called the board of regents. The state university and community college system is composed of state universities, community colleges, and state colleges of applied technology.

(2)(A) The board of regents state universities shall be composed of Austin Peay State University, East Tennessee State University, Middle Tennessee State University, Tennessee State University, Tennessee Technological University, and the University of Memphis. The board of regents state universities shall be subject to the authority of a local governing board of trustees, referred to in this chapter as a state university board.

(B) The management and governance of each state university shall be vested in the institution's respective state university board, subject to certain powers and duties maintained by the Tennessee higher education commission.

(C) During a transition period commencing July 1, 2016, and ending November 30, 2017, the board of regents shall maintain performance of the following functions on behalf of the state university boards: data systems, capital project planning and management, and procurement. By November 30, 2017, the Tennessee higher education commission shall solicit and receive requests from the state university boards to assume the performance of these functions. The Tennessee higher education commission shall approve or deny a state university board's request to assume these functions. A state university board shall not be permitted to assume the performance of these functions until November 30, 2017. If the board of regents continues to perform the functions related to data systems, capital project planning and management, and procurement after the transition period has concluded, a state university board is not precluded from requesting to assume the performance of these functions at any time after November 30, 2017.

(3)(A) The state community colleges shall be composed of Chattanooga State Community College, Cleveland State Community College, Columbia State Community College, Dyersburg State Community College, Jackson State Community College, Motlow State Community College, Nashville State Community College, Northeast State Community College, Pellissippi State Community College, Roane State Community College, Southwest Tennessee Community College, Volunteer State Community College, and Walters State Community College, and other community colleges that may be established. The statewide system of state colleges of applied technology, established under chapter 11, part 4, of this title, shall be composed of the state colleges of applied technology now established and located at Athens, Chattanooga, Covington, Crossville, Crump, Dickson, Elizabethton, Harriman, Hartsville, Hohenwald, Jacksboro, Jackson, Knoxville, Livingston, McKenzie, McMinnville, Memphis, Morristown, Murfreesboro, Nashville, Newbern, Oneida, Paris, Pulaski, Ripley, Shelbyville, and Whiteville. The board of regents is authorized to establish additional state colleges of applied technology or to combine existing state colleges of applied technology as needed to improve operational and administrative efficiencies.

(B) Subject to certain powers and duties reserved for and relegated to the Tennessee higher education commission, the government, management, and control of the state community colleges and the state colleges of applied technology shall be vested in the board of regents.

(b) The board of regents shall work collaboratively with state university boards to ensure alignment between community colleges and state universities, especially in regards to innovation and student success initiatives.

(c) Notwithstanding any law to the contrary, the board of regents, in consultation with the Tennessee higher education commission, shall establish a comprehensive statewide community college system of coordinated programs and services to be known as the Tennessee community college system.

(1) It is the legislative intent that the Tennessee community college system operate as a unified system with individual campuses, teaching centers and teaching sites as necessary to maximize the effectiveness of the system in enhancing student success and increasing the number of college degrees held by Tennesseans.

(2) In order to carry out this subsection (c), the board shall develop a plan to transition from the existing system of thirteen (13) independently managed institutions to a comprehensive statewide community college system managed as a unified system. Such plan shall identify any statutory changes needed to accomplish the transition.

(3) As part of its plan, the board shall identify and implement consolidation of services among institutions and standardization of processes between institutions in order to improve efficiency and effectiveness in all functional areas, including, but not limited to, student services, academic support and institutional support.

(4) The plan shall also incorporate the use of block scheduling and cohort programming as a means of delivering educational programs within the Tennessee community college system. Programs developed pursuant to this subdivision (c)(4) shall be developed in a manner that results in the opportunity for more rapid and significantly higher rates of program completion through structured degree programs that incorporate fixed course offerings that meet the requirements for the degree being offered on

a predetermined schedule.

(5) In carrying out this subsection (c), the Tennessee community college system shall pursue strategies to create mutually beneficial relationships with colleges of applied technology such that certificate programs may be offered at community college sites and community college courses may be offered at colleges of applied technology.

(6) This subsection (c) shall be fully implemented no later than July 1, 2012.

(d) All institutions in the state university and community college system shall submit annually institutional mission statements to the Tennessee higher education commission for review and approval. An institutional mission statement shall:

(1) Characterize distinctiveness in degree offerings by level, focus, and student characteristics, including, but not limited to, nontraditional students and part-time students; and

(2) Address institutional accountability for the quality of instruction, student learning, and, when applicable, research and public service to benefit Tennessee citizens.

(e) Nothing contained in this section shall prohibit any institution from pursuing research and related activities that are consistent with the institution's mission.

**49-8-115. [Repealed.]**

**49-8-119. American sign language — Satisfaction of foreign language admission requirements.**

By July 1, 2019, each state institution of higher education operated by the board of regents and each state university shall adopt a policy to allow American sign language courses to satisfy any foreign language requirements for admission to an undergraduate degree program.

**49-8-201. Composition.**

(a)(1) The board shall consist of eighteen (18) members, including four (4) ex officio members who shall be the governor, the commissioners of education and agriculture and the executive director of the higher education commission.

(2) The executive director of the higher education commission shall serve as a nonvoting member.

(3)(A) Twelve (12) public members shall be appointed by the governor, one (1) of whom shall be from each congressional district, and three (3) at-large from different geographical areas of the state; provided, however, that after July 1, 2016, at-large appointments may be either residents from different geographical areas of the state or non-Tennessee residents.

(B) In appointing public members to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older, that at least one (1) person serving on the board is an honorably discharged military veteran of the United States armed forces, and that at least one (1) person serving on the board is a member of a racial minority.

(C) Appointments made after January 1, 1995, shall alternate such that every other appointment of a new member to the board shall be a female

until the membership of the board reflects the percentage of females in the population generally, after which this subdivision (a)(3)(C) shall cease to be effective.

(D) Beginning July 1, 2017, two (2) members, appointed by the governor, shall be current faculty members at a community college or college of applied technology governed by the board of regents, who served as faculty senate president or the equivalent during the academic year immediately preceding appointment as a regent. One (1) faculty member shall be a voting member and one (1) faculty member shall be a nonvoting member to allow a faculty member to serve one (1) year as a nonvoting member before becoming the voting member. The voting positions shall rotate among the institutions governed by the board of regents. Beginning July 1, 2017, the voting member shall be from a college of applied technology, and the nonvoting member shall be from a community college. The voting and nonvoting members shall each serve a one-year term. On July 1, 2018, the previous nonvoting member from a community college shall become the voting member, and a new nonvoting member from a college of applied technology shall be appointed. Thereafter, the voting and nonvoting positions shall rotate between the community colleges and the colleges of applied technology. The board of regents shall adopt a process ensuring that the position of faculty regent rotates among all of the institutions in the system.

(4) The terms of the first at-large members shall be two (2), four (4) and six (6) years, with the terms of the remaining initial eight (8) members to be one (1), two (2), three (3), four (4), five (5), six (6), seven (7) and eight (8) years. The terms for all public members shall begin July 1, 1972. As their terms expire, successors shall be appointed for nine-year terms; provided, that on April 26, 1988, the term shall be for six (6) years, and as each current term expires the successor appointee shall be appointed for a six-year term.

(5) The appointed members shall be subject to confirmation by the senate, but appointments shall be effective until adversely acted upon by the senate.

(6) Members shall be eligible for reappointment.

(7) If a vacancy occurs, except by reason of expiration of term, it shall be filled for the remainder of the term.

(8) Each of the two (2) leading political parties shall be represented by at least three (3) appointive members.

(9) [Deleted by 2018 amendment.]

(10) [Deleted by 2018 amendment.]

(11) At least one (1) of the appointed members shall be under thirty (30) years of age.

(12) The position of any at-large member of the board shall be vacated at such time as the member ceases to have the member's domicile in this state.

(13) The position of any member appointed from the congressional districts shall be vacated at such time as the member ceases to have the member's domicile in that district. However, no incumbent member shall be removed from the member's seat prior to the expiration of the member's current term as a result of changes in congressional districts occasioned by reapportionment.

(14) No employee of any public institution of higher education, any elected or appointed official or employee of the state or any member of a governing body for any institution of higher education may serve as a public member of

the board while so employed.

(b)(1) One (1) member of the board shall be a student who shall be appointed annually by the governor from a list of three (3) nominees selected and submitted no later than the month of April by the presidents of the student government associations or the equivalent of all state colleges of applied technology and community colleges.

(2) The student member shall serve for a term of one (1) year, commencing on July 1 following the member's appointment by the governor, and must retain status as a full-time student in good standing in an institution governed by the board of regents for the duration of the student's term on the board, except that a student member who graduates during the student's term as regent may complete that term.

(3) The student regent nominees shall be selected in accordance with the following provisions:

(A)(i) One (1) nominee shall be enrolled at the time of nomination as a full-time student at a community college governed by the board of regents;

(ii) One (1) nominee shall be enrolled at the time of nomination as a full-time student at a college of applied technology;

(iii) One (1) nominee shall be enrolled at the time of nomination as a full-time student at any community college or college of applied technology governed by the board of regents, provided that neither of the other two (2) nominees is enrolled at the same institution;

(B) All nominees for the position of student regent shall be residents of this state; and

(C) A majority of the presidents of the student government associations or the equivalent of all state colleges of applied technology and community colleges governed by the board of regents shall constitute a quorum for the purpose of conducting business of the nomination. A two-thirds (⅔) vote of the quorum shall be required to effect all nominations.

(4) The chancellor of the board of regents, or the chancellor's designee, shall notify all presidents of student government associations or the equivalent at institutions governed by the board of regents of the necessity for the conference described in this subsection (b).

(c)(1) The board shall hold at least one (1) stated meeting annually on a day or days determined by the board from year to year and at called meetings that may be necessary, to be called by the secretary, giving at least five (5) days' notice to the board members, but the board may adjourn the stated or called meetings to any date that it may set for adjournment.

(2) Meetings of the board shall be made available for viewing by the public over the internet by streaming video accessible from the board's website. Archived videos of the board's meetings shall also be available to the public through the board's website.

(d) The board shall elect from its members a chair and other officers it deems appropriate, shall determine their terms of office and shall adopt rules for the organization and conduct of business.

(e) Nothing in Chapter 869 of the Public Acts of 2016 shall be construed to affect the terms of the existing members of the board of regents. Amendments to or revisions of this section shall not affect the current members of the board of regents, who shall continue to serve until the expiration of their terms.

(f)(1)(A) Each state university board shall consist of ten (10) members of which nine (9) members shall be voting members and one (1) member shall

be a nonvoting member. The nonvoting member shall be a student representative. Of the (9) voting members, at least six (6) members shall be residents of the state of Tennessee.

(B) Eight (8) of the voting state university board members shall be appointed by the governor.

(C) At least three (3) of the members appointed by the governor shall be alumni of the institution for which they are serving. "Alumnus" shall mean a person who is a graduate of the institution.

(D) In making appointments, the governor shall strive to ensure that the state university boards are composed of members who are diverse in sex, race, perspective, experience, and honorable military service.

(E) One (1) voting board member shall be a faculty member of the institution who shall be selected in a manner determined by the faculty senate of the respective institution.

(F) The nonvoting student member shall be appointed by the state university board.

(2)(A) The initial terms of the members appointed by the governor to a state university board shall be three (3), four (4), and six (6) years. Three (3) members shall serve a three-year term; three (3) members shall serve a four-year term; and two (2) members shall serve a six-year term. As the initial terms of the initial board members expire, successors shall be appointed for six-year terms.

(B) The faculty member shall serve a term of two (2) years.

(C) The nonvoting student member shall serve a term of one (1) year.

(3) The eight (8) members of a state university board appointed by the governor shall be subject to confirmation by the senate and the house of representatives, but appointments shall be effective until adversely acted upon by joint resolution of the senate and the house of representatives.

(4) State university board members appointed by the governor shall be eligible to serve for two (2) consecutive terms. A member who serves two (2) consecutive terms on a state university board may be reappointed after at least four (4) years have elapsed since the member's last date of service.

(5) If a vacancy occurs by death or resignation, the vacancy shall be filled for the remainder of the term. If a vacancy occurs by reason of expiration of term, the board member whose term is expiring shall serve until a successor is appointed.

(6) The following individuals are prohibited from serving as a member of a state university board for so long as they hold the office or position:

(A) Employees of any public institution of higher education; except those faculty members appointed to the board under subdivision (f)(1)(E);

(B) Elected or appointed officials;

(C) State employees; and

(D) Members of a governing body for a public institution of higher education.

(7)(A) The Tennessee higher education commission shall coordinate and administer an orientation training program, as well as an ongoing continuing education program, for governing board members. This training shall include a perspective on higher education that incorporates national experts in higher education governance. This training shall address the roles and responsibilities of governing boards; the legal and ethical responsibilities of trustees; the board's role in upholding academic

standards, intellectual diversity, and academic freedom; budget development; presidential searches and evaluation; the role of higher education in K-12 collaboration; and setting strategic goals. Initial training shall be conducted prior to the first called meeting of the board. In subsequent years, all newly appointed members shall attend orientation seminars within their first year of service.

(B)(i) Each state university board's first meeting after all members have been appointed shall be upon the call of the governor, at which point the state university boards shall assume responsibility for the management and governance of their respective institutions.

(ii) The state university boards thereafter shall meet at least four (4) times each year.

(iii) Meetings of the state university boards shall be made available for viewing by the public over the internet by streaming video accessible from the respective institution's website. Archived videos of the board meetings shall also be available to the public through the respective institution's website.

(8)(A) A state university board shall elect from its members a chair and other officers the board deems appropriate. The chair shall serve a term of two (2) years.

(B) The board shall adopt by-laws and rules for the organization and conduct of its business.

(C) To the extent that the policies and guidelines adopted by the board of regents as of July 1, 2016, are applicable to the state university boards and their respective institutions, such policies shall be deemed the policies and guidelines of the state university boards and their respective institutions until rescinded or revised by the respective state university boards. Boards shall adopt a policy that facilitates ongoing professional development for members.

(g) Board of regents and state university board members shall receive no compensation for their services, but shall be entitled to reimbursement for travel expenses incurred in the performance of their official duties, in conformity with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

**49-9-108. [Repealed.]**

**49-9-110. [Repealed.]**

**49-9-115. American sign language — Satisfaction of foreign language admission requirements.**

By July 1, 2019, each institution operated by the University of Tennessee shall adopt a policy to allow American sign language courses to satisfy any foreign language requirements for admission to an undergraduate degree program.

**49-9-201. Board of trustees.**

The governing body of the University of Tennessee shall be the board of trustees, established in § 49-9-202.

**49-9-202. Composition — Appointive members — Expenses.**

(a)(1) As of July 1, 2018, the existing membership of the board of trustees of the University of Tennessee is vacated and reconstituted to consist of one (1) ex officio voting member, who shall be the commissioner of agriculture; ten (10) voting members appointed by the governor; and one (1) nonvoting student member appointed pursuant to subdivision (a)(3).

(2)(A) The governor shall appoint at least two (2) residents of each grand division of the state. For purposes of this subdivision (a)(2)(A), "resident" means a person whose legal domicile is in the grand division from which appointed.

(B) At least five (5) of the members appointed by the governor must be alumni of the University of Tennessee. For purposes of this subdivision (a)(2)(B), "alumni" means a person who earned a degree at an institution of the University of Tennessee. In making appointments, the governor shall strive to ensure that the board includes alumni from different University of Tennessee institutions.

(C) At least seven (7) of the members appointed by the governor must be residents of the state of Tennessee. For purposes of this subdivision (a)(2)(C), "resident" means a person whose legal domicile is the state of Tennessee.

(D) In making appointments, the governor shall strive to ensure that the board of trustees is composed of members who are diverse in sex, race, perspective, experience, and honorable military service.

(3)(A) One (1) member shall be a student at a University of Tennessee institution who shall be selected and appointed in a manner determined by the board of trustees. The student member shall be selected as soon as practicable for the initial appointment and, for all subsequent appointments, no later than May 31 of each year.

(B) Beginning July 1, 2018, the student member position shall rotate annually among the institutions of the University of Tennessee, according to the following sequence: University of Tennessee Health Science Center; University of Tennessee, Knoxville; University of Tennessee at Martin; and University of Tennessee at Chattanooga.

(C) Each student member shall serve a term of one (1) year, beginning July 1 of the year of appointment and ending the following June 30. Each student member must be enrolled full time at the University of Tennessee institution from which the student is appointed throughout the student member's term of appointment; provided, that a student member shall not be required to be enrolled during any summer semester, and a student member who graduates during the spring semester of the student member's term may serve out the remainder of the student member's term.

(b) The following individuals are prohibited from serving as an appointed member of the board of trustees, or a committee of the board, for so long as they hold the office or position:

(1) Employees of any public institution of higher education; except the student member appointed pursuant to this section and the faculty member appointed to a committee pursuant to § 49-9-206;

(2) Elected officials;

(3) State employees; and

(4) Members of a governing body for any other public institution of higher

education.

(c)(1)(A) Except as otherwise provided in this subsection (c), the ten (10) members of the board of trustees appointed by the governor pursuant to subsection (a) must be confirmed by joint resolution of the senate and the house of representatives prior to beginning a term of office.

(B) If either house fails to confirm the appointment of a board member by the governor within ninety (90) calendar days after the general assembly next convenes in regular session following such appointment, the appointment terminates on the day following the ninetieth calendar day.

(2) If the general assembly is not in session when initial gubernatorial appointments are made, all such initial appointees shall serve the terms prescribed pursuant to § 49-9-203, unless the appointments are not confirmed during the next regular session of the general assembly following the appointments in accordance with subdivision (c)(1).

(3) If the general assembly is not in session at the time a member is appointed by the governor to fill a vacancy resulting from the expiration of a term, the member whose term has expired serves until a new appointee is confirmed in accordance with subdivision (c)(1).

(4) If the general assembly is not in session at the time a member is appointed by the governor to fill a vacancy not resulting from the expiration of a term, the new appointee serves for the term appointed unless the appointment is not confirmed during the next regular session of the general assembly following the appointment in accordance with subdivision (c)(1).

(5) All gubernatorial appointed members shall be subject to removal from the board of trustees by a two-thirds (2/3) majority vote of each house of the general assembly for misconduct, incapacity, or neglect of duty. Such removal shall be by passage of a joint resolution by the senate and the house of representatives.

(d) Members of the board of trustees shall be reimbursed for travel expenses in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(e) The reconstituted board of trustees shall assume responsibility beginning July 1, 2018. The reconstitution of the board of trustees has no effect on any action taken by the board of trustees prior to July 1, 2018, unless inconsistent with chapter 657 of the Public Acts of 2018.

(f) The governor is authorized to call the initial meeting of the reconstituted board of trustees to occur on or after July 1, 2018.

**49-9-203. Term of appointive trustees.**

(a) The initial terms of the members of the board of trustees of the University of Tennessee appointed by the governor pursuant to § 49-9-202(a) shall be two (2), four (4), and six (6) years. Three (3) members shall serve a two-year term; four (4) members shall serve a four-year term; and three (3) members shall serve a six-year term. For all subsequent appointments, members of the board of trustees appointed pursuant to § 49-9-202(a) shall be appointed to serve terms of six (6) years beginning July 1 of the year of appointment and ending on June 30.

(b) Members appointed by the governor pursuant to § 49-9-202(a) are

eligible to succeed themselves; provided, that no person may serve more than two (2) consecutive terms, whether appointed as an initial member, as a successor member, or to fill a vacancy. A member who serves two (2) consecutive terms may be reappointed after four (4) years have elapsed since the individual's last date of service on the board of trustees.

**49-9-204. Filling of vacancies.**

(a) If a vacancy on the board of trustees of the University of Tennessee occurs by death or resignation, the governor shall appoint a successor for the remainder of the term, subject to § 49-9-202(c). If a vacancy occurs by reason of expiration of a term, the member whose term has expired shall serve until a successor is appointed and confirmed.

(b) The cessation of any member's legal domicile in the grand division that the member represents pursuant to § 49-9-202(a)(2)(A), or the cessation of any member's legal domicile in the state that results in a failure to satisfy § 49-9-202(a)(2)(C), vacates the member's position. The governor shall appoint a person satisfying the requirement as a successor for the remainder of the term, subject to § 49-9-202(c).

(c) The failure of a member to attend more than fifty percent (50%) of the regular meetings in a calendar year shall be cause for the member's removal and shall authorize the board to call on the governor to appoint a successor; provided, that this requirement does not apply to any ex officio member.

**49-9-205. Meetings.**

(a) The board of trustees of the university shall hold at least one (1) stated meeting annually on a day or days determined by the board from year to year and at called meetings that may be necessary, to be called by the secretary, giving at least five (5) days' notice to the board members, but the board may adjourn the stated or called meetings to any date that it may set for adjournment.

(b) Six (6) members shall constitute a quorum, and they are empowered to transact any business.

(c) The board has the authority to transact at any called meeting any business it is authorized to transact at stated meetings.

(d) Meetings of the board shall be made available for viewing by the public over the internet by streaming video accessible from the board's website. Archived videos of the board's meetings shall also be available to the public through the board's website.

**49-9-206. Committees.**

(a)(1) The board of trustees of the University of Tennessee shall appoint an executive committee of five (5) of its members as a standing committee of the board.

(2) In appointing members to the executive committee, the board of trustees shall strive to ensure that the committee includes alumni from different University of Tennessee institutions.

(3) The executive committee:

(A) May meet as often as necessary to conduct its business;

(B) Must have a majority of voting members present at meetings to

constitute a quorum for the transaction of committee business;

(C) Has the authority to:

(i) Oversee and monitor the work of other standing committees, the university's planning process, the president's performance and welfare, and the university's commitment to and compliance with the state's plans and objectives for higher education;

(ii) Recommend to the board of trustees the initial and subsequent compensation of the president and the initial compensation of the chancellors and other university officers defined in the bylaws approved by the board;

(iii) Act for the board of trustees on any matter when necessary between meetings of the board; and

(iv) Perform other responsibilities as the board of trustees deems necessary or advisable, subject to the approval of the board; and

(D) Has only the specific authority granted pursuant to subdivision (a)(3)(C) and shall not operate or conduct any business outside the scope of such authority.

(b)(1) The board of trustees shall appoint the following standing committees, with at least three (3) of its members serving on each committee:

(A) An audit committee in compliance with the State of Tennessee Audit Committee Act of 2005, compiled in title 4, chapter 35;

(B) A finance and administration committee with responsibility for oversight of finance and administration related matters; and

(C) An academic affairs and student success committee with responsibility for oversight of matters related to academic affairs and student success.

(2) The standing committees created under subdivision (b)(1) must have a majority of voting members present at meetings to constitute a quorum for the transaction of committee business.

(c)(1) The board of trustees may establish:

(A) Other standing committees as it deems necessary or advisable from time to time; and

(B) Its own subcommittees and ad hoc committees as it deems necessary or advisable from time to time.

(2) Any standing committee established under subdivision (c)(1)(A):

(A) Must be comprised of at least three (3) members of the board of trustees;

(B) May meet as often as necessary to conduct their business;

(C) Must have a majority of voting members present at meetings to constitute a quorum for the transaction of committee or subcommittee business; and

(D) Has only the specific authority granted to it by the board of trustees and shall not operate or conduct any business outside the scope of such authority.

(3) In appointing members to a standing committee created under subdivision (c)(1)(A), the board of trustees shall strive to ensure that the committee includes alumni from different University of Tennessee institutions.

(4) Any standing committee of the board of trustees established under subdivision (c)(1)(A) may establish and appoint the members and chairs of any subcommittee or ad hoc committee it deems necessary or advisable from

time to time.

(d)(1) The standing committee with responsibility for oversight of academic affairs and student success shall include one (1) voting full-time faculty member of a University of Tennessee institution. The faculty member shall be selected and appointed in a manner determined by the board of trustees as soon as practicable for the initial appointment and, for all subsequent appointments, no later than May 31 of each year.

(2) The faculty member position shall rotate among the institutions of the University of Tennessee in a manner determined by the board of trustees. Each faculty member shall serve a one-year term, beginning on July 1 of the year of appointment and ending the following June 30.

(3) Each faculty member must maintain employment with the University of Tennessee institution and full-time faculty status throughout the faculty member's term.

(4) The student member of the board of trustees shall be appointed to, and be a voting member of, the standing committee with responsibility for oversight of academic affairs and student success.

(e) Nothing in this part authorizes the restructure or reorganization of the University of Tennessee system in a manner that removes a campus or institute from the system, unless such restructure or reorganization is authorized specifically by statute.

**49-9-209. Powers of the trustees.**

(a) By the name of the "Trustees of the University of Tennessee," the trustees shall have perpetual succession and a common seal.

(b)(1) The trustees and their successors designated in subsection (a) shall be endowed with and receive in such manner as the general assembly may from time to time direct, that part of the donation specified in Acts 1807, chapter 64 that designed for the college in East Tennessee. They shall be capable in law to purchase, receive and hold to them and their successors forever, or for any less estate, any lands, tenements, goods or chattels that is given, granted or devised to them, or purchased by them for the use of the university, and to use and dispose of the lands, tenements, goods or chattels, in such manner as to them shall seem most advantageous for the use of the university.

(2) None of the real property belonging to the university shall be sold or otherwise disposed of except at a meeting of the board of trustees.

(c) The trustees and their successors may sue and be sued, plead and be impleaded, in any court of law or equity in this state or elsewhere.

(d)(1) The board of trustees shall:

(A) Appoint a chief executive officer of the University of Tennessee system, who shall be the president of the University of Tennessee system. The president shall serve at the pleasure of the board, subject to the terms of any written employment contract approved by the board;

(B) Define the president's duties, including the president's administrative duties with respect to the system and the individual institutions of the system and, within budgetary limitations, fix the president's compensation and other terms of employment;

(C) Approve, upon the recommendation of the president, the appointments of persons to fill vacant or new positions as chancellors of the

campuses and the Institute of Agriculture and, within budgetary limitations, approve their initial compensation and other terms of employment. The chancellors shall:

(i) Report directly to the president. The president shall have authority to annually evaluate the chancellors and to annually set their compensation and other terms of employment; and

(ii) Serve at the pleasure of the president. The president shall have authority to remove the chancellors at any time without the approval of the board of trustees;

(D) Approve, upon the recommendation of the president, the appointments of persons to fill other vacant or new positions as officers of the University of Tennessee system designated in the bylaws duly adopted by the board of trustees and approve their initial compensation and other terms of employment. Such other officers of the University of Tennessee system shall:

(i) Report directly to the president unless otherwise provided in the bylaws duly adopted by the board of trustees. The president shall have authority to annually evaluate such other officers and to annually set their compensation and other terms of employment; and

(ii) Serve at the pleasure of the president. The president shall have authority to remove such other officers at any time without the approval of the board of trustees; provided, that the board alone shall have authority to remove the chief financial officer and the chief legal officer;

(E) Have the power to remove the president at any time;

(F) Have full authority and control over all university funds, whether appropriated from state revenues or institutional revenues, except authority to reallocate funds appropriated for a specific purpose or funds appropriated pursuant to the outcomes-based funding formula, and shall annually adopt an operating budget, set tuition and fees, and take all actions necessary and appropriate to ensure the financial stability and solvency of the University of Tennessee system;

(G) Confirm the salaries of all employees of the University of Tennessee system and the individual institutions by adoption of the annual operating budget for the university;

(H) Have authority to adopt policies governing the granting and removal of tenure for faculty members;

(I) Approve policies governing student conduct;

(J) Oversee and monitor the operation of the intercollegiate athletics programs of the university, including proposed actions reasonably anticipated to have a long-term impact on the operations, reputation, and standing of the intercollegiate athletics programs or the university;

(K) Evaluate student financial aid in relation to the cost of attendance and approve any necessary policies to improve the availability of financial aid that are in the best interest of students, the university, and the state;

(L) Monitor the university's nonacademic programs, other than athletics, including programs related to diversity and monitor compliance of nonacademic programs with federal and state laws, rules, and regulations;

(M) Evaluate administrative operations and academic programs periodically to identify efficiencies to be achieved through streamlining, consolidation, reallocation, or other measures;

(N) Establish a process through which each advisory board created pursuant to § 49-9-501 must provide a recommendation to the president

on the proposed operating budget, including tuition and fees, as it relates to the respective institution prior to the adoption of the annual operating budget by the board of trustees, beginning with any operating budget adopted after January 1, 2019;

(O) Establish a process through which each advisory board created pursuant to § 49-9-501 must provide a recommendation to the president on the proposed strategic plan for the respective institution prior to the approval of the strategic plan by the board of trustees, beginning with any strategic plan approved or adopted after January 1, 2019;

(P) Exercise general control and oversight of the University of Tennessee system and its institutions, delegating to the president the executive management and administrative authority necessary and appropriate for the efficient administration of the system or necessary to carry out the mission of the system, and delegating to each chancellor the executive management and administrative authority necessary and appropriate for the efficient administration of such chancellor's institution and its programs, subject to the general supervision of the president. The president shall exercise administrative authority over the chancellors;

(Q) Establish a mechanism by which a person may bring an issue to the attention of the board and provide notice of that mechanism to the public;

(R) Provide, in conjunction with regular meetings of the board, a reasonable opportunity for the public to address the board or a board committee concerning issues germane to the responsibilities of the board;

(S) Have the authority to name buildings owned by the university or its institutions; and

(T) Exercise all powers and take all actions necessary, proper, or convenient for the accomplishment of the university's mission and the responsibilities of the board.

(2) As used in this subsection (d), "institution" includes the University of Tennessee, Knoxville, the University of Tennessee at Chattanooga, the University of Tennessee at Martin, the University of Tennessee Health Science Center, the University of Tennessee Space Institute, the Institute of Agriculture, and the Institute for Public Service.

(e)(1) The board of trustees shall also have full power and authority to make bylaws, rules, and regulations for the governance of the university and the promotion of education in the university that in the board's opinion may be expedient or necessary.

(2) The bylaws, rules, and regulations shall not be inconsistent with the constitution and laws of the United States or of this state.

(f) The president and chancellors of the university, with the advice and consent of a majority of the board, are authorized to confer any bachelor's, master's, or doctoral degree approved by the board of trustees upon certification by the appropriate university offices that a student has satisfied all degree requirements and all obligations to the university.

**49-9-410. Tennessee Foreign Language Center.**

(a) The Tennessee Foreign Language Institute is transferred to and reestablished as a part of the Institute for Public Service and renamed the Tennessee Foreign Language Center.

(b) As a part of the Institute for Public Service, the Tennessee Foreign

Language Center shall provide coordination and foreign language services to state and local government entities, as well as private entities. Programming may include, but is not limited to:

(1) Services in support of government, industrial recruitment, and economic and tourist development;

(2) Original research into issues related to foreign language, language instruction, and associated cultural considerations; and

(3) Providing publications, conducting educational conferences, and furnishing technical consultation, training, and field services in the areas of foreign language and culture.

(c)(1)(A) On July 1, 2018, the Tennessee Foreign Language Institute endowment fund shall be transferred from the state treasury to the University of Tennessee Institute for Public Service. The fund shall be renamed the Tennessee Foreign Language Center endowment fund. The Institute for Public Service may receive private gifts and contributions for deposit in the Tennessee Foreign Language Center endowment fund for the benefit of the Tennessee Foreign Language Center.

(B) Notwithstanding subdivision (c)(1)(A), the Institute for Public Service may keep the Tennessee Foreign Language Center endowment fund in the state treasury and may enter into an agreement with the state treasurer for its management.

(2) The income from the Tennessee Foreign Language Center endowment fund shall be used for the operation and maintenance of the center. All interest and earnings on deposit in the fund shall become a part of and remain in the Tennessee Foreign Language Center endowment fund. No funds in the Tennessee Foreign Language Center endowment fund shall revert to the state general fund on June 30 of any year, but shall remain available for expenditure in accordance with this part.

**49-9-501. Advisory boards for University of Tennessee institutions.**

(a)(1) On July 1, 2018, there are established advisory boards for the University of Tennessee, Knoxville; University of Tennessee at Martin; University of Tennessee at Chattanooga; and University of Tennessee Health Science Center.

(2) Each advisory board shall consist of five (5) members appointed by the governor, one (1) faculty member selected in accordance with subsection (c), and one (1) student member selected in accordance with subsection (d).

(b)(1) Of the five (5) members appointed by the governor:

(A) At least three (3) members of each advisory board must be alumni of the respective University of Tennessee institution. For purposes of this subdivision (b)(1), "alumni" means a person who earned a degree at the respective institution;

(B) At least one (1) member of each advisory board must be a resident of the county in which the respective University of Tennessee institution is located. For purposes of this subdivision (b)(1)(B), "resident" means a person whose legal domicile is in the county in which the respective institution is located; and

(C) At least three (3) members of each advisory board must be residents of this state. For purposes of this subdivision (b)(1)(C), "resident" means a person whose legal domicile is the state of Tennessee.

(2) In making appointments, the governor shall strive to ensure that the advisory boards are composed of members who are diverse in sex, race, perspective, and experience.

(c) One (1) member must be a full-time faculty member of the respective University of Tennessee institution selected and appointed in a manner determined by the faculty senate or equivalent body of that respective institution as soon as practicable for the initial appointment and, for all other subsequent appointments, no later than April 15 of the year of appointment.

(d) One (1) member must be a student at the respective University of Tennessee institution selected and appointed in a manner determined by the respective advisory board as soon as practicable for the initial appointment and, for all subsequent appointments, no later than April 15 of each year. Each student member must be enrolled full-time at the respective University of Tennessee institution throughout the term of appointment; provided, that this requirement does not require enrollment during any summer semester.

(e) The following individuals are prohibited from serving as a member of an advisory board for so long as they hold the office or position:

(1) Employees of any public institution of higher education; except those faculty or student members appointed to each advisory board;

(2) Elected officials;

(3) State employees; and

(4) Members of a governing body for any public institution of higher education.

(f)(1)(A) Except as otherwise provided in this subsection (f), the five (5) members appointed by the governor must be confirmed by the senate and the house of representatives prior to beginning a term of office.

(B) Except as otherwise provided in this subsection (f), all appointments of the board members by the governor shall be confirmed by joint resolution prior to the commencement of the term of office to which the member is appointed.

(C) If either house fails to confirm the appointment of a board member by the governor within ninety (90) calendar days after the general assembly next convenes in regular session following such appointment, the appointment terminates on the day following the ninetieth calendar day.

(2) If the general assembly is not in session when initial gubernatorial appointments are made, all such initial appointees shall serve the terms prescribed pursuant to this section, unless the appointments are not confirmed during the next regular session of the general assembly following the appointments in accordance with subdivision (f)(1).

(3) If the general assembly is not in session at the time a member is appointed by the governor to fill a vacancy resulting from the expiration of a term, the member whose term has expired will serve until a new appointee is confirmed in accordance with subdivision (f)(1).

(4) If the general assembly is not in session at the time a member is appointed by the governor to fill a vacancy not resulting from the expiration of a term, the new appointee will serve for the term appointed unless the appointment is not confirmed during the next regular session of the general assembly following the appointment in accordance with subdivision (f)(1).

(g)(1) The initial terms of the members appointed by the governor shall be two (2), three (3), and four (4) years. One (1) member shall serve a two-year

term, two (2) members shall serve a three-year term, and two (2) members shall serve a four-year term. For all subsequent appointments, such members of the advisory boards shall be appointed to serve terms of four (4) years beginning July 1 of the year of appointment and ending on June 30.

(2) Each faculty member selected in accordance with subsection (c) shall serve a term of two (2) years, beginning July 1 and ending June 30.

(3) Each student member selected in accordance with subsection (d) shall serve a term of one (1) year, beginning July 1 and ending the following June 30.

(h) Members are eligible to succeed themselves; provided, that no person may serve more than two (2) consecutive terms, whether appointed as an initial member, as a successor member, or to fill a vacancy. A member who serves two (2) consecutive terms may be reappointed after four (4) years have elapsed since the individual's last date of service on that advisory board.

(i) If a vacancy occurs by death or resignation, the governor shall appoint a successor for the remainder of the term. If a vacancy occurs by reason of expiration of a term, the board member whose term has expired serves until a successor is appointed.

(j) The cessation of a member's legal domicile in the applicable county that results in a failure to satisfy subdivision (b)(1)(B), or the cessation of any member's legal domicile in the state that results in a failure to satisfy subdivision (b)(1)(C), vacates the member's position. The governor shall appoint a person satisfying the requirement as a successor for the remainder of the term.

(k) The cessation of a faculty member's employment with the university or full-time faculty status that results in a failure to satisfy subsection (c), or the cessation of a student member's full-time enrollment status that results in a failure to satisfy subsection (d), vacates the member's position. The governor shall appoint a faculty member or student satisfying the requirement as a successor for the remainder of the term.

**49-9-502. Advisory board meetings.**

(a) Each advisory board of the University of Tennessee established pursuant to § 49-9-501 shall hold at least three (3) meetings annually on a day or days determined by the board from year to year.

(b) Four (4) members shall constitute a quorum, and they are empowered to transact any business.

(c) Each advisory board shall adopt bylaws to govern its meetings, subject to approval by the board of trustees.

(d) The governor shall call the initial meeting of each advisory board to occur on or after July 1, 2018.

(e) The failure of a member to attend more than fifty percent (50%) of the regular meetings in a calendar year is cause for the member's removal and authorizes the board to call on the governor to appoint a successor.

(f) Advisory board members shall be reimbursed for travel expenses in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

**49-9-503. Advisory board role and responsibilities.**

(a) Each advisory board of the University of Tennessee established pursuant

to § 49-9-501 shall:

(1) Submit a recommendation, in accordance with the process established pursuant to § 49-9-209(d)(1)(N), regarding the proposed operating budget, including tuition and fees, as it relates to the respective institution;

(2) Submit a recommendation, in accordance with the process established pursuant to § 49-9-209(d)(1)(O), regarding the strategic plan for the respective institution;

(3) Advise the chancellor of the respective University of Tennessee institution regarding university operations and budget, campus master plan, campus life, academic programs, policies, and other matters related to the institution and as may be requested by the chancellor from time to time;

(4) Under the leadership of the chancellor of the respective institution, seek to promote the overall advancement of the institution and the University of Tennessee system;

(5) Advise the board of trustees or president of the University of Tennessee system on matters related to the institution and the University of Tennessee system as may be requested by the president or board of trustees from time to time; and

(6) Be subject to the open meetings laws, compiled in title 8, chapter 44.

(b) The responsibilities of, and any actions taken by, an advisory board shall not conflict with or inhibit the authority of the board of trustees.

**49-10-112. [Repealed.]**

**49-10-113. State financial aid.**

(a)(1) The state shall provide financial aid in each school year to school districts and other entities entitled by the laws of this state to receive school aid for educational and related services provided by them for children with disabilities.

(2) The aid shall be determined and paid in accordance with this section and rules and regulations set forth by the state board of education.

(b) State financial aid pursuant to parts 1-6 of this chapter may be claimed by and shall be paid to any public school district or other entities entitled by the laws of this state to receive school aid for each of the following elements:

(1) The education of children with disabilities in the regular school programs of the district or entity;

(2) The education of children with disabilities in special classes, schools and programs designed to meet their special needs and the furnishing of corrective or remedial services designed to ameliorate or eliminate physical, mental, emotional or learning disabilities or handicaps; and

(3) The furnishing of transportation.

(c)(1) For the purposes of entitlement to state aid, children with disabilities shall be counted in the same manner as other children.

(2)(A) A local education agency (LEA) shall include qualifying services provided to students in any public school in the LEA, including charter schools authorized by the LEA, in the LEA's annual request for high cost reimbursement.

(B) An LEA shall provide to its authorized charter schools applicable high cost reimbursement funds received by the LEA for any qualifying special education expenditures incurred directly by the charter school.

(C) Special education services associations applying for high cost reimbursement shall include qualifying services provided to students in any public school served by the special education services association.

(d)(1) If any of the educational or other services aided pursuant to this section are provided partly by one school district or other entitled entity and partly by another district or entity, and if there is no valid contract or agreement by which one of the districts or entities is the proper claimant for all the aid in question, each district and entity shall be entitled to claim and receive a proportionate share of state aid in accordance with its actual assumption of costs.

(2) The department shall provide for the calculation and apportionment of state aid in cases covered by subdivision (d)(1).

(e) The state board of education shall promulgate rules necessary to effectuate the purposes of this section. All rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**49-10-201. Establishment.**

A special education services association shall provide services for all the areas included within the school districts and for any charter schools participating in it. It may be established by resolution of each of the governing boards of the school districts or charter schools participating in it.

**49-10-202. Governing boards.**

(a) The governing board of a special education services association shall consist of representatives of the participating school districts and charter schools.

(b) Unless otherwise provided in a written agreement embodied in the resolution or resolutions by which the special education services association is established, each participating school district and each participating charter school shall have one (1) representative.

(c)(1) The representative of each school district on the governing board shall be elected by the governing board of the school district by its own members.

(2) The representative of each charter school on the governing board shall be elected by the governing body of the charter school from its own members.

(d) Each representative shall have one (1) vote on the governing board.

**49-10-203. Administration — Powers.**

(a) The affairs of a special education services association shall be administered by its governing board and the officers and employees of the board.

(b) A special education services association has power to:

(1) Establish and operate programs and classes for the education of children with disabilities;

(2) Acquire, construct, maintain and operate facilities in which to provide education, corrective and supporting services for children with disabilities;

(3) Make arrangements with school districts or charter schools participating in the special education services association for the provision of special education, corrective services, and supporting services for children with disabilities enrolled in the school districts or charter school;

(4) Employ special education teachers and personnel required to furnish corrective or supporting services to children with disabilities;

(5) Acquire, hold and convey real and personal property;

(6) Provide transportation for children with disabilities in connection with any of its programs, classes or services;

(7) Receive, administer and expend funds appropriated for its use;

(8) Receive, administer and expend the proceeds of any issue of school bonds or other bonds intended wholly or partly for its benefit;

(9) Apply for, accept and utilize grants, gifts or other assistance, and, if not contrary to law, comply with the conditions, if any, attached to the grants, gifts or other assistance;

(10) Participate in, and make its employees eligible to participate in, any retirement system, group insurance system or other program of employee benefits, on the same terms as govern school districts, charter schools, and their employees; and

(11) Do other things that are necessary and incidental to the execution of any of the powers of this subsection (b) and of any other powers conferred upon special education services associations elsewhere in parts 1-6 of this chapter or in other laws of this state.

**49-10-204. Special education centers.**

(a)(1) A special education services association may establish and operate one (1) or more special education centers to provide diagnostic, therapeutic, corrective and other services on a more comprehensive, expert, economic and efficient basis than can reasonably be provided by a single school district or charter school.

(2) The services may be provided in the regular schools by personnel and equipment of a center; or, whenever it is impractical or inefficient to provide them on the premises of a regular school, the center may provide services in its own facilities.

(b) Centers established pursuant to this section also may contain classrooms and other educational facilities and equipment to supplement instruction and other services furnished to children with disabilities in the regular schools and to provide separate instruction to children whose degree or kind of disability makes it impracticable or inappropriate for them to participate in classes with normal children.

(c) Centers established pursuant to this section may include dormitory and related facilities and services in order to permit children with disabilities who may not reasonably go to and from home daily to receive educational and related services.

(d)(1) No facilities may be acquired or constructed pursuant to this section unless application for the facilities has been made by the special education services association to the division of special education and a permit for the facilities has been issued by the division.

(2) The permit may contain such conditions as the division may deem appropriate to assure conformity with the policy of parts 1-6 of this chapter.

(3) No permit shall be issued unless the division is satisfied that every effort has been and is being made to accommodate the educational or related services in a regular school building or on regular school premises and that separate facilities are necessary.

**49-10-205. Functions.**

(a) A special education services association shall provide education, corrective and supporting services for all children with disabilities who are residents of the association, except for special education, corrective and supporting services that are provided directly by the state or any special education, corrective and supportive services as, pursuant to the agreement under which the association functions, are expressly reserved for continued provision by the individual school districts or charter schools.

(b) To the maximum extent practicable, a special education services association shall make such provision in the regular schools of the school districts or charter schools served by the special education services association or in its own facilities established and operated pursuant to § 49-10-203.

(c) A special education services association shall make arrangements with and payments to private schools, institutions and agencies for services to children with disabilities only if it is unable to provide satisfactory service with its own facilities and personnel and the facilities and personnel of its member school districts or charter schools.

(d) A special education services association shall provide home or hospital instruction, corrective and supporting services to children with disabilities, but only in cases where the nature and severity of the disability make the provision of education, corrective and supporting services in the regular schools or in other facilities of the special education services association, the state or in suitable private facilities impracticable.

**49-10-206. Qualification of school district or charter school as association — Application for qualification.**

(a)(1) A school district or charter school may qualify, for the purposes of state aid, as a special education services association, if it provides a full complement of educational, corrective and supporting services, exclusive of services provided directly by the state, for all children with disabilities residing within the boundary of the school district or attending the charter school.

(2) Upon application made pursuant to subsection (b), the state board of education shall determine whether the applicant school district or charter school meets the requirements of this section.

(b)(1) A school district or charter school may apply for and receive the status of a special education services association by submitting to the state board of education an appropriate resolution of its governing board requesting the status.

(2) Section 49-10-207(a) shall not apply to an application submitted pursuant to this section, but the application shall not be approved unless the state board of education finds that the school district or charter school complies with § 49-10-208(1) and that it maintains a full complement of special education facilities and programs.

**49-10-207. Inter-district agreements.**

(a)(1) Each special education services association, other than one composed of a single school district or a single charter school, shall function pursuant to and in accordance with an inter-school district agreement, referred to as

"the agreement" in this section.

(2) The agreement may be incorporated in the resolution or other action establishing the special education services association or may be a separate document. It shall be adopted by affirmative vote of each of the governing boards of the school districts or charter schools participating in the special education services association.

(b) An agreement shall contain:

(1) A precise identification of the party school districts or charter schools;

(2) An enumeration or other precise delineation of the services to be provided by the special education services association;

(3) Provisions relating to the internal management and control of the special education services association;

(4) Provisions defining the relationships between the party school districts or charter schools and the special education services association in regard to the responsibilities for regular education of children with disabilities and special education, corrective and supporting services for children with disabilities;

(5) Provisions fixing the financial responsibilities of each party school district or charter school to the special education services association or setting forth formulas, procedures and other specific methods for the calculation of the financial responsibilities;

(6) A minimum duration for the agreement;

(7) Provisions for amendment, renewal, withdrawal from or termination of the agreement;

(8) Provisions for the disposition of special education services association property upon dissolution of the association;

(9) Financial settlement, if any, with a withdrawing school district or charter school; and

(10) Any other necessary or appropriate provisions.

(c)(1) Prior to becoming effective, an agreement shall be submitted to the state board of education and the attorney general and reporter, and it shall not go into effect unless approved by them.

(2) Failure to respond to a submission within ninety (90) days shall constitute approval of the agreement.

(3) The state board of education shall approve a submitted agreement, unless it finds that the provisions of the agreement are not in accordance with parts 1-6 of this chapter and the policies set forth in this section, or unless it finds that the agreement does not contain sufficient evidence that the special education services association will have the means of providing the facilities, personnel and services necessary to fulfill its obligations toward children with disabilities.

(4) The attorney general and reporter shall approve a submitted agreement, unless the attorney general and reporter finds it to be in improper form or unless the attorney general and reporter finds one (1) or more of its provisions contrary to law.

(d)(1) Any special education services association that is in the process of formation and that proposes to qualify for state aid shall submit the inter-school district agreement pursuant to which it proposes to function to the state board of education.

(2) The submission may be either prior or subsequent to adoption of the agreement and the resolution required by § 49-10-106, but no special

education services association shall receive state aid unless it has been approved for state aid by the state board of education.

**49-10-208. Approval of association for state aid.**

The state board of education shall approve a special education services association for state aid if it determines that:

(1) The association complies with all provisions of parts 1-6 of this chapter or, if the association is not yet in operation, that it will have the resources and authority to comply with parts 1-6 of this chapter; and

(2) The geographic area served or to be served by the special education services association is not so located or of such a configuration as to exclude one (1) or more other school districts or charter schools from effective participation in a special education services association or from forming a viable association of their own.

**49-10-209. Withdrawal from or dissolution of association.**

(a)(1) A school district or charter school that is included in a special education services association may withdraw from participation in any part of the association only with the approval of the director of the division of special education after the director has conferred with the school district or charter school and is satisfied that withdrawal is in the interest of the children with disabilities in the association and the school district or charter school affected.

(2) Withdrawal shall be effective only if the governing board has the approval of the director to establish a comparable part of a program.

(3) Withdrawal shall not be effective until the end of the next full school year.

(4) The withdrawing school district or charter school shall be liable for its proportionate share of all operating costs until its withdrawal becomes effective, shall continue to be liable for its share of debt incurred while it was a participant and shall receive no share in the assets.

(b)(1) An association established under §§ 49-10-104 — 49-10-106 and this part may be dissolved by action of its governing board, but the dissolution shall not take place until the end of the school year in which the action was taken.

(2) When an association is dissolved, assets and liabilities shall be distributed to all entities that participated in the association.

**49-10-804. [Repealed.]**

**49-10-805. [Repealed.]**

**49-10-806. [Repealed.]**

**49-10-807. [Repealed.]**

**49-10-808. [Repealed.]**

**49-10-809. [Repealed.]**

**49-10-1101. Establishment of program.**

(a) Each LEA shall establish a program of homebound instruction for each student who qualifies. A student qualifies for homebound instruction if the student's treating physician certifies in writing that the student has a medical condition that prevents the student from attending regular classes.

(b) If a student qualifies for homebound instruction, then the student's LEA shall offer the student homebound instruction for a minimum of three (3) hours per week. The LEA shall determine how long the student may receive homebound instruction on a case-by-case basis and shall take into consideration the recommendations of the student's treating physician.

(c) If, at the conclusion of any period of homebound instruction, the student's treating physician recertifies in writing that the student's medical condition continues to prevent the student from returning to regular classes, then the LEA shall continue to offer the student three (3) hours of homebound instruction per week, subject to periodic recertification as required by the LEA.

**49-10-1102. [Repealed.]**

**49-10-1104. [Repealed.]**

**49-10-1201. [Repealed.]**

**49-10-1202. [Repealed.]**

**49-10-1203. [Repealed.]**

**49-11-104. Career and technical education in high schools.**

(a)(1) It is declared to be the intent of the general assembly that comprehensive career and technical education be made available by the state and local education agencies in grades nine through twelve (9-12).

(2) The program shall be made accessible to all high school students and planned to serve at least fifty percent (50%) of the students in grades nine through twelve (9-12).

(b)(1) All capital costs and operating costs of the programs developed under this section shall be borne by the state, to the extent that appropriations are made for the programs.

(2) The operation of the facilities shall be by local boards of education or as joint facilities by two (2) or more local systems.

(3) Appropriate counseling and career and technical courses shall be made available in grades seven (7) and eight (8).

(4) The acquisition of necessary land, the construction or acquisition of adequate facilities and equipment and the training of an adequate number of career and technical instructors and counselors shall proceed as rapidly as possible after needs are determined in order to carry out the intent expressed in subsection (a).

(5) Counseling shall be provided in grades seven through twelve (7-12) at the ratio of one (1) counselor for two hundred (200) students, with special competence in career and technical guidance including some practical experience.

(6) In the selection of career and technical instructors, some practical experience shall be considered an essential qualification.

(c) After each county, including city and special school districts, is surveyed, facilities shall be planned by the board of career and technical education for comprehensive career and technical training for high school and post high school students in accordance with one (1) of the following alternatives:

(1) **Comprehensive High Schools.** Facilities will be utilized or expanded, or both, in school systems where schools have been consolidated sufficiently to provide comprehensive high schools for a minimum of about one thousand five hundred (1,500) students;

(2) **State Colleges of Applied Technology.** Facilities will be utilized or expanded, or both, in state colleges of applied technology, where properly located, to provide comprehensive high school career and technical training;

(3) **Career and Technical Training Centers.** In counties, including city and special school districts, with two (2) or more high schools, where students cannot be served under subdivision (c)(1) or (c)(2), a career and technical training center will be established separate from any existing school;

(4) **Joint Facilities.** Where practicable, and where school systems may not be served adequately by any of the alternatives in subdivisions (c)(1)-(3), joint facilities may be established and operated to serve two (2) or more counties or school systems, or both;

(A) The governing body of each joint facility that exists separately from any other local school system shall cause an annual audit to be made of the books and records of the facility, to order and pay for the audit and to contract with certified public accountants, public accountants or the department of audit to make the audit;

(B) The comptroller of the treasury, when the comptroller of the treasury deems it necessary, may require the audit to be conducted by the department of audit, the cost of the audit to be paid by the governing body;

(C) The comptroller of the treasury, through the department of audit, shall be responsible for determining that the audit is prepared in accordance with generally accepted governmental auditing standards and that the audit meets the minimum standards prescribed by the comptroller of the treasury;

(D) The comptroller of the treasury shall prepare a uniform audit manual as is required to assure that the books and records are kept in accordance with generally accepted accounting principles and that audit standards prescribed by the comptroller of the treasury are met; or

(5) In the event that it is found not to be economically or physically feasible to provide expanded career and technical programs by one (1) of the

four (4) alternatives in subdivisions (c)(1)-(4), an alternate delivery procedure may be developed. The conditions that will authorize the development of an alternate delivery procedure include, but are not limited to, geographical barriers, low student population and excessive distances involved.

(d)(1) Career and technical training for the post high school student shall be planned and implemented through utilization of facilities provided by this section.

(2) The student shall have available to the student the programs of any facility.

(e)(1) The board of career and technical education shall, upon recommendation of the executive officer of the board, adopt the plan of career and technical education program for each county.

(2) The plan shall incorporate previous decisions of the general assembly for the establishment of career and technical training facilities and programs.

**49-11-109. Liability of employer of work-based learning student — Election to provide workers' compensation insurance — Liability insurance coverage maintained by LEA or state institution of higher learning.**

(a) An employer that accepts or employs a student who is participating in work-based learning coordinated through the student's LEA or a state institution of higher education, including, but not limited to, Tennessee colleges of applied technology:

(1) Shall not be liable for actions relating to that student unless the employer acted willfully or with gross negligence; and

(2) May elect to provide workers' compensation insurance coverage to compensate a participating student for any injury that is covered under the Workers' Compensation Law, compiled in title 50, chapter 6. Notwithstanding subdivision (a)(1), if an employer elects to provide workers' compensation insurance coverage pursuant to this subdivision (a)(2):

(A) The coverage shall serve as the participating student's exclusive remedy for any compensable injury that is covered under the Workers' Compensation Law; and

(B) The employer shall not disclaim the participating student's eligibility for such coverage.

(b) An LEA or state institution of higher education that coordinates work-based learning for students shall maintain liability insurance coverage for all participating students. If an employer elects to provide workers' compensation insurance coverage to a participating student pursuant to subdivision (a)(2), then the LEA or state institution of higher education shall maintain liability insurance coverage to compensate the participating student for any injury that is not covered under the Workers' Compensation Law.

(c) For purposes of this section, an employer shall not be prohibited from employing a student who is under the age of eighteen (18); provided, that the employer is in compliance with state and federal law.

**49-11-602. Part definitions.**

As used in this part, unless the content otherwise requires:

(1) "Director" means director of the vocational rehabilitation program;

(2) "Division" means the division of rehabilitation services;

(3)(A) "Eligible individual with a disability," when used with respect to diagnostic and related services, training, guidance and placement, means any person with a disability who is a bona fide resident of this state at the time of application, whose vocational rehabilitation is determined feasible by the division;

(B) When used with respect to other rehabilitation services, "eligible individual with a disability" means an individual meeting the requirements of subdivision (3)(A) who is also found by the division to require financial assistance with respect to rehabilitation services, after full consideration of the individual's eligibility for any similar benefit by the way of pension, compensation and insurance;

(4) "Establishment of a workshop or rehabilitation facility" means:

(A) In the case of a workshop, the expansion, remodeling or alteration of existing buildings necessary to adapt the buildings to workshop purposes or to increase the employment opportunities in workshops, and the acquisition of initial equipment necessary for new workshops, or to increase the employment opportunities in workshops; and

(B) In the case of a rehabilitation facility, the expansion, remodeling or alteration of existing buildings and initial equipment of the buildings, necessary to adapt the buildings to rehabilitation facility purposes or to increase their effectiveness for those purposes and initial staffing of the facility;

(5) "Executive officer" means the executive officer of the state board for vocational education;

(6) "Individual with a disability" means an individual of employable age who has a disability that constitutes a substantial barrier to employment, but that is of such a nature that appropriate vocational rehabilitation services may reasonably be expected to:

(A) Render the individual able to engage in a remunerative occupation; or

(B) Enable the individual to wholly or substantially achieve such ability of independent living as to dispense with the need of institutional care or to dispense or largely dispense with the need of an attendant at home;

(7) "Maintenance" means the provision of money to cover a handicapped individual's necessary living expenses and health maintenance essential to achieving the handicapped individual's vocational rehabilitation;

(8) "Nonprofit," when used with respect to a rehabilitation facility or a workshop, means a rehabilitation facility and a workshop, respectively, owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under § 501 of the Internal Revenue Code of 1954 (26 U.S.C. § 501);

(9) "Physical restoration" includes:

(A) Corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition that is stable or slowly progressive and:

(i) Constitutes a substantial barrier to employment; or

(ii) Necessitates institutional care or attendant care, but is of such a nature that the correction or modification may reasonably be expected to eliminate or substantially reduce the barrier within a reasonable length

of time and includes psychiatric treatment, dentistry, physical therapy, occupational therapy, speech or hearing therapy, treatment of medical complications and emergencies that are associated with or arise out of physical restoration services or are inherent in the conditions under treatment, and other medical services related to rehabilitation;

(B) Necessary hospitalization, either in patient or out patient, nursing or rest home care, in connection with surgery or treatment specified in subdivision (9)(A); and

(C) Prosthetic devices essential to:

(i) Obtaining or retaining employment; or

(ii) Achieving such ability of independent living as to dispense with the need for expensive institutional care or dispense with or largely dispense with the need of an attendant at home;

(10) "Prosthetic appliance" means any appliance designed to support or take the place of a part of the body or to increase the acuity of a sensory organ;

(11) "Rehabilitation facility" means a facility operated for the primary purpose of assisting in the rehabilitation of physically handicapped individuals:

(A) That provides one (1) or more of the following types of services:

(i) Testing, fitting or training in the use of prosthetic devices;

(ii) Pre-vocational or conditioning therapy;

(iii) Physical or occupational therapy;

(iv) Adjustment training; or

(v) Evaluation or control of special disabilities; or

(B) Through which is provided an integrated program of medical, psychological, social and vocational evaluation and services under competent professional supervision;

(12) "Remunerative occupation" includes employment as an employee or self-employed, practice of a profession, homemaking or farm and family work for which payment is in kind rather than cash, sheltered employment and home industry or other homebound work of a remunerative nature;

(13) "State board" means the state board of education in its capacity as the state board for vocational education;

(14) "Vocational rehabilitation" means making an individual able, or increasing the individual's ability, to:

(A) Engage in a remunerative occupation; or

(B) Dispense with or largely dispense with the need of an attendant at home or expensive institutional care, through providing the individual needed vocational rehabilitation services;

(15) "Vocational rehabilitation services" means:

(A) Diagnostic and related services, including transportation, incidental to the determination of whether an individual is a handicapped individual, and if so, the individual's eligibility for, and the nature and scope of, other vocational rehabilitation services to be provided; and

(B) The following services provided eligible handicapped individuals needing the services:

(i) Training;

(ii) Guidance;

(iii) Placement;

(iv) Maintenance, not exceeding the estimated costs of subsistence

during vocational rehabilitation;

(v) Occupational licenses, tools, equipment, initial stocks and supplies, including equipment and initial stocks and supplies for vending stands, books and training materials;

(vi) Transportation, other than provided as diagnostic and related services; and

(vii) Physical restoration; and

(16) "Workshop" means a place where any manufacture or handiwork is carried on and that is operated for the primary purpose of providing remunerative employment to severely handicapped individuals who cannot be readily absorbed in the competitive labor market.

**49-11-603. Division of rehabilitation services and office of director of vocational rehabilitation program established.**

(a)(1) The division of rehabilitation services and the office of director of the vocational rehabilitation program, the incumbent of which is called the director in this section, are established.

(2) The director shall be appointed, in accordance with established personnel standards, on the basis of the person's training, experience and demonstrated ability in the field of vocational rehabilitation, or related fields, with the approval of the state board by its executive officer and shall be the head of the division and subject only to the supervision and direction of the state board acting through the executive officer.

(b) Except as may be otherwise provided with respect to the blind, the division shall be the sole agency to supervise and administer vocational rehabilitation services authorized by this part under the state plan formulated and administered pursuant to this part, except the part or parts thereof may be administered in a political subdivision or subdivisions of this state by a sole local agency of the subdivision, and the division shall be the sole agency to supervise the local agency or agencies in the administration of such part or parts.

(c)(1) The director shall prepare, conformable to this part, the proposed regulations and a proposed state plan of vocational rehabilitation and, from time to time, prepare proposed changes that appear to be necessary or desirable.

(2) Upon approval of the proposals by the state board or by its executive officer when so authorized by the board, the approved proposals shall constitute the state plan and state regulations.

**49-11-702. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Advisory board" means the state advisory board for the rehabilitation centers;

(2) "Commissioner" means the commissioner of human services;

(3) "Department" means the department of human services;

(4) "Director" means director of the vocational rehabilitation program;

(5) "Division" means the division of rehabilitation services; and

(6) "Rehabilitation center" or "center" means a rehabilitation center authorized under this part.

**49-11-703. Rehabilitation center system authorized.**

(a) The commissioner is authorized to establish a system of rehabilitation training centers for persons with disabilities.

(b) The system shall include the ten (10) Volunteer State vocational centers operated on July 1, 1965, by the Tennessee Association for Retarded Children and Adults, Incorporated, under the terms of OVR grant 956d from the office of vocational rehabilitation of the United States department of human services, and any other existing centers furnishing the same training, and any other rehabilitation centers established pursuant to this part.

(c) Rehabilitation centers established pursuant to this part shall be designated as the "Tennessee Rehabilitation Center at _____" (name of city where located).

(d)(1) The department shall appoint an advisory board for each center that it establishes.

(2) The advisory board for each rehabilitation center shall be appointed by the commissioner or designee, with the advice of the statewide advisory board, from among the citizens of the county where the center is located.

(3) The boards shall be composed of twelve (12) members, who shall serve for staggered terms of four (4) years and shall receive no compensation for their services.

(4) Wherever possible, each rehabilitation center advisory board shall include among its members representation from the professional fields of education, vocational rehabilitation, human services, employment security, psychology, law and medicine. To achieve such representation, the commissioner or designee may appoint to any such board state personnel from any of the fields enumerated in this subdivision (d)(4) who are employed in or reside in a county where a rehabilitation center is located. When appointing members to the advisory board pursuant to this subsection (d), the department shall, to the extent possible, appoint the board's members to ensure appropriate representation on the board based upon gender and ethnicity.

(5) Not more than two (2) of the rehabilitation center advisory board members shall be parents of an individual with a disability.

(e) The advisory board shall have the following responsibilities:

(1) To provide advice, in cooperation with the center's director and the department, regarding the operation of the rehabilitation services program and the clients served by the center for that county;

(2) To assist in coordination of the rehabilitation center's program with the public school system for students enrolled in the center from the public schools of the county where the center is located;

(3) To promote community support and education concerning persons with disabilities and their employment;

(4) To provide placement coordination in the local community for the development of employment opportunities for persons with disabilities; and

(5) To assist the center manager in presenting the proposed local operating budget to the proper local officials for certification.

(f) Clients of the rehabilitation centers established pursuant to this part shall not be considered state employees for any purpose. Any funds paid to these clients for sheltered employment shall be paid out of a special fund established from the gross income to the center from contract work.

**49-11-704. Advisory board.**

(a) In order to coordinate the activities of the rehabilitation centers and to advise the commissioner and to better acquaint the public with the needs and activities of the program, the commissioner is authorized to create a statewide advisory board for the rehabilitation centers to be composed of sixteen (16) members as follows:

(1) There shall be one (1) ex officio member from each of the following departments and agencies of state government:

(A) The department of mental health and substance abuse services;

(B) The department of labor and workforce development;

(C) The department of human services;

(D) The division of rehabilitation services of the department of human services;

(E) The department of education;

(F) The Tennessee committee on employment of persons with disabilities; and

(G) The department of intellectual and developmental disabilities; and

(2) The remaining nine (9) members shall be appointed by the commissioner from among private organizations and agencies concerned with persons with disabilities, to serve for staggered terms of four (4) years each. In appointing the nine (9) remaining members to the board, to the extent possible, the assistant commissioner shall appoint the board's members to ensure appropriate representation on the board based upon gender and ethnicity.

(b) It is the duty of the advisory board to consider and advise the commissioner and the division on broad problems and policies, to review periodically the progress of the rehabilitation center program, and to help maintain coordination between the program and the related programs of the organizations and agencies represented on the board.

(c)(1) Members of the advisory board shall meet at least annually and at other times that may be necessary, upon call of the director of the vocational rehabilitation program, and shall receive no compensation for their services.

(2) The appointed members shall be entitled to reimbursement for their expenses incurred in traveling to and from meetings, in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d) The commissioner, through the division, shall, with the advice and assistance of the advisory board, set and enforce standards for the operation of the rehabilitation centers, assist communities in organizing local rehabilitation centers, develop and administer contractual arrangements between the centers and the division, secure contract work for the various rehabilitation centers from industry on a local, statewide and national basis in order to provide the type of work experience most needed by the clients and still provide income to the rehabilitation centers sufficient to adequately remunerate the clients.

(e)(1) The advisory board is transferred to the department. All functions of the advisory board are administered by and shall be under the control of the commissioner.

(2) The commissioner shall perform all such duties and has the responsibilities heretofore vested in the advisory board and the state board of

education in accordance with this part.

(3) All rules, regulations, orders and decisions issued or promulgated by the advisory board prior to February 21, 1989, shall remain in full force and effect and be administered and enforced by the department. To this end, the department, through its chief executive officer, has the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred by this subsection (e) and other provisions in chapter 4 of the Public Acts of 1989, to modify or rescind orders or rules and regulations issued prior to February 21, 1989, and to adopt, issue or promulgate new orders or rules and regulations as may be necessary for the administration of the program or function transferred by this subsection (e) and other provisions in chapter 4 of the Public Acts of 1989.

**49-11-707. Services provided.**

The division of rehabilitation services is authorized, with the approval of the commissioner and in accordance with all federal vocational rehabilitation program requirements, to contract with any public or private entity to provide services to vocational rehabilitation program clients who receive training and other approved services at a rehabilitation center. The division of rehabilitation services shall comply with all requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) in the award and administration, pursuant to this section, of any contracts for services to clients of the division.

**49-11-801. Establishment.**

The division of rehabilitation services is authorized to establish and operate a statewide comprehensive rehabilitation and training center at Smyrna.

**49-11-901. Part definitions.**

As used in this part:

(1) "Department" means the department of economic and community development;

(2) "Grant" means a qualified work-based learning student grant issued pursuant to this part;

(3) "Grant fund" means the qualified work-based learning student grant fund established by § 49-11-902(b);

(4) "Program operator" means a nonprofit entity that has entered into an agreement with the department to administer the program established by this part; and

(5) "Qualified work-based learning student" means a student who:

(A) Is enrolled in a secondary or postsecondary work-based learning course coordinated through the student's LEA or a state institution of higher education, including, but not limited to, Tennessee colleges of applied technology;

(B) Is receiving academic credit or credit toward completion of a career and technical education program for the work-based learning course;

(C) Is performing the duties associated with the work-based learning course in this state; and

(D) Is supervised by a teacher, faculty member, or staff member of the LEA or state institution of higher education.

**49-11-902. Qualified work-based learning student grant program — Grant fund — Program operator.**

(a) There is established a qualified work-based learning student grant program.

(b) There is created a separate fund within the general fund to be known as the qualified work-based learning student grant fund.

(c) The grant fund is composed of:

(1) Funds specifically appropriated by the general assembly for the grant fund; and

(2) Gifts, grants, and other donations received for the grant fund.

(d) Moneys in the grant fund shall be invested by the state treasurer for the benefit of the grant fund pursuant to § 9-4-603. Interest accruing on investments and deposits of the grant fund shall be returned to the grant fund and remain a part of the grant fund.

(e) Any unencumbered funds and any unexpended balance of the grant fund remaining at the end of any fiscal year shall not revert to the general fund, but shall be carried forward until expended in accordance with this section.

(f) Moneys in the grant fund may be expended only with the approval of the department and in accordance with this section.

(g) The department shall select a program operator to administer the program established by this part and shall issue a grant from funds available in the qualified work-based learning student grant fund to the program operator selected by the department.

**49-11-903. Employer's application for grant.**

Any employer that accepts or employs a qualified work-based learning student may apply to the program operator for a grant in a manner determined by the program operator.

**49-11-904. Amount of grants.**

(a) The grant amount allowed under this part shall be limited to five thousand dollars ($5,000) per employer in any calendar year.

(b) The total amount of grants provided to employers under this part shall not exceed one million dollars ($1,000,000) for any calendar year.

**49-11-905. Submission of application by employer.**

An employer must submit an application, in a form prescribed by the program operator, along with any supporting documentation required by the program operator, by July 15 following the calendar year in which the employer accepted or employed a qualified work-based learning student. No grant shall be allowed under this part to an employer that fails to submit an application by the July 15 deadline. By September 15 following the July 15 deadline established in this section the program operator shall notify the employer of the amount of the grant allowed under this part.

**49-11-906. Promulgation of rules.**

The department may promulgate rules to effectuate the purposes of this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**49-11-907. Application fee.**

The program operator may establish an application fee sufficient to offset the costs of administering this part, subject to approval by the department.

**49-11-908. Audits of program operator.**

As a condition of receiving funds from the department pursuant to this part, the program operator must agree to submit to audits by the comptroller of the treasury.

**49-13-108. Approval, denial of application.**

(a)(1) This section shall apply only to applications for new charter schools under § 49-13-106(b)(1) that are submitted to an LEA.

(2) The local board of education shall have the authority to approve applications to establish public charter schools and renew public charter school agreements. The local board of education shall rule by resolution, at a regular or special called meeting, on the approval or denial of a charter application within ninety (90) days of receipt of the completed application. Should the local board of education fail to either approve or deny a charter application within the ninety-day time limit prescribed in this subdivision (a)(1), the application shall be deemed approved.

(3) The grounds upon which the local board of education based a decision to deny a public charter school application must be stated in writing, specifying objective reasons for the denial. Upon receipt of the grounds for denial, the sponsor shall have thirty (30) days within which to submit an amended application to correct the deficiencies. The local board of education shall have sixty (60) days either to deny or to approve the amended application. Should the local board of education fail to either approve or deny the amended application within sixty (60) days, the amended application shall be deemed approved.

(4)(A) A denial by the local board of education of an application to establish a public charter school may be appealed by the sponsor, within ten (10) days of the final decision to deny, to the state board of education. The appeal and review process shall be in accordance with this subdivision (a)(4).

(B) Within sixty (60) days after receipt of the notice of appeal or the making of a motion to review by the state board and after reasonable public notice, the state board, at a public hearing attended by the board or its designated representative and held in the school district in which the proposed charter school has applied for a charter, shall conduct a de novo on the record review of the proposed charter school's application and make its findings.

(C) The state board or its executive director, acting for the state board, may allow a sponsor to make corrections to its application on appeal, except for the elements of the application required under § 49-13-107(b)(1), (2), (4), (6), (9), (12), (13), (18) and (20).

(D) If the application is for a charter school in an LEA that does not contain a priority school on the current or last preceding priority school list and if the state board finds that the local board's decision was contrary to the best interests of the pupils, school district or community, the state

board shall remand the decision to the local board of education with written instructions for approval of the charter. The grounds upon which the state board of education based a decision to remand the application shall be stated in writing, specifying objective reasons for the decision. The decision of the state board shall be final and not subject to appeal. The LEA, however, shall be the chartering authority.

(E) If the application is for a charter school in an LEA that contains at least one (1) priority school on the current or last preceding priority school list and if the state board finds that the local board's decision was contrary to the best interests of the pupils, school district or community, the state board may approve the application for the charter school. The decision of the state board shall be final and not subject to appeal. The state board shall be the chartering authority.

(5) A chartering authority may require a charter school sponsor to pay to the chartering authority an application fee of up to two thousand five hundred dollars ($2,500) with each charter school application the sponsor files.

(b) The local board of education may consider whether the establishment of the charter school will have a substantial negative fiscal impact on the LEA such that authorization of the charter school would be contrary to the best interest of the pupils, school district or community.

(c)(1) A chartering authority may disapprove a charter school application, if the proposed charter school plans to staff positions for teachers, administrators, ancillary support personnel or other employees by utilizing or otherwise relying on nonimmigrant foreign worker H1B or J1 visa programs in excess of three and one half percent (3.5%) of the total number of positions at any single school location for any school year.

(2) Notwithstanding subdivision (c)(1), a chartering authority may not deny a charter school application solely because the proposed school plans to exceed the limitation in subdivision (c)(1) in employing foreign language instructors who, prior to employment, meet and, during the period for which such instructors' H1B or J1 visas have been granted, will meet all Tennessee licensure requirements. If a chartering authority disapproves a charter school application under this subsection (c), the sponsor may appeal the decision to disapprove the application as provided in subsection (a).

(d) Approval of a charter application shall not be based on conditions or contingencies.

(e) Prior to approving any charter school on appeal if the LEA's denial is based on substantial negative fiscal impact, the state board shall consider the financial impact of the charter school on the LEA. The state board may request additional information from the charter school sponsor and the LEA in regards to such consideration. The state board shall not approve for operation any charter school that is determined by the board to have a substantial negative fiscal impact on an LEA, such that authorization of the charter school would be contrary to the best interests of the pupils, school district or community.

(f) Chartering authorities shall adopt policies and practices for quality charter authorizing standards as approved by the state board of education.

(g) Within ten (10) days of approving or denying a charter application, the chartering authority shall report to the department of education whether the chartering authority has approved or denied the application. The chartering

authority shall provide the department a copy of the chartering authority's resolution setting forth the action taken and reasons for the decision.

**49-13-111. Compliance.**

(a) A public charter school shall:

(1) Operate as a public, nonsectarian, nonreligious public school, with control of instruction vested in the governing body of the school under the general supervision of the chartering authority and in compliance with the charter agreement and this chapter;

(2) Meet the same performance standards and requirements adopted by the state board of education for public schools;

(3) Except as provided in § 49-13-142(d), receive state, federal, and local funds from the local board of education;

(4) Provide special education services for students as provided in chapter 10 of this title;

(5) Administer state assessments as provided in chapter 1, part 6 of this title; and

(6) Open and operate within the jurisdictional boundaries of the authorizing LEA, or if the charter school is authorized by the state board, in the school district in which the charter sponsor originally applied for a charter.

(b) A public charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, national origin, religion, ancestry or need for special education services. A public charter school may not violate or be used to subvert any state or federal court orders in place in the local school district.

(c)(1) A public charter school shall comply with all applicable health and safety standards, regulations and laws of the United States and this state.

(2) The governing body of a public charter school shall ensure that the public charter school provides parents and guardians with information about meningococcal disease and the effectiveness of vaccination against meningococcal disease at the beginning of every school year. This information shall include the causes, symptoms, and the means by which meningococcal disease is spread and the places where parents and guardians may obtain additional information and vaccinations for their children. Nothing in this subdivision (c)(2) shall be construed to require a public charter school or its governing body to provide or purchase vaccine against meningococcal disease.

(d) A public charter school shall be accountable to the chartering authority for the purposes of ensuring compliance with the charter agreement and the requirements of this chapter.

(e) All contracts for goods in excess of ten thousand dollars ($10,000) shall be bid and must be approved by the governing body of each public charter school.

(f) A public charter school shall be governed and managed by a governing body in a manner agreed to by the sponsor and the chartering authority as provided in the charter agreement.

(g) With regard to conflicts of interest, the governing body of a public charter school shall be subject to §§ 12-4-101 and 12-4-102.

(h) The meetings of the governing body of a public charter school shall be deemed public business and must be held in compliance with title 8, chapter

44, part 1.

(i) All teachers in a public charter school must have a current valid Tennessee teaching license or meet the minimum requirements for licensure as defined by the state board of education.

(j) A public charter school is subject to state audit procedures and audit requirements.

(k) A public charter school shall not charge tuition; provided, however, that tuition may be charged if the governing body of the charter school approves a transfer from another district to a public charter school in its district pursuant to § 49-6-3003.

(*l*) A public charter school shall be operated on a July 1 to June 30 fiscal year and the governing body shall adopt and operate under an annual budget for the fiscal year. The budget shall be prepared in the same format as that required by the state department of education for LEAs.

(m) A public charter school shall maintain its accounts and records in accordance with generally accepted accounting principles and in conformance with the uniform chart of accounts and accounting requirements prescribed by the comptroller of the treasury. The charter school shall prepare and publish an annual financial report that encompasses all funds. The annual financial report shall include the audited financial statements of the charter school; however, the chartering authority shall not require additional financial reports more frequently than required by this subsection (m) unless the chartering authority has reason or reasons to believe a public charter school is not in compliance with this chapter and states the reason or reasons in writing to the public charter school sponsor.

(n) A public charter school shall require any member of the governing body, employee, officer or other authorized person who receives funds, has access to funds, or has authority to make expenditures from funds, to give a surety bond in the form prescribed by § 8-19-101. The cost of the surety bond shall be paid by the charter school and shall be in an amount determined by the governing body.

(o) The governing body shall conduct at least one (1) annual board training course and shall provide documentation of such training to the chartering authority. The training course shall be certified by the Tennessee Charter Schools Association.

**49-13-127. Audits.**

(a)(1) The comptroller of the treasury is authorized to audit any books and records, including internal school activity and cafeteria funds, of any charter school created under this chapter and by virtue of the statutes of this state when the audit is deemed necessary or appropriate by the comptroller of the treasury. The comptroller of the treasury shall have the full cooperation of officials of the charter school in the performance of the audit or audits.

(2)(A) The comptroller of the treasury is authorized to audit all financial transactions of a CMO for any charter school created under this chapter and by virtue of the statutes of this state when the audit is deemed necessary or appropriate by the comptroller of the treasury. The comptroller of the treasury may appoint a certified public accountant or direct the department of audit to prepare the audit. The cost of the audit shall be paid by the CMO. The comptroller of the treasury shall have the full cooperation of officials of the CMO in the performance of the audit or

audits.

(B) All CMOs operating a charter school in this state shall file an annual financial report with the comptroller of the treasury detailing transactions between the CMO and any charter school operated by the CMO in this state. The report shall be:

(i) For the fiscal year ending June 30;

(ii) Filed in a form prescribed by the comptroller of the treasury; and

(iii) Filed by the CMO with the comptroller of the treasury no later than August 31 of each year.

(b)(1) The governing body of the charter school shall cause an annual audit to be made of the accounts and records, including internal school activity and cafeteria funds, of their school. The audits may be prepared by certified public accountants or by the department of audit.

(2) The audit shall be completed as soon as practical after June 30 of each year and a copy of the audit shall be furnished to the local board of education, the commissioner of education and the comptroller of the treasury.

(3) A CMO may comply with subdivision (b)(1) by submitting one (1) audit for all the charter schools operated in Tennessee by the CMO; provided, that such audit includes all information required under this section for each school.

(c) The comptroller of the treasury, through the department of audit, shall be responsible for ensuring that the audits are prepared in accordance with generally accepted auditing standards and determining if the audits meet minimum audit standards and regulations, which shall be prescribed by the comptroller of the treasury. No audit may be accepted as meeting the requirements of this section until the audit has been approved by the comptroller of the treasury. In the event the governing body fails or refuses to have the audit prepared, then the comptroller of the treasury may appoint a certified public accountant or direct the department of audit to prepare the audit. The cost of the audit shall be paid by the governing body.

**49-13-129. [Repealed.]**

**49-13-133. Student tracking system to track students who leave charter schools.**

The department of education shall develop a student tracking system to be used to track students who leave charter schools. The system shall show when and why the student left the charter school. The system may be modeled on the current tracking system used to determine high school dropout rates. A charter school shall report the data required by the tracking system to the LEA.

**49-13-136. Use of capital outlay funds — Contracting for goods and services — Underutilized and vacant properties.**

(a) Charter schools may use capital outlay funds for the following purposes:

(1) Purchase, lease-purchase, or lease of real property;

(2) Purchase, lease-purchase, or lease of school facilities;

(3) Construction or renovation of school facilities, including renovation, rehabilitation, or alteration of existing facilities to comply with applicable codes and health and safety standards necessary to use the property or facility, or to make the property or facility useful;

(4) Purchase, lease-purchase, or lease of any tangible or intangible property, including furniture, computers for a computer lab, science lab equipment, or other equipment if such purchase is necessary to use the property or facility, or to make the property or facility useful; and

(5) Pay debt service on any transaction authorized under this subsection (a).

(b) A public charter school may contract with the LEA or any third party for the provision of goods and services necessary to use the property or facility or to make the property or facility useful.

(c)(1) No later than October 1, in any LEA in which one (1) or more charter schools operates, the LEA shall catalog each year all underutilized and vacant properties owned or operated by the LEA and all underutilized and vacant properties within any educational facility owned or operated by the LEA. The LEA shall submit a comprehensive listing of all such properties to the department of education and the comptroller of the treasury. The department shall make an LEA's list available to any charter school operating in the LEA or to any sponsor seeking to establish a public charter school in the LEA.

(2) An LEA having underutilized and vacant properties shall make the underutilized and vacant properties available for use by charter schools operating in the LEA. Any lease agreement executed between a charter school and an LEA shall not reflect any outstanding bonded debt on the underutilized or vacant property, except as agreed upon to reflect any necessary costs associated with the occupation or remodeling of the facility.

(d) On or before October 11, 2011, the department shall adopt uniform guidelines to be used to determine what constitutes the irregular or intermittent use of property by an LEA. In any LEA in which one (1) or more charter schools operates, the LEA shall use such guidelines to catalog all underutilized and vacant properties owned or operated by the LEA.

(e) Nothing in this section is intended to frustrate an LEA's ability to plan for the use of underutilized or vacant properties owned or operated by the LEA. In any LEA in which one (1) or more charter schools operates, the LEA shall submit each year its plans for the use of underutilized or vacant properties owned or operated by the LEA in its annual report to the department of education and the comptroller of the treasury.

(f) At least sixty (60) days prior to the opening of the charter school, the charter sponsor shall submit the physical address of the school to the chartering authority and the department of education. If a charter school has not secured a physical location for its school at least sixty (60) days prior to opening, then the charter school must seek a delay in opening pursuant to § 49-13-121(a)(1).

### 49-13-142. Oversight and monitoring of charter schools authorized by state board upon appeal from denial of approval of a charter school application by certain LEAs.

(a) This section shall only apply to charter schools authorized by the state board of education upon appeal from a denial of approval of a charter school application by an LEA that contains at least one (1) priority school on the current or last preceding priority school list.

(b)(1) Except as provided in subdivision (b)(3), oversight and monitoring of charter schools authorized by the state board of education shall be performed

by the state board. As requested, the department of education shall assist the state board with general oversight of any charter school authorized by the state board.

(2) A charter school authorized by the state board shall continue to be overseen and monitored by the state board notwithstanding the subsequent removal of all schools in an LEA from the priority school list; provided, however, that in the case of a charter school authorized by the state board but renewed by the LEA in accordance with § 49-13-121(b), the LEA becomes the chartering authority and shall be responsible for oversight and monitoring of the charter school.

(3) A charter school authorized by the state board and the LEA in which the charter school is located may, within thirty (30) calendar days of such authorization, mutually agree that the charter school shall be overseen and monitored by the LEA. Any such agreement shall be filed with the state board in a manner prescribed by the state board. This subdivision (b)(3) shall also apply to charter schools renewed on appeal by the state board.

(c)(1) Except as provided in subdivision (c)(2), for accountability purposes under § 49-1-602, the performance of a charter school authorized by the state board of education shall not be attributable to the LEA.

(2) If a charter school authorized by the state board and the LEA in which the charter school is located mutually agree that the charter school shall be overseen and monitored by the LEA pursuant to subdivision (b)(2), then, for accountability purposes under § 49-1-602, the performance of the charter school shall be attributable to the LEA.

(d) The state board shall receive from the department of education or from the LEA in which the charter school is located, as appropriate, an amount equal to the per student state and local funds received by the department or the LEA in which the charter school is located for the students enrolled in a charter school authorized by the state board. The state board shall receive for the charter schools it authorizes all appropriate allocations of federal funds as do other LEAs under federal law or regulations, including, but not limited to, Title I, IDEA, and ESEA funds. All funding allocations and disbursements shall be made in accordance with procedures developed by the department. Funding for charter schools authorized by the state board shall be in accordance with §§ 49-13-112 and 49-13-118.

(e) The department shall determine the amount of the state BEP nonclassroom component for capital outlay to be distributed, according to § 49-13-112(c), to a charter school authorized by the state board. The LEA shall pay to the department one hundred percent (100%) of the required local match under the BEP for capital outlay as a nonclassroom component for distribution to the charter school.

(f) A charter school authorized by the state board may contract with the LEA in which the school operates for school support services or student support services, including, but not limited to, food services and transportation.

(g) The state board of education is the LEA for all charter schools it authorizes.

**49-15-108. Evaluation of programs.**

(a) Success of a program shall be measured by high school retention rates, high school completion rates, high school dropout rates, certification and

associate and baccalaureate degree completion, admission to four-year institutions, postgraduation employment in career or study-related fields, employer satisfaction of employees who participated in and graduated from the programs and other measures as the consortium finds appropriate. The consortium shall evaluate programs for success, shall establish best practices and lessons learned from successful programs and shall provide assistance to LEAs and postsecondary institutions seeking to implement a program by replicating or adapting a successful program designed elsewhere or through creation of a new program.

(b) [Deleted by 2018 amendment.]

**49-17-103. Creation of energy efficient schools council.**

(a)(1) There is created the energy efficient schools council. The council shall consist of twelve (12) members, including the commissioner of education, the commissioner of environment and conservation and the commissioner of economic and community development, or their designees, who shall serve as ex-officio members. The remaining members shall be appointed as follows:

(A) The governor shall appoint three (3) members as follows:

(i) One (1) member representing local governments, who shall serve an initial term of two (2) years;

(ii) One (1) member representing school systems, who shall serve an initial term of three (3) years; and

(iii) One (1) member representing the interests of the industries that provide natural gas and oil heating to school buildings;

(B) The speaker of the senate shall appoint three (3) members as follows:

(i) One (1) member who may be appointed from lists of qualified persons submitted by interested contractor groups, including, but not limited to, the board for licensing contractors, as provided for in title 62, chapter 6, who shall serve an initial term of two (2) years;

(ii) One (1) member representing local school systems in this state, who shall serve an initial term of three (3) years; and

(iii) One (1) member representing the Oak Ridge National Laboratory, who shall be an ex-officio, nonvoting member; and

(C) The speaker of the house of representatives shall appoint three (3) members as follows:

(i) One (1) member who may be appointed from lists of qualified persons submitted by interested architectural and engineering groups, including, but not limited to, the board of examiners for architects and engineers, as provided for in title 62, chapter 2;

(ii) One (1) member representing local governments in this state, who shall serve an initial term of three (3) years; and

(iii) One (1) member representing the Tennessee Valley authority, who shall be an ex-officio, nonvoting member.

(2) In making the appointments as provided in subdivisions (a)(1)(B)(i) and (C)(i), the appointing authorities shall consult with the interested contractor, architectural and engineering groups, including, but not limited to, the specific industries represented on the council to determine qualified persons to fill the positions.

(3) In making the appointments as provided in subdivision (a)(1), it is the legislative intent that the appointing authorities coordinate so that the membership of the council reflects the racial and social demographic makeup of this state.

(b) Each member shall serve a four-year term, unless otherwise provided in this chapter, and may be appointed for successive terms.

(c) The members of the council shall receive no compensation for their services; provided, that each member of the commission shall be eligible for reimbursement of expenses and mileage in accordance with the regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(d) The council shall elect one (1) member to serve as president. The president will serve for a term of one (1) year. The council shall also elect a vice president and secretary, as well as any other officers as it deems necessary to perform the business of the entity.

(e) The purposes of the council are to:

(1) Approve the design and technology guidelines as established by the technical advisory committee as provided in subsection (j);

(2) Award grants or loans to school systems, charter schools, and the achievement school district for qualifying capital outlay projects, including projects where a provider has warranted predetermined energy use objectives under the criteria established by the technical advisory committee and approved by the council;

(3) Cause to be conducted verification of energy efficiencies achieved using the methodologies established by the technical advisory committee as provided in subsection (j);

(4) To the extent feasible, establish and support ongoing energy management programs; and

(5) Establish compensation policies for members of the technical advisory committee, unless otherwise prohibited in this chapter.

(f) The council shall have the authority to appoint a full-time executive director, who shall serve at the pleasure of the council. Other staff shall be employed on recommendation of the executive director with the approval of the council. Any employees under this section shall not have preferred service status, but council employees shall be subject to personnel policies applicable to state employees generally, such as leave, compensation, classification and travel requests.

(g) The council has the authority to raise funds, including, but not limited to, corporate funding and federal funding, to promote its activities and support ongoing programs; provided, that the council does not have the authority to borrow money without the express, prior approval of the state funding board.

(h)(1) Except as prohibited by law, the council shall have all other power and authority necessary and convenient to effect the purposes of this chapter.

(2) All members of the council shall be subject to the conflict of interest provisions set forth in §§ 12-4-101 and 12-4-102.

(i) For administrative purposes, the energy efficient schools council shall be attached to the department of education for all administrative matters relating to receipts, disbursements, expense accounts, budget, audit and other related items. The autonomy of the council and its authority are not affected by this subsection (i), and neither the commissioner nor any other departmental official or employee shall have or exercise any administrative or supervisory

control over the council.

(j) The council shall establish a technical advisory committee.

(1) The purpose of the technical advisory committee is as follows:

(A) Establish energy efficient design and technology guidelines for all kindergarten through grade twelve (K-12) school facilities, including, but not limited to, lighting and HVAC guidelines, as well as establishing criteria whereby projects that have been warranted for a predetermined energy use shall be eligible;

(B) Establish methodology guidelines for post-audit verification of energy efficiencies achieved, if any, by qualifying capital outlay projects awarded by the council;

(C) Establish guidelines for commissioning verification controls to monitor on an ongoing basis the efficiency and effectiveness of qualifying capital outlay projects awarded by the council, including recommendations for utilization of energy managers where feasible; and

(D) Any additional duties required by the council in furtherance of the council's goals.

(2) The technical advisory committee shall be composed of seven (7) members as follows:

(A) The council members representing the interests of the Oak Ridge National Laboratory and the Tennessee Valley authority shall serve as ex-officio members and shall serve as co-chairs; and

(B) The council shall appoint the remaining five (5) members as follows:

(i) One (1) member shall have obtained a professional engineer certification, preferably with a background in mechanical engineering, but may be either active or retired;

(ii) Two (2) members shall have a background in sustainable building design, including, but not limited to, persons with LEED AP certification or background in Green Globes design and management;

(iii) One (1) member representing the Tennessee Valley Public Power Association; and

(iv) One (1) member shall have obtained a professional engineering certification and be experienced in performance-based energy accountable construction processes.

(3) The members appointed under subdivision (j)(2)(B) shall serve at the pleasure of the council, except for the ex-officio members who shall be appointed as provided in this chapter, and shall be provided access to staff resources serving the council.

(4) Non-ex-officio members shall be entitled to receive compensation determined by the council as provided in this chapter.

**49-17-104. Authority and powers of energy efficient schools council.**

(a) The council may award grants or loans to school systems, charter schools, or the achievement school district for qualifying capital outlay projects as provided in § 49-17-103 after reviewing and approving:

(1) An energy audit performed by a qualified professional that is either chosen by the council or approved by the council; or

(2) A cost-benefit analysis that shows that incorporating energy efficient technologies provides a reasonable payback period.

(b) The council has the authority to adopt a charter and bylaws and shall

promulgate rules, regulations and policies the council deems necessary to further the purposes and duties of the energy efficient schools council as defined in § 49-17-103 and this section. Any rules and regulations proposed by the council shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) It is the legislative intent that the council establish and operate its programs in a manner that makes funds available on an equitable basis for the benefit of LEAs of all sizes, characteristics, and geographical locations, charter schools, and the achievement school district.

**49-18-102. Chapter definitions.**

As used in this chapter:

(1) "Blended learning" means the combination of virtual learning with the integration of in-person teaching practices. Blended learning occurs in a school building and can be teacher led or involve the purchase or use of a technology;

(2) "Charter management organization" or "CMO" means a nonprofit entity that operates multiple charter schools at least one (1) of which is in Tennessee;

(3) "Charter school" means a Tennessee public charter school authorized to operate under chapter 13 of this title;

(4) "Course access catalog" means a listing of providers that have been approved by the state board of education and a listing of courses offered by approved providers, which are available to participating students;

(5) "Course access program" means the program created by this chapter;

(6) "Course provider" or "provider" means a nonprofit entity, LEA, charter school or charter management organization, institution of higher education, or state agency, that has been approved by the state board to offer individual courses in person or online and that has been included in the listing of providers in the course access catalog;

(7) "Department" means the department of education;

(8) "Eligible student" means any student who is enrolled in a Tennessee public school, including a charter school, in grades seven through twelve (7-12);

(9) "Governing body of a home LEA" means the local board of education, if the home LEA is an LEA, or the governing body of a charter school, if the home LEA is a charter school;

(10) "Home LEA" means the LEA or the charter school in which the student is enrolled full-time;

(11) "Host LEA" means an LEA or a charter school offering course access program courses through an approved course provider to eligible students;

(12) "Participating student" means any eligible student enrolled in a course access program course through a host LEA;

(13) "State board" means the state board of education; and

(14) "Virtual learning course" means a course in which a significant portion of instruction is delivered to students through the effective use of technology.

**49-18-103. Enrollment in course access program courses.**

(a) Beginning in the 2018-2019 school year, an eligible student may enroll in course access program courses.

(b)(1) A participating student may enroll in no more than two (2) course access program courses, unless the student's home LEA approves the student to take additional courses. A home LEA may reject a student's course enrollment request if the course enrollment for the student does not comply with the requirements of this chapter.

(2) For the first two (2) course access program courses in which a participating student enrolls, the student's home LEA shall pay the required tuition and fees to the host LEA.

(c) If the student's home LEA approves a student to take more than two (2) course access program courses then:

(1) The student shall be responsible for paying to the host LEA any required tuition and fees for all additional courses beyond the two (2) courses permitted under subsection (b); and

(2) The home LEA shall award credit to the student upon successful completion of the additional courses.

(d)(1) Home LEAs shall inform students and their parents or legal guardians of their right to appeal, in writing, to the governing body of the home LEA from any denial of course enrollment.

(2) The governing body of a home LEA shall develop a policy for hearing appeals from denials of course enrollments.

(3)(A) The Tennessee school boards association (TSBA) is encouraged to develop a model policy for adoption by local boards of education. If TSBA does not develop a model policy or the local board of education does not adopt the TSBA's model policy, then the local board of education shall submit its policy to the commissioner for approval.

(B) The governing body of a charter school that is a home LEA may adopt the TSBA model policy, if TSBA develops a model policy, or develop its own policy. If the governing body develops its own policy, it shall submit the policy to its chartering authority for approval.

(e) An eligible student may enroll in courses provided through the course access program only if the student meets all prerequisites for the course and the student is unable to enroll in a comparable course at the student's school because either a comparable course is not offered or a legitimate situation exists that prevents the student from enrolling in a comparable course. The state board may approve and adopt additional enrollment requirements.

**49-18-104. Authorization process for course providers.**

(a) The department shall establish guidelines and procedures for course providers to seek approval from the state board. All approved providers shall be included in the listing of providers in the course access catalog.

(b) The department shall post all approval guidelines and procedures and all approved providers on its website.

(c) Upon approval and inclusion in the listing of providers in the course access catalog, course providers may offer course access program courses for review and selection by a host LEA under the host LEA's local course review and approval process developed according to § 49-18-106. Courses that meet all requirements under § 49-18-106, as determined by the host LEA, may be submitted to the department for recommendation to the state board for its approval and inclusion in the course access course catalog.

(d) Host LEAs may partner with approved course providers to offer course

access program courses included in the course access catalog pursuant to § 49-18-106.

**49-18-105. Requirements of course providers.**

(a) To be approved as a course provider pursuant to this chapter, a provider shall:

(1) Follow the approval process of the department as established under § 49-18-104(a). No provider applicant shall act as a course provider until approved by the state board. All decisions of the state board concerning approval of provider applicants shall be final and not subject to appeal; however, a provider applicant that has been denied approval may submit a new application according to the department's approval process for the school year following the school year for which the application was denied;

(2) Be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, sex, creed, color, national origin, religion, ancestry, or need for special education services;

(3) Comply with all applicable state and federal student data privacy provisions, including, but not limited to, the Data Accessibility Transparency and Accountability Act, compiled in chapter 1, part 7 of this title; § 10-7-504; and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g);

(4) Provide an assurance that all online information and resources for online or blended learning courses are fully accessible for students of all abilities, including that:

(A) All courses submitted for approval are reviewed to ensure the courses meet legal accessibility standards;

(B) The provider has created and promulgated an accessibility online learning policy;

(C) The provider has an Americans with Disabilities Act (ADA) Section 504 coordinator, a grievance policy, and annual notifications;

(D) The provider has policies and activities to ensure its organizational and course websites meet accessibility requirements; and

(E) The provider has no examination or test where a specific score is required to participate in course access program courses beyond completion of prerequisite coursework or demonstrated mastery of prerequisite material;

(5) Demonstrate financial viability;

(6) Provide an assurance that the provider will electronically provide, in compliance with guidelines set by the department, a detailed student record of enrollment, performance, course completion, and course grading information to the participating student's home LEA;

(7) Comply with applicable virtual learning requirements established in chapter 16 of this title, if offering virtual learning courses;

(8) Comply with class size requirements established in § 49-1-104 and instructional and planning time requirements established by the state board; and

(9) Ensure each teacher of a course access program course is licensed to teach in this state and meets the qualifications to teach in compliance with the rules of the state board.

(b) The state board or department may exclude a course provider at any

time if the state board or department finds that a provider has failed to comply with this chapter, the rules of the state board, or the procedures of the department.

**49-18-106. Course review and approval process.**

(a) The department shall establish guidelines for the design and implementation of course access program courses.

(b) Host LEAs seeking to offer a course access program course shall establish a local course review and approval process.

(c) Host LEAs shall ensure each course approved:

(1) Is offered by an approved course provider included in the listing of providers in the course access catalog;

(2) Meets the instructional and academic rigor of a course that is provided in a traditional classroom setting;

(3) Is aligned to the applicable state academic standards of the state board;

(4) Is designed and implemented consistently with guidelines established by the department; and

(5) Is taught by a teacher who is properly licensed and endorsed in accordance with the rules of the state board.

(d) Host LEAs shall submit locally approved courses to the department with an assurance that the course has been reviewed in compliance with this section and with guidelines established by the department. The department shall submit locally approved courses to the state board for approval and inclusion in the course access catalog.

(e) A course included in the course access catalog shall be available to eligible students in any home LEA. The approving host LEA is responsible for establishing a partnership with the approved provider in order to offer the course to students.

(f)(1) The state board may exclude a course from the course access catalog at any time if a home LEA, the host LEA, or the department:

(A) Submits evidence to the state board that:

(i) The course is no longer adequately aligned with the approved state academic standards;

(ii) The course fails to meet the minimum requirements of the state board; or

(iii) The course no longer complies with the requirements of subdivisions (c)(1)-(5); and

(B) Requests, in writing, that the state board exclude the course.

(2) Before excluding a course under subdivision (f)(1), the state board shall make a finding that at least one (1) of subdivisions (f)(1)(A)(i)-(iii) has been met.

(3) The state board shall exclude a course from the course access catalog at any time that the course provider is excluded from the course access catalog under § 49-18-105(b).

(4) The state board may establish additional reasons and requirements for the exclusion of courses from the course access catalog.

**49-18-107. Reports.**

(a) Approved providers shall annually report to the department, in the manner directed by the department, the following information:

(1) Detailed student records of enrollment;

(2) Student performance, course completion rates, and course grading information for each subject area and grade level; and

(3) Additional information the department deems necessary.

(b) On an annual basis, a home LEA shall review the academic performance of the students enrolled in courses offered by a course provider to ensure that participating students are receiving instruction and curriculum that are aligned with the state standards, as determined by the state board, and that meet the requirements for graduation.

**49-18-108. [Repealed.]**

**49-18-109. Link to course access catalog on department's website — Report.**

(a) The department shall publish a link to the course access catalog in a prominent location on the department's website that includes:

(1) A list of approved course providers;

(2) A list of courses offered by approved providers available through the course access program;

(3) A detailed description of the courses; and

(4) All available student course completion and outcome data in a manner that protects student privacy in compliance with chapter 1, part 7 of this title, § 10-7-504, and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g).

(b) The department shall make publicly available each year the following information concerning the course access program:

(1) The number of students participating in the course access program and the total number of courses in which students are enrolled;

(2) The number of approved course providers;

(3) The number of approved courses and the number of students enrolled in each course;

(4) The number of courses available by subject and grade level;

(5) The number of students enrolled in courses by subject and grade level; and

(6) Student outcome data, including course completion rates and other approved measures.

**49-18-110. Notice given by home LEA — Credits — Rules and regulations.**

(a) Home LEAs shall:

(1) Provide written notice to students and parents on the availability of courses and the timeline for students to enroll; and

(2) Publish information and eligibility guidelines on the home LEA's website.

(b) Each home LEA shall establish policies and procedures to ensure that credits earned through the course provider shall appear on the participating student's official transcript and shall count towards the requirements of any approval of a high school diploma awarded by a home LEA.

(c) [Deleted by 2018 amendment.]

(d) Nothing in this chapter shall prevent an LEA from establishing its own

online program or supplemental course offerings or require an LEA to revise an existing program.

**49-18-111. [Repealed.]**

**49-50-804. Placement of automated external defibrillator (AED) devices in private schools.**

(a) All private schools, as defined in § 49-6-3001, are encouraged to place automated external defibrillator (AED) devices in schools, as required of public schools in § 49-2-122.

(b) If a private school places an AED in the school, then the private school shall comply with this section, § 49-2-122, and title 68, chapter 140, part 4, relative to training, establishment of a written plan, notification, and other requirements. Private schools shall comply with § 68-140-404 as to the maintenance and testing of AEDs to ensure that the devices are in optimal operating condition.

(c) Section 49-2-122(e) shall apply to private schools that place an AED in the school.

**49-50-1101. Student transcripts — Alterations — Penalties.**

(a)(1) A student transcript shall not be altered by any employee of an LEA, charter school, or virtual school unless the LEA, charter school, or virtual school has a written policy governing student transcript alterations. All transcript alterations shall be made in accordance with the LEA, charter school, or virtual school policy governing student transcript alterations.

(2) An LEA, charter school, or virtual school policy governing student transcript alterations must require any student transcript alteration to be supported by documentation providing an explanation of the reason for the transcript alteration and evidence that the student has earned the grade reflected in the altered transcript.

(b) An LEA, charter school, charter school authorizer, or virtual school shall not retaliate against an employee who brings unauthorized transcript alterations to the attention of school officials.

(c) Any person who intentionally violates this section may be subject to disciplinary action, including, but not limited to, revocation of a professional educator license or certification issued by the department of education, and may be subject to prosecution for falsification of educational or academic records under § 39-14-136.

**49-50-1301. [Repealed.]**

**49-50-1302. [Repealed.]**

**49-50-1303. [Repealed.]**

**49-50-1304. [Repealed.]**

**49-50-1305. [Repealed.]**

**49-50-1306. [Repealed.]**

**49-50-1307. [Repealed.]**

**49-50-1308. [Repealed.]**

**49-50-1701. Part definitions.**

As used in this part, "homeless child or youth" and "homeless student" have the same meaning as "homeless children and youths" in the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(2)).

**49-50-1702. LEAs' duties to homeless students — Technical assistance for homeless-student liaisons.**

(a) In accordance with the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.), LEAs must:

(1) Provide educational services and support to homeless students; and

(2) Designate a local liaison responsible for ensuring homeless students are identified and have a full and equal opportunity to succeed in school.

(b) The department of education shall provide technical assistance to homeless-student liaisons as needed.

**49-50-1703. Obtaining minor's birth certificate and state-issued identification card for homeless child.**

A minor may obtain a copy of the minor's birth certificate from the department of health and a state-issued identification card from the department of safety; provided, that the minor has been verified as a homeless child or youth by at least one (1) of the following:

(1) A director or designee of a governmental or nonprofit agency that receives public or private funding to provide services to homeless people;

(2) An LEA liaison for homeless children or youth designated pursuant to 42 U.S.C. § 11432(g)(1)(J)(ii), or a school social worker or counselor;

(3) The director of a federal TRIO program or Gaining Early Awareness and Readiness for Undergraduate Programs program, or the director's designee; or

(4) A financial aid administrator.