OFFICE *of* LEGAL SERVICES

2019 LEGISLATIVE DRAFTING GUIDE

OUR MISSION:

TO PROVIDE TO THE MEMBERS OF THE GENERAL ASSEMBLY LEGAL ANALYSIS AND ADVICE; AS WELL AS RESEARCH, DRAFTING, LIBRARY, AND CODIFICATION SERVICES; ALL IN A PROFESSIONAL, CONFIDENTIAL, AND NONPARTISAN MANNER.

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Upon request, OLS will provide an outside drafter with an electronic template to use when drafting.

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TABLE OF CONTENTS

INTRODUCTION 1

CHAPTER 1: Preparation 2

- (a) Filing Deadlines 2
- (b) Purpose 2
- (c) Research 2
- (d) Organization 3
- (e) Electronic Format 3
- (f) Correct Version 3

CHAPTER 2: Form and Style 4

- (a) Names of Departments 4
- (b) Capitalization 4
- (c) Numerals 6
- (d) Punctuation 8
- (e) Legal Action Verbs 15
- (f) Other Guidelines 17

CHAPTER 3: Plain Language 21

CHAPTER 4: Code Provisions 28

CHAPTER 5: General Bills 43

- (a) Introduction 43
- (b) Caption 43
- (c) Preamble 46
- (d) Enacting Clause 47
- (e) Body 47

CHAPTER 6: Amendments 52

CHAPTER 7: Review 56

APPENDICES 57

- (A) Sample Bill 57
- (B) Sample Amendment 58
- (C) Drafter's Checklist 59
- (D) Bill Formatting Instructions 60
- (E) Departments of the State of Tennessee 61
- (F) General Assembly Designation by Year 62

INTRODUCTION

DRAFTING GUIDE

This guide is intended to assist drafters in preparing bills and amendments for consideration by the Tennessee General Assembly. It is not intended to be a comprehensive treatise on the subject of legislative drafting.

Examples are provided throughout this guide to aid drafters. However, because of margin constraints, not all examples are in 11 point font or double spaced, as would be required in a draft. Additionally, there are also times when emphasis is added to examples by underlining, while underlining or bolding would not always be appropriate in a draft. In the appendices are font and word processing guidelines to follow when drafting legislation.

The information contained in this guide reflects the current practice of the Office of Legal Services as of October 1, 2018, and replaces all previous drafting guides. OLS's practices and procedures, including preferred form and style guidelines, are updated periodically.

DRAFTER'S CHECKLIST

There is a Drafter's Checklist in the appendices of this guide. Each item on the checklist is linked to the location in the guide where a more detailed discussion of the subject may be found. The checklist is intended to encourage thoroughness in drafting and reviewing legislation.

OFFICE OF LEGAL SERVICES

The Office of Legal Services (OLS) is created by Tenn. Code Ann. § 3-12-101. OLS attorneys draft legislation on a nonpartisan basis for members of the General Assembly. Additionally, OLS attorneys review proposed legislation as to form and style prior to its filing. While performing these duties, OLS attorneys maintain an attorney-client relationship with respect to communications between a member of the General Assembly and the OLS attorney.

TENNESSEE CODE COMMISSION

The Tennessee Code Commission (the commission) is responsible for the publication of the Tennessee Code Annotated (the code). The commission's role is limited by Tenn. Code Ann. § 1-1-108, which prohibits the commission from altering the sense, meaning, or effect of any act of the General Assembly, and requires the commission to copy the exact text of the public chapters. Although the commission is authorized to "correct manifest misspelling and typographical errors," the commission narrowly interprets this power. Every effort is made by OLS attorneys in their capacities as drafters, reviewers, and committee staff to correct any deficiencies in the legislation prior to its passage.

CHAPTER 1: PREPARATION

(a) FILING DEADLINES

(1) Drafters should be aware of the various filing deadlines for each house of the General Assembly. In preparation for filing, each bill is entered into the General Assembly's electronic database by OLS and assigned a barcode for proper identification by each clerk's office. OLS is required by Tenn. Code Ann. § 3-12-101(5) to "review all proposed legislation as to form and style, prior to its introduction." The weeks leading up to the bill filing deadlines are extremely busy. As filing deadlines approach, the time available for OLS review is limited. Drafters are strongly encouraged to work with OLS well in advance of the bill filing deadlines to allow adequate time to ensure a quality bill and to reduce the need for amendments after a bill is filed.

(2) Drafters may find, due to unavoidable circumstances, that the final draft of a bill is not ready by a filing deadline, and the drafter may need to use a bill that will require an amendment to incorporate the final draft. A bill that requires an amendment should include substantive content that is relevant to the anticipated amendment. If the drafter makes only cosmetic changes of no substance to the code in the body of a filed bill, then the question may arise as to whether the body provides notice of a bill's content sufficient to comply with the Constitution of Tennessee, Article II, § 17.

(b) PURPOSE

The first and most important step in preparing a bill is to gain a thorough understanding of what the legislation is intended to accomplish. Generally, the purpose of legislation is to direct behavior. The legislation will either prohibit, authorize, or require some form of behavior. In addition to these three directives, the legislation may set forth conditions under which a directive applies and consequences for failure to follow a directive. A drafter should strive to be as specific as possible when setting forth these directives, conditions, and consequences, as generality may lead to ambiguity and confusion.

(c) RESEARCH

(1) The second step is to conduct the research necessary to ensure a sound bill. This research should include a thorough review of relevant state and federal constitutional provisions to determine the constitutionality of the proposed bill. Additionally, research should include a review of relevant state and federal statutes, regulations, and case law. Tennessee courts presume that when the General Assembly enacts laws, it: (1) knows the "state of the law," including common law affecting the subject matter; (2) is aware of and has considered its own previous enactments; and (3) is aware of how the courts have interpreted enacted statutes. Therefore, a complete understanding of the legal context of any proposed bill is required before drafting.

(2) If a drafter prepares a bill prior to the annual update of the code, then the drafter will need to review the research and draft after the annual update. The code commission updates the code every year to include changes that were made in the prior legislative session. During codification, not only will new law be integrated into the code, but changes may be made that alter designations. Tenn. Code Ann. § 1-1-108(a) authorizes the code commission to "rearrange, regroup and renumber the titles, chapters, sections and parts of sections of the statutes, codes and code supplements." Updating any research and legislation drafted prior to the code commission's annual update is required to verify that the language in the bill accurately amends the current code.

(d) ORGANIZATION

The third step in preparing to draft a bill is to develop a plan for logically and systematically organizing and arranging the proposed content, such as an outline, time-line, chart, or other organizational aid. For legislation that is more complex, working with a thoughtfully conceived plan will promote clarity, consistency, and accuracy.

(e) ELECTRONIC FORMAT

(1) If possible, outside drafters should submit an electronic version of a bill to OLS in Microsoft Word. When electronic drafts are submitted in Microsoft Word, the process of entering the bill into the General Assembly's electronic database is expedited, and the potential for error when retyping or scanning a bill is eliminated.

(2) **Upon request, OLS will provide an outside drafter with an electronic template to use when drafting.** Requests for electronic templates should be sent to Sandra Whitmore, sandra.whitmore@capitol.tn.gov, Julie Smith, julie.smith@capitol.tn.gov, or Brian Heath, brian.heath@capitol.tn.gov.

(3) If the OLS template is not used, the following guidelines should be followed:

(A) The bill should only be in Arial 11 point font;

(B) The bill should be double spaced, except for the caption of the bill, which should be single spaced;

(C) Italic font should only be used if required for a subdivision designation;

(D) Bold font should not be used, except as otherwise provided in this guide;

(E) The "indent" and "tab" format in the example on page 60 should be followed;

(F) "Left justification" should be used;

(G) There should be no headers, footers, footnotes, margin changes, or other similar word processing features; and

(H) Two spaces should be placed between the section and the beginning of text, and between a subsection or subdivision designation and the beginning of text.

(4) For additional help, please review the SAMPLE BILL and the BILL FORMATTING INSTRUCTIONS located near the end of this guide.

(f) CORRECT VERSION

(1) When an OLS attorney and an outside drafter are both working on editing a bill, it is important to ensure that the most recent version is being edited; otherwise, edits and corrections previously made by OLS may be lost and not reflected in subsequent drafts, causing OLS to perform duplicate formatting and review. Any drafts of bills should be saved with an updated name reflecting the most recent version of the draft before transmittal.

(2) The OLS attorney may be able to provide an outside drafter with a final PDF version of the bill. However, PDF versions that contain barcodes are treated as jacketed bills or amendments ready to be filed with the applicable chief clerk. Therefore, PDF versions containing barcodes are only provided to outside drafters if the legislator or the legislator's staff give express permission.

CHAPTER 2: FORM AND STYLE

OLS has its own form and style guidelines unique to the Tennessee General Assembly and set out in this chapter. However, if this chapter does not address a question of form or style, then the drafter should consult The Redbook: A Manual on Legal Style, the preferred legal style manual of OLS. If there is a conflict between The Redbook and this Guide, the guidelines set out in this Guide should be followed.

(a) NAMES OF DEPARTMENTS

(1) If a department is defined in a definition section for a particular title, chapter, or part, then all subsequent references in the title, chapter, or part should be to "the department." The department's full name need not be written out, except when confusion would result from references to other departments. This rule should also be followed for "commissioner."

IF:	"Department" means the department of financial institutions;
THEN:	The department shall promulgate rules.
EXCEPTION:	The department of financial institutions, in consultation with the department of safety, shall prepare a report on this topic. The department of financial institutions shall submit the report by August 15.

(2) If a department is not defined in a definition section for a particular title, chapter, or part, then write out the name of the department the first time it appears in each section and use "the department" each subsequent time when in the same section. This rule should also be followed for "commissioner."

(3) Do not use "of the department" in a reference to a commissioner.

CORRECT:	the commissioner of financial institutions
INCORRECT:	the commissioner of the department of financial institutions

(4) There is a table in Appendix E of all department names.

(b) CAPITALIZATION

(1) Use lower case for federal, state, and local public entities, but capitalize private entities.

the environmental protection agency

the Audubon Society

the American Psychiatric Association

(2) Use lower case for titles of public officials.

the governor

the commissioner of revenue

the speaker of the house

(3) Capitalize the names of schools and proper names used in connection with places or programs in more than one country, state, county, or city.

the John S. Wilder development center

the University of Memphis

Pell grants

(4) Capitalize short titles of acts.

Comprehensive Alcohol and Drug Treatment Act

(5) Capitalize the names of countries, states, counties, and cities. However, do not capitalize the words "countries," "states," "counties," or "cities," when used to identify more than one country, state, county, or city.

CORRECT:	Hamilton County	**INCORRECT**:	Hamilton county
CORRECT:	Shelby and Davidson counties	**INCORRECT**:	Shelby and Davidson Counties

(6) Do not capitalize "internet," "email," "electronic mail," or "website."

(7) Capitalize criminal penalty classifications.

Class A misdemeanor
Group III violation

(c) NUMERALS

(1) Express numbers in text with words followed by numerals in parentheses. However, express numbers in dates and tables with numerals only.

CORRECT:	a period of one hundred forty-two (142) days	
CORRECT:	two-thirds (2/3) of the members	
CORRECT:	NOT MORE THAN	NOR LESS THAN
	25,500	26,000
	37,590	38,500

(2) The word "one," when used as a number and when used as an indefinite pronoun, is treated differently. The parenthetical numeral is never inserted after the pronoun.

one may obtain the information
one (1) member from each house

(3) Hyphenate numbers from twenty-one to ninety-nine.

(4) Do not insert a parenthetical numeral in hyphenated adjectives, unless the adjective is a fraction.

CORRECT:	a two-thirds (2/3) majority
CORRECT:	a nine-member commission
INCORRECT:	a nine (9)-member commission

(5) Write dates in the form of "month" then "day." When a month, day, and year are used as a date in a sentence, use a comma after the day and the year. See also (d)(7)(B).

CORRECT: July 1	**INCORRECT**: July 1st
CORRECT: On March 1, 2008, the procedures become effective.	**INCORRECT**: July First
	INCORRECT: first of July

(6) When drafting a range of years, do not shorten or abbreviate the year range.

CORRECT:	2017-2018
INCORRECT:	2017-18

(7) Write out time expressions and include a parenthetical translation at the end.

five o'clock p.m. (5:00 p.m.)

twelve o'clock (12:00) noon

(8) Use "first," "second," or "third," instead of "1st," "2nd," or "3rd."

(9) If a fraction can easily be expressed as a decimal, use a decimal.

USE DECIMAL:	one-tenth of one percent (0.1%)
USE FRACTION:	three-eighths of one percent (3/8 of 1%)

(10) When identifying amounts of money, use decimals for numbers less than one hundred dollars or if cents are indicated, but do not use decimals for numbers equal to one hundred dollars or more.

CORRECT:	**INCORRECT**:
ninety-nine dollars ($99.00)	ninety-nine dollars ($99)
one dollar and fifty cents ($1.50)	one hundred fifty dollars ($150.00)
one hundred fifty dollars ($150)	

(11) Use "years of age" when stating a person's age.

CORRECT:	twelve (12) years of age
INCORRECT:	twelve (12) years old
INCORRECT:	the age of twelve (12)

(d) PUNCTUATION

(1) Do not use a hyphen when use of a hyphen is optional.

CORRECT:	firefighter	**INCORRECT:**	fire-fighter
CORRECT:	service member	**INCORRECT:**	service-member

(2) Hyphenate "full-time" and "part-time" when the terms are used as an adjective or an adverb. Do not hyphenate "full time" or "part time" when the terms are used as a noun.

CORRECT:	all full-time candidates
CORRECT:	a candidate who works part-time
CORRECT:	This section does not apply to any candidate for office for which the service is part-time.

(3) Never hyphenate "vice president," "vice chair," or "attorney general."

(4) Hyphenate adjectives that incorporate numbers.

CORRECT:	any three-way intersection
INCORRECT:	any three way intersection

(5) Always hyphenate fractions.

CORRECT:	two-thirds (2/3) of the members
CORRECT:	one-fourth (1/4) of the time
CORRECT:	five-eighths (5/8) of the membership
CORRECT:	a two-thirds (2/3) majority

(6) Generally, do not hyphenate words beginning with "pre," "non," or "re."

CORRECT: predetermined, nonmalignant, reelected

(7) Comma Rules

(A) Commas in a Series

A comma should follow each element of a series containing three or more elements connected by a final conjunction. Although newspapers and other publications omit the last comma, in order to avoid confusion and ambiguity, the statutes should adhere to the closed-punctuation rule.

INCORRECT:

The information may be obtained from the committees overseeing education, commerce and insurance and health.

CORRECT:

The information may be obtained from the committees overseeing education, commerce and insurance, and health.

A drafter should think carefully before adding a comma to a series written by another drafter. In rare cases, such a sentence may be ambiguous and the addition of a comma could be a substantive change.

TWO PEOPLE ASSIGNED:

The commissioner shall assign to the case two managers, a program specialist and a family visitor.

FOUR PEOPLE ASSIGNED:

The commissioner shall assign to the case two managers, a program specialist, and a family visitor.

It may be clearer for the drafter to redraft the entire sentence rather than just inserting or removing a comma.

(B) Commas in Dates

In a full date that is written month-day-year, put a comma between the day and the year. Unless the date is being used as an adjective, place a comma after the year if the sentence continues. Do not use a comma with the style day-month-year or month-year.

INCORRECT:

Beginning July 1, 2017 the commission must be composed...

CORRECT:

Beginning July 1, 2017, the commission must be composed...

(C) Commas After Cross-Reference

There is no requirement that a cross-reference to a code provision be followed by a comma unless the cross-reference is in a phrase that requires a comma according to these guidelines or other grammar rules that do not conflict with these guidelines.

INCORRECT:

Any employer who violates § 50-2-202, is liable to the employee or employees affected in the amount of their unpaid wages.

CORRECT:

An employer who violates § 50-2-202 is liable to the employee or employees affected in the amount of their unpaid wages.

(8) Use "that," not preceded by a comma, to introduce a restrictive clause. Use "which," preceded by a comma, to introduce a nonrestrictive clause. A restrictive clause or phrase limits or identifies which of several possible things or ideas the clause or phrase refers; therefore, the restrictive clause is essential to the meaning of the sentence. A nonrestrictive clause or phrase provides additional or parenthetical information about the thing or idea to which the clause or phrase refers. A discussion of other commonly misused words can be found in chapter 3, subsection (d).

(9) The phrase "provided, however" should be preceded with a semi-colon and followed by a comma. However, the drafter should consult the discussion of provisos in chapter 3, subdivision (b)(10) prior to drafting one.

CORRECT: ; provided, however, that

CORRECT: ; provided further, however,

CORRECT: ; provided, that

(10) In order to avoid dense blocks of text and draft statutes that are relatively easy to read and understand, a drafter may find it helpful to subdivide a section, subsection, or subdivision into additional subsections or subdivisions as applicable or appropriate.

(A) There are two ways to subdivide, as a list of items or as items that are in some way related but not as a list.

LIST

(14) "Food" means:

(A) Articles used for food or drink for humans or other animals;

(B) Chewing gum; and

(C) Articles used for components of any article listed in subdivisions (14)(A) and (B);

NON-LIST

(a) (1) The administrator shall appoint a medical advisory committee comprised of practitioners in the medical community having experience in the treatment of workers' compensation injuries, representatives of the insurance industry, employer representatives, and employee representatives to assist the administrator in the development of treatment guidelines and advise the administrator on issues relating to medical care in the workers' compensation system.

(2) The medical director serves as a nonvoting ex-officio member of the committee.

(B) When subdividing as a list using subdivisions, separate the subdivisions by a semicolon, not a comma. Except in limited circumstances where context clearly indicates intent, it is necessary to use coordinating conjunctions to indicate the relationship of the items in the list.

LIST

(a) A person commits the offense of involuntary labor servitude who knowingly subjects, or attempts to subject, another person to forced labor or services by:

(1) Causing or threatening to cause serious bodily harm to the person;

(2) Abusing or threatening to abuse the law or legal process;

(3) Using blackmail or using or threatening to cause financial harm for the purpose of exercising financial control over the person;

(4) Facilitating or controlling the person's access to an addictive controlled substance; or

(5) Controlling the person's movements through threats or violence.

(C) When subdividing as a list within a sentence and not as separate subdivisions, use a colon to introduce the list of items, and use commas to separate items in the list unless commas are used within an item. If commas are used within an item, semicolons should be used to separate items within the list. This is a different punctuation rule than used for subdividing by using separate subdivisions. In contrast, commas and complete sentences may be used within an item in a list that is subdivided as subdivisions, as each item is a separate subdivision separated by a semicolon.

LIST OF ITEMS NOT IN SUBDIVISIONS

(c) (1) In addition to the periodic interest rate authorized under subsection (b), a licensee may also charge and collect a customary fee to defray the ordinary costs of opening, administering, and terminating a flex loan plan, including, but not limited to, costs associated with: underwriting and documenting the account; securing and maintaining account information; validating customer information; offering electronic and phone access to accounts; processing account transactions; responding to customer inquiries; inspection, verification, and protection of collateral and establishment, perfection, and release of the security interest; and all other services or activities conducted by the licensee under the flex loan plan.

ITEMS IN SUBDIVISIONS

(a) In addition to any other powers conferred upon the commissioner by law, the commissioner is authorized to require persons subject to this chapter to be licensed through a multi-state automated licensing system. Pursuant to this authority, the commissioner may:

(1) Promulgate rules that are reasonably necessary for participation in, transition to, or operation of a multi-state automated licensing system;

(2) Establish relationships or enter into agreements that are reasonably necessary for participation in, transition to, or operation of a multi-state automated licensing system. The agreements may include, but are not limited to, operating agreements, information sharing agreements, interstate cooperative agreements and technology licensing agreements;

(3) Require that applications for licensing under this chapter and renewals of such licenses be filed with a multi-state automated licensing system; and

(4) Take such further actions as are reasonably necessary to give effect to this section.

(D) When introducing a list of items, consider using an appositive to indicate to the reader the manner in which the items in the list are related, such as "all of the following" or "one of the following." An appositive is not required, but may be helpful. However, when using an appositive, make sure that the coordinating conjunctions and the meaning of the appositive are the same. Also see the discussion in chapter 3, subdivision (b)(4), which requires that a drafter use a parallel sentence structure when elements in a sentence are joined by coordinating conjunctions, which would include a list of items. While not required, for purposes of simplicity, place terms that are shared by each item in the list as the lead-in to the list.

(E) When subdividing as a non-list, subsections or subdivisions may be used with a period at the end of each subsection or subdivision. There is no need to use coordinating conjunctions when subdividing as a non-list. The drafter should structure subsections and subdivisions in logical order, such as an order in which the subsections or subdivisions may occur in time.

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(11) Avoid using parentheses, except when designating subsections, subdivisions, or numerals.

(12) Do not use brackets.

(13) When setting out language in a directory sentence, use quotations to identify the language; however, when setting out language below a directory clause, do not use quotations.

SETTING OUT LANGUAGE IN A DIRECTORY SENTENCE

Tennessee Code Annotated, Sections 12-4-405(5) and 12-4-406(a), are amended by deleting the language "contractors" wherever it appears and substituting instead "highway contractors".

SETTING OUT LANGUAGE BELOW A DIRECTORY CLAUSE

Tennessee Code Annotated, Section 12-4-401, is amended by deleting the section and substituting instead the following:

This part shall be known and may be cited as the "Prevailing Wage Act for State Highway Construction Projects."

(14) Use quotation marks when defining a word or phrase.

"Department" means the department of education.

(15) Place periods and commas inside quotation marks and place colons and semicolons outside quotation marks, unless the language is amendatory language that is being repeated for purposes of identifying language to be deleted. In such a case, the only punctuation that would be placed inside the quotation marks would be punctuation in the language of the code provision being amended.

NO PUNCTUATION WITHIN THE TEXT BEING DELETED

Tennessee Code Annotated, Section 71-5-110(c)(1), is amended by deleting the language "thirty (30)" and substituting the language "fifteen (15)".

PUNCTUATION WITHIN THE TEXT BEING DELETED

Tennessee Code Annotated, Section 55-4-236(a), is amended by deleting the language "the Congressional Medal of Honor," and "the Air Medal,".

(e) LEGAL ACTION VERBS

In stating the legislative objective, the drafter must pay particular attention to the verb forms the drafter uses to establish the duty, right, power, entitlement, or disentitlement. There has been much change in how legal action verbs have been used over the years. The trend has been to discourage the routine use of "shall" and substitute words that have a more specific meaning attached to them. Because there has been change, the drafter will find that much of the existing law will not reflect the modern trend away from the routine use of "shall." Therefore, when amending existing law, the drafter should exercise discretion on the appropriate action verb to use, keeping in mind the multiple considerations when updating archaic and outdated language as discussed in subsection (e) of chapter 3. The following chart may be helpful when determining the drafter's needs.

Shall	Has a duty to, Has to
Must	Is required to (to achieve an end)
Shall Not	Is prohibited
May	Is permitted to, Has a right to, Has discretion to, Is authorized to [+ *verb*]
Is Entitled To	Has a right to [+ *noun*]
Will	Expresses a policy or a future contingency in the manner of normal English
Can	Is legally or physically capable
Cannot	Is legally or physically incapable

(1) The goal of the drafter should be to reduce the use of "shall" by using it only to impose a duty on a person or body of people or to mandate action by a person or body of people. That is, the drafter should only use "shall" to say a person or a body of people "has a duty to" do something or "has to" do something.

CORRECT:	The commissioner shall adopt rules.
INCORRECT:	The commissioner must adopt rules.

(2) "Shall" should not be used in sentences that require an action to achieve an end. "Must" rather than "shall" is the proper action verb to use when the action is only required to achieve an end.

CORRECT:	To be eligible for parole, a prisoner must demonstrate...
INCORRECT:	To be eligible for parole, a prisoner shall demonstrate...

(3) Avoid using "shall" to confer a right. If "shall be" can be replaced with "is" or "are," make the replacement.

CORRECT:	The director is entitled to compensation of twelve thousand dollars ($12,000) a year.
CORRECT:	Compensation for the director is twelve thousand dollars ($12,000) a year.
INCORRECT:	The director shall receive compensation of twelve thousand dollars ($12,000) a year.

(4) Do not use "shall" to state what the law is or how it applies in the future. A common problem in legislative drafting is that the word "shall" is often used to indicate a legal result rather than a command. This is known as a "false imperative."

CORRECT:	Nine (9) members shall be appointed to the board.
INCORRECT:	The board shall be composed of nine (9) members as follows:

(5) When using "shall" to mandate an action in which the outcome is in the discretion of the actor, include alternative actions the actor may take.

CORRECT:	The commissioner shall approve or deny an application within thirty (30) days.
INCORRECT:	The commissioner shall approve an application within thirty (30) days.

(6) Use "may" to express permission to do something or preserve power to do something. "May" authorizes or permits rather than commands.

(7) If the drafter finds that "shall" or "may" could both be used, redraft the sentence to avoid the use of either legal action verb.

CORRECT:	The appointee qualifies for office by taking the official oath and filing the required bond.
INCORRECT:	The appointee shall qualify for office by taking the official oath and filing the required bond.
INCORRECT:	The appointee may qualify for office by taking the official oath and filing the required bond.

(8) The drafter may find the following step-by-step analysis helpful when determining the legal action verb to use.

(1) Figure out whether the subject of your sentence is a person or a thing.

(2) Figure out whether there is or should be a duty or only a condition.

- Things can't have duties, only people can.
- A duty is something that a court will enforce, for instance, by applying a penalty or entering an injunction.
- A condition is simply a prerequisite for a consequence to apply. A court will not apply a penalty or enter an injunction to require a person or thing to meet the condition, but may determine that a consequence does or doesn't apply.

(3) If the subject is a person and:

- There is a duty, use "shall".
- There is not a duty, use "must" or another present-tense verb.

(4) If the subject is a thing:

- First, figure out whether your sentence is active or passive voice (try to use active voice).
- In the active voice, "shall" is not an option because a thing can't have a duty. Use "must" or another present-tense verb.

(f) OTHER GUIDELINES

(1) Delete "of Tennessee" or "of the state of Tennessee" from the end of official or department titles.

CORRECT:	department of financial institutions
INCORRECT:	department of financial institutions of Tennessee
CORRECT:	secretary of state
INCORRECT:	secretary of state of Tennessee

However, if there is a federal department with the same name as a state department, then the federal or state department designations may be used to avoid ambiguity.

The state department of transportation shall deliver the documentation to the federal department of transportation within five (5) days.

(2) Do not include the words "Tennessee" or "of this state" when referencing a county within Tennessee, as the General Assembly does not enact legislation affecting any other state.

CORRECT: Hamilton County	**INCORRECT**: Hamilton County, Tennessee
CORRECT: Nashville	**INCORRECT**: Nashville, Tennessee

(3) Use "United States" rather than "United States of America."

(4) Use "general assembly" rather than "legislature" and "house of representatives" rather than "house." Use the complete name of any standing committee. For example, use "senate commerce and labor committee" rather than "senate commerce committee."

(5) The words "such" or "said" should not be used as a substitute for the words "the," "that," "it," "those," or "them" or similar words. The use of "such" or "said" as a substitute for these words can cause confusion. However, use "such" to express "for example" or "of that kind." Use of the word "said" should be avoided altogether—except as a verb.

INCORRECT:	A person who files a false report or fails to file such report commits a misdemeanor.
CORRECT:	A document, such as a birth certificate, must be signed.

(6) Do not use "any," "each," "all," or "some" if "a," "an," or "the" can be used with the same result.

INCORRECT:	Any document found to be...
CORRECT:	A document found to be…
INCORRECT:	Each person who...
CORRECT:	A person who...

(7) Do not use "sunset" as a verb. Appropriate alternatives include "terminate," "expire," or "is repealed."

CORRECT:	This section is repealed on June 30, 2009.
INCORRECT:	This section shall sunset June 30, 2009.

(8) Generally, singular and plural designations are unnecessary, as Tenn. Code Ann. § 1-3-104(c) states: "singular includes the plural and the plural the singular, except when the contrary intention is manifest." However, if a drafter needs to indicate both singular and plural, the drafter should not place the "s" in parentheses. Instead, the drafter should write out the term in singular and plural.

CORRECT:	the subcommittee or subcommittees
INCORRECT:	the subcommittee(s)

(9) The plural of "district attorney general" is "district attorneys general".

(10) "Website" should be one word, and "email" should not be hyphenated. The drafter should also consult subdivision (b)(6) of this chapter for capitalization rules of these words.

(11) There has been confusion over whether to spell "healthcare" as one or two words. The modern rule is that "health care" should be used when using the term as a noun and "healthcare" should be used when the term is being used as an adjective.

ADJECTIVE:	the healthcare practitioner
NOUN:	as it pertains to health care

However, the drafter should be aware of the different meanings associated with "healthcare" and "health care," as well as the various ways the words are used within the statutory text being amended and make the determination of whether the modern rule should be followed according to the legal context in which the term is being used. It is ultimately up to the drafter to decide which term should be used. If the drafter decides not to follow the modern rule, the drafter should indicate on the draft to identify to subsequent reviewers that the drafter reviewed the legal context and determined that the term used was most appropriate.

(12) The drafter should strive to use gender-neutral language. Such terms as "he" or "she" or "him" or "her" should not be used, except in those rare instances when the topic is gender-specific. An example may be a bill dealing with ovarian cancer. However, when changing language to make it gender-neutral, the drafter should not sacrifice clarity or intent. The drafter should make every effort to follow accepted principles of grammar, punctuation, and usage and any applicable rules of statutory construction.

(A) If the drafter adds a new provision to existing law, the drafter should check the portions not being amended to assure that any gender-neutral language is consistent or compatible with those unamended portions. The underlying question the drafter should consider is whether the changes to gender-neutral language would create an ambiguity or conflict in the remaining portions of the statute that are not being amended.

(B) Use of nouns that are gender-specific should be avoided in favor of the use of substitutes that are generally accepted by recognized authorities on correct English usage.

(C) Avoid gender-specific pronouns. There are a number of different alternatives a drafter may use. The drafter should evaluate each alternative and select one that assures clarity and avoids ambiguity.

(i) Repeat the subject of the sentence or the word that would have been the pronoun's antecedent reference. In some instances the possessive noun may be repeated.

INCORRECT:	The applicant shall sign his name.
CORRECT:	The applicant shall sign the applicant's name.

(ii) Substitute a noun for the pronoun.

INCORRECT:	If he submits an application...
CORRECT:	If a person submits an application...

(iii) Omit the pronoun, or the phrase that would include the pronoun, if the pronoun or phrase is not essential.

INCORRECT:	The director shall hold his office until a successor is appointed.
CORRECT:	The director holds office until a successor is appointed.

(iv) Use an article such as "a," "an," "the," or "that" instead of a pronoun.

INCORRECT:	An applicant shall include with his application a copy of his permit.
CORRECT:	An applicant shall include with the application a copy of the applicant's permit.

(v) Restructure or rewrite the sentence to avoid the need for a pronoun.

CHAPTER 3: PLAIN LANGUAGE

(a) SIMPLICITY

(1) Select short and familiar words and phrases to best express an intended meaning according to common and approved usage. Use ordinary English and avoid "legalese." Also, avoid using a complicated word when a simple word would convey the same concept.

(2) Do not include material that has no legal effect in a bill. For example, avoid "aforesaid," "whatsoever," or similar words that only provide unnecessary emphasis.

(3) Avoid superfluous and verbose expressions. The following is a list of terms to avoid and the preferred substitutes for each:

Superfluous or Verbose	Preferred
absolutely null and void and of no effect	void
adequate number of	sufficient
by means of	by
by virtue of	by, under
during such time as	while
during the course of	during
each and every	each
for a period of	for
for the purpose of	to
give consideration to	consider
give recognition to	recognize
in accordance with	under
is applicable	applies
is directed to	shall
is empowered to	may
is entitled to	may
is required to	shall
it is the duty	shall
make application	apply
make payment	pay
make provision for	provide
shall be construed to mean	means
state of Tennessee	this state
under the provisions of	under
until such time as	until

(4) When referring to a subsection or subdivision, do not use the language "of this section" or "of this subsection."

CORRECT: this subdivision (a)(2) **CORRECT**: this subsection (b)	**INCORRECT**: subdivision (2) of this subsection (a) **INCORRECT**: subsection (b) of this section

(5) Omit the phrase "the provisions of" when the phrase is superfluous. However, use "the provisions of" when it adds meaning to the sentence.

INCORRECT: Notwithstanding the provisions of subdivision (a)(2) to the contrary, a precinct boundary established, consolidated, or changed pursuant to subdivision (a)(2) may coincide with a line which divides a census block if...	**CORRECT**: Notwithstanding subdivision (a)(2) to the contrary, a precinct boundary established, consolidated, or changed pursuant to subdivision (a)(2) may coincide with a line which divides a census block if...

(b) CLARITY

(1) Avoid wide gaps between the subject, the verb, and the object.

CORRECT: Any injured party may file a claim with the claims commission. A claim must not exceed five hundred dollars ($500) for negligent misconduct, nor one thousand dollars ($1,000) for intentional misconduct.	**INCORRECT**: A claim, which in the case of negligent misconduct must not exceed five hundred dollars ($500), and in the case of intentional misconduct must not exceed one thousand dollars ($1,000), may be filed with the claims commission by any injured party.

(2) Do not use "and/or," as the conjunctions have very different meanings and may cause confusion when used together. Instead, use "or" when one or more is sufficient, and use "and" when all are required. However, this does not prohibit the use of connectors when used at the end of subdivisions.

> (12) Partnership agreement means any agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business. A written partnership agreement:
>
> (A) May provide that a person shall be admitted as a limited partner of a limited partnership:
>
> (i) If the person executes the partnership agreement; or
>
> (ii) Without execution, if the person complies with other conditions for becoming a limited partner; and
>
> (B) Must not be unenforceable by reason of its not having been signed by a person being admitted as a limited partner or becoming an assignee as provided in subdivision (12)(A);

(3) If a concept can be expressed either positively or negatively, then the drafter should express it positively.

POSITIVE:	**NEGATIVE:**
The commission must approve a renewal application if the application is complete.	The commission must not reject a renewal application if the application is complete.

(4) Use grammatically parallel sentence structure when elements in a series are joined by coordinating conjunctions.

CORRECT: A person may obtain a copy by mail or by appearing personally.	**INCORRECT:** A copy may be obtained by mail or if a person appears personally.

(5) Although the phrase "notwithstanding any law to the contrary" has frequently been used in the past, avoid using it. The term "law" in the phrase lacks clarity, and the reader will likely be unable to determine the specific code provision referenced. If "notwithstanding" is used, then it should be followed by a specific code provision, such as "notwithstanding § 56-5-401."

(6) Whenever possible, be specific when cross-referencing. Avoid the use of "herein," "hereinafter," "above," "below," or similar words. For example, if "herein" is used, it is unclear if the reference is to the subdivision, subsection, or section. These words fail to precisely identify where the cross-referenced provision is located. Instead, use the exact citation to cross-reference a separate provision.

CORRECT: as used in this section	**INCORRECT**: as used herein

(7) Use the active voice. Active voice typically requires fewer words to express an idea, and when used, it is easier for a reader to discern the subject and verb of the sentence.

ACTIVE:	**PASSIVE**:
The department of commerce and insurance shall promulgate rules consistent with this section.	Rules must be promulgated consistent with this section.

(8) If possible, use finite verbs rather than their corresponding participles, infinitives, gerunds, or other noun or adjective forms.

CORRECT: consider	**INCORRECT**: given consideration by
CORRECT: applies	**INCORRECT**: is applicable to

(9) Do not use "etc.," "i.e.," "e.g.," or "viz.," as the abbreviations are considered shorthand and lack a clear and distinct meaning.

(10) Avoid Provisos

The purpose of a proviso is to exempt a case from a general statutory declaration and to provide for it specially. It should be confined exclusively to that function. Provisos are all too frequently used indiscriminately, being freely tacked on to sentences and sections, introduced by such phrases as "provided, that," or "provided, however, that," or "provided, further, that." Many times, the material added may be an additional declaration, a new idea not necessarily connected with the preceding clause. This misuse of a proviso creates ambiguity.

Therefore, provisos should best be avoided altogether. If an exception, a limitation, or a qualification is called for, the drafter should introduce it with the proper language, such as "except that," or "but," or "however." Sometimes, the exception may be more conveniently stated as a condition at or near the beginning of the sentence. Additionally, if there are many conditions or exceptions, they may be placed in a list at the end of the sentence. Finally, it is often better to simply start a new sentence.

INCORRECT: The governor may request a second list of nominees; provided, however, no nominees from the original list of nominees may appear on the second list of nominees.

CORRECT: The governor may request a second list of nominees. No nominees from the original list of nominees may appear on the second list of nominees

Does the proviso in the incorrect example mean that no list may contain original nominees, or does the proviso mean that the governor is unable to request a general list if the second list contains nominees from the original list?

(c) CONSISTENCY

(1) Terms should be used consistently throughout the legislation. Do not use the same word or phrase to convey different meanings, and do not use a word and its synonym.

CORRECT:

The defendant shall be given time to consider the allegations and an opportunity to be heard by the court.

INCORRECT:

The defendant shall be given time to consider the allegations, and the accused shall be given an opportunity to be heard in court.

(2) If a section begins using a singular subject or noun, then the singular should be used throughout the section. If a section begins using a plural subject or noun, then the plural should be used throughout the section.

(3) Verbs and their subjects must agree in number.

(4) A pronoun must have a clear antecedent and must agree with its antecedent in number.

(d) COMMONLY MISUSED WORDS AND PHRASES

Affect

As a verb, affect means to influence or to have an effect on.
As a noun, affect has no modern meaning other than as a psychological term.
As an adjective, affected means artificially or falsely assumed.

Effect

As a verb, effect means to cause to come into being, or to bring about a result.
As a noun, effect means a result.

Capital

a capital city, money or assets, or related to physical improvements

Capitol

the statehouse

Ensure

to make certain or to guarantee

Insure

to procure insurance for someone or for something

Farther

applies to actual distance

Further

additional or more advanced

Less

denotes amount or quantity among things that are measured

Fewer

denotes number among things that are counted

Means

indicates that the following is identical or synonymous

Includes

indicates that the following is part of the first, but the following is not exhaustive

Principal

As a noun, principal means a leader, chief, or head; a capital sum placed at interest, due as a debt, or used as a fund; or the main body of a decedent's estate.
As an adjective, principal means chief or main.

Principle

As a noun, principle means a fundamental truth or a governing law of conduct. Principle should never be used as an adjective

Among

used for more than two

Between

used for two

Bimonthly

Avoid. Could be construed to mean twice a month or every other month.

Biweekly

Avoid. Could be construed to mean twice a week or every other week.

That

Not preceded by a comma. Used to introduce a restrictive clause. A restrictive clause or phrase limits or identifies which of several possible things or ideas the clause or phrase refers; therefore, the restrictive clause is essential to the meaning of the sentence.[1]

Which

Preceded by a comma. Used to introduce a nonrestrictive clause. A nonrestrictive clause or phrase provides additional or parenthetical information about the thing or idea to which the clause or phrase refers.

[1] **For more information on punctuation when using "that" and "which," see subdivision (d)(8) in Chapter 2.**

(e) ARCHAIC AND OUTDATED LANGUAGE

(1) There are terms that were once used by drafters that may now be considered outdated and possibly offensive. The following is a list of terms that should give a drafter pause prior to usage:

insane	defective person	retarded
crippled	feeble-minded	retardation
idiot	handicapped person	handicap
senile	mental defect	physical defect

(2) The form and style guidelines contained in this guide should always be followed when drafting new code provisions, including avoiding the use of outdated language. However, when amending current law, updating outdated terms may not be the best approach due to considerations such as prior judicial constraints, model language, or the complexity of the language.

CHAPTER 4: CODE PROVISIONS

(a) THE CODE'S DESIGNATION SYSTEM

(1) The basic code designation system is as follows:

§ 3-12-112 =	3 -	12 -	1	12
	Title	Chapter	Part	Section

(2) Sections Contain Provisions of Law

(A) A section is often divided into subsections and subdivisions. Sections are always grammatically complete without any aid from a prior or subsequent section. Within each section, there is a designation system of subsections and subdivisions. The following uniform designation system is the proper order for subsection and subdivision designations:

(a)(1)(A)(i)(*a*)(*1*)(*A*)(*i*)

(B) The first level "(a)" is referred to as a subsection; all subsequent levels are referred to as subdivisions. There are no subchapters, subparts, paragraphs, subparagraphs, items, or subitems in the code. The first group of designations of (a) - (i) are in regular font, while the second group of designations of (a) - (i) are in italics.

(3) Generally, the substance within a sub-designation should relate to the higher designation. That is, the substance contained within a designation would have some logical connection to the designation above it. For example, the offense of "aggravated assault" is in a section located within the part labeled "assaultive offenses," that is located within the chapter labeled "offenses against persons," that is located within the "criminal offenses" title of the code. This organizational structure applies not only to sections, parts, chapters, and titles, but may also be used to organize designations within a section.

(4) There should be at least two parts in order to refer to a part. If there is only one part, the drafter should use only a chapter. Similarly, there should be at least two subsections or subdivisions in order to use the designated subsection or subdivision. For example, if there is an "(a)," there must be a "(b)"; there should never be an "(a)" without a "(b)." If there is only one subsection in a section but several subdivisions, such as in a definition section, then the subsection designation does not need to be written out, and the first designation is subdivision (1). The following is an example:

1-3-105. As used in this code:

(1) "Age of majority" means eighteen (18) years of age or older;

(2) "Code" includes the Tennessee Code and all amendments and revisions to the code and all additions and supplements to the code;

(3) "Collector" includes any person entrusted with the collection of public revenue; . . .

(5) If subsections and subdivisions are used, avoid undesignated language. All language should be attached to the appropriate designation. Failure to attach text to a designation makes referring to the text or citing to it difficult.

INCORRECT:

(a) The claims commission may make an emergency award to the claimant pending a final decision in the case if it appears to the claims commission, prior to any hearing on a claim, that:

(1) The claim is one with respect to which an award will probably be made; and

(2) Undue hardship will result to the claimant if immediate payment is not made.

The amount of the emergency award must not exceed five hundred dollars ($500).

(b) The amount of an emergency award must be deducted from any final award made to the claimant.

CORRECT:

(a) The claims commission may make an emergency award to the claimant pending a final decision in the case if it appears to the claims commission, prior to any hearing on a claim, that:

(1) The claim is one with respect to which an award will probably be made; and

(2) Undue hardship will result to the claimant if immediate payment is not made.

(b) The amount of the emergency award must not exceed five hundred dollars ($500).

(c) The amount of an emergency award must be deducted from any final award made to the claimant.

(6) Legislation should not be drafted to amend the language of section headings, as the headings are not considered law. Instead, if a drafter would like to request in the legislation that the commission insert certain headings, then the drafter should use the language found in the "correct example" box.

CODIFIED VERSION OF THE STATUTE:

3-2-101. Engrossment and enrollment.

All bills and resolutions of the general assembly shall be engrossed or enrolled in type, or on a typewriter, by the engrossing clerks, and a copy made at the time and furnished to the secretary of state.

INCORRECT:

SECTION __. Tennessee Code Annotated, Section 3-2-101, is amended by deleting the language "Engrossment and enrollment" and substituting instead the language "Engrossment or enrollment".

CORRECT:

SECTION __. The headings to sections, chapters, and parts in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

(b) REFERENCING

(1) A citation to the Constitution of Tennessee:

Constitution of Tennessee, Article XI, § 5

(2) A citation to the United States Constitution:

United States Constitution, Article I, § 8

(3) If citing to the code within language that will be codified, "Tennessee Code Annotated," or a similar phrase, should not be used. However, if citing to the code within language that will not be codified, such as in a preamble, severability clause, or effective date section, "Tennessee Code Annotated," or a similar phrase identifying the code should be used.

CODIFIED TEXT:	§ 8-36-102
UNCODIFIED TEXT:	as provided in Tennessee Code Annotated, Section 8-36-102

(4) A citation to a Tennessee statute or statutes that appears at the beginning of a sentence within text that will be codified should be as follows:

Section 8-36-108
Sections 8-36-108, 8-36-109, and 8-36-114
Section 8-36-108, § 8-36-109, or § 8-36-114

(5) A citation to a Tennessee statute or statutes that does not appear at the beginning of a sentence within text that will be codified should be as follows:

§ 8-36-108
§§ 8-36-108, 8-36-109, and 8-36-114
§ 8-36-108, § 8-36-109, or § 8-36-114

(6) The drafter should use pinpoint citations to subsections and subdivisions when cross-referencing:

as described in § 32-4-101(a)

However, definitions are kept in alphabetical order. When a definition section is amended, the subdivision designation may change. Therefore, a drafter should not use a pinpoint citation when cross-referencing a definition.

CORRECT:	person, as defined in § 32-1-101
INCORRECT:	person, as defined in § 32-1-101(1)

An exception to the "no pinpoint citation rule for definitions" occurs when a term has multiple definitions within a subdivision.

the definition of "business" in § 67-6-102(8)(B)
"Business" has several definitions in § 67-6-102(8).

(7)

(A) If there is a need to cross-reference a provision that does not share any of the same designations as the provision being drafted, it should appear in full form. Except for the exception set out in subdivision (b)(6) of this chapter, the drafter should use the citation that most accurately pinpoints the provision being referenced. There is a chart in subdivision (b)(7)(E) of this chapter that contains additional information regarding the proper citation form to be used.

(B) Cross-Reference is Within the Provision Being Drafted

(i) If there is a need to reference a specific title, chapter, part, or section being drafted, the drafter should not use "title x," "chapter x," "part x," or "section x"; instead, the drafter should use "this title," "this chapter," "this part," or "this section."

(ii) If there are multiple parts within a chapter, the drafter should be mindful of the provisions in which the drafter intends to cross-reference. If the drafter intends to direct the reader to the provisions contained throughout various parts in the chapter, the drafter should cross-reference the chapter. However, if the drafter intends to direct the reader to a specific part within a chapter, the chapter cross-reference should not be used; instead, the drafter should use "part x of this chapter."

(iii) If there is a need to reference a subsection or subdivision within the subsection or subdivision being drafted, the drafter should not use "this subsection," or "this subdivision"; instead, the drafter should use "this subsection x," or "this subdivision x." Additionally, the entire subdivision reference should be included, and not just the last designation. However, if there is only one subsection but several subdivisions, as seen in subdivision (a)(4) of this chapter, only the subdivision designation would be included, as there would be no subsection.

INCORRECT: § 5-6-104

(a) Reimbursements must be made in accordance with this subdivision.

INCORRECT: § 5-6-104

(a) Reimbursements must be made in accordance with this subdivision (a)(1).

CORRECT: §5-6-104

(b) Reimbursements must be made in accordance with this subdivision (1).

(C) If there is a need to reference another chapter or part within the same title, the drafter should use "of this title" or "of this chapter." If there is a need to reference another subsection or subdivision within the same section, the drafter should not use "of this section."

CORRECT: Reimbursements paid from the fund pursuant to subdivision (b)(3) are benefits for the purpose of this chapter.

CORRECT: Reimbursements paid from the fund pursuant to part 5 of this chapter are benefits for the purpose of this chapter.

INCORRECT: Reimbursements paid from the fund pursuant to subdivision (b)(3) of this section are benefits for the purpose of this chapter.

(D) If the drafter is cross referencing a subdivision that is contained in a section with multiple subdivision tiers, the drafter should be mindful of the subdivision tier in which the drafter intends to direct the reader. For example, the drafter may intend to direct the reader to all provisions in subdivision (a)(1), or the drafter may intend to direct the reader to only the provisions in subdivision (a)(1)(A) or subdivision (a)(1)(B). The drafter should use the citation that most accurately pinpoints the provision the drafter intends to cross-reference.

(E) The following is a chart that the drafter may find helpful when determining the correct citation form to be used for the cross-reference:

Cross Reference	**Provision Being Drafted and Cross-Referenced Are Not Within Any of the Same Designations**	**Cross Reference is Within the Provision Being Drafted**	**Cross-Reference and Provision Being Drafted Share a Higher Designation**
Title	title 1	this title	N/A (note—do not use "of this code")
Chapter	title 1, chapter 2	this chapter	chapter 2 of this title
Part	title 1, chapter 2, part 3	this part	part 3 of this chapter
Section	§ 1-2-103	this section	N/A (note—do not use "of this part")
Subsection	§ 1-2-103(a)	this subsection (a)	subsection (a)
Single Subdivision Tier	§ 1-2-103(a)(1)	this subdivision (a)(1) (exception for multiple subdivisions and no subsection)	subdivision (a)(1) (exception for all definitions)

(8) When a drafter references a short title in a provision that will be codified, the drafter should use the following format:

Uniform Administrative Procedures Act, compiled in title 4, chapter 5

However, when a drafter references a short title in a provision that will not be codified, the drafter should use the following format:

Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5

(9) Generally, if a drafter is cross-referencing a short title act in a statute, the short title needs to be capitalized and reflect the complete short title.

CORRECT:	Tennessee Consumer Protection Act of 1977
INCORRECT:	the Consumer Protection Act

The first time the drafter refers to the short title in a section, the drafter should include the full citation to the act.

Uniform Administrative Procedures Act, compiled in title 4, chapter 5

But if the drafter refers to the act again in the same section, the drafter does not include the citation again, just the name of the act.

Uniform Administrative Procedures Act

If the short title is too long to be efficiently referenced within the section, the drafter may choose to reference the section of the code in which the act is compiled instead of the short title.

OPTION 1:	The board may exercise all powers authorized pursuant to the More Jobs and Revenue, Less Hassle and Expenses, Help Businesses and Taxpayers Act of 2009, compiled in § 50-7-107.
OPTION 2:	The board may exercise all powers authorized pursuant to § 50-7-107.

(10)

(A) Use a hyphen instead of the word "through" in statutory references to a citation range.

INCORRECT:	subsections (a) through (c)
CORRECT:	subsections (a)-(c)
CORRECT:	subsection (a) or (c)

(B) If the drafter is referring to just two consecutive items, use "and" and not the hyphen.

CORRECT:	subsections (a) and (b)
INCORRECT:	subsections (a)-(b)

(C) Generally, the drafter should use the hyphen on the keyboard instead of inserting an em dash or en dash.

§§ 1-1-108 - 1-1-110

The drafter may have to turn off some autocorrect and auto format options that change hyphens to a dash.

(D) If the drafter is citing to a range of sections, do not shorten the citation.

CORRECT:	§§ 1-1-102 - 1-1-109
INCORRECT:	§§ 1-1-102 - 109

(11) References to federal code provisions should include, if available, citations to the United States Code.

26 U.S.C. § 501(c)(4)

(12) If the federal code provision has not yet been codified, a citation to the public law may be used.

Pub. L. No. 92-75, § 2

(13) When a federal code provision has a short title or popular name, the drafter may use the title or name in the citation. A citation following a short title or popular name should be placed in a parenthetical following the title or name.

Fair Credit Reporting Act (15 U.S.C. §§ 1681-1697)

Clean Water Act of 1977 (Pub. L. No. 97-300)

(14) A short title or popular name may also be used, even if the reference is to specific portions of the act. If citing to only specific sections of a short title or popular name, the sections should be indicated prior to the short title or popular name.

Sections 203(b) and (k), National Housing Act (12 U.S.C. §§ 1709(b) and (k))

(15) Citations to the Code of Federal Regulations should be as follows:

14 CFR Part 121

14 CFR Part 121, Subpart J

14 CFR 121.221(a)

(c) DIRECTORY LANGUAGE

The body of a bill or amendment is composed of directory language and amendatory language. the directory language of a bill directs the reader to the applicable code provision that is being amended and describes how the code provision is to be changed. The directory language of an amendment is described in chapter 6, subsection (c).

(1) There are various ways to draft directory language. The following are examples:

Tennessee Code Annotated, Section 50-6-623, is amended by deleting the section in its entirety.

Tennessee Code Annotated, Section 3-6-306(a)(1)(A), is amended by deleting the language "twenty-five dollars ($25.00)" and substituting instead the language "fifty dollars ($50.00)".

Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following language as a new, appropriately designated section:

Tennessee Code Annotated, Section 4-29-233, is amended by deleting subdivision (a)(2) in its entirety.

Tennessee Code Annotated, Section 4-29-235(a), is amended by adding the following as a new, appropriately designated subdivision:

(2) The purpose of a bill or amendment may be to direct that a code provision be removed. There are various ways to remove a code provision.

(A) A code provision may be removed by stating "the provision is hereby repealed." This method of removing a code provision is sometimes referred to as "an express repeal." If expressly repealing a code provision, the Constitution of Tennessee, Article II, § 17, requires that "repeal" be set out in the caption. However, if "repeal" is set out in the caption, the bill may only be used: (1) to repeal; or (2) to repeal and amend cross-references to the repealed provision. The bill may not be used to amend other code provisions.

(B) A code provision may be removed by altering it or amending it. If "deleting the code provision and substituting instead," then the Constitution of Tennessee, Article II, § 17, requires that "to amend" be set out in the caption.

(C) A code provision may also be removed by deleting the code provision in its entirety. The practice has been that if "deleting without substitution," then, "to amend" should be set out in the caption.

(D) A general repealing clause, such as "all acts or parts of acts in conflict with this section are hereby repealed," is a greatly disfavored form of drafting, as the clause lacks express direction to the public or a court. A general repealing clause does not direct the commission to codify a repeal of, or to delete, any additional code provisions; therefore, the public and the courts are left to determine the exact provisions of law the General Assembly intended to remove. If an existing law needs to be deleted, the drafter should expressly repeal the law, delete by substitution, or delete without substitution.

(3) It is not necessary to use "further amended" in the directory language of a bill. This phrase in the directory language of a bill is discouraged.

INCORRECT

SECTION 1. Tennessee Code Annotated, Section 45-3-809, is amended by adding the following sentence to the end of subsection (a): ...

SECTION 2. Tennessee Code Annotated, Section 45-3-809, is further amended by deleting subsection (b) and redesignating the remaining subsections.

CORRECT

SECTION 1. Tennessee Code Annotated, Section 45-3-809, is amended by adding the following sentence to the end of subsection (a): ...

SECTION 2. Tennessee Code Annotated, Section 45-3-809, is amended by deleting subsection (b) and redesignating the remaining subsections.

(d) BEST PRACTICES

It is important for a drafter to be mindful of certain codification practices when using directory language so that the drafter can craft directory language that accomplishes its purpose. Additionally, when a drafter is using directory language, there are some instances when the code's designation system and certain directory language may be ambiguous. Below are examples of codification practices to understand, and potential areas of ambiguity that should be avoided when using directory language.

(1) There are multiple ways to remove a provision of the code. If a drafter decides to repeal a section, subsection, or subdivision, the provision is replaced by what is commonly referred to as a "tombstone." In the case of a section, the tombstone remains until it is replaced by a subsequent section. In the case of a subsection or subdivision, the tombstone remains until the volume is replaced or until the section is subsequently rewritten.

As used in this chapter:

(1) **[Deleted by 2015 amendment]**

(2) "Annual event" means an event:

(A) Authorized by two-thirds (2/3) vote of all members elected to each house of the general assembly;

(B) Operated for the benefit of a nonprofit organization located in Tennessee;

(C) Conducted with a single type of lottery game;

(D) Conducted on an event date; and

(E) Conducted at a location within a county where the organization maintains a physical presence or in a county that is contiguous to a county where the organization maintains a physical presence;

Therefore, it is not necessary for the drafter to ever include direction to redesignate, as a tombstone/marker will be put in the provision's place. Accordingly, the drafter would not need to amend any cross-references within the section. The only time a cross-reference would need to be changed would be if there is a cross-reference in other sections to the deleted provision.

(2) Additionally, it is not necessary for the drafter to include section numbers when the drafter is creating a new section. However, there may be a need to include section numbers if there is a need to avoid confusion, including, referencing the section in subsequent sections in the legislation.

SECTION NOT LISTED

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 3, is amended by adding the following as a new section to be appropriately designated:

SECTION LISTED

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 3, is amended by adding the following as a new section to be appropriately designated:

71-3-105.

(3) The drafter should be mindful that using directory language that states "insert a new provision" when there is already a provision with the same designation could cause confusion. The example best explains this problem.

The code commission may question whether the drafter intended a new (c) because there is already a (b), or if the drafter intended to replace the (b) with the new language. The drafter should attempt to avoid this type of ambiguity.

AMENDATORY LANGUAGE

SECTION 1. Tennessee Code Annotated, Section 49-9-701, is amended by adding the following as a new subsection (b):

EXISTING STATUTE

(a) The University of Tennessee school of medicine must include in the curriculum a department of general practice of medicine under the direction and supervision of a qualified family practitioner.

(b) The minimum requirements for the department must include courses of study in family care, including clinical experience, a program of preceptorships, a program of internships or general practice residences in a hospital and other teaching techniques that, in the judgment of the management of the school, are best suited to encourage and implement the preparation of students for the general practice of medicine.

(c) The University of Tennessee is authorized to use that portion of the funds appropriated to it by the general assembly that the board of trustees deems necessary to establish and operate a department of general practice of medicine in the University of Tennessee school of medicine.

Acts 1971, ch. 203, 1, 2; T.C.A., 49-3353.

(4) There are times when a drafter would like to change references that appear throughout the code and the drafter would like to change the reference in multiple provisions in the code with one directory statement.

> SECTION 1. Tennessee Code Annotated, Title 55, is amended by deleting the language "trial court" wherever it appears and substituting instead the language "the court of workers' compensation".

Although this directory language is not incorrect, it can be imprecise if not checked. Oftentimes, a drafter will not individual check all references to assure that the change is appropriate in every instance and would remain grammatically correct. Therefore, each instance, no matter the number, should be individually checked by the drafter.

(5) There are times when a drafter needs to specifically include or exclude an area from a law. This is most frequently done by using a population exclusion. There are times when the drafter should research the constitutional implications of drafting the population exclusion. The following is an example of a population exclusion.

> The provisions of this act shall apply to any county having a population of not less than _____ nor more than _____ , according to the 2010 federal census or any subsequent federal census.

Population tables can be found in the Tables volume of the code. The population exclusion remains somewhat simple if the new law is a completely new law. However, ambiguity may arise when the law to which the exclusion will apply is actually a change to an existing law. How the population inclusion or exclusion is inserted within the existing law can cause confusion as it is sometimes not clear whether the exclusion applies only to the existing law or the new law. If the population exclusion applies to a change in the existing law, the drafter should include clear direction as to what part or parts of the law the exclusion applies.

(6) The code commission may redesignate sections, parts, or chapters during the codification process. The code commission is always the final arbiter of where new law will be codified, not the drafter. However, it is best for the drafter to attempt to place the new law in the code where it will ultimately be codified to give notice to the public and all parties involved in the legislative process. Keeping this goal in mind, the drafter should observe the following guidelines:

(A) As a general rule, the drafter should attempt to use section designations that may be "empty" or available, unless placement of the new law in the empty designation would be illogical.

EXAMPLE: 53-11-417 —53-11-450. [Reserved.]

(B) However, a drafter should not use a repealed tombstone if the tombstone is recent. When in doubt, the drafter should consult with the Revisor of Statutes to determine if it is appropriate to use a certain tombstone. For a discussion of tombstones, see subdivision (d)(1) of this chapter.

CHAPTER 5: GENERAL BILLS

(a) INTRODUCTION

There is a uniform electronic format for bills drafted for introduction to the General Assembly. Drafting is set to default to the uniform format template. Bills are in Arial 11 font, double spaced (except for the caption), and justified to the left. For additional information on formatting, review the samples and formatting instructions located in the Appendix A, Appendix B, and Appendix D.

There are potentially four parts of a bill: caption, preamble (optional), enacting clause, and body, which includes the effective date. Within the body of the bill, there may be two or more sections. There is a general organization of the body of a bill that a drafter may find useful to follow. Additionally, there are unique drafting concerns involved for particular types of bills. All of these topics are discussed in this chapter.

(b) CAPTION

(1) The Constitution of Tennessee, Article II, § 17, requires that all bills contain a caption. It states "No bill shall become law which embraces more than one subject, that subject to be expressed in the title." The purpose of this provision is to provide notice. Generally, the function of the caption is to describe the nature of the legislation and to give notice of the contents of the bill. Drafting a caption is one of the most important parts of the initial drafting process because the caption cannot be amended after the bill is filed. OLS strives to adhere to the caption opinions in Tennessee Attorney General Opinion No. 10-121 and No. 10-122. These opinions should be consulted by a drafter as the most substantive statement of the views of the Attorney General on caption questions. The following is an example of a caption:

> AN ACT to amend Tennessee Code Annotated, Title 45, relative to financial institutions.

(2) The first portion of a caption contains the code provisions, or the public or private chapters, that a bill amends, or that may be amended in order to carry out the purpose of the bill. The code provisions should be set out as title, chapter, and part. However, if amending one or more sections, only the specific sections should be in the caption, and the section number should be used in the caption and not "title, chapter, part."

CORRECT:	AN ACT to amend Tennessee Code Annotated, Title 10, Chapter 4, Part 5, relative to public records.
CORRECT:	AN ACT to amend Tennessee Code Annotated, Section 10-7-503, relative to public records.
CORRECT:	AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 2, relative to taxation of income received from stock dividends and interest on bonds.
CORRECT:	AN ACT to amend Tennessee Code Annotated, Title 55, Chapters 1 and 6, to remove waiting periods for abortion.
CORRECT:	AN ACT relative to possession of small amounts of marijuana.
INCORRECT:	AN ACT to amend Tennessee Code Annotated, Title 10, Chapter 7, Part 5, Section 501, relative to public records.

(3) There are times when a drafter may choose not to include titles or other provisions of law in the caption. Although this may be constitutionally permissible, the drafter should exercise caution. If no titles or provisions of law are placed in the caption, more effort should be given to include a clearly identifiable subject. The drafter should consult Tennessee Attorney General Opinion No. 10-121 and No. 10-122.

CORRECT:	AN ACT relative to transportation.
INCORRECT:	AN ACT relative to governmental endeavors.

"Governmental endeavors" fails to state a subject, as the term could cover virtually any legislation. However, "transportation" states a clear subject.

(A) When drafting a caption, the drafter should conduct an electronic code search to find any cross-references in the code to the provision or provisions that are amended by the bill. If the text in the cross-referenced code provisions needs to be amended in order to be consistent with the bill's text, then the drafter must include the cross-referenced code provisions in the caption.

(B) Similarly, if the bill removes a code provision, then cross-references to the code provision must also be removed. A drafter should perform an electronic text search in the code for the citation. Because an electronic search of a citation may not catch references to the subject of a deleted section, the drafter should also conduct a search of any subject references in the code and include any applicable code provision containing the subject reference in the caption.

Amendatory Language of the Bill:

Tenn. Code Ann. § 3-15-201, is amended by deleting the section in its entirety.

Search of Citation Would Catch:

The select committee on children and youth created by § 3-15-201...

Search of Citation Would Not Catch:

The select committee on children and youth shall be responsible for...

This Additional Subject Search Required:

"children and youth"

(C) Title 4 should be included in the caption of a bill if the bill pertains to an entity that is subject to sunset review or creates a new entity that may be subject to sunset review.

(4) The Constitution of Tennessee, Article II, § 17, requires that a bill contain only one subject. Although there are various acceptable phrases that may be used to introduce the subject, the most common phrase is "relative to."

(A) A drafter should give consideration to whether the caption should be broad or narrow in context of the subject matter that the bill addresses and the legislative environment. Specifically, a drafter may need to address the potential of unwanted amendments by limiting the scope of the code provisions set out in the caption or by narrowly tailoring the subject.

NARROW SUBJECT	**BROAD SUBJECT**
(bill does):	**(bill is about):**
relative to requiring state agencies to sell surplus motor vehicles at public auction	relative to the disposition of surplus motor vehicles owned by the state agencies

(B) When drafting the subject, a drafter may find words describing what the bill is about, rather than what the bill does, most helpful. Because bills are often amended, a statement of what a bill is about is more likely to remain accurate than a statement of what the bill does.

(C) Conjunctions, such as "and" or "or," should be avoided in describing the subject of the bill because conjunctions suggest a violation of the one subject requirement. However, a conjunction may be used when the phrase that includes the conjunction describes only one subject.

SINGLE SUBJECT:	**MULTIPLE SUBJECT:**
Labor and Workforce Development Children and Youth	Teachers and Contracts

(D) Typically, if a multiple subject needs to be made into a single subject, then the drafter should consider a subject that is broader and includes both.

ORIGINAL MULTIPLE SUBJECT:	**NEW SINGLE SUBJECT:**
Contractors and Architects	Professions

(5) The drafter should be aware that the passage of the Code Bill, the codification of all acts passed during the last General Assembly, cures defects that may have existed in the original caption. Although this reading represents settled law, the drafter should be aware that this fact does not satisfy the practice of the legislative process. Additionally, there are limits to this curative power found in case law, such as when a criminal offense occurs before codification.

(6) The drafter should also be aware that there are specific caption issues relative to particular types of bills, such as bills making appropriations or bills expressly repealing code provisions. The drafter may need to conduct additional research when drafting a caption depending on the type of bill.

(c) PREAMBLE

A preamble is not a required part of the bill. Generally, a preamble is used to demonstrate the legislature's intent. If a preamble is used, it does not become part of the enacted law and is not codified. The preamble is placed between the caption and the enacting clause. When drafting a preamble, each clause should begin with "WHEREAS," and end with "; and", except the final clause, which ends with "; now, therefore,". The following is an example of the format of a preamble:

WHEREAS, throughout the years, the intrepid and valiant members of the United States armed forces have continued to inspire our confidence, loyalty, and support; and

WHEREAS, from Valley Forge to Iraq, Afghanistan, and the war-torn nations of Africa, Eastern Europe, and the Middle East, our armed forces have unselfishly paid the price of freedom for their friends and families and for all of us; and

WHEREAS, it is most appropriate that we should honor those courageous men and women who have made many sacrifices to preserve the blessed freedoms we enjoy today and that our progeny will hopefully continue to cherish for generations to come; and

WHEREAS, this General Assembly wishes to name the remaining portion of U.S. Highway 27 in the City of Dayton and Rhea County that is not otherwise designated in memory of those brave sons and daughters who sacrificed personal concerns and their safety, with many of them giving their lives, so that we may enjoy the many bounties of democracy and the American way of life; now, therefore,

(d) ENACTING CLAUSE

The enacting clause is required by the Constitution of Tennessee, Article II, § 20, and must be written as follows:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

(e) BODY

(1) Definitions

(A) Definitions are commonly used to avoid repetition of a phrase or to give a standard meaning to a word or phrase. Definitions should be in alphabetical order. Once a defined term is placed in a definition section, use the defined term throughout the applicable code provision. Do not use synonyms or derivatives. Do not define a word that is not subsequently used in the applicable code provisions.

(B) The introductory language of a definition provision should be "As used in this _____:". The blank should be the applicable code provision, such as a section, chapter, part, or title. The drafter may substitute "act," if the drafter has not designated the location in the code where the act will be placed. When drafting a definition section, remember the difference between the words "means" and "includes." "Means" indicates that the following is identical or synonymous, while "includes" indicates that the following is part of the first. Use "means" instead of "shall mean," and use "includes" instead of "shall include."

(C) Definitions should not be used to prescribe substantive law. Placing substantive law in a definition section may be easily missed by a reader and may call into question the substantive law's application. The following is an example of a definition section:

39-16-701. As used in this part:

(1) "Material" means the statement, irrespective of its admissibility under the rules of evidence, could have affected the course or outcome of the official proceeding;

(2) "Official proceeding" means any type of administrative, executive, judicial, or legislative proceeding that is conducted before a public servant authorized by law to take statements under oath in that proceeding; and

(3) "Statement" means any representation of fact.

(2) Criminal Offenses

(A) Pursuant to Tenn. Code Ann. § 39-11-102, conduct does not constitute an offense unless it is defined as an offense. Therefore, when drafting a provision that contains a criminal offense, a drafter should use the phrase "it is an offense" instead of language such as "it is unlawful" or "shall not." Each criminal offense should contain the elements of the crime. Examples of elements of a crime are an overt act and a mental state. There may be other provisions included within a criminal offense, such as definitions, exceptions to the offense, defenses to the offense, and aggravating factors. The following are examples of language a drafter may use to make conduct criminal:

It is an offense to…

A person commits…if…

(B) When drafting criminal offenses, the drafter should designate the offense classification. A criminal offense is either a felony or a misdemeanor. Tenn. Code Ann. § 40-35-111 sets out the authorized terms of imprisonment and fines for felonies and misdemeanors. There are three classifications for misdemeanor offenses: Class A, Class B, and Class C. If an offense is punishable as a misdemeanor, but the drafter does not specify a classification, then, by operation of Tenn. Code Ann. § 39-11-114, the offense is considered a Class A misdemeanor. There are five classifications for felony offenses: Class A, Class B, Class C, Class D, and Class E. If an offense is punishable as a felony, but the drafter does not specify a classification, then, by operation of Tenn. Code Ann. § 39-11-113, the offense is considered a Class E felony. If conduct is made criminal, but the drafter does not specify whether the offense is a misdemeanor or a felony, then, pursuant to Tenn. Code Ann. § 39-11-111, the offense is considered a misdemeanor. The following are examples of language that may be used to draft a penalty for a criminal offense:

CORRECT: A violation of this section is a Class B misdemeanor.

CORRECT: An offense under this section is a Class A felony.

CORRECT: Bigamy is a Class A misdemeanor.

CORRECT: A first violation of this section is a Class B misdemeanor. A second or subsequent violation of this section is a Class A misdemeanor.

(C) The Constitution of Tennessee, Article VI, § 14, provides that fines exceeding fifty dollars are to be assessed by a jury. The drafter should note that municipal and general sessions courts do not have the authority to impanel juries. Therefore, any offense punishable by a fine greater than fifty dollars must be tried by a court of record, unless the defendant waives the right to a jury trial.

(D) The Constitution of Tennessee, Article I, § 11, provides that no *ex post facto* law shall be made. Generally, an *ex post facto* law retroactively changes the legal consequences of actions that were engaged in before the enactment of the law. The drafter should be mindful that *ex post facto* may apply not only when conduct is made criminal, but also when a penalty is increased, or certain sentencing credits are reduced.

(E) The Constitution of Tennessee, Article I, § 8, provides that no person shall be taken, imprisoned, or in any other way deprived of life, liberty, or property but by judgment of the person's peers or "the law of the land." The "law of the land" has been interpreted to mean a general and public law operating equally upon every citizen of the state. The General Assembly is generally considered to be prohibited from making conduct criminal only in specific geographical areas within the state or allowing a specific geographical area within the state to declare conduct to be criminal.

(3) Severability

(A) A drafter may want to include a severability clause in the legislation. If a severability clause is included, it is not codified. The following is an example of a severability clause:

> SECTION ___. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

(B) Instead of a severability clause, a drafter may want to include a reverse severability clause in the legislation. If a reverse severability clause is included, it is not codified. The following is an example of a reverse severability clause:

> SECTION ___. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, then all provisions and applications of this act are declared to be invalid and void.

(4) Rules

There are times when a drafter authorizes a department to promulgate rules to effectuate the purposes of an act. The following is sample language to use when drafting a rules provision:

> SECTION ___. The department (or commissioner) of _____ is authorized to promulgate rules to effectuate the purposes of this _____. All rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5.

(5) Effective Date

(A) Typically the effective date section is the last section of a bill. The Constitution of Tennessee, Article II, § 20, states that, "no law of a general nature shall take effect until forty days after its passage unless the same or the caption thereof shall state that the public welfare requires that it should take effect sooner." Therefore, if the intent is for a bill to take effect sooner, then the drafter must include the language "the public welfare requiring it." Even when the effective date is more than forty days, many drafters will always include the phrase as a matter of practice.

> SECTION ___. This act shall take effect upon becoming a law, the public welfare requiring it.

(B) There are certain instances in which a specific date should be used as the effective date rather than "upon becoming a law." Bills that include a criminal offense should have an effective date that specifies the act will take effect on a certain date so that the public has adequate notice of changes in the law that make certain behavior criminal.

> SECTION ___. This act shall take effect July 1, 2017, the public welfare requiring it.

(C) A drafter may use the later of the two dates as the effective date. The most frequent situation in which it makes any sense to provide an effective date that is the later of two dates is when one of the dates is a specific date and the other is the date the act becomes law.

> SECTION ___. This act shall take effect on September 1, 2017, or upon becoming a law, whichever is later, the public welfare requiring it.

(D) Some parts of a bill may take effect on one date and other parts on a different date. The easiest way to accomplish this is to first make the bill effective generally on the earliest date and then exempt out those provisions that are to become effective later.

SECTION ___. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2017, the public welfare requiring it.

SECTION ___. This act shall take effect upon becoming a law, the public welfare requiring it, except that sections 20 and 25 shall take effect one (1) year after this act becomes a law.

Regardless of the method the drafter uses to express varied effective dates, the drafter must ensure that the effective date section in one way or another accounts for every provision of the draft.

SECTION ___. This act shall take effect January 1, 2017, except that section 25 shall take effect July 1, 2017, the public welfare requiring it.

(E) A drafter should be aware of the difference between the effective date of a bill and the date a bill becomes a law. An effective date is the date the law will be implemented, will start, or begin. However, the date the bill becomes law is the date the bill becomes a legislative enactment according to the Tennessee Constitution. A bill becomes law on a date determined under Section 18 of Article II and Article VIII of the Tennessee Constitution. The determination is straightforward. The various possibilities are:

(1) The date the governor approves a bill;

(2) A date ten days after a bill is presented to the governor if the governor neither approves nor vetoes the bill within the ten calendar days (Sunday excepted) after it is presented to the governor; or

(3) The date the second house votes by a majority to override the governor's veto of a bill.

CHAPTER 6: AMENDMENTS

(a) PREPARATION

(1) Filing Deadlines

Typically, standing committees have filing deadlines for amendments. Additionally, there are filing deadlines for amendments to be properly considered on the floor of each chamber. Amendments, just as bills, must be entered into the General Assembly's electronic database by OLS, assigned a barcode for proper identification by the clerk's office of either house, and reviewed by OLS. Drafters should allow time for a proper review of the amendment prior to the amendment being filed.

(2) Alterations to the Bill

Just as with a bill, the first and most important step in preparing an amendment is to comprehend the objectives and gain a thorough understanding of what the amendment is intending to accomplish. Not only does this include understanding the substance of the amendment but also how the amendment affects the bill and any other proposed amendments.

(b) FORMAT

(1) A bill may be amended by deleting language, adding language, deleting and substituting language, or rewriting a bill in its entirety. Currently, the rules of both houses of the General Assembly prohibit amendments greater than the second degree, which means that amendments to amendments are permissible, but amendments to amendments to amendments are not permitted. As with bills, OLS is required by Tenn. Code Ann. § 3-12-101(5) to review all amendments prior to their introduction. A sample amendment is located near the end of this guide.

(2) The top of an amendment includes the following:

Amend Senate Bill No. ____	**House Bill No. ____**

(3) The drafter should use the word "by" to begin the directory language of the amendment. The drafter should note that the "by" begins with a lowercase "b."

(4) Each additional clause containing directory language of an amendment should begin with the following phrase. The drafter may find it useful to bold this language.

AND FURTHER AMEND

(c) DIRECTORY LANGUAGE

(1) The directory language of an amendment is different from the directory language of a bill. An amendment's directory language tells the engrossing clerk how to amend the original bill, while the directory language of a bill tells the code commission how to amend the code. A discussion of directory language of a bill can be found in subsection (c) of chapter 4.

(A) Depending on how the drafter wishes to amend the filed bill or prior adopted amendments, there are multiple ways to draft the directory language of an amendment. The following are examples:

> by adding the following new section to the bill:
>
> by adding the following language at the end of Section 1:

(B) Although the drafter is constitutionally prohibited from amending the caption of a bill, the drafter may amend everything that comes after the caption, including the preamble. Examples of directory language that would amend the preamble would be:

> by deleting all language after the caption and substituting instead the following:
>
> by deleting the language between the caption and the enacting clause.

The drafter should be mindful that if all language after the caption is deleted, then the enacting clause must be replaced when substitute language is inserted.

(2) There may be separate sections within the amendment that contain directory language that directs where and how the actual substance of the bill should be placed in the code. Again, this directory language is not codified. Moreover, an amendment may amend the directory or the amendatory language of a bill.

> **AND FURTHER AMEND** by deleting the language "_____" in the amendatory language of Section 1 and by substituting instead the language "_____".
>
> **AND FURTHER AMEND** by deleting the language "_____" in the directory language of Section 1 and by substituting instead the language "_____".

Note that it is custom to use "and further amend" for multiple amendatory clauses in an amendment. However, it may not be necessary to use "further amended" in the directory language of a bill when directing the code commission to amend the code. For examples, see the discussion in subdivision (c)(3) in chapter 4.

(3) The purpose of directory language of an amendment is to direct the engrossing clerk when incorporating amendments into a final bill and is different than the directory language of a bill that directs the code commission when codifying laws. The code commission is authorized by statute to correct manifest errors and include designations that may have been omitted when codifying laws; however, this is not always the power that an engrossing clerk may exercise when engrossing legislation. Remember that when drafting directory language of an amendment for the engrossing clerk, the directory language should ultimately be drafted to reflect a complete and accurate public chapter.

INCORRECT:

AND FURTHER AMEND by deleting 66-29-104 of Section 1 in its entirety and substituting instead the following:

The treasurer may promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to carry out this part.

CORRECT:

AND FURTHER AMEND by deleting 66-29-104 of Section 1 in its entirety and substituting instead the following:

66-29-104.

The treasurer may promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to carry out this part.

The drafter should note that directory language of a bill may also be in an amendment, as it generally appears at the beginning of a new section.

(d) CAPTION

An amendment to a bill must fall within the subject set forth within the caption, which means the amendment should amend only code provisions that are set out in the caption and relevant to the caption's subject. An amendment may not amend the caption of a bill.

(e) OTHER AMENDMENTS

(1) Before preparing an amendment, the drafter should be aware of any previously adopted amendments to determine whether the amendment to be drafted will work with or without prior amendments. Depending on whether a prior amendment was adopted by a committee or by one house, the drafter may need to remove the prior amendment. The language "by deleting all language after the enacting clause and by substituting instead the following:" will not only delete the body of a bill but also all prior amendments on the bill, whether in committee or on a house floor.

(2) However, if there is a previously adopted amendment and the drafter would like the drafter's amendment to work with the previously adopted amendment, the drafter should not only reconcile conflicts in the substance of the two amendments, but should also draft the amendment's directory language to be consistent with the previously adopted amendment, so that both amendments can be accurately engrossed.

CHAPTER 7: REVIEW

(a) FIRST STEPS

A draft of legislation should undergo various edits by the drafter. Allowing the draft to lie over before additional editing may give a drafter a "fresh pair of eyes" for editing. During the editing process, the drafter's review should have the following focus:

(1) There are no substantive errors in the legislation;

(2) Sections are numbered correctly;

(3) Internal code and bill or amendment section references are accurate;

(4) There are no spelling, grammar, or punctuation errors; and

(5) The bill or amendment ultimately accomplishes the intended objectives.

(b) SECOND REVIEW

A review by a second or third drafter is also an invaluable tool in helping to produce quality legislation. A good reviewer may raise questions about apparent "loopholes" or other unintended consequences in the draft and suggest ways to enhance clarity and consistency. The drafter should carefully consider the reviewer's comments in polishing the final draft. The ability to accept and utilize constructive criticism to improve legislation is a prized quality in a drafter.

(c) DRAFTER'S CHECKLIST

As a last step, before finalizing a bill or amendment, the drafter should review appropriate items on the Drafter's Checklist to verify that each item has been properly addressed.

(d) OTHER LEGISLATION

There are times when one bill amends the same section as another bill or adds new material, identically numbered, as another bill. Accordingly, the drafter should monitor all legislation on the same subject matter as the drafter's legislation. If two acts amending the same section are enacted in the same legislative session, the code commission will attempt to codify the language of both acts, to the extent possible. However, if the differences in the acts are irreconcilable, then, generally, the act with the later effective date will prevail, or neither act will be codified, depending on the nature of the conflict. To avoid an act failing to take effect due to an irreconcilable conflict, the drafter should closely monitor legislation for potential conflicts as part of the initial bill drafting review and throughout the legislation process.

APPENDIX A: SAMPLE BILL

CAPTION

AN ACT to amend Tennessee Code Annotated, Title 68, relative to emergency medical telecommunications.

PREAMBLE

WHEREAS, it is the intention of the General Assembly to employ a statewide system of emergency medical service area telecommunications to provide effective and rapid emergency medical service to the general population; now, therefore,

ENACTING CLAUSE

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding Sections 2 through 5 as a new chapter.

SHORT TITLE

SECTION 2. This chapter shall be known and may be cited as the "Emergency Medical Services Act."

SECTION 3. As used in this chapter:

DEFINITIONS

(1) "Category 'B' hospital" means a hospital facility within the state of Tennessee assigned to a category B by the board for licensing health care facilities of the department of health; and

(2) "Health care professional" includes a person licensed under title 63.

SECTION 4.

BODY

(a) The department of health shall create and administer a statewide system of emergency medical service area telecommunications through rules.

(b) Health care professionals and category B hospitals shall report to the department regarding implementation of a statewide system of emergency medical service, pursuant to rules promulgated by the department.

(c) It is an offense for health care professionals and category B hospitals to fail to report to the department pursuant to this section.

PENALTIES

SECTION 5. A violation of Section 4(c) is a Class A misdemeanor.

SEVERABILITY CLAUSE

SECTION 6. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 7. For purposes of promulgating rules, this act shall take effect, upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2016, the public welfare requiring it.

EFFECTIVE DATE

DRAFT NUMBER

0616523456

001676

APPENDIX B: SAMPLE AMENDMENT

HEADER

Amendment No. _____

_____

Signature of Sponsor

DIRECTORY LANGUAGE

SENATE BILL NUMBER

HOUSE BILL NUMBER

AMEND Senate Bill No. 139 **House Bill No. 107***

by deleting the amendatory language of Section 28 and by substituting instead the following:

AMENDATORY LANGUAGE

On or before July 1, 2015, and annually thereafter, the division shall review the effect of the Workers' Compensation Reform Act of 2013 on the workers' compensation system and deliver a report of its findings to the general assembly.

AND FURTHER AMEND by deleting the language "five (5) business period" from the first sentence in subdivision (d)(2)(B) of Section 76, and substituting the language "five-day period".

AND FURTHER AMEND by deleting the language "seven (7) days" from the second sentence in subdivision (a)(1)(A) of Section 83, and substituting the language "seven (7) business days".

AND FURTHER AMEND by deleting Sections 5, 10, 57, 58 and 93 and renumbering the remaining sections accordingly.

AND FURTHER AMEND by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION ___. The division of workers' compensation created pursuant to this act terminates pursuant to title 4, chapter 29 on June 30, 2018.

DRAFT NUMBER

0616523456

001676

APPENDIX C:

BILL	AMENDMENT	DRAFTER'S CHECKLIST
		What is the **bill filing deadline**? What is the **amendment filing deadline**?
		What is the **purpose**?
		Has the necessary **research** been conducted?
		Is there an **organized arrangement** for the proposed content?
		Is the proper **electronic format** being used? If multiple versions, is the most recent version sent from OLS being used?
	N/A	Is there a **caption**? Are all code provisions that the bill amends or may amend in the caption? Is there a single subject? If the bill is removing a code provision, have other code provisions referring to the removed provision been included in the caption? Is there a need to include Title 4 in the caption?
N/A		Does the amendment fall **within the caption** of the bill?
		Is a **preamble** needed?
		Is there an **enacting clause**?
	N/A	Is all **directory language** complete and accurate? Is the directory language "reader friendly"?
N/A		Does the **amendment's directory language** adequately inform the engrossing clerk? Is all directory language complete and accurate? Is the directory language "reader friendly"?
N/A		Are there **other amendments** traveling with the bill, and if so, have the amendments been considered or addressed?
		Is the proper **code and section designation** system used? Are there at least two subsection or subdivision designations for each type of designation being used?
		Has the legislation been reviewed for **simplicity**? Is short and familiar language used? Are simplified words used? Has unnecessary language been removed?
		Has the legislation been reviewed for **clarity**? Does every pronoun have a clear antecedent? Are conjunctions used properly? Are concepts expressed positively when possible? Is parallel sentence structure used? Are cross-references precise? Is active voice used?
		Has the legislation been reviewed for **consistency**?
		Are all **names for departments** and commissioners correct?
		Is correct **capitalization** used?
		Are **numerals** used correctly?
		Is correct **punctuation** used?
		Have **commonly misused words** been used correctly?
		Has **archaic and outdated language** been updated?
		Are **citations** to federal and state law in the correct format?
		Is there a **definitions section**, and if so, is it in the correct format?
		Is there a **criminal offense**, and if so, is it in the correct format?
		Is a **severability** or reverse severability clause needed?
		Is a **rules** provision needed?
		Is there an **effective date** section, and is an applicability clause needed?
		Has **other legislation** on the same subject been tracked? Does the other legislation conflict with the bill? Have the conflicts been addressed?
		Has the legislation been **edited** by the drafter and by a second drafter? Are internal code and legislation section references accurate? Is spelling correct? Is grammar correct?

APPENDIX D: BILL FORMATTING INSTRUCTIONS

All font is Arial 11

Do not bold text

Align text to the left

The caption is the only provision that is single-spaced.

Enacting Clause (do not change)

AN ACT to amend Tennessee Code Annotated…, relative to…

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

TAB

SECTION 1.

SECTION 2.

2 SPACES between each new section, subsection, or subdivision designation and the text that follows.

INDENT + TAB

(a)

(b)

If there is only 1 subsection in a section but many subdivisions, as in a definition section then the first designation is subdivision (1).

2 INDENTS + TAB

(1)

(2)

3 INDENTS + TAB

(A)

(B)

4 INDENTS + TAB

(i)

(ii)

5 INDENTS + TAB

(a)

(b)

Begin to italicize subdivision designations but NOT bill text.

6 INDENTS + TAB

(1)

(2)

7 INDENTS + TAB

(A)

(B)

8 INDENTS + TAB

(i)

(ii)

SECTION 3.

The effective date is typically the final section of the bill.

APPENDIX E: DEPARTMENTS OF THE STATE OF TENNESSEE

DEPARTMENTS RELATED TO THE EXECUTIVE BRANCH	DEPARTMENTS RELATED TO THE LEGISLATIVE AND JUDICIAL BRANCHES
Department of Agriculture	Department of Audit (the office of the Comptroller of the Treasury)
Department of Children's Services	
Department of Commerce and Insurance	Department of State (the office of the Secretary of State)
Department of Correction	
Department of Economic and Community Development	Department of the Treasury (the office of the State Treasurer)
Department of Education	
Department of Environment and Conservation	Legal Department (the office of the Attorney General and Reporter)
Department of Finance and Administration	
Department of Financial Institutions	
Department of General Services	
Department of Health	* The Department of Safety is sometimes referred to as "The Department of Safety and Homeland Security." However, this is not the official name, as it is not in the statute.
Department of Human Resources	
Department of Human Services	
Department of Intellectual and Developmental Disabilities	** Formerly Tennessee Veterans Affairs. As is the case with the national organization, there is no apostrophe in "Veterans."
Department of Labor and Workforce Development	
Department of Mental Health and Substance Abuse Services	
Department of Military	
Department of Revenue	
Department of Safety*	
Department of Tourist Development	
Department of Transportation	
Department of Veterans Services**	

APPENDIX F: GENERAL ASSEMBLY DESIGNATION BY YEAR

G.A.	Years	G.A.	Years
1st	1796	*	1861-1862
2nd	1797-1798	*	1863-1864
3rd	1799-1800	**34th**	1865-1866
4th	1801-1802	**35th**	1867-1868
5th	1803-1804	**36th**	1869-1870
6th	1805-1806	**37th**	1871-1872
7th	1807-1808	**38th**	1873-1874
8th	1809-1810	**39th**	1875-1876
9th	1811-1812	**40th**	1877-1878
10th	1813-1814	**41st**	1879-1880
11th	1815-1816	**42nd**	1881-1882
12th	1817-1818	**43rd**	1883-1884
13th	1819-1820	**44th**	1885-1886
14th	1821-1823	**45th**	1887-1888
15th	1823-1824	**46th**	1889-1890
16th	1825-1826	**47th**	1891-1892
17th	1827-1828	**48th**	1893-1894
18th	1829-1830	**49th**	1895-1896
19th	1831-1832	**50th**	1897-1898
20th	1833-1834	**51st**	1899-1900
21st	1835-1836	**52nd**	1901-1902
22nd	1837-1838	**53rd**	1903-1904
23rd	1839-1840	**54th**	1905-1906
24th	1841-1842	**55th**	1907-1908
25th	1843-1844	**56th**	1909-1910
26th	1845-1846	**57th**	1911-1912
27th	1847-1848	**58th**	1913-1914
28th	1849-1850	**59th**	1915-1916
29th	1851-1852	**60th**	1917-1918
30th	1853-1854	**61st**	1919-1920
31st	1855-1856	**62nd**	1921-1922
32nd	1857-1858	**63rd**	1923-1924
33rd	1859-1860	**64th**	1925-1926

G.A.	Years	G.A.	Years
65th	1927-1928	**98th**	1993-1994
66th	1929-1930	**99th**	1995-1996
67th	1931-1932	**100th**	1997-1998
68th	1933-1934	**101st**	1999-2000
69th	1935-1936	**102nd**	2001-2002
70th	1937-1938	**103rd**	2003-2004
71st	1939-1940	**104th**	2005-2006
72nd	1941-1942	**105th**	2007-2008
73rd	1943-1944	**106th**	2009-2010
74th	1945-1946	**107th**	2011-2012
75th	1947-1948	**108th**	2013-2014
76th	1949-1950	**109th**	2015-2016
77th	1951-1952	**110th**	2017-2018
78th	1953-1954	**111th**	2019-2020
79th	1955-1956		
80th	1957-1958		
81st	1959-1960		
82nd	1961-1962		
83rd	1963-1964		
84th	1965-1966		
85th	1967-1968		
86th	1969-1970		
87th	1971-1972		
88th	1973-1974		
89th	1975-1976		
90th	1977-1978		
91st	1979-1980		
92nd	1981-1982		
93rd	1983-1984		
94th	1985-1986		
95th	1987-1988		
96th	1989-1990		
97th	1991-1992		

*** All acts by the Confederate General Assembly were declared null and void.**