50-1-103. Employment of illegal aliens.

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

(1) "Commissioner" means the commissioner of labor and workforce development;

(2) "Department" means the department of labor and workforce development;

(3) "Employ" or "employment" means any work engaged in for compensation in money or other valuable consideration and for which a person paying the compensation for the work performed is required to file a W-2 wage and tax statement with the federal internal revenue service;

(4) "Illegal alien" means a person who is, at the time of employment, neither an alien who is lawfully admitted for permanent residence in the United States pursuant to the federal Immigration and Naturalization Act, compiled in 8 U.S.C. § 1101 et seq., nor authorized to be employed by the federal Immigration and Naturalization Act or the United States attorney general;

(5) "Knowingly" means having actual knowledge that a person is an illegal alien or having a duty imposed by law to determine the immigration status of an illegal alien and failing to perform that duty;

(6) "Lawful resident alien" means a person who is entitled to lawful residence in the United States pursuant to the federal Immigration and Naturalization Act;

(7) "Lawful resident verification information" means the documentation that is required by the United States department of homeland security when completing the employment eligibility verification form commonly referred to as Form I-9. Documentation that later proves to be falsified, but that at the time of employment satisfies the requirements of Form I-9, is lawful resident verification information;

(8) "License" means any certificate, approval, registration or similar form of permission required by law; and

(9) "Person" means individual, corporation, partnership, association or any other legal entity.

(b) A person shall not knowingly employ, recruit or refer for a fee for employment an illegal alien.

(c) A person has not violated subsection (b) with respect to a particular employee if the person requested from the employee, received, and documented in the employee record, after commencement of employment, lawful resident verification information consistent with employer requirements under the Immigration Reform and Control Act of 1986, compiled in 8 U.S.C. § 1101 et seq.

(d) A person has not violated subsection (b) with respect to a particular employee if the person verified the work authorization status of the employee by using the federal electronic work authorization verification service provided by the United States department of homeland security pursuant to the federal Basic Pilot Program Extension and Expansion Act of 2003, P.L. 108-156, or any successor program thereto, and the verification service returned a confirmation showing that:

(1) Such employee was eligible to work;

(2) Such employee was ineligible to work, but the employee has appealed such confirmation and the appeal has not been resolved; or

(3) Such employee was ineligible to work, the employee has not appealed such confirmation and the time for such employee to appeal pursuant to federal law has not expired.

(e)(1) If any state or local governmental agency, officer, employee or entity has reason to believe that a violation of subsection (b) has occurred, the agency, officer, employee or entity shall file a complaint with the department. Upon receipt of a complaint by a federal, state or local governmental agency, officer, employee or entity, the commissioner shall conduct an investigation. If there is substantial evidence that a violation of subsection (b) has occurred, the commissioner shall conduct a contested case hearing pursuant to the Uniform Administrative Procedures Act, complied in title 4, chapter 5, on the question of whether the person has violated subsection (b). If the commissioner or the commissioner's designee determines that there is clear and convincing evidence that a person has violated subsection (b) and the violation occurred while the person was acting within the scope of practice of a license issued by the state or pursuant to title 67, chapter 4, the commissioner shall request an order consistent with § 4-5-320, requiring the appropriate regulatory board or local government with respect to business licensure pursuant to title 67, chapter 4, to revoke, suspend, or deny the person's license. The commissioner shall state in the commissioner's findings of fact and conclusions of law whether there have been previous violations of subsection (b).

(A) For the first violation of subsection (b), the commissioner shall order that the regulatory board or local government suspend the person's license until the person shows to the satisfaction of the commissioner that the person is no longer in violation of subsection (b). The showing may be made by the person filing a sworn statement with the commissioner stating that the person is no longer employing illegal aliens.

(B) For a second or subsequent violation of subsection (b) occurring within three (3) years from the issuance of the commissioner's first order, the commissioner shall order that the regulatory agency or local government suspend the license for one (1) year.

(2) Upon receiving a complaint pursuant to this section, consistent with this section, the commissioner or the commissioner's designee shall inform the person against whom the complaint is made that the person may request the name of the person filing the complaint, or if the complaint is filed by an agency or entity, the name of the person who caused the complaint to be filed. If the person requests the name, the commissioner or the commissioner's designee shall provide the name requested.

(f) The department shall notify the appropriate official making declarations pursuant to § 12-4-124 of a person's violation of this section.

(g) The department shall notify the department of homeland security of any person found in violation of this section.

50-1-104. State officials notified of plant closings or mass layoffs.

Upon being served with advance written notification of a plant closing or mass layoff pursuant to § 3(a)(2) of the Worker Adjustment and Retraining Notification Act, codified in 29 U.S.C. § 2102, the commissioner of labor and workforce development shall immediately advise the commissioners of economic and community development, education, health, human services, and

mental health and substance abuse services, the executive director of the state board of education, and the chancellor of the state university and community college system concerning the circumstances of the plant closing or mass layoff, including the number of employees affected.

50-1-206. Right to work.

(a) It is the public policy of this state that employees of this state have the right to:

(1) Employment without regard to any person's refusal to join or affiliate with, or decision to withdraw from or cease membership in, any labor union or employee organization of any kind;

(2) Be employed free from the restraints of any contract, combination or agreement, written or oral, that provides for exclusion from employment of any person due to their refusal to join or affiliate with, or decision to withdraw from or cease membership in, any labor union or employee organization of any kind;

(3) Be employed without regard to any person's refusal to pay dues, fees, assessments or other charges to any labor union or employee organization of any kind; and

(4) Decertify a union or other bargaining representative upon compliance with the applicable federal law.

(b) Private employers may physically post notice of the rights described in this section, at locations where notices are normally posted, informing employees about their rights under this section, or may physically disseminate such notice to employees if no such normal location for posting exists.

(c) To assist private employers in informing workers of their rights as described in this section, the commissioner of labor and workforce development shall create model notice language reiterating the public policies of this state espoused in this part, which may be used by private employers accordingly.

(d) The commissioner shall designate those persons in the department responsible for carrying out the commissioner's power, duties and responsibilities under this part.

50-1-602. Notification of employees and state.

(a) Upon notifying affected employees of a reduction in operations, the employer shall then notify state government by telephoning the commissioner of labor and workforce development and informing the commissioner of the circumstances of the reduction in operations, as well as the number of employees affected.

(b)(1) The commissioner of labor and workforce development shall obtain and operate a toll-free telephone line for the purpose of receiving and encouraging employer compliance with subsection (a).

(2) The commissioner shall regularly undertake appropriate activities to inform and remind employers of the existence of the toll-free telephone line and of the requirements contained in subsection (a).

(c) Upon receiving initial notification of a reduction in operations, the commissioner shall immediately advise the commissioners of economic and community development, education, health, human services, and mental health and substance abuse services, the executive director of the state board of education, and the chancellor of the board of regents of the state university

and community college system, concerning the circumstances of the reduction in operations and the number of affected employees.

50-1-701. Short title.

This part shall be known and may be cited as the "Tennessee Lawful Employment Act."

50-1-702. Part definitions.

As used in this part:

(1) "Commissioner" means the commissioner of labor and workforce development, or the commissioner's designee;

(2) "Department" means the department of labor and workforce development, unless the context provides otherwise;

(3) "Department of homeland security" means the United States department of homeland security, or the appropriate agency or division within such department, or any successor department, agency, or division thereto;

(4) "Economic development incentive" means any grant, loan or performance-based incentive from any governmental entity;

(5) "Employee" means any individual for whom an employer must complete a Form I-9 pursuant to federal law and regulations, and does not include an independent contractor as defined by 8 U.S.C. § 1324a and its regulations;

(6) "Employer" means private employers and governmental entities;

(7) "E-Verify program" means the federal electronic work authorization verification service provided by the department of homeland security pursuant to the federal Basic Pilot Program Extension and Expansion Act of 2003, P.L. 108-156, or any successor program thereto;

(8) "Governmental entity" means this state or any political subdivision which exercises governmental powers under the laws of this state and uses tax revenues;

(9) "Internet access" means Internet service that is installed and accessible at an employer's place of business;

(10) "License" means any certificate, approval, registration, or similar form of permission issued by a local government with respect to business licensure as described in title 67, chapter 4;

(11) "Non-employee" means any individual, other than an employee, paid directly by the employer in exchange for the individual's labor or services;

(12) "Person" means an individual, corporation, partnership, or other legal entity;

(13) "Private employer" means any person who is required by federal law and regulations to report, for any purpose, remuneration paid to at least six (6) employees; and

(14) "Tax form" means any form issued by the United States internal revenue service, including, but not limited to, Form W-2, Form-1099 or Form-1040.

50-1-703. Duties of employers — Office of employment verification assistance — Application — Complaints for violations — Commissioner's order on finding of violation — Penalties.

(a)(1) Employers shall:

(A) For non-employees, request and maintain a copy, pursuant to subdivision (a)(3), of any one (1) of the following documents prior to the non-employee providing labor or services on or after the phase-in period applicable to the particular size employer described in subsection (b):

(i) A valid Tennessee driver license or photo identification license issued by the department of safety;

(ii) A valid driver license or photo identification license issued by another state where the issuance requirements are at least as strict as those in this state, as determined by the department. The commissioner, in consultation with the department of safety, shall determine which states have issuance requirements that are at least as strict as this state, and shall develop, and periodically update, a publicly accessible list of such states on the department's web site;

(iii) An official birth certificate issued by a United States state, jurisdiction or territory;

(iv) A United States government-issued certified birth certificate;

(v) A valid, unexpired United States passport;

(vi) A United States certificate of birth abroad (DS-1350 or FS-545);

(vii) A report of birth abroad of a citizen of the United States (FS-240);

(viii) A certificate of citizenship (N560 or N561);

(ix) A certificate of naturalization (N550, N570 or N578);

(x) A United States citizen identification card (I-197 or I-179); or

(xi) Valid alien registration documentation or other proof of current immigration registration recognized by the United States department of homeland security that contains the individual's complete legal name and current alien admission number or alien file number (or numbers if the individual has more than one (1) number); and

(B) For employees, either:

(i) Request and maintain a copy, pursuant to subdivision (a)(3), of any one (1) of the documents described in (a)(1)(A)(i)-(xi) prior to the employee providing labor or services on or after the phase-in period applicable to the particular size employer described in subsection (b); or

(ii)*(a)* Enroll in the E-Verify program prior to hiring an employee on or after the applicable phase-in period described in subsection (b);

(b) Verify the work authorization status of the employee hired by using the E-Verify program; and

(c) Maintain a record of any results generated by the E-Verify program for that particular employee in a manner consistent with subdivision (a)(3).

(C)(i) An employer who verifies the work authorization status of an employee pursuant to subdivision (a)(1)(B)(ii) has not violated § 50-1-103(b) with respect to the particular employee if the employer meets the requirements in § 50-1-103(d).

(ii) No employer shall prevail in any proceeding where a violation of § 50-1-103 is alleged if the sole evidence presented by the employer is evidence of compliance with subdivisions (a)(1)(A) or (a)(1)(B)(i).

(2) No employer shall be in violation of subdivision (a)(1)(B) if the employer has requested, but has not received, assistance pursuant to subdivision (a)(5).

(3) An employer shall maintain:

(A) A record of results generated by the E-Verify program pursuant to (a)(1)(B)(ii) with respect to an employee for three (3) years after the date of the employee's hire or for one (1) year after the employee's employment is terminated, whichever is later; and

(B) Documentation received pursuant to subdivision (a)(1)(A) and (a)(1)(B)(i) for three (3) years after the documentation is received by the employer or for one (1) year after the employee or non-employee ceases to provide labor or services for the employer, whichever is later.

(4) Nothing in this section shall be construed to prevent an employer from contracting with or otherwise obtaining the services of an E-Verify employer agent, or similar third party, for the purpose of complying with subdivision (a)(1)(B)(ii).

(5) There is created within the department the office of employment verification assistance. The department is authorized to enter into any memorandum of understanding or other agreement required by the E-Verify program to operate this office, and shall create no more than one (1) full-time administrative position to staff the office. If an employer does not have Internet access, then the office shall, at no charge to the employer, enroll the employer in the E-Verify program or conduct work authorization status checks of the employer's employees by using the E-Verify program; provided, that the employer signs a prescribed form, under penalty of perjury, attesting to the employer's lack of Internet access and completes any paperwork required by the E-Verify program to permit the office to provide such assistance.

(6) Except as otherwise provided in subsection (c), the department shall conduct an inquiry concerning an employer's compliance with subdivision (a)(1) in conjunction with any pending inquiry, investigation, or inspection of the employer by the department's division of labor standards or workers' compensation division, or any successor divisions thereto. When conducting an inquiry, the commissioner shall provide written notification to the employer of the inquiry and a request for documentation establishing compliance with subdivision (a)(1). The employer shall provide such documentation to the commissioner within thirty (30) days from the date the employer received the department's request. If the employer fails to respond with documentation establishing compliance with subdivision (a)(1) within the thirty-day period, then the commissioner shall issue an initial order pursuant to subsection (d).

(b)(1) On or after January 1, 2012, subsection (a) shall apply to:

(A) Governmental entities; and

(B) Private employers with employees of five hundred (500) or more;

(2) On or after July 1, 2012, subsection (a) shall apply to private employers with employees of two hundred (200) to four hundred ninety-nine (499); and

(3) On or after January 1, 2013, subsection (a) shall apply to private employers with employees of six (6) to one hundred ninety-nine (199).

(c)(1) Any lawful resident of this state or employee of a federal agency may file a complaint alleging a violation of subdivision (a)(1) to the department. The complaint shall, at a minimum, include the name of the individual filing the complaint, and satisfactory evidence of a violation as determined by the commissioner.

(2) On receipt of a complaint, the commissioner shall determine if the complaint contains satisfactory evidence of a violation of subdivision (a)(1);

provided, that the commissioner shall inform the individual filing the complaint the basis for such determination. The commissioner shall not investigate complaints that are based solely on race, color or national origin.

(3) If the commissioner determines that the complaint contains satisfactory evidence of a violation of subdivision (a)(1), then the commissioner shall conduct an inquiry. When conducting an inquiry, the commissioner shall provide written notification to the employer of the alleged violation of subdivision (a)(1) and a request for documentation establishing compliance with subdivision (a)(1). The employer shall provide such documentation to the commissioner within thirty (30) days from the date the employer received the department's request. Upon request by the employer, the department shall provide the employer with the name of the individual filing a complaint.

(4) Upon the expiration of the thirty-day period in subdivision (c)(3), the commissioner shall make a determination of whether a violation of subdivision (a)(1) occurred. If the employer fails to provide documentation establishing compliance with subdivision (a)(1) within the thirty-day period, then the commissioner shall issue an initial order pursuant to subdivision (d)(1). If documentation is submitted within the thirty-day period, then the commissioner shall determine whether there is clear and convincing evidence of a violation of subdivision (a)(1) based on the documentation submitted, the evidence from the complaint, and other applicable evidence.

(d)(1) If the commissioner determines that an employer has violated subdivision (a)(1) pursuant to subdivision (a)(6) or (c)(4), or determines that an employer has violated § 50-1-704, then the commissioner shall issue an initial order that shall include, at a minimum:

(A) The commissioner's findings and determinations;

(B) The penalties that will apply if a final order is issued;

(C) The process to request a contested case hearing; and

(D) The process by which the commissioner shall waive all penalties for a first violation as provided in subdivision (d)(3).

(2) An employer shall have the right to appeal, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, an initial order issued by the commissioner pursuant to this section; provided, that the employer sends written notice to the commissioner within thirty (30) days of the date of the initial order. If the employer fails to send such written notice, then the contested case hearing process is waived.

(3) The commissioner shall issue a warning in lieu of all penalties for a first violation of subdivision (a)(1) if:

(A) The employer complies with all remedial action requested by the department to remedy the violation of subdivision (a)(1) within sixty (60) days of the date of the initial order; and

(B) The commissioner determines that the violation of subdivision (a)(1) was not a knowing violation.

(e) If the commissioner does not issue a warning in lieu of penalties pursuant to subdivision (d)(3), then the commissioner shall issue a final order on the date the contested case hearing concludes or is waived and assess penalties in accordance with subsections (f)-(j). The final order shall include, at a minimum, the types of evidence required from the private employer in order to avoid suspension of the private employer's license under subdivision (f)(3).

(f)(1) If the commissioner issues a final order for a violation of subdivision (a)(1) by a private employer, or a violation of § 50-1-704, then the commis-

sioner shall assess the following civil penalties:

(A) Five hundred dollars ($500) for a first violation;

(B) One thousand dollars ($1,000) for a second violation; or

(C) Two thousand five hundred dollars ($2,500) for a third or subsequent violation.

(2) In addition to the civil penalties provided in subdivision (f)(1), the commissioner shall also assess the following civil penalties:

(A) For a first violation, five hundred dollars ($500) for each employee or non-employee not verified pursuant to subdivisions (a)(1)(A) and (B);

(B) For a second violation, one thousand dollars ($1,000) for each employee or non-employee not verified pursuant to subdivisions (a)(1)(A) and (B); or

(C) For a third or subsequent violation, two thousand five hundred dollars ($2,500) for each employee or non-employee not verified pursuant to subdivisions (a)(1)(A) and (B).

(3) The private employer shall submit to the commissioner evidence of compliance with subdivision (a)(1) within sixty (60) days of the final order. If the private employer fails to submit such documentation, then the commissioner shall request an order consistent with § 4-5-320, requiring the appropriate local government with respect to business licensure pursuant to title 67, chapter 4, to suspend the private employer's license until the employer remedies the violation; provided, however, if the private employer's license has also been suspended pursuant to § 50-1-103(e)(1)(A) or (B), then the license shall remain suspended until the expiration of the period provided for in § 50-1-103(e)(1)(A) or (B).

(g) A second or subsequent violation of subdivision (a)(1) shall accrue from a separate inquiry conducted under subdivision (a)(6) or (c)(3).

(h) All moneys collected pursuant to this section shall be deposited into the lawful employment enforcement fund created by § 50-1-708.

(i) The penalties described in this section shall not be mutually exclusive, and may be imposed in conjunction with any applicable penalties as provided by law.

(j) If the commissioner issues a final order for a violation of subdivision (a)(1) by a governmental entity, then the commissioner shall post the violation on the department's web site as provided in § 50-1-705.

50-1-704. Employer's knowing misclassification to avoid requirements.

(a) If the department determines that an employer knowingly misclassified an individual in order to avoid the requirements of this part or chapters 1, 2, 6 or 7 of this title, then the department shall:

(1) Share the findings and information from its investigations with divisions within the department and with the department of commerce and insurance; and

(2) Pursue appropriate sanctions against the employer as provided by law including, but not limited to, sanctions provided in this part and chapters 1, 2, 6 and 7 of this title.

(b) The department and its divisions are hereby authorized to execute any necessary memorandums of understanding to allow the sharing of such findings and information as required by this section.

50-1-705. Posting of list of employers against whom final orders issued.

(a) Beginning February 1, 2012, and on a monthly basis thereafter, the department shall post a publicly accessible list on the department's web site of any employer against whom a final order has been issued pursuant to this part.

(b) The list required to be posted pursuant to this section shall state, at a minimum, the employer's name, the place of business of a private employer where the violation occurred, a brief description of the violation, a designation of the violation as a first or subsequent violation, and any penalties that have been assessed against the employer.

(c) The list shall remain on the web site for such time as determined by the commissioner.

50-1-706. Protection against retaliation.

Any individual alleging a violation of this part shall have all protections under §§ 8-50-116 and 50-1-304, and any other applicable protections as provided by law.

50-1-707. Compliance deadline.

On or after January 1, 2012, in addition to any other requirement to receive an economic development incentive, a private employer shall be in compliance with this part.

50-1-708. Lawful employment enforcement fund.

(a) There is created in the state treasury a fund to be known as the lawful employment enforcement fund. Moneys collected by the department pursuant to this part shall be deposited in this fund and shall only be used by the department to implement and administer the purposes set forth in this part, including, but not limited to, enforcement and education. Moneys in the fund shall not revert to the general fund of the state, but shall remain available to be used as provided for in this section.

(b) Interest accruing on investments and deposits of the lawful employment enforcement fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

(c) Moneys in the lawful employment enforcement fund account shall be invested by the state treasurer in accordance with § 9-4-603.

50-1-709. Termination of employment of illegal aliens.

If an employer fails to terminate the employment of any individual for whom the employer receives a final non-confirmation result from the E-Verify program, then the department may consider such fact when making a determination pursuant to § 50-1-103.

50-1-710. Enforcement without prejudice.

This part shall be enforced without regard to race, color, or national origin.

50-1-711. Compliance with federal immigration law.

Nothing in this part shall be construed to abrogate any obligations by an employer to comply with federal immigration law, including, but not limited to, the proper completing and maintaining of federal employment eligibility verification forms or documents.

50-1-712. Interpretation as fully consistent with federal immigration and labor laws.

This part shall be interpreted so as to be fully consistent with all federal laws, including, but not limited to, federal laws regulating immigration and labor.

50-1-713. Exemption when E-Verify program suspended or not operational.

An employer shall not be in violation of this part during any time period in which the E-Verify program is suspended or not operational.

50-1-714. Rules and regulations.

The commissioners of labor and workforce development and safety are authorized to promulgate rules and regulations to effectuate the purposes of this part. All rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

50-1-715. Expiration of federal electronic work authorization verification system.

If the federal electronic work authorization verification service provided by the United States department of homeland security pursuant to the federal Basic Pilot Program Extension and Expansion Act of 2003, P.L. 108-156, or any successor program, expires and a successor program is not implemented prior to such expiration date, then this part shall cease to be effective as of such expiration date.

50-2-103. Payment of employees in private employments.

(a) All wages or compensation of employees in private employments shall be due and payable as follows:

(1) All wages or compensation earned and unpaid prior to the first day of any month shall be due and payable not later than the twentieth day of the month following the one in which the wages were earned;

(2) All wages or compensation earned and unpaid prior to the sixteenth day of any month shall be due and payable not later than the fifth day of the succeeding month; and

(3) For the purposes of this subsection (a), the final wages of an employee who quits or is discharged shall include any vacation pay or other compensatory time that is owed to the employee by virtue of company policy or labor agreement. This subdivision (a)(3) does not mandate employers to provide vacations, either paid or unpaid, nor does it require that employers establish written vacation pay policies.

(b) "Private employment," as used in subsection (a), means and includes all

employments in concerns where five (5) or more employees are employed, except those under the direct management, supervision and control of the United States, this state, any county, incorporated city or town, or other municipal corporation or political subdivision of the state, or any office or department of the state or general government.

(c) Nothing contained in this section shall be construed as prohibiting the payment of wages at more frequent periods than semimonthly.

(d) Every employer shall establish and maintain regular pay days as provided in this section, and shall post and maintain notices, printed or written in plain type or script, in at least two (2) conspicuous places where the notices can be seen by the employees as they go to and from work, setting forth the regular pay day as prescribed in subsection (a).

(e)(1) The payment of wages or compensation of employees in the employments defined in this section shall be made as follows:

(A) In lawful money of the United States;

(B) By a good and valid negotiable check or draft, payable on presentation of the check or draft at some bank or other established place of business without discount, exchange or cost of collection, in lawful money of the United States;

(C) Electronic automated fund transfer in lawful money of the United States; or

(D) Credit to a prepaid debit card issued through a network system from which the employee is able to withdraw or transfer funds, subject to the limitations contained in subdivisions (e)(2) and (3).

(2) An employer who chooses to compensate its employees using prepaid debit cards under subdivision (e)(1)(D) shall also give employees the choice of being paid by electronic transfer under subdivision (e)(1)(C). If after the employer has explained this system to an employee and provided full written disclosure of any applicable fees associated with the prepaid debit card and the employee does not designate an account at a financial institution in advance and as required by the employer for the payroll transfer to occur, then the employer may arrange to pay such employee by prepaid debit card pursuant to subdivision (e)(1)(D).

(3) If an employer pays its employees their wages on a prepaid debit card pursuant to subdivision (e)(1)(D), then such employer shall insure that each employee shall have the ability to make at least one (1) withdrawal or transfer from the prepaid debit card per pay period without cost to the employee for any amount contained on the card.

(f) In case an employee in the employments defined in this section is absent from the usual place of employment at the time the payment of wages or compensation is due and payable, the employee shall be paid the wages or compensation within a reasonable time after making a demand for the wages or compensation.

(g) Any employee who leaves or is discharged from employment shall be paid in full all wages or salary earned by the employee no later than the next regular pay day following the date of dismissal or voluntary leaving, or twenty-one (21) days following the date of discharge or voluntary leaving, whichever occurs last. No employer shall, by any means, secure an exemption from this subsection (g).

(h)(1)(A) Except as provided in subdivision (h)(2), each employee shall have a thirty-minute unpaid meal break if scheduled to work six (6) hours

consecutively, except in workplace environments that by their nature of business provide ample opportunity to take an appropriate meal break. The meal break shall not be scheduled during or before the first hour of scheduled work activity.

(B) For purposes of this subsection (h), "meal break" means a rest break or meal period.

(2)(A) At the discretion of an employer, an employee who is principally employed in the service of food or beverages to customers and who, in the course of such employment, receives tips and reports the tips to the employer may waive the employee's right to a thirty-minute unpaid meal break.

(B) To waive the meal break, an employee shall submit a waiver request to the employer in writing on a form established by the employer as provided in subdivision (h)(C)(i). For the waiver to be effective:

(i) The employee must submit the request knowingly and voluntarily; and

(ii) The employer and employee must both consent to the waiver.

(C) An employer who intends to enter into waiver agreements with employees subject to this subdivision (h)(2) shall establish a reasonable policy that permits employees to waive the meal break subject to the demands of the employees' work environment. This policy shall be in writing and posted in at least one (1) conspicuous place in the workplace. The policy shall include, but not be limited to, the following:

(i) A waiver form that contains a statement that the employee acknowledges the employee's right, under state law, to receive an unpaid meal break of not less than thirty (30) minutes during a six-hour work period and that the employee is knowingly and voluntarily waiving this right;

(ii) The length of time the waiver will be in effect; and

(iii) Procedures for rescission of the waiver agreement by the employee or employer.

(D) An employer or employee may rescind a waiver agreement after providing notice to the other party. Such notice must be provided at least seven (7) calendar days prior to the date that the waiver will no longer be in effect.

(E) No employer shall coerce an employee into waiving a meal break.

(i) A violation of this section is a Class B misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Further, every employer, partnership or corporation willfully violating this section is subject to a civil penalty of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) at the discretion of the commissioner or the commissioner's designated representative. Each and every infraction constitutes a separate and distinct offense. If the commissioner, or the commissioner's designated representative, determines that the violation was unintentional, there shall be a warning, in lieu of a penalty, on the first offense. On second or subsequent violations, the civil penalty is applicable and may be assessed at the discretion of the commissioner or the commissioner's designated representative. It shall be at the sole discretion of the commissioner to elect to proceed either civilly or criminally upon any violation of this part; however, the employer shall not be charged both civilly and criminally for the same violation.

(j) The department of labor and workforce development shall enforce this

section. Each employer, during normal business hours, shall make available to inspectors of the department specific wage and payroll records of its employees maintained on the premises that are pertinent to a written complaint. Records that are maintained off the premises or inaccessible shall be made available to the inspectors on a timely basis as agreed upon by the inspector and the employer.

50-2-107. Distribution of service charges or gratuities.

(a)(1) If a business, including a private club, lounge, bar or restaurant, includes on the bill presented to and paid by a customer, member or patron an automatic percentage or specific dollar amount denominated as a service charge, tip, gratuity, or otherwise, which amount is customarily assumed to be intended for the employee or employees who have served the customer, member or patron, that amount shall be paid over to or distributed among the employee or employees who have rendered that service. The payment shall be made at the close of business on the day the amount is received or at the time the employee is regularly paid, or, in the case of a bill for which credit is extended to a customer, member or patron, payment shall be made at the close of business on the day the amount is collected or on the first day the employee is regularly paid occurring after the amount is collected.

(2) The payment shall not be reduced, docked or otherwise diminished to penalize an employee for any actions in connection with the employee's employment, if it is derived from a mandatory service charge or tip collected from customers, members or patrons.

(3)(A) This section does not apply to bills for food or beverage served in a banquet, convention or meeting facility segregated from the public-at-large, except banquet, convention or meeting facilities that are on the premises of a private club.

(B)(i) This section does not apply to bills presented to or charges paid by guests for accommodations and activities at a guest ranch.

(ii) For purposes of subdivision (a)(3)(B)(i), "guest ranch" means a facility segregated from the public-at-large:

(a) Offering accommodations for overnight stays and activities typical of western ranching;

(b) That may provide other recreational activities exclusively for guests in conjunction with the ranching activities, including, but not limited to, fishing, hiking, horseback riding, rafting and swimming; and

(c) At which food services are incidental to the operation of the guest ranch, are only for the guests of the guest ranch and the cost of which are included in the fee to stay.

(b) A violation of this section is a Class C misdemeanor. Each failure to pay an employee constitutes a separate offense.

50-3-920. No regulation and enforcement of changes in federal regulations relating to child labor performed on farms.

On or after April 16, 2012, no public funds of this state or any political subdivision of this state shall be allocated to the regulation or enforcement of any change made after December 1, 2011, to the United States department of labor's Hazardous Occupations Orders for Agricultural Employment relating to children, compiled in 29 CFR part 570.

50-3-1001. Part definitions.

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

(1) "Approved" means approved by the commissioner;

(2) "Commissioner" means the commissioner of labor and workforce development or any of the commissioner's authorized representatives;

(3) "Department" means the department of labor and workforce development;

(4) "High-voltage" means a voltage in excess of seven hundred fifty (750) volts between conductors or from any conductor to ground; and

(5) "Overhead lines" means all bare or insulated electrical conductors installed above ground, except those conductors that are enclosed in approved metal covering.

50-3-1002. Guarding against accidental contact by employee.

No person, firm, or corporation, or agent of a person, firm or corporation, shall require or permit any employee to perform any function in proximity to high-voltage overhead lines; to enter upon any land, building, or other premises and engage in any excavation, demolition, construction, repair or other operation; or to erect, install, operate, or store in or upon such premises any tools, machinery, equipment, materials, or structures, including house moving, well drilling, pile driving or hoisting equipment, unless and until danger from accidental contact with such high-voltage overhead lines has been effectively guarded against in the manner prescribed in this part.

50-3-1003. Clearance or safeguard required.

(a) The operation, erection or transportation of any tools, machinery, or equipment, or any part of any tools, machinery, or equipment, capable of vertical, lateral or swinging motion, the handling, transportation or storage of any supplies, materials or apparatus, or the moving of any house or other building, or any part of any house or building, under, over, by or near high-voltage overhead lines, is expressly prohibited, if at any time during such operation, transportation or other manipulation it is possible to bring the equipment, tools, materials, building, or any part of the equipment, tools, materials or building, within ten feet (10′) of the high-voltage overhead lines, or the distance required by an applicable standard of the Tennessee occupational health administration, except where the high-voltage overhead lines have been effectively guarded against danger from accidental contact, by either:

(1) The erection of mechanical barriers to prevent physical contact with high-voltage conductors;

(2) De-energizing the high-voltage conductors and grounding where necessary; or

(3) By insulating the lines.

(b) Only in the case of an exception referenced in subdivision (a)(1), (a)(2) or (a)(3) may the clearance required by subsection (a) be reduced. The clearance required by subsection (a) shall not be provided by movement of the conductors through strains impressed, by attachments or otherwise, upon the structures supporting the high-voltage overhead line nor upon any equipment, fixtures or attachments on the structures.

(c) If temporary relocation of the high-voltage conductors is necessary,

appropriate arrangements shall be made with the owner or operator of the overhead line for such temporary relocation.

50-3-1004. [Repealed.]

50-3-1005. Notification to power company and responsibility for safeguards.

When any operations are to be performed, tools or materials are to be handled, or equipment is to be moved or operated, within ten feet (10′), or the distance required by an applicable standard of the Tennessee occupational health administration, of any high-voltage overhead line, the person or persons responsible for the work to be done shall promptly notify the operator of the high-voltage overhead line of the work to be performed, and such person shall be responsible for the completion of the safety measures that are required by §§ 50-3-1002 and 50-3-1003, before proceeding with any work that would impair the clearance.

50-3-1006. Enforcement.

The commissioner shall administer and enforce this part and the commissioner is empowered to prescribe and promulgate rules and regulations consistent with this part.

50-3-1007. Penalty for violations.

A violation of any provision of this part is a violation of § 50-3-105(1).

50-3-1008. Operations exempt.

This part shall not be construed as applying to, shall not apply to, and is not intended to apply to, the construction, reconstruction, operation, and maintenance of overhead electrical conductors and their supporting structures and associated equipment by authorized and qualified electrical workers; nor to the authorized and qualified employees of any person, firm or corporation engaged in the construction, reconstruction, operation, and maintenance of overhead electrical circuits or conductors and their supporting structures and associated equipment of rail transportation systems, or electrical generating, transmission, distribution, and communication systems. This exception, when applied to railway systems, shall be construed as permitting operation of standard rail equipment that is normally used in the transportation of freight or passengers or both and the operation of relief trains, or other equipment in emergencies, or in maintenance of way service, at a distance of less than ten feet (10′), or the distance required by an applicable standard of the Tennessee occupational health administration, from any high-voltage overhead conductor of such railway system; but this part shall be construed as prohibiting normal repair or construction operations at a distance of less than ten feet (10′), or the distance required by an applicable standard of the Tennessee occupational health administration, from any high-voltage overhead conductor by other than properly qualified and authorized persons or employees under the direct supervision of an authorized person who is familiar with the hazards involved, unless there has been compliance with the safety provisions of §§ 50-3-1002 — 50-3-1005.

50-6-102. Chapter definitions.

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

(1) "Administrator" means the chief administrative officer of the division of workers' compensation of the department of labor and workforce development;

(2) "AMA guides" means the 6th edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, American Medical Association, until a new edition is designated by the general assembly in accordance with § 50-6-204(d)(3)(C). The edition that is in effect on the date the employee is injured is the edition that shall be applicable to the claim;

(3)(A) "Average weekly wages" means the earnings of the injured employee in the employment in which the injured employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of the injury divided by fifty-two (52); but if the injured employee lost more than seven (7) days during the period when the injured employee did not work, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks remaining after the time so lost has been deducted;

(B) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts of weeks during which the employee earned wages shall be followed; provided, that results just and fair to both parties will be obtained;

(C) Where, by reason of the shortness of the time during which the employee has been in the employment of the employer, it is impracticable to compute the average weekly wages as defined in this subdivision (3), regard shall be had to the average weekly amount that, during the first fifty-two (52) weeks prior to the injury or death, was being earned by a person in the same grade, employed at the same work by the same employer, and if there is no such person so employed, by a person in the same grade employed in the same class of employment in the same district;

(D) Wherever allowances of any character made to any employee in lieu of wages are specified as part of the wage contract, they shall be deemed a part of the employee's earnings;

(4) "Benefit review conference" means a nonadversarial, informal dispute resolution proceeding to mediate and resolve workers' compensation disputes as provided in this chapter;

(5) "Case management" means medical case management or the ongoing coordination of medical care services provided to an injured or disabled employee on all cases where medical care expenses are expected to exceed a threshold;

(6) "Commissioner" means the commissioner of labor and workforce development;

(7) "Construction design professional" means:

(A) Any person possessing a valid registration or license entitling that person to practice the technical profession of architecture, engineering, landscape architecture or land surveying in this state;

(B) Any corporation, partnership, firm or other legal entity authorized by law to engage in the technical profession of architecture, engineering,

landscape architecture or land surveying in this state; or

(C) Any person, firm or corporation providing interior space planning or design in this state;

(8) "Department" means the department of labor and workforce development;

(9) "Division" or "division of workers' compensation" means the division of workers' compensation of the department of labor and workforce development;

(10)(A) "Employee" includes every person, including a minor, whether lawfully or unlawfully employed, the president, any vice president, secretary, treasurer or other executive officer of a corporate employer without regard to the nature of the duties of the corporate officials, in the service of an employer, as employer is defined in subdivision (11), under any contract of hire or apprenticeship, written or implied. Any reference in this chapter to an employee who has been injured shall, where the employee is dead, also include the employee's legal representatives, dependents and other persons to whom compensation may be payable under this chapter;

(B) "Employee" includes a sole proprietor or a partner who devotes full time to the proprietorship or partnership and elects to be included in the definition of employee by filing written notice of the election with the division at least thirty (30) days before the occurrence of any injury or death, and may at any time withdraw the election by giving notice of the withdrawal to the division;

(C) The provisions of this subdivision (10), allowing a sole proprietor or a partner to elect to come under this chapter, shall not be construed to deny coverage of the sole proprietor or partner under any individual or group accident and sickness policy the sole proprietor or partner may have in effect, in cases where the sole proprietor or partner has elected not to be covered by the provisions of the Workers' Compensation Law, for injuries sustained by the sole proprietor or partner that would have been covered by the provisions of the Workers' Compensation Law had the election been made, notwithstanding any provision of the accident and sickness policy to the contrary. Nothing in this section shall require coverage of occupational injuries or sicknesses, if occupational injuries or sicknesses are not covered under the terms of the policy without reference to eligibility for workers' compensation benefits;

(D) In a work relationship, in order to determine whether an individual is an "employee," or whether an individual is a "subcontractor" or an "independent contractor," the following factors shall be considered:

(i) The right to control the conduct of the work;

(ii) The right of termination;

(iii) The method of payment;

(iv) The freedom to select and hire helpers;

(v) The furnishing of tools and equipment;

(vi) Self-scheduling of working hours; and

(vii) The freedom to offer services to other entities;

(E) "Employee" does not include a construction services provider, as defined in § 50-6-901, if the construction services provider is:

(i) Listed on the registry established pursuant to part 9 of this chapter as having a workers' compensation exemption and is working in the service of the business entity through which the provider obtained

such an exemption;

(ii) Not covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider is providing services; and

(iii) Rendering services on a construction project that:

(a) Is not a commercial construction project, as defined in § 50-6-901; or

(b) Is a commercial construction project, as defined in § 50-6-901, and the general contractor for whom the construction services provider renders construction services complies with § 50-6-914(b)(2);

(11) "Employer" includes any individual, firm, association or corporation, the receiver or trustee of the individual, firm, association or corporation, or the legal representative of a deceased employer, using the services of not less than five (5) persons for pay, except as provided in § 50-6-902, and, in the case of an employer engaged in the mining and production of coal, one (1) employee for pay. If the employer is insured, it shall include the employer's insurer, unless otherwise provided in this chapter;

(12) "Injury" and "personal injury":

(A) Mean an injury by accident, arising out of and in the course of employment, that causes either disablement or death of the employee; provided, that:

(i) An injury is "accidental" only if the injury is caused by a specific incident, or set of incidents, arising out of and in the course of employment, and is identifiable by time and place of occurrence; and

(ii) The opinion of the physician, selected by the employee from the employer's designated panel of physicians pursuant to §§ 50-6-204(a)(4)(A) or (a)(4)(B), shall be presumed correct on the issue of causation but said presumption shall be rebutted by a preponderance of the evidence;

(B) Include a mental injury arising out of and in the course of employment; and

(C) Do not include:

(i) A disease in any form, except when the disease arises out of and in the course and scope of employment; or

(ii) Cumulative trauma conditions, hearing loss, carpal tunnel syndrome, or any other repetitive motion conditions unless such conditions arose primarily out of and in the course and scope of employment;

(13) "Maximum total benefit" means the sum of all weekly benefits to which a worker may be entitled;

(A) For injuries occurring between July 1, 1990, and June 30, 1991, the maximum total benefit shall be one hundred nine thousand two hundred dollars ($109,200);

(B) For injuries occurring on or after July 1, 1991, and before August 1, 1992, the maximum total benefit shall be one hundred seventeen thousand six hundred dollars ($117,600);

(C) For injuries occurring on or after July 1, 1992, the maximum total benefit shall be four hundred (400) weeks times the maximum weekly benefit except in instances of permanent total disability; and

(D) For injuries occurring on or after July 1, 2009, the maximum total benefit shall be four hundred (400) times one hundred percent (100%) of the state's average weekly wage, as determined pursuant to subdivision

(14)(B), except in instances of permanent total disability. Temporary total disability benefits paid to the injured worker shall not be included in calculating the maximum total benefit;

(14)(A) "Maximum weekly benefit" means the maximum compensation payable to the worker per week;

(i) For injuries occurring between July 1, 1990, and June 30, 1991, the maximum weekly benefit shall be two hundred seventy-three dollars ($273) per week;

(ii) For injuries occurring on or after July 1, 1991, and before August 1, 1992, the maximum weekly benefit shall be two hundred ninety-four dollars ($294) per week;

(iii) For injuries occurring on or after August 1, 1992, and through June 30, 1993, the maximum weekly benefit shall be sixty-six and two thirds percent (66 ⅔%) of the employee's average weekly wage up to seventy-eight percent (78%) of the state's average weekly wage, as determined by the department;

(iv) For injuries occurring on or after July 1, 1993, and through June 30, 1994, the maximum weekly benefit shall be sixty-six and two thirds percent (66 ⅔%) of the employee's average weekly wage up to eighty-two and four-tenths percent (82.4%) of the state's average weekly wage, as determined by the department;

(v) For injuries occurring on or after July 1, 1994, and through June 30, 1995, the maximum weekly benefit shall be sixty-six and two thirds percent (66 ⅔%) of the employee's average weekly wage up to eighty-six and eight-tenths percent (86.8%) of the state's average weekly wage, as determined by the department;

(vi) For injuries occurring on or after July 1, 1995, and through June 30, 1996, the maximum weekly benefit shall be sixty-six and two thirds percent (66 ⅔%) of the employee's average weekly wage up to ninety-one and two-tenths percent (91.2%) of the state's average weekly wage, as determined by the department;

(vii) For injuries occurring on or after July 1, 1996, and through June 30, 1997, the maximum weekly benefit shall be sixty-six and two thirds percent (66 ⅔%) of the employee's average weekly wage up to ninety-five and six-tenths percent (95.6%) of the state's average weekly wage as determined by the department;

(viii) For injuries occurring on or after July 1, 1997, and through June 30, 2004, the maximum weekly benefit shall be sixty-six and two thirds percent (66 ⅔%) of the employee's average weekly wage up to one hundred percent (100%) of the state's average weekly wage as determined by the department;

(ix) For injuries occurring on or after July 1, 2004, the maximum weekly benefit for permanent disability benefits shall be sixty-six and two thirds percent (66 ⅔%) of the employee's average weekly wage up to one hundred percent (100%) of the state's average weekly wage, as determined by the department; and

(x)*(a)* For injuries occurring on or after July 1, 2004, through June 30, 2005, the maximum weekly benefit for temporary disability benefits shall be sixty-six and two thirds percent (66 ⅔%) of the employee's average weekly wage up to one hundred five percent (105%) of the state's average weekly wage, as determined by the department; and

(b) For injuries occurring on or after July 1, 2005, the maximum weekly benefit for temporary disability benefits shall be sixty-six and two thirds percent (66 ⅔%) of the employee's average weekly wage up to one hundred ten percent (110%) of the state's average weekly wage, as determined by the department;

(B) As used in subdivision (14)(A), the state average weekly wage shall be determined as of the preceding January 1, and shall be adjusted annually using the data from the division and shall be effective on July 1 of each year;

(15) "Mental injury" means a loss of mental faculties or a mental or behavioral disorder where the proximate cause is a compensable physical injury resulting in a permanent disability, or an identifiable work-related event resulting in a sudden or unusual mental stimulus. A mental injury shall not include a psychological or psychiatric response due to the loss of employment or employment opportunities;

(16) "Minimum weekly benefit" means the minimum compensation per week payable to the worker;

(A) For injuries occurring between July 1, 1985, and June 30, 1986, the minimum weekly benefit shall be twenty dollars ($20.00) per week;

(B) For injuries occurring between July 1, 1986, and June 30, 1987, the minimum weekly benefit shall be twenty-five dollars ($25.00) per week;

(C) For injuries occurring between July 1, 1987, and June 30, 1988, the minimum weekly benefit shall be thirty dollars ($30.00) per week;

(D) For injuries occurring on or after July 1, 1988, and before July 1, 1993, the minimum weekly benefit shall be thirty-five dollars ($35.00) per week; and

(E) For injuries occurring on or after July 1, 1993, the minimum weekly benefit shall be fifteen percent (15%) of the state's average weekly wage, as determined by the department;

(17) "Utilization review" means evaluation of the necessity, appropriateness, efficiency and quality of medical care services, including the prescribing of one (1) or more Schedule II, III, or IV controlled substances for pain management for a period of time exceeding ninety (90) days from the initial prescription of such controlled substances, provided to an injured or disabled employee based on medically accepted standards and an objective evaluation of those services provided; provided, that "utilization review" does not include the establishment of approved payment levels, a review of medical charges or fees, or an initial evaluation of an injured or disabled employee by a physician specializing in pain management; and

(18) "Workers' compensation specialist" or "specialist" means a department employee who provides information and communication services regarding workers' compensation for employees and employers, and who conducts benefit review conferences and performs other duties as provided in this chapter.

50-6-121. Advisory council on workers' compensation.

(a)(1) There is created an advisory council on workers' compensation. There shall be seven (7) voting members of the council, with three (3) representing employers, three (3) representing employees, and one (1) member who shall serve as the chair and who shall be the state treasurer or the state

treasurer's designee. There shall be ten (10) nonvoting members of the council. All members shall have a demonstrable working knowledge of the workers' compensation system.

(A) The chair shall preside at meetings of the council and, in consultation with the voting members of the council, shall supervise the work of the staff of the council. The council shall meet at the call of the chair or at the written call of four (4) voting members of the council which written call shall be delivered to the chair. The chair may vote only on matters related to the administration of the council or the council's research. The chair is not permitted to vote on any matter that constitutes the making of a policy recommendation to the governor or to the general assembly.

(B) The speaker of the house of representatives, the speaker of the senate and the governor shall each appoint one (1) employer and one (1) employee representative to the council, who shall be voting members. Representatives, officers and employees from labor organizations or business trade organizations are eligible for appointment. In making the appointments of the employer representatives, the appointing authorities shall strive to ensure a balance of a commercially insured employer, self-insured employer or an employer who operates a small business. At least one (1) employee representative shall be from organized labor. Proxy voting is prohibited by voting members of the council; provided, however, that in instances where a voting member will be absent from a vote of the council, the member's appointing authority is authorized to appoint an alternate or designee for the vote or votes.

(C) Voting members shall serve four-year terms and the terms shall be staggered so that the terms of only three (3) voting members shall terminate at the same time. The terms of the voting members who are serving as of June 30, 2003, shall be amended as follows: those members whose terms are scheduled to expire in 2004 shall expire on June 30, 2004, and the successors shall serve a four-year term to begin on July 1, 2004, and to end on June 30, 2008, and those members whose terms are scheduled to expire in 2006 shall expire on June 30, 2006, and the successors shall serve a four-year term to begin on July 1, 2006, and to expire on June 30, 2010. Thereafter, all four-year terms shall begin on July 1 and terminate on June 30, four (4) years thereafter.

(D)(i) The governor shall also appoint ten (10) nonvoting members of the council as follows: one (1) to represent local governments, one (1) to represent insurance companies, five (5) to represent health care providers and three (3) attorneys. The nonvoting local government representative may be appointed from lists of qualified persons submitted by interested municipal and county organizations including, but not limited to, the Tennessee Municipal League and the Tennessee County Services Association. The nonvoting insurance company representative may be appointed from lists of qualified persons submitted by interested insurance organizations including, but not limited to, the Alliance of American Insurers and the American Insurance Association. One (1) nonvoting healthcare provider representative may be appointed from lists of qualified persons submitted by interested medical organizations including, but not limited to, the Tennessee Medical Association and one (1) nonvoting healthcare provider representative may be appointed from lists of qualified persons submitted by interested hospital organizations

including, but not limited to, the Tennessee Hospital Association. One (1) nonvoting health care provider representative shall be a chiropractor who is licensed in this state, one (1) nonvoting health care provider representative shall be a physical therapist who is licensed in this state, and one (1) nonvoting health care provider representative shall be an occupational therapist who is licensed in this state, and these members shall not receive reimbursement for travel expenses. The nonvoting attorney members shall be appointed as follows: one (1) who shall primarily represent injured workers' compensation claimants, who may be appointed from lists of qualified persons submitted by interested justice organizations including, but not limited to, the Tennessee Association for Justice; one (1) who shall primarily represent employers or workers' compensation insurers, who may be appointed from lists of qualified persons submitted by interested defense lawyer organizations including, but not limited to, the Tennessee Defense Lawyers Association; and one (1) who may be appointed from lists of qualified persons submitted by interested legal organizations including, but not limited to the Tennessee Bar Association.

(ii) The appointing authorities shall consult with interested groups including, but not limited to, the organizations listed in subdivision (a)(D)(i) to determine qualified persons to fill positions on the council.

(E) The nonvoting members shall be appointed to four-year terms that shall begin on July 1 and terminate on June 30, four (4) years thereafter.

(F) The chair of the commerce, labor and agriculture committee of the senate, the chair of the consumer and employee affairs committee of the house of representatives, the commissioner of labor and workforce development and the commissioner of commerce and insurance, or their designees, shall be ex officio, nonvoting members of the council.

(2) Each voting and nonvoting member of the advisory council on workers' compensation shall, upon the expiration of the member's term, be eligible for reappointment and shall serve until a successor is appointed. In the event a member resigns or becomes ineligible for service during the member's term, a successor shall be appointed by the appropriate appointing authority to serve the remainder of the term.

(3) No employer shall discriminate in any manner against an employee who serves on the advisory council because of the employee's service. Employees who serve on the advisory council shall not be denied any benefit from their employer because of the employee's service. Travel expenses of the employee representatives on the council shall be reimbursed pursuant to subsection (b); however, employers may choose to pay the travel expenses of their employees' service on the advisory council according to their own policies.

(b)(1) Notwithstanding the provisions of § 3-6-304 or any other law to the contrary, and in addition to all other requirements for membership on the council:

(A) Any person registered as a lobbyist pursuant to the registration requirements of title 3, chapter 6 who is subsequently appointed or otherwise named as a member of the council shall terminate all employment and business association as a lobbyist with any entity whose business endeavors or professional activities are regulated by the council, prior to serving as a member of the council. The provisions of this subdivision (b)(1)(A) shall apply to all persons appointed or otherwise

named to the council after July 1, 2010;

(B) No person who is a member of the council shall be permitted to register or otherwise serve as a lobbyist pursuant to title 3, chapter 6 for any entity whose business endeavors or professional activities are regulated by the council during such person's period of service as a member of the council. The provisions of this subdivision (b)(1)(B) shall apply to all persons appointed or otherwise named to the council after July 1, 2010, and to all persons serving on the council on such date who are not registered as lobbyists; and

(C) No person who serves as a member of the council shall be employed as a lobbyist by any entity whose business endeavors or professional activities are regulated by the council for one (1) year following the date such person's service on the council ends. The provisions of this subdivision (b)(1)(C) shall apply to persons serving on the council as of July 1, 2010, and to persons appointed to the council subsequent to such date.

(2) A person who violates the provisions of this subsection (b) shall be subject to the penalties prescribed in title 3, chapter 6.

(3) The bureau of ethics and campaign finance is authorized to promulgate rules and regulations to effectuate the purposes of this subsection (b). All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and in accordance with the procedure for initiating and proposing rules by the ethics commission to the bureau of ethics and campaign finance as prescribed in § 4-55-103.

(c) In addition to all other requirements for membership on the council, all persons appointed or otherwise named to serve as members of the council after July 1, 2010, shall be residents of this state.

(d) Members of the council shall not be paid but may be reimbursed for travel expenses. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(e) The council shall meet at least twice each year. It shall annually review workers' compensation in the state and shall issue a report of its findings and conclusions on or before July 1 of each year. The annual report shall be sent to the governor, the speakers of the house of representatives and the senate, the chair and vice-chair of the special joint committee on workers' compensation, the commissioner of labor and workforce development, the commissioner of commerce and insurance and the clerks of the house of representatives and senate. Notice of the publication of the annual report and all other reports published by the council shall be provided to all members of the general assembly pursuant to § 3-1-114.

(f) In performing its responsibilities, the council's role shall be strictly advisory, but it may:

(1) Make recommendations to the governor, the general assembly, the special joint committee on workers' compensation, the standing committees of each house that review the status of the workers' compensation system, the commissioner of labor and workforce development and the commissioner of commerce and insurance relating to the promulgation or adoption of legislation or rules;

(2) Make recommendations to the commissioner of labor and workforce development and the commissioner of commerce and insurance regarding

the method and form of statistical data collections; and

(3) Monitor the performance of the workers' compensation system in the implementation of legislative directives.

(g) The chair, in consultation with the voting members of the council, is authorized to retain staff and professional assistance, such as consultants and actuaries, as the chairman shall deem necessary for the work of the council, subject to budgetary approval in the general appropriations act. For administrative purposes, the council shall be attached to the department of treasury for all administrative matters relating to receipts, disbursements, expense accounts, budget, audit and other related items. The state treasurer shall have administrative and supervisory control over the staff assigned to assist the council. Employees of the council shall not have the status of preferred service employees pursuant to title 8. The autonomy of the council and its authority are not affected by this subsection (g).

(h) The council may develop evaluations, statistical reports and other information from which the general assembly may evaluate the impact of the legislative changes to workers' compensation law, including, but not limited to, the Reform Act of 2004 and subsequent statutory changes to the Workers' Compensation Law.

(i) The advisory council shall issue an annual report that includes a summary of significant supreme court decisions relating to workers' compensation, including an explanation of their impact on existing policy. The report shall be due on or before January 15 of each year and shall include, to the extent possible, the decisions that were issued during the preceding calendar year. This annual report shall be sent to the governor, the speaker of the house of representatives, the speaker of the senate, the chair of the consumer and employee affairs committee of the house of representatives, the chair of the commerce, labor and agriculture committee of the senate, and the chair and co-chair of the special joint committee on workers' compensation. Notice of the publication of the report shall be provided to all members of the general assembly pursuant to § 3-1-114.

(j) The advisory council on workers' compensation shall, within ten (10) business days of each meeting it conducts, provide a summary of the meeting and a report of all actions taken and all actions recommended to be taken to each member of the consumer and employee affairs committee of the house of representatives and commerce, labor and agriculture committee of the senate.

(k) Whenever any bill is introduced in the general assembly proposing to amend this chapter or to make any change in workers' compensation law, or to make any change in the law that may have a financial or other substantive impact on the administration of workers' compensation law, the standing committee to which the bill is referred may refer the bill to the council. The council's review of bills relating to workers' compensation should include, but not be limited to, bills that propose to amend chapters 3, 6, 7, and 9 of this title, and title 56, chapters 5 and 47. All bills referred to the council shall be reported back to the standing committee to which they were assigned as quickly as reasonably possible. Notwithstanding the absence of a report from the council, the standing committee is free to consider the bill at any time. The chair making the referral shall immediately notify the prime sponsors of the referral and the council shall not review and comment on the proposed legislation until the prime sponsors have been notified. The comments of the council shall describe the potential effects of the proposed legislation on the workers'

compensation system and its operations and any other information or suggestions that the council may think helpful to the sponsors, the standing committees or the general assembly. The comments of the council may include recommendations for or against passage of the proposed legislation. Other than reporting the recommendations for or against passage of proposed legislation and responding to any questions that the legislators may have, no staff of the advisory council shall lobby or advocate for or against passage of proposed legislation.

(*l*) The council shall study and report on the occupational health and safety of employment in Tennessee and make recommendations for safe employment education and training and promote the development of employer-sponsored health and safety programs.

50-6-124. Utilization review system — Pre-admission review — Penalties for rendering excessive or inappropriate services — Chiropractic and physical therapy services — Legislative intent.

(a) The commissioner of labor and workforce development shall establish a system of utilization review of selected outpatient and inpatient health care providers to employees claiming benefits under this chapter, by providers qualified pursuant to law or the utilization review accreditation commission.

(b) The commissioner shall also establish a system of pre-admission review of all hospital admissions, except for emergency services; however, utilization review pursuant to subsection (a) and this subsection (b) shall begin within one (1) working day of all emergency hospital admissions.

(c) Pursuant to the commissioner's established system of utilization review, the commissioner may contract with an independent utilization review organization, not owned by or affiliated with any carrier authorized to write workers' compensation insurance in the state, to provide utilization review, including peer review.

(d) Nothing in this section shall prevent an employer from electing to provide utilization review; however, if the employee, provider or any other party not contractually bound to the employer's utilization review program disagrees with that employer's utilization review, then that employee, provider or other party shall have recourse to the commissioner's utilization review program, as provided for in this section.

(e) Pursuant to the utilization review conducted by the commissioner, including providing an opportunity for a hearing, any health care provider who is found by the commissioner to have rendered excessive or inappropriate services may be subject to:

(1) A forfeiture of the right to payment for those services that are found to be excessive or inappropriate;

(2) A civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000); or

(3) A temporary or permanent suspension of the right to provide medical care services for workers' compensation claims if the health care provider has established a pattern of violations.

(f) It is the intent of the general assembly to ensure the availability of quality medical care services for injured and disabled employees and to manage medical costs in workers' compensation matters by eradicating pre-

scription drug abuse through the employment of the system established by subsection (a) to review any healthcare provider prescribing one (1) or more Schedule II, III, or IV controlled substances for pain management to an injured or disabled employee for a period of time exceeding ninety (90) days from the initial prescription of such controlled substances.

50-6-204. Medical treatment, attendance and hospitalization — Release of medical records — Reports — Disputes — Reimbursement or payment of expenses — Burial expenses — Physical examinations — Pain management.

(a)(1)(A) The employer or the employer's agent shall furnish, free of charge to the employee, such medical and surgical treatment, medicine, medical and surgical supplies, crutches, artificial members, and other reasonable and necessary apparatus, including prescription eyeglasses and eye wear, such nursing services or psychological services as ordered by the attending physician and hospitalization, including such dental work made reasonably necessary by accident as defined in the chapter.

(B) No medical provider shall charge more than ten dollars ($10.00) for the first twenty (20) pages or less, and twenty-five cents (25>) per page for each page after the first twenty (20) pages, for any medical reports, medical records or documents pertaining to medical treatment or hospitalization of the employee that are furnished pursuant to this subsection (a).

(2)(A) It is the intent of the general assembly that the administration of the workers' compensation system proceed in a timely manner and that the parties and the department have reasonable access to the employee's medical records and medical providers that are pertinent to and necessary for the swift resolution of the employee's workers' compensation claim. Notwithstanding any law to the contrary, there shall be no implied covenant of confidentiality, prohibition against ex parte communications or privacy of medical records in the custody of authorized treating physicians with respect to case managers, employers, or insurance companies, or their attorneys, if these persons comply with subdivision (a)(2)(C); provided, however, that the employee, or the employee's attorney, shall be provided copies, no later than ten (10) days in advance of a deposition of the authorized treating physician taken for any purpose or the appearance of the authorized treating physician for testimony, of any and all written memorandum or visual or recorded materials, including e-mails or other written materials:

(i) Provided to the employee's authorized treating physician by case managers, employers, insurance companies, or their attorneys; or

(ii) Received from the employee's authorized treating physician.

(B) For purposes of subdivision (a)(2)(C), "employer" means the employer, the employer's attorney, the employer's insurance carrier or third party administrator, a case manager as authorized by § 50-6-123, or any utilization review agent as authorized by § 50-6-124 during the employee's treatment for the claimed workers' compensation injury.

(C) To facilitate the timely resolution of workers' compensation claims and to facilitate the use of the benefit review process established by this chapter, there shall be reasonable access to any employee's medical

information only by compliance with the following:

(i) An employee claiming workers' compensation benefits shall provide the employer or the division of workers' compensation with a signed, written medical authorization form as prescribed by the commissioner; provided, the form shall:

(a) Be addressed to a specific medical provider authorized by the employer pursuant to this section;

(b) Permit the release of information through communication, either orally or in writing, as authorized under this subdivision (a)(2)(C); and

(c) Plainly state in capitalized lettering on the face of the document the following language:

THIS MEDICAL AUTHORIZATION FORM ONLY PERMITS THE EMPLOYER OR THE DIVISION OF WORKERS' COMPENSATION TO OBTAIN MEDICAL INFORMATION THROUGH ORAL OR WRITTEN COMMUNICATION, INCLUDING, BUT NOT LIMITED TO, CHARTS, FILES, RECORDS, AND REPORTS IN THE POSSESSION OF A MEDICAL PROVIDER AUTHORIZED BY THE EMPLOYER PURSUANT TO T.C.A. § 50-6-204 AND A MEDICAL PROVIDER THAT IS REIMBURSED BY THE EMPLOYER FOR THE EMPLOYEE'S TREATMENT;

(ii) An employee claiming workers' compensation benefits, or the employee's attorney, shall be entitled to obtain medical information, records, opinions, or reports from, or communicate in writing or in person with, any medical provider who has treated or provided medical care to the employee; provided, that the employee executes and provides the medical provider with a properly completed form as described in subdivision (a)(2)(C)(i).

(iii) Any medical provider authorized by the employer pursuant to this section and who has treated or provided medical care to an employee claiming workers' compensation benefits is permitted to communicate, orally or in writing, with the employer, or the employer's attorney, and shall honor any request by the employer for medical information, medical records, professional opinions, or medical reports pertaining to the claimed workers' compensation injury. Oral communication may be utilized, and includes, but is not limited to, a telephone conversation or an in-person meeting.

(iv) If an employee or employer files a request for assistance with the department, requesting the department to make a determination as to whether the claim is compensable or concerning an issue related to medical benefits or temporary disability benefits, the department may request, orally or in writing, medical information, records, opinions, or reports from the medical provider; provided, that:

(a) Any response by the medical provider to the department's request shall be in writing; and

(b) If the department receives documents or written responses to any request for information pursuant to this subdivision (a)(2)(C)(iv), then the department shall notify the employee, the employer and any attorney representing the employee or employer within fourteen (14) days of receipt of the document or written response that such persons may review or copy the documents or responses; provided, that the requesting party shall pay the copying fee authorized by subdivision

(a)(1)(B) prior to the department providing the requested copies; and

(v) If the department becomes involved in the appeal of a utilization review issue, then the department is authorized to communicate with the medical provider involved in the dispute either orally or in writing to permit the timely resolution of the issue and shall notify the employee, employer or any attorney representing the employee or employer that they may review or copy the documents or responses; provided, that the requesting party shall pay the copying fee authorized by subdivision (a)(1)(B) prior to the department providing the requested copies.

(D) No relevant information developed in connection with authorized medical treatment or an examination provided pursuant to this section for which compensation is sought by the employee shall be considered a privileged communication, and no medical provider shall incur any liability as a result of providing medical information, records, opinions, or reports as described in subdivision (a)(2)(C); provided, that the medical provider complies with subdivision (a)(2)(C).

(3) Whenever it appears that the amount of medical benefits to which the employee may be entitled under this section will exceed the amount of five thousand dollars ($5,000), the insurer shall file written notice with the division of workers' compensation, which shall, upon receipt of the notice, notify the employer that the claim for medical benefits for the employee will exceed five thousand dollars ($5,000).

(4)(A) The injured employee shall accept the medical benefits afforded under this section; provided, that, except as provided in subdivision (a)(4)(B) or (a)(4)(C), the employer shall designate a group of three (3) or more reputable physicians or surgeons not associated together in practice, if available in that community, from which the injured employee shall have the privilege of selecting the operating surgeon and the attending physician; and provided, further, that the liability of the employer for the services rendered the employee shall be limited to the charges that are established in the applicable medical fee schedule adopted pursuant to this section.

(B) If the injury is a back injury, then the group of three (3) or more physicians or surgeons required to be designated pursuant to subdivision (a)(4)(A) shall be expanded to four (4), one (1) of whom must be a doctor of chiropractic; provided, that no more than twelve (12) visits to the doctor of chiropractic shall be approved per back injury, except upon the approval of the employer. The provisions of this subdivision (a)(4)(B) shall not apply to state or local government employees and shall not apply to workers' compensation self-insurer pools established pursuant to § 50-6-405(c)(1).

(C) If the injury or illness requires the treatment of a physician or surgeon who practices orthopedic or neuroscience medicine, then the employer may appoint a panel of physicians or surgeons practicing orthopedic or neuroscience medicine required to be designated pursuant to subdivision (a)(4)(A) consisting of five (5) physicians, with no more than four (4) physicians affiliated in practice.

(D) In circumstances where an employee is offered a treating panel as described in subdivision (a)(4)(C), the injured employee shall be entitled to have a second opinion on the issue of surgery, impairment, and a diagnosis from that same panel of physicians selected by the employer.

(E) The employer shall provide the applicable panel of physicians to the employee in writing on a form prescribed by the division, and the employee shall document in writing the physician the employee has selected and the employee shall sign and date the prescribed form. The employer shall provide a copy of the completed form to the employee and shall maintain a copy of the completed form in the records of the employer and shall produce a copy of the completed form upon request by the division.

(5) All cases of dispute as to the value of the services shall be determined by the tribunal having jurisdiction of the claim of the injured employee for compensation. The tribunal may also deny payment of physicians' fees and hospital charges for failure to submit the reports as required in this section.

(6)(A) When an injured worker is required by the worker's employer to travel to an authorized medical provider or facility located outside a radius of fifteen (15) miles from the insured worker's residence or workplace, then, upon request, the employee shall be reimbursed for reasonable travel expenses. The injured employee's travel reimbursement shall be calculated based on a per mile reimbursement rate, as defined in subdivision (a)(6)(B), times the total round trip mileage as measured from the employee's residence or workplace to the location of the medical provider's facility. The definition of community as contemplated by this subdivision (a)(6)(A) shall apply only for the purposes of this section.

(B) The per mile reimbursement rate for the injured employee shall be no less than the mileage allowance authorized for state employees who have been authorized to use personally owned vehicles in the performance of their duties. This minimum per mile reimbursement rate shall be based on the last published comprehensive travel regulations promulgated by the department of finance and administration.

(b)(1) Where the nature of the injury or occupational disease, as defined in § 50-6-102, is such that it does not disable the employee but reasonably requires medical, surgical, psychological or dental treatment or care, medicine, surgery, dental and psychological treatment, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus shall be furnished by the employer.

(2) In addition to any attorney fees provided for pursuant to § 50-6-226, a court may award attorney fees and reasonable costs to include reasonable and necessary court reporter expenses and expert witness fees for depositions and trials incurred when the employer fails to furnish appropriate medical, surgical and dental treatment or care, medicine, medical and surgical supplies, crutches, artificial members and other apparatus to an employee provided for pursuant to a settlement or judgment under this chapter.

(c) In case death results from the injury or occupational disease, as defined in § 50-6-102, the employer shall, in addition to the medical services, etc., referred to in subsections (a) and (b), pay the burial expenses of the deceased employee, not exceeding seven thousand five hundred dollars ($7,500). If the deceased employee leaves no dependents entitled to compensation under this chapter, the employer shall pay to the employee's estate the additional benefits provided in § 50-6-209(b)(2) and (3), and shall also be liable for the medical and hospital services and burial expenses provided for in this section.

(d)(1) The injured employee must submit to examination by the employer's physician at all reasonable times if requested to do so by the employer, but

the employee shall have the right to have the employee's own physician present at the examination, in which case the employee shall be liable to the employee's physician for that physician's services.

(2) Any medical report submitted to the employer based upon the examination, or a true copy of the report, shall be furnished by the employer to the employee upon request; provided, that the employer may, in the employer's discretion, furnish the report to the attorney for the employee or to a member of the employee's family.

(3)(A) To provide uniformity and fairness for all parties in determining the degree of anatomical impairment sustained by the employee, a physician, chiropractor or medical practitioner who is permitted to give expert testimony in a Tennessee court of law and who has provided medical treatment to an employee or who has examined or evaluated an employee seeking workers' compensation benefits shall utilize the applicable edition of the AMA Guides as established in § 50-6-102 or, in cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medical community.

(B) No anatomical impairment or impairment rating, whether contained in a medical record, medical report, including a medical report pursuant to § 50-6-235(c), deposition or oral expert opinion testimony shall be accepted during a benefit review conference or be admissible into evidence at the trial of a workers' compensation matter unless the impairment is based on the applicable edition of the AMA Guides or, in cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medical community.

(C) In the event of a release of a new edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, American Medical Association, other than the edition designated in § 50-6-102(2), the commissioner shall, within six (6) months of the release of the new edition, conduct an evaluation of the new edition and report the commissioner's findings and recommendations to the general assembly. The AMA guides, as defined in § 50-6-102, shall remain in effect until a new edition is designated by the general assembly.

(4) The employer shall pay for the services of the physician making the examination at the instance of the employer.

(5) When a dispute as to the degree of medical impairment exists, either party may request an independent medical examiner from the commissioner's registry. If the parties are unable to mutually agree on the selection of an independent medical examiner from the commissioner's registry, it shall be the responsibility of the employer to provide a written request to the commissioner for assignment of an independent medical examiner with a copy of the notice provided to the other party. Upon receipt of the written request, the commissioner shall provide the names of three (3) independent medical examiners chosen at random from the registry. No physician may serve as an independent medical examiner in a case and serve on any panel of providers selected under this section for the employer involved in such case. The commissioner shall immediately notify the parties by facsimile or e-mail when the list of independent medical examiners has been assigned to a matter, but in any event the notification shall be made within five (5) business days of the date of the request. The employer may strike one (1) name from the list, with the rejection made and communicated to the other

party by facsimile or e-mail no later than the third business day after the date on which notification of the list is provided. The employee shall select a physician to perform the independent medical examination from the remaining physicians on the list. All costs and fees for an independent medical examination and report made pursuant to this subdivision (d)(5) shall be paid by the employer. The written opinion as to the permanent impairment rating given by the independent medical examiner pursuant to this subdivision (d)(5) shall be presumed to be the accurate impairment rating; provided, however, that this presumption may be rebutted by clear and convincing evidence to the contrary.

(6) The commissioner shall establish by rule, in accordance with the provisions of the Uniform Administrative Procedures Act, compiled title 4, chapter 5, an independent medical examiners registry. The commissioner shall establish qualifications for the independent medical examiners, including continuing education and peer review requirements, with the advice of the Tennessee Medical Association and the advisory council on workers' compensation, established by § 50-6-121. The rules established shall include, but not be limited to, qualifications and procedures for submission of an application for inclusion on the registry, procedures for the review and maintenance of the registry, and procedures for assignment that ensures that the composition of the panels is random.

(7) Whenever the nature of the injury is such that specialized medical attention is required or indicated and the specialized medical attention is not available in the community in which the injured employee resides, the injured employee can be required to go, at the request of and at the expense of the employer, to the nearest location at which the specialized medical attention is available.

(8) If the injured employee refuses to comply with any reasonable request for examination or to accept the medical or specialized medical services that the employer is required to furnish under this chapter, the injured employee's right to compensation shall be suspended and no compensation shall be due and payable while the injured employee continues to refuse.

(9) For accidents or injuries occurring on or after July 1, 2005, in case of a dispute as to the injury, other than disputes as to the degree of medical impairment, the court may, at the instance of either party or on its own motion, appoint a neutral physician of good standing and ability to make an examination of the injured person and report the physician's findings to the court, the expense of which examination shall be borne equally by the parties.

(e) In all death claims where the cause of death is obscure or is disputed, any interested party may require an autopsy, the cost of which is to be borne by the party demanding the autopsy.

(f) Any physician whose services are furnished or paid for by the employer and who treats or makes or is present at any examination of an injured employee may be required to testify as to any knowledge acquired by the physician in the course of the treatment or examination as the treatment or examination relates to the injury or disability arising therefrom.

(g)(1) If an emergency, or on account of the employer's failure or refusal to provide the medical care and services required by this law, the injured employee or the injured employee's dependents may provide the medical care and services, and the cost of the medical care and services, not

exceeding three hundred dollars ($300), shall be borne by the employer; provided, that the pecuniary liability of the employer shall be limited to the charges for the service that prevail in the community where the services are rendered.

(2)(A) If an employer denies it is required to provide or refuses to provide medical care and treatment, medical services or medical benefits, or both, that an employee contends should be provided as a result of a judgment or decree entered by a court following a workers' compensation trial or as a result of a workers' compensation settlement agreement approved by a court or by the commissioner or the commissioner's designee pursuant to § 50-6-206, either the employee or the employer, or the attorney for the employee or employer, may request the assistance of a workers' compensation specialist to determine whether such medical care and treatment, medical services or medical benefits, or both, are appropriate by filing with the division a form prescribed for that purpose by the commissioner.

(B) A workers' compensation specialist shall have the authority to determine whether it is appropriate to order the employer or the employer's insurer to provide specific medical care and treatment, medical services or medical benefits, or both, to the employee pursuant to a judgment or decree entered by a court following a workers' compensation trial or pursuant to a workers' compensation settlement agreement approved by a court or by the commissioner or the commissioner's designee pursuant to § 50-6-206. The specialist's authority shall include, but is not limited to, the authority to order specific medical care and treatment, medical services or medical benefits, or both, and any authority granted to a specialist by § 50-6-238(a)(3). The specialist's authority shall also include any authority granted to a court by subdivision (b)(2), to award attorney fees and reasonable costs that include reasonable and necessary court reporter expenses and expert witness fees for depositions.

(C) Upon receipt of the request for assistance, the specialist shall review the available information and then, after such review, enter an order, on a form prescribed by the commissioner, in accord with the following:

(i) If the employer, or the employer's insurer, agrees it will provide medical care and treatment, medical services or medical benefits, or both, requested by the employee, the specialist shall issue an agreed order specifying the medical care and treatment to be provided by the employer and if the employer fails to comply with the agreed order, the specialist shall enter an order directing the employer or the employer's insurer to provide specific medical care and treatment; and

(ii) If the employer does not agree to provide the medical care and treatment at issue, the specialist shall enter an order as to whether the employer shall provide medical care and treatment, medical services or medical benefits, or both, to the employee, and if so, the specific medical care and treatment, medical services or medical benefits, or both, that shall be provided to the employee.

(D) If either the employee or the employer disagrees with the order entered by the specialist pursuant to subdivision (g)(2)(C)(ii), the following shall apply:

(i) If the request for assistance involved a request for medical care or treatment pursuant to a court judgment or decree following a trial of the

underlying workers' compensation claim, then either the employer or the employee may appeal the specialist's order to the original court that issued the judgment or decree. The parties shall attach a copy of the specialist's order to any request for review that is filed in the original court; however, any review by the original court shall be de novo; and

(ii) If the request for assistance involved a request for medical care and treatment pursuant to a settlement approved by a court of competent jurisdiction or by the commissioner or the commissioner's designee pursuant to § 50-6-206, and either the employee or the employer disagrees with the order of the specialist, the aggrieved party may request administrative review pursuant to § 50-6-238(d) and all provisions of § 50-6-238(d) shall apply to the request. If administrative review is not requested, the order of the specialist shall be considered a final order for administrative purposes. If administrative review is requested, the order of the administrator or administrator's designee shall be considered a final order for administrative purposes, if not otherwise stated in the order.

(h) All psychological or psychiatric services available under subdivisions (a)(1) and (b)(1) shall be rendered only by psychologists or psychiatrists and shall be limited to those ordered upon the referral of physicians authorized under subdivision (a)(4).

(i)(1) The commissioner, in consultation with the medical care and cost containment committee and the advisory council on workers' compensation, is authorized to establish by rule, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, a comprehensive medical fee schedule and a related system that includes, but is not limited to, procedures for review of charges, enforcement procedures and appeal hearings to implement the fee schedule. In developing the rules, the commissioner shall strive to assure the delivery of quality medical care in workers' compensation cases and access by injured workers to primary and specialist care while controlling prices and system costs. The medical care fee schedule shall be comprehensive in scope and shall address fees of physicians and surgeons, hospitals, prescription drugs, and ancillary services provided by other health care facilities and providers. The commissioner may consider any and all reimbursement systems and methodologies in developing the fee schedule, except that, in no event shall the fee schedule set forth differing rates for reimbursement or conversion factors for reimbursement of physical or occupational therapy services based or dependent on whether the services are performed in independently-owned facilities or physician-affiliated facilities, and shall not otherwise consider the physician ownership in the facility providing services. However, differing reimbursement rates may be implemented by the commissioner upon the department's presentation of state data demonstrating there is a need for differing reimbursement rates for physical/occupational therapy services and upon the department's holding a public hearing on the issue.

(2) The commissioner is authorized to retain experts to assist in the development of the fee schedule and related system in accordance with the contracting rules of the department of finance and administration.

(3) The commissioner, in consultation with the medical care and cost containment committee and the advisory council on workers' compensation, shall review the fee schedules adopted pursuant to this section on an annual

basis and when appropriate the commissioner shall revise the fee schedules as necessary. It is the intent of the general assembly that this annual review consider, among other factors, the medical consumer price index.

(4)(A) The comprehensive medical fee schedule adopted pursuant to this subsection (i) is not intended to prohibit an employer, trust or pool, or insurer from negotiating lower fees in its own medical fee agreements.

(B) [Deleted by 2010 amendment.]

(C) [Deleted by 2010 amendment.]

(D) [Deleted by 2010 amendment.]

(j)(1) If a treating physician determines that pain is persisting for an injured or disabled employee beyond an expected period for healing, the treating physician may either prescribe, if the physician is a qualified physician as defined in subdivision (j)(2)(B), or refer, such injured or disabled employee for pain management encompassing pharmacological, non-pharmacological and other approaches to manage chronic pain.

(2)(A) In the event that a treating physician refers an injured or disabled employee for pain management, the employee is entitled to a panel of qualified physicians as provided in subdivision (a)(4) except that, in light of the variation in availability of qualified pain management resources across the state, if the office of each qualified physician listed on the panel is located not more than one hundred seventy-five (175) miles from the injured or disabled employee's residence or place of employment, then the community requirement of subdivision (a)(4) shall not apply for the purposes of pain management.

(B) For the purposes of the panel required by subdivision (j)(2)(A), "qualified physician" means an individual licensed to practice medicine or osteopathy in this state and:

(i) Board certified in anesthesiology, neurological surgery, orthopedic surgery, radiology or physical medicine and rehabilitation through the:

(a) American Board of Medical Specialties (ABMS);

(b) American Osteopathic Association (AOA); or

(c) Another organization authorized by the commissioner;

(ii) Board certified by an organization listed in subdivision (j)(2)(B)(i)(*a*)-(*c*) in a specialty other than a specialty listed in subdivision (j)(2)(B)(i) and who has completed an ABMS or AOA subspecialty board in pain medicine, or completed an Accreditation Council for Graduate Medical Education (ACGMA) accredited pain fellowship; or

(iii) Serving as a clinical instructor in pain management at an accredited Tennessee medical training program.

(3) The injured or disabled employee is not entitled to a second opinion on the issue of impairment, diagnosis or prescribed treatment relating to pain management. However, on no more than one (1) occasion, if the injured or disabled employee submits a request in writing to the employer stating that the prescribed pain management fails to meet medically accepted standards, then the employer shall initiate and participate in utilization review as provided in this chapter for the limited purpose of determining whether the prescribed pain management meets medically accepted standards.

(4)(A) As a condition of receiving pain management that requires prescribing Schedule II, III, or IV controlled substances, the injured or disabled employee may sign a formal written agreement with the physician prescribing the Schedule II, III, or IV controlled substances acknowl-

edging the conditions under which the injured or disabled employee may continue to be prescribed Schedule II, III, or IV controlled substances and agreeing to comply with such conditions.

(B) If the injured or disabled employee violates any of the conditions of the agreement on more than one (1) occasion, then:

(i) The employee's right to pain management through the prescription of Schedule II, III, or IV controlled substances under this chapter shall be terminated and the injured or disabled employee shall no longer be entitled under this chapter to the prescription of such substances for the management of pain;

(ii) For injuries occurring on or after July 1, 2012, the violation shall be deemed to be misconduct connected with the employee's employment for purposes of § 50-6-241(d); and

(iii) For injuries occurring on or after July 1, 2012, in the event such violation occurs prior to a finding that the injured or disabled employee is totally disabled as provided in § 50-6-207(4), through either a judgment or decree entered by a court following a workers' compensation trial or a settlement agreement approved pursuant to § 50-6-206, the incapacity to work due to lack of pain management shall not be considered when determining whether the injured employee is entitled to permanent total disability benefits as provided in § 50-6-207(4).

(C) A physician may disclose the employee's violation of the formal written agreement on the physician's own initiative. Upon request of the employer, a physician shall disclose the employee's violation of the formal written agreement as provided in this section.

(D) The formal written agreement shall include a notice to the employee in capitalized, conspicuous lettering on the face of the agreement the consequences for violating the terms of the agreement as provided for in this subsection (j).

(E)(i) If an employer terminates an injured or disabled employee's right under this chapter to pain management through the prescription of Schedule II, III, or IV controlled substances pursuant to alleged violations of the formal agreement as provided in subdivision (j)(4)(B), then the employee may either file a:

(a) Request for assistance pursuant to § 50-6-238, if the benefit review conference requirement has not been exhausted, and a workers' compensation specialist shall determine whether such violations occurred; or

(b) Petition in a court of proper jurisdiction as provided in § 50-6-225, if the benefit review conference requirement has been exhausted, for a determination of whether such violations occurred.

(ii) If an employer or insurer alleges that an injured or disabled employee is not entitled to reconsideration under § 50-6-241(d) or permanent total disability benefits as provided in § 50-6-207(4) because of the employee's alleged violations of the formal agreement as provided in subdivision (j)(4)(B), then a court shall also determine whether such violations occurred.

(5) Prescribing one (1) or more Schedule II, III, or IV controlled substances for pain management treatment of an injured or disabled employee for a period of time exceeding ninety (90) days from the initial prescription of any such controlled substances is considered to be medical care services

for the purposes of utilization review as provided in this chapter. The department is authorized to impose a fee for the administration of an appeal process for utilization review under this subdivision (j)(5) and subdivision (j)(3).

50-6-225. Submission of claim to court upon failure to agree on compensation — Special workers' compensation appeals panel — Impasse.

(a)(1) Notwithstanding any provisions of this chapter to the contrary, in case of a dispute over or failure to agree upon compensation under this chapter, between the employer and employee or the dependent or dependents of the employee, the parties shall first submit the dispute to the benefit review conference process provided by the division of workers' compensation.

(2)(A) In the event the parties are unable to reach an agreement at the benefit review conference as to all issues related to the claim or the benefit review conference process is otherwise exhausted pursuant to rules promulgated by the commissioner, either party may file a civil action as provided in § 50-6-203 in the circuit or chancery court in the county in which the employee resided at the time of the alleged injury or in which the alleged injury occurred. In instances where the employee resides outside of the state and where the injury occurs outside of the state, the complaint shall be filed in any county where the employer maintains an office.

(B) If the parties are unable to reach an agreement at the benefit review conference as to all issues related to the claim or the benefit review conference process is otherwise exhausted pursuant to rules promulgated by the commissioner, and if the employer is a county or a municipal corporation that has accepted the provisions of this chapter, either party may file a civil action in the county in which the governmental entity is located or in the county in which the incident occurred from which the civil action arises.

(3) Neither party in a civil action filed pursuant to this section shall have the right to demand a jury.

(b) The Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence apply to all civil actions filed pursuant to this section.

(c) Unless required to be filed by an earlier date as a result of discovery requests pursuant to the Tennessee Rules of Civil Procedure, within sixty (60) days after the filing of an answer in an action under this section, the employer shall file with the court a wage statement detailing the employee's wages for the previous fifty-two (52) weeks, unless the employer stipulates that the maximum weekly workers' compensation rate applies in the particular action.

(d) Whenever any civil action is brought pursuant to this section, the judge or chancellor may, if the judge or chancellor so desires, visit the scene of the accident and examine the surroundings.

(e)(1) Any party to the proceedings in the circuit or chancery court may, if dissatisfied or aggrieved by the judgment or decree of that court, appeal to the supreme court, where the cause shall be heard and determined as provided in the Tennessee Rules of Appellate Procedure.

(2) Review of the trial court's findings of fact shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of

the finding, unless the preponderance of the evidence is otherwise.

(3) The supreme court may, by order, refer workers' compensation cases to a panel known as the special workers' compensation appeals panel. This panel shall consist of three (3) judges designated by the chief justice, at least one (1) of whom shall be a member of the supreme court.

(4) Any case that the supreme court by order or rule refers to the special workers' compensation appeals panel shall be briefed, and oral argument shall be heard pursuant to the Tennessee Rules of Appellate Procedure as if the appeal were being heard by the entire supreme court.

(5)(A) The special workers' compensation appeals panel shall reduce to writing its findings and conclusions in all cases. The decision of the panel shall become the judgment of the supreme court thirty (30) days after it is issued unless:

(i) Any member of the supreme court files with the clerk a written request within the thirty-day period that the case be heard by the entire supreme court, in which event a final judgment will not be entered until the supreme court, after due consideration of the case, enters final judgment; or

(ii) Any party to the appeal files a motion requesting review by the entire supreme court within fifteen (15) days after issuance of the decision by the panel, in which event a final judgment will not be entered:

(a) Until the motion is denied; or

(b) If the motion is granted, until the supreme court enters final judgment after its consideration of the case.

(B) For purposes of this subsection (e), a decision of the panel shall be deemed to be issued on the day it is mailed to the parties, which date shall be noted on the decision by the clerk. Section 27-1-122 applies to all motions made pursuant to this subsection (e).

(6) If the entire supreme court, on its own motion or after granting the motion of a party, reviews an opinion of the special workers' compensation appeals panel, its review will be limited to the record and the briefs on file before the special workers' compensation appeals panel; provided, that the supreme court may, in its discretion, order the parties to further brief the issues or appear at oral argument.

(f) The trial of all cases under this chapter shall be expedited by:

(1) Giving the cases priority over all cases on the trial and appellate dockets; and

(2) Allowing any case on appeal in the supreme court to be on motion of either party transferred to the division where the supreme court is then or will next be in session.

(g)(1) If the judgment or decree of a court is appealed pursuant to subsection (e), interest on the judgment or decree shall be computed from the date that the judgment or decree is entered by the trial court at an annual rate of interest five (5) percentage points above the average prime loan rate for the most recent week for which such an average rate has been published by the board of governors of the federal reserve system on the total judgment awarded by the supreme court. For purposes of calculating the accrual of interest pursuant to this subdivision (g)(1), the average prime loan rate on the day the judgment or decree is entered by the trial court shall be used.

(2) Total judgment awarded is computed by the total number of weeks

multiplied by the benefit rate without any reduction.

(3) For purposes of determining the amount of interest that has accrued on a judgment or decree, the commissioner of financial institutions shall maintain a listing of the average prime loan rate as it becomes available each month, and the commissioner of financial institutions shall respond to inquiries concerning what the average prime rate was on a given month and year. If the person making the inquiry so requests, the commissioner shall send the person a letter certifying what the average prime rate was on the month and year requested. The commissioner is authorized to charge a reasonable fee not to exceed ten dollars ($10.00) for preparing and sending the letter.

(4) For purposes of this subsection (g), "judgment" and "decree" includes any discretionary costs awarded pursuant to this chapter.

(h) When a reviewing court determines pursuant to motion or sua sponte that the appeal of an employer or insurer is frivolous, or taken for purposes of delay, a penalty may be assessed by the court, without remand, against the appellant for a liquidated amount.

(i) When a reviewing court determines pursuant to motion or sua sponte that the appeal of an employee is frivolous, a penalty may be assessed by the court, without remand, against the appellant for a liquidated amount.

(j) If an employer wrongfully fails to pay an employee's claim for temporary total disability payments, the employer shall be liable, in the discretion of the court, to pay the employee, in addition to the amount due for temporary total disability payments, a sum not exceeding twenty-five percent (25%) of the temporary total disability claim; provided, that it is made to appear to the court that the refusal to pay the claim was not in good faith and that the failure to pay inflicted additional expense, loss or injury upon the employee; and provided, further, that the additional liability shall be measured by the additional expense thus entailed.

(k) If, on request by the specialist, a party fails to produce documents, to cooperate in scheduling a conference or to provide a representative authorized to settle a matter in attendance at a conference, then a specialist may declare an impasse and file the report on unresolved issues with a court. On the motion of either party or on the court's own motion, a court is authorized, but not required, to hold a hearing on the failure to produce documents requested by the specialist, to cooperate in scheduling or to provide a representative who possessed settlement authority. If the court determines that the failure lacked good cause or resulted from bad faith, then the court may assess the offending party who failed to take the requested action with attorney's fees and costs related only to the trial. The commissioner is authorized to promulgate rules to effectuate the purposes of this subsection (k) in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(*l*) If an employee receives a settlement, judgment or decree under this chapter that includes the payment of medical expenses and the employer or workers' compensation carrier wrongfully fails to reimburse an employee for any medical expenses actually paid by the employee within sixty (60) days of the settlement, judgment or decree, or fails to provide reasonable and necessary medical expenses and treatment, including failure to reimburse for reasonable and necessary medical expenses, in bad faith after receiving reasonable notice of their obligation to provide the medical treatment, the employer or workers' compensation carrier shall be liable, in the discretion of

the court, to pay the employee, in addition to the amount due for medical expenses paid, a sum not exceeding twenty-five percent (25%) of the expenses; provided, that it is made to appear to the court that the refusal to pay the claim was not in good faith and that the failure to pay inflicted additional expense, loss or injury upon the employee.

50-6-412. Penalties for noncompliance with insurance requirements.

(a) The commissioner of labor and workforce development or the commissioner's designee has the authority to issue a subpoena to require an employer doing business in the state to produce any and all books, documents or other tangible things that may be relevant to or reasonably calculated to lead to the discovery of relevant information necessary to determine whether an employer is subject to this chapter, or has secured payment of compensation pursuant to this chapter, and to determine the amount of any monetary penalty that is required to be assessed against an employer for failure to secure payment of compensation pursuant to this chapter.

(b)(1) All monetary penalties assessed pursuant to this section that are based on the average yearly workers' compensation premium shall be calculated by utilizing the appropriate assigned risk plan advisory prospective loss cost and multiplier for the employer as of the date of determination that the employer is subject to this chapter, and has not secured payment of compensation pursuant to this chapter.

(2) If the commissioner or commissioner's designee determines the period of noncompliance with this chapter, is less than one (1) year, any assessed monetary penalty shall be prorated; however, the monetary penalty shall not be less than an amount equal to one (1) month's premium of the average yearly workers' compensation premium for the employer based on the appropriate assigned risk plan advisory prospective loss cost and multiplier.

(3) If any monetary penalty assessed against an employer is held in abeyance pursuant to this section, the period of abeyance shall be two (2) years. Any abated penalty becomes void upon the expiration of the two-year period; provided, that the employer remained subject to this chapter, during the two-year period and continuously secured payment of compensation as required by law. Any abated penalty becomes voidable, if within the two-year period, the employer provides notice to the commissioner that the employer is no longer subject to this chapter and upon concurrence of the commissioner that the employer is no longer subject to this chapter, the penalty shall become void. Any abated penalty shall become due and payable immediately if, within the two-year period, the employer continues to be subject to this chapter and fails to secure payment of compensation as required by law.

(4) The commissioner shall advise an employer of the amount of any assessed monetary penalty in writing and shall include the date on which the monetary penalty shall be due and payable.

(c)(1) When the records of the department of labor and workforce development indicate, or when the department's investigation of an employer indicates, that an employer is subject to this chapter, and has failed to secure payment of compensation as required by this chapter, the department shall so notify the employer by certified letter, return receipt requested.

(2) The department shall require the employer to provide, within ten (10) days of the receipt of the certified letter, excluding Saturdays, Sundays and

holidays, either proof that the employer had secured payment of compensation as required by this chapter or a verifiable sworn affidavit, with supporting documentation, that the employer is exempt from this chapter.

(3) The certified letter shall also advise the employer of the monetary penalties that may be assessed against the employer if it is determined by the commissioner or the commissioner's designee that the employer has failed to secure payment of compensation as required by this chapter and shall advise the employer of the criminal penalties to which the employer may be subject for the failure.

(d)(1) If the employer responds to the certified letter within ten (10) days of its receipt, excluding Saturdays, Sundays, and holidays, and it is determined by the commissioner or the commissioner's designee that the employer has secured payment of compensation as required by this chapter, or that the employer is not subject to this chapter, no monetary penalty shall be assessed.

(2) If the employer responds to the certified letter within ten (10) days of its receipt, excluding Saturdays, Sundays, and holidays, and it is determined by the commissioner or the commissioner's designee that the employer is subject to this chapter and that the employer has secured the payment of compensation since the date of receipt of the certified letter, the commissioner shall issue a monetary penalty to the employer equal to one and one half (1 ½) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars ($1,000) or one and one half (1 ½) times the average yearly workers' compensation premium.

(e)(1) If the employer fails to respond to the certified letter within ten (10) days of its receipt, excluding Saturdays, Sundays, and holidays, or the employer responds to the certified letter but does not provide a verifiable sworn affidavit of exemption, the commissioner or the commissioner's designee shall issue a show cause order and notice of hearing, which shall be sent to the employer by certified mail, return receipt requested, to the employer's last known address, according to department records. If either of these circumstances occur, the commissioner shall assess two (2) penalties. The first monetary penalty shall be equal to one and one half (1 ½) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars ($1,000) or one and one half (1 ½) times the average yearly workers' compensation premium. The second monetary penalty shall be equal to the average yearly workers' compensation premium for such employer.

(2) The show cause order and notice of hearing shall notify the employer of all monetary penalties that have been assessed against the employer and the criminal penalties to which the employer may be subject.

(3) The show cause order and notice of hearing shall advise the employer it must appear at the show cause hearing before the commissioner or the commissioner's designee to show cause why it should not be held to be in violation of this chapter, by its failure to secure compensation as required by this chapter.

(4) The employer shall have the burden of proof at the show cause hearing and shall be required to produce documentary evidence that the employer is not subject to this chapter, or that the employer was in compliance with this

chapter.

(5) The department shall schedule the show cause hearing in a timely manner, not to exceed sixty (60) days from the date of the employer's receipt of the first certified letter sent pursuant to subdivision (c)(1).

(f)(1) If the commissioner or the commissioner's designee determines at the show cause hearing that the employer is not subject to this chapter, or that the employer had secured and continues to secure payment of compensation as required by this chapter, all monetary penalties shall be void.

(2) If the employer appears at the show cause hearing and it is determined by the commissioner or the commissioner's designee that the employer is subject to this chapter and that the employer has come into compliance with this chapter by securing payment of compensation prior to the date of the show cause hearing, the first monetary penalty equal to one and one half (1 ½) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars ($1,000) or one and one half (1 ½) times the average yearly workers' compensation premium shall be due; however, the second monetary penalty equal to the average yearly workers' compensation premium shall be held in abeyance.

(3) If the employer appears at the show cause hearing and it is determined by the commissioner or the commissioner's designee that the employer is subject to this chapter and that the employer has failed to secure payment of compensation as required by this chapter, the employer shall be ordered to procure workers' compensation insurance coverage and to provide the department with proof of coverage within five (5) days of the issuance of the order, excluding Saturdays, Sundays and holidays. If the employer obtains workers' compensation insurance coverage and provides the department with proof of coverage as ordered, the first monetary penalty equal to one and one half (1 ½) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars ($1,000) or one and one half (1 ½) times the average yearly workers' compensation premium shall be due; however, the second monetary penalty equal to the average yearly workers' compensation premium shall be held in abeyance.

(4) If the employer fails to obtain workers' compensation insurance coverage as ordered by the commissioner or commissioner's designee within the required time period, all monetary penalties, totaling two and one half (2 ½) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of two thousand dollars ($2,000) or two and one half (2 ½) times the average yearly workers' compensation premium, shall be immediately due and payable.

(g) The commissioner shall notify the secretary of state when any employer engaged in the construction industry:

(1) Fails to secure payment of compensation, as required by this chapter; and

(2) When any employer who has failed to secure payment of compensation, as required by this chapter, has secured payment of such compensation.

(h)(1) In the event an employer engaged in the construction industry, as defined in § 50-6-901, fails to comply with the requirements of this chapter, by failing to secure payment two (2) or more times within a five-year period,

then the commissioner shall issue a monetary penalty against the employer that is the greater of three thousand dollars ($3,000) or three (3) times the average yearly workers' compensation premium for each second or subsequent violation.

(2)(A) In the event an employer engaged in the construction industry, as defined in § 50-6-901, fails to comply with the requirements of this chapter, by failing to secure payment two (2) or more times within a five-year period, such employer shall be permanently prohibited from obtaining an exemption pursuant to part 9 of this chapter and the commissioner shall notify the secretary of state of such prohibition.

(B) For purposes of subdivision (h)(2)(A), "such employer" includes any construction services provider, as defined by § 50-6-901, who applies for or has ever received a workers' compensation exemption pursuant to part 9 of this chapter using the same federal employer identification number as the employer who fails to comply with the requirements of this chapter.

(i)(1) The commissioner has the authority to seek an injunction in the chancery court of Davidson County to prohibit an employer from operating its business in any way until the employer has complied with an order by the commissioner or the commissioner's designee to obtain workers' compensation insurance coverage.

(2) In the event an employer shall fail to comply with the requirements of this chapter, by failing to secure payment of compensation on a second or subsequent occasion, the commissioner shall have the authority to seek an injunction in the chancery court of Davidson County to prohibit the employer from operating its business in any way until the employer provides proof that it has complied with this chapter by securing payment of compensation.

(j) The employer shall have the right to appeal, pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, any decision made by or order issued by the commissioner or the commissioner's designee pursuant to this section.

50-6-912. Fees. [Effective until January 1, 2013. See the version effective on January 1, 2013.]

(a) The secretary of state may charge the following maximum fees for each of the following:

(1) The issuance of a construction services provider registration to providers who have not been issued a license by the board $100

(2) The issuance of a construction services provider workers' compensation exemption $100

(3) The filing of correction information pursuant to § 50-6-905(c) $20

(4) The filing of change of address information pursuant to § 50-6-905(d) $20

(5) The filing of a construction services provider workers' compensation exemption renewal $100

(6) The filing of a construction services provider registration renewal to providers who have not been issued a license by the board $100

(7) The filling of a revocation pursuant to § 50-6-908(a) $20

(8) The issuance of a copy of the notice issued pursuant to § 50-6-905(a)(1) $20

(9) The issuance of a second or subsequent construction services provider

workers' compensation exemption registration .....$20 per registration

(10) The filing of a second or subsequent construction services provider workers' compensation exemption renewal ..... $20 per renewal

(b) In addition to the maximum fees authorized in subsection (a), the secretary of state is authorized to charge an online transaction fee to cover costs associated with processing payments for applications submitted online.

(c) Except as provided in subsections (a) and (b), no other fees shall be charged by the secretary of state to administer this part.

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(2) The issuance of a construction services provider workers' compensation exemption $50

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(4) The filing of change of address information pursuant to § 50-6-905(d) *$20*

(5) The filing of a construction services provider workers' compensation exemption renewal $50

(6) The filing of a construction services provider registration renewal to providers who have not been issued a license by the board $50

(7) The filling of a revocation pursuant to § 50-6-908(a) $20

(8) The issuance of a copy of the notice issued pursuant to § 50-6-905(a)(1) *$20*

(9) The issuance of a second or subsequent construction services provider workers' compensation exemption registration .....$20 per registration

(10) The filing of a second or subsequent construction services provider workers' compensation exemption renewal ..... $20 per renewal

(b) In addition to the maximum fees authorized in subsection (a), the secretary of state is authorized to charge an online transaction fee to cover costs associated with processing payments for applications submitted online.

(c) Except as provided in subsections (a) and (b), no other fees shall be charged by the secretary of state to administer this part.

50-7-302. Benefit eligibility conditions.

(a) **Personal Eligibility Conditions.** An unemployed claimant shall be eligible to receive benefits with respect to any week only if the administrator finds that all of the following conditions are met:

(1) The claimant has made a claim for benefits with respect to the week in accordance with rules or regulations the commissioner prescribes;

(2) The claimant has furnished to the division of employment security the claimant's social security account number, or numbers, if the claimant has more than one (1) social security account number;

(3) The claimant has registered for work, and thereafter continued to report, at an employment office as prescribed by the administrator, except that the administrator may waive or alter either or both of the requirements of this subdivision (a)(3) as to individuals attached to regular jobs and as to

such other types of cases or situations with respect to which the administrator finds that compliance with the requirements would be oppressive, or would be inconsistent with the purposes of this chapter; provided, that no prescription, waiver or alteration shall conflict with § 50-7-301(a);

(4) The claimant is able to work, available for work, and making a reasonable effort to secure work. "Making a reasonable effort to secure work" means the claimant shall provide detailed information regarding contact with at least three (3) employers per week or shall access services at a career center created by the department. The administrator shall conduct random verification audits of one thousand (1,000) claimants weekly to determine if claimants are complying with the requirement of contacting at least three (3) employers per week or accessing services at a career center. The administrator shall disqualify any claimant receiving benefits who the administrator finds, as the result of a random audit or on information provided to the administrator, has provided false work search information for a period of not less than eight (8) benefit weeks. In determining whether the claimant is making a reasonable effort to secure work, the administrator shall consider the customary methods of obtaining work in the claimant's usual occupation or any occupation for which the claimant is reasonably qualified, the current condition of the labor market, and any attachment the claimant may have to a regular job;

(A) No claimant shall be considered ineligible in any week of unemployment for failure to comply with this subsection (a) if the failure is due to an illness or disability that occurred after the claimant has registered for work, and no work that would have been considered suitable at the time of the claimant's initial registration has been offered after the beginning of the illness or disability. The administrator may, however, in the administrator's discretion, require the claimant to obtain and submit a certificate by a duly licensed physician as to the illness or disability with respect to each week that the illness or disability exists;

(B) No otherwise eligible claimant shall be denied benefits for any week because the claimant is in training with the approval of the administrator, nor shall the claimant be denied benefits with respect to any week in which the claimant is in training with the approval of the administrator by reason of the application of this subsection (a) relating to availability for work, or of § 50-7-303(a)(3) relating to failure to apply for, or refusal to accept, suitable work;

(C) The unemployment of a claimant for any week or any portion of a week, caused by a plant, departmental or other type of shutdown for vacation purposes shall not be the basis for a denial of benefits for the week, or portion of a week, if the claimant has not or will not receive any vacation pay from the claimant's employer for the period, when so found by the administrator;

(D) No otherwise eligible claimant shall be denied benefits by reason of the application of this subsection (a) who subsequent to the claimant's enrollment in and while attending a regularly established school, college or university, has been regularly employed and becomes unemployed and makes the claimant available for all suitable work, as determined by the administrator, to the same extent that the claimant was previously employed while continuing to attend and be enrolled in the regularly established school, college or university, but if the claimant is offered the

same job that the claimant previously held immediately prior to entering the school and refuses the job, then the claimant shall become ineligible for the benefits provided by this chapter if the job meets the standards set forth in § 50-7-303(a)(3)(A) and (B) as required by applicable federal law;

(E) No provision of this subsection (a) or any other provision of law shall be construed to deny unemployment benefits to any claimant who is a veteran enrolled in school under the Veterans' Educational Assistance Program, commonly known as the "G.I. Bill", compiled in 38 U.S.C. § 1650 et seq., solely because of the claimant's enrollment and attendance in school, if the claimant is otherwise eligible for the benefits, except that if the claimant is offered the same job that the claimant previously held immediately prior to entering the school and refuses the job, then the claimant shall become ineligible for benefits as provided by § 50-7-303(a)(3) if the job meets the standards set forth in § 50-7-303(a)(3)(A) and (B) as required by applicable federal law;

(F) No claimant who is otherwise eligible shall be deemed ineligible for benefits solely for the reason that the claimant seeks, applies for or accepts only part-time work instead of full-time work, if the part-time work is for a minimum of twenty (20) hours per week; and

(G) A claimant shall be considered ineligible for benefits if the claimant is incarcerated four (4) or more days in any week for which unemployment benefits are being claimed;

(5)(A) The claimant has been unemployed for a waiting period of one (1) week. For the purpose of this subsection (a), one (1) week of part total or partial unemployment or other forms of short time work shall be deemed one (1) week of unemployment. No week shall be counted as a week of unemployment for the purposes of this subsection (a), unless:

(i) It occurs within the benefit year that includes the week with respect to which the claimant claims payment of benefits;

(ii) No benefits have been paid with respect to the week to which the claimant claims payment of benefits; and

(iii) The claimant was eligible for benefits with respect to the week to which to the claimant claims payment of benefits as provided in § 50-7-303 and this section, except for the requirements of this subsection (a);

(B) Benefits shall be payable to a claimant for the waiting period, provided the claimant has made a claim for benefits and is determined to be eligible and certified for benefits in the waiting period and in each of the three (3) consecutive weeks immediately following the waiting period;

(6) The claimant has satisfied the wages requirements of § 50-7-301(b);

(7) The claimant has satisfied the requirements of § 50-7-301(d); and

(8) The claimant participates in reemployment services, such as job search assistance services, if the claimant has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the administrator, unless the administrator determines that:

(A) The claimant has completed the services; or

(B) There is justifiable cause for the claimant's failure to participate in the services.

(b) **Special Rules.** The following special rules shall apply in the circumstances indicated:

(1) If the qualifying base period wages of the claimant's current benefit year include wages paid prior to the establishment of a previous benefit year, the claimant shall not be eligible for any benefits under this chapter unless the claimant has been paid wages for insured work performed after the establishment of the previous benefit year equal to at least five (5) times the claimant's weekly benefit amount in the claimant's preceding benefit year;

(2) Benefits based on service after December 31, 1977, in employment defined in § 50-7-207(b)(3) and (c)(5) shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter; provided, that:

(A) With respect to services performed in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on the services for any week of unemployment commencing during the period between two (2) successive academic years or terms, or, when an agreement provides instead for a similar period between two (2) regular but not successive terms, during that period, or during a period of paid sabbatical leave provided for in the claimant's contract, to any claimant if the claimant performs the services in the first of the academic years or terms, or if there is a contract or a reasonable assurance that the claimant will perform services in that capacity for any educational institution in the second of the academic years or terms;

(B) With respect to services performed in any other capacity for an educational institution:

(i) Benefits shall not be paid on the basis of the services to any individual for any week that commences during a period between two (2) successive academic years or terms, if the individual performs the services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms, except that;

(ii) If compensation is denied to any claimant for any week under subdivision (b)(2)(B)(i) and the claimant was not offered an opportunity to perform the services for any educational institution for the second of the academic years or terms, the claimant shall be entitled to a retroactive payment of compensation for each week for which the claimant filed a timely claim for compensation and for which compensation was denied solely by reason of subdivision (b)(2)(B)(i);

(C) With respect to weeks of unemployment beginning after December 31, 1977, benefits shall be denied to any claimant for any week that commences during an established and customary vacation period or holiday recess that has been predetermined as part of a school calendar prior to the beginning of each fiscal year if the claimant performs any services described in subdivision (b)(2)(A) or (b)(2)(B) in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the claimant will perform any such services in the period immediately following the vacation period or holiday recess;

(D) With respect to services performed for any educational institution, benefits shall not be payable on the basis of services in the capacities specified in subdivision (b)(2)(A), (b)(2)(B) or (b)(2)(C) to an individual who performed the services in an educational institution while in the employ of an educational service agency, and for this purpose "educational service agency" means a governmental entity that is established and operated exclusively for the purpose of providing the services to one (1) or more

educational institutions; and

(E) With respect to services performed for an educational institution, benefits shall not be payable on the basis of services in any such capacities as specified in subdivision (b)(2)(A), (b)(2)(B), or (b)(2)(C) to an individual who provided such services to or on behalf of an educational institution.

(3) Benefits shall not be paid to any claimant on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week that commences during the period between two (2) successive sport seasons, or similar periods, if the claimant performed the services in the first of the seasons, or similar periods, and there is a reasonable assurance that the claimant will perform the services in the later of the seasons, or similar periods; and

(4) Benefits shall not be payable on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as the result of the application of the Immigration and Nationality Act, § 203(a)(7) or § 212(d)(5), compiled in 8 U.S.C. §§ 1153(a)(7) [repealed] and 1182(d)(5), respectively.

(A) Any data or information required of claimants applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all claimants applying for benefits.

(B) In the case of a claimant whose application for benefits would otherwise be approved, no determination that benefits to the claimant are not payable because of the claimant's alien status shall be made except upon a preponderance of the evidence.

(c) **Partial Unemployment Claims.** A penalty in the amount of fifty dollars ($50.00) may be assessed against any employer for failure to file partial claims required by regulations and within the time limits required by regulations for individuals having regular jobs with the employers, but who have sustained underemployment as defined in the regulations. In the event the commissioner finds that the employer had good cause for failure to comply with the regulations, this penalty may be waived.

50-7-303. Disqualification for benefits.

(a) **Disqualifying Events.** A claimant shall be disqualified for benefits:

(1)(A) If the administrator finds that the claimant has left the claimant's most recent work voluntarily without good cause connected with the claimant's work. The disqualification shall be for the duration of the ensuing period of unemployment and until the claimant has secured subsequent employment covered by an unemployment compensation law of this state, another state, or the United States, and was paid wages by the subsequent employment ten (10) times the claimant's weekly benefit amount. No disqualification shall be made under this section, however, if the claimant presents evidence supported by competent medical proof that the claimant was forced to leave the claimant's most recent work because the claimant was sick or disabled and notified the claimant's employer of

that fact as soon as it was reasonably practical to do so, and returned to that employer and offered to work as soon as the claimant was again able to work, and to perform the claimant's former duties. Pregnancy shall be considered in the same way as any other illness or disability within the meaning of this subsection (a). At the expiration of the period, if the claimant is not reemployed, the claimant shall be entitled to unemployment benefits under this chapter, if otherwise eligible under this chapter. Nor shall this disqualification apply to a claimant who left the claimant's work in good faith to join the armed forces of the United States;

(B) The disqualification provided in subdivision (a)(1)(A) shall not apply to a claimant who left employment because the claimant's spouse is a member of the armed services of the United States, the spouse is the subject of a military transfer, and the claimant left employment to accompany the claimant's spouse; provided, however, that any benefits payable under this subdivision (a)(1)(B) shall be paid from the state's general revenue funds and the payment of any such benefits shall not adversely affect the employer's experience rating for purposes of determining premiums;

(2)(A) If the administrator finds that a claimant has been discharged from the claimant's most recent work for misconduct connected with the claimant's work, the disqualification shall be for the duration of the ensuing period of unemployment and until the claimant has secured subsequent employment covered by an unemployment compensation law of this state, another state, or the United States, and was paid wages by the subsequent employment ten (10) times the claimant's weekly benefit amount;

(B)(i) A discharge resulting from a positive result from a drug test for drugs administered in conformity with chapter 9 of this title shall be deemed to be a discharge for misconduct connected with the claimant's work;

(ii) A discharge resulting from an alcohol test administered in conformity with chapter 9 of this title, where the claimant's blood alcohol concentration level is equal to or greater than ten-hundredths of one percent (.10%) by weight for non-safety-sensitive positions, and four-hundredths of one percent (.04%), as determined by blood or breath testing, for safety-sensitive positions, shall be deemed to be a discharge for misconduct connected with work;

(iii) A discharge resulting from a refusal to take a drug test or an alcohol test authorized by chapter 9 of this title shall be deemed to be a discharge for misconduct connected with work where it is based upon substantial and material evidence of the employee's refusal;

(iv) As regards an injured employee, refusal shall not be presumed from failure to take the test during a period of approved medical leave;

(C) A discharge shall be deemed to be a discharge for misconduct connected with the claimant's work when it results after a claimant entered into a written agreement with an employer to obtain a license or certification by a specified date as a condition of employment and subsequently the claimant willfully fails without good cause to obtain such license or certification by the specified date;

(3)(A) If the administrator finds that the claimant has failed without good cause either to apply for available, suitable work, when so directed by the

employment office or the administrator, or to accept suitable work when offered, or to return to the claimant's customary self-employment, if any, when so directed by the administrator. The disqualification shall continue for the week in which the failure occurred, and for the duration of the ensuing period of unemployment and until the claimant has secured subsequent employment covered by an unemployment compensation law of this state, another state, or the United States, and was paid wages by the subsequent employment ten (10) times the claimant's weekly benefit amount. In determining whether or not any work is suitable for a claimant, the administrator shall consider the degree of risk involved to the claimant's health, safety and morals, the claimant's physical fitness and prior training, the claimant's experience and prior earnings, the claimant's length of unemployment and prospects for securing local work in the claimant's customary occupation, and the distance of the available work from the claimant's residence. Work is suitable if the work meets all the other criteria of this subdivision (a)(3) and if the gross weekly wages for the work equal or exceed the following percentages of the claimant's average weekly wage for insured work paid to the claimant during that quarter of the claimant's base period in which the claimant's wages were highest:

(i) One hundred percent (100%), if the work is offered during the first thirteen (13) weeks of unemployment;

(ii) Seventy-five percent (75%), if the work is offered during the fourteenth through the twenty-fifth week of unemployment;

(iii) Seventy percent (70%), if the work is offered during the twenty-sixth through the thirty-eighth week of unemployment; and

(iv) Sixty-five percent (65%), if the work is offered after the thirty-eighth week of unemployment. This subdivision (a)(3) shall not be construed as requiring a claimant to accept employment below the federal minimum wage;

(B) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this section to any otherwise eligible claimant for refusing to accept new work under any of the following conditions:

(i) If the position offered is vacant due directly to a strike, lockout or other labor dispute;

(ii) If the wages, hours or other conditions of the work offered are substantially less favorable to the claimant than those prevailing for similar work in the locality; or

(iii) If, as a condition of being employed, the claimant would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(4)(A) For any week with respect to which the administrator finds that the claimant's total or partial unemployment is due to a labor dispute, other than a lockout that is in active progress at the factory, establishment or other premises at which the claimant is or was last employed; provided, that this subdivision (a)(4) shall not apply if it is shown to the satisfaction of the administrator that:

(i) The claimant is not participating in the labor dispute that caused the claimant's total or partial unemployment;

(ii) The claimant does not belong to a grade or class of workers of which immediately before the commencement of the labor dispute there were members employed at the premises at which the labor dispute occurs, any of whom are participating in the dispute; and

(iii) The claimant was indefinitely separated from employment prior to the labor dispute and is otherwise eligible for benefits. Subdivision (a)(4)(A)(ii) notwithstanding, persons who were separated before the commencement of the labor dispute, and who were eligible for benefits as a result of the separation, shall continue to be eligible for benefits as long as they do not participate in the labor dispute and remain otherwise eligible. For purposes of this subdivision (a)(4)(A)(iii), an "indefinite separation" means that the relationship between the employee and employer has been severed without a reasonably definite recall date;

(B) If, in any case, separate branches of work that are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each department shall, for the purposes of this subsection (a), be deemed to be a separate factory, establishment or other premises;

(C) Disqualification imposed by this subdivision (a)(4) shall be for the duration of the labor dispute or until the claimant has secured employment covered by an unemployment compensation law of this state, another state, or the United States, and was paid by subsequent employment ten (10) times the claimant's weekly benefit amount. The subsequent employment must meet the definition of "most recent work" as set forth in subsection (b);

(5) For any week with respect to which the claimant is receiving, or has received, remuneration in the form of compensation for temporary partial disability under the workers' compensation law of any state or under a similar law of the United States;

(6)(A) For any week with respect to which, or a part of which the claimant has received, or is seeking, unemployment benefits under an unemployment compensation law of another state or of the United States; however, if the appropriate agency of the other state or of the United States finally determines that the claimant is not entitled to the unemployment benefits, this disqualification shall not apply. The disqualification imposed by this subdivision (a)(6)(A) shall not apply to any claimant who is seeking or who has received benefits provided for by the Veterans' Readjustment Assistance Act of 1952, Act of July 16, 1952, ch. 875, 66 Stat. 663 [repealed], and any payments previously made by the division of employment security to a claimant who was seeking or received simultaneous benefits under the Veterans' Readjustment Assistance Act of 1952 [repealed] are validated;

(B) In addition, a claimant shall be disqualified from obtaining the advantage of a waiting period for any week with respect to which, or a part of which, the claimant has received, or is seeking, unemployment benefits under an unemployment compensation law of another state or of the United States; however, if the appropriate agency of the other state or of the United States finally determines that the claimant is not entitled to the unemployment benefits, this disqualification shall not apply. The disqualification imposed by this subdivision (a)(6)(B) shall not apply to any claimant who is seeking or who has received benefits provided for by

the Veterans' Readjustment Assistance Act of 1952 [repealed];

(7) For the week or weeks in which the administrator finds that the claimant has made any false or fraudulent representation or intentionally withheld material information for the purpose of obtaining benefits contrary to this chapter and for not less than four (4) nor more than the fifty-two (52) next following weeks, beginning with the week following the week in which the findings were made, as determined by the administrator in each case according to the seriousness of the facts. In addition, the claimant shall remain disqualified from future benefits so long as any portion of the overpayment or interest on the overpayment is still outstanding. In the event an overpayment of benefits results from the application of this disqualifying provision, the overpayment of benefits shall not be chargeable to any employer's account for experience rating purposes;

(8)(A) For any week with respect to which a claimant is receiving or is entitled to receive a pension, which includes a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment, under a plan maintained or contributed to by a base period or chargeable employer as follows: The weekly benefit amount payable to the claimant for that week shall be reduced, but not below zero (0):

(i) By the entire prorated weekly amount of the pension if one hundred percent (100%) of the contributions to the plan were provided by a base period or chargeable employer; provided, that no reduction shall be made if one hundred percent (100%) of the pension is rolled into an individual retirement account (IRA); and

(ii) By no part of the pension if any contributions to the plan were provided by the claimant during the claimant's base period;

(B) No reduction shall be made under this subdivision (a)(8) by reason of the receipt of a pension if the services performed by the claimant during the base period for the employer, or remuneration received for the services, did not affect the claimant's eligibility for, or increase the amount of, the pension, retirement or retired pay, annuity, or similar payment. The conditions specified by this subsection (a) shall not apply to pensions paid under the Social Security Act, compiled in 42 U.S.C. § 301 et seq., or the Railroad Retirement Act of 1974, or the corresponding provisions of prior law. Payments made under those acts shall be treated solely in the manner specified by subdivisions (a)(8)(A)(i) and (ii);

(C) For purposes of this subdivision (a)(8), if any reduced benefit payment for any week is not a multiple of one dollar ($1.00), it shall be computed to the next lower multiple of one dollar ($1.00);

(D) Any annuities, pensions or retirement pay that is disqualifying pursuant to this section and is payable at the option of the claimant on either a lump sum or periodic basis shall be treated as though it were paid on the periodic basis specified;

(E) For purposes of this subdivision (a)(8), an individual shall be deemed entitled to receive a pension if a determination has been made by appropriate officials of the individual's vested right to a pension for any week in which the individual is entitled to receive benefits under this chapter;

(9)(A) For any week for which a claimant receives the claimant's regular wages for a vacation period under terms of a labor-management agreement or other contract of hire allocating the pay to designated week or

weeks for vacation purposes, but if the remuneration for any week is less than the benefit that would be due the claimant for the week under this chapter, the claimant shall be entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration; provided, that the total amount of benefits, if not a multiple of one dollar ($1.00), shall be computed at the next lower multiple of one dollar ($1.00);

(B) Subdivision (a)(9)(A) shall apply only if it is found by the administrator that employment will be available for the claimant with the employer at the end of a vacation period described in this subsection (a);

(C) If an employee elects to take the employee's vacation at a period other than that designated in the agreement or contract of hire, any vacation pay shall be considered as having been paid for the vacation week or weeks designated in the agreement or contract of hire;

(10) If the administrator finds that a claimant has been discharged from the claimant's most recent work because such claimant's actions, not previously known or permitted by the employer, placed the claimant's employer in violation of the Fair Labor Standards Act, compiled in 29 U.S.C. § 201 et seq., the disqualification shall be for the duration of the ensuing period of unemployment and until the claimant has secured subsequent employment covered by an unemployment compensation law of this state, or another state, or of the United States, and was paid wages by the subsequent employment ten (10) times the claimant's weekly benefit amount;

(11) For any week with respect to which the claimant is receiving, or has received, renumeration in the form of wages in lieu of notice unless the claimant's employer has filed notice pursuant to § 50-1-602 as of July 1, 2012;

(12) If the claimant received a severance package from an employer that includes an equivalent amount of salary the employee would have received if the employee was working during that week unless the claimant's employer has filed notice pursuant to § 50-1-602 as of July 1, 2012;

(13) If the claimant was discharged from the claimant's most recent work through a layoff by the employer and the employer has offered the claimant the same job the claimant had prior to the layoff or a similar job with an equivalent level of compensation that the claimant had prior to the layoff. The disqualification shall be for the duration of the ensuing period of unemployment and until the claimant has secured subsequent employment covered by an unemployment compensation law of this state, another state, or the United States, and was paid wages by the subsequent employment ten (10) times the claimant's weekly benefit amount; or

(14) If the claimant has an offer of work withdrawn by an employer due to the claimant's refusal to submit to a drug test or the claimant's positive result from a drug test. The disqualification shall be for the duration of the ensuing period of unemployment and until the claimant has secured subsequent employment covered by an unemployment compensation law of this state, another state, or the United States, and was paid wages by the subsequent employment ten (10) times the claimant's weekly benefit amount.

(b) **Definitions.** The following definitions apply with respect to the following subdivisions of this section:

(1) For purposes of subdivisions (a)(1) and (2), "most recent work" means employment with:

(A) Any employer covered by an unemployment compensation law of this state, another state, or the United States for whom the claimant last worked and voluntarily quit without good cause connected with the claimant's work;

(B) Any employer covered by an unemployment compensation law of this state, another state, or the United States for whom the claimant last worked and was discharged for misconduct connected with the claimant's work; or

(C) Any employer covered by an unemployment compensation law of this state, another state, or the United States for whom the claimant last worked and earned wages equal to or exceeding ten (10) times the claimant's weekly benefit amount or, if the wages paid are less than ten (10) times the claimant's weekly benefit amount, it shall be considered as the "most recent work" when a preponderance of evidence establishes that the intent of the hiring agreement was to provide for regular permanent employment. Short term employment shall be considered most recent work if the employment is traditionally a part of the claimant's chosen profession;

(2) For purposes of subdivision (c)(2), "suitable employment" means, with respect to a claimant, work of a substantially equal or higher skill level than the claimant's past adversely affected employment as defined for purposes of the Trade Act of 1974, compiled in 19 U.S.C. § 2101 et seq., and wages for the work at not less than eighty percent (80%) of the claimant's average weekly wage as determined for the purposes of the Trade Act of 1974;

(3) For purposes of subdivision (a)(2):

(A) "Misconduct" includes, but is not limited to, the following conduct by a claimant:

(i) Conscious disregard of the rights or interests of the employer;

(ii) Deliberate violations or disregard of reasonable standards of behavior that the employer expects of an employee;

(iii) Carelessness or negligence of such a degree or recurrence to show an intentional or substantial disregard of the employer's interest or to manifest equal culpability, wrongful intent or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employee's employer;

(iv) Deliberate disregard of a written attendance policy and the discharge is in compliance with such policy;

(v) A knowing violation of a regulation of this state by an employee of an employer licensed by this state, which violation would cause the employer to be sanctioned or have the employer's license revoked or suspended by this state; or

(vi) A violation of an employer's rule, unless the claimant can demonstrate that:

(a) The claimant did not know, and could not reasonably know, of the rule's requirements; or

(b) The rule is unlawful or not reasonably related to the job environment and performance;

(B) "Misconduct" also includes any conduct by a claimant involving dishonesty arising out of the claimant's employment that constitutes an essential element of a crime for which the claimant was convicted; and

(C) "Misconduct" does not include:

(1) Inefficiency, or failure to perform well as the result of inability or incapacity;

(2) Inadvertence or ordinary negligence in isolated instances; or

(3) Good faith errors in judgment or discretion; and

(4) For purposes of subdivision (a)(11), "wages in lieu of notice" means wages paid under circumstances where the employer, not having given an advance notice of separation to the employee, and irrespective of the length of service of the employee, makes a payment to the employee equivalent to the wages the employee could have earned had the employee been permitted to work during the period of notice.

(c) **Qualifications.** Notwithstanding any other law to the contrary:

(1) Benefits shall not be denied under this chapter to any otherwise eligible claimant for separation from employment pursuant to a labor-management contract or agreement, or pursuant to an established employer plan, program, policy, layoff or recall that permits the claimant (employee), because of lack of work, to accept a separation from employment. However, benefits shall be denied a claimant for separation from employment resulting from the claimant's acceptance of an employer's program that provides incentives to employees for voluntarily terminating their employment;

(2) No otherwise eligible claimant shall be denied benefits for any week because of leaving work to enter training approved under § 236(a)(1) of the Trade Act of 1974, codified in 19 U.S.C. § 2296(a)(1), provided the work left is not suitable employment, as defined in § 236(e) of the Trade Act of 1974, codified in 19 U.S.C. § 2296(e), or because of the application to any such week in training of provisions in this law or any applicable federal unemployment compensation law relating to active search for work, availability for work or refusal to accept suitable work; and

(3) Benefits shall not be reduced or denied under this chapter to any otherwise eligible claimant due to such claimant's enrollment in any institution of higher education.

(d) **Overpayments.**

(1) Any person who is overpaid any amounts as benefits under this chapter is liable to repay those amounts, except as otherwise provided by this subsection (d) or by § 50-7-304(b)(2).

(2) Upon written request by any person submitted to the administrator within ninety (90) days from the date of determination of the overpayment, the administrator shall waive repayment of the overpaid amounts if the person proves to the satisfaction of the administrator that all of the following conditions exist:

(A) The overpayment was not due to fraud, misrepresentation or willful nondisclosure on the part of the person;

(B) The overpayment was received without fault on the part of the person; and

(C) The recovery of the overpayment from the person would be against equity and good conscience.

(3)(A) The administrator shall waive the collection of any overpayment that is due to fraud, misrepresentation or willful nondisclosure on the part of the person who was overpaid and that is outstanding after the expiration of six (6) years from the date of determination of the overpayment.

(B) The administrator shall waive the collection of any overpayment that is not due to fraud, misrepresentation or willful nondisclosure on the part of the person who was overpaid and that is outstanding after the expiration of six (6) years from the date of determination of the overpayment.

(4) Any person who is overpaid any amounts as benefits under this chapter has the right to appeal the determination of overpayment. A person may request a waiver of overpayment in accordance with the conditions of subdivision (d)(2). Upon determination that a person has been overpaid, the person shall be given timely notice of the person's right to appeal the determination of overpayment in accordance with § 50-7-304, and the person's right to request a waiver of overpayment in accordance with subdivision (d)(2). The notice shall indicate that there is a determination of overpayment, the reasons for the determination, the person's rights to contest the determination or request a waiver of the overpayment, and the time period during which the appeal must be filed or the waiver request must be submitted. A recovery of overpayment by reduction of benefits as to a subsequent claim shall not occur until notice is provided to a person, previously determined to be overpaid, of the person's right to request a waiver of overpayment in accordance with subdivision (d)(2).

(e)(1) **Back Pay Awards.** For unemployment insurance benefit purposes, the amount of back pay constitutes wages paid in the period for which it was awarded. Any employer who is a party to a back pay award settlement due to loss of wages is required to report to the division of employment security within thirty (30) days of the ruling:

(A) The amount of the award settlement;

(B) The name and social security number of the recipient; and

(C) The calendar weeks for which the back pay was awarded.

(2) It is the intent of the general assembly that no overpayment of benefits shall be established as a result of a back pay award.

50-7-304. Procedure for claims and appeals.

(a) **Filing.** Claims for benefits shall be made in accordance with regulations the commissioner prescribes. Each employer shall post and maintain, in places readily accessible to individuals performing services for the employer, printed statements concerning benefit rights, claims for benefits and other matters relating to the administration of this chapter that the commissioner prescribes by regulation. Each employer shall supply to the individuals copies of the printed statements or other materials relating to claims for benefits when and if the commissioner prescribes by regulation. If the commissioner, as a result of the regulations or otherwise, elects to supply the printed statements or other materials to any employer or employers, it will be done without cost to the employer or employers.

(b) **Determinations.**

(1)(A) **Monetary Determination.** A representative designated by the commissioner, and referred to as the "agency representative," shall promptly examine the claim and, on the basis of the facts found by the agency representative, shall either determine whether or not the claim is valid monetarily and, if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum

duration of the benefit. The claimant shall be furnished a copy of the monetary determination showing the amount of wages paid the claimant by each employer during the claimant's base period and the employers by whom the wages were paid, the claimant's benefit year, weekly benefit amount, and the maximum amount of benefits that may be paid to the claimant for unemployment during the benefit year. When a claimant is ineligible due to lack of earnings in the claimant's base period, the monetary determination shall so designate. The claimant shall be allowed ninety (90) days from the mailing date, or in-person delivery of the claimant's monetary determination to the claimant, within which to protest the claimant's monetary determination.

(B) **Nonmonetary Determination.** Further, the agency representative shall then review the claim deemed valid monetarily and render a determination on the nonmonetary issues presented, except that in any case in which the payment or denial of benefits will be determined by § 50-7-303(a)(4), the agency representative shall promptly transmit the agency representative's full findings of fact with respect to § 50-7-303(a)(4) to the commissioner, who, on the basis of the evidence submitted and additional evidence that the commissioner may require, shall affirm, modify or set aside the findings of fact and transmit to the agency representative a decision upon the issues involved under § 50-7-303(a)(4), which shall be deemed to be the nonmonetary determination of the agency representative. Any questions or issues involved in any nonmonetary determination may be referred by the commissioner to an unemployment hearing officer, who shall make the unemployment hearing officer's determination with respect to the nonmonetary determination in accordance with the procedure described in subdivision (c)(1). The agency representative shall promptly give written notice to the claimant and all other interested parties of the nonmonetary determination and the reasons for the determination. The nonmonetary determination of the agency representative shall become final, unless an interested party files an appeal from the nonmonetary determination within fifteen (15) calendar days after the date of mailing of the written notification of the nonmonetary determination to the last known address of the party, or within fifteen (15) calendar days after the date the written notification is given to the party, whichever first occurs.

(C) **Reconsideration.** At any time within one (1) year from the date of the making of any monetary or nonmonetary determination, the agency representative may, for good cause, reconsider the agency representative's decision, unless an interested party has appealed the monetary or nonmonetary determination and the appeals tribunal has accepted jurisdiction, and shall promptly give written notice to the claimant and all other interested parties of the agency representative's amended monetary or nonmonetary determination and the reason for the amended determination.

(2) **Payment — Overpayments — Employer Response to Request for Separation Information — Employer Charges for Overpayment.**

(A) **Payment.** Benefits shall be paid promptly in accordance with the agency decision or any decision of the appeals tribunal, the commissioner's designee or a reviewing court.

(i) The payment shall be made upon the issuance of the decision unless and until the decision has been modified or reversed by a

subsequent decision. The payment shall be made regardless of the pendency of any application for reconsideration, filing of an appeal, or a petition for judicial review.

(ii) If and when the decision has been modified or reversed, benefits shall be paid or denied for weeks of unemployment thereafter in accordance with the modifying or reversing decision.

(B) **Overpayments.** If no fraud or misrepresentation on the part of the claimant is involved and a subsequent decision adverse to the claimant results because of the employer's failure to respond as described in subdivision (b)(2)(C) or results because the employer did not appear for a scheduled hearing before the appeals tribunal or the commissioner's designee, no overpayment will be established and the claimant will not be required to repay any benefits paid prior to the decision. Otherwise, the claimant will be charged with any benefits paid, and shall be liable to have the payments deducted from future benefits payable under this chapter, or shall be liable to repay the commissioner, for deposit in the unemployment compensation fund, a sum equal to the amount so received, and the sum shall be collectible in the manner provided in § 50-7-404(b), for collection of past due premiums.

(C) **Employer Response to Request for Separation Information.** If a separation issue exists, the separating employer will be asked to supply information describing circumstances leading to the separation. The information must be received by the agency within seven (7) days from the date the agency request for information is mailed to the separating employer. In the absence of the response, the decision of entitlement will be based on the claimant's statement and other information available to the agency. The separating employer may supply information to the agency prior to a request for information being mailed from the agency if the employer expects a separation issue to arise with regard to an employee.

(D) **Employer Charges for Overpayments.** If the decision approving the claim is finally reversed, no premium paying employer's account shall be charged with any benefits so paid. The separating employer who fails to respond as described in subdivision (b)(2)(C) or who did not appear for a scheduled hearing before the appeals tribunal or the commissioner's designee will be charged with that portion of benefits paid that are attributable to wages paid in its employment during the base period.

(E) **Offset expenses and fees.**

(i) In addition to any remedies authorized by this chapter, the department may offset any covered unemployment compensation debt due to the department against any federal income tax refund due to the department's claimant debtor in accordance with § 6402 of the Internal Revenue Code, codified in 26 U.S.C. § 6402, and the federal Treasury Offset Program, compiled in 31 CFR part 285, or any successor program.

(ii) The department may exercise this right of setoff if the obligation of the debtor was the result of:

(a) Fraud or the claimant debtor's failure to report earnings; or

(b) Any penalties and interest assessed by the department on a debt contemplated by this subdivision (b)(2)(E).

(iii) Any fee or administrative expense imposed by the United States department of the treasury or the United States department of labor in

connection with such offset shall be the responsibility of the debtor.

(iv) Following such offset, the amount of credit to which a debtor is entitled shall not exceed the amount of the credit received by the department.

(c) **Appeals.**

(1) In the case of an appeal that has been filed pursuant to subdivision (b)(1) and that has not been withdrawn, an unemployment hearing officer shall first afford all interested parties reasonable opportunity for a fair hearing, and the unemployment hearing officer shall affirm, modify or set aside the findings of fact and decision of the agency representative. The unemployment hearing officer promptly shall give written notice to all interested parties of the unemployment hearing officer's decision and the reasons for the decision. The decision of the unemployment hearing officer shall be deemed to be the final decision of the commissioner, unless further appeal is initiated pursuant to subsection (e) within fifteen (15) calendar days after the date of mailing of the written notification of the decision to the last known address of each interested party, or within fifteen (15) calendar days after the date the written notification of the decision is given to each interested party, whichever first occurs. In the absence of an appeal to the commissioner's designee and within thirty (30) calendar days after the date of mailing of the written notification of the decision to the last known address of each interested party or within thirty (30) calendar days after the date the written notification of the decision is given to each interested party, whichever first occurs, the unemployment hearing officer may reconsider the unemployment hearing officer's decision and thereupon promptly shall give written notice to the claimant and all other interested parties of the amended decision and the reasons for the decision. The amended decision of the unemployment hearing officer shall be deemed to be the final decision of the commissioner, unless further appeal is initiated pursuant to subsection (e) within fifteen (15) calendar days after the date of mailing of the written notification of the decision to the last known address of each interested party, or within fifteen (15) calendar days after the date the written notification of the decision is given to each interested party, whichever first occurs.

(2) Notwithstanding any other provision of this chapter, the time limit provided in subdivision (b)(1) for an appeal to the appeals tribunal may be extended for good cause by the appeals tribunal, and the time limit provided in subdivision (c)(1) for an appeal to the commissioner's designee may be extended for good cause by the commissioner's designee. In determining whether or not good cause exists for extending the time limits, the appeals tribunal and the commissioner's designee shall consider the length of the delay, the reason for the delay, and the prejudice or lack of prejudice to the parties.

(d) **Unemployment Hearing Officers.** To hear and decide disputed claims, the commissioner shall appoint one (1) or more unemployment hearing officers selected in accordance with § 50-7-605. No person shall participate on behalf of the commissioner or the commissioner's designee in any case in which the person is an interested party. The commissioner may designate any regular qualified employee or employees of the department of labor and workforce development as temporary or acting unemployment hearing officers who shall serve as hearing officers without additional salary and for the period of time the commissioner designates. All reimbursement for travel expenses shall be

in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter. All permanently and temporarily appointed unemployment hearing officers will constitute a part of the unemployment compensation division. The commissioner shall provide the designees designated to hear second stage appeals and the unemployment hearing officers with proper facilities and assistants for the execution of their functions.

(e) **Commissioner's Designees.**

(1) The commissioner shall designate Tennessee licensed attorneys within the department of labor and workforce development to adjudicate appeals of the decision of the unemployment hearing officer. The individuals so designated shall be referred to as the commissioner's designees and will constitute a part of the department of labor and workforce development's legal division.

(2) The commissioner's designees may on their own motion affirm, modify, or set aside any decision of an unemployment hearing officer on the basis of the evidence previously submitted in the case, or direct the taking of additional evidence, or may permit any of the parties to the decision to initiate further appeals before it. The commissioner's designee shall permit the further appeal by any of the parties interested in a decision of an unemployment hearing officer. The commissioner may remove to a designee or transfer to another unemployment hearing officer proceedings of any claim pending before an unemployment hearing officer. The commissioner's designee shall promptly give written notice to all interested parties of his or her findings and decision. Any decision of the commissioner's designee shall be the final decision of the commissioner.

(f) **Procedure.** The manner in which disputed claims shall be presented, the reports required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the commissioner for determining the rights of the parties, whether or not the regulations conform to common law or statutory rules of evidence and other technical rules of procedure; provided, that proof of misconduct may include personnel records and other business records that are in the possession of a claimant's employer and that are relevant to a claim, and such records shall be admissible and may constitute evidence of misconduct, regardless of whether such evidence is hearsay or whether corroborated by direct witness testimony, if such evidence is accompanied by an affidavit of its custodian or other qualified person certifying the evidence as a business record. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed, unless the disputed claim is appealed to chancery court. Notwithstanding § 4-5-312(c) or any other provision to the contrary, the appeals tribunal and the commissioner's designee may, for good cause, hold all or part of the hearing by telephone conference. In determining good cause, the appeals tribunal and commissioner's designee shall consider the wishes of the parties and such factors as the physical security risk to the participants or the department's staff, the travel distance to the hearing location for either or both parties, the relative hardship or convenience to the parties, the complexity of the issues and any other factor relevant to having a fair hearing.

(g) **Witness Fees.** Witnesses subpoenaed pursuant to this section shall be allowed fees at the rates fixed by the commissioner; provided, that the rates

shall not be less than the per diem and mileage rates fixed by the laws of the state in other civil cases. The fees are deemed a part of the expense of administering this chapter.

(h) **Appeal to Courts.** Any decision of the commissioner, in the absence of any application by any interested party for rehearing of that decision, shall become final ten (10) calendar days after the date of mailing of the written notification of the decision to the last known address of each interested party or within ten (10) calendar days after the date the written notification of the decision is given to each interested party, whichever first occurs. In the written notification shall be an explanation that further appeals shall be conducted within thirty (30) days of the commissioner's final decision by filing a petition for judicial review in the chancery court of the county of the party's residence and that the petition shall be against the commissioner of labor and workforce development. Judicial review of any decision of the commissioner shall be permitted only after any party claiming to be aggrieved by the decision has exhausted the administrative remedies provided by this chapter.

(i) **Court Review.**

(1) Within thirty (30) days after the decision of the commissioner has become final, any party aggrieved by the decision may secure judicial review of the decision by filing a petition for judicial review in the chancery court of the county of the party's residence against the commissioner for review of the decision, except that any petition for judicial review of tax liability must be filed in the chancery court of Davidson County. In the case of a petition filed by an aggrieved party who is not a resident of the state, within thirty (30) days after the decision of the commissioner's designee has become final, a nonresident party may secure judicial review of the decision by filing a petition for judicial review against the commissioner in the chancery court of the county where the employer is located, except that any petition for judicial review of tax liability must be filed in the chancery court of Davidson County. Any other party to the proceeding before the commissioner's designee shall be made a defendant to the petition and duly served with process. For the purposes of this subsection (i), the parties to the proceeding before the commissioner's designee shall be deemed to include the original claimant or applicant for benefits, and each and every employer from whom the claimant received, during the claimant's base period, any wages for insured work, whether or not the party appeared and participated in the proceeding before the commissioner's designee; and all the parties shall be deemed necessary parties to any petition for judicial review filed pursuant to this subsection (i). In such action, the petition shall distinctly state the grounds upon which the review is sought, and shall be served through the normal processes of the court upon the commissioner or the attorney general and reporter. Immediately upon the filing of the petition, the petitioner shall cause to be forwarded to the commissioner, for informational purposes, a copy of the petition, which shall be in addition to the copy of the petition served by the court at the time of service of the process. With the commissioner's answer, which shall be filed within thirty (30) days from the date the commissioner or the attorney general and reporter is served with the process, the commissioner shall file in the court a complete transcript of the record, which shall contain all documents and papers, a transcript of all testimony taken in the matter and findings of fact and conclusions of law by the commissioner's designee.

(2) The chancellor may affirm the decision of the commissioner or the chancellor may reverse, remand or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(A) In violation of constitutional or statutory provisions;

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

(C) Made upon unlawful procedure;

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

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

(3) In determining the substantiality of evidence, the chancellor shall take into account whatever in the record fairly detracts from its weight, but the chancellor shall not substitute the chancellor's judgment for that of the commissioner's designee as to the weight of the evidence on questions of fact. No decision of the commissioner's designee shall be reversed, remanded or modified by the chancellor, unless for errors that affect the merits of the final decision of the commissioner's designee. The petition for judicial review shall be heard by the chancellor either at term time or vacation as a matter of right, any other statute of this state to the contrary notwithstanding.

(4) It shall not be necessary in any judicial proceedings under this section to enter exceptions to the ruling of the commissioner's designee, but the petition shall distinctly state the grounds upon which the action of the commissioner's designee is deemed erroneous. An appeal may be taken from the judgment and decree of the chancery court having jurisdiction of these controversies to the Tennessee court of appeals, in the same manner, but not inconsistent with this chapter, as provided in other civil cases.

(5) In any judicial proceeding under this subsection (i), the appellant or petitioner shall give bond for costs, or in lieu of bond take the oath prescribed by law for paupers.

(6) Upon the final determination of the judicial proceedings, the commissioner's designee shall enter an order in accordance with the final judicial determination.

(j) **Notice of Health Insurance.** The commissioner, in performing the duties established in this section, shall provide to every individual at the time the individual first inquires about unemployment compensation benefits the following notice:

You may be entitled to have the state of Tennessee pay the premium for your on-going health insurance. For more information, contact your local department of human services.

(k) **Conclusiveness of Findings.** No finding of fact or law, judgment, conclusion, or final order made with respect to a claim for unemployment compensation under this chapter may be conclusive in any separate or subsequent action or proceeding in another forum, except proceedings under this chapter, regardless of whether the prior action was between the same or related parties or involved the same facts.

50-7-306. Seasonal employment.

(a) As used in this section:

(1) "Active period or periods of a seasonal pursuit" means the longest regularly recurring period or periods of a calendar year within which

production operations of a seasonal employer are customarily carried on;

(2) "Inactive period or periods of a seasonal pursuit" means that part of a calendar year which is not included in the active period or periods of a seasonal employer;

(3) "Interested party" means any individual affected by a seasonal determination;

(4) "Production operations" means all the activities of employment which are primarily related to the production of the employer's characteristic goods or services;

(5) "Reasonable assurance" means a written, oral or implied agreement that the employee will perform services in the same or similar capacity during the ensuing active period of a seasonal pursuit;

(6) "Seasonal employment" means services performed by an individual in the employ of a seasonal employer and only during such seasonal employer's active period or periods of a seasonal pursuit. No services performed by an individual in the employ of a seasonal employer may be considered seasonal employment if the individual performs any services in the employ of such employer during the inactive period of seasonal pursuit;

(7) "Seasonal wages" means the wages earned by a seasonal worker as an employee of a seasonal employer within the active period or periods of such employer. The department may prescribe by rule the manner in which seasonal wages shall be reported; and

(8) "Seasonal worker" means an individual in the employ of a seasonal employer only during the employer's active period of seasonal pursuit. An individual may not be considered a seasonal worker nor should wages be reported as seasonal wages if the individual performs any services in the employ of such employer within the inactive period of a seasonal pursuit.

(b) Effective with claims filed on or after July 1, 2016:

(1) A seasonal employer is one which, because of seasonal conditions making it impracticable or impossible to do otherwise, customarily carries on production operations only within a regularly recurring active period or periods of less than an aggregate of thirty-six (36) weeks in a calendar year. No employer shall be considered a seasonal employer until the department makes a determination that the employer is seasonal. However, any successor to a seasonal employer shall be deemed a seasonal employer unless the successor requests cancellation of the seasonal employer status within one hundred twenty (120) days after the acquisition. This subdivision (b)(1) shall not be applicable to pending cases or retroactive in effect;

(2) Upon application by an employer for seasonal employer status, the department shall determine or redetermine whether the employer is seasonal and, if seasonal, the employer's active period. The department is authorized to redetermine a seasonal employer's active period. An application for a seasonal determination must be made on forms prescribed by the department and must be made at least thirty (30) days prior to the beginning date of the period of production operations for which a determination is requested;

(3)(A) Whenever the department has determined or redetermined an employer to be seasonal, the employer shall be notified immediately. The notice must contain the beginning and ending dates of the employer's active period or periods;

(B) Any employer determined or redetermined to be a seasonal employer shall display notices of its seasonal determination conspicuously on

the employer's premises in a sufficient number of places to be available for inspection by the employer's workers. Any employer determined or redetermined to be a seasonal employer shall also notify the employer's workers in writing upon the initial seasonal determination and individually to any worker hired by the seasonal employer after such initial notification. Such notices shall contain the department's contact information for any inquiries by the workers. The notices may be furnished by the department;

(4) A determination or redetermination by the department that an employer is a seasonal employer shall become effective unless an interested party files an application for review within ten (10) days of the beginning date of the first period of production operations to which the determination or redetermination applies. An application for review shall be an application for a determination of status;

(5)(A) Benefits based on seasonal employment shall be payable to a seasonal worker in the employ of a seasonal employer for weeks of unemployment that occur during such employer's active period of seasonal pursuit;

(B) Benefits shall not be paid based on services performed in seasonal employment for any week of unemployment beginning after July 1, 2016, that begins during the period between two (2) successive normal active periods of seasonal pursuit to any seasonal worker if that seasonal worker performs the service in the first of the normal active periods and if there is a reasonable assurance that the seasonal worker will perform the service for a seasonal employer in the second of the active periods. If benefits are denied to a seasonal worker for any week solely as a result of this subsection (b) and the seasonal worker is not offered an opportunity to perform in the second normal active period for which reasonable assurance of employment had been given, the seasonal worker is entitled to a retroactive payment of benefits under this subsection (b) for each week that the seasonal worker previously filed a timely claim for benefits;

(6) The benefits payable to any otherwise eligible seasonal worker shall be calculated in accordance with this section for any benefit year which is established on or after the beginning date of a determination by the department that an employer is a seasonal employer if such seasonal worker was employed by the seasonal employer during the base period applicable to such benefit year, as if such determination had been effective in such base period;

(7) Nothing in this section shall be construed to limit the right of any individual whose claim for benefits is determined in accordance with this section to appeal from such determination as provided in § 50-7-304.

(c) It is the intent of the general assembly that the department will begin preparation for implementation of this section by including in any request for proposal for new computer systems the ability to begin implementing this section by July 1, 2016.

50-7-404. Collection of premiums — Interest — Procedure when employer in default — Priorities — Adjustments — Refunds.

(a) **Interest on Past-Due Premiums.** Premiums unpaid on the date on which they are due and payable, as prescribed by the commissioner, shall bear

interest at the rate of one percent (1.0%) prior to July 1, 1983, and one and one half percent (1.5%) thereafter, for each month or any portion of a month from and after that date until payment plus accrued interest is received by the commissioner. Interest collected pursuant to this subsection (a) shall be paid into the unemployment compensation special administrative fund.

(b) **Collection.**

(1) If, after due notice, any employer defaults in any payment of premiums, interest on premiums, penalties, or costs prescribed in this chapter, the amount due, including additionally incurred premiums, interest, penalties and costs, shall be a lien in favor of the department of labor and workforce development upon the assets of the employer. The lien shall commence upon the date the premiums, interest, or penalties become due and shall continue until the original and any subsequent premiums, interest, penalties, costs or assessments are paid in full. The lien shall attach to all interest in property either real or personal, tangible or intangible, in this state then owned, or subsequently acquired by the employer, and shall be enforced by original attachment issued by any court having jurisdiction of the amount claimed to be due, as provided by § 66-21-101. The definition of "assessment" is provided for in subdivisions (c)(1)-(3).

(2)(A) The commissioner shall cause a notice of the lien to be recorded in the office of the county register of deeds in the county or counties in which the employer's business or residence is located, or in any county in which the employer has an interest in property. The notice shall be recorded in the same manner as liens recorded in that office. Recordation shall constitute notice of both the original and all subsequent liabilities of the same taxpayer.

(B) There shall be no fees collected by the county register at the time the notice is recorded, but the county register shall extend credit to the department for the fees that are chargeable and submit the county register's bill at the end of each month to the department in order to obtain payment.

(C) The lien created in this chapter shall have the same priority, in relation to other liens and security interests created under Tennessee law, as the lien described in § 67-1-1403.

(D) Any lien of record in favor of the Tennessee department of employment security shall inure to the Tennessee department of labor and workforce development as a successor in interest to the Tennessee department of employment security by virtue of the Tennessee Workforce Development Act of 1999, compiled in title 4, chapter 3, part 14.

(3)(A) In addition to the remedy provided for in subdivision (b)(2), it is further expressly provided as follows: if after due notice, any employer defaults in payment of premiums or interest on the premiums, the amount due may be collected by civil action in the name of the commissioner, and the employer adjudged in default shall pay the costs of the action; furthermore, and in addition to all other remedies delineated in subdivision (b)(2), the commissioner is expressly authorized to issue, under the commissioner's hand and seal, a distress warrant against the delinquent employer for the amount of the premiums and any interest on the premiums that may be due and unpaid as of the date of the issuance.

(B) The distress warrant shall be returnable within thirty (30) days from its date and shall have the same effect as other distress warrants authorized by law for the collection of delinquent taxes or revenue owed to

the state or any agency of the state.

(C) Civil actions brought under this section to collect premiums or interest on the premiums from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except cases involving the Workers' Compensation Law, compiled in chapter 6 of this title, or state revenue.

(D) The collection of all premiums shall be barred and any lien for the premiums shall be cancelled and extinguished, unless the premiums are collected or suit for the collection has been instituted within six (6) years from the due date of the premiums as prescribed by the commissioner; however, the period of limitations on collection of premiums or interest on the premiums shall be suspended for the period the assets of the employer are in control or custody of the court in any proceeding before any court of the United States or of any state, as defined in § 50-7-210, and six (6) months thereafter.

(4) Distress warrants issued under the authority of this chapter for the collection of premiums, payments in lieu of premiums, interest or penalties arising out of this chapter may, in the discretion of the commissioner, be addressed to and delivered to an employee or representative of the department for the purpose of execution, and the employee or representative shall have the same power and authority as a sheriff for the purpose of levying and executing the distress warrant. The employee or representative shall be entitled to the same fees and costs as would accrue to a sheriff for those services. The fees and costs shall be paid to the department for return to the United States department of labor as miscellaneous receipts.

(5)(A) If the commissioner or the commissioner's delegate determines that the collection of premiums under this title will be jeopardized by delay, the commissioner shall, whether or not premiums accrued have become due, immediately assess the premiums together with all interest, penalties, and costs.

(B) The amount of the assessment shall then become immediately due and payable, and immediate notice and demand shall be made by the commissioner or the commissioner's delegate for the payment of the assessment.

(6) The employees or representatives shall not be subject to civil suit as a result of performing or attempting to perform the duties specified in this subsection (b).

(7)(A) In addition to any remedies authorized by this chapter, the department may offset any covered unemployment compensation debt due to the department against any federal income tax refund due to the department's taxpayer debtor in accordance with § 6402 of the Internal Revenue Code, codified in 26 U.S.C. § 6402, and the federal Treasury Offset Program, compiled in 31 CFR part 285, or any successor program.

(B) The department may exercise this right of setoff if the obligation of the debtor was the result of:

(i) Past due contributions due to the state's unemployment fund that remain uncollected and the state has determined the taxpayer debtor to be liable for those contributions; or

(ii) Any penalties and interest assessed by the department on a debt contemplated by this subdivision (b)(7).

(C) Any fee or administrative expense imposed by the United States department of the treasury or the United States department of labor in connection with such offset shall be the responsibility of the debtor.

(D) Following such offset, the amount of credit to which a debtor is entitled shall not exceed the amount of the credit received by the department.

(c) **Failure to Make Reports and Pay Premiums; Duty and Power of the Commissioner.**

(1) If any employing unit fails to make and file any report as and when required by the terms and provisions of this chapter, or by any rule or regulation of the commissioner, for the purpose of determining the amount of premiums due by the employing unit under this chapter, or if any report that has been filed is deemed by the commissioner to be incorrect or insufficient, and the employing unit after having been mailed written notice, to its last known address, by the commissioner to file the report, or a corrected or sufficient report, as the case may be, shall fail to file the report within thirty (30) days after the date of the filing of the notice, the commissioner may:

(A) Determine the amount of premiums due from the employing unit on the basis of the information that may be readily available to the commissioner, which determination shall be prima facie correct;

(B) Assess the employing unit with the greater of the amount of premiums so determined or fifty dollars ($50.00); and

(C) Immediately give written notice, by certified mail, to the employing unit of the determination, assessment and damages, if any, added and assessed, demanding payment of the assessment and damages, together with interest and penalty, as herein provided on the amount of premiums from the date when the premiums were due and payable.

(2) The determination and assessment shall be final and conclusive on the employing unit thirty (30) calendar days after the date of mailing of written notice of the determination and assessment to the last known address of the employing unit, or not later than thirty (30) calendar days after the date the written notice is given to the employing unit, whichever first occurs, unless the employing unit has timely filed with the department a written application for review and redetermination in accordance with subsection (h). Any premium or deficiencies in premiums found to be due by the department in the redetermination shall be assessed and paid, together with interest, penalty and assessed damages, if any, within fifteen (15) calendar days after the date of mailing of written notice of the redetermination and assessment and demand for payment of the assessment by the department to the last known address of the employing unit, or not later than fifteen (15) calendar days after the date the written notice is given to the employing unit, whichever first occurs. Any employer who neglects or refuses to file a quarterly wage report and a quarterly premium report, or who intentionally files an incomplete quarterly wage report or an incomplete quarterly premium report within the time required by this chapter, or by any rule or regulation of the commissioner, shall pay a penalty of ten dollars ($10.00) for each month, or portion of a month, the report is due; however, the total penalty for each report shall not exceed fifty dollars ($50.00).

(3) Effective for the quarter beginning January 1, 1997, and thereafter, every employer with two hundred fifty (250) or more employees, and every person or organization that, as an agent, reports wages on a total of two

hundred fifty (250) or more employees on behalf of one (1) or more subject employers, shall file that portion of the wage and premium report that contains the name, social security number, and gross wages of each individual in employment on magnetic media in a format prescribed by the commissioner. However, if the internal revenue service regulations at 26 CFR 301.6011-2 are amended or superseded to reduce the threshold number of employees required by this section from two hundred fifty (250) employees to a lower number of employees, this section shall remain consistent with those regulations as amended. Effective for reports due for the quarter beginning July 1, 2000, and thereafter, any employer, person or organization subject to this subdivision (c)(3) who fails to file on magnetic media as prescribed in this subdivision (c)(3) shall be assessed a penalty of fifty dollars ($50.00) for each month, or portion of a month, the report is past due; however, the total penalty for each report shall not exceed five hundred dollars ($500). Penalties assessed pursuant to this subdivision (c)(3) shall cease to accrue as soon as the subject employer, person or organization complies with the requirements to report on magnetic media.

(d) **Forfeiture of Right to Do Business Upon Noncompliance.**

(1) An employer liable for premiums under this chapter who fails to make and file the employer's returns and reports as required, or who fails to pay any premiums when due under the this chapter, shall forfeit the employer's right to do business in this state until the employer complies with all the provisions of this chapter and until the employer enters into a bond with sureties, to be approved by the commissioner, in an amount not to exceed all contributions estimated to become due by the employer under this chapter for any three-month period, conditioned to comply with this chapter and to pay all premiums legally due or to become due by the employer, and the commissioner may proceed by injunction to prevent the continuance of the business upon the failure by the employer, by applying to a court of competent jurisdiction for an injunction and any temporary injunction enjoining the continuance of the business may be granted after reasonable notice not less than ten (10) days by any judge or chancellor now authorized by law to grant injunctions.

(2) This subsection (d) is to be deemed as cumulative and in addition to any other provisions of this chapter relating to the collection of premiums by the commissioner.

(e) **Priorities Under Legal Dissolution or Distributions.** In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, premiums then or thereafter due shall have the same priority as now provided by the state for the payment of debts and taxes due it. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal Bankruptcy Act of 1898 [repealed], premiums then or thereafter due shall be entitled to the priority as is provided in § 64(a) of that act (11 U.S.C. § 104(a) [repealed]).

(f) **Adjustment or Refund.**

(1) If, not later than three (3) years after the date of payment of any premium or interest on the premium, an employer who has paid the premium or interest on the premium makes application for an adjustment of the premium in connection with subsequent premium payments, or for a

refund of the premiums because the adjustment cannot be made, and the commissioner determines that the premiums or interest, or any portion of the premiums or interest, was erroneously collected, the commissioner shall allow the employer to make an adjustment, without interest, in connection with subsequent premium payments by the employer, or if the adjustment cannot be made, the commissioner shall refund the amount, without interest, from the fund; provided, that when an employer has erroneously paid to this state premiums or interest that should have been paid as contributions or interest under the unemployment compensation law of some other state, or of the United States, the commissioner may refund to the employer the amount of the premium or interest erroneously paid without interest, and without regard to any period of limitation, upon satisfactory proof to the commissioner that the contributions have been paid to the other state, or to the United States; and provided, further, that in no case shall an adjustment or refund be made with respect to premiums paid on wages that have been included in the determination of an eligible claimant for benefits, unless and until it is shown to the satisfaction of the commissioner that the determination was due entirely to the fault or mistake of the department. For like cause, and within the same period, adjustment or refund may be made on the commissioner's own initiative. Any refund of the interest erroneously paid, which was paid into the unemployment compensation special administrative fund provided for in this chapter, shall be refunded from the fund. When an adjustment or refund to any employer has been approved, the experience rating record provided for in § 50-7-403 shall be corrected, but no premium rate assigned to an employer shall be changed as a result of the adjustment or refund unless the application for the refund has been filed on or before the final day of February immediately preceding the premium rate year. Nothing in this subsection (f) shall be construed to deny any refund required under § 50-7-207(c)(1).

(2) Employers lawfully electing to make payments in lieu of premiums shall be entitled to refunds, if:

(A) The commissioner finds that the payment in lieu of premiums was made in error;

(B) If the claim for refund is based on benefits originally paid that were subsequently determined to be improperly paid and the claimant has repaid the commissioner for the benefits; and

(C) The claim for refund has been filed with the commissioner within three (3) years from the date the payment in lieu of premiums was originally made.

(g) **Collection of Premiums on Public Contracts.**

(1) Any person, firm or corporation entering into a formal contract with the state or any county, municipality or political subdivision, or any public board, department, commission or institution that is a part thereof for construction or maintenance of public buildings, works or projects in which the total contract sum shall equal or exceed one hundred thousand dollars ($100,000) and the time of performance is more than six (6) months, shall notify the department in writing of the name of all subcontractors who will furnish or who are furnishing labor in performance of the contract and whose subcontracts are in the amount of ten thousand dollars ($10,000) or more, the notice to be given not less than thirty (30) days prior to paying the

subcontractor the final five percent (5%) of the subcontract; and the contractor shall retain the final five percent (5%) for thirty (30) days following the notice or until there is compliance with subdivision (g)(2).

(2) The department may, within thirty (30) days following the filing of notice pursuant to subdivision (g)(1), notify the contractor of premiums and interest required or believed to be required under this chapter and owed by the subcontractor by reason of performance of the subcontract or any part of the contract, and the contractor shall then, within the limits provided for in subdivision (g)(1), which is five percent (5%) of the subcontract amount, retain the amount claimed to be due by the subcontractor or require that the subcontractor furnish bond for the amount to the department or make such other arrangement for satisfaction of the obligation of the subcontractor as are satisfactory to and protect the rights of the department.

(3) If the contractor fails to give notice as provided in this subsection (g), the contractor will be primarily liable for the obligations of the subcontractor that are described in subdivisions (g)(1) and (2), limited to five percent (5%) of the subcontract amount, and the obligation shall continue for a period of ninety (90) days from the date upon which a request is subsequently filed with the department by the contractor for final determination of the obligation of any subcontractor, or for one (1) year from the date upon which the final payment is received by the contractor from the state, county, municipality, political subdivision or any public board, department, commission or institution that is a part thereof, if notice of the claim is presented by the department within that time to the contractor.

(4) The contractor will not be liable for obligations of the subcontractor unless notice is given by the department as provided in either subdivision (g)(2) or (g)(3).

(h) **Redeterminations.** A person may file an application for review and redetermination by the department of certain determinations made by the department under this part only in accordance with the following:

(1) A nonprofit organization or person other than a nonprofit organization may file an application for review and redetermination by the department of:

(A) Any determination made by the department concerning the status of a nonprofit organization as an employer and of which the organization is sent written notice pursuant to § 50-7-403(h)(1)(E);

(B) Any determination made by the department concerning the status of any person other than a nonprofit organization as an employer and of which the person is sent written notice;

(C) Any bill rendered by the department under subdivision (g)(2) with respect to payments in lieu of premiums due from a nonprofit organization and of which the organization is sent written notice pursuant to subdivision (g)(2);

(D) Any determination and assessment of premiums and damages, if any, made by the department under subsection (c) with respect to an employing unit and of which the employing unit is sent written notice pursuant to subsection (c); or

(E) Any determination made by the department concerning a premium rate assigned to an employer pursuant to this chapter and of which the employer is sent written notice;

(2) An application for review and redetermination shall be in writing and shall state the reason or reasons that the employer submits justifies a

change in the initial determination, bill or assessment;

(3) An application for review and redetermination must be filed with the department within thirty (30) calendar days after the date of mailing of written notice of the initial determination, bill or assessment, to the last known address of the person or not less than thirty (30) calendar days after the date the written notice is given to the person, whichever first occurs. In the absence of timely filing of the application, any determination, bill or assessment described in subdivision (h)(1) shall be final and conclusive on that person; and

(4)(A) In the case of an application for review and redetermination timely and properly filed with the department in accordance with this subsection (h), the department shall review and reconsider the determination, the amount due specified in the bill or the assessment, shall issue a redetermination, and shall notify the person in writing within ninety (90) calendar days after the application for review and redetermination was so filed with the department. The redetermination shall become a final order of the commissioner and not subject to further review, unless an appeal is filed to the appeals tribunal pursuant to § 50-7-304 within twenty (20) calendar days after the date the written notification of the redetermination is given or mailed to the last known address of the interested party;

(B) Any premium, payment in lieu of premiums, deficiencies in premiums, or deficiencies in payments in lieu of premiums found to be due by the department in the redetermination shall be assessed and paid together with interest, penalty and assessed damages, if any, within fifteen (15) calendar days after the date of mailing of written notice of the redetermination and assessment and demand for payment of the assessment by the department to the last known address of the person, or not later than fifteen (15) calendar days after the date the written notice is given to the person, whichever occurs first.

(i) **Discharge of Liens.**

(1) If the commissioner is not joined as a party, a judgment in any civil action or suit, or a judicial sale pursuant to the judgment with respect to property on which the department has or claims a lien under this title:

(A) Shall be made subject to and without disturbing the lien of the department, if notice of the lien has been filed in the place provided by law for the filing at the time the action or suit is commenced; or

(B) If a judicial sale of property pursuant to a judgment in any civil action or suit to which the department is not a party discharges a lien of the department arising under this title, the department may claim, with the same priority as its lien had against the property sold, the proceeds, exclusive of costs, of the sale at any time before the distribution of the proceeds is ordered.

(2)(A) Notwithstanding subdivision (i)(1), a sale of property on which the department has or claims a lien, or a title derived from enforcement of a lien, under this title, made pursuant to an instrument creating a lien on the property, pursuant to a confession of judgment on the obligation secured by such an instrument, or pursuant to a nonjudicial sale under a statutory lien on the property shall, except as otherwise provided, be made subject to and without disturbing the lien or title, if notice of the lien was filed or the title recorded in the place provided by law for the filing or recording more than thirty (30) days before the sale and the department is not given notice of the sale in the manner prescribed in subdivision

(i)(2)(B).

(B) **Special Rules.**

(i) **Notice of Sale.** Notice of sale to which subdivision (i)(2)(A) applies shall be given, in accordance with regulations prescribed by the commissioner, in writing, by registered or certified mail or by personal service, not less than twenty-five (25) days prior to the sale, to the commissioner or the commissioner's delegate.

(ii) **Consent to Sale.** Notwithstanding the notice requirement of subdivision (i)(1), a sale described in subdivision (i)(2)(A) of the property shall discharge or divert the property of the lien or title of the department if the department consents to the sale of the property free of the lien or title.

(iii) **Sale of Perishable Goods.** Notwithstanding the notice requirement of this section, a sale described in subdivision (i)(2)(A) of the property liable to perish or become greatly reduced in price or value by keeping, or that cannot be kept without great expense, shall discharge or divert the property of the lien or title of the department if notice of the sale is given, in accordance with regulations prescribed by the commissioner, in writing, by registered or certified mail or by personal service, to the commissioner or the commissioner's delegate before the sale. The proceeds, exclusive of costs, of the sale shall be held as a fund subject to the liens and claims of the department, in the same manner and with the same priority as the liens and claims had with respect to the property sold, for not less than thirty (30) days after the date of the sale.

(3) **Right to Redeem.**

(A) In the case of real property to which subdivision (i)(2)(A) applies, to satisfy a lien prior to that of the department, the commissioner or the commissioner's delegate may redeem the property within the period allowable for redemption under law.

(B) **Amount to be Paid.** In any case in which the department redeems real property pursuant to § 50-7-304(c)(1), the amount to be paid for the property shall be the amount paid by the purchaser, plus six percent (6%) interest per annum.

(C) **Certificate of Redemption.**

(i) **In General.** In any case in which real property is redeemed by the department pursuant to subdivision (i)(3), the commissioner or the commissioner's delegate shall execute a certificate of redemption therefor.

(ii) **Filing.** The commissioner or the commissioner's delegate shall, without delay, cause the certificate to be duly recorded in the proper registry of deeds.

(iii) **Effect.** A certificate of redemption executed by the commissioner or the commissioner's delegate shall constitute prima facie evidence of the regularity of the redemption and shall, when recorded, transfer to the department all the rights, title and interest in and to the property acquired by the person from whom the department redeems the property by virtue of the sale of the property.

(j) **Revocation of Charter or Authority to Conduct Business for Nonpayment.**

(1) The commissioner is empowered to certify to the secretary of state the name of any corporation or limited liability company permitted to conduct

business in the state that meets the definition of employer or employing unit for the purposes of this chapter, and that fails or refuses to file any quarterly report or to pay any fees, premiums, penalties or interest required in this chapter; however, no certification shall be issued until the report, fees, premiums, penalties or interest has remained delinquent for a period of ninety (90) days.

(2) At the time of the certification to the secretary of state, the commissioner shall give notice to the corporation or limited liability company of the action taken. Then, in the case of a corporation, the charter of the corporation or its domestication in the state shall stand as automatically revoked and the secretary of state shall note the revocation in its records. In the case of a limited liability company, the secretary of state shall administratively dissolve the limited liability company and shall note the dissolution in its records.

(3)(A) In the case of a corporation, at any time after the date of the revocation, the charter may be reinstated upon the filing of all reports and the payment of all fees, premiums, penalties and interest due the state; and in the case of a limited liability company, the certificate of dissolution may be cancelled upon the filing of all reports and the payment of all fees, premiums, penalties and interest due the state; provided, that the title has not been taken by another corporation or limited liability company, and that proof is furnished sufficient to the commissioner that no third party will be injured by the reinstatement or cancellation, unless proof has been furnished sufficient to the secretary of state upon requesting the reinstatement or cancellation.

(B) A corporation whose charter has been revoked or a limited liability company that has been administratively dissolved pursuant to subdivisions (j)(1) and (2) may apply to the secretary of state for reinstatement or cancellation by presenting a certificate from the commissioner certifying that the corporation or limited liability company has satisfied the requirements set forth in subdivision (j)(3)(A).

(k) A client of a staff leasing company shall be jointly and severally liable with the staff leasing company for state unemployment premiums, unless the client is relieved of the joint and several liability as provided under § 62-43-113(b)(2)(B) [repealed] of the Tennessee Employee Leasing Act.

50-7-452. Including with employer's annual premium rate notice a statement of benefits charged to employer's experience rating account.

By January 1, 2013, at the request of the employer, the department shall begin including with an employer's annual premium rate notice the statement of benefits charged to the employer's experience rating account that affected that annual premium rate. The department shall include on the annual premium rate notice how an employer may opt in to having that additional information included with the notice.

50-7-501. Unemployment compensation fund.

(a) **Establishment and Control.**

(1) There is established as a special fund, within the state treasury, an unemployment compensation fund, which shall be administered by the administrator of the division of employment security exclusively for the

purposes of this chapter. This fund shall consist of all:

(A) Premiums collected under this chapter;

(B) Interest earned upon any money in the fund;

(C) Property or securities acquired in lieu of premiums or other liabilities to the fund;

(D) Earnings of the property or securities;

(E) Money recovered on losses sustained by the fund;

(F) Money credited to this state's account in the unemployment trust fund pursuant to the § 903 of the Social Security Act, codified in 42 U.S.C. § 1103;

(G) Money received from employers who elect to make reimbursement of benefits paid and chargeable to them in lieu of paying premiums as provided in § 50-7-403(h) and (i);

(H) Money received from the federal government pursuant to § 204 of the Federal-State Extended Unemployment Compensation Act of 1970: and

(I) Fees, penalties, or interest collected in accordance with the federal Treasury Offset Program described in § 6402 of the Internal Revenue Code, codified in 26 U.S.C. § 6402, and 31 CFR part 285, 42 U.S.C. § 503(a), and § 50-7-715.

(2) All money in the fund shall be commingled and undivided.

(b) **Accounts and Deposits.**

(1) The state treasurer shall be the ex officio treasurer and custodian of the fund. Within the accounting system of the state, the fund shall be divided into three (3) separate accounts:

(A) A clearing account;

(B) An unemployment trust fund account; and

(C) A benefit account.

(2) All money payable to the fund, upon receipt of the money, shall be immediately deposited into the state treasury to the credit of the clearing account. Refunds payable pursuant to § 50-7-404 may be paid from the clearing account upon warrants originating in the office of the administrator and approved by the commissioner or a duly designated agent and countersigned by the state treasurer.

(3) All other collected funds in the clearing account shall be immediately transferred to and deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund established and maintained pursuant to the § 904 of the Social Security Act, codified in 42 U.S.C. § 1104. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund.

(c) **Withdrawals.** Money shall be requisitioned from the state's account in the unemployment trust fund and shall be used exclusively for the payment of benefits, including extended benefits authorized by § 50-7-305; for refunds pursuant to § 50-7-404; and for the payment of fees authorized under the Treasury Offset Program described in § 6402 of the Internal Revenue Code, codified in 26 U.S.C. § 6402, and 31 CFR part 285, except that money credited to this state's account pursuant to § 903 of the Social Security Act, codified in 42 U.S.C. § 1103, by the Employment Security Administration Financing Act of 1954, shall be used for the purpose of paying benefits as provided in this section, and for any purposes for which an appropriation may be made, which

general appropriations act shall specifically comply with all the requirements of § 903 of the Social Security Act, codified in 42 U.S.C. § 1103, by the Employment Security Administration Financing Act of 1954. The administrator shall, from time to time, requisition from the unemployment trust fund amounts, not exceeding the amounts standing to this state's account in the fund, the administrator deems necessary for the payment of benefits for a reasonable future period, the limits of which shall be specified by the administrator. Upon receipt of the moneys, the state treasurer shall deposit the moneys in the benefit account and all warrants for the payment of benefits shall be issued in the manner prescribed in this section and shall be payable by the state treasurer solely from the benefit account. Expenditures of the moneys in the benefit account and refunds from the clearing account shall not be subject to any law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants for the payment of benefits and refunds shall originate in the office of the administrator and shall be approved by the commissioner or a duly designated agent and shall be countersigned by the state treasurer. Any balance of moneys requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the administrator, shall be redeposited with the secretary of the treasury of the United States, to the credit of this state's account in the unemployment trust fund, as provided in subsection (b).

(d) **Management of Funds upon Discontinuance of Unemployment Trust Fund.** Subsections (a), (b) and (c), to the extent that they relate to the unemployment trust fund, shall be operative only so long as the unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States continues to maintain for this state a separate book account of all funds deposited in the fund by this state for benefit purposes, together with this state's proportionate share of the earnings of the unemployment trust fund, from which no other state is permitted to make withdrawals. If, and when, the unemployment trust fund ceases to exist, or the separate book account is no longer maintained, all moneys, properties or securities in the fund belonging to the unemployment compensation fund of this state shall be transferred to the state treasurer, who shall hold, invest, transfer, sell, deposit and release the moneys, properties or securities as the general assembly may direct in accordance with this chapter; provided, that the moneys shall be invested in the following readily marketable classes of securities, bonds or other interest-bearing obligations of the United States, or in such securities as the sinking fund of this state may now or hereafter be invested; and provided further, that investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The state treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the commissioner.

50-7-503. Unemployment compensation special administrative fund.

(a)(1) There is created in the state treasury a fund to be known as the "unemployment compensation special administrative fund," which shall

consist of interest collected on delinquent payments pursuant to § 50-7-404(a) and, except as provided in § 50-7-501(a)(1)(I), all fines and penalties collected pursuant to this chapter, including the penalty rate payments collected under § 50-7-403(b)(2)(G)(i)(*b*), the civil money penalties collected under § 50-7-403(b)(2)(G)(ii), and fees, penalties, or interest collected in accordance with the federal Treasury Offset Program described in § 6402 of the Internal Revenue Code, compiled in 26 U.S.C. § 6402, and 31 CFR part 285, 42 U.S.C. § 503(a).

(2) Annual estimates of expenditures and requirements from this fund shall be set forth in the budget document, and estimates approved by the general assembly shall be appropriated from this fund as a specific appropriation item in each year's general appropriations act.

(3) No sum sufficient appropriation shall be made from this fund that may add to estimates approved and appropriated by the general assembly, except for subdivisions (a)(1) and (2).

(4) The moneys deposited with the fund may be used for the following purposes:

(A) Replacements in the unemployment compensation administration fund as provided in § 50-7-502(c);

(B) Refunds pursuant to § 50-7-404(f) of interest erroneously collected; and

(C) Meeting necessary expenses for the administration of this chapter, including, but not limited to, automation expenses, as approved by the commissioner of finance and administration, the information systems council, and any other entity as required by law.

(b)(1) Interest earned on this fund shall be credited to and augment this fund.

(2) The balance of this fund and the balance of the unemployment compensation trust fund shall be considered for purposes of establishing the applicable premium table pursuant to § 50-7-403(j).

50-7-609. Assistant or deputy commissioner.

(a) The commissioner of labor and workforce development may appoint an assistant or deputy commissioner for the division of employment security, and may delegate to the person so appointed the responsibility and authority in connection with the administration of this chapter, the commissioner may, from time to time, deem necessary, reasonable and proper for the effective and efficient administration of the division, including, but not limited to, the coordination of the unemployment compensation bureau of the division and the Tennessee state employment service.

(b) Neither this chapter nor title 8, chapter 30 shall apply to the appointment of the assistant or deputy commissioner provided for in this section, or to the assistant or deputy commissioner's tenure of office, it being the express intent that the assistant or deputy commissioner shall serve in that capacity solely at the will of the commissioner.

50-7-613. Receiving notices electronically and submitting separation information electronically — Electronic appeals.

By July 1, 2012, the department shall implement an Internet-based system that allows employers to receive separation notices from the department

electronically and to submit separation information electronically to the department. The system shall also have the capability to allow an employer to initiate an appeal electronically.

50-7-715. Repayment of unemployment benefits as a result of a violation of this chapter — Interest on amount due — Appeal does not toll interest — Application of moneys received.

(a) Any person who has received unemployment benefits by knowingly misrepresenting, misstating, or failing to disclose any material fact, or by making a false statement or false representation without a good faith belief as to the correctness of the statement or representation, after a determination by the commissioner that such a violation has occurred, shall be required to repay the amount of benefits received.

(b)(1) The commissioner shall assess a penalty equal to fifteen percent (15%) of the overpaid benefits as described in subsection (a), to comply with the requirements of 42 U.S.C. § 503(a)(11). Moneys collected by this penalty shall be deposited into the unemployment compensation fund as provided in § 50-7-501.

(2) The commissioner shall further assess a penalty equal to seven and one-half percent (7.5%) of the overpaid benefits described in subsection (a). Moneys collected by this penalty shall be used to defray the costs of deterring, detecting, or collecting overpayments. The penalty provided in this subdivision (b)(2) is in addition to the penalty provided in subdivision (b)(1).

(c)(1) In addition to the requirements of subsections (a) and (b), the commissioner shall assess interest at a rate of no more than one and one-half percent (1.5%) per month on the total amount due that remains unpaid for a period of thirty (30) or more calendar days after the date on which the commissioner sends notice of the commissioner's determination that a violation has occurred to the last known address of the claimant. For purposes of this subdivision (c)(1), "total amount due" includes the unemployment benefits received pursuant to subsection (a) and the penalties provided for in subsection (b).

(2) A pending appeal of the order of the commissioner shall not suspend the assessment of interest on unemployment benefits obtained in violation of this chapter.

(d) Moneys received by the department in repayment of unemployment benefits and payment of penalties and interest pursuant to subsections (a), (b)(2), and (c) shall first be applied to the unemployment benefits received, then to any interest due. These moneys shall be used by the department to defray the costs of deterring, detecting or collecting overpayments.

50-7-801. Short title. [Effective on January 1, 2013.]

This part shall be known and may be cited as the "Tennessee Works Act of 2012."

50-7-802. Tennessee Works pilot program — Purpose. [Effective on January 1, 2013.]

(a) There is hereby established the Tennessee works pilot program to provide job training designed to attract new businesses to the state and to assist in the

expansion or retention of existing businesses in this state.

(b) The purpose of the Tennessee works pilot program is to:

(1) Enhance this state's economic growth and vitality by offering assistance to privately owned businesses and industries in training a new workforce and by creating new jobs and retaining and upgrading existing jobs;

(2) Provide technical education and training as a component of this state's economic development efforts;

(3) Be flexible and responsive to the training needs of business and industry in this state; and

(4) Offering on-the-job training programs to support existing employees and dislocated workers.

50-7-803. Part definitions. [Effective on January 1, 2013.]

As used in this part:

(1) "Department" means the department of labor and workforce development;

(2) "Dislocated worker" means an individual who:

(A) Has been terminated or laid off, or who has received a notice of termination or layoff from employment, including an individual:

(i) Currently eligible for unemployment insurance benefits; or

(ii) Who has exhausted entitlement to unemployment insurance benefits;

(B) Has been terminated or laid off, or has received a notice of termination or layoff from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise, including a facility at which the employer has made a general announcement that the facility will close within one hundred eighty (180) days;

(C) Was self-employed, but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters; or

(D) Is a displaced homemaker;

(3) "Displaced homemaker" means an individual who has been:

(A) Providing unpaid services to the individual's family members in the home; and

(B) Dependent on the income of another family member but is no longer supported by that income;

(4) "Eligible business" means a business determined by the department to be eligible for Tennessee works pilot program grants;

(5) "Eligible training expenses" means expenses determined by the department to be eligible for grants awarded through the Tennessee works pilot program; and

(6) "Trade adjustment assistance funds" means funds distributed in accordance with the federal Trade Adjustment Assistance Reform Act of 2002, compiled in title 19 of the United States Code.

50-7-804. Administration — Reimbursable screening for potential employment of grants to private businesses. [Effective on January 1, 2013.]

(a) The department shall administer the Tennessee works pilot program by awarding reimbursable training grants to privately owned businesses for the

purpose of screening for potential employment of new and existing employees in this state.

(b)(1) Tennessee works pilot program training grants will be awarded to eligible businesses seeking to make new hires during or after the screening period. Such grants shall be used for the eligible training expenses of a dislocated worker:

(A) Who is a first-time unemployment insurance claimant. The claimant shall continue to receive unemployment insurance benefits during the screening period; or

(B) Whose job is lost due to workforce off shoring by the worker's former employer and who is currently under a valid trade petition approved by the United States department of labor.

(2)(A) A Tennessee works pilot program screening period shall last for up to, but no more than, eight (8) weeks. At any time during the screening period or after the screening period, the employer may elect to employ a dislocated worker on a full-time basis.

(B)(i) If an employer elects to employ the dislocated worker and to provide additional on the job training (OJT) to the dislocated worker, then the employer will be eligible to receive a wage offset in return for providing additional OJT to the dislocated worker. The employment and training of a dislocated worker pursuant to this subdivision (b)(2)(B)(i) shall be in accordance with the department's existing OJT program and the department's rules and policies regarding the existing OJT program.

(ii) A dislocated worker shall no longer be eligible to receive unemployment insurance benefits or trade adjustment compensation if the dislocated worker is employed and receiving OJT pursuant to subdivision (b)(2)(B)(i). If the employer does not retain the dislocated worker following the OJT period and the dislocated worker is otherwise eligible to receive unemployment insurance benefits, then the dislocated worker can, upon filing a claim, resume receipt of unemployment insurance benefits.

(3) An employer shall no longer be eligible for grants through the Tennessee works pilot program if the employer does not demonstrate a pattern of continued employment of dislocated workers following the end of the OJT period.

(c) Trade adjustment assistance funds shall only be awarded:

(1) Through the Tennessee works pilot program pursuant to subdivision (b)(1)(B); and

(2) To be used in limited cases as an option to expedite employment where the conditions described in subdivision (b)(1)(B) exist.

50-7-805. Funding — Organizations ineligible for grants. [Effective on January 1, 2013.]

(a) The Tennessee works pilot program established under this part shall be funded solely with funds received by the state from the United States department of labor and shall be subject to the availability of such funds and all laws governing the use of the funds.

(b) No Tennessee works pilot program grant shall be awarded to:

(1) Any state entity;

(2) Any county, city, town, or other political subdivision of this state; or

(3) Any organization or group of organizations, described in § 501(c)(3) of the Internal Revenue Code, codified in 26 U.S.C. § 501(c)(3), that is exempt

from income tax under § 501(a) of the Internal Revenue Code, codified in 26 U.S.C. § 501(a).

50-7-806. Rules. [Effective on January 1, 2013.]

The department has authority to adopt rules to effectuate this part. The rules shall be adopted in accordance with the rulemaking provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The department may also adopt emergency rules as determined to be necessary to effectuate this chapter, in accordance with the Uniform Administrative Procedures Act. No rule shall be adopted without prior hearing and notice as provided under the Uniform Administrative Procedures Act.

50-7-807. Report concerning findings and recommendations. [Effective on January 1, 2013.]

On or before January 1, 2014, the department shall report to the commerce, labor and agriculture committee of the senate and the commerce committee of the house of representatives concerning the department's findings and recommendations concerning the Tennessee works pilot program.

53-8-117. Sale of foods prepared in home-based kitchens.

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

(1) "Home-based kitchen" means a cooking facility located in that person's primary residence;

(2) "Nonpotentially hazardous food" means jam, jellies, candy, dried mixes and other such food that do not meet the definition of potentially hazardous food; and

(3) "Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustaceans, or other ingredients which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, home-canned foods other than jams and jellies, or any food that requires temperature control for safety.

(b) Notwithstanding any law, rule or regulation to the contrary, nonpotentially hazardous food prepared in a home-based kitchen may be sold at that person's personal residence, a community or social event, including church bazaars and festivals, flea markets, or at farmer's markets located in this state.

(c) Persons offering for sale nonpotentially hazardous food prepared in a home-based kitchen shall display an eight and one-half inch by eleven inch (8 ½″ x 11″) sign with three-fourths inch (¾″) font at the place of sale stating: "These food products were made in a private home not licensed or inspected."

(d) Each food product that is sold shall be labeled with the name and address of the person who prepared the food product, the common or usual name of the food product, the date on which the food product was packaged, the net quantity of the food product, the statement "This product was made in a private home not licensed or inspected," and a list of ingredients in descending order of prominence of weight. If any ingredient contains milk, eggs, fish, crustaceans, shellfish, tree nuts, wheat, peanuts, or soybeans, the list of ingredients shall include the common name of the ingredient.

(e) Whenever the commissioner finds that a nonpotentially hazardous food

prepared in a home-based kitchen is, by reason of microbiological, physical, chemical or allergenic contamination, injurious to the public health, the commissioner may prohibit the sale of such food until the facility in which it was prepared is inspected and found to be in substantial compliance with the regulations for establishments utilizing domestic kitchen facilities for bakery and other nonpotentially hazardous food, and the contamination is eliminated. Any food product prepared in a home-based kitchen failing to meet the definition of a "nonpotentially hazardous food" shall immediately be removed from sale.

(f) All nonpotentially hazardous food from a home-based kitchen may be distributed as free samples.

(g) An individual who processes nonpotentially hazardous foods in a home-based kitchen is encouraged but shall not be required to complete a food safety course and to have their recipes and processes reviewed by a person who is knowledgeable about food processing and who is recognized by the department or a state college or university with a curriculum in food safety as an authority on preparing processed food.

(h) This section shall not prohibit a person from obtaining a regulatory services permit for a domestic kitchen when appropriately applied for and the relative requirements are met.

(i) If a conflict exists between this section and chapter 1 of this title, then this section shall control.

53-10-301. Short title. [Effective until January 1, 2013, and on July 1, 2016. See the version effective from January 1, 2013, until July 1, 2016.]

This part shall be known and may be cited as the "Controlled Substance Monitoring Act of 2002."

53-10-305. Submission of information — Data format. [Effective until January 1, 2013, and on July 1, 2016. See the version effective from January 1, 2013, until July 1, 2016.]

(a) Each dispenser shall, regarding each controlled substance dispensed, submit to the committee all of the following information by a procedure and in a format established by the committee at least monthly within ten (10) days following the last day of each calendar month:

(1) Prescriber identifier;
(2) Dispensing date of controlled substance;
(3) Patient identifier;
(4) Controlled substance dispensed identifier;
(5) Quantity of controlled substance dispensed;
(6) Strength of controlled substance dispensed;
(7) Estimated days supply;
(8) Dispenser identifier; and
(9) Other relevant information as required by rule.

(b) A pharmacy dispenser that uses a computerized system to record information concerning the dispensing of controlled substances listed in Schedule II, III, or IV, and Schedule V controlled substances identified by the controlled substance database advisory committee as demonstrating a potential for abuse, shall submit the required information to the committee or its agent utilizing nationally recognized pharmacy telecommunications format

standards.

(c) The board of pharmacy shall maintain the database in an electronic file or by other means established by the committee in such a manner as not to infringe on the legal use of controlled substances, and in such a manner as to facilitate use of the database for identification of:

(1) Prescribing practices and patterns of prescribing and dispensing controlled substances; and

(2) Individuals, facilities or entities receiving prescriptions for controlled substances from licensed practitioners, and who subsequently obtain dispensed controlled substances from a pharmacy in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance, or by means of forged or otherwise false or altered prescriptions.

(d)(1) The committee shall by rule establish the electronic format in which the information required under this section shall be submitted to the committee and shall allow for waiver for individual dispensers for whom it would cause undue hardship.

(2) The committee shall ensure the database system records and shall maintain for reference:

(A) Identification of each person who requests or receives information from the database;

(B) The information provided to each person; and

(C) The date and time the information is requested or provided.

(e) The committee shall make rules to:

(1) Effectively enforce the limitations on access to the database as described in this part; and

(2) Establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information from the database without a request.

53-10-306. Confidentiality — Disclosure of information — Penalties. [Effective until January 1, 2013, and on July 1, 2016. See the version effective from January 1, 2013, until July 1, 2016.]

(a) Information sent to, contained in, and reported from the database in any format is confidential and not subject to title 10, chapter 7, regarding public records, and not subject to subpoena from any court and shall be made available only as provided for in § 53-10-308 and to the following persons, and in accordance with the limitations stated and rules promulgated pursuant to this part:

(1) Personnel of the committee specifically assigned to conduct analysis or research;

(2) Authorized committee, board, or department of health personnel engaged in analysis of controlled substances prescription information as a part of the assigned duties and responsibilities of their employment;

(3) A licensed health care practitioner having authority to prescribe or dispense controlled substances, to the extent the information relates specifically to a current or bona fide prospective patient of the practitioner, to whom the practitioner has prescribed or dispensed or is prescribing or dispensing or considering prescribing or dispensing any controlled

substance;

(4) A licensed pharmacist having authority to dispense controlled substances to the extent the information relates specifically to a current patient to whom that pharmacist has dispensed, is dispensing or considering dispensing any controlled substance;

(5) A county medical examiner appointed pursuant to § 38-7-104 when acting in an official capacity as established in § 38-7-109; provided, any access to information from the database shall be subject to the confidentiality provisions of this part except where information obtained from the database is appropriately included in any official report of the county medical examiners, toxicological reports or autopsy reports issued by the county medical examiner under § 38-7-110(c);

(6) Personnel of the following entities actively engaged in analysis of controlled substances prescription information as a part of their assigned duties and responsibilities related directly to TennCare:

(A) The office of inspector general;

(B) The medicaid fraud control unit; and

(C) The bureau of TennCare's chief medical officer, associate chief medical directors, director of quality oversight, and associate director of pharmacy; or

(7) A quality improvement committee as defined in § 68-11-272 of a hospital licensed under title 68 or title 33, as part of the committee's confidential and privileged activities under § 68-11-272(b)(4) with respect to the evaluation, supervision or discipline of a healthcare provider employed by the hospital or any of its affiliates or subsidiaries, who is known or suspected by the hospital's administrator to be prescribing controlled substances for the prescriber's personal use;

(8) Law enforcement personnel; provided, that such personnel are engaged in the official investigation and enforcement of state or federal laws involving controlled substances; and that any law enforcement personnel receiving information from the database pursuant to this section shall comply with the requirements of this subsection (a):

(A)(i) Any law enforcement agency or judicial district drug task force that wants one (1) or more of its officers or agents to have the authorization to request information from the database shall first pre-approve each such officer. Pre-approval shall be by the applicant's supervisor, who shall be either the chief of police, county sheriff or the judicial district drug task force director. The list of pre-approved applicants shall be sent to the district attorney general in the judicial district in which the agency or task force has jurisdiction.

(ii) By December 1 of each year, each district attorney general shall send to the board of pharmacy a list of applicants authorized to request information from the database from that general's judicial district for the next calendar year.

(B)(i) If the Tennessee bureau of investigation (TBI) wants one (1) or more of its agents to have the authorization to request information from the database each such agent shall first be pre-approved by the agent's immediate supervisor and division head. Approved applicants shall be sent to the board by the director.

(ii) By December 1 of each year, the TBI director shall send to the board of pharmacy a list of applicants authorized to request information

from the database from the bureau for the next calendar year.

(C) An application submitted by a law enforcement agency, a judicial drug task force or the TBI shall include, but not be limited to the:

(i) Applicant's name; title; agency; agency address; agency contact number; agency supervisor; and badge number, identification number or commission number, and the business email address of each applicant officer or agent, the appropriate district attorney general and, if a TBI agent, the TBI director and their business email addresses; and

(ii) Signatures of the applicant, the applicants approving supervisor and the district attorney general of the judicial district in which the applicant has jurisdiction or the approving division head and the TBI director.

(D) It shall be a duty of the board, as part of its duties to maintain the database pursuant to § 53-10-305(c), to receive and verify the lists of authorized applications sent to it by the district attorneys general and the director of the TBI pursuant to this subsection (a).

(b) When requesting information from the database, the board shall require law enforcement personnel to provide a case number as part of the process for requesting information from the database. The case number entered shall correspond with an official investigation involving controlled substances and information requested should directly relate to the investigation.

(c) The board of pharmacy shall by rule, establish a fee for providing information to a law enforcement agency, judicial district drug task force or TBI pursuant to this section. In determining the fee and type of fee to be charged, the board shall consider options such as an annual fee or a per use, incremental cost basis fee.

(d)(1) Law enforcement personnel and judicial district drug task force agents who are authorized to request information from the database shall resubmit their identifying application information that was submitted pursuant to subdivision (a)(8)(C) to the appropriate district attorney by November 20 of each year. Such resubmitted applications shall be sent by the appropriate district attorney general to the board by December 1 of each year. If during the calendar year a name is added to the list, removed from the list or information about a person on the list changes, the appropriate district attorney shall immediately notify the board of any changes to the list submitted or in the information submitted for each officer or agent on the list application.

(2) TBI agents who are authorized to request information from the database shall resubmit their identifying application information that was submitted pursuant to subdivision (a)(8)(C) to the TBI director by November 20 of each year. Such resubmitted applications shall be sent by the TBI director to the board by December 1 of each year. If during the calendar year a name is added to the list, removed from the list or information about a person on the list changes, the TBI director shall immediately notify the board of any changes to the list submitted or in the information submitted for each officer or agent on the list application.

(e)(1) Information obtained from the database may be shared with other law enforcement personnel or prosecutorial officials, only upon the direction of the officer or agent who originally requested the information and may only be shared with law enforcement personnel from other law enforcement agencies who are directly participating in an official joint investigation.

(2) Any information obtained from the data base that is sent to a law enforcement official or a judicial district drug task force agent shall also be sent to the district attorney general of the judicial district in which such officer or agent has jurisdiction. Likewise, any database information sent to a TBI agent shall also be sent to the TBI director.

(f) To ensure the privacy and confidentiality of patient records, information obtained from the database by law enforcement personnel shall be retained by the law enforcement personnel's respective department or agency. The information obtained from the database shall not be made a public record, notwithstanding the use of the information in court for prosecution purposes. Information obtained from the database shall be maintained as evidence in accordance with each law enforcement agency's respective procedures relating to the maintenance of evidence.

(g) Any information disseminated pursuant to subdivisions (a)(1)-(7) shall be released to the individual or entity requesting the information by the database manager or by password protected internet access.

(h) Any licensed practitioner or pharmacist receiving patient-specific information pursuant to subdivision (a)(1), (a)(2), (a)(3) or (a)(4) shall not disclose the information to any person other than:

(1) The patient to whom the information relates and then only for the purpose of adjusting the patient's treatment plans or counseling the patient to seek substance abuse treatment;

(2) Other dispensers identified by the information and then only for the purposes of verifying the accuracy of the information; and

(3) Any law enforcement agency or judicial district drug task force to whom reporting of controlled substances being obtained in a manner prohibited by § 53-11-402(a)(6) is required by § 53-11-309.

(i) If a law enforcement officer, judicial district drug task force agent or TBI agent has probable cause to believe, based upon information received from a database request, that a prescriber or pharmacist may be acting or may have acted in violation of the law, the officer or agent shall consult with the board of pharmacy inspector's office if a pharmacist and the health related boards' investigations unit if a prescriber.

(j)(1) At least every six (6) months, the board shall send a list to each district attorney general containing all requests made for database information during the previous six (6) months. The list shall include the name of the requesting officer or agent, the officer or agent's agency, the date of the request, and the nature of the request, including the case number, for each officer or agent making a request in such district attorney's judicial district. Likewise, a list shall be sent to the director of the TBI for all TBI agents making requests during the previous six (6) months.

(2) Each district attorney general and the TBI director shall use the list to perform an audit to determine if the database information requests made during the preceding six (6) month period correspond to specific cases under investigation in the applicable judicial district or by the bureau and if the information requested is relevant and pertinent to an investigation.

(3) Each district attorney general and the TBI director shall verify all database information requests contained on the list received and send it back to the board within sixty (60) days of receipt. If a database information request does not correspond to an investigation in the applicable jurisdiction or if the information requested was not relevant or pertinent to the

information requested, the district attorney general or director shall so note on the verified list and shall investigate the discrepancy and make a report back to the board within a reasonable period of time.

(4) The results of the audit conducted pursuant to subdivision (j)(2) shall be discoverable by a prescriber or pharmacist charged with violating any state or federal law involving controlled substances or under a notice of charges proffered by a licensing board for a violation of any law involving controlled substances, but only the results pertaining to that prescriber or pharmacist is discoverable. However, if there is an active criminal investigation involving a prescriber or the prescriber is under investigation by the health related boards' investigation unit, the results of the audit conducted pursuant to subdivision (j)(2) shall not be discoverable by the prescriber during either such period.

(k)(1) Any person who obtains or attempts to obtain information from the database by misrepresentation or fraud is guilty of a Class A misdemeanor.

(2) Any person who knowingly uses, releases, publishes, or otherwise makes available to any other person or entity any information submitted to, contained in, or obtained from the database for any purpose other than those specified in this part is guilty of a Class A misdemeanor.

(3) Intentional unauthorized use or disclosure of database information by law enforcement personnel, judicial district drug task force members or TBI agents shall be punishable as a Class A misdemeanor.

(4) Any law enforcement personnel, judicial district drug task force member or TBI agent charged with a violation of this section shall have such person's authorization to request information from the database suspended pending final disposition of any criminal prosecution. Any law enforcement personnel, judicial district drug task force member or TBI agent found guilty of a violation of this subsection (i) shall have such person's authorization to request information from the database permanently revoked.

(5) Where an individual authorized under subsection (a) acts in good faith in accessing or using information from the database in accordance with the limitations under this part, that person shall not incur any civil or criminal liability as a result of that use or access.

(*l*)(1) The following personnel of the department of mental health and substance abuse services actively engaged in analysis of controlled substances prescription information as a part of their assigned duties and responsibilities shall have access to the database for controlled substances prescription information for specific patients:

(A) The chief pharmacist;

(B) The state opioid treatment authority (SOTA) or SOTA designee; and

(C) The medical director.

(2) Aggregate controlled substances prescribing information from the database may be provided upon request by the following personnel of the department of mental health and substance abuse services, who are actively engaged in analysis of controlled substances prescription information as provided in this subsection (*l*), and may be shared with other personnel of the department of mental health and substance abuse services as needed to fulfill assigned duties and responsibilities:

(A) The chief pharmacist;

(B) The SOTA; or

(C) The medical director.

(m) Where an investigation is conducted under § 38-7-109, and information

within the database is obtained pursuant to the requirements of this part, there exists a rebuttable presumption that the county medical examiner is acting in good faith.

53-10-307. Failure to submit information — Liability. [Effective until January 1, 2013, and on July 1, 2016. See the version effective from January 1, 2013, until July 1, 2016.]

(a) The failure of a dispenser to submit information to the database required under this part after the committee has submitted a specific written request for the information, or when the committee determines the individual has a demonstrable pattern of failing to submit the information as required, is grounds for the denial of licensure, renewal of licensure, or other disciplinary action against the dispenser before the licensing board with jurisdiction over the dispenser and for the committee to take the following actions:

(1) Recommend to the appropriate licensure board that it should refuse to issue a license to the individual;

(2) Recommend to the appropriate licensure board that it should refuse to renew the individual's license; and

(3) Recommend to the appropriate licensure board that it should commence disciplinary action against the licensee seeking revocation, suspension or other appropriate discipline, including civil penalties.

(b) An individual or entity that has submitted information to the database in accordance with this part and in good faith shall not be subject to a suit for civil damages nor held civilly liable for having submitted the information.

(c) An individual or entity that in good faith disseminates information contained in, or derived from, the database to the individuals authorized by this part to receive it in the manner authorized by this part or rules promulgated pursuant to this part, shall not be subject to a suit for civil damages nor held individually liable for having done so.

(d) No health care practitioner licensed by any board or committee shall be subject to licensure disciplinary action for submitting the information required by this part to the committee and the submission of the information shall not be deemed to be a breach of any confidentiality, ethical duty to a patient, or the sharing of any professional secret.

53-10-308. Release of confidential information. [Effective until January 1, 2013, and on July 1, 2016. See the version effective from January 1, 2013, until July 1, 2016.]

(a) Notwithstanding any other provision of this part to the contrary, the committee may release confidential information from the database regarding practitioners, patients, or both, to a manager of any investigations or prosecution unit of a board, committee, or other governing body that licenses practitioners and is engaged in any investigation, an adjudication, or a prosecution of a violation under any state or federal law that involves a controlled substance.

(b) Before the committee releases confidential information under this section, the applicant must petition the committee for the confidential information, particularly describe the information required, and demonstrate to the committee that the applicant has reason to believe that a violation under any state or federal law that involves a controlled substance has occurred and that the requested information is reasonably related to the investigation, adjudi-

cation, or prosecution of the violation.

(c) No information may be released under this section until it has been reviewed by the committee, including a member of the committee who is licensed in the same profession as the prescribing or dispensing practitioner identified by the data, and until the committee, including that member, has certified that further investigation or prosecution is warranted and that release of the information is necessary to that continued investigation or prosecution.

53-10-311. [Repealed.] [Effective from January 1, 2013, until July 1, 2016. See the version effective from January 1, 2013, until July 1, 2016.]

53-10-301. Short title. [Effective from January 1, 2013, until July 1, 2016. See the version effective until January 1, 2013, and on July 1, 2016.]

This part shall be known and may be cited as the "Tennessee Prescription Safety Act of 2012."

53-10-302. Part definitions. [Effective from January 1, 2013, until July 1, 2016. See the version effective until January 1, 2013, and on July 1, 2016.]

As used in this part:

(1) "Board" means the board of pharmacy created by title 63, chapter 10, part 3;

(2) "Commissioner" means the commissioner of health;

(3) "Committee" means the controlled substance database committee created by this part;

(4) "Controlled substances" means a drug, substance or immediate precursor in Schedules I through VI defined or listed in the Tennessee Drug Control Act, compiled in title 39, chapter 17, part 4;

(5) "Database" means the controlled substance database created by this part;

(6) "Department" means the department of health;

(7) "Dispense" means to physically deliver a controlled substance covered by this part to any person, institution or entity with the intent that it be consumed away from the premises on which it is dispensed. It does not include the act of writing a prescription by a practitioner to be filled at a pharmacy licensed by the board. For purposes of this part, physical delivery includes mailing controlled substances into this state;

(8) "Dispenser" means a pharmacist, a pharmacy, or any healthcare practitioner who is licensed and has current authority to dispense controlled substances;

(9) "Healthcare practitioner" means:

(A) A physician, dentist, optometrist, veterinarian, or other person licensed, registered, or otherwise permitted to prescribe, distribute, dispense or administer a controlled substance in the course of professional practice; or

(B) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, or administer a controlled

substance in the course of professional practice;

(10) "Healthcare practitioner extender" means any registered or licensed healthcare professional, and up to two (2) unlicensed persons designated by the prescriber or dispenser, who act as agents of that prescriber or dispenser. The prescriber or dispenser shall be responsible for all actions taken by their agents pursuant to this part;

(11) "Law enforcement personnel" means agents of the Tennessee bureau of investigation, agents of a judicial district drug task force, federal law enforcement officers commissioned by a federal government entity, certified law enforcement officers certified pursuant to § 38-8-107, and certified law enforcement officers in other states; and

(12) "Prescriber" means an individual licensed as a medical doctor, podiatrist, dentist, optometrist, veterinarian, osteopathic physician, or physician assistant who has the authority to issue prescriptions for controlled substances, or an advanced practice nurse with a certificate of fitness to prescribe and the required supervisory relationship with a physician.

53-10-303. Creation — Membership — Elections — Meetings — Per diem and travel reimbursement — Public meetings — Rules and regulations. [Effective from January 1, 2013, until July 1, 2016. See the version effective until January 1, 2013, and on July 1, 2016.]

(a) There is created the controlled substance database committee. The committee members shall be:

(1) The executive director of the board of pharmacy, who shall serve as database manager;

(2) The director of the department of health's division of health-related boards;

(3) The executive director of the board of medical examiners;

(4) One (1) of the governor-appointed and licensed members of each of the following health care professional licensure boards or committees to be chosen by the licensing board or committee:

(A) The board of medical examiners;

(B) The board of osteopathic examination;

(C) The board of dentistry;

(D) The board of registration in podiatry;

(E) The optometry board;

(F) The board of veterinary medical examiners;

(G) The board of nursing;

(H) The board of medical examiners' committee for physician assistants; and

(I) The board of pharmacy; and

(5) One (1) of the members of the board of pharmacy and one (1) of the members of the board of medical examiners who were appointed to those boards to represent the general public. The boards shall choose those representatives.

(b) The committee shall have a chair and vice chair, who shall be elected annually from its members.

(c) The committee shall meet at least annually and as often as deemed necessary either at the call of the chair or upon request of at least three (3) members of the committee. A quorum for purposes of official actions by the

committee shall be seven (7) members.

(d) The members of the committee chosen to serve by the individual licensure boards and committees, while serving on this committee, shall be deemed to be performing official duties as members of their original board or committee and shall be entitled to the same per diem and travel reimbursements as they would receive for performing their duties for their original board or committee. The member's original board or committee shall pay those per diems and travel reimbursements.

(e) At all times, except when considering, reviewing, discussing, advising or taking action in reference to specifically named individuals or dispensers identified from information contained in, or reported to the database, the committee shall be subject to title 8, chapter 44, part 1, regarding public meetings.

(f) The commissioner shall have the authority to promulgate rules and regulations, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, necessary for implementation of this part. The commissioner shall promulgate rules regarding:

(1) Establishing, maintaining and operating the database;

(2) Access to the database and how access is obtained;

(3) Control and dissemination of data and information in the database; and

(4) The sharing and dissemination of data and information in the database with other states or other entities acting on behalf of a state.

(g) The committee shall advise the commissioner of health with respect to any contemplated rulemaking under this part. The committee may make formal recommendations to the commissioner of health.

(h)(1) The committee shall have the duty to examine database information to identify unusual patterns of prescribing and dispensing controlled substances that appear to be higher than normal, taking into account the particular specialty, circumstances, patient-type or location of the prescriber or dispenser.

(2)(A) If the committee determines that a pharmacist or pharmacy has an unusually high pattern of dispensing controlled substances that is not explained by other factors, it shall refer the pharmacist or pharmacy to the chief board of pharmacy investigator.

(B) When the pharmacy investigator completes the investigation of any pharmacy or pharmacist referred to it by the committee pursuant to this subsection (h), the investigator shall report the results of the investigation back to the committee as follows:

(i) The investigator shall report that the investigation was dismissed if the results of the investigation indicate that the pharmacist or pharmacy had an unusually high dispensing pattern for explainable, legitimate and lawful reasons; or

(ii) The investigator shall report that the investigation was referred to the pharmacy board if the results indicate that a prescriber has an unusually high pattern of prescribing or dispensing controlled substances that are not explained by other factors.

(C) If the action taken by the board indicates that the pharmacist or pharmacy had an unusually high dispensing pattern for explainable, legitimate and lawful reasons, the committee shall take that finding into consideration before it again refers the same pharmacist or pharmacy to

the investigator based upon similar conduct.

(3)(A) If the committee determines that a prescriber has an unusually high pattern of prescribing or dispensing controlled substances that are not explained by other factors, it shall refer the prescriber to the health related boards' investigation unit.

(B) When the boards' investigator completes the investigation of any prescriber referred to it by the committee pursuant to this subsection (h), the investigator shall report the results of the investigation back to the committee as follows:

(i) The investigator shall report that the investigation was dismissed if the results of the investigation indicate that the prescriber had an unusually high dispensing pattern for explainable, legitimate and lawful reasons; or

(ii) The investigator shall report that the investigation was referred to the health related boards if the results indicate that a prescriber has an unusually high pattern of prescribing or dispensing controlled substances that are not explained by other factors.

(C) If the action taken by the board indicate that the prescriber had an unusually high dispensing or prescribing pattern for explainable, legitimate and lawful reasons, the committee shall take that finding into consideration before it again refers the same prescriber to the health related boards' investigation unit based upon similar conduct.

(4) If a pharmacy investigator or a member of the health related boards' investigation unit has reason to believe during any part of an investigation that a prescriber or dispenser is in violation of a criminal law, the investigator is authorized to report the conduct to the appropriate district attorney general.

53-10-304. Administrative attachment — Controlled substance database — Data requirements. [Effective from January 1, 2013, until July 1, 2016. See the version effective until January 1, 2013, and on July 1, 2016.]

(a) There is created within the department a controlled substance database to be attached administratively and for purposes of staffing to the board of pharmacy. The executive director of the board shall be responsible for determining staffing.

(b) The board and the committee shall establish, administer, maintain and direct the functioning of the database in accordance with this part. The board, upon concurrence of the committee, may, under state procurement laws, contract with another state agency or private entity to establish, operate, or maintain the database. Additionally, the board, upon concurrence of the committee, shall determine whether to operate the database within the board or contract with another entity to operate the database, based on an analysis of costs and benefits.

(c) The purpose of the database is to assist in research, statistical analysis, criminal investigations, enforcement of state or federal laws involving controlled substances, and the education of health care practitioners concerning patients who, by virtue of their conduct in acquiring controlled substances, may require counseling or intervention for substance abuse, by collecting and maintaining data as described in this part regarding all controlled substances

in Schedules II, III and IV dispensed in this state, and Schedule V controlled substances identified by the controlled substance database advisory committee as demonstrating a potential for abuse.

(d) The data required by this part shall be submitted in compliance with this part to the database by any dispenser, or dispenser's agent, who dispenses a controlled substance contained in Schedules II, III, and IV, and Schedule V controlled substances identified by the controlled substance database committee as demonstrating a potential for abuse. The reporting requirement shall not apply for the following:

(1) A drug administered directly to a patient;

(2) Any drug sample dispensed;

(3) Any drug dispensed by a licensed veterinarian; provided, that the quantity dispensed is limited to an amount adequate to treat the non-human patient for a maximum of forty-eight (48) hours;

(4) Any facility that is registered by the United States drug enforcement administration as a narcotic treatment program and is subject to the recordkeeping provisions of 21 CFR 1304.24; or

(5) Any drug dispensed by a licensed healthcare facility; provided, that the quantity dispensed is limited to an amount that is adequate to treat the patient for a maximum of forty-eight (48) hours.

53-10-305. Submission of information — Data format. [Effective from January 1, 2013, until July 1, 2016. See the version effective until January 1, 2013, and on July 1, 2016.]

(a) All prescribers with DEA numbers who prescribe controlled substances and dispensers in practice providing direct care to patients in Tennessee for more than fifteen (15) calendar days per year shall be registered in the controlled substance database. New licensees shall have up to thirty (30) calendar days after notification of licensure to register in the database. Licensed veterinarians who never prescribe a controlled substance in an amount intended to treat a non-human patient for more than forty-eight (48) hours shall not be required to register in the database.

(b)(1) Each dispenser or dispenser's agent shall, regarding each controlled substance dispensed, submit to the database all of the following information:

(A) Prescriber identifier;

(B) Dispensing date of controlled substance;

(C) Patient identifier;

(D) Controlled substance dispensed identifier;

(E) Quantity of controlled substance dispensed;

(F) Strength of controlled substance dispensed;

(G) Estimated days supply;

(H) Dispenser identifier;

(I) Date the prescription was issued by the prescriber;

(J) Whether the prescription was new or a refill;

(K) Source of payment; and

(L) Other relevant information as required by rule.

(2) The information in the database, as required by subdivision (b)(1), shall be submitted by a procedure and in a format established by the committee, at least once every seven (7) days for all the controlled substances dispensed during the preceding seven-day period.

(c) The committee shall have the authority to shorten the length of time

dispensers are required to submit to the database through the promulgation of rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. When the committee shortens the length of time dispensers are required to submit to the database, the department shall provide notice to all dispensers who are registered in the database at least sixty (60) days prior to the date in which the rule goes into effect. If the committee shortens the length of time which dispensers must submit information to the database, a dispenser may provide to the committee a written statement indicating why it creates a hardship for that dispenser to submit information within that time period, and the committee may grant an extension up to seven (7) days within which that dispenser must submit the information to the database. Such a hardship extension shall be valid for two (2) years and may be renewed by the committee upon request of the dispenser.

(d) Any dispenser, except veterinarian dispensers, that uses a computerized system to record information concerning the dispensing of controlled substances, shall submit the required information to the database utilizing nationally recognized pharmacy telecommunications format standards.

(e) The board shall maintain the database in an electronic file or by other means established by the committee in such a manner so as not to infringe on the legal use of controlled substances, and in such a manner as to facilitate use of the database by the committee for identification of:

(1) Prescribing and dispensing practices and patterns of prescribing and dispensing controlled substances; and

(2) Individuals, facilities or entities that receive prescriptions for controlled substances from prescribers, and who subsequently obtain dispensed controlled substances from a dispenser in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance, or by means of forged or otherwise false or altered prescriptions.

(f) The committee or a designee appointed by the committee shall review information in the database. If the committee or its designee determines from review that a prescriber or dispenser may have committed a violation of the law, the committee shall notify the entity responsible for licensure, regulation, or discipline of that prescriber or dispenser and shall supply information required by the entity for an investigation of the violation of the law that may have occurred.

(g)(1)(A) The committee shall by rule establish the electronic format in which the information required under this section shall be submitted to the database and shall allow for waiver of electronic reporting for individual dispensers for whom it would cause undue hardship as determined by the committee. The waiver may be valid for two (2) years from ratification by the committee.

(B) The committee may authorize a designee to initially approve a waiver subject to ratification by the committee.

(2) The committee shall ensure the database system records and shall maintain for reference:

(A) Identification of each person who requests or receives information from the database;

(B) The information provided to each person; and

(C) The date and time the information is requested or provided.

(h) The committee shall make rules to:

(1) Effectively enforce the limitations on access to the database as described

in this part; and

(2) Establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information from the database without a request.

53-10-306. Confidentiality — Disclosure of information — Penalties. [Effective from January 1, 2013, until July 1, 2016. See the version effective until January 1, 2013, and on July 1, 2016.]

(a) Information sent to, contained in, and reported from the database in any format is confidential and not subject to title 10, chapter 7, regarding public records, and not subject to subpoena from any court and shall be made available only as provided for in § 53-10-308 and to the following persons in accordance with the limitations stated and rules promulgated pursuant to this part, or as otherwise provided for in § 53-10-311:

(1) Personnel of the committee specifically assigned to conduct analysis or research;

(2) Authorized committee, board, or department of health personnel or any designee appointed by the committee engaged in analysis of controlled substances prescription information as a part of the assigned duties and responsibilities of their employment;

(3) A prescriber conducting medication history reviews who is actively involved in the care of the patient; a prescriber or supervising physician of the prescriber conducting a review of all medications dispensed by prescription attributed to that prescriber; or a prescriber having authority to prescribe or dispense controlled substances, to the extent the information relates specifically to a current or bona fide prospective patient of the prescriber, to whom the prescriber has prescribed or dispensed, is prescribing or dispensing, or considering prescribing or dispensing any controlled substance. Each authorized individual referenced under this subdivision shall have a separate identifiable authentication for access;

(4) A dispenser or pharmacist not authorized to dispense controlled substances conducting drug utilization or medication history reviews who is actively involved in the care of the patient; or a dispenser having authority to dispense controlled substances to the extent the information relates specifically to a current or a bona fide prospective patient to whom that dispenser has dispensed, is dispensing, or considering dispensing any controlled substance. Each authorized individual referenced under this subdivision shall have a separate identifiable authentication for access;

(5) A county medical examiner appointed pursuant to § 38-7-104 when acting in an official capacity as established in § 38-7-109; provided, any access to information from the database shall be subject to the confidentiality provisions of this part except where information obtained from the database is appropriately included in any official report of the county medical examiners, toxicological reports or autopsy reports issued by the county medical examiner under § 38-7-110(c);

(6) Personnel of the following entities actively engaged in analysis of controlled substances prescription information as a part of their assigned duties and responsibilities related directly to TennCare:

(A) The office of inspector general;

(B) The medicaid fraud control unit; and

(C) The bureau of TennCare's chief medical officer, associate chief medical directors, director of quality oversight, and associate director of pharmacy;

(7) A quality improvement committee as defined in § 68-11-272 of a hospital licensed under title 68 or title 33, as part of the committee's confidential and privileged activities under § 68-11-272(b)(4) with respect to the evaluation, supervision or discipline of a healthcare provider employed by the hospital or any of its affiliates or subsidiaries, who is known or suspected by the hospital's administrator to be prescribing controlled substances for the prescriber's personal use;

(8) Law enforcement personnel; provided, that such personnel are engaged in the official investigation and enforcement of state or federal laws involving controlled substances or violations under this part; and that any law enforcement personnel receiving information from the database pursuant to this section shall comply with the requirements of this subsection (a):

(A)(i) Any law enforcement agency or judicial district drug task force that wants one (1) or more of its officers or agents to have the authorization to request information from the database shall first pre-approve each such officer. Pre-approval shall be by the applicant's supervisor, who shall be either the chief of police, county sheriff or the judicial district drug task force director. The list of pre-approved applicants shall be sent to the district attorney general in the judicial district in which the agency or task force has jurisdiction;

(ii) By December 1 of each year, each district attorney general shall send to the board of pharmacy a list of applicants authorized to request information from the database from that general's judicial district for the next calendar year;

(B)(i) If the Tennessee bureau of investigation (TBI) wants one (1) or more of its agents to have the authorization to request information from the database each such agent shall first be pre-approved by the agent's immediate supervisor and division head. Approved applicants shall be sent to the board by the director;

(ii) By December 1 of each year, the TBI director shall send to the board of pharmacy a list of applicants authorized to request information from the database from the bureau for the next calendar year;

(C) An application submitted by law enforcement personnel shall include, but not be limited to the:

(i) Applicant's name; title; agency; agency address; agency contact number; agency supervisor; and badge number, identification number or commission number, and the business email address of each applicant officer or agent, the appropriate district attorney general and, if a TBI agent, the TBI director and their business email addresses; and

(ii) Signatures of the applicant, the applicants approving supervisor and the district attorney general of the judicial district in which the applicant has jurisdiction or the approving division head and the TBI director;

(D) It shall be a duty of the board, as part of its duties to maintain the database pursuant to § 53-10-305(c), to receive and verify the lists of authorized applications sent to it by the district attorneys general and the director of the TBI pursuant to this subsection (a); or

(9) A healthcare practitioner extender, who is acting under the direction and supervision of a prescriber or dispenser, and only to the extent the information relates specifically to a current or bona fide prospective patient to whom the prescriber or dispenser has prescribed or dispensed, is prescribing or dispensing, or considering prescribing or dispensing any controlled substance. Each authorized individual referenced under this subdivision shall have a separate identifiable authentication for access.

(b) When requesting information from the database, the board shall require law enforcement personnel to provide a case number as part of the process for requesting information from the database. The case number entered shall correspond with an official investigation involving controlled substances and information requested should directly relate to the investigation.

(c) The board of pharmacy shall by rule, establish a fee for providing information to a law enforcement agency, judicial district drug task force or TBI pursuant to this section. In determining the fee and type of fee to be charged, the board shall consider options such as an annual fee or a per use, incremental cost basis fee.

(d)(1) Law enforcement personnel and judicial district drug task force agents who are authorized to request information from the database shall resubmit their identifying application information that was submitted pursuant to subdivision (a)(8)(C) to the appropriate district attorney by November 20 of each year. Such resubmitted applications shall be sent by the appropriate district attorney general to the board by December 1 of each year. If during the calendar year a name is added to the list, removed from the list or information about a person on the list changes, the appropriate district attorney shall immediately notify the board of any changes to the list submitted or in the information submitted for each officer or agent on the list application.

(2) TBI agents who are authorized to request information from the database shall resubmit their identifying application information that was submitted pursuant to subdivision (a)(8)(C) to the TBI director by November 20 of each year. Such resubmitted applications shall be sent by the TBI director to the board by December 1 of each year. If during the calendar year a name is added to the list, removed from the list or information about a person on the list changes, the TBI director shall immediately notify the board of any changes to the list submitted or in the information submitted for each officer or agent on the list application.

(e)(1) Information obtained from the database may be shared with other law enforcement personnel or prosecutorial officials, only upon the direction of the officer or agent who originally requested the information and may only be shared with law enforcement personnel from other law enforcement agencies who are directly participating in an official joint investigation.

(2) Any information obtained from the data base that is sent to a law enforcement official or a judicial district drug task force agent shall also be sent to the district attorney general of the judicial district in which such officer or agent has jurisdiction. Likewise, any database information sent to a TBI agent shall also be sent to the TBI director.

(f) To ensure the privacy and confidentiality of patient records, information obtained from the database by law enforcement personnel shall be retained by the law enforcement personnel's respective department or agency. The information obtained from the database shall not be made a public record, notwith-

standing the use of the information in court for prosecution purposes. Information obtained from the database shall be maintained as evidence in accordance with each law enforcement agency's respective procedures relating to the maintenance of evidence.

(g) Any information disseminated pursuant to subdivisions (a)(1)-(7) shall be released to the individual or entity requesting the information by the database manager or by password protected internet access.

(h) Any prescriber, dispenser or healthcare practitioner extender receiving patient-specific information pursuant to subdivision (a)(1), (a)(2), (a)(3), or (a)(4) shall not disclose the information to any person other than:

(1) The patient to whom the information relates for the purpose of adjusting the patient's treatment plans or counseling the patient to seek substance abuse treatment;

(2) Other dispensers or prescribers who are involved or have a bona fide prospective involvement in the treatment of the patient, or dispensers or prescribers identified by the information for the purpose of verifying the accuracy of the information; or

(3) Any law enforcement personnel to whom reporting of controlled substances being obtained in a manner prohibited by § 53-11-401, § 53-11-402(a)(3) or (a)(6) and required by § 53-11-309, or any agent of the prescriber who is directed by the prescriber to cause a report to law enforcement to be made in accordance with § 53-11-309(a) and (d).

(i) If a law enforcement officer, judicial district drug task force agent or TBI agent has probable cause to believe, based upon information received from a database request, that a prescriber or pharmacist may be acting or may have acted in violation of the law, the officer or agent shall consult with the board of pharmacy inspector's office if a pharmacist and the health related boards' investigations unit if a prescriber.

(j)(1) At least every six (6) months, the board shall send a list to each district attorney general containing all requests made for database information during the previous six (6) months. The list shall include the name of the requesting officer or agent, the officer or agent's agency, the date of the request, and the nature of the request, including the case number, for each officer or agent making a request in such district attorney's judicial district. Likewise, a list shall be sent to the director of the TBI for all TBI agents making requests during the previous six (6) months.

(2) Each district attorney general and the TBI director shall use the list to perform an audit to determine if the database information requests made during the preceding six (6) month period correspond to specific cases under investigation in the applicable judicial district or by the bureau and if the information requested is relevant and pertinent to an investigation.

(3) Each district attorney general and the TBI director shall verify all database information requests contained on the list received and send it back to the board within sixty (60) days of receipt. If a database information request does not correspond to an investigation in the applicable jurisdiction or if the information requested was not relevant or pertinent to the information requested, the district attorney general or director shall so note on the verified list and shall investigate the discrepancy and make a report back to the board within a reasonable period of time.

(4) The results of the audit conducted pursuant to subdivision (j)(2) shall be discoverable by a prescriber, dispenser or healthcare practitioner extender

charged with violating any state or federal law involving controlled substances or under a notice of charges proffered by an appropriate licensing board for a violation of any law involving controlled substances, but only the results pertaining to that prescriber, dispenser or healthcare practitioner extender are discoverable. If, however, there is an active criminal investigation involving a prescriber, dispenser or healthcare practitioner extender or the prescriber, dispenser or healthcare practitioner extender is under investigation by any investigations or prosecution unit of the appropriate licensure board, the results of the audit conducted pursuant to subdivision (j)(2) shall not be discoverable by the prescriber, dispenser or healthcare practitioner extender during either such period.

(k)(1) Any person who obtains or attempts to obtain information from the database by misrepresentation or fraud is guilty of a Class A misdemeanor.

(2) Any person who knowingly uses, releases, publishes, or otherwise makes available to any other person or entity any information submitted to, contained in, or obtained from the database for any purpose other than those specified in this part is guilty of a Class A misdemeanor.

(3) Intentional unauthorized use or disclosure of database information by law enforcement personnel, judicial district drug task force members or TBI agents shall be punishable as a Class A misdemeanor.

(4) Any law enforcement personnel, judicial district drug task force member or TBI agent charged with a violation of this section shall have such person's authorization to request information from the database suspended pending final disposition of any criminal prosecution. Any law enforcement personnel, judicial district drug task force member or TBI agent found guilty of a violation of this subsection (i) shall have such person's authorization to request information from the database permanently revoked.

(5) Where an individual authorized under subsection (a) acts in good faith in accessing or using information from the database in accordance with the limitations under this part, that person shall not incur any civil or criminal liability as a result of that use or access.

***(l)**(1) The following personnel of the department of mental health and substance abuse services actively engaged in analysis of controlled substances prescription information as a part of their assigned duties and responsibilities shall have access to the database for controlled substances prescription information for specific patients:*

(A) The chief pharmacist;

(B) The state opioid treatment authority (SOTA) or SOTA designee; and

(C) The medical director.

*(2) Aggregate controlled substances prescribing information from the database may be provided upon request by the following personnel of the department of mental health and substance abuse services, who are actively engaged in analysis of controlled substances prescription information as provided in this subsection (**l**), and may be shared with other personnel of the department of mental health and substance abuse services as needed to fulfill assigned duties and responsibilities:*

(A) The chief pharmacist;

(B) The SOTA; or

(C) The medical director.

(m) Where an investigation is conducted under § 38-7-109, and information within the database is obtained pursuant to the requirements of this part, there

exists a rebuttable presumption that the county medical examiner is acting in good faith.

53-10-307. Failure to submit information — Liability. [Effective from January 1, 2013, until July 1, 2016. See the version effective until January 1, 2013, and on July 1, 2016.]

(a) The failure of a dispenser to submit information to the database required under this part after the committee has submitted a specific written request for the information, or when the committee determines the individual has a demonstrable pattern of failing to submit the information as required, is grounds for the denial of licensure, renewal of licensure, or other disciplinary action against the dispenser before the licensing board with jurisdiction over the dispenser and for the committee to take the following actions:

(1) Recommend to the appropriate licensure board that it should refuse to issue a license to the individual;

(2) Recommend to the appropriate licensure board that it should refuse to renew the individual's license; and

(3) Recommend to the appropriate licensure board that it should commence disciplinary action against the licensee seeking revocation, suspension or other appropriate discipline, including civil penalties.

(b) An individual or entity that has submitted information to the database in accordance with this part and in good faith shall not be subject to a suit for civil damages nor held civilly liable for having submitted the information.

(c) An individual or entity that in good faith disseminates information contained in, or derived from, the database to the individuals authorized by this part to receive it in the manner authorized by this part or rules promulgated pursuant to this part, shall not be subject to a suit for civil damages nor held individually liable for having done so.

(d) Submitting the information as required by this part shall not subject the person submitting the information to licensure disciplinary action or any action for breach of confidentiality, ethical duty to a patient, or the sharing of any professional secret.

53-10-308. Release of confidential information. [Effective from January 1, 2013, until July 1, 2016. See the version effective until January 1, 2013, and on July 1, 2016.]

(a) Notwithstanding any other provision of this part to the contrary, the committee or its designee:

(1) After consultation with the member of the committee who represents the board which has licensed the individual being considered for investigation, may release confidential information from the database regarding dispensers, prescribers, healthcare practitioner extenders, or patients, to a manager of any investigations or prosecution unit of an appropriate licensure board, committee, or other governing body that licenses or registers dispensers, prescribers or healthcare practitioner extenders and is engaged in an investigation, adjudication, or prosecution of a violation under any state or federal law that involves a controlled substance;

(2) May release confidential information from the database regarding patients to law enforcement personnel engaged in an investigation, adjudication, or prosecution of a violation under any state or federal law that involves a controlled substance, pursuant to the procedure established in

§ 53-10-306(a)(6);

(3) Shall release information from the database when ordered by a court to do so upon the court's finding that disclosure is necessary for the conduct of proceedings before the court regarding the investigation, adjudication, or prosecution of a violation under any state or federal law that involves controlled substances and after an appropriate protective order is issued regarding the information to be released to the court.

(b) Before the committee releases confidential information under this section, the applicant must petition the committee for the confidential information, particularly describe the information required, and demonstrate to the committee that the applicant has reason to believe that a violation under any state or federal law that involves a controlled substance has occurred and that the requested information is reasonably related to the investigation, adjudication, or prosecution of the violation.

(c) No information may be released under this section until it has been reviewed by the committee or its designee and the member of the committee who represents the board which has licensed the individual being considered for investigation, and certified that further investigation or prosecution is warranted and that release of the information is necessary to that continued investigation or prosecution.

53-10-309. Reports. [Effective from January 1, 2013, until July 1, 2016. See the version effective until January 1, 2013, and on July 1, 2016.]

The committee shall report annually on the outcome of the program with respect to its effect on distribution and abuse of controlled substances, including recommendations for improving control and prevention of diversion of controlled substances in this state. The committee's annual report shall include information about the prescribing and dispensing patterns of prescribers and dispensers, and this data shall be made available electronically to prescribers and dispensers in a format that will allow them to compare their prescribing and dispensing patterns to those of their peers. The committee shall also file an annual report with the general welfare, health and human resources committee of the senate and the health and human resources committee of the house of representatives starting on or by February 1, 2008, and each year thereafter to include a monthly analysis about tracking the individuals or entities that access the database and the security measures taken to ensure that only authorized persons or entities access the database. In addition to the annual report submitted to the general assembly by the committee, authorized committee, board, or department of health personnel engaged in analysis of controlled substance prescription information as a part of the assigned duties and responsibilities of their employment shall release information from the database requested by a member of the general assembly that is related to research, statistical analysis, or education of health care practitioners relative to controlled substances. However, no report released pursuant to this section shall contain the name or other identifying information of a specific prescriber, dispenser or healthcare practitioner extender contained in the report. All information released from the database for such a report shall be in the aggregate.

53-10-310. Practice sites where a controlled substance dispensed required to provide for electronic access to the controlled substance database — Exceptions — Violations and penalties — Civil liability. [Effective from January 1, 2013, until July 1, 2016. See the version effective until January 1, 2013, and on July 1, 2016.]

(a) Each person or entity operating a practice site where a controlled substance is prescribed or dispensed to a human patient shall provide for electronic access to the database at all times when a prescriber or dispenser provides healthcare services to a human patient potentially receiving a controlled substance.

(b) This section shall not apply to any dispensers that are not required to report pursuant to § 53-10-304(d) or § 53-10-305(g).

(c) A violation of subsection (a) is punishable by a civil penalty not to exceed one hundred dollars ($100) per day assessed against the person or entity operating the practice site; provided, however, that the penalty shall only be imposed when there is a continued pattern or practice of not providing electronic access to the database.

(d) Any prescriber, dispenser, individual or entity who is authorized to access the database by this part shall not be subject to a suit for civil damages or held civilly liable for the failure to register in, report to, or check the database, or for actions taken after reasonable reliance on information in the database, or accessing the database to determine whether or not the prescriber or dispenser's professional medical credentials are being inappropriately used or for reporting the same to the appropriate authorities, except as otherwise provided in this part.

(e)(1) ***[Requirements effective April 1, 2013. See the Compiler's Notes.]*** *All prescribers or their designated healthcare practitioner's extenders, unless otherwise exempted under this part, shall check the controlled substance database prior to prescribing one of the controlled substances identified in subdivision (e)(3) to a human patient at the beginning of a new episode of treatment and shall check the controlled substance database for that human patient at least annually when that prescribed controlled substance remains part of the treatment.*

(2) Before dispensing, a dispenser shall have the professional responsibility to check the database or have a healthcare practitioner extender check the database if the dispenser is aware or reasonably certain that a person is attempting to obtain a Schedule II-V controlled substance, identified by the committee as demonstrating a potential for abuse for fraudulent, illegal, or medically inappropriate purposes, in violation of § 53-11-402.

(3) The controlled substances which trigger a check of the controlled substance database pursuant to subdivision (e)(1) include, but are not limited to, all opioids and benzodiazepines. By rule, the committee may require a check of the database for additional Schedule II-V controlled substances that are identified by the committee as demonstrating a potential for abuse.

(4) The board shall adopt rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, that establish standards and procedures to be followed by a dispenser regarding the review of patient information available through the database.

(5) Prescribers are not required to check the controlled substance database before prescribing or dispensing one of the controlled substances identified in subdivision (e)(3) or added to that list by the committee if one (1) or more of

the following conditions is met:

(A) The controlled substance is prescribed or dispensed for a patient who is currently receiving hospice care;

(B) The committee has determined that prescribers in a particular medical specialty shall not be required to check the database as a result of the low potential for abuse by patients receiving treatment in that medical specialty;

(C) The controlled substance is prescribed or dispensed to a patient as a non-refillable prescription as part of treatment for a surgical procedure that occurred in a licensed healthcare facility;

(D) The quantity of the controlled substance which is prescribed or dispensed does not exceed an amount which is adequate for a single, seven-day treatment period and does not allow a refill.

(f) Each appropriate licensure board shall promulgate rules pursuant to the Uniform Administrative Procedures Act, to establish procedures, notice requirements, and penalties for prescribers and dispensers who fail to register in, report to, or check the controlled substance database as required.

(g) Notwithstanding any other provision of this part to the contrary, a prescriber, dispenser or healthcare practitioner extender shall not be in violation of this part during any time period in which the controlled substance database is suspended or not operational or the Internet is not operational or available as defined by rules promulgated by the commissioner after consultation with the committee.

53-10-311. Agreements with other jurisdictions for sharing and dissemination of data and information. [Effective from January 1, 2013, until July 1, 2016.]

Notwithstanding any other provision of this part to the contrary, the commissioner is authorized to enter into agreements with other states or other entities acting on behalf of a state for the purposes of sharing and dissemination of data and information in the database. Disclosure of such agreements shall be consistent with the provisions and limitations set forth in this part. All such agreements shall specifically provide which prescribers, dispensers, heathcare practitioner extenders or law enforcement personnel who are licensed, registered, or certified in other states shall have access to the database.

53-11-309. Reporting persons obtaining or attempting to obtain controlled substances — Immunity — Exception. [Effective from January 1, 2013, until July 1, 2016. See the version effective until January 1, 2013, and on July 1, 2016.]

(a) Any physician, dentist, optometrist, podiatrist, veterinarian, pharmacist, advanced practice nurse with a certificate of fitness issued under title 63, chapter 7, or physician assistant, hereinafter referred to collectively as "health care providers", who has actual knowledge that a person has knowingly, willfully and with intent to deceive, obtained or attempted to obtain controlled substances in the manner prohibited by § 53-11-402(a)(6) shall cause a report to be submitted regarding such activity within five (5) business days of obtaining such knowledge. The report should be submitted to the local law enforcement agency where the health care provider is located or, where one exists, to a judicial district or multi-judicial district drug task force. The

controlled substance database advisory committee established by § 53-10-303 shall develop a form by no later than August 1, 2010, that health care providers may choose to use to make reports. The department of health shall make the form available on its web site.

(b) Any physician or advanced practice nurse with a certificate of fitness issued under title 63, chapter 7, or physician assistant who has actual knowledge that a person has knowingly, willfully and with the intent to deceive, obtained or attempted to obtain controlled substances in the manner prohibited by § 53-11-402(a)(6) and who is providing treatment to a person with a mental illness as defined in § 33-1-101 may, but is not required to, report as provided for under subsection (a).

(c) If the health care provider's actual knowledge of conduct prohibited by § 53-11-402(a)(6) is a result of the health care provider accessing the information available in the controlled substance database established in § 53-10-304, then notwithstanding the confidentiality provisions in § 53-10-306, the local law enforcement agency or, where one exists, a judicial district or multi-judicial district drug task force may receive from the health care provider only the pertinent information from the database for the thirty (30) days prior to the date of treatment leading to the alleged offense which ostensibly demonstrates non-compliance with § 53-11-402(a)(6). A report with information from the database not exceeding thirty (30) days prior to the date of treatment made under this provision to local law enforcement or, where one exists, to a judicial district or multi-judicial district drug task force is sufficient grounds for the production of complete or more detailed controlled substance database information for purposes of a criminal investigation or pending prosecution pursuant to the procedures established by § 53-10-306(b).

(d) A health care provider, or any person under the direction of the health care provider or any entity that assumes the responsibility of reporting for the provider who furnishes any information in good faith is immune from liability if a complaint, report, information, or record is furnished to a law enforcement agency.

(e) This section shall not apply in the case of a person who, on the date of treatment by the health care provider, is enrolled in or covered by TennCare.

53-11-402. Fraud — Penalties. [Effective from January 1, 2013, until July 1, 2016. See the version effective until January 1, 2013, and on July 1, 2016.]

(a) It is unlawful for any person knowingly or intentionally to:

(1) Distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by § 53-11-307;

(2) Use in the course of the manufacture or distribution of a controlled substance a registration number that is fictitious, revoked, suspended or issued to another person;

(3) Acquire or obtain, or attempt to acquire or attempt to obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge. Any person who violates this subdivision (a)(3) may, upon first conviction, have the sentence suspended and may as a condition of the suspension be required to participate in a program of rehabilitation at a drug treatment facility operated by the state or a comprehensive community mental health center;

(4) Furnish false or fraudulent material information in, or omit any material information from, any application, report or other document required to be kept or filed under part 3 of this chapter and this part, or title 39, chapter 17, part 4, or any record required to be kept by part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(5) Make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name, or other identifying mark, imprint or device of another or any likeness of the trademark, trade name, or other identifying mark, imprint or device of another upon any drug or container or labeling of any drug or container so as to render the drug a counterfeit substance; or

(6) Notwithstanding § 71-5-2601, deceive or fail to disclose to a physician, nurse practitioner, ancillary staff or other health care provider from whom the person obtains a controlled substance or a prescription for a controlled substance that the person has received either the same controlled substance or a prescription for the same controlled substance or a controlled substance of similar therapeutic use or a prescription for a controlled substance of similar therapeutic use from another practitioner within the previous thirty (30) days.

(b)(1) A violation of this section is a Class D felony, except that a violation of subdivision (a)(6) is a Class A misdemeanor and any violation of subdivision (a)(6) involving more than two hundred fifty (250) units of a controlled substance is a Class E felony. For purposes of this subdivision (b)(1), a "unit" means an amount of a controlled substance in any form that would equate to the initial single individual dosage recommended by the manufacturer of the controlled substance.

(2) Notwithstanding § 40-35-111, regarding the authorized fine for a Class D felony, the authorized fine for a violation of this section shall be as follows:

For a violation involving a Schedule I or II controlled substance	*$ 100,000*
For a violation involving a Schedule III or IV controlled substance	*50,000*
For a violation involving a Schedule V or VI controlled substance	*5,000*
For a violation involving a Schedule VII controlled substance	*1,000*
For any other violation of this section not involving a scheduled controlled substance	*20,000*

(3) Nothing contained in this section shall preclude a prosecution under the general drug laws.

(c) Any person who violates subdivision (a)(3) may, upon first conviction, have the sentence suspended and may as a condition of the suspension be required to participate in a program of rehabilitation at a drug treatment facility operated by the state or a comprehensive community mental health center.

53-11-408. Bureau of investigation — Powers and duties.

(a) The Tennessee bureau of investigation shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in

controlled substances and controlled substance analogues and in suppressing the abuse of controlled substances and controlled substance analogues. To this end, it may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances and controlled substance analogues;

(2) Coordinate and cooperate in training programs concerning controlled substance and controlled substance analogue law enforcement at local and state levels;

(3) Cooperate with the United States drug enforcement administration by establishing a centralized unit to accept, catalogue, file and collect statistics, including records of drug dependent persons and other controlled substance and controlled substance analogue law offenders within the state, and make the information available for federal, state and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection (c); and

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances and controlled substance analogues may be extracted.

(b) Results, information and evidence received from the United States drug enforcement administration relating to the regulatory functions of part 3 of this chapter and this part, or title 39, chapter 17, part 4, including results of inspections conducted by it, may be relied and acted upon by the Tennessee bureau of investigation in the exercise of its regulatory functions under part 3 of this chapter and this part, or title 39, chapter 17, part 4.

(c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the Tennessee bureau of investigation, nor may the practitioner be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential, except the commissioner of mental health and substance abuse services may require the disclosure of information to the department of mental health and substance abuse services concerning individuals being treated with controlled substances that is necessary to ensure compliance by a practitioner and the practitioner's patient or research subject with state or federal laws and regulations governing the use of controlled substances.

53-11-411. Administrative decisions — Judicial review.

(a) All final determinations, findings and conclusions of the department of safety, department of mental health and substance abuse services, department of health, or the board of pharmacy under part 3 of this chapter and this part, or title 39, chapter 17, part 4, are final and conclusive decisions of the matters involved.

(b) Any person aggrieved by the decision may obtain review of the decision in the circuit court of Davidson County upon petition for writ of certiorari.

(c) Findings of fact by the department of safety, department of mental health and substance abuse services, or department of health, or the board of pharmacy, if supported by substantial evidence, are conclusive.

53-11-412. Research, instruction or chemical analysis.

No person shall manufacture, obtain, possess, administer or dispense any controlled substance or controlled substance analogue for the purpose of scientific research, instruction or chemical analysis except as provided in the Tennessee Legend Drug and Controlled Substance Research Act of 1984, compiled in chapter 14 of this title.

53-11-451. Goods subject to forfeiture — Seizure — Disposition.

(a) The following are subject to forfeiture:

(1) All controlled substances or controlled substance analogues that have been manufactured, distributed, dispensed or acquired in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(2) All raw materials, products and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or controlled substance analogue in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(3) All property that is used, or intended for use, as a container for property described in subdivision (a)(1) or (a)(2);

(4) All conveyances, including aircraft, vehicles or vessels that are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of property described in subdivision (a)(1) or (a)(2), but:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without the owner's knowledge or consent;

(C) A conveyance is not subject to forfeiture for a violation of § 39-17-418(a) or (b) or § 39-17-425; and

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes and data that are used, or intended for use, in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(6)(A) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance or controlled substance analogue in violation of the Tennessee Drug Control Act of 1989, compiled in part 3 of this chapter, this part and title 39, chapter 17, part 4, all proceeds traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act;

(B) No property shall be forfeited under subdivision (a)(6)(A), to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the

owner's knowledge or consent; and

(7) All drug paraphernalia as defined by § 39-17-402.

(b) Property subject to forfeiture under part 3 of this chapter and this part, or title 39, chapter 17, part 4, may be seized by the director of the Tennessee bureau of investigation or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, internal affairs director or internal affairs special agent of the department of correction, or constable upon process issued by any circuit or criminal court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(3) The director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, internal affairs director or internal affairs special agent of the department of correction, or constable has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, internal affairs director or internal affairs special agent of the department of correction, or constable has probable cause to believe that the property was used or is intended to be used in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4.

(c) In the event of seizure pursuant to subsection (b), proceedings under subsection (d) shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, internal affairs director or internal affairs special agent of the department of correction, or constable, subject only to the orders and decrees of the circuit or criminal court. When property is seized under part 3 of this chapter and this part, or title 39, chapter 17, part 4, the seizing authority may:

(1) Place the property under seal;

(2) Remove the property to a place designated by the seizing authority;

(3) Require the director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, internal affairs director or internal affairs special agent of the department of correction, or constable to take custody of the property and remove it to an

appropriate location for disposition in accordance with law; or

(4) Regardless of any other method of disposition of property contained in this chapter, use of the property taken or detained, with permission of the court and under such terms and conditions as are approved by the court, for use in the drug enforcement program of the county in which the goods are seized, or, with approval of the court having jurisdiction over the property, sell the property and utilize the proceeds for the drug enforcement program of the county in which the property was seized, or both.

(A) In the case of property seized by the Tennessee bureau of investigation, the director of the bureau is authorized to designate, in writing, any part of the property for use by the bureau for any period of time, subject to inventory, management and disposition as provided by law.

(B) In the case of an aircraft seized by the bureau, the director is also authorized to designate, in writing, any such property for transfer to and use by the department of general services subject to inventory, management and disposition as provided by law. If an aircraft is not sold, but is to be transferred to another state governmental entity, such transfer shall be approved by the commissioner of finance and administration.

(C) The proceeds from any sale conducted under this chapter of forfeited property seized by the bureau and not designated for its use, or not transferred to the department of general services as provided in subdivision (d)(4)(B), shall be paid to the state treasurer to be used only as appropriated by the general assembly.

(e) When property is forfeited under part 3 of this chapter and this part, or title 39, chapter 17, part 4, the director or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, internal affairs director or internal affairs special agent of the department of correction, or constable shall remove it for disposition in accordance with law.

(f) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4, are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I that are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(g) Species of plants from which controlled substances in Schedules I, II and VI may be derived that have been planted or cultivated in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4, or of which the owners or cultivators are unknown, or that are wild growths, may be seized and summarily forfeited to the state.

(h) Controlled substance analogues that are possessed, transferred, sold, or offered for sale in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4, are contraband and shall be seized and summarily forfeited to the state. Controlled substance analogues that are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(i) The failure, upon demand by the commissioner of safety, the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-

118, internal affairs director or internal affairs special agent of the department of correction, or constable, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that such person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(j) Confiscation proceedings under part 3 of this chapter and this part, or title 39, chapter 17, part 4, shall be conducted in accordance with part 2 of this chapter.

(k) Any property of the type set forth in subdivisions (a)(1) and (7) that is in the custody and possession of a clerk of any court of this state by virtue of the property having been held as evidence or exhibits in any criminal prosecution where all appeals or potential appeals of a judgment have ended, or when the case has been dismissed or otherwise brought to a conclusion, shall be disposed of as follows:

(1) The clerk of the court having custody of the property to be disposed of shall, no less than once annually, inventory the property and prepare a list of the property proposed to be destroyed with references to the cases involved and the name of the case, the case number and date when the property was used;

(2) The clerk shall submit the inventory list with a filed petition to the court and shall serve a copy of the petition upon the district attorney general. After determining that the listed property is not needed as evidence in any pending or potential judicial proceeding, the court shall order the property to be destroyed; and

(3) The clerk, or a deputy clerk that the clerk may designate, shall completely destroy each item by cutting, crushing, burning or melting and shall file, together with the petition and order relating to the destroyed property, an affidavit concerning the destruction, showing a description of each item, the method of destruction, the date and place of destruction, and the names and addresses of all witnesses to the destruction.

53-14-103. Chapter definitions.

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

(1) "Board" means the board of pharmacy created by § 63-10-301;

(2) "Commissioner" means the commissioner of health;

(3) "Controlled substance analogues" is defined as in § 39-17-454;

(4) "Controlled substances" is defined as in § 39-17-402;

(5) "Director" means the director of the board of pharmacy elected pursuant to § 63-10-303;

(6) "Legend drugs" is defined as in § 53-10-101; and

(7) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

53-14-104. License — Required — Application — Fees.

(a) No person shall manufacture, obtain, possess, administer or dispense a legend drug, controlled substance or controlled substance analogue for the purpose of scientific research, chemical analysis, instruction or training of detection animals without having first secured a license to do so from the director.

(b) An application for the license shall be submitted on the prescribed form,

and shall be accompanied by:

(1) A nonrefundable fee of thirty dollars ($30.00), or in an amount set by the board;

(2) Copies of all papers and materials filed with any state or federal governmental agency in connection with the applicant's proposed project; and

(3) A detailed protocol, in triplicate, setting forth:

(A) The nature of the proposed project;

(B) The qualifications of the applicant to engage in the project;

(C) The proposed quantity of each drug involved;

(D) The measures proposed to provide for security and proper record-keeping of the drugs;

(E) Specific provisions for the safe administration or dispensing of drugs to humans, if contemplated, and the proposed method for selecting the humans; and

(F) Other information the commissioner may require.

53-14-105. License — Issuance.

(a) Upon approval by the commissioner, the director shall issue a license authorizing the holder to manufacture, obtain, possess, dispense, or administer legend drugs, controlled substances or controlled substance analogues, or any combination thereof, for the purpose of scientific research, instruction or chemical analysis.

(b) The commissioner shall not grant approval unless the commissioner determines that the applicant:

(1) Has submitted a satisfactory protocol for the proposed project, except as provided in § 53-14-109;

(2) Is of good character;

(3) Possesses, or is capable of acquiring, sufficient staff, facilities and equipment to conduct properly the proposed project;

(4) Is able to maintain effective control against diversion of the drugs for which the license is sought; and

(5) Is able to comply with all applicable state and federal laws and regulations relating to the drugs for which the license is sought.

53-14-106. License — Contents — Expiration — Nontransferable.

(a) All licenses issued pursuant to § 53-14-105 shall specify:

(1) The name and address of the licensees;

(2) The nature of the authorized project or projects;

(3) The nature of legend drugs, controlled substances or controlled substance analogues to be used in the project; and

(4) Whether dispensing to human subjects is permitted.

(b) A license shall expire one (1) year from the date of issuance, or upon termination of the authorized project or projects, whichever comes first, and shall be renewable annually at a fee of thirty dollars ($30.00).

(c) No license shall be transferable.

53-14-110. Records and documents.

All licensees under this chapter shall maintain in a readily retrievable manner for a period of two (2) years:

(1) Records showing the receipt, administration, dispensing or destruction of all legend drugs, controlled substances and controlled substance analogues; and

(2) Copies of any protocols, including revisions of the protocols, progress reports, evaluations and other project documents.

53-14-111. Inspections.

(a) The board, or its officers, agents or employees, shall periodically inspect the premises of licensees under this chapter for compliance with the submitted protocol, record-keeping and security requirements, and other state and federal laws or regulations relating to legend drugs, controlled substances and controlled substance analogues.

(b) Any applicant for a license under this chapter shall be deemed to have consented to the inspections.

53-14-112. Suspension or revocation of license — Probation.

The board may, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, suspend or revoke any license issued pursuant to this chapter or place on probation any licensee, if the licensee is found to have:

(1) Falsified any application, record, report or information required by this chapter;

(2) Failed to comply with the protocol of a project;

(3) Failed to maintain effective control against diversion of legend drugs, controlled substances or controlled substance analogues;

(4) Willfully and unreasonably refused to permit an inspection authorized by this chapter;

(5) Been convicted of an offense in any jurisdiction relating to legend drugs, controlled substances or controlled substance analogues; or

(6) Willfully or negligently violated this chapter or any state or federal drug laws or regulations.

53-14-114. Restricted access to information.

Only the following persons shall have a right of access to the names and other identifying characteristics of individuals who are the subjects of research on the use and effects of legend drugs, controlled substances or controlled substance analogues:

(1) The board;

(2) The director;

(3) The commissioner;

(4) The attorney general and reporter or the attorney general and reporter's designee;

(5) Any person directly connected with the research who has a legitimate need for the information; and

(6) Any federal agency having responsibility for the research project.

53-16-101. Labeling.

All sorghum molasses that is sold or offered for sale in this state shall be prominently labeled as being either one hundred percent (100%) pure sorghum

molasses or not pure sorghum molasses. Only sorghum molasses that contains no additives shall be labeled as one hundred percent (100%) pure sorghum molasses.

53-16-102. Construction regarding testing.

Nothing in this chapter shall be construed to require the department of agriculture to test, or cause to be tested, any sorghum molasses.

53-16-103. Cause of action for loss.

(a)(1) Any person who suffers an injury or death, or an ascertainable loss of money or property, as a result of a violation of this chapter, may bring an action individually to recover actual damages.

(2) The action may be brought in a court of competent jurisdiction in the county where the alleged violation took place or is taking place, or in the county in which such person resides, has such person's principal place of business, conducts, transacts, or has transacted business, or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(b)(1) The trial court may award reasonable expenses, including court costs, discretionary costs and reasonable attorneys' fees to a plaintiff who prevails in a proceeding that is brought pursuant to this chapter.

(2) On termination of the proceeding, the trial court may require the plaintiff to pay any defendant's reasonable expenses, including court costs, discretionary costs and reasonable attorneys' fees, incurred in defending the proceeding if the court finds that the proceeding was commenced without reasonable cause.

54-4-103. Distribution of funds — Resolution directing expenditure — Bond of officer handling — Compensation of trustee — Final disposition of fund.

(a)(1) The county aid funds shall be divided and distributed to the various counties of the state as follows: fifty percent (50%) of the fund shall be distributed equally among the ninety-five (95) counties of the state, and fifty percent (50%) of the balance shall be distributed among the ninety-five (95) counties on the basis of area and fifty percent (50%) on basis of population, as of the most recent federal census or by special census pursuant to § 9-16-101, and shall be paid over monthly by the commissioner of finance and administration to the various county trustees, to be used by the county highway authorities in the building, repairing and improvement of county roads and bridges or for the funding of mass transit systems; provided, that the county legislative body of any county may at any regular term, by resolution passed by a majority of the members composing the membership of the body, and spread upon the minutes of the body, direct the department of transportation to expend the county's pro rata share of the fund on county highways and bridges designated by resolutions passed from time to time by the county legislative body. In the event the department of transportation is directed to expend the county's pro rata share of the funds, by resolution conforming to the requirements of this subdivision (a)(1), but thereafter the county legislative body and the county highway department are unable to

agree on a designation of the roads and bridges on which the funds are to be expended, then the department of transportation shall expend the funds on the county roads and bridges in the county designated by the commissioner. Nothing in this part shall affect the rights or duties now imposed by law on counties having a board of county commissioners in expending funds derived from taxes levied exclusively within and by the county.

(2) "Mass transit systems," as used in this section, includes, but is not limited to, services also funded under § 18 of the federal Urban Mass Transportation Act of 1964, as amended, and administered by the department.

(b)(1) The trustee of each and every county of the state to which any of this fund is allotted and paid shall receive one percent (1%) of the fund when the allotment for that county has been paid out, as compensation for receiving and disbursing the fund, to be collected and at the times and in the manner that compensation is paid to the trustee for receiving and paying out the general funds belonging to the county, except that when the funds have been turned over to the department of transportation to be expended on the county highways as provided in this section, the funds shall not be turned over to the trustee of the county by the commissioner of finance and administration or the department, but shall be kept and retained by the department and expended on the roads in the same way that this section and §§ 54-4-101 and 54-4-102 require it to be expended; and during the time the funds are retained and expended by the department, neither the department of transportation nor the trustee of the county to which they belong shall be entitled to any compensation out of the funds, but all of the funds shall be expended on or with relation to the public highways in the county.

(2) At any time after the expiration of twelve (12) months from the passage of any resolution by the county legislative body turning the funds over to the department of transportation to be expended on the roads of the county, the county legislative body of the county may, at any regular session of the county legislative body, by resolution adopted by a majority of all the members composing that body and spread on the minutes of the body, direct the department of transportation to turn back to the county all the funds in its hands belonging to the county, to be thereafter expended by the county highway authorities on its county roads, as provided for by this section and §§ 54-4-101 and 54-4-102; provided, that at any regular session of the county legislative body within the twelve-month period, the body may pass a resolution to take effect at the end of the twelve-month period.

(3) During the time the department of transportation is given the expenditure of the funds, it shall not be permitted to obligate this fund by contract or otherwise, beyond the amount of the funds reasonably expected to be received for three (3) months immediately following the contract or obligation, and in no event, beyond the period fixed in the recalling resolution for the return of the funds to the county.

(4) Upon receipt of a certified copy of the resolution, it shall be the duty of the department, within twenty (20) days after the receipt of the copy of the resolution, to pay out of the funds in its hands any unpaid indebtedness created by it due to be paid out of this fund, and to pay the balance of the funds in its hands over to the trustee of the county.

(5) Upon receipt of a certified copy of the resolution, it also shall be the duty of the state to thereafter pay over to the trustee of the county any and

all funds allotted to that county from the gasoline tax that have not at that time been paid over to the department of transportation, or that may thereafter be allotted to the county.

(c) Any person vested by law with the authority to administer county highway and bridge funds shall furnish an official bond in the amount of one hundred thousand dollars ($100,000), or in a greater sum as the county legislative body may determine. The bond shall be prepared in accordance with title 8, chapter 19, approved by the county legislative body, recorded in the office of the county register of deeds, and transmitted to the office of the county clerk for safekeeping.

(d) Before distributing to the counties any of the revenues mentioned in this section, the commissioner of finance and administration shall make a monthly deduction from the revenues of twenty-eight thousand two hundred fifty dollars ($28,250), which sum, together with an appropriation per annum from the general fund of the state, shall be apportioned and transmitted to the University of Tennessee for use by the university in operating the county technical assistance service (CTAS) in its institute for public service (IPS) as provided by § 49-9-402.

(e) No more than twenty-two and twenty-two one hundredths percent (22.22%) of funds in the county aid fund may be expended for the purpose of funding mass transit.

54-5-854. Project plans — Copies — Marking, approval, and changes — Liability — Civil penalties.

(a) When the department is informed of the existence of utility facilities pursuant to § 54-5-853, it shall provide each owner with a set of complete project plans either by providing the owner with a paper copy or a digital copy. The plans may be transmitted by hand delivery or return receipt mail, or by electronic transmission of a digital copy. Digital copies shall be in the format, and subject to such restrictions on use, as the department may specify.

(b) Within one hundred twenty (120) calendar days following the receipt of the plans, the owner shall mark on the plans, or on a copy of the plans, the approximate vertical and horizontal locations of underground utility facilities, approximate horizontal location of above-ground utility facilities, a description of each of its existing utility facilities and any proposed new location of the facilities and additional facilities within all rights-of-way shown on the project plans, and prepare a plan and a schedule of calendar days to accomplish the proposed new location. The project plans, or a copy of the plans, and the plan and schedule of calendar days, shall be returned to the department in care of the person whose name and address are listed on the project plans. Should coordination with other owners be required in order for an owner to prepare a plan and schedule of calendar days, or should changes to the project plans cause the utility to alter its relocation plan or schedule, then additional time shall be allowed, but in no case shall the additional time exceed the original one hundred twenty (120) calendar days by more than an additional forty-five (45) calendar days.

(c)(1) After the owner has submitted its plan and schedule of calendar days, the department may approve them if reasonable, or the department may otherwise reasonably direct the owner to install, relocate or adjust its utility facilities in accordance with an approved plan and schedule of calendar days. The department shall communicate approval or direction to the owner via

certified mail.

(2) The department shall establish the date on which the owner may begin the installation, relocation or adjustment of its utility facilities, and the owner shall be given reasonable advance notice of the date by certified mail via a notice to proceed. The owner shall be free to order the required materials associated with the proposed utility relocation or adjustment at this time. No owner shall be notified to begin installation, relocation or adjustment until all health, governmental, and environmental regulatory agencies have approved the submitted plan where applicable.

(3) In the event the department and the owner fail to agree on a reasonable plan and schedule of calendar days to install, relocate or adjust the utility, the owner may proceed with the approved schedule under a reservation of rights notice to the department. The notice shall be filed within ten (10) days of the issuance of a notice to proceed by the department. The notice shall contain the owner's objections to the relocation schedule and shall state the reasons for the objections. The reservation of rights shall become a part of the administrative record for any subsequent contested case. If any subsequent contested case results in a revised plan and schedule of calendar days, then any penalty under subsections (g) and (h), shall be determined on the basis of the revised schedule.

(d) After the owner has completed the installation, relocation or adjustment, or any part of the installation, relocation or adjustment, and the department requires any additional relocation or adjustment, the department shall reimburse the owner for the cost incurred.

(e) The department shall give its contractor and the owner notice of any change in highway construction that would require any additional relocation or adjustment and the owner shall be given an agreed reasonable time to accomplish the work. In addition, the department shall reimburse the owner for the costs of all materials that have been purchased in association with the utility relocation or adjustment that cannot be utilized as a result of the change in the project.

(f) The department's contractor shall be liable for any damages negligently inflicted to the owner's utility facilities occurring during the time provided in the schedule of calendar days for installation, relocation or adjustment, or during the approved time for any additional relocation or adjustment.

(g) If any owner fails to comply with and implement this section, the contractor, with the consent of the department, may then undertake construction without liability to the owner for damages to the owner's utility facilities, and in addition, the owner shall be liable to the department's contractor for damages resulting from the failure.

(h)(1)(A) If the owner fails to complete the required installation, relocation or adjustment of its utility facilities within the approved schedule of calendar days as approved by the department, the commissioner of transportation shall have the authority to assess and collect from the owner a civil penalty in the amount of five hundred dollars ($500) for each calendar day after the scheduled completion date that the owner fails to complete the required installation, relocation or adjustment. Owners having less than three thousand (3,000) customers shall be subject to the assessment of a civil penalty not to exceed two hundred fifty dollars ($250) per calendar day when the owner fails to complete the required installation, relocation or adjustment of its utility facilities within the approved

schedule of calendar days.

(B) The failure of another owner to sufficiently complete its required installation, relocation or adjustment of utilities that interferes with the owner's relocation plan shall constitute an affirmative defense to the assessment of a civil penalty pursuant to this section.

(2) Notwithstanding any provision of this subsection (h) to the contrary, no civil penalty shall be assessed for delays that result from catastrophic weather events or acts of God.

(3) During the course of the utility relocation phase of the project, each owner that is installing, relocating or adjusting its utility facilities shall furnish the department and all other such owners with monthly progress reports regarding the status of the relocation of its utility facility, until its relocation is completed. It shall be sufficient to comply with this subsection (h) if the owner regularly reports progress during the course of pre-construction meetings held by the contractor and the department. The content of the reports shall be reflected in the minutes of the meetings and the minutes shall constitute the monthly progress report required under this subdivision (h)(3), whether or not the meetings are held on a monthly basis.

(4) The department shall give the owner written notice of the intent to assess a civil penalty and the opportunity to appear before the commissioner or the commissioner's designee to show cause why the penalty should not be assessed. Upon finding that a civil penalty should be assessed, the commissioner or the commissioner's designee shall issue an appropriate order to the owner. If the civil penalty has not been paid in full within ninety (90) days after the entry of the order, the matter shall be turned over to the attorney general and reporter for collection, and the owner shall be liable for all expenses associated with the enforcement action, including court costs and attorneys' fees.

(5) Appeals of any decision to assess a civil penalty pursuant to this section shall be undertaken pursuant to the normal procedures for appeal of agency decisions in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(6) The moneys collected as civil penalties under this subsection (h) shall be paid into the fund set aside for the utility relocation loan program established under § 67-3-901.

54-7-102. Application of chapter. [Effective until January 1, 2013. See the version effective on January 1, 2013.]

(a) This chapter applies to all counties of the state, except those counties having populations of not less than two hundred thousand (200,000), according to the 1970 federal census or any subsequent federal census.

(b) However, all counties, except those of not less than two hundred thousand (200,000), shall be subject to and not be exempted from all amendments to this chapter as amended by the Public Acts of 1980.

54-7-102. Applicability of chapter. [Effective on January 1, 2013. See the version effective until January 1, 2013.]

This chapter applies to all counties of the state, except for those excluded by Chapter 801 of the Public Acts of 1976, and counties with a charter or a metropolitan form of government, unless the charter of such county provides for the application of this chapter.

54-7-104. Tennessee highway officials certification board. [Effective until January 1, 2013. See the version effective on January 1, 2013.]

(a)(1) Subject to subdivision (a)(7), there is created and established the Tennessee highway officials certification board, referred to as the "board," which shall be composed of five (5) members as follows:

(A) One (1) member appointed by the secretary of state;

(B) One (1) member appointed by the director of the Tennessee chapter of the American Public Works Association;

(C) One (1) member appointed by the governor from a list of nominees submitted by the representative professional engineering society of the state;

(D) One (1) member appointed by the comptroller of the treasury; and

(E) One (1) member appointed by the executive director of the Tennessee County Services Association.

(2) The board has and shall exercise the power to review the qualifications of all candidates for both elected and appointed positions as chief administrative officer of the county or metropolitan government departments that build and maintain the roads of the county. Candidates for this office in counties where the position is filled by popular election shall file affidavits and other evidence the board requires with the board not later than fourteen (14) days prior to the qualifying deadline for candidates in the election. After review of the qualifications and the standards required for that county, the board shall certify to the coordinator of elections, who shall forward the certification to the appropriate county election commission, that a candidate's qualifications are acceptable prior to the candidate's name being placed on the ballot. A certificate of qualification from the board shall be filed with the candidate's qualifying petition prior to the qualifying deadline. Candidates for this office in the counties where the position is appointed shall also file evidence satisfactorily demonstrating that they meet the qualifications to hold the office with the board prior to appointment to the office.

(3) Members of the board shall serve for a term of two (2) years. The appointee representing the secretary of state shall serve as the chair of the board. Upon the death, resignation, or removal of any appointive member, a replacement shall be appointed by the party representing the same area of interest as the member whose position has been vacated to fill the unexpired term of the member. The terms of the members of the board shall begin on July 1, 1997.

(4) No chief administrative officer of a county or metropolitan highway department shall be appointed to the board if that person may become subject to reelection or reappointment as a chief administrative officer during that person's term of service on the board.

(5) The board shall only meet as is necessary to fulfill its duties. All materials or correspondence submitted to the board shall be received through the office of the coordinator of elections, who shall forward the materials or correspondence to the board. The board shall keep complete and accurate records of the proceedings of all its meetings, a copy of which shall be kept on file in the office of the coordinator of elections and open to public inspection.

(6) Subject to the approval of the secretary of state, the board may promulgate rules to be followed by persons wishing to submit themselves for certification as qualified to seek the office of the chief administrative officer of the county or metropolitan highway department. The board shall submit any promulgated rules pertaining to the qualifications for the office of chief administrative officer to the administrator of elections of each affected county election commission who shall publish the rules in a local newspaper with general circulation in the county at least sixty (60) days before the qualifying deadline for either the primary or general election, or appointment by the legislative body of the county.

(7) This subsection (a) and subdivision (b)(1)(A) shall not apply:

(A) In counties having a metropolitan form of government and a population in excess of one hundred thousand (100,000), according to the 1990 federal census or any subsequent federal census; or

(B) In counties having populations, according to the 1990 federal census or any subsequent federal census, of:

not less than	nor more than
67,600	67,900
80,000	83,000

(b)(1)(A) Except as provided in subdivisions (b)(1)(B) and (C), in each county of the state, in order to qualify for the office of the chief administrative officer of the county or metropolitan government departments that build and maintain the roads of the county, a person shall be a graduate of an accredited school of engineering, with at least two (2) years of experience in highway construction or maintenance or be licensed to practice engineering in Tennessee; or shall have had at least four (4) years' experience in a supervisory capacity in highway construction or maintenance; or a combination of education and experience equivalent to either of the above, as evidenced by affidavits filed with the Tennessee highway officials certification board. In no event shall the chief administrative officer have less than a high school education or a general equivalency diploma (GED®).

(B)(i) This subsection (b) shall not apply to any chief administrative officer incumbent in office on April 5, 1974, or to any candidate for the office qualifying for or being elected to the office in 1974.

(ii) This subsection (b) shall not apply to chief administrative officers incumbent in office on February 6, 1976, in counties having a population of not less than fifty-six thousand two hundred (56,200) nor more than fifty-six thousand three hundred (56,300), according to the 1970 federal census or any subsequent federal census; furthermore, these incumbent officers may succeed themselves in office.

(iii) This subsection (b) shall not apply in counties having a population, according to the 1990 federal census or any subsequent federal census of:

not less than	nor more than
6,700	6,950
9,275	9,400
27,500	27,750

(C)(i) Subdivision (b)(1)(C)(ii) shall apply:

(a) In counties having a metropolitan form of government and a population in excess of one hundred thousand (100,000), according to the 1990 federal census or any subsequent federal census; or

(b) In counties having populations, according to the 1990 federal census or any subsequent federal census, of

not less than	nor more than
67,600	67,900
80,000	83,000

(ii) In each county of the state, in order to qualify for the office of the chief administrative officer of the county or metropolitan government departments that build and maintain the roads of the county, a person shall be a graduate of an accredited school of engineering, with at least two (2) years of experience in highway construction or maintenance or be licensed to practice engineering in Tennessee; or shall have had at least four (4) years of experience in a supervisory capacity in highway construction or maintenance; or a combination of education and experience equivalent to either of the above, as evidenced by affidavits filed with the appointing authority or with the state coordinator of elections, when the chief administrator is an elected official. In no event shall the chief administrative officer have less than a high school education or a GED®. In the case of elected officials, candidates shall file affidavits and other evidence the state coordinator of elections may require with the state coordinator of elections not later than fourteen (14) days prior to the qualifying deadline for candidates in the election. The state coordinator of elections shall certify to the county election commission that a candidate's qualifications are acceptable prior to the candidate's name being placed on the ballot, and the certificate of qualification shall be filed with a candidate's qualifying petition prior to the qualifying deadline. Subject to approval by the secretary of state, the state coordinator of elections may promulgate rules to be followed by persons wishing to submit themselves for certification as qualified to seek the office of chief administrative officer of the county highway department.

(2) The sole educational or experience qualification for the office of the chief administrative officer of the county or metropolitan government departments that build and maintain the roads of a county shall be a high school education or GED® in counties having the following populations, according to the 1970 federal census or any subsequent federal census:

not less than	nor more than
6,500	6,700
12,350	12,400

(3) This subsection (b) shall not apply in any county having a population of not less than eight thousand six hundred fifty (8,650) nor more than eight thousand seven hundred fifty (8,750), according to the 1980 federal census or any subsequent federal census. In that county the qualifications for the chief administrative officer shall be at least four (4) years of experience in a supervisory capacity in highway construction or maintenance.

(4) This subsection (b) shall not apply to any county having a population of not less than fifteen thousand six hundred seventy-five (15,675) nor more than fifteen thousand seven hundred seventy-five (15,775), according to the 1980 federal census or any subsequent federal census.

(5) In any county having a population of not less than forty-four thousand five hundred (44,500) and not more than forty-five thousand (45,000), according to the 1990 federal census or any subsequent federal census, the sole educational or experience qualification for the office of chief administrative officer of the county or metropolitan government departments that build and maintain the roads of the county shall be a high school education or GED®.

(6) In any county having a population of not less than twenty-six thousand one hundred (26,100) nor more than twenty-six thousand four hundred (26,400), according to the 1990 federal census or any subsequent federal census, if only one (1) candidate meeting the minimum qualifications in subdivision (a)(1) for chief administrative officer has filed to qualify for election to the office prior to the qualifying deadline or the only qualified candidate legally withdraws, then the county election commission shall extend the qualifying deadline for ten (10) days. During the ten-day period, a candidate who meets the minimum requirements of a high school education or a GED® may qualify for election to the office of chief administrative officer of the county department that builds and maintains the roads of that county.

(7) In any county having a population of not less than thirty-seven thousand one hundred (37,100) nor more than thirty-seven thousand four hundred (37,400), according to the 2000 federal census or any subsequent federal census, the sole educational and experience qualification for the office of the chief administrative officer of the county department that builds and maintains roads of the county shall be a high school education or GED®.

(c) Incumbent chief administrative officers on April 5, 1974, shall be able to succeed themselves in office without limitation as to the number of terms.

(d) Any provision in this section requiring a chief administrative officer to have a high school diploma or GED® shall only be deemed to be satisfied if the candidate for office can demonstrate that the candidate has obtained a high school diploma or its equivalent in educational training as recognized by the state board of education.

54-7-104. Tennessee highway officials certification board. [Effective on January 1, 2013. See the version effective until January 1, 2013.]

(a) There is created and established the Tennessee highway officials certification board, referred to as the "board," which shall be composed of five (5) members as follows:

(1) One (1) member appointed by the secretary of state;

(2) One (1) member appointed by the director of the Tennessee Chapter of the American Public Works Association;

(3) One (1) member appointed by the governor from a list of nominees submitted by the representative professional engineering society of the state;

(4) One (1) member appointed by the comptroller of the treasury; and

(5) One (1) member appointed by the executive director of the Tennessee

County Services Association.

(b) The board has and shall exercise the power to review the qualifications of all candidates for both elected and appointed positions as chief administrative officer of the highway department. Candidates for this office in counties where the position is filled by popular election shall file affidavits and other evidence the board requires with the board not later than fourteen (14) days prior to the qualifying deadline for candidates in the election. After review of the applicable qualifications and standards, the board shall certify to the coordinator of elections that a candidate's qualifications are acceptable prior to the candidate's name being placed on the ballot. The coordinator of elections shall forward the certification to the appropriate county election commission. A certificate of qualification from the board shall be filed with the candidate's qualifying petition prior to the qualifying deadline. Notwithstanding any law to the contrary, votes for write-in candidates, whether in a primary or general election, shall only be counted for an individual who has been certified by the board prior to the date of the election. Persons wishing to receive a party nomination or to be elected by write-in ballot must file with the board affidavits and other evidence the board requires not later than sixty-four (64) days prior to the election. Candidates for chief administrative officer of the highway department in counties where the position is appointed shall, prior to their appointment to the office, file with the board evidence satisfactorily demonstrating that they meet the qualifications to hold the office. However, in any county, pursuant to subsection (h), that has established by private act more stringent qualifications and standards than those set forth in subsection (g), and that has an appointed chief administrative officer, candidates shall submit evidence of their qualifications to the local appointing authority and shall not be required to submit evidence of their qualifications to the board.

(c) Members of the board shall serve for a term of four (4) years beginning with the term commencing on July 1, 2013. The appointee representing the secretary of state shall serve as chair of the board. Upon the death, resignation, or removal of any appointive member, a replacement shall be appointed by the party representing the same area of interest as the member whose position has been vacated to fill the unexpired term of the member.

(d) No chief administrative officer of a highway department shall be appointed to the board if that person may become subject to reelection or reappointment as a chief administrative officer during that person's term of service on the board.

(e) The board shall only meet as is necessary to fulfill its duties. All materials or correspondence submitted to the board shall be received through the office of the coordinator of elections, who shall forward the materials or correspondence to the board. The board shall keep complete and accurate records of the proceedings of all its meetings. A copy of records of all proceedings shall be kept on file in the office of the coordinator of elections and open to public inspection.

(f) Subject to the approval of the secretary of state, the board may promulgate rules to be followed by persons wishing to submit themselves for certification as qualified to seek the office of the chief administrative officer of the highway department. The board shall submit any promulgated rules pertaining to the qualifications for the office of chief administrative officer to the administrator of elections of each affected county election commission. The county election commission shall publish such rules in a local newspaper with general circulation in the county at least sixty (60) days before the qualifying deadline for either the primary or general election, or appointment by the legislative body

of the county.

(g) In each county, in order to qualify for the office of the chief administrative officer of the highway department, a person shall:

(1) Be a graduate of an accredited school of engineering, with at least two (2) years of experience in highway construction or maintenance;

(2) Be licensed to practice engineering in Tennessee; or

(3) Have had at least four (4) years' experience in a supervisory capacity in highway construction or maintenance; or a combination of education and experience equivalent to subdivision (g)(1) or (g)(2), as evidenced by affidavits filed with the board.

(h) In no event shall the chief administrative officer have less than a high school education or a general equivalency diploma (GED). A county may, by private act, require more stringent qualifications and standards than those set forth in subsection (g) for persons to qualify for the office of the chief administrative officer of such highway department. Any county that establishes more stringent qualifications and standards by private act shall send a copy of such private act to the board.

(i) Incumbent chief administrative officers in office on December 31, 2012, who have met the qualifications for the office of chief administrative officer applicable to them in effect at the time of their last election shall be able to succeed themselves in office without meeting the qualifications set forth in this section for as long as such incumbents continuously hold office. If such incumbent leaves office for any reason and then subsequently is elected or appointed to the office of chief administrative officer, such incumbent shall then be subject to the qualifications set forth in this section.

(j) Satisfactory evidence of graduation from an accredited school of engineering shall be in the form of a diploma, transcript or other official documentation. Evidence of a candidate's engineering licensure shall only be deemed to be satisfied if the candidate can provide the board with a copy of the candidate's engineering license, including the candidate's license number. Any provision in this section requiring a chief administrative officer to have a high school diploma or GED shall only be deemed to be satisfied if the candidate can demonstrate that the candidate has obtained a high school diploma or its equivalent in educational training as recognized by the state board of education by providing the board with the candidate's diploma, GED certificate or other official documentation.

54-7-105. Term of office. [Effective until January 1, 2013. See the version effective on January 1, 2013.]

(a) Any chief administrative officer elected or appointed after April 5, 1974, shall serve for a term of four (4) years. Elected chief administrative officers shall take office on September 1, following their election.

(b) This section shall not apply in counties having populations of not less than thirty-five thousand four hundred fifty (35,450) nor more than thirty-five thousand four hundred seventy-five (35,475), according to the 1970 federal census or any subsequent federal census. This section shall not apply to counties with a metropolitan form of government.

(c) In counties having a population of not less than twenty-seven thousand seven hundred fifty (27,750) nor more than twenty-eight thousand two hundred (28,200), according to the 1970 federal census or any subsequent

federal census, and having appointed chief administrative officers, the appointed chief administrative officers shall serve at the pleasure of the county governing body that appointed them; or the county legislative body or other county governing body may enter into a personal services contract with the appointed chief administrative officer, not to exceed a term of four (4) years.

(d) This section shall not apply to any counties having a population of not less than forty-seven thousand eight hundred seventy-one (47,871) nor more than forty-eight thousand (48,000), according to the 1970 federal census or any subsequent federal census.

54-7-105. Term of office. [Effective on January 1, 2013. See the version effective until January 1, 2013.]

Elected or appointed chief administrative officers shall serve a term of four (4) years. Elected chief administrative officers shall take office on September 1, following their election.

54-7-109. Duties of chief administrative officer. [Effective until January 1, 2013. See the version effective on January 1, 2013.]

(a) The chief administrative officer, except in those counties with elected road commissioners or county councils wherein the general control and authority provided by this subsection (a) remains as provided by private or general act, shall be the head of the county highway department and shall have general control over the location, relocation, construction, reconstruction, repair and maintenance of the county road systems of the county, including roads designated as county roads under § 13-3-406, and including bridges and ferries, but not including roads and bridges under the supervision of the department of transportation; provided, that the county road system shall not include roads designated as county roads under § 13-3-406 in counties having a population, according to the 1970 federal census or any subsequent federal census, of:

not less than	nor more than
12,550	12,600
13,600	13,700
14,800	14,900
60,250	60,350

(b) It is the duty of the chief administrative officer to employ a qualified secretary and other office personnel as required to handle all correspondence, maintain accurate records of receipts and expenditures, equipment, supplies, materials, maintenance performed, and other items necessary for the operation of the county highway department.

(c) The chief administrative officer is authorized to determine the total number of employees of the county highway department, to determine personnel policies, hours of work, to establish job classifications, and to establish policies and wages within the classifications. The compensation established by the chief administrative officer should be in keeping with that paid for similar services in the county and surrounding area.

54-7-109. Duties of chief administrative officer. [Effective on January 1, 2013. See the version effective until January 1, 2013.]

(a) The chief administrative officer shall be the head of the highway department and shall have general control over the location, relocation, construction, reconstruction, repair and maintenance of the county road systems of the county, including roads designated as county roads under § 13-3-406 and including bridges and ferries, but not including roads and bridges under the supervision of the department of transportation or a municipality.

(b) It is the duty of the chief administrative officer to employ qualified administrative personnel as required to handle all administrative functions, including maintenance of financial records, inventory of equipment, supplies, and materials, preservation of maintenance records, maintenance of the official county road list, and all other functions necessary for the operation of the highway department.

(c) The chief administrative officer is authorized to determine the total number of employees of the highway department, to determine personnel policies, hours of work, to establish job classifications, and to establish policies and wages within the classifications. The compensation established by the chief administrative officer should be in keeping with the compensation paid for similar services in the county and surrounding area.

54-7-110. Employment of legal counsel. [Effective until January 1, 2013. See the version effective on January 1, 2013.]

(a) The chief administrative officer shall be empowered to employ legal counsel or to solicit the use of legal counsel retained by the county to prosecute or defend litigation caused by or necessary to the operation of the county highway department.

(b) In those counties with road commissioners or county councils, the general control and authority provided by this section for the chief administrative officer shall remain as provided by private or general act.

54-7-110. Employment of legal counsel. [Effective on January 1, 2013. See the version effective until January 1, 2013.]

(a) The chief administrative officer shall be empowered to employ legal counsel or to solicit the use of legal counsel retained by the county to prosecute or defend litigation caused by or necessary to the operation of the county highway department.

(b) [Deleted by 2012 amendment, effective January 1, 2013.]

54-7-111. Annual work program — Priorities for proposed work. [Effective until January 1, 2013. See the version effective on January 1, 2013.]

(a) The chief administrative officer shall have prepared and submit to the county legislative body or other governing body and to the department of transportation an annual work program to be financed under the state-aid highway system program.

(b) The priorities for proposed work contained in the annual work program shall be established, taking into consideration the degree of deficiencies in the structural condition, capacity and safety of existing roadway, traffic volume

and desirable level of service necessary for schools, religious institutions, industry, recreational facilities and other major uses.

54-7-111. Annual work program — Priorities for proposed work. [Effective on January 1, 2013. See the version effective until January 1, 2013.]

(a) The chief administrative officer shall prepare and submit to the county legislative body and to the department of transportation an annual work program to be financed under the state-aid highway system program.

(b) The priorities for proposed work contained in the annual work program shall be established, taking into consideration the degree of deficiencies in the structural condition, capacity and safety of existing roadway, traffic volume and desirable level of service necessary for schools, religious institutions, industry, recreational facilities and other major uses.

54-7-113. Receipt and disbursement of funds — Public advertisement and competitive bidding — Chart of accounts. [Effective until January 1, 2013. See the version effective on January 1, 2013.]

(a) All funds received by any person for the county for road or highway purposes shall be promptly deposited with the county trustee and shall be expended only upon a disbursement warrant drawn on the trustee in accordance with law.

(b) Expenditures of funds for the operation of the county road department shall be made within the limits of the approved budget and the appropriations made for the department, in accordance with law.

(c)(1) Except as provided in subdivision (c)(3), all purchases by or for a county road department or by a chief administrative officer shall be by public advertisement and competitive bid, except as follows:

(A) Purchases costing less than ten thousand dollars ($10,000); provided, that this exemption shall not apply to purchases of like items that individually cost less than ten thousand dollars ($10,000), but that are customarily purchased in lots of two (2) or more, if the total purchase price of the items would exceed ten thousand dollars ($10,000) during any fiscal year;

(B) Repair of heavy road building machinery or other heavy machinery for which limited repair facilities are available;

(C) Purchases of any supplies, materials, or equipment for immediate delivery in actual emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work; but emergencies shall not include conditions arising from neglect or indifference in anticipating normal needs. A report of emergency purchases shall be kept, specifying each purchase, the amount paid, the items purchased, from whom the items were purchased, and the nature of the emergency; and

(D) All purchases costing less than ten thousand dollars ($10,000) by or for a county road department or by a chief administrative officer may be made in the open market without newspaper notice, but shall, wherever possible, be based on at least three (3) competitive bids.

(2) Except as provided in subdivision (c)(3), all leases or lease-purchase arrangements requiring payments of ten thousand dollars ($10,000) or more,

or that are made or are automatically extendable, for periods of more than ninety (90) days, shall be entered into only after public advertisement and competitive bidding.

(3) This subsection (c) does not have the effect of repealing existing statutes, including private acts, that establish purchasing provisions for a county road department; but no county road department shall be required to publicly advertise and competitively bid purchases of ten thousand dollars ($10,000) or less even if the bids are now required by public or private act. This subsection (c) shall apply to all counties of the state except counties of population of two hundred thousand (200,000) or more according to the 1970 federal census, whether or not excluded from this chapter.

(d) A chart of accounts shall be kept by the chief administrative officer in conformity with a uniform chart of accounts developed and prescribed by the comptroller of the treasury in accordance with §§ 5-8-501 — 5-8-503.

54-7-113. Receipt and disbursement of funds — Public advertisement and competitive bidding — Chart of accounts. [Effective on January 1, 2013. See the version effective until January 1, 2013.]

(a) All funds received by any person for the county for road or highway purposes shall be promptly deposited with the county trustee and shall be expended only upon a disbursement warrant drawn on the trustee in accordance with law.

(b) Expenditures of funds for the operation of the county road department shall be made within the limits of the approved budget and the appropriations made for the department, in accordance with law.

(c)(1) Except as provided in subdivision (c)(3), all purchases by or for a county road department or by a chief administrative officer shall be by public advertisement and competitive bid, except as follows:

(A) Purchases costing less than ten thousand dollars ($10,000); provided, that this exemption shall not apply to purchases of like items that individually cost less than ten thousand dollars ($10,000), but that are customarily purchased in lots of two (2) or more, if the total purchase price of the items would exceed ten thousand dollars ($10,000) during any fiscal year;

(B) Repair of heavy road building machinery or other heavy machinery for which limited repair facilities are available;

(C) Purchases of any supplies, materials, or equipment for immediate delivery in actual emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work; but emergencies shall not include conditions arising from neglect or indifference in anticipating normal needs. A report of emergency purchases shall be kept, specifying each purchase, the amount paid, the items purchased, from whom the items were purchased, and the nature of the emergency; and

(D) All purchases costing less than ten thousand dollars ($10,000) by or for a county road department or by a chief administrative officer may be made in the open market without newspaper notice, but shall, wherever possible, be based on at least three (3) competitive bids.

(2) Except as provided in subdivision (c)(3), all leases or lease-purchase arrangements requiring payments of ten thousand dollars ($10,000) or more,

or that are made or are automatically extendable, for periods of more than ninety (90) days, shall be entered into only after public advertisement and competitive bidding.

(3) This subsection (c) does not have the effect of repealing existing statutes, including private acts, that establish purchasing provisions for a county road department; but no county road department shall be required to publicly advertise and competitively bid purchases of ten thousand dollars ($10,000) or less even if the bids are now required by public or private act.

(d) A chart of accounts shall be kept by the chief administrative officer in conformity with a uniform chart of accounts developed and prescribed by the comptroller of the treasury in accordance with §§ 5-8-501 — 5-8-503.

54-7-114. Agreements with adjoining counties.

Notwithstanding any law to the contrary, a chief administrative officer of a highway department of a county containing and physically divided by a United States government corps of engineers dam and reservoir project of thirty-four thousand (34,000) acres, or more, may sell to, or purchase from, any adjoining county, at actual cost any road products for use on the public roads, and may contract with any adjoining county to maintain roads, or a portion of the roads, under the chief administrative officer's jurisdiction.

54-7-201. Obstruction of roads, bridges and ditches — Penalty — Removal. [Effective until January 1, 2013. See the version effective on January 1, 2013.]

(a) The chief administrative officer is authorized to remove or cause to be removed any fence, gate, or other obstruction from the roads, bridges and ditches of the county and to clean out and clear all fences and ditches along or adjacent to the county roads.

(b) Any person who places or maintains an obstacle or obstruction upon the right-of-way of any county road and refuses to remove the obstacle or obstruction upon direction of the chief administrative officer to do so commits a Class C misdemeanor.

(c) It is a Class C misdemeanor to place or cause to be placed any obstruction upon the right-of-way or in the ditches along any county road except that transmission lines, telephone or telegraph lines or poles may be placed on and along the right-of-way of any county road under the direction and with the permission of the chief administrative officer.

54-7-201. Obstruction of roads, bridges and ditches — Penalty — Removal — Injury or damage to bridge, highway, highway facility, highway structure or right-of-way. [Effective on January 1, 2013. See the version effective until January 1, 2013.]

(a) The chief administrative officer is authorized to remove or cause to be removed any fence, gate, or other obstruction from the roads, bridges and ditches of the county and to clean out and clear all fences and ditches along or adjacent to the county roads.

(b) Any person who places or maintains an obstacle or obstruction upon the right-of-way of any county road and refuses to remove the obstacle or obstruction upon direction of the chief administrative officer to do so commits a Class

C misdemeanor.

(c) It is a Class C misdemeanor to place or cause to be placed any obstruction upon the right-of-way or in the ditches along any county road except that transmission lines, telephone or telegraph lines or poles may be placed on and along the right-of-way of any county road under the direction and with the permission of the chief administrative officer.

(d) Any person who injures or damages a bridge, highway, highway facility, highway structure or right-of-way shall be guilty of a Class C misdemeanor. Any such person shall also be liable in a civil action for the cost of such injury or damage.

(e) Notwithstanding any law to the contrary, this section shall apply to all counties.

54-7-202. Private use of equipment and materials prohibited — Penalty — Work for governmental entities authorized. [Effective until January 1, 2013. See the version effective on January 1, 2013.]

(a) The chief administrative officer shall not authorize or knowingly permit the trucks or road equipment, the rock, crushed stone or any other road materials to be used for any private use or for the use of any individual for private purposes, and the chief administrative officer's failure to see that this subsection (a) is enforced is a Class C misdemeanor.

(b) Any employee of the county road department who uses any truck or any other road equipment or any rock, crushed stone or other road material for that employee's personal use, or sells or gives those things away, shall be immediately discharged.

(c) No truck or other road equipment or any rock, crushed stone or any road material shall be used to work private roads or for private purposes of owners of the roads.

(d) Neither the chief administrative officer nor any other official or employee of the county may use any county vehicle, equipment, supplies or road materials for other than official county road purposes; however, the county governing body has the authority to authorize the county road department to perform work for other governmental entities; provided, that the cost of the projects so authorized is to be reimbursed to the county road department.

(e) A violation of this section is a Class C misdemeanor. Each separate use of the same for other than authorized purposes constitutes a separate offense and is subject to a separate punishment.

(f) Any person whose property is improved by having road material placed on the property in violation of this section shall be liable to suit for the value of the improvement. Any amounts recovered, including all legal fees and other recovery costs, shall go to the county road department.

(g)(1) Notwithstanding this section or any other section to the contrary, at the written request of the appropriate United States postal authority or the appropriate school board or education department, the county may use county vehicles, equipment and supplies to maintain areas for the purpose of providing public school buses and postal vehicles with a route and a turnaround area, even though the areas may not be on the official county road map or part of a public road right-of-way for which the county is responsible. The county shall not maintain the area if it will not be used for

that purpose. The county shall obtain written permission from the owner of any property proposed to be used as a turnaround area prior to commencing any work on that property.

(2) The county road department and the appropriate postal authority or school board or education department shall determine prior to commencement of the project whether all or part of the cost of the paving will be reimbursed to the road department.

(3) This subsection (g) shall not apply in any county with a population of four hundred thousand (400,000) or more, according to the 1990 federal census or any subsequent federal census.

54-7-202. Private use of equipment and materials prohibited — Penalty — Work for governmental entities authorized. [Effective on January 1, 2013. See the version effective until January 1, 2013.]

(a) The chief administrative officer shall not authorize or knowingly permit the trucks or road equipment, the rock, crushed stone or any other road materials to be used for any private use or for the use of any individual for private purposes, and the chief administrative officer's failure to see that this subsection (a) is enforced is a Class C misdemeanor.

(b) Any employee of the county road department who uses any truck or any other road equipment or any rock, crushed stone or other road material for that employee's personal use, or sells or gives those things away, shall be immediately discharged.

(c) No truck or other road equipment or any rock, crushed stone or any road material shall be used to work private roads or for private purposes of owners of the roads.

(d) Neither the chief administrative officer nor any other official or employee of the county may use any county vehicle, equipment, supplies or road materials for other than official county road purposes; however, the county governing body has the authority to authorize the county road department to perform work for other governmental entities; provided, that the cost of the projects so authorized is to be reimbursed to the county road department.

(e) A violation of this section is a Class C misdemeanor. Each separate use of the same for other than authorized purposes constitutes a separate offense and is subject to a separate punishment.

(f) Any person whose property is improved by having road material placed on the property in violation of this section shall be liable to suit for the value of the improvement. Any amounts recovered, including all legal fees and other recovery costs, shall go to the county road department.

(g)(1) Notwithstanding this section or any other section to the contrary, at the written request of the appropriate United States postal authority or the appropriate school board or education department, the county may use county vehicles, equipment and supplies to maintain areas for the purpose of providing public school buses and postal vehicles with a route and a turnaround area, even though the areas may not be on the official county road map or part of a public road right-of-way for which the county is responsible. The county shall not maintain the area if it will not be used for that purpose. The county shall obtain written permission from the owner of any property proposed to be used as a turnaround area prior to commencing any work on

that property.

(2) The county road department and the appropriate postal authority or school board or education department shall determine prior to commencement of the project whether all or part of the cost of the paving will be reimbursed to the road department.

(3) [Deleted by 2012 amendment, effective January 1, 2013.]

54-7-203. Personal financial interest prohibited — Penalties.

(a) Neither the chief administrative officer, county highway commissioner, member of the county governing body nor any employee of the county road department shall be financially interested in or have any personal interest, either directly or indirectly, in the purchase of any supplies, machinery, materials, equipment or contractual services for the department or system of roads for the county, nor in any firm, corporation, partnership, association or individual selling or furnishing the machinery, equipment, supplies and materials.

(b) A violation of this section constitutes official misconduct and is a Class C misdemeanor and is grounds for removal from office.

54-9-119. Bond of commissioners.

The commissioners shall execute a good and solvent bond, in an amount to be specified by the county legislative body, payable to the state, for the benefit of the county from which they were elected, conditioned that they will faithfully and impartially execute all the duties imposed upon them, without favor for any part of the county over that of any other part of the county; that they will honestly and faithfully expend and account for all moneys coming into their hands; and that they will as honestly and economically expend the money for the county as if it were their own private funds. The bond shall be prepared in accordance with title 8, chapter 19, approved by the county legislative body, recorded in the office of the county register of deeds, and transmitted to the office of the county clerk for safekeeping.

54-21-118. Outdoor advertising on certain interstate highways prohibited — Penalty — Exceptions.

No outdoor advertising shall be erected or continued in use for the purpose of having its message read from the main traveled ways of Interstate 26 from State Route 1 in Sullivan County to State Route 67 in Washington County (formerly Interstate 181), except those portions within the boundaries of an incorporated municipality on March 3, 1994, Interstate 440 in Davidson County, Interstate 640 in Knox County, or the section of State Route 840 in Williamson County from State Route 246 to one (1) mile from the intersection with State Route 100. Failure to comply with this section shall render the outdoor advertising a nuisance constituting a Class C misdemeanor, subject to immediate disposal, removal, or destruction and subject to the punishment and remedies provided in § 54-21-105. Valid permits for outdoor advertising structures located along Interstate 640 in Knox County issued prior to May 13, 1982, shall remain valid after May 13, 1982, and the holders of the permits shall be permitted to construct, reconstruct, maintain or repair the structures according to the original application for which a permit was issued. Valid

permits for outdoor advertising structures located along Interstate 26 from State Route 1 in Sullivan County to State Route 67 in Washington County (formerly Interstate 181), issued prior to March 3, 1994, shall remain valid after March 3, 1994, and the holders of the permits shall be permitted to construct, reconstruct, maintain or repair the structures according to the original application for which a permit was issued.

56-1-109. License of person in default on student loans. [Effective January 1, 2013.]

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

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

(2) "License" means a license, certification, registration, permit, approval or other similar document issued to an individual evidencing admission to or granting authority to engage in a profession, trade, occupation, business, or industry;

(3) "Licensing authority" means the department or any division, board, commission, committee, agency or other governmental entity under the authority of the department or attached to a division of the department that has been established by statute or regulation to oversee the issuance and regulation of any license; and

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

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

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

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

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

(ii) State that the debtor's license shall be suspended, denied or

revoked ninety (90) days after service unless within that time the debtor:

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

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

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

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

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

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

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

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

(iii) Whether the debtor:

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

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

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

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

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

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

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

that exceeds fifty dollars ($50.00).

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

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

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

56-2-104. Contents of statement — Deposits.

(a) Any domestic company shall satisfy the commissioner that:

(1) It is fully and legally organized under the laws of this state to do the business it proposes to transact;

(2)(A) If it is a stock life insurance company or a mutual life insurance company, it has and will maintain on deposit with the state treasurer, or with such other officer designated by law, at least two hundred thousand dollars ($200,000) in cash or its equivalent; but the commissioner may, in the commissioner's discretion, accept as an equivalent bonds of the United States, or any agency or instrumentality of the United States, which have been included in the three (3) highest grades by any of the recognized securities rating firms, bonds of this state, bonds of the state of domicile, or bonds publicly issued by any solvent institution created or existing under the laws of the United States or any state of the United States, which have been included in the three (3) highest grades by any of the recognized securities rating firms;

(B) Notwithstanding subdivision (a)(2)(A), the commissioner may decline to accept as a deposit any specific issue of securities that the commissioner has determined may not provide the necessary protection to policyholders and creditors in the United States;

(3)(A) The company shall likewise be required to file with the commissioner the certificate of the official with whom the securities are deposited, stating the time and amount of bonds of the United States, or any agency or instrumentality of the United States, which have been included in the three (3) highest grades by any of the recognized securities rating firms, bonds of this state, bonds of the state of domicile, or bonds publicly issued by any solvent institution created or existing under the laws of the United States or any state, which have been included in the three (3) highest grades by any of the recognized securities rating firms, and that the commissioner is satisfied they are worth two hundred thousand dollars ($200,000), and that the deposit was made with the commissioner by the company for the protection of all policyholders and creditors in the United States;

(B) Notwithstanding subdivision (a)(3)(A), the commissioner may decline to accept as a deposit any specific issue of securities that the commissioner has determined may not provide the necessary protection to policyholders and creditors in the United States;

(4)(A) If the applicant is an insurance company other than a stock or mutual life insurance company, each company shall maintain on deposit at least one hundred thousand dollars ($100,000) in cash or its equivalent for each kind or class of insurance as defined in § 56-2-201; but the commissioner, in the commissioner's discretion, may accept as an equivalent bonds of the United States, or any agency or instrumentality of the United States, which have been included in the three (3) highest grades by any of the recognized securities rating firms, bonds of this state, bonds of the state of domicile, or bonds publicly issued by any solvent institution created or existing under the laws of the United States or any state, which have been included in the three (3) highest grades by any of the recognized securities rating firms;

(B) Notwithstanding subdivision (a)(4)(A), the commissioner may decline to accept as a deposit any specific issue of securities that the commissioner has determined may not provide the necessary protection to policyholders and creditors in the United States. The deposits shall be subject to the same conditions as required in the case of stock or mutual life insurance companies; and

(5)(A) The insurer's principal place of business and primary executive, administrative and home offices and all original books and records of the insurer are or will be located and maintained in this state. The removal from the state, or the retention outside the state, of all or a material part of these original books and records, except for reasonable purposes and periods of time approved by the commissioner in writing, is prohibited. This subdivision (a)(5)(A) also applies to domestic health maintenance organizations. This subdivision (a)(5)(A) does not apply to:

(i) Any insurer that was a domestic insurer prior to July 1, 1993, and whose primary executive, administrative and home offices were located outside of the state prior to July 1, 1993;

(ii) Any records of a domestic insurer that were located and maintained outside the state prior to July 1, 1993;

(iii) Records substantially similar to the general type of records located and maintained outside the state prior to July 1, 1993; or

(iv) Any domestic reciprocal whose primary executive, administrative and home offices, and original books and records, were located and maintained outside the state prior to January 1, 1996;

(B) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority of a domestic company found to be in violation of subdivision (a)(5)(A).

(b)(1) The deposit required by this section is not applicable to foreign stock or mutual life insurance companies, or to domestic or foreign insurance companies writing workers' compensation insurance or fidelity and surety bonds. Companies writing that type or form of insurance shall make deposits in accordance with the requirements of existing laws.

(2) The provisions of this section applicable to domestic insurance companies shall apply to all insurance companies and associations except those specifically exempted in this section, whether the companies are stock or mutual, and it is specifically provided that §§ 56-2-101 — 56-2-103, this section, §§ 56-2-113 — 56-2-115, 56-2-201, and 56-2-301 fully apply to all such companies or associations regardless of what law or statute of this state under which the companies or associations may have been organized.

(3) No requirement in this section not in effect on January 1, 1967, shall be considered applicable to any insurance company properly licensed to transact business in this state as of that date, except that any stock casualty company, foreign or domestic, not having at least one hundred thousand dollars ($100,000) in cash or equivalent on deposit for each kind of insurance as defined in § 56-2-201, shall meet the requirement by December 31, 1978. Domestic stock casualty companies not maintaining capital paid up of at least one hundred thousand dollars ($100,000) shall make a deposit equal to their capital paid up by December 31, 1977.

(4) This section shall not apply to, or affect, or be construed as in anywise applying to, or affecting, domestic state and county mutual fire insurance companies, the organization of which was and is authorized by chapters 19-21 of this title.

(c) [Deleted by 2012 amendment.]

56-2-117. [Repealed.]

56-2-125. Establishment and maintenance of an all payer claims database — Establishment of Tennessee health information committee.

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

(1) "All payer claims database" means a database comprised of health insurance issuer and group health plan claims information that excludes the data elements in 45 CFR 164.514(e)(2);

(2) "Commissioner" means the commissioner of commerce and insurance;

(3) "Department" means the department of commerce and insurance;

(4) "Group health plan" means an employee welfare benefit plan, as defined in § 3(1) of the Employee Retirement Income Security Act of 1974 (ERISA), codified in 29 U.S.C. § 1002(1), to the extent that the plan provides medical care to employees or their dependents, as defined under the terms of the plan, or an administrator of the plan. For purposes of this section, "group health plan" shall not mean any plan that is offered through a health insurance issuer;

(5) "Health insurance coverage" means health insurance coverage as defined in § 56-7-2902, as well as medicare supplemental health insurance; and

(6) "Health insurance issuer" means an entity subject to the insurance laws of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide health insurance coverage, including, but not limited to, an insurance company, a health maintenance organization and a nonprofit hospital and medical service corporation. "Health insurance issuer" also means a pharmacy benefits manager, a third party administrator and an entity described in § 56-2-121.

(b)(1) The commissioner shall establish and maintain an all payer claims database to enable the commissioner of finance and administration to carry out the following duties:

(A) Improving the accessibility, adequacy and affordability of patient health care and health care coverage;

(B) Identifying health and health care needs and informing health and health care policy;

(C) Determining the capacity and distribution of existing health care resources;

(D) Evaluating the effectiveness of intervention programs on improving patient outcomes;

(E) Reviewing costs among various treatment settings, providers and approaches; and

(F) Providing publicly available information on health care providers' quality of care.

(2) Nothing in this section shall preclude a health insurance issuer from providing information on health care providers' quality of care in accordance with § 56-32-130(e).

(c) There is established a Tennessee health information committee, referred to as the committee in this section. The commissioner of finance and administration shall give all consideration to policies and recommendations formed by the committee, including those formed by the committee on any issues in response to a request of the commissioner of finance and administration in the commissioner's discretion. Any recommendations developed by the committee shall, to the largest extent possible, be consistent with those of nationally recognized standard setting and accrediting bodies.

(1)(A)(i) The public release of any report utilizing data derived from the all payer claims database on quality, effectiveness, or cost of care of health care providers or provider shall require a two-thirds (⅔) affirmative vote of the committee members present.

(ii) Health insurance issuers that contribute data to the all payer claims database and providers who are subjects of reports on quality, effectiveness or cost of care that utilize data derived from the all payer claims database shall be given access to the reports sixty (60) days prior to the public release of the reports for the review and submission of comments prior to the public release.

(B) Any other committee action shall require a simple majority affirmative vote of the committee members present.

(C) Neither the committee nor the commissioner is authorized to make public release of individual patient level claims data.

(2) The committee shall develop for the commissioner of finance and administration:

(A) A description of the data sets, based on national standards, if and when available, that will be included in the all payer claims database; and

(B) A method for submission of data.

(3) The committee shall develop for the commissioner of finance and administration security measures for ensuring compliance with:

(A) The federal requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), compiled in 42 U.S.C. § 1320d et seq., and implementing federal regulations; and

(B) Other state and federal privacy laws.

(4) The committee shall regularly evaluate the integrity and accuracy of the all payer claims database.

(5) The committee shall develop policies to make reports from the all payer claims database available as a resource for insurers, employers, providers and purchasers of health care, to continuously review health care utilization, expenditures and performance in this state. Such uses shall be subject to restrictions required by HIPAA and other applicable privacy laws and policies as well as to reasonable charges recommended by the committee

and set by rule.

(6) The committee shall be chaired by the commissioner of finance and administration or designee and attached to the department of finance and administration for administrative purposes. The committee members shall serve without compensation and travel expenses.

(7)(A) The committee shall include:

(i) The commissioner or the commissioner's designee;

(ii) The commissioner of health or the commissioner of health's designee;

(iii) The commissioner of mental health and substance abuse services or the commissioner of mental health and substance abuse services' designee;

(iv) The commissioner of finance and administration or the commissioner of finance and administration's designee;

(v) The director of the state division of health planning or equivalent;

(vi) The director of the office of e-health initiatives or equivalent;

(vii) The deputy commissioner of the bureau of TennCare or the deputy commissioner of the bureau of TennCare's designee; and

(viii) The commissioner of intellectual and developmental disabilities or the commissioner of intellectual and developmental disabilities' designee.

(B) The committee shall include the following members to be appointed by the commissioner of finance and administration:

(i) Two (2) physician members. The Tennessee Medical Association is authorized to submit to the commissioner a list of nominees from which the physicians may be selected;

(ii) Two (2) members to represent hospitals. The Tennessee Hospital Association and the Hospital Alliance of Tennessee are authorized to submit to the commissioner a list of nominees from which the representatives may be selected;

(iii) One (1) pharmacist member. The Tennessee Pharmacists Association is authorized to submit to the commissioner a list of nominees from which the pharmacist may be selected;

(iv) Two (2) members to represent the health insurance industry;

(v) One (1) member to represent a hospital and medical service corporation;

(vi) One (1) member to represent a coalition of businesses who purchase health services;

(vii) One (1) member to represent a self-insured employer;

(viii) One (1) member to represent health care consumers; and

(ix) One (1) member to represent ambulatory surgical treatment centers.

(8) The committee may appoint one (1) or more subcommittees to provide advice and recommendations related to the operations and use of the all payer claims database, including, but not limited to, advisory committees on:

(A) Research;

(B) Technology;

(C) Participation by health insurance issuers in the all payer claims database; and

(D) Such other matters as the committee may approve in its discretion.

(9) The members of the Tennessee health information committee appointed by the commissioner of finance and administration as provided in

subdivision (b)(7)(B) shall serve one-year terms and shall be eligible for reappointment to subsequent terms; provided, however, that five (5) of the initial members shall serve an initial term of two (2) years. Vacancies shall be filled for any unexpired terms, and members shall serve until their successors are appointed. The initial term of such members shall be deemed to commence on July 1, 2009.

(10) [Deleted by 2011 amendment.]

(d)(1) As required by HIPAA, the all payer claims database shall not publicly disclose any individually identifiable health information as defined in 45 CFR 160.103. Use of the all payer claims database shall be subject to restrictions required by HIPAA and other applicable privacy laws and policies. The all payer claims database shall be accessed only by staff or a designated entity authorized in writing by the commissioner of finance and administration to perform the analyses contemplated by this section. The commissioner shall collaborate with the Tennessee health information committee in developing procedures and safeguards to protect the integrity and confidentiality of any data contained in the all payer claims database.

(2)(A) The all payer claims database, summaries, source or draft information used to construct or populate the all payer claims database, patient level claims data, reports derived from the all payer claims database, unless public release of reports is authorized by the Tennessee health information committee, and other information submitted under this section, whether in electronic or paper form:

(i) Shall not be considered a public record and shall not be open for inspection by members of the public under § 10-7-503(a)(1). Further, such information contained in the all payer claims database shall be considered confidential and not subject to subpoena; and

(ii) Reports derived from the information shall only be released pursuant to rules adopted by the commissioner subsequent to consultation with the Tennessee health information committee. Any release of reports shall not result in such information losing its confidentiality or cause it to be admissible, except in administrative proceedings authorized under the rules adopted by the commissioner.

(B) The commissioner shall, through memoranda of understanding and after consultation with the Tennessee health information committee, allow the use of the all payer claims database by the department of finance and administration, the department of health, the department of mental health and substance abuse services, the department of intellectual and developmental disabilities and other departments of state government for the purposes listed in subdivision (b)(1).

(C) Except for officials of the state or those officials' designees as permitted by subdivision (d)(1), nothing within this section shall be construed as permitting access to or discovery of the source or draft information used to construct or populate the all payer claims database.

(e) The all payer claims database shall contain unique health care provider identifiers that may be used in public reports; provided, however, that no information that could reveal the identity of any patient from the all payer claims database shall be made available to the public. To ensure that individual patients are not identified, the following data shall not be included in any transmission by a group health plan or health insurance issuer to the state or designated entity for the all payer claims database or in any source or

draft information used to construct or populate the all payer claims database:

(1) Patient names;

(2) Patient street addresses;

(3) All elements of patient birth dates, except year of birth;

(4) Patient telephone numbers;

(5) Patient facsimile numbers;

(6) Patient electronic mail addresses;

(7) Patient social security numbers;

(8) Medical record numbers;

(9) Health plan beneficiary numbers;

(10) Patient account numbers;

(11) Patient certificate/license numbers;

(12) Vehicle identifiers and serial numbers including license plate numbers;

(13) Device identifiers and serial numbers;

(14) Web universal resource locators (URLs);

(15) Internet protocol (IP) address numbers;

(16) Biometric identifiers including fingerprints, voiceprints, and genetic code;

(17) Full-face photographic images and any comparable images; or

(18) Any other unique patient identifying number, characteristic or code, except encrypted index numbers assigned prior to the transmission by group health plans or health insurance issuers to the state or designated entity for the purpose of linking procedures by patient; provided, that a patient's identity cannot be known from the encrypted index number.

(f)(1)(A) No later than January 1, 2010, and every month thereafter, all group health plans and health insurance issuers shall provide electronic health insurance claims data for state residents to the commissioner or a designated entity authorized by the commissioner, in accordance with standards and procedures recommended by the Tennessee health information committee pursuant to subdivision (c)(2) and adopted by the commissioner by rule.

(B) All group health plans and health insurance issuers shall provide additional information as the Tennessee health information committee recommends and the commissioner subsequently establishes by rule for the purpose of creating and maintaining an all payer claims database.

(C) The Tennessee health information committee and the commissioner shall strive for standards and procedures that are the least burdensome for data submitters.

(2) The collection, storage and release of health and health care data and statistical information that is subject to the federal requirements of HIPAA shall be governed by the rules adopted in 45 CFR parts 160 and 164.

(3) All group health plans and health insurance issuers that collect the health employer data and information set (HEDIS) shall annually submit the HEDIS information to the commissioner in a form and in a manner prescribed by the National Committee for Quality Assurance (NCQA).

(4) If any group health plan or health insurance issuer fails to submit required data to the commissioner on a timely basis, the commissioner may impose a civil penalty of up to one hundred dollars ($100) for each day of delay.

(g) The commissioner, in the commissioner's discretion, may allow some

group health plans and health insurance issuers to submit data on a quarterly basis. The commissioner may also establish by rule exceptions to the reporting requirements of this section for entities based upon an entity's size or amount of claims or other relevant factors deemed appropriate.

(h)(1) The commissioner may, subject to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, promulgate rules and regulations for purposes of implementing this section. The commissioner is authorized to promulgate the initial rules as emergency rules pursuant to the Uniform Administrative Procedures Act prior to January 1, 2010, for the purpose of creating the all payer claims database.

(2) The commissioner of finance and administration may, subject to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, promulgate rules and regulations concerning the operation of the all payer claims database and the distribution and use of information maintained or created thereby. The commissioner of finance and administration is authorized to promulgate the initial rules as emergency rules pursuant to the Uniform Administrative Procedures Act prior to January 1, 2010, for the purpose of creating the all payer claims database.

56-2-201. Definitions of kinds of insurance.

Kinds of insurance are defined as follows:

(1) "Accident and health insurance" means insurance against bodily injury, disablement or death, by accident or accidental means, or the expense of bodily injury, disablement or death, against disablement or expense resulting from sickness, and every insurance pertaining thereto; providing for the mental and emotional welfare of an individual and members of the individual's family by defraying the cost of legal services; or providing aggregate or excess stop-loss coverage in connection with employee welfare benefit plans, managed care organizations participating in commercial plans or the TennCare program, or both, health maintenance organizations, long-term care facilities and physician-hospital organizations as defined in § 56-32-102;

(2) "Casualty insurance" includes vehicle insurance, disability insurance, and in addition is:

(A) "Boiler insurance," which is insurance against any liability and loss or damage to property resulting from accidents to or explosion of boilers, pipes, pressure containers, machinery, or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery and apparatus of any kind, whether or not insured;

(B) "Burglary and theft insurance," which is insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment, or from any attempt of burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers or documents, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail;

(C) "Collision insurance," which is insurance against loss of or damage to any property of the insured resulting from collision of any other object with the property, but not including collision to or by elevators, or to or by vessels, craft, piers or other instrumentalities of ocean or inland navigation;

(D) "Credit insurance," which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;

(E) "Elevator insurance," which is insurance against loss or damage to any property of the insured resulting from the ownership, maintenance or use of elevators, except loss or damage by fire, and to make inspection of and issue certificates of inspection on elevators;

(F) "Glass insurance," which is insurance against loss of or damage to glass and its appurtenances resulting from any cause;

(G) "Liability insurance," which is insurance against legal liability for the death, injury, or disability of any person, or for damage to property; and insurance of medical, hospital, surgical and funeral benefits to persons injured, regardless of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(H) "Livestock insurance," which is insurance against loss of or damage to any domesticated or wild animal resulting from any cause;

(I) "Personal property floater," which is insurance of individuals, by an all-risk type of policy commonly known as the "personal property floater," against any and all kinds of loss of or damage to, or loss of use of, any personal property other than merchandise;

(J) "Professional liability insurance," which is insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of legal liability, and including any obligation of the insured to pay medical, hospital, surgical and funeral benefits to injured persons, regardless of legal liability of the insured, arising out of the death or injury of any person, or arising out of injury to the economic interest of any person as the result of negligence in rendering expert, fiduciary or professional service;

(K) "Water insurance," which is insurance against loss of or damage to any property caused by the breakage or leakage of sprinklers, water pipes and other apparatus, or by water entering through leaks or openings in buildings, other than flood waters;

(L) "Workers' compensation and employer's liability insurance," which is insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees; and

(M) Insurance against any other kind of loss, damage, or liability properly the subject of insurance and not within any other kind or kinds of insurance as defined in this section, if the insurance is not disapproved by the commissioner as being contrary to law or public policy;

(3) "Credit insurance" includes:

(A) "Credit accident and health insurance," which means that form of insurance under which a borrower of money or a purchaser of goods is indemnified in connection with a specific loan or credit transaction against loss of time resulting from accident or sickness; and

(B) "Credit life insurance," which means that form of insurance under which the life of a borrower of money or a purchaser of goods is insured in connection with a specified loan or credit transaction;

(4) "Life insurance" means insurance on human lives and insurance appertaining to human lives or connected with human lives. For the purposes of this title, the transacting of life insurance includes the granting of annuities, both with and without a life or mortality contingency or element, and endowment benefits, additional benefits in the event of death by accident or accidental means, additional benefits in the event of the total and permanent disability of the insured, and optional modes of settlement of proceeds;

(5)(A) "Property insurance" means insurance against loss of or damage to real or personal property of every kind and interest in the real or personal property, from any or all hazards or causes, and against loss consequential upon the loss or damage;

(B) "Property insurance" includes, but is not limited to:

(i) Insurance against loss or damage to property and loss of use and occupancy by fire, lightning, storm, flood, frost, freezing, snow, hail, ice, weather or climatic conditions, including excess or deficiency of moisture, rain or rising of the waters of the ocean or its tributaries, drought, insects, vermin, forces of nature, smoke, smudge, riot, riot attending strike, strikes, sabotage, civil commotion, vandalism or malicious mischief or caused by wrongful conversion, disposal or concealment of a motor vehicle or aircraft, whether or not handled under a conditional sales contract or subject to chattel mortgage, civil war, rebellion, insurrection, invasion, bombardment, military or usurped power, or by any order of civil authorities meant to prevent the spread of conflagration or epidemic or catastrophe, explosion with no fire ensuing, except explosion by steam boilers or flywheels, but there may be insured explosion of pressure vessels, not including steam boilers of more than fifteen pounds (15 lbs.) pressure, in buildings designed and used solely for residential purposes by not more than four (4) families, explosion of any kind originating outside the insured building, or outside the building containing the property insured, and explosion of pressure vessels that do not contain steam or that are not operated with steam coils or steam jackets;

(ii) Insurance against loss or damage by insects or disease to farm crops or products, and loss of rental value of land used in producing the crops or products;

(iii) Insurance against accidental injury to sprinklers, pumps, water pipes, elevator tanks and cylinders, steam pipes and radiators, plumbing and its fixtures, ventilating, refrigerating, heating, lighting or cooking apparatus, or their connections, or conduits or containers of any gas, fluid, or other substance, and against loss or damage to property of the insured caused by the breakage or leakage thereof, or by water, hail, rain, sleet or snow seeping or entering through water pipes, leaks or openings in buildings;

(iv) Insurance against loss or damage caused by railroad equipment, motor vehicles, airplanes, seaplanes, dirigibles or other aircraft;

(v) Insurance against loss of or damage to vessels, crafts, aircrafts, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidence of debt, valuable papers, bottomry and respondentia interests therein, in re-

spect to, appertaining to or in connection with, any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the being assembled, packed, crated, baled, compressed or similarly prepared for shipment or during any delays, storage, transshipment incident thereto, including marine builder's risks and all personal property floater risks, and persons or property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of the insurance, but not including life insurance or surety bonds, and precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade, or otherwise, and whether in course of transportation or otherwise, and bridges, tunnels and other instrumentalities of transportation, and communication, excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage, unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion, are the only hazards to be covered, and piers, wharves, docks and ships, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion, and other aids to navigation and transportation, including dry docks and marine railways, against all risks;

(vi) "Marine protection and indemnity insurance," which means insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person; and

(vii) Vehicle insurance;

(C) Matters set out in subdivision (5)(B) are not deemed to limit the scope of property insurance as defined in subdivision (5)(A), nor shall the fact that certain coverages coming within the scope of property insurance, as defined in subdivision (5)(A), are also defined as part of another kind of insurance be deemed to limit the scope of the definition of property insurance or the right of a property insurer to provide the coverage;

(6) "Surety insurance" includes:

(A) Credit insurance;

(B) "Fidelity insurance," which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(C) Guaranteeing the performance of contracts, and guaranteeing and executing bonds, undertakings, and contracts of suretyship;

(D) Indemnifying banks, bankers, brokers, financial or moneyed corporations or associations or other persons against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debts, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made from precious metals, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while the items are being transported in

armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also against loss or damage to the insured's premises, or to the insured furnishings, fixtures, equipment, safes and vaults in safes, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt of burglary, robbery, theft, vandalism or malicious mischief; and

(E) Insurance that guarantees the performance of any debt obligation of a public or private corporation; and

(7)(A) "Vehicle insurance" means insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon, or being loaded or unloaded therein or therefrom, and against any loss, expense or liability for loss or damage to persons or property resulting from or incident to ownership, maintenance, or use of the vehicle or aircraft or animal;

(B) Insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if the insurance is issued as part of insurance on the vehicle, aircraft, or draft or riding animal, shall be deemed to be vehicle insurance.

56-2-801. Sharing of confidential information.

The commissioner shall maintain as confidential all information received from the National Association of Insurance Commissioners (NAIC), any state or federal agency, and foreign countries that is confidential in those jurisdictions. The commissioner may allow for the sharing of otherwise confidential documents, materials, information, administrative or judicial orders, and other actions with the regulatory officials of any state or federal agency and foreign countries; provided, that the recipients are required, under their respective laws, to maintain such confidentiality. The commissioner may also allow for the sharing of otherwise confidential documents, materials, information, administrative or judicial orders, and other actions with the NAIC; provided, that the NAIC demonstrates by written statement its intent to maintain such confidentiality.

56-3-111. Certain insurance companies to report settlement or judgment in health care liability claims.

(a) Insurance companies providing insurance coverage against civil liability for the death or personal injury of any person as the result of negligence or health care liability in the rendering of professional services by a licensed physician, either doctor of osteopathic medicine or doctor of medicine, or by a licensed dentist shall report to the state board of medical examiners or state board of osteopathic examination or the state board of dentistry any settlement of a claim or judgment, sealed, confidential or otherwise, of five thousand dollars ($5,000) or more that arises out of a claim of negligence or health care liability on the part of an insured physician or dentist as distinguished from administrative matters. The report shall be made within thirty (30) days of the settlement or judgment and shall contain only the following information:

(1) The name and address of the licensed physician or dentist;

(2) The name and address of the plaintiff;

(3) The name of the patient, if different from the plaintiff;

(4) The name and location of the court in which a claim was filed, if any;

(5) The amount of any judgment or settlement; and

(6) The identity of the insurance company and the person filling out the report.

(b) The reports shall be confidential, shall not be subject to public inspection, shall not be subject to subpoena or used as evidence in any legal proceeding, civil or criminal; provided, however, that the reported judgments and settlements contained in the reports, except those that are ordered sealed or to remain confidential by a court of competent jurisdiction, may be used to fulfill the requirements of the Health Care Consumer Right to Know Act of 1998, compiled in title 63, chapter 51, but may not be used to initiate or prosecute any administrative proceeding before the board for licensing health care facilities.

(c) No insurance company, official, or other person authorized by an insurance company to issue the reports shall be liable for filing reports in accordance with this section, so long as the report is not disclosed to anyone other than authorized personnel of the state board of medical examiners, state board of osteopathic examination or the state board of dentistry, or the reported judgments and settlements contained in the reports, except those that are ordered sealed or to remain confidential by a court of competent jurisdiction are used to fulfill the requirements of the Health Care Consumer Right to Know Act of 1998.

56-3-112. [Repealed.]

56-3-901. Purpose.

The purpose of this part is to authorize insurance companies to utilize modern systems for holding and transferring securities without physical delivery of securities certificates, subject to rules and regulations promulgated by the commissioner pursuant to this part.

56-3-902. Part definitions.

As used in this part:

(1)(A) "Clearing corporation" means:

(i) A corporation as defined in § 8-102(a) of the Uniform Commercial Code, codified in § 47-8-102(a), as adopted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, as amended from time to time; and

(ii) "Treasury/reserve automated debt entry securities system" and "treasury direct" book-entry securities systems established pursuant to 5 U.S.C. Part 301, 12 U.S.C. Part 391 and 31 U.S.C. § 3100 et seq.;

(B) With respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "clearing corporation" also means a corporation which is organized or existing under the laws of any foreign country and is legally qualified under such laws to effect transactions in securities by computerized book-entry;

(2) "Commissioner" means the commissioner of commerce and insurance;

(3) "Custodian" means a national bank, state bank, federal home loan bank, trust company or broker/dealer that participates in a clearing corporation; and

(4) "Securities" means instruments as defined in § 8-102(a) of the Uniform Commercial Code, codified in § 47-8-102(a), as adopted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, as amended from time to time.

56-3-903. Use of book-entry systems.

(a)(1) A domestic insurance company may deposit, or arrange for the deposit of, securities held in or purchased for its general account and its separate accounts in a clearing corporation.

(2) When securities are deposited with a clearing corporation:

(A) Certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other securities deposited with such clearing corporation by any person, regardless of the ownership of such securities; and

(B) Certificates representing securities of small denominations may be merged into one (1) or more certificates of larger denominations.

(3) The records of any custodian through which an insurance company holds securities in a clearing corporation shall at all times show that such securities are held for such insurance company and for which accounts.

(4) Ownership of, and other interest in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities.

(b) The commissioner is authorized to promulgate rules and regulations governing the deposit by insurance companies of securities with clearing corporations, including establishing standards for national banks, state banks, federal home loan banks, trust companies and broker/dealers to qualify as custodians for insurance company securities.

56-3-904. Deposit of securities by domestic insurance companies.

(a)(1) Securities qualified for deposit under § 56-2-104 may be deposited with a clearing corporation.

(2) Securities deposited with a clearing corporation and used to meet the deposit requirements set forth in § 56-2-104 shall be under the control of the commissioner and shall not be withdrawn by the insurance company without the approval of the commissioner.

(b) Any insurance company holding securities as provided in subsection (a) shall provide to the commissioner evidence issued by its custodian through which the insurance company has deposited securities in a clearing corporation, in order to establish that:

(1) The securities are actually recorded in an account in the name of the custodian; and

(2) The records of the custodian reflect that such securities are held subject to the order of the commissioner.

56-3-905. Deposit of securities by insurance companies.

(a)(1) Securities eligible for deposit under the insurance laws of this state relating to deposit of securities by an insurance company as a condition of commencing or continuing to do any insurance business in this state may be deposited with a clearing corporation.

(2) Securities deposited with a clearing corporation and used to meet the deposit requirements under the insurance laws of this state shall be under the control of the commissioner and shall not be withdrawn by the insurance company without the approval of the commissioner.

(b) Any insurance company holding such securities as provided in subsection (a), shall provide to the commissioner evidence issued by its custodian in order to establish that:

(1) The securities are actually recorded in an account in the name of the custodian; and

(2) The records of the custodian reflect that such securities are subject to the order of the commissioner.

56-5-322. Exempt commercial risk policyholders.

(a) For purposes of this section:

(1) "Exempt commercial risk policyholder" means an insured that either employs the services of an insurance producer licensed in property or casualty lines of authority or procures commercial risk insurance with the services of a full-time risk manager, and:

(A) Is a city, county, or metropolitan government with a population of at least fifty thousand (50,000), according to the 2010 federal census or any subsequent census;

(B) Is this state;

(C) Is a not-for-profit organization or a public entity with an annual budget of at least twenty-five million dollars ($25,000,000) in the preceding fiscal year; or

(D) Is a commercial risk policyholder that annually certifies to the department on a form designated by the department that the policyholder:

(i) Possesses a net worth of more than ten million dollars ($10,000,000) at the time the policy of insurance is issued;

(ii) Generated net revenue or sales of more than fifteen million dollars ($15,000,000) in the preceding fiscal year;

(iii) Employs more than twenty-five (25) employees per individual company or fifty (50) employees per holding company at the time the policy of insurance is issued; and

(iv) Paid annual aggregate insurance premiums of more than two hundred fifty thousand dollars ($250,000) in the preceding fiscal year of commercial risk insurance as defined in § 56-5-302, excluding any premiums paid for accident and health insurance and workers' compensation and employer's liability insurance as defined in § 56-2-201; and

(2) "Risk manager" means a person who:

(A) Holds an Accredited Advisor in Insurance (AAI) or Associate in Risk Management (ARM) designation for property and casualty lines of authority;

(B) Holds a risk management in insurance degree from an accredited college or university for property and casualty lines of authority; or

(C) Is qualified by experience, as determined by the commissioner.

(b) Section 56-5-306(a) does not apply to a commercial risk policy issued to an exempt commercial risk policyholder by an insurer of commercial risk insurance.

(c) An insurer of commercial risk insurance is subject to the penalties provided in § 56-2-305 if the:

(1) Insurer does not comply with § 56-5-306(a) relative to a commercial risk insurance policy issued to a commercial risk policyholder; and

(2) Policyholder has not filed a certification as required by subdivision (a)(1)(D).

(d) The certification form filed by a commercial risk policyholder pursuant to subdivision (a)(1)(D) shall be confidential and not subject to title 10, chapter 7, part 5.

(e) Any application or policy issued to an exempt commercial risk policyholder shall contain a disclaimer in language the same as or substantially similar to the following:

The rate provided for in this policy and all forms utilized are exempt from the filing requirements of Tenn. Code Ann. § 56-5-306. The forms which make up this policy contract are exempt from the filing requirements of Tenn. Code Ann. § 56-5-306.

56-6-104. Exceptions to licensing.

(a) Nothing in this part shall be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries or affiliates.

(b) A license as an insurance producer shall not be required of the following:

(1) An officer, director or employee of an insurer or of an insurance producer; provided, that the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in this state and:

(A) The officer, director or employee's activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance;

(B) The officer, director or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance; or

(C) The officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

(2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans, issuing certificates under plans or otherwise assisting in administering plans, or performs administrative services related to mass marketed property and casualty insurance, where no commission is paid to the person for the service;

(3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers,

employees, director or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;

(5) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state; provided, that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state;

(6) A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract; provided, that the person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state;

(7) A salaried full-time employee who counsels or advises an employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer; provided, that the employee does not sell or solicit insurance or receive a commission;

(8) Any regular salaried officer, employee or member of a fraternal benefit society that provides benefits in case of death or disability, resulting solely from accident, and that does not obligate the officer, employee or member to pay natural death or sick benefits, the officers, employees or members procuring other members and receiving no compensation for the procurement other than awards or merchandise nominal in value;

(9) An officer, director, or employee of a vehicle rental company engaged in the sale, solicitation, or negotiation of optional insurance sold in connection with and incidental to a motor vehicle rental agreement for a period not to exceed ninety (90) days;

(A) The insurance that may be offered pursuant to this subdivision (b)(9) is limited to:

(i) Personal accident coverage that provides protection for renters and other rental vehicle occupants for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs during the rental period;

(ii) Liability coverage that provides protection to renters and to other authorized drivers of the rental motor vehicle for liability arising from the operation of the motor vehicle during the rental period. The liability protection, when purchased by a renter, shall be deemed to be primary over any other coverages that may be available to the renter or other authorized driver of the rental vehicle to the extent of the protection provided;

(iii) Personal effects coverage that provides protection to renters and other motor vehicle occupants for loss of, or damage to, personal effects

in the rental motor vehicle during the rental period; and

(iv) Roadside assistance coverage;

(B) As used in subdivision (b)(9)(A), "motor vehicle" or "rental vehicle" means a private passenger motor vehicle, including passenger vans, mini vans, and sport utility vehicles, and a cargo motor vehicle, including cargo vans, pickup trucks, and trucks with a gross vehicle weight of less than twenty-six thousand pounds (26,000 lbs.);

(C) Each person engaged in the sale of optional insurance products pursuant to this subdivision (b)(9) shall give each renter who purchases the coverage brochures or other written materials that:

(i) Summarize, clearly and correctly, the material terms and conditions of coverage offered to renters;

(ii) Identify the insurer;

(iii) Describe the process for filing a claim in the event the renter elects to purchase coverage;

(iv) State that the purchase of the coverage is not required in order to rent a vehicle;

(v) Disclose that the coverage offered by the rental agreement may provide a duplication of coverage already provided by a renter's personal automobile policy or by another source of coverage; and

(vi) Itemize the cost for the coverage separately;

(D) The commissioner may seek the sanctions provided in former § 56-6-112(e) [repealed] against a vehicle rental company upon a finding that an officer, director, or employee of a vehicle rental company has violated § 56-6-112(a)(2), (4), (5), (7), (8), or (10) in connection with the sale, solicitation, or negotiation of optional insurance sold in connection with and incidental to a motor vehicle rental agreement for a period not to exceed ninety (90) days; or

(10) An officer, director, employee, or authorized representative of a business entity engaged in the sale, solicitation, or negotiation of portable electronics insurance licensed pursuant to and acting in compliance with part 11 of this chapter.

56-6-110. Limited lines producers.

An individual who has met the requirements of § 56-6-106 shall be entitled to a limited lines producer license without examination in one (1) or more of the following limited lines:

(1) Insurance on personal effects carried as baggage or limited travel accident insurance sold in connection with transportation provided by a common carrier;

(2) Credit life, credit accident and health insurance, or involuntary unemployment credit insurance;

(3) Mortgage guaranty insurance;

(4) Personal property insurance sold to a debtor under a master group policy issued to a creditor;

(5) Crop hail insurance;

(6) Title insurance; provided, that the limited lines producer is an attorney, duly licensed in this state, who acts as a title insurance agent as an ancillary part of the attorney's practice of law;

(7) Any other lines that the commissioner finds by rule are essential for the transaction of business in this state and do not require the professional

competency demanded by an insurance producer's license; or

(8) Portable electronics insurance.

56-6-705. Utilization review agents — Minimum standards.

(a) All utilization review agents shall meet the following minimum standards:

(1) Notification of a determination by the utilization review agent shall be mailed or otherwise communicated to the provider of record or the enrollee or other appropriate individual within two (2) business days of the receipt of the request for determination and the receipt of all information necessary to complete the review;

(2) Any determination by a utilization review agent as to the necessity or appropriateness of an admission, service, or procedure shall be reviewed by a physician or determined in accordance with standards or guidelines approved by a physician;

(3) Any notification of determination not to certify an admission or service or procedure must include the principal reason for the determination and the procedures to initiate an appeal of the determination;

(4) Utilization review agents shall maintain and make available a written description of the appeal procedure by which the enrollee or the provider of record may seek review of a determination by the utilization review agent. The appeal procedure shall provide for the following:

(A) On appeal, all determinations not to certify an admission, service, or procedure as being necessary or appropriate shall be made by a physician in the same or a similar general specialty as typically manages the medical condition, procedure or treatment under discussion as mutually deemed appropriate. For mental health and chemical dependency care, the person performing the utilization review in these appeal determinations must be both licensed at the independent practice level and in an appropriate mental health or chemical dependency discipline like that of the provider seeking authorization for the care denied;

(B) Utilization review agents shall complete the adjudication of appeals of determinations not to certify admissions, services, and procedures no later than thirty (30) days from the date the appeal is filed and the receipt of all information necessary to complete the appeal; and

(C) When an initial determination not to certify a health care service is made prior to or during an ongoing service requiring review, and the attending physician believes that the determination warrants immediate appeal, the attending physician shall have an opportunity to appeal that determination over the telephone on an expedited basis. A representative of a hospital or other health care provider or a representative of the enrollee or covered patient may assist in an appeal. Utilization review agents shall complete the adjudication on an expedited basis. Utilization review agents shall complete the adjudication of expedited appeals within forty-eight (48) hours of the date the appeal is filed and the receipt of all information necessary to complete the appeal. Expedited appeals which do not resolve a difference of opinion may be resubmitted through the standard appeal process;

(5) Utilization review agents shall make staff available by toll-free telephone at least forty (40) hours per week during normal business hours;

(6) Utilization review agents shall have a telephone system capable of accepting or recording incoming telephone calls during other than normal business hours and shall respond to these calls within two (2) working days;

(7) Utilization review agents shall comply with all applicable laws to protect the confidentiality of individual medical records;

(8) Physicians or psychologists making utilization review determinations shall have current licenses from a state licensing agency in the United States;

(9) Utilization review agents shall allow a minimum of twenty-four (24) hours after an emergency admission, service, or procedure for an enrollee or the enrollee's representative to notify the utilization review agent and request certification or continuing treatment for that condition; and

(10)(A) For outpatient mental health and chemical dependency care, the patient must register pursuant to the requirements of the policy or contract. After registration, the patient shall be approved for at least twelve (12) visits to a particular provider, except as otherwise provided in this section;

(B) Initial utilization review for such outpatient mental health or chemical dependency patients shall be limited to no more than a two (2) page form to be submitted via facsimile or internet and pursuant to state and federal privacy rules, security rules, and any final rules issued pursuant to the Health Insurance Portability and Accountability Act (HIPAA). After November 1, 2005, or sooner if required by HIPAA, the form shall be restricted to a single page. After November 1, 2005, the provider may no longer fax the form but is required to use the internet to submit necessary information if the utilization review agent so requires. In the event that the utilization review agent elects to restrict the submissions to the internet, provisions must be made to fax the information in the event of computer malfunction;

(C) After the initial utilization review, additional information or follow-up utilization review for outpatient mental health or chemical dependency patients shall be limited to no more than eighteen percent (18%) of the total number of outpatient mental health and chemical dependency patients' reviews performed by the utilization review agent for the previous calendar year adjusted for the difference of covered lives in this state for the present calendar year, or as otherwise required by the Utilization Review Accreditation Commission (URAC) or the National Committee for Quality Assurance (NCQA). The eighteen-percent limit shall not apply to utilization review applicable to at risk populations, patients seen more than two (2) visits a week and patients for which substance abuse is reported or suspected. Calls from reviews to providers for appointment follow-up calls or for the credentialing process shall also not be subject to the eighteen-percent limit;

(D) After utilization review as provided in this subdivision (a)(10), patients shall be authorized for at least twelve (12) additional visits or as otherwise recommended by the treatment plan;

(E) Nothing in this part shall be construed to require compliance with the final security and privacy rules of HIPAA prior to the compliance dates set by the secretary of health and human services; and

(F) Nothing in this part shall affect the policy or contract benefits nor shall it affect the Mental Health Parity Act, compiled in §§ 56-7-2601 and

56-7-2360.

(b) With the exception of those standards contained in subdivision (a)(10), the commissioner shall exempt from the standards of this section any utilization review agent who has received accreditation by URAC or NCQA.

56-6-1101. Part definitions.

For purposes of this part:

(1) "Commissioner" means the commissioner of commerce and insurance;

(2) "Customer" means a person who purchases portable electronics or services;

(3) "Department" means the department of commerce and insurance;

(4) "Enrolled customer" means a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics;

(5) "Location" means any physical location in this state or any web site, call center site, or similar location directed to residents of this state;

(6) "Portable electronics" means electronic devices that are portable in nature, the devices' accessories, and services related to the use of the devices;

(7)(A) "Portable electronics insurance" means insurance providing coverage for the repair or replacement of portable electronics which may provide coverage for portable electronics against any one (1) or more of the following causes of loss:

(i) Loss;

(ii) Theft;

(iii) Inoperability due to mechanical failure;

(iv) Inoperability due to malfunction;

(v) Damage; or

(vi) Other similar causes of loss.

(B) "Portable electronics insurance" does not include:

(i) A service contract or extended warranty providing coverage limited to the repair, replacement, or maintenance of property for the operational or structural failure of property due to a defect in materials, workmanship, accidental damage from handling, power surges, or normal wear and tear;

(ii) A policy of insurance covering a seller's or a manufacturer's obligations under a warranty; or

(iii) A homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar policy;

(8) "Portable electronics transaction" means:

(A) The sale or lease of portable electronics by a vendor to a customer; or

(B) The sale of a service related to the use of portable electronics by a vendor to a customer;

(9) "Supervising entity" means a business entity that is a licensed insurance producer or insurer; and

(10) "Vendor" means a person in the business of engaging in portable electronics transactions directly or indirectly.

56-6-1102. Requirement to hold a limited lines license to sell or offer coverage.

(a) A vendor is required to hold a limited lines license to sell or offer coverage under a policy of portable electronics insurance. A vendor who has met the requirements of this part shall be entitled to a limited lines business entity producer's license, without examination, authorizing the vendor to sell or offer coverage under a policy of portable electronics insurance.

(b) A limited lines license issued to a vendor under this section shall authorize any employee or authorized representative of the vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

(c) In connection with a vendor's initial application for licensure and at renewal, the vendor shall provide a list to the commissioner of all locations in this state at which the vendor offers coverage.

(d) Notwithstanding any law to the contrary, a license issued pursuant to this section shall authorize the licensee and its employees or authorized representatives to engage in activities permitted in this part.

56-6-1103. Availability of brochures or other written materials — Offer on periodic basis — Eligibility and underwriting standards.

(a) At every location where portable electronics insurance is offered to customers, brochures or other written materials shall be made available to a prospective customer that:

(1) Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage;

(2) State that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services;

(3) Summarize the material terms of the insurance coverage, including:

(A) The identity of the insurer;

(B) The identity of the supervising entity;

(C) The amount of any applicable deductible and how it is to be paid;

(D) Benefits of the coverage; and

(E) Key terms and conditions of coverage such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or non-original manufacturer parts or equipment;

(4) Summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable in the event the enrolled customer fails to comply with any equipment return requirements; and

(5) State that the enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium shall receive a refund of any applicable unearned premium.

(b) Notwithstanding any law to the contrary, portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor of portable

electronics for its enrolled customers.

(c) Eligibility and underwriting standards for customers electing to enroll in coverage shall be established for each portable electronics insurance program.

56-6-1104. Employees not subject to licensure under certain conditions.

(a) Notwithstanding any law to the contrary, the employees and authorized representatives of vendors may sell or offer portable electronics insurance to customers and shall not be subject to licensure as an insurance producer under this part; provided, that:

(1) The vendor obtains a limited lines license to authorize its employees or authorized representatives to sell or offer portable electronics insurance pursuant to § 56-6-1102;

(2) The insurer issuing the portable electronics insurance either directly supervises or appoints a supervising entity to supervise the administration of the program, including development of a training program for employees and authorized representatives of the vendors. The training required by this subdivision (a)(2) shall comply with the following:

(A) The training shall be delivered to employees and authorized representatives of a vendor who are directly engaged in the activity of selling or offering portable electronics insurance;

(B) The training may be provided in electronic form. If the training is conducted in an electronic form the supervising entity shall implement a supplemental education program regarding portable electronics insurance that is conducted and overseen by licensed employees of the supervising entity; and

(C) Each employee and authorized representative shall receive basic instruction concerning the portable electronics insurance offered to customers and the disclosures required under § 56-6-1103;

(3) No employee or authorized representative of a vendor of portable electronics shall advertise, represent, or otherwise hold himself or herself out as a non limited lines licensed insurance producer; and

(4) No employee or authorized representative of a vendor shall be compensated based primarily on the number of customers enrolled for portable electronics insurance coverage; provided, however, that the employee or authorized representative may receive compensation for activities under the limited lines license which is incidental to his or her overall compensation.

(b)(1) The charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics. Any charge to the customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the enrolled customer's bill. If the portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services the vendor shall clearly and conspicuously disclose to the enrolled customer that the coverage is included with the purchase or lease of the portable electronics or related services.

(2) Vendors billing and collecting such charges shall not be required to maintain such funds in a segregated account; provided, that the vendor is authorized by the insurer to hold such funds in a non-segregated account and remits such amounts to the supervising entity within sixty (60) days of

receipt.

(3) All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer.

(4) Vendors may receive compensation for billing and collection services.

56-6-1105. Violations.

If a vendor of portable electronics or its employee or authorized representative violates this part, the commissioner is authorized to:

(1) After notice and hearing, impose on a person's license pursuant to this part civil penalties not to exceed five hundred dollars ($500) per violation and five thousand dollars ($5,000) in the aggregate for such conduct; and

(2) After notice and hearing, impose on a person's license pursuant to this part other penalties that the commissioner deems necessary and reasonable to carry out the purpose of this part, including:

(A) Suspending the privilege of transacting portable electronics insurance pursuant to this part at specific business locations where violations have occurred; and

(B) Suspending or revoking the ability of individual employees or authorized representatives to act under a license issued pursuant to § 56-6-1102.

56-6-1106. Termination or change in terms and conditions by insurer.

Notwithstanding any other law to the contrary:

(1) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the policyholder and enrolled customers with at least thirty (30) days' notice;

(2) If the insurer changes the terms and conditions, then the insurer shall provide the vendor policyholder with a revised policy or endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating a change in the terms and conditions has occurred and a summary of material changes;

(3) Notwithstanding subdivision (1):

(A) An insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon fifteen (15) days' notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim thereunder; and

(B) An insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:

(i) For nonpayment of premium;

(ii) If the enrolled customer ceases to have active service with the vendor of portable electronics; or

(iii) If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within thirty (30) calendar days after exhaustion of the limit. However, if notice is not timely sent, enrollment shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer;

(4) If a portable electronics insurance policy is terminated by a policyholder, then the policyholder shall mail or deliver written notice to each

enrolled customer advising the enrolled customer of the termination of the policy and the effective date of termination. The written notice shall be mailed or delivered to the enrolled customer at least thirty (30) days prior to the termination; and

(5)(A) Whenever notice by an insurer is required pursuant to this section, the notice shall be in writing and may be mailed or delivered to the vendor of portable electronics at the vendor's mailing address and to its affected enrolled customers' last known mailing addresses on file with the insurer;

(B) If notice is mailed pursuant to this section, then the insurer or vendor of portable electronics, as the case may be, shall maintain proof of mailing in a form authorized or accepted by the United States postal service or other commercial mail delivery service;

(C) An insurer or vendor policyholder may comply with any notice required by this section by providing electronic notice to a vendor or its affected enrolled customers, as the case may be, by electronic means. If notice is accomplished through electronic means the insurer or vendor of portable electronics, as the case may be, shall maintain proof that the notice was sent.

56-6-1107. Licensure.

(a) A sworn application for a license under this part shall be made to and filed with the commissioner on forms prescribed and furnished by the department.

(b) The application shall:

(1) Provide the name, residence address, and other information required by the department for an individual that is designated by the applicant as the individual responsible for the vendor's compliance with the requirements of this part. Notwithstanding any other law, the individual required to be designated by the vendor pursuant to this section and § 56-6-106(b)(2) shall not be required to be a principal, officer or employee of the vendor but shall be a principal, officer or employee of the supervising entity who holds a current producer license in this state; and

(2) Provide the location of the applicant's home office.

(c) Initial licenses issued pursuant to this part shall be valid for a period of twenty-four (24) months and expire biennially on March 1 of the renewal year assigned by the commissioner.

(d)(1) Except as provided in subdivision (d)(2), each vendor of portable electronics licensed under this part shall pay to the commissioner a fee as prescribed by the commissioner, but in no event shall the fee exceed one thousand dollars ($1,000) for an initial portable electronics limited lines license and five hundred dollars ($500) for each renewal thereof.

(2) The fee prescribed for a vendor that is engaged in portable electronics transactions at ten (10) or fewer locations in this state shall not exceed one hundred dollars ($100) for an initial license and for each renewal thereof.

56-7-101. Contract of insurance — Definition — Restrictions and limitations — Exceptions.

(a) A contract of insurance is an agreement by which one party, for a consideration, promises to pay money or its equivalent, or to do some act of value to the assured, upon the destruction or injury, loss or damage of

something in which the other party has an insurable interest; and it is unlawful for any company to make any contract of insurance upon or concerning any property or interests or lives in this state, or with any resident of this state, or for any person, as insurance agent or insurance broker, to make, negotiate, solicit, or in any manner aid in the transaction of the insurance, unless and except as authorized under this title; but nothing contained in this chapter and chapters 1-4 and 6 of this title, with the exception of the Easy to Read Life and Health Insurance Policy Act, compiled in part 16 of this chapter, shall affect the rights and powers of corporations engaged in the transaction of life and casualty insurance upon the assessment plan.

(b)(1) Agreements made by a religious, charitable, or nonprofit corporation or association to accept donations of whole blood in return for a promise by the organization to furnish to the donor and the donor's immediate family, upon the happening of any illness or injury, benefits not exceeding one hundred dollars ($100) in value, payable either in cash or blood, shall not be deemed to be a contract of insurance within the meaning of this title.

(2) Agreements made by colleges or universities operating accredited medical schools, or by hospitals or clinics operated by or affiliated with the college or university under which the college or university, hospital, or clinic binds itself to indemnify physicians, nurses, other professional employees or faculty, or medical, nursing or allied health students of the college or university for the legal liability of the physician, nurse, or other professional health care employee, or student for loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or health care liability in rendering professional service by the employee or student shall not be deemed to be contracts of insurance within the meaning of this title. The college or university making the agreements shall be required to establish and maintain a distinct reserve fund with which basic health care liability coverage will be provided in an amount at least equivalent to the existing basic Joint Underwriting Association aggregate annual level of coverage.

(3) A contract entered into between a tax preparation service company and a taxpayer, providing for the tax preparation service company to pay the additional tax liability, penalties or interest imposed by a taxing authority on the taxpayer as a result of an error of the tax preparation service, shall not be deemed to constitute a contract of insurance, as long as the tax preparation service has secured, on a form approved by the commissioner, a surety bond from an insurance company licensed in this state for a penal sum in an amount to be determined by the commissioner, which amount shall be not less than one hundred thousand dollars ($100,000), but not more than five hundred thousand dollars ($500,000), with respect to the statewide operations of the tax preparation service and its franchisees engaged in the tax preparation business. In the alternative, the commissioner may accept a deposit of cash or securities in the amount of not less than one hundred thousand dollars ($100,000), but not more than five hundred thousand dollars ($500,000). This bond or deposit shall be subject to suit by the state and by any person who has a cause of action arising from a contract subject to this subdivision (b)(3).

(c) The commissioner may promulgate rules and regulations necessary or appropriate to carry out subdivision (b)(3), in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

56-7-115. Medical health care liability insurance — Availability for all classifications of practice.

(a) All insurance companies issuing health care liability insurance policies to physicians licensed to practice medicine in this state shall issue policies covering physicians of all classifications of practice; provided, that this subsection (a) shall not be construed to require the issuance of a policy contrary to established underwriting practices.

(b) This section shall not be construed to prevent an insurance company issuing health care liability insurance policies to physicians licensed in the state from limiting the amount of the coverage of the policies or from making a premium surcharge for the insurance in accordance with established underwriting practices.

56-7-134. Medical records release authorization.

(a) In connection with a claim for death benefits payable under a life insurance policy or an annuity contract, the following persons are authorized to execute a medical records release authorization that may be required by the insurance company that issued the life insurance policy or annuity contract:

(1) The personal representative of the decedent's estate, if any;

(2) A beneficiary of the death benefits named in the policy or contract; or

(3) A person who has filed an affidavit pursuant to § 30-4-103 in connection with the decedent's estate.

(b) Unless prohibited by federal law, a health care provider licensed under title 33, title 63 or title 68 shall honor a medical records release authorization executed in accordance with this section.

(c) Nothing in this section shall be construed as affecting the ability of a health care provider to charge for copies of medical records in accordance with any applicable law.

56-7-135. Rebuttable presumption.

(a) The signature of an applicant for or party to an insurance contract on an application, amendment, or other document stating the type, amount, or terms and conditions of coverage, shall create a rebuttable presumption that the statements provided by the person bind all insureds under the contract and that the person signing such document has read, understands, and accepts the contents of such document.

(b) The payment of premium for an insurance contract, or amendment thereto, by an insured shall create a rebuttable presumption that the coverage provided has been accepted by all insureds under the contract.

56-7-1001. Credentialing and contracting of health care providers by health insurance entities.

(a)(1) A health insurance entity, as defined in § 56-7-109, regardless of status as a participating organization of the Council on Affordable Quality Healthcare (CAQH) or its successor, shall notify the health care provider of the results of the provider's clean CAQH credentialing application and shall notify the health care provider as to whether or not the health insurance entity is willing to contract with that provider within ninety (90) calendar days after receipt of the completed application.

(2) A clean CAQH application means an application that has no defect, misstatement of facts, improprieties, including a lack of any required substantiating documentation, or particular circumstance requiring special treatment that impedes prompt credentialing.

(b) Unless otherwise required by a national accrediting body, a health insurance entity shall accept and begin processing a completed credentialing application, whether a CAQH or the health insurance entity's application, as early as ninety (90) calendar days before the anticipated employment start date of the health care provider.

(c) Unless otherwise required by a national health insurance entity accrediting body, a health insurance entity shall not mandate, in order to process a credentialing application, whether a CAQH or the health insurance entity's application, that a health care provider have an active health care liability insurance policy and bear the unnecessary costs of the premiums before the provider's employment start date.

(d) No health insurance entity shall reflect, in either written material sent to its members or on a web site available to its members, that a health care provider is an in-network provider or that the provider's credentialing application is pending approval until such time as a contract is signed by both the provider and the health insurance entity and the provider is eligible to be reimbursed as an in-network provider.

(e)(1) Nothing in this section requires a health insurance entity to contract with a provider if the health insurance entity and the provider do not agree on the terms and conditions of the provider contract.

(2) Nothing in this section creates a private cause of action against a health insurance entity.

56-7-2004. Maintenance of minimum essential health coverage.

Coverage made available under the plan shall constitute minimum essential health coverage for purposes of compliance with 26 U.S.C. § 5000A.

56-7-2005. Presumption that operating entity satisfies requirements regarding health care sharing ministries.

Operation consistent with the standards described in § 56-7-2003 shall create a presumption that the operating entity satisfies the requirements of 26 U.S.C. § 5000A(d)(2)(B)(ii).

56-7-2368. Health insurance coverage for hearing aids for children.

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

(1) "Child" or "children" means any person under eighteen (18) years of age; and

(2) "Hearing aid" means any wearable, nonexperimental, nondisposable instrument or device designed for the ear and used to aid or compensate for impaired human hearing, including earmolds and services necessary to select, fit, and adjust the hearing aid, but excluding batteries, cords, and other assistive listening devices such as FM systems.

(b) Every individual or group health insurance policy providing coverage on an expense-incurred basis, every policy or contract issued by a hospital or medical service corporation, every individual or group service contract issued

by a health maintenance organization, and every self-insured group arrangement to the extent not preempted by federal law, which is delivered, issued for delivery, or renewed in this state on or after January 1, 2012, shall provide coverage of up to one thousand dollars ($1,000) per individual hearing aid per ear, every three (3) years, for every child covered by such policy whether as a dependent of the policy holder or otherwise.

(c) The insured may choose a hearing aid exceeding one thousand dollars ($1,000) and pay the difference in cost above the amount of coverage required by this section. Reimbursement shall be provided according to the respective principles and policies of the insurer.

(d) The insurer may require the policyholder to provide a prescription by a licensed audiologist or physician or show proof through other suitable documentation of the need for a hearing aid, and this section shall not preclude the insurer from conducting managed care, medical necessity, or utilization review or prevent the operation of such policy provisions as deductibles, coinsurance, allowable charge limitations, coordination of benefits or provisions restricting coverage to services by licensed, certified or carrier-approved providers or facilities.

(e) This section shall not apply to insurance coverage providing benefits for the following:

(1) Hospital confinement indemnity;
(2) Disability income;
(3) Accident only;
(4) Long term care;
(5) Medicare supplement;
(6) Limited benefit health;
(7) Specified disease indemnity;
(8) Sickness or bodily injury or death by accident, or both; and
(9) Other limited benefit policies.

(f) This section shall not apply to TennCare or any successor program provided for in title 71, chapter 5.

56-7-2401. Reimbursement for services of optometrists, psychologists, podiatrists and social workers.

(a) Whenever any policy of insurance issued in this state provides for reimbursement for any service that is within the lawful scope of practice of a duly licensed optometrist, as defined in § 63-8-102; a licensed psychologist designated as a health service provider, as provided by title 63, chapter 11; licensed psychological examiner; certified psychological assistant supervised, as provided by title 63, chapter 11; licensed senior psychological examiner; a duly licensed podiatrist, as defined in § 63-3-101; a person duly licensed to engage in independent practice as a licensed clinical social worker in accordance with § 63-23-105; a duly licensed marital and family therapist, as defined in § 63-22-115; or a duly licensed professional counselor, as defined in § 63-22-150, the insured or other person entitled to benefits under the policy shall be entitled to reimbursement for the services, whether the services are performed by a duly licensed physician; by a duly licensed optometrist; by a duly licensed podiatrist; by a duly licensed psychologist designated as a health service provider; by a duly licensed psychological examiner supervised, as provided by title 63, chapter 11; by a certified psychological assistant super-

vised, as provided by title 63, chapter 11; by a duly licensed senior psychological examiner; by a duly licensed independent practitioner of social work; by a duly licensed marital and family therapist; or by a duly licensed professional counselor, not to exceed the percentage of reimbursement provided for psychiatrists in the policy, notwithstanding any other provision in the policy.

(b) Reimbursements shall be made in a timely manner.

(c) The provisions of this section relating to podiatric services shall apply to all contracts, plans or policies issued or renewed on or after July 1, 1981.

(d) As used in this section, "licensed psychologist designated as a health service provider" includes all psychologists previously licensed as clinical, school and counseling psychologists pursuant to title 63, chapter 11, prior to June 30, 1993, and who have been designated as health service providers.

56-7-2402. Participation by optometrists, podiatrists and social workers in medical, hospital, and hospital and medical service plans.

(a) Whenever any subscribers under any medical service plan or hospital service contract or hospital and medical service contract, as provided under chapters 27-29 of this title or any similar statutes, or any other persons covered by the plan or contract, are entitled to reimbursement for any services that are within the lawful scope of practice of a duly licensed optometrist as defined in § 63-8-102; a duly licensed podiatrist as defined in § 63-3-101; a person duly licensed to engage in independent practice as a licensed clinical social worker in accordance with § 63-23-105; the subscriber or other person shall be entitled to reimbursement for the services, whether the services are performed by a duly licensed physician; a duly licensed optometrist; a duly licensed podiatrist; or a person duly licensed to engage in independent practice as a licensed clinical social worker, notwithstanding any provision to the contrary in any other statute or in the plan or contract; and duly licensed optometrists and podiatrists shall be entitled to participate in the plans or contracts providing for the services to the same extent and subject to the same limitations as duly licensed physicians.

(b) The provisions of this section relating to podiatric services apply to all contracts, plans or policies issued or renewed on or after July 1, 1981.

56-7-2601. Health insurance — Coverage of mental illness.

(a) As used in this section:

(1) "Annual limit" means a dollar limitation on the total amount that may be paid for benefits in a twelve-month period under a health plan with respect to an individual or other coverage unit;

(2) "Clinical staff" means an individual on the community mental health center staff who performs as a part of the treatment team diagnostic and/or counseling services and who holds at least a master's degree in either of the disciplines of psychology, nursing, or social work and any required license; and

(3) "Community mental health center" means a private entity qualified as a tax exempt organization under § 501(c)(3) of the Internal Revenue Code, codified in 26 U.S.C. § 501(c)(3), or a public entity created by private act of the general assembly that:

(A) Is primarily engaged in providing services for the diagnosis and treatment of emotionally disturbed and mentally ill persons, has a

requirement that all mental health care be under a treatment plan approved and reviewed by a licensed physician or a licensed psychologist designated as a health care service provider, and has appropriate arrangements to assure that patients requiring medical services can be referred to a physician or hospital; and

(B) Has been licensed as a mental health clinic facility by the department of mental health and substance abuse services, or by the licensing board of the state in which the community mental health center is located.

(b) All other laws of this state notwithstanding, any individual, franchise, blanket or group policy of insurance issued pursuant to this title that provides hospital expense and surgical expense insurance and that is entered into, delivered, issued for delivery, or renewed, excepting individual insurance policy renewal, by agreement or otherwise, commencing on July 1, 1974, shall provide benefits for expense of residents of this state covered under the policy or plan, arising from psychiatric disorders, mental or nervous conditions, as described and defined in the Diagnostic Standard Manual of the American Psychiatric Association, alcoholism, drug dependence, both defined as mental illness in § 33-1-101, or the medical complication of mental illness or intellectual disability, unless the policy or plan of insurance specifically excludes or reduces these benefits. This subsection (b) shall not apply to group policies or plans to which § 56-7-2360 applies. The medical and hospital benefits and coverage provided for the disorders, conditions and complications, if any, shall not be denied because of confinement in a particular facility; provided, that the facility is either:

(1) A hospital licensed under title 33, chapter 2 or title 68, chapter 11, part 2, and accredited by the joint commission on the accreditation of hospitals; or

(2) A hospital owned or operated by the state that is especially intended for use in the diagnosis, care and treatment of psychiatric, mental or nervous disorders, nor shall the benefits and coverage be denied on the basis that physician's services were performed by physicians not on the staff of a particular facility, so long as those services were rendered while insureds were hospitalized in that facility.

(c)(1) After July 1, 1980, every insurer that proposes to issue a group hospital policy or a group major medical policy in this state and every nonprofit hospital and medical service plan corporation that proposes to issue group hospital, medical or major medical service plan contracts that provide coverage for the insured or the subscriber shall, in the case of outpatient expenses at a community mental health center, make available benefits as specified in this section for the care and treatment of mental, emotional or nervous disorders, alcoholism, drug dependence or the medical complication of mental illness or intellectual disability.

(2) The benefits required to be made available by this subsection (c) shall be a part of each group policy or group contract described in this section, unless the policyholder or group contract subscriber rejects in writing the coverage.

(3) When benefits as specified in this section are made available for treatment received at the community mental health center, the benefits that cover services rendered by a physician in accordance with the policy or service plan contract shall also be made available when services are rendered by a member of the clinical staff, so long as the community mental

health center has in effect a plan for quality assurance approved by the department of mental health and substance abuse services and the treatment is supervised by a licensed physician or a licensed psychologist designated as a health service provider. However, nothing in this subsection (c) may be construed to affect the license of a physician or psychologist designated as a health service provider providing the service or supervision. The benefits shall be provided at the usual and customary rates established by the community mental health center for the services rendered. However, the benefits provided shall be subject to deductibles and coinsurance factors that are not less favorable than for physical illness generally, and in no event shall coverage be required to be made available for more than thirty (30) outpatient visits per year.

(d) With respect to policies and contracts as described in subsection (c) that are delivered or issued for delivery in this state on or before July 1, 1980, each insurer and nonprofit hospital and medical service plan corporation shall notify the group policyholder or group contract holder of the availability of coverage described in subsection (c). The notification shall describe the benefits available and shall provide a means by which the policyholder or group contract holder may communicate acceptance or rejection of the coverage.

(e) All group hospital and major medical policies delivered or issued for delivery in this state after July 1, 1980, and all group hospital, medical and major medical service plans commencing in this state after July 1, 1980, that provide benefits for expenses of residents of the state arising from psychiatric disorders, mental or nervous conditions, alcoholism, drug dependence or medical complication of mental illness or intellectual disability, shall reimburse for these benefits, if any, when the benefits are provided at a facility that is:

(1) With respect to outpatient benefit, a community mental health center, or

(2) With respect to inpatient benefits, a community mental health center that has facilities for inpatient care and that has received a certificate of need from the Tennessee health facilities commission certifying the necessity of the facility if required by law.

(f) All individual, franchise, blanket, or group policies of insurance issued pursuant to this title that provide hospital expense and medical or surgical expense insurance and that are entered into, delivered, issued for delivery, or renewed, except individual insurance policy renewal, by agreement or otherwise, commencing on July 1, 1981, and that provide benefits for expenses of residents of the state arising from alcoholism, drug dependence or medical complication resulting from alcoholism, or drug dependence shall reimburse for these benefits, if any, when the benefits are provided at a facility that is a residential treatment facility licensed under title 33, chapter 2, part 4, and accredited by the joint commission on the accreditation of hospitals.

(g) Subject to § 56-7-2360, in general, with respect to group health plans issued by entities regulated pursuant to insurance law, for plan years beginning on or after January 1, 1998, certain mental health benefits are required as follows:

(1) As to either aggregate lifetime limits or annual limits or both, for a group health plan providing both medical and surgical benefits and mental health benefits:

(A) If the plan does not have a limit on substantially all medical and surgical benefits, the plan may not impose such a limit on mental health

benefits;

(B) If the plan has a limit on substantially all medical and surgical benefits, the plan shall either include mental health benefits under the limit applied to medical and surgical benefits or apply a separate limit to mental health benefits that is no less than the one applied to medical and surgical benefits; and

(C) If the plan has varying limits on different medical or surgical benefits, the plan shall apply an average limit to mental health benefits with the average to be computed based on the weighted average of the varying limits;

(2) No group health plan is required under this subsection (g) to provide mental health benefits;

(3) This subsection (g) shall not affect the terms and conditions related to the amount, duration or scope of mental health benefits except for aggregate lifetime limits and annual limits;

(4) This subsection (g) shall not apply to group health plans issued to small employers, defined as those with from two (2) to fifty (50) employees;

(5) This subsection (g) shall not apply if its application results in an increase in the cost of the coverage of at least one percent (1%);

(6) If the group health plan offers a participant two (2) or more benefit package options, this subsection (g) shall be applied separately to each option;

(7) For purposes of this subsection (g), "mental health benefits" does not include benefits for the treatment of substance abuse or chemical dependency;

(8) This subsection (g) shall not apply to benefits for services furnished on or after September 30, 2001; and

(9) The commissioner may promulgate reasonable rules and regulations necessary for the proper administration of this subsection (g).

56-7-2602. Alcoholism and drug dependence — Coverage for treatment.

(a) **Purpose.** The purpose of this section is to encourage consumers to avail themselves of basic levels of benefits under group health insurance policies and contracts for the care and treatment of alcohol and other drug dependency, and to preserve the rights of the consumer to select the coverage according to the consumer's medical-economic needs.

(b) **Availability of Coverage for Alcohol and Other Drug Dependency.**

(1) Insurers, nonprofit hospitals and medical service plan corporations and health maintenance organizations transacting health insurance in this state shall offer and make available under group policies, contracts and plans providing hospital and medical coverage on an expense-incurred, service or pre-paid basis, benefits for the necessary care and treatment of alcohol and other drug dependency that are not less favorable than for physical illness generally, subject to the same durational limits, dollar limits, deductibles and coinsurance factors, and that offer of benefits shall be subject to the right of the group policy or contract holder to reject the coverage or to select any alternative level of benefits if the right is offered by or negotiated with the insurer, service plan corporation or health mainte-

nance organization.

(2) Any benefits so provided shall be determined as if necessary care and treatment in an alcohol or other drug dependency treatment center were care and treatment in a hospital. For purposes of this section, "alcohol or other drug dependency treatment center" means a facility that provides a program for the treatment of alcohol or other drug dependency pursuant to a written treatment plan approved and monitored by a physician, and which facility is also:

(A) Affiliated with a hospital under a contractual agreement with an established system for patient referral;

(B) Licensed, certified or approved as an alcohol or other drug dependency treatment center by the department of mental health and substance abuse services; or

(C) Accredited as such a facility by the joint commission on accreditation of hospitals.

(c) **Applicability.** This section shall apply to group policies or contracts delivered or issued for delivery in this state more than one hundred twenty (120) days after October 1, 1982; but shall not apply to blanket, short term travel, accident only, limited or specified disease, individual conversion policies or contracts, or to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as medicare, 42 U.S.C. § 1395 et seq., or any other similar coverage under state or federal governmental plans.

56-7-2903. Creation of Access Tennessee health insurance pool — Board of directors — Advisory committee — Funding plan and plan of operation — Promulgation of rules — Errors and omissions by commissioner or board members. [Effective until June 30, 2015. See the Compiler's Notes.]

(a) There is created a nonprofit entity known as Access Tennessee to operate an insurance pool to provide health insurance coverage pursuant to this part. The pool shall be known as the Access Tennessee health insurance pool.

(b) Access Tennessee shall operate the pool subject to the supervision and control of a board of directors composed of fourteen (14) members. The commissioner shall, within ninety (90) days after July 1, 2006, give notice to all insurers of the time and place for the initial organizational meeting of the board. The board shall consist of the following members:

(1) The commissioner of finance and administration or the commissioner's designee;

(2) The commissioner of health or the commissioner's designee;

(3) The commissioner of mental health and substance abuse services or the commissioner's designee;

(4) One (1) representative of the Tennessee Hospital Association, selected by the commissioner;

(5) One (1) representative of the Tennessee Medical Association, selected by the commissioner;

(6) One (1) member involved primarily as a producer in the business of health insurance, selected by the commissioner;

(7) One (1) member of the general public, selected by the commissioner;

(8) One (1) member selected by the speaker of the house of

representatives;

(9) One (1) member selected by the speaker of the senate;

(10) One (1) representative of an employer of greater than or equal to five hundred (500) employees that is self-insured, selected by the commissioner;

(11) One (1) representative of an employer of less than five hundred (500) employees that is commercially insured, selected by the commissioner;

(12) One (1) representative of a hospital medical service corporation, selected by the commissioner, unless, pursuant to subsection (d), no such representative is able to serve, in which case this position shall be filled by a representative of another insurer;

(13) One (1) representative of an insurer other than a hospital medical service corporation, selected by the commissioner, unless, pursuant to subsection (d), no such representative is able to serve, in which case this position shall be filled by a representative of another insurer; and

(14) The commissioner of intellectual and developmental disabilities or the commissioner's designee.

(c) The commissioner and the speakers of the senate and the house of representatives, in making appointments to the board, shall strive to ensure that the membership of the board is representative of the state's geographic and demographic composition, with appropriate attention to the representation of women and minorities.

(d) No individual representing an entity selected to administer the pool, pursuant to § 56-7-2909, or its affiliates shall serve on the board. Any appointed board member who represents an entity or affiliate that has the intention of serving as administrator of the pool shall be prohibited from serving as the administrator, unless the board member provides written notice to the board of the entity's or affiliate's intent to bid on the contract for administrator. The notice shall be delivered to the board at least six (6) months prior to the release of any request for proposal (RFP) seeking to select or renew an administrator. In the event the notice is delivered, the board member shall simultaneously resign the board member's membership on the board.

(e) The commissioner shall, on an annual basis, designate one (1) member of the board to serve as chair and one (1) member of the board to serve as vice chair.

(f) The board members selected pursuant to subdivisions (b)(4), (5) and (6) shall serve for an original term of one (1) year. The board members selected pursuant to subdivisions (b)(8), (9), (12) and (13) shall serve for an original term of two (2) years. The board members selected pursuant to subdivisions (b)(7), (10) and (11) shall serve for an original term of three (3) years. Thereafter, all board members selected pursuant to subdivisions (b)(4) - (11) shall serve for a term of three (3) years. Board members appointed pursuant to subdivisions (b)(12) and (13) shall not be appointed to the board until after Access Tennessee awards an initial contract to an administrator of the pool.

(g) Board members shall receive no compensation, but shall be reimbursed for all travel expenses in accordance with state travel regulations.

(h) Vacancies in the board shall be filled by the appropriate appointing authority. Board members may be removed by their respective appointing authority for cause.

(i) In order to assist the board, there shall be an advisory committee consisting of five (5) representatives of insurers that offer health insurance coverage in the state of Tennessee who shall be selected by the commissioner.

The advisory committee may provide advice on insurance related issues, including, but not limited to, benefit design and market impact of the plans created and offered by Access Tennessee.

(j) The board, on an annual basis, shall submit to the commissioner and the comptroller of the treasury a funding plan and a plan for operation of the pool and any amendments necessary or suitable to assure the fair, reasonable and efficient administration of the pool and its financial solvency, based upon timely and accurate actuarial assumptions. The plan of operation shall become effective upon approval, in writing, by the commissioner and the comptroller of the treasury.

(k) The commissioner and the comptroller of the treasury shall approve the funding plan and the plan of operation, if they determine that the plans assure the financial solvency of the pool, the efficient administration of the pool, and otherwise are in compliance with this part.

(*l*) If the board fails to submit a suitable plan of operation within one hundred eighty (180) days after the appointment of the board or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner may initiate actions necessary or advisable to effectuate this part. The actions shall continue in effect until modified by the commissioner or superseded by a plan of operation submitted by the board and approved by the commissioner and the comptroller. To the extent that the actions include the promulgation of rules to effectuate this part, the rules shall be promulgated as public necessity rules pursuant to § 4-5-209.

(m) The plan of operation shall:

(1) Establish procedures for operation of the pool;

(2) Establish procedures for selecting an administrator, in accordance with § 56-7-2909;

(3) Establish procedures to create a fund, under management of the board, for administrative expenses;

(4) Establish procedures for the handling, accounting, and auditing of assets, moneys and claims of the pool and the pool administrator;

(5) Develop and implement a program to publicize the existence of the pool, the eligibility requirements, and procedures for enrollment, and to maintain public awareness of the pool;

(6) Establish procedures under which applicants and participants may have grievances reviewed by a grievance committee appointed by the board. The grievances shall be reported to the board after completion of the review. The board shall retain all written complaints regarding the plan for at least three (3) years;

(7) Establish procedures to implement the requirements of § 56-7-2909(g); and

(8) Provide for other matters as may be necessary and proper for the execution of the board's powers, duties and obligations under this part.

(n) The funding plan shall:

(1) Establish premium rates for the upcoming year, pursuant to § 56-7-2911(a);

(2) Establish an assessment rate for insurers and insurance arrangements, pursuant to § 56-7-2911(a)(2); provided, however, that the total amount of the assessments authorized under § 56-7-2911(a)(2) for a fiscal year shall not exceed the amount appropriated by the state to the pool for that same fiscal year; and

(3) Identify other available funds for the pool, including any legislative appropriations and federal funding.

(o) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the commissioner or the board members, or any of their employees or agents, for any omission or any action taken by them within the scope of their duties arising from this part, except for willful, malicious or criminal acts or omissions done for personal gain.

56-7-3002. Part definitions. [Effective until June 30, 2015. See the Compiler's Notes.]

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

(1) [Deleted by 2012 amendment.]

(2) "Commissioner" means the commissioner of finance and administration;

(3) "Contractor" means a health insurance carrier or third party administrator that enters into a contract with the department pursuant to § 56-7-3007 to offer a plan to eligible individuals; provided, however, that any such insurance carrier or administrator shall have at least a "B+" rating by the A.M. Best Company, where available, or a rating determined by the commissioner to be equivalent, issued by an independent insurance company rating organization;

(4) "Contributing employer" means an employer that has, pursuant to § 56-7-3013, elected to contribute toward the premiums of one (1) or more of its employees who have enrolled in the program;

(5) "Department" means the department of finance and administration;

(6) "Dependent" means a dependent of an eligible individual, as defined by the department;

(7) "Eligible individual" means an individual who meets the eligibility criteria established by the department pursuant to § 56-7-3005;

(8) "Enrollee" means an eligible individual or a dependent who is enrolled in a plan;

(9)(A) "Health benefits coverage" includes medical insurance in force currently or in force during the past six (6) months that would make a participating employer or enrollee ineligible pursuant to § 56-7-3005. Health benefits coverage shall include, but not be limited to, basic medical coverage (hospitalization plans), major medical insurance, comprehensive medical insurance, short-term medical policies, limited-benefit plans, mini-medical plans and high deductible health plans with health savings accounts. Health benefits coverage shall not include catastrophic health insurance plans that only provide medical services after satisfying a deductible in excess of fifteen thousand dollars ($15,000). Additionally, health benefits coverage shall not include medical insurance that is available to an enrollee pursuant either to the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, Pub. L. No. 99-272, compiled in 29 U.S.C. § 1161 et seq. and that the individual declined, or to § 56-7-2312 et seq. and that the individual declined;

(B) This subdivision (9) shall be repealed midnight June 30, 2015;

(10) "Health insurance carrier" means an entity that is authorized to provide health insurance coverage in this state in accordance with this title, including, but not limited to, an insurance company, a health maintenance

organization, a nonprofit hospital and medical service corporation, and a preferred provider organization. For purposes of this part, "health insurance carrier" shall also include a plan described in § 56-2-121(a); provided, that nothing in this part shall be construed to modify or eliminate the exemption conferred on such plans by § 56-2-121(a);

(11)(A) "Involuntary loss of coverage" means the loss of health benefits coverage arising from, but not limited to, the following circumstances:

(i) A separation from employment, voluntary or involuntary;

(ii) A health insurance carrier's cancellation of group or individual health benefits coverage for reasons other than premium nonpayment, fraud or misrepresentation;

(iii) A health insurance carrier's decision to no longer sell small group health benefits coverage; or

(iv) The loss of eligibility for TennCare or CoverKids;

(B) "Involuntary loss of coverage" shall not include situations in which the primary insured dropped dependent spouse or dependent child or children from the health benefits coverage policy;

(C) This subdivision (11) shall be repealed midnight June 30, 2015;

(12) "Low income employee" means an employee whose income, as defined by the department, is less than two hundred fifty percent (250%) of the federal poverty level, or such other amount as the department may specify;

(13) "Participating small employer" means an employer with fifty (50) or fewer employees, a significant proportion of whom are low income employees, that meets the eligibility criteria established pursuant to § 56-7-3006(a);

(14) "Plan" means the health benefits coverage offered by a contractor to eligible individuals;

(15) "Program" means the Cover Tennessee program established pursuant to this part; and

(16) "Third party administrator" means an entity that, on behalf of a health insurance carrier, employer or other entity, provides health insurance coverage to individuals in this state, receives or collects charges, contributions or premiums for, or adjudicates, processes or settles claims in connection with, any type of health benefit provided in, or as an alternative to, health insurance coverage.

(b) The definitions of "health benefits coverage" and "involuntary loss of coverage" in subsection (a) shall be repealed midnight June 30, 2015. Pursuant to § 56-7-3028, the remaining definitions in subsection (a) shall be repealed on June 30, 2015.

56-7-3004. [Repealed.]

56-8-104. Unfair trade practices defined.

The following practices are defined as unfair trade practices in the business of insurance by any person:

(1) **Misrepresentations and False Advertising of Insurance Policies.** Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation, omission or comparison that:

(A) Misrepresents the benefits, advantages, conditions or terms of any

policy;

(B) Misrepresents the dividends or share of the surplus to be received on any policy;

(C) Makes a false or misleading statement as to the dividends or share of surplus previously paid on any policy;

(D) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(E) Uses any name or title of any policy or class of policies misrepresenting the true nature of the policy or class of policies;

(F) Is a misrepresentation, including any intentional misquote of premium rate, for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion or surrender of any policy;

(G) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any policy; or

(H) Misrepresents any policy as being shares of stock;

(2) **False Information and Advertising Generally.** Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any insurer in the conduct of its insurance business, that is untrue, deceptive or misleading;

(3) **Defamation.** Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature that is false, or maliciously critical of or derogatory to the financial condition of any insurer, and that is calculated to injure the insurer;

(4) **Boycott, Coercion and Intimidation.**

(A) Entering into any agreement to commit, or by any concerted action committing, any act or boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in, the business of insurance; or

(B) By any act of boycott, coercion or intimidation, monopolizing or attempting to monopolize any part of the business of insurance; provided, that nothing in this subdivision (4)(B) shall be interpreted as defining or determining as an unfair method of competition or any unfair or deceptive act or practice in the business of insurance any act of boycott, coercion or intimidation on the part of any person, unless the act is committed in connection with an intention on the part of the person to monopolize, or attempt to monopolize, any material part of the business of insurance; and provided further, that no insurance company shall be held to have violated this subdivision (4)(B) because of any act of a producer of that company, which act has not been authorized or approved or acquiesced in by the company;

(5) **False Statements and Entries.**

(A) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to

any person, or placing before the public, or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of an insurer; or

(B) Knowingly making any false entry of a material fact in any book, report or statement of any insurer or knowingly omitting to make a true entry of any material fact pertaining to the business of the insurer in any book, report or statement of the insurer, or knowingly making any false material statement to any insurance department official;

(6) **Stock Operations and Advisory Board Contracts.** Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to purchase insurance;

(7) **Unfair Discrimination.**

(A) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any life insurance policy or annuity or in the dividends or other benefits payable on any policy or annuity, or in any other of the terms and conditions of the policy;

(B)(i) Refusing life insurance to, refusing to continue life insurance of, or limiting the amount, extent, or kind of life insurance coverage available to an individual based on the individual's past lawful travel experiences; or

(ii)*(a)* Refusing life insurance to, refusing to continue life insurance of, limiting the amount, extent, or kind of life insurance available to an individual, or determining the premium of life insurance based on the individual's future lawful travel plans unless:

(1) The risk of loss for individuals who travel to a specified destination at a specified time is reasonably anticipated to be greater than if the individuals did not travel to that destination at that time; and

(2) The risk classification is based on sound actuarial principles and actual or reasonably anticipated experience;

(b) An action shall be deemed to meet the requirements for exemption under subdivision (7)(B)(ii)(*a*) if it is taken because either one (1) of the following is true with respect to the travel destination:

(1) The director of the centers for disease control and prevention of the department of health and human services has issued alerts or warnings regarding serious health-related conditions or an epidemic or pandemic alert or response; or

(2) There is an ongoing armed conflict involving the military of a sovereign nation foreign to the destination;

(iii)*(a)* The commissioner is authorized to promulgate rules necessary to implement this subdivision (7)(B) and is authorized to provide for limited exceptions that are based upon national or international emergency conditions that affect the public health, safety, and welfare and that are consistent with public policy;

(b) An insurer shall make any pertinent underwriting guidelines and supporting analyses available to the commissioner on request;

(C) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any accident or health insurance policy or in the benefits payable under any accident or health insurance policy, or in any of the terms or conditions of the policy, or in any other manner;

(D) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless the action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience;

(E) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on the residential property risk, or the personal property contained in the residential property, solely because of the age of the residential property;

(F) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex, race, religion, national origin, marital status, income, or educational background of the individual; however, nothing in this subdivision (7) shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits and nothing shall prohibit price distinctions between persons pursuant to underwriting and actuarial principles;

(G) To terminate, or to modify coverage or to refuse to issue or refuse to renew any property or casualty policy solely because the applicant or insured or any employee of either is mentally or physically impaired; provided, that this subdivision (7) shall not apply to health care liability insurance or accident and health insurance sold by a casualty insurer; and, provided further, that this subdivision (7) shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance or renewal of any insurance policy or contract; or

(H) Refusing to insure solely because another insurer has refused to write a policy, or has canceled or has refused to renew an existing policy in which that person was the named insured. Nothing contained in this subdivision (7)(H) shall prevent the termination of an excess insurance policy on account of the failure of the insured to maintain any required underlying insurance;

(8) **Rebates.**

(A) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any policy of insurance, including, but not limited to, any life insurance policy or annuity, or accident and health insurance or other insurance, or agreement as to the contract other than as plainly expressed in the policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to the policy, any rebate of premiums payable on the policy, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the

policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to the policy or annuity or in connection with the policy or annuity, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the policy;

(B) Nothing in subdivision (7) or this subdivision (8)(A) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) In the case of life insurance policies or annuities, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(ii) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously, for a specified period, made premium payments directly to an office of the insurer in an amount that fairly represents the saving in collection expenses;

(iii) Readjusting the rate of premium for a group insurance policy based on the loss or expense under the group insurance policy, at the end of the first or any subsequent policy year of insurance under the group insurance policy, that may be made retroactive only for the policy year; or

(iv) Offering a child passenger restraint system or a discount in premium equal to the amount of the purchase price of a child passenger restraint system to policyholders, when the purpose of the restraint system is the safety of a child and complies with § 55-9-602;

(9) **Prohibited Group Enrollments.** No insurer shall offer more than one (1) group policy of insurance through any person unless the person is licensed, at a minimum, as a limited lines producer; however, this prohibition shall not apply to employer/employee relationships, nor to any such enrollments;

(10) **Failure to Maintain Marketing and Performance Records.** Failure of an insurer to maintain its books, records, documents and other business records in such an order that data regarding claims, rating, underwriting and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year and the two (2) preceding years shall be maintained;

(11) **Failure to Maintain Complaint Handling Procedures.** Failure of any insurer to maintain a complete record of all the complaints it received since the date of its last examination under § 56-1-408. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For purposes of this subdivision (11), "complaint" means a written communication expressing dissatisfaction or disagreement with the decision or action of an insurer; provided, however, that a communication submitted as part of the insurer's usual and customary claims process shall not be considered as a complaint;

(12) **Misrepresentation in Insurance Applications.** Making false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money or other benefit from any provider or individual person;

(13) **Failure to File or to Certify Information Regarding the Endorsement or Sale of Long-term Care Insurance.** Failure of any insurer to:

(A) File with the insurance department the following material:

(i) The policy and certificate;

(ii) A corresponding outline of coverage; and

(iii) All advertisements requested by the insurance department; or

(B) Certify annually that the association has complied with the responsibilities for disclosure, advertising, compensation arrangements, or other information required by the commissioner, as set forth by rule;

(14) **Failure to Provide Claims History.**

(A) Failure of a company issuing property and casualty insurance to provide the following loss information for the three (3) previous policy years to the first named insured within thirty (30) days of receipt of the first named insured's written request:

(i) On all claims, date and description of occurrence, and total amount of payments; and

(ii) For any occurrence not included in subdivision (14)(A)(i), the date and description of occurrence;

(B) Should the first named insured be requested by a prospective insurer to provide detailed loss information in addition to that required under subdivision (14)(A), the first named insured may mail or deliver a written request to the insurer for the additional information. No prospective insurer shall request more detailed loss information than reasonably required to underwrite the same line or class of insurance. The insurer shall provide information under this subdivision (14)(B) to the first named insured as soon as possible, but in no event later than twenty (20) days of receipt of the written request. Notwithstanding any other provision of this section, no insurer shall be required to provide loss reserve information, and no prospective insurer may refuse to insure an applicant solely because the prospective insurer is unable to obtain loss reserve information;

(C) The commissioner is authorized to promulgate rules to exclude the provision of the loss information as outlined in subdivision (14)(A) for any line or class of insurance where it can be shown that the information is not needed for that line or class of insurance, or where the provision of loss information otherwise is required by law;

(D) Information provided under subdivision (14)(B) shall not be subject to discovery by any party other than the insured, the insurer and the prospective insurer;

(15) **Unfair Replacement Transaction Practices.** Replacing a life insurance policy or an annuity contract in a manner contrary to rules promulgated by the commissioner pursuant to this part;

(16) **Unfair Utilization of Proprietary Information.** With respect to any policy of insurance underwritten in a pool, residual market mechanism, joint underwriting authority or assigned risk plan or through a plan depopulation initiative or other similar program, any information contained

in a policy application or obtained in the servicing of such a policy of insurance cannot be used in any manner by the servicing carrier or its representatives for the purpose of soliciting any form of insurance, except when permission to use the information is granted by the commissioner on any specific risk;

(17) **Changing Classification and Rate After Policy Expiration or Renewal.** With respect to commercial risk insurance, making a change in the classification or rates either more than one (1) year after the policy's renewal date or the expiration date if the policy was not renewed without the written consent of the insured; provided, that no consent is necessary if the change is in the favor of the insured. This subdivision (17) does not apply where the insured has failed to cooperate, given misleading information, or made material misrepresentations or omissions;

(18) **Preferences or Distinctions in Certain Insurance Transactions prohibited.**

(A) Making, offering to make, or permitting any preference or distinction in property, marine, casualty, or surety insurance as to form or policy, certificate, premium, rate, benefits, or conditions of insurance, based upon membership, nonmembership, or employment of any person or persons by or in any particular group, association, corporation, or organization, or making the preference or distinction available in any event based upon any fictitious grouping of persons;

(B) The restrictions and limitations of this subdivision (18) do not extend or apply to life, health and accident, disability or workers' compensation insurance or to plans to provide legal services. Nothing in this subdivision (18) shall apply to any domestic company that confines its insurance business and operations to this state and to the provision of insurance solely for the benefit of its members, or members of its parent or sponsoring organization;

(C) Notwithstanding any other provision of this title, dues paid before or after March 22, 1996, to a nonprofit association, membership in which entitles the members to apply for insurance from insurance companies described in subdivision (18)(B), shall not be considered as gross premium or consideration for insurance;

(D) Notwithstanding any other provision of this title to the contrary, an insurer may make, offer to make, or permit a preference or distinction in property, marine, casualty or surety insurance as to form or policy, certificate, premium, rate, benefits or conditions of insurance based upon membership in an association of professionals with more than five thousand (5,000) dues-paying members in this state with members residing or practicing in at least eighty (80) counties within the state;

(19) **Disclosure of Nonpublic Personal Information.**

(A) Disclosing nonpublic personal information contrary to Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, compiled in 15 U.S.C. § 6801 et seq., or violating a rule lawfully promulgated under this part;

(B)(i) The commissioner shall not impose civil penalties against, or revoke or suspend the license of, a person who violates subdivision (19)(A), unless the violator intentionally violated subdivision (19)(A) or committed violations of subdivision (19)(A) in sufficient number as to indicate a lack of the use of due diligence on the part of the violator in

complying with subdivision (19)(A);

(ii) For purposes of subdivision (19)(A):

(a) "Nonpublic personal information" means nonpublic personal information as defined in Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102; and

(b) "Person" means an entity or individual holding or required by law to hold a certificate of authority or license, or the functional equivalent of a certificate of authority or license, under this title;

(C) Any rules promulgated pursuant to this subdivision (19) shall be no more restrictive than Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102;

(20) **False, Misleading, Deceptive or Unfair Practices Concerning Sales to Members of the Armed Forces.** Notwithstanding any other provision in this title, the commissioner shall have the authority to adopt rules to protect service members of the United States armed forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair; and

(21)(A) **Unauthorized Use of Lender Information.** It is unlawful for any person to make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster or over the Internet or any radio or television, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the sale, distribution, offering for sale or advertising of any loan, refinance, insurance or any other product or service that is untrue, deceptive, or misleading.

(B) It is unlawful for any person to commit any of the unlawful acts prohibited in § 45-2-1709(a)(1)(D) or (E).

(C) For purposes of this subdivision (21), "lender" means any bank, savings and loan association, savings bank, trust company, credit union, industrial loan and thrift company, mortgage company, mortgage broker, or any subsidiary or affiliate of a bank, savings and loan association, savings bank, trust company, credit union, industrial loan and thrift company, mortgage company, or mortgage broker.

56-9-103. Chapter definitions.

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

(1) "Ancillary state" means any state other than a domiciliary state;

(2) "Commissioner" means the commissioner of commerce and insurance;

(3) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent;

(4) "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving the insurer, and any summary proceeding under § 56-9-201;

(5) "Doing business" includes any of the following acts, whether effected by mail or otherwise:

(A) The issuance or delivery of contracts of insurance to persons resident in this state;

(B) The solicitation of applications for the contracts, or other negotiations preliminary to the execution of the contracts;

(C) The collection of premiums, membership fees, assessments or other consideration for the contracts;

(D) The transaction of matters subsequent to execution of the contracts and arising out of them; or

(E) Operating under a license or certificate of authority, as an insurer, issued by the department of commerce and insurance;

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry;

(7) "Fair consideration" is given for property or an obligation:

(A) When in exchange for the property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or

(B) When the property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained;

(8) "Foreign country" means any other jurisdiction not in any state;

(9) "Foreign guaranty association" means any entities similar to a guaranty association now in existence in or hereafter created by the legislature of any other state;

(10) "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding;

(11) "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all the property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets;

(12) "Guaranty association" means the Tennessee insurance guaranty association created by chapter 12, part 1 of this title, the life and health insurance guaranty association created by chapter 12, part 2 of this title, and any other similar entity now or hereafter created by the general assembly of this state for the payment of claims of insolvent insurers;

(13) "Insolvency" or "insolvent" means:

(A) For an insurer issuing only assessable fire insurance policies:

(i) The inability to pay any obligation within thirty (30) days after it becomes payable; or

(ii) If an assessment is made within thirty (30) days after the date, the inability to pay the obligation thirty (30) days following the date specified in the first assessment notice issued after the date of loss pursuant to § 56-20-106;

(B) For any other insurer, that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities, plus the greater of:

(i) Any capital and surplus required by law for its organization; or

(ii) The total par or stated value of its authorized and issued capital stock;

(C) As to any insurer licensed to do business in this state as of July 1, 1991, that does not meet the standard established under subdivision

(13)(B), "insolvency" or "insolvent" means, for a period not to exceed three (3) years from July 1, 1991, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities, plus any required capital contribution ordered by the commissioner under the insurance law; and

(D) For purposes of this subdivision (13), "liabilities" include, but are not limited to, reserves required by statute or by department general regulations or specific requirements imposed by the commissioner upon a subject company at the time of admission or subsequent thereto;

(14) "Insurer" means any person who has done, purports to do, is doing or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by, any insurance commissioner. For purposes of this chapter, any other persons included under § 56-9-102 are deemed to be insurers;

(15) "Netting agreement" means:

(A) A contract or agreement, including terms and conditions incorporated by reference in it, including a master agreement, which master agreement, together with all schedules, confirmations, definitions, and addenda to it and transactions under any of them, shall be treated as one (1) netting agreement, that documents one (1) or more transactions between the parties to the agreement for or involving one (1) or more qualified financial contracts and that provides for the netting, liquidation, setoff, termination, acceleration, or close-out, under or in connection with one (1) or more qualified financial contracts or present or future payment or delivery obligations or payment or delivery entitlements under one (1) or more qualified financial contracts, including liquidation or close-out values relating to those obligations or entitlements, among the parties to the netting agreement;

(B) Any master agreement or bridge agreement for one (1) or more master agreements described in subdivision (15)(A); or

(C) Any security agreement or arrangement or other credit enhancement or guarantee or reimbursement obligation related to any contract or agreement described in subdivision (15)(A) or (15)(B); provided, that any contract or agreement described in subdivision (15)(A) or (15)(B) relating to agreements or transactions that are not qualified financial contracts shall be deemed to be a netting agreement only with respect to those agreements or transactions that are qualified financial contracts;

(16) "Preferred claim" means any claim with respect to which the terms of this chapter accord priority of payment from the general assets of the insurer;

(17)(A) "Qualified financial contract" means any commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the commissioner determines to be a qualified financial contract for the purposes of this chapter; provided, that the insurer entered into such contract or agreement in accordance with:

(i) Section 56-3-303(a)(21); and

(ii) The insurer's derivative instruments use plan that has been approved by the commissioner pursuant to § 56-3-303(a)(21);

(B) As used in subdivision (17)(A), "commodity contract" means:

(i) A contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade or contract market under the Commodity Exchange Act, compiled in 7 U.S.C. § 1 et seq., or a board of trade outside the United States;

(ii) An agreement that is subject to regulation under § 23 of the Commodity Exchange Act, compiled in 7 U.S.C. § 23, as amended from time to time, and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract;

(iii) An agreement or transaction that is subject to regulation under § 6c(b) of the Commodity Exchange Act, compiled in 7 U.S.C. § 6c(b), as amended from time to time, and that is commonly known to the commodities trade as a commodity option;

(iv) Any combination of the agreements or transactions referred to in this subdivision (17)(B); or

(v) Any option to enter into an agreement or transaction referred to in this subdivision (17)(B);

(C) As used in subdivision (17)(A), "forward contract," "repurchase agreement," "securities contract," and "swap agreement" have the meanings set forth in the Federal Deposit Insurance Act, compiled in 12 U.S.C. § 1821(e)(8)(D), as amended from time to time;

(18) "Receiver" means receiver, liquidator, rehabilitator or conservator as the context requires;

(19) "Reciprocal state" means any state other than this state in which in substance and effect §§ 56-9-307(a), 56-9-404, 56-9-405 and 56-9-407 — 56-9-409 are in force, and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers;

(20)(A) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets.

(B) "Secured claim" also includes claims that have become liens upon specific assets by reason of judicial process;

(21) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any claim secured by general assets;

(22) "State" means any state, district or territory of the United States and the Panama Canal Zone; and

(23) "Transfer" includes the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest therein, or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

56-9-338. Netting agreements and qualified financial contracts with insurers.

(a)(1) Notwithstanding any other provision of this chapter, including any other provision of this chapter permitting the modification of contracts, or any other state law to the contrary, no person shall be stayed or prohibited from exercising:

(A) A contractual right to cause the termination, liquidation, acceleration, or close-out of obligations under or in connection with any netting agreement or qualified financial contract with an insurer because of:

(i) The insolvency, financial condition, or default of the insurer at any time, provided that the right is enforceable under another law other than this chapter; or

(ii) The commencement of a formal delinquency proceeding under this chapter;

(B) Any right under a pledge, security, collateral, reimbursement or guarantee agreement or arrangement or any other similar security arrangement, or arrangement or other credit enhancement relating to one (1) or more netting agreements or qualified financial contracts; or

(C) Subject to § 56-9-319, any right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with one (1) or more qualified financial contracts where the counterparty or its guarantor is organized under the laws of the United States or a state or a foreign jurisdiction approved by the Securities Valuation Office of the National Association of Insurance Commissioners as eligible for netting.

(2) Notwithstanding any other provision of this chapter, including any other provision of this chapter permitting the modification of contracts, or any other state law to the contrary, if a counterparty to a master netting agreement or a qualified financial contract with an insurer subject to a proceeding under this chapter terminates, liquidates, closes out, or accelerates the agreement or contract, damages shall be measured as of the date or dates of termination, liquidation, close-out, or acceleration; the amount of a claim for damages shall be actual direct compensatory damages calculated in accordance with subsection (f).

(b)(1) Upon termination of a netting agreement or qualified financial contract, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under this chapter shall be transferred to, or on the order of, the receiver for the insurer, even if the insurer is the defaulting party, notwithstanding any walkaway clause in the netting agreement or qualified financial contract.

(2) For purposes of this subsection (b), "walkaway clause" means a provision in a netting agreement or a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from one of the parties in accordance with its terms upon termination, liquidation, or acceleration of the netting agreement or qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of the party's status as a nondefaulting party.

(3) Any limited two-way payment or first method provision in a netting agreement or qualified financial contract with an insurer that has defaulted

shall be deemed to be a full two-way payment or second method provision as against the defaulting insurer. Any such property or amount shall, except to the extent it is subject to one or more secondary liens or encumbrances, or rights of netting or setoff, be a general asset of the insurer.

(c) In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under this chapter, the receiver shall either:

(1) Transfer to one party, other than an insurer subject to a proceeding under this chapter, all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding, including:

(A) All rights and obligations of each party under each netting agreement and qualified financial contract; and

(B) All property, including any guarantees or other credit enhancement, securing any claims of each party under each netting agreement and qualified financial contract; or

(2) Transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in subdivision (c)(1), with respect to the counterparty and any affiliate of the counterparty.

(d)(1) If a receiver for an insurer makes a transfer of one (1) or more netting agreements or qualified financial contracts, then the receiver shall use its best efforts to notify any person who is party to the netting agreements or qualified financial contracts of the transfer by twelve o'clock (12:00) noon, the receiver's local time, on the business day following the transfer.

(2) For purposes of this subsection (d), "business day" means a day other than a Saturday, Sunday, or any day on which either the New York Stock Exchange or the federal reserve bank of New York is closed.

(e) Notwithstanding any other provision of this chapter, a receiver may not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract, or any pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract, that is made before the commencement of a formal delinquency proceeding under this chapter. However, a transfer may be avoided under § 56-9-315 if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

(f)(1) In exercising the receiver's rights of disaffirmance or repudiation with respect to any netting agreement or qualified financial contract to which an insurer is a party, the receiver for the insurer shall either:

(A) Disaffirm or repudiate all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding; or

(B) Disaffirm or repudiate none of the netting agreements and qualified financial contracts referred to in subdivision (f)(1)(A), with respect to the person or any affiliate of the person.

(2)(A) Notwithstanding any other provision of this chapter, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or immediately preceding conservation or rehabilitation case shall be determined and

shall be allowed or disallowed as if the claim had arisen before the date of the filing of the petition for liquidation or, if a conservation or rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of the filing of the petition for conservation or rehabilitation. The amount of the claim shall be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract.

(B) "Actual direct compensatory damages" does not include punitive or exemplary damages, damages for lost profit or lost opportunity, or damages for pain and suffering, but does include normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives, securities, or other market for the contract and agreement claims.

(g) As used in this section, "contractual right" includes any right set forth in a rule or bylaw of a derivatives clearing organization as defined in the Commodity Exchange Act, compiled in 7 U.S.C. § 1a, as amended from time to time, a multilateral clearing organization as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991, compiled in 12 U.S.C. § 4421, as amended from time to time, a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, compiled in 7 U.S.C. § 7b-1, as amended from time to time, a derivatives transaction execution facility registered under the Commodity Exchange Act, compiled in 7 U.S.C. § 7a, as amended from time to time, or a board of trade as defined in the Commodity Exchange Act, compiled in 7 U.S.C. § 1a, as amended from time to time, or in a resolution of the governing board thereof and any right, whether or not evidenced in writing, arising under statutory or common law, or under law merchant, or by reason of normal business practice.

(h) This section shall not apply to persons who are affiliates of the insurer that is the subject of the proceeding.

(i) All rights of counterparties under this chapter shall apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts if the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of such separate account.

56-22-115. Examination of county mutual insurance company.

(a) The commissioner may investigate or examine the affairs of a county mutual insurance company to the same extent that the commissioner may investigate or examine the affairs of an insurance company doing business in this state. At least once every five (5) years, the commissioner shall examine the affairs of each county mutual insurance company holding a certificate of authority in this state as to both its financial condition and its compliance with the law.

(b) After the completion of an examination undertaken under subsection (a), the requirements and procedures of § 56-1-411(d) shall be followed.

(c) A county mutual insurance company examined by the commissioner shall pay all costs of the examination, including, but not limited to, the reasonable fees of actuaries, accountants, attorneys and other professionals that the commissioner may enter into a contract with to perform examination services on behalf of the commissioner.

(d) All working papers, recorded information, documents or copies thereof

produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this chapter shall be given confidential treatment and may not be made public by the commissioner or any other person, except to the extent provided under § 56-1-411. Access may also be granted to the National Association of Insurance Commissioners under § 56-2-801, or to any other state or federal agency or law enforcement authority as the commissioner deems appropriate.

56-27-115. Purchase of liability insurance authorized.

A medical service plan corporation is authorized to purchase a contract of insurance protecting the corporation or any officer or employee of the corporation, or any physician from liability for injuries resulting from negligence, misfeasance, malfeasance, nonfeasance or health care liability on the part of any officer or employee of the corporation, or on the part of any physician in the course of rendering medical services to beneficiaries.

56-30-115. Purchase of liability insurance authorized.

A dental service plan corporation is authorized to purchase a contract of insurance protecting the corporation or any officer or employee of the corporation, or any dentist from liability for injuries resulting from negligence, misfeasance, malfeasance, nonfeasance or health care liability on the part of any officer or employee of the corporation, or on the part of any dentist in the course of rendering dental services to beneficiaries.

56-31-114. Purchase of liability insurance authorized.

A vision service plan corporation is authorized to purchase a contract of insurance protecting the corporation or any officer or employee of the corporation or any optometrist from liability for injuries resulting from negligence, misfeasance, malfeasance, nonfeasance or health care liability on the part of any officer or employee of the corporation, or on the part of any optometrist in the course of rendering vision services to beneficiaries.

56-32-130. Notice for providers.

(a) A managed health insurance issuer shall not terminate or nonrenew a contract with a health care provider, or take other retaliatory action against a health care provider, because the provider:

(1) Communicated with an enrollee with respect to the enrollee's health status, health care or treatment options, if the health care provider is acting in good faith and within the provider's scope of practice as defined by law;

(2) Disclosed accurate information about whether a health care service or treatment is covered by an enrollee's health coverage plan; or

(3) Expressed personal disagreement with the decision made by the managed health insurance issuer regarding treatment or coverage provided to a patient of the provider, or assisted the enrollee in pursuing the grievance process relative to the decision of the managed health insurance issuer; provided the health care provider makes it clear that the provider is acting in a personal capacity, and not as a representative of, or on behalf of, the managed health insurance issuer.

(b) Nothing in this section shall prohibit:

(1) A managed health insurance issuer from taking action against a provider if the health plan has evidence that the provider's actions are illegal, constitute health care liability or are contrary to accepted medical practices;

(2) A contract provision or directive that requires any contracting party to keep confidential or to not use or disclose specific amounts paid to a provider, provider fee schedules, provider salaries and other proprietary information of a specific contract issued by a managed health insurance issuer; or

(3) A managed health insurance issuer from making a determination not to pay for a particular medical treatment or service or to enforce reasonable peer review or utilization review protocols.

(c) Nothing in this section shall be construed as permitting retaliatory action by a managed health insurance issuer against a provider because the provider disclosed to the patient accurate information regarding the basis of the provider reimbursement.

(d) This section shall not be construed to create a cause of action or remedy that would not exist in the absence of this section, except for the purposes of enforcing the prohibitions set forth in this section.

(e)(1) A managed health insurance issuer shall develop and implement procedures to ensure that health care providers are regularly informed of information maintained by the issuer to evaluate the performance or practice of the health care provider. The issuer shall consult with health care professionals in developing methodologies to collect the health care provider's profiling, tiering, comparison, or ratings data, which may include, but is not limited to, claims data. For those issuers that publicize or otherwise make known to participating providers or their members the results of the provider's performance, the managed health insurance issuer shall, sixty (60) days prior to the public publishing of provider-specific information such as profiling, tiering, performance comparison, including, but not limited to, pay for performance programs or ratings data, do all of the following:

(A) Make available to the provider all methodologies, quality measures, data, analysis, and conclusions, ratings relied upon by the issuer and the degree to which each is relied upon by the issuer and allow the provider a reasonable opportunity to review and provide additional data or medical records and comments on the information proposed to be published by the issuer regarding the individual provider's profiling, tiering, comparison, or ratings;

(B) Should a provider submit additional data or medical records or comments under this subsection (e), that submission shall be made within thirty (30) days of the receipt of notice that the issuer will publish the information. If a provider submits additional data or medical records or comments on the information proposed to be published by the issuer, and the issuer elects to alter the provider's profiling, tiering, comparison, or ratings in accordance with and pursuant to the additional data or medical records and comments, then the issuers shall accordingly modify the provider's profiling, tiering, comparison or ratings prior to public publication of provider-specific information;

(C) The issuer shall provide with the publication of the provider performance rating information a prominently displayed disclosure of the data sources used to develop the rating information, an explanation of the limitations of data derived from these sources, and an explanation of the specific aspects or domains of provider performance that were measured to

derive the ratings; and

(D) Whenever the issuer periodically updates any data results or findings publicized pursuant to this section, and to the extent those updates result in a lower rating of the provider's performance rating, the issuer shall repeat the requirements established by subdivisions (e)(1)(A)-(C).

(2) Notwithstanding any law, contract or other legal standard to the contrary, upon satisfying and complying with the requirements of this subsection (e), the issuer may publicize the results of a provider's performance rating in the manner and frequency that the issuer deems appropriate.

56-35-129. Title search and examination.

No policy or contract of title insurance shall be issued until and unless the title insurance company has caused to be conducted a reasonable search and examination of the title; provided, that the commissioner shall exercise no supervision and control over, and title insurance companies and title insurance rating organizations shall not file as part of their schedule of rates for title insurance, that part of the charge for title insurance applicable to search and examination in connection with insurance of title to real property located in counties with a population of less than one hundred seventy-five thousand (175,000), according to the 2010 federal census or any subsequent federal census.

56-44-105. [Repealed.]

56-46-104. Company Action Level Events.

(a) "Company Action Level Event" means any of the following events:

(1) The filing of an RBC Report by an insurer that indicates that:

(A) The insurer's Total Adjusted Capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC;

(B) If a life and/or health insurer, the insurer has Total Adjusted Capital that is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 2.5 and has a negative trend; or

(C) If a property and casualty insurer, the insurer has total adjusted capital that is greater than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the Property and Casualty RBC instructions;

(2) The notification by the commissioner to the insurer of an Adjusted RBC Report that indicates an event in subdivision (a)(1); provided the insurer does not challenge the Adjusted RBC Report under § 56-46-108; or

(3) If, pursuant to § 56-46-108, an insurer challenges an Adjusted RBC Report that indicates the event in subdivision (a)(1), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(b) In the event of a Company Action Level Event, the insurer shall prepare and submit to the commissioner an RBC Plan, which shall:

(1) Identify the conditions that contribute to the Company Action Level Event;

(2) Contain proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the Company Action Level Event;

(3) Provide projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions, including projections of statutory operating income, net income, capital and/or surplus. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense and benefit component;

(4) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(5) Identify the quality of, and problems associated with, the insurer's business including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(c) The RBC Plan shall be submitted:

(1) Within forty-five (45) days of the Company Action Level Event; or

(2) If the insurer challenges an Adjusted RBC Report pursuant to § 56-46-108, within forty-five (45) days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(d) Within sixty (60) days after the submission by an insurer of an RBC Plan to the commissioner, the commissioner shall notify the insurer whether the RBC Plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC Plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions that will render the RBC Plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a Revised RBC Plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the Revised RBC Plan to the commissioner:

(1) Within forty-five (45) days after the notification from the commissioner; or

(2) If the insurer challenges the notification from the commissioner under § 56-46-108, within forty-five (45) days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(e) In the event of a notification by the commissioner to an insurer that the insurer's RBC Plan or Revised RBC Plan is unsatisfactory, the commissioner may, at the commissioner's discretion, subject to the insurer's right to a hearing under § 56-46-108, specify in the notification that the notification constitutes a Regulatory Action Level Event.

(f) Every domestic insurer that files an RBC Plan or Revised RBC Plan with the commissioner shall file a copy of the RBC Plan or Revised RBC Plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(1) That state has an RBC provision substantially similar to § 56-46-109(a), and

(2) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of

the RBC Plan or Revised RBC Plan in that state no later than the later of:

(A) Fifteen (15) days after the receipt of notice to file a copy of its RBC Plan or Revised RBC Plan with the state; or

(B) The date on which the RBC Plan or Revised RBC Plan is filed under subsections (c) and (d).

56-51-152. Taxes imposed.

(a) The premiums, contributions and assessments received by prepaid limited health service organizations are subject to the tax imposed by § 56-32-124; provided, however, that the premiums, contributions and assessments received by prepaid limited health service organizations pursuant to subcontracts with entities under contract to the Title XIX single state agency for the provision of health care services are exempt from the tax.

(b) The department shall administer this section pursuant to § 56-32-124.

(c) The amount of taxes collected under this section shall be a single credit against the sum total of the taxes imposed by the Franchise Tax Law, compiled in title 67, chapter 4, part 21 and by the Excise Tax Law, compiled in title 67, chapter 4, part 20.

56-52-104. Charitable gift annuity separate accounts.

(a) A charitable organization authorized by this chapter shall maintain one (1) or more charitable gift annuity separate accounts for its charitable gift annuities. The assets allocated to any such separate account shall not be used to satisfy any debts of the charitable organization other than those incurred pursuant to the issuance of charitable gift annuities to which the account applies. The assets of the separate account shall at least equal either:

(1) The total amount of donations for outstanding charitable gift annuities to which the account applies, measured at the time of each annuity donation, later reduced by payments under the annuity and taking into account investment gains and losses; or

(2) One hundred ten percent (110%) of the reserves, calculated in a manner consistent with subsection (b) for charitable gift annuities to which the separate account applies.

(b)(1) Reserves on the outstanding charitable gift annuities shall not be less than reserves calculated using:

(A) The commissioner's annuity reserve valuation method as defined in the charitable organization's domestic state standard valuation law;

(B) Any mortality table permitted under the charitable organization's domestic state standard valuation law to be used in determining the minimum standard for the valuation of individual annuities issued during the same calendar year as the charitable gift annuity; and

(C) The maximum interest rate permitted under the charitable organization's domestic state standard valuation law to be used in determining the minimum standard for the valuation of individual annuities issued during the same calendar year as the charitable gift annuity; or

(2) One hundred ten percent (110%) of reserves determined by using the Annuity 2000 Mortality Table and an interest assumption of five percent (5%), or such other mortality table and interest assumption as may be prescribed from time to time by the commissioner.

(c) Any portion of the charitable gift annuity risk that is insured or

reinsured by the charitable organization with an authorized insurer or reinsurer shall be exempt from subsection (a). For this purpose, any annuity contract purchased from an authorized insurer or reinsurer by the charitable organization is considered to be "annuity risk reinsured."

(d) The general assets of the charitable organization shall be liable for charitable gift annuity agreements to the extent that assets allocated to the charitable gift annuity separate accounts are inadequate.

(e) A charitable organization may, but is not required to, maintain a charitable gift annuity separate account solely applicable to its charitable gift annuities issued to Tennessee annuitants. Any charitable gift annuity separate account maintained pursuant to this subsection (e) shall be subject to the requirements of subsection (a).

56-52-106. Annual report.

(a) A charitable organization authorized under this chapter shall annually file a report verified by at least two (2) principal officers with the commissioner covering the preceding fiscal year. The report is due ninety (90) days after the close of the charity's fiscal year or at a later date approved by the commissioner. Alternatively, in lieu of a verified report, a charitable organization may submit an audited report within one hundred fifty (150) days after the close of the charity's fiscal year or at a later date approved by the commissioner.

(b) The report shall be in a form prescribed by the commissioner and shall include:

(1) A financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year;

(2) Any material changes in the information;

(3) The number of gift annuity contracts issued during the year, the number of gift annuity contracts as of the end of the year and the number of gift annuity contracts that terminated during the year;

(4) The amount of annuity payments made during the year and the amounts transferred from the charitable gift annuity separate account to the general account during the year; and

(5) Other information relating to the performance of the charitable gift annuities and charitable gift annuity separate account of the charitable organization necessary to enable the commissioner to:

(A) Issue certificates of authority;

(B) Ascertain maintenance of records;

(C) Evaluate solvency;

(D) Respond to consumer complaints; and

(E) Conduct hearings to determine compliance with this chapter.

(c) A copy of a report, containing the information required under subsection (b), that has been filed in the state of domicile of the charitable organization, or in any other state in which the charitable organization must file a report containing substantially the same information required by this chapter will be deemed to satisfy the requirements of this section. The commissioner shall have the authority to request additional information.

56-54-101. Short title.

This chapter shall be known and may be cited as the "Tennessee Health Care Liability Reporting Act."

56-54-102. Legislative intent — Use of information.

This chapter is intended to ensure the availability of health care liability claims data necessary for thorough analysis and understanding of issues associated with health care liability claims, in order to support the establishment and maintenance of sound public policy. The information submitted to the department of commerce and insurance pursuant to this section shall be used solely for the purpose of analyzing trends in health care liability claims; provided, however, that the information received pursuant to § 56-54-105 that pertains to judgments and settlements paid as to any medical physician, osteopathic physician or dentist shall be sent to the department of health, division of health related boards and § 56-54-107 shall apply to the reports.

56-54-103. Chapter definitions.

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

(1) "Claim" means:

(A) A demand for monetary damages for injury or death caused by health care liability; or

(B) A voluntary indemnity payment for injury or death caused by health care liability;

(2) "Claimant" means a person, including a decedent's estate, that is seeking or has sought monetary damages for injury or death caused by health care liability;

(3) "Closed claim" means a claim that has been settled or otherwise disposed of by the insuring entity, self-insurer, facility or provider. A claim may be closed with or without an indemnity payment to a claimant;

(4) "Commissioner" means the commissioner of commerce and insurance;

(5) "Companion claims" means separate claims involving the same incident of health care liability made against other providers or facilities;

(6) "Economic damages" means objectively verifiable monetary losses, including medical expenses, loss of earnings, burial costs, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services, and loss of business or employment opportunities;

(7) "Health care facility" or "facility" means an entity licensed under title 68, including a clinic, diagnostic center, hospital, laboratory, mental health center, nursing home, office, surgical facility, treatment facility, or similar place where a health care provider provides health care to patients;

(8) "Health care liability" means an actual or alleged negligent act, error, or omission in providing or failing to provide health care services;

(9) "Health care provider" or "provider" means:

(A) A person licensed in either title 63, except chapter 12, or title 68 to provide health care or related services, including, but not limited to, an acupuncturist, a physician, a surgeon, an osteopathic physician, a dentist, a nurse, an optometrist, a podiatrist, a chiropractor, a physical therapist, a psychologist, a pharmacist, an optician, a physician assistant, a certified professional midwife, an orthopedic physician assistant, or a nurse practitioner. If the person is deceased, this includes the person's estate or personal representative; or

(B) An employee or agent of a person described in subdivision (9)(A), acting in the course and scope of the employee's or agent's employment. If the employee or agent is deceased, this includes the employee's or agent's

estate or personal representative;

(10) "Insuring entity" means:

(A) An authorized insurer;

(B) A captive insurer;

(C) A joint underwriting association;

(D) A patient compensation fund;

(E) A risk retention group; or

(F) An unauthorized insurer that provides surplus lines coverage;

(11) "Noneconomic damages" means subjective, nonmonetary losses, including pain, suffering, inconvenience, mental anguish, disability, or disfigurement incurred by the injured party, emotional distress, loss of society and companionship, loss of consortium, humiliation and injury to reputation, and destruction of the parent-child relationship; and

(12) "Self-insurer" means any health care provider, facility, or other individual or entity that assumes operational or financial risk for claims of health care liability.

56-54-104. Applicability of chapter.

This chapter shall apply to all health care liability claims in this state, regardless of whether or how they are covered by medical professional liability insurance. This chapter shall not apply to the state or those employed by the state to the extent that their health care liability is not covered by an insurance entity.

56-54-105. Claims — Report.

(a) For claims closed or open and pending on or after January 1, 2008:

(1) Every insuring entity or self-insurer that provides health care liability insurance to any facility or provider in this state must report each health care liability claim to the commissioner;

(2) A claim that is covered under a primary policy and one (1) or more excess policies shall be reported only by the insuring entity that issued the primary policy. The insuring entity that issued the primary policy shall report the total amount, if any, paid with respect to the claim, including any amount paid under an excess policy, any amount paid by the facility or provider, and any amount paid by any other person on behalf of the facility or provider;

(3) If a claim is not covered by an insuring entity or self-insurer, the facility or provider named in the claim must report it to the commissioner after a final claim disposition has occurred due to a court proceeding or a settlement by the parties. Instances in which a claim may not be covered by an insuring entity or self-insurer include situations in which:

(A) The facility or provider did not buy insurance or maintained a self-insured retention that was larger than the final judgment or settlement;

(B) The claim was denied by an insuring entity or self-insurer because it did not fall within the scope of the insurance coverage agreement; or

(C) The annual aggregate coverage limits had been exhausted by other claim payments.

(b)(1) Any self-insurer, risk retention group, or unauthorized insurer that may be exempt from this chapter due to a federal preemption or other cause,

may report all data required under this section.

(2) The self-insurer, risk retention group, or unauthorized insurer must notify covered providers and facilities that they may have reporting responsibilities under this chapter if the self-insurer, risk retention group or unauthorized insurer does not report due to a federal exemption or other jurisdictional preemption.

(3) If any self-insurer, risk retention group or unauthorized insurer does not report information required by this chapter due to the assertion of a federal exemption or other jurisdictional preemption, the facility or provider named in a health care liability claim shall report all data required by this chapter once notified by the self-insurer, risk retention group or unauthorized insurer that such entity is not reporting under this section.

(c)(1) Counsel for claimants asserting claims covered by this section shall provide:

(A) Information about fee arrangements to the commissioner. The information shall include the portion of any settlement or judgment received by claimant's counsel; and

(B) Information as to whether the healthcare provider named in the claim received payment from TennCare for the incident that is the subject of the claim.

(2) For the purposes of the levying of civil penalties under § 56-54-109, counsel for claimants who are required to submit the information outlined in this subsection (c) shall be considered reporting entities under this section.

(3) The information provided pursuant to subdivision (c)(1)(B) shall be provided for claims closed or open and pending on or after January 1, 2012.

(d) Beginning in 2009, reports required under subsections (a) and (c) must be filed by March 1. These reports must include data for all claims open and pending as of the last day of the preceding calendar year, and those claims closed in the preceding calendar year and any adjustments to data reported in prior years.

(e) The commissioner may adopt rules that require insuring entities, self-insurers, facilities, providers and claimant's counsel to submit all required claim data electronically.

56-54-106. Contents of report.

With the exception of reports received pursuant to § 56-54-105(c), reports required under § 56-54-105 must contain the following information in a format and coding protocol prescribed by the commissioner; however, for all open claims, an insuring entity, self-insurer, facility and provider shall only be required to report the information in its possession as of the date of the report. To the greatest extent possible while still fulfilling the purposes of this chapter, the format and coding protocol shall be consistent with the format and coding protocol for data reported to the National Practitioner Data Bank.

(1) Claim and incident identifiers, including:

(A) A claim identifier assigned to the claim by the insuring entity, self-insurer, facility or provider; and

(B) An incident identifier if companion claims have been made by a claimant;

(2) The policy limits of the medical professional liability insurance policy covering the claim; however, no information concerning policy limits shall be

included in the report prepared pursuant to § 56-54-111;

(3) If applicable, the medical specialty of the provider named in the claim;

(4) The type of health care facility where the health care liability incident occurred;

(5) The primary location within a facility where the health care liability incident occurred;

(6) The geographic location, by city and county, where the health care liability incident occurred;

(7) The injured person's sex and age on the incident date;

(8) The severity of the health care liability injury using the National Practitioner Data Bank severity scale;

(9) The dates of:

(A) The incident that was the proximate cause of the claim;

(B) Notice to the insuring entity, self-insurer, facility or provider;

(C) Suit, if a suit was filed;

(D) Final indemnity payment, if any; and

(E) Final action by the insuring entity, self-insurer, facility or provider to close the claim;

(10) Settlement information that identifies the timing and final method of claim disposition, including:

(A) Claims settled by the parties;

(B) Claims disposed of by a court, including the date disposed;

(C) Claims disposed of by alternative dispute resolution, such as arbitration, mediation, private trial and other common dispute resolution methods; and

(D) Whether the settlement occurred before or after trial, if a trial occurred;

(11) Specific information about the indemnity payments and defense and cost containment expenses, including:

(A) For claims disposed of by a court that result in a verdict or judgment that itemizes damages:

(i) The total verdict or judgment;

(ii) If there is more than one (1) defendant, the total indemnity paid by or on behalf of this facility or provider;

(iii) Economic damages;

(iv) Noneconomic damages;

(v) Punitive damages, if applicable; and

(vi) Defense and cost containment expenses, including court costs, attorneys' fees, and costs of expert witnesses; and

(B) For claims that do not result in a verdict or judgment that itemizes damages:

(i) The total amount of the settlement;

(ii) If there is more than one (1) defendant, the total indemnity paid by or on behalf of this facility or provider;

(iii) The insuring entity's or self-insurer's best estimate of economic damages included in the settlement;

(iv) The insuring entity's or self-insurer's best estimate of noneconomic damages included in the settlement; and

(v) Defense and cost containment expenses, including court costs, attorneys' fees, and costs of expert witnesses;

(12) The reason for the health care liability claim. The reporting entity must use the same allegation group and specific allegation codes that are

used for mandatory reporting to the National Practitioner Data Bank; and

(13) Any other open or closed claim data the commissioner determines to be necessary to accomplish the purpose of this chapter and requires by adopting a rule. The commissioner is also authorized by rule to determine certain open or closed claim data not necessary for submission to the commissioner.

56-54-111. Annual report summary.

The commissioner shall submit an annual report to the speaker of the senate and the speaker of the house of representatives summarizing the information submitted pursuant to this chapter. The annual report shall be submitted on or before November 1 of each year. Any report shall contain aggregate data only and shall not identify any individual health care facility or health care provider. The annual report compiled by the commissioner shall aggregate total settlement and judgment to all health care providers in connection with a single occurrence; provided, that the report shall not contain any claimant's social security number. The report shall differentiate between health care facilities and health care providers listed in § 56-54-103. The report shall also include information as to whether any healthcare provider named in any claim received payment from TennCare for the incident that is the subject of the respective claim.

56-56-101. Definition of "professional employer organization benefit and welfare plan".

As used in this chapter, "professional employer organization benefit and welfare plan" means a plan offered to the covered employees of a professional employer organization registered pursuant to the Tennessee Professional Employer Organization Act, compiled in title 62, chapter 43 and as amended.

56-56-102. Self-insured plans.

A professional employer organization may sponsor and maintain employee benefit and welfare plans in accordance with § 62-43-108(c), for the benefit of covered employees. The self-insured plans developed under this section are not subject to the premium taxes imposed by this title. The department may promulgate rules regulating self-insured plans under this section

56-60-102. Chapter definitions.

As used in this chapter:

(1) "Affiliate" means an individual or entity that directly or indirectly through one (1) or more intermediaries, controls or is controlled by or is under common control with a contracting entity;

(2) "Contracting entity" means any individual or entity that is engaged in the act of contracting with providers and that has entered into a provider network contract with a provider for the delivery of health care services. "Contracting entity" shall not include any self-funded employer-sponsored health insurance plan regulated under the Employee Retirement Income Security Act of 1974 (ERISA), compiled in 29 U.S.C. § 1001, et seq. In addition, "contracting entity" shall not include any individual or entity that provides administrative services to a self-funded employer sponsored health

insurance plan; provided, however, that this exemption applies only to those administrative services performed for a self-funded employer-sponsored health insurance plan;

(3) "Control" or "controlled by" or "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the individual or entity. "Control" is presumed to exist if any individual or entity, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent (10%) or more of the voting securities of any other individual or entity;

(4) "Covered individual" means an individual who is covered under a health insurance plan;

(5) "Department" means the department of commerce and insurance;

(6) "Discount medical plan organization" means an entity that, in exchange for fees, dues, charges or other consideration, provides access for plan members to providers of medical services and the right to receive medical services from those providers at a discount;

(7) "Entity" means a corporation, business trust, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity;

(8) "Health care services" means services for the diagnosis, prevention, treatment or cure of a health condition, illness, injury or disease;

(9)(A) "Health insurance plan" means any hospital and medical expense incurred policy, nonprofit health care service plan contract, health maintenance organization subscriber contract or any other health care plan or arrangement that pays for or furnishes medical or health care services, whether by insurance or otherwise;

(B) "Health insurance plan" does not include one (1) or more, or any combination of, the following:

(i) Coverage only for accident, or disability income insurance;

(ii) Coverage issued as a supplement to liability insurance;

(iii) Liability insurance, including general liability insurance and automobile liability insurance;

(iv) Workers' compensation or similar insurance;

(v) Automobile medical payment insurance;

(vi) Credit-only insurance;

(vii) Coverage for on-site medical clinics;

(viii) Coverage similar to subdivisions (9)(B)(i)-(vii) as specified in federal regulations issued pursuant to P.L. 104-191, under which benefits for medical care are secondary or incidental to other insurance benefits;

(ix) Dental or vision benefits;

(x) Benefits for long-term care, nursing home care, home health care or community-based care;

(xi) Specified disease or illness coverage, hospital indemnity or other fixed indemnity insurance, or such other similar, limited benefits as are specified in regulations;

(xii) Medicare supplemental health insurance, as defined under § 1882(g)(1) of the Social Security Act, codified in 42 U.S.C. § 1395ss(g)(1);

(xiii) Coverage supplemental to the coverage provided under 10 U.S.C. § 1071 et seq.; or

(xiv) Other similar limited benefit supplemental coverages;

(10) "Physician" means any individual licensed as a chiropractic physician under title 63, chapter 4; a medical doctor under title 63, chapter 6; or an osteopathic physician under title 63, chapter 9;

(11) "Physician hospital organization" means an organization that includes, but is not limited to, hospitals and physicians and that contracts with and provides administrative services to hospitals and physicians that have entered into or intend to enter into managed care arrangements;

(12) "Physician organization" means an organization that contracts with and provides administrative services to physicians who have entered into managed care arrangements;

(13) "Provider" means a physician, a physician organization or a physician hospital organization. "Provider" does not include a physician organization or physician hospital organization that leases or rents the physician organization's or physician hospital organization's network to a third party;

(14) "Provider network contract" or "provider agreement" means a direct contract between a contracting entity and a provider for the delivery of health care services specifying the rights and responsibilities of the contracting entity and the provider in relation to access and payment for health care services to covered individuals; and

(15) "Third party" means an organization that enters into a contract with a contracting entity or with another third party to gain access to a provider network contract. "Third party" also includes a contracting entity's subsidiaries and affiliates, except as provided in § 56-60-103(a). "Third party" does not include any self-funded employer-sponsored health insurance plan regulated under the Employee Retirement Income Security Act of 1974 (ERISA), compiled in 29 U.S.C. § 1001 et seq. In addition, "third party" does not include any individual or entity that provides administrative services to a self-funded employer-sponsored health insurance plan; provided, however, that this exemption applies only to those administrative services performed for a self-funded employer-sponsored health insurance plan.

57-1-111. Full-time employment.

(a) [Deleted by 2012 amendment.]

(b) The director, the chief law enforcement officer and all other law enforcement personnel shall be employed only on a full-time basis.

57-1-201. Transfer of provisions relating to intoxicating beverages — Authority to impose fine instead of license suspension or revocation.

(a) The entire provisions, definitions and terms of chapter 3, parts 1, 2 and 4 of this title, § 57-3-304 and the authority contained therein are hereby transferred and shall be vested under the jurisdiction of the alcoholic beverage commission as though all of the provisions of such sections were set out and copied verbatim herein for the purpose of the commission to carry out the

provisions of this chapter.

(b)(1) In any case where the commission is given the power to suspend or revoke any license or permit, it may impose a fine. Fines imposed shall not exceed:

(A) One thousand five hundred dollars ($1,500) for retailers licensed under 57-3-204;

(B) One thousand five hundred dollars ($1,500) for permittees for consumption of alcoholic beverages on the premises under § 57-4-201;

(C) Two thousand dollars ($2,000) for wholesalers licensed under § 57-3-203; and

(D) Ten thousand dollars ($10,000) for manufacturers licensed under chapter 2 of this title or § 57-3-202.

For the purpose of imposing fines hereunder, each violation may be treated as a separate offense.

(2) The commission shall deposit collections of any such fine with the state treasurer, for the general funds of the state.

(3) The commission shall promulgate by rule pursuant to the Administrative Procedures Act, compiled in title 4, chapter 5, a schedule setting forth a range of fines for each violation.

(c) Any document a person receives informing the person of having a fine imposed upon such person shall cite each particular rule or statute the person is being charged with violating.

57-1-209. Rules and regulations — Annual report.

(a) The commission is hereby authorized to adopt and promulgate the present rules and regulations which are in existence pertaining to alcoholic beverages, and the commission may in its discretion alter, amend or repeal any of such parts of such rules and regulations as it deems necessary. The commission may promulgate rules governing the conduct of educational seminars conducted by businesses licensed pursuant to § 57-3-204, and such regulation may include the transportation and serving for sampling purposes only alcoholic beverages, notwithstanding §§ 57-3-402, and 57-3-404(h).

(b) The executive director of the commission shall file an annual report with the state and local government committees of each house no later than March 1 detailing with specificity each rule promulgated during the previous year together with the rationale for promulgating the rule.

57-1-213. Assessment of costs of hearing held in accordance with contested case provisions.

(a) Notwithstanding any other law to the contrary, the alcoholic beverage commission may assess the actual and reasonable costs of any hearing held in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, and in which sanctions of any kind are imposed on any person or entity required to be licensed, permitted, registered or otherwise authorized by the commission. These costs may include, but are not limited to, those incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative judges and any other persons involved in the investigation, prosecution and hearing of the action.

(b) The commissioner shall promulgate rules and regulations establishing a

schedule of costs that may be assessed pursuant to this section. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c)(1) All costs assessed pursuant to this section shall become final thirty (30) days after the date a final order of assessment is served.

(2) If the individual or entity disciplined fails to pay an assessment when it becomes final, the commission may apply to the appropriate court for a judgment and seek execution of the judgment.

(3) Jurisdiction for recovery of the costs shall be in the chancery court of Davidson County.

57-2-101. "Intoxicating liquors" and "intoxicating drinks" defined — Fuel alcohol exception.

(a) "Intoxicating liquors" or "intoxicating drinks," as defined in this chapter, means and includes alcohol, spirits, liquors, wines and every liquid or solid, patented or not, containing alcohol, spirits, liquor or wine, and capable of being consumed by human beings; but nothing in this chapter shall be construed or defined as including or relating to the manufacture of any beverage with alcohol content of five percent (5%) by weight or less.

(b) This title shall not apply to fuel alcohol as it is defined in § 67-3-1203, and this title shall not apply to ethanol that is produced in a facility whose production process is primarily a wet milling process, sold and transported in bulk lots of five thousand gallons (5,000 gals.) or more and not packaged for retail sale by the holder of a valid alcohol fuels permit or a valid distilled spirits permit:

(1) For export to another country;

(2) To a domestic manufacturer, distiller, vintner, or rectifier who is a duly licensed alcohol beverage or liquor manufacturer in this or some other state; or

(3) To a manufacturer who uses the ethanol to create a product which is incapable of human consumption or contains less than one half of one percent (0.5%) alcohol by volume.

57-2-103. Manufacturing of intoxicating liquors — Petition — Election.

(a) The county legislative body of any county shall have the right and power, and such county authorities shall have the duty, to call and direct the county election commission to hold an election at any time, upon the filing and presentation of a petition bearing the genuine signatures of ten percent (10%) or more of the qualified voters of such county, based upon the number of votes cast in the last preceding presidential election in such county. Such petition shall be addressed to the county legislative body, and shall contain such language as to request, or to call upon the county legislative body, to call an election of the qualified voters of the county upon the question of permitting and legalizing the manufacture of intoxicating liquors and other intoxicating drinks within the boundaries of the county.

(b) Upon the adoption of a motion or resolution by the county legislative body directing the holding of an election, the county clerk shall file a certified copy of the motion or resolution with the county election commission.

(c) If a majority of the qualified votes cast in such election, in a county so

holding an election, favors the manufacture of intoxicating liquors or other intoxicating drinks, as herein provided, in that event, it shall be lawful to manufacture intoxicating liquors and/or intoxicating drinks within the boundaries of such county.

(d)(1)(A) Notwithstanding subsections (a)-(c), it shall be lawful to manufacture intoxicating liquors or intoxicating drinks, or both, within the boundaries of those counties included in subdivision (d)(1)(B), if both retail package sales and liquor-by-the-drink have been approved through voter referendum within the county or if the county is included in the Tennessee River resort district as defined in § 57-4-102 and retail package sales have been approved through voter referendum within the county.

(B) This subsection (d) shall apply in any county having a population, according to the 2000 federal census or any subsequent federal census, of:

not less than	nor more than
7,600	7,700
11,369	11,450
14,300	14,400
17,700	17,775
17,900	18,000
25,575	25,650
26,700	26,800
27,100	27,200
27,700	27,800
29,400	29,450
31,100	31,200
33,525	33,600
35,900	36,000
37,200	37,300
39,200	39,300
43,100	43,200
44,200	44,300
46,800	46,900
48,125	48,200
51,200	51,300
51,900	52,000
53,500	53,600
54,400	54,500
62,900	63,000
71,100	71,200
71,300	71,400
91,800	91,900
105,800	105,900
107,100	107,200
126,600	126,700
134,700	134,800
153,000	153,100
182,000	182,100
382,000	382,100

and in any county having a population of more than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal

census.

(2)(A) The county legislative body of any other county to which subdivision (d)(1)(A) applies may adopt a resolution to apply this subsection (d) within the boundaries of its county. The county mayor shall notify the alcoholic beverage commission if such action is taken and approved.

(B)(i) Notwithstanding a county's inclusion in subdivision (d)(1)(B), the county legislative body of any such county may adopt a resolution to remove the county from the application of this subsection (d) subject to the restrictions in subdivision (d)(2)(B)(ii). The county mayor shall notify the alcoholic beverage commission and the Tennessee code commission if such action is taken and approved.

(ii) Such action may be taken by the county legislative body until a written notification is filed with the county mayor by any person as an official notice that the person intends to pursue all lawful avenues to manufacture intoxicating liquors or intoxicating drinks, or both, within the boundaries of the county. Once the notice is filed, no action may be taken by the county legislative body unless such interest is withdrawn or the person's application to manufacture such intoxicating liquors or intoxicating drinks, or both, is denied by the state or federal government.

(3) Any facility producing such intoxicating liquors or intoxicating drinks may be located in the unincorporated areas of the county, notwithstanding any other provision of law to the contrary.

(4) If a manufacturer that has been issued a license pursuant to this subsection (d) is also issued a license for the retail sale of alcoholic beverages in accordance with § 57-3-204(f) and the manufacturer is located in a county that, pursuant to § 57-5-105, has established a distance requirement that restricts the storage, sale or manufacture of beer from places of public gatherings, then the distance requirements in effect in the county shall apply to the building used for such retail sale with respect to any building used for religious purposes. The measurement shall be a building-to-building measurement.

(e) Any manufacturer's license issued pursuant to subsection (c) or (d) shall comply with § 57-3-202.

(f)(1)(A) Notwithstanding subsections (a)-(c), it shall be lawful to manufacture high alcohol content beer as defined in § 57-3-101(a) within the boundaries of a municipality if both retail package sales and consumption of alcoholic beverages on the premises have been approved through voter referendum of voters within such municipality and in the unincorporated areas of any county if both retail package sales and consumption of alcoholic beverages on the premises have been approved through voter referendum of voters in any jurisdiction located within the county, or if the county is included in the Tennessee River resort district as defined in § 57-4-102 and retail package sales have been approved through voter referendum within the county, and if the manufacturer also holds a brewer's notice approved by the United States department of the treasury, alcohol and tobacco tax and trade bureau, or any successor federal beer manufacturing permit granted by a federal bureau having jurisdiction over the manufacture of beer.

(B) In all jurisdictions not meeting the requirements of subdivision (f)(1)(A), it shall be lawful to manufacture high alcohol content beer as

defined in § 57-3-101(a) within the boundaries of a municipality or in the unincorporated area of such county upon such jurisdiction meeting the requirements of subsections (a)-(c), and if the manufacturer also holds a brewer's notice approved by the United States department of the treasury, alcohol and tobacco tax and trade bureau, or any successor federal beer manufacturing permit granted by a federal bureau having jurisdiction over the manufacture of beer.

(2) Notwithstanding any other law to the contrary, it shall be lawful for any manufacturer of high alcohol content beer authorized to manufacture such beverages pursuant to subdivision (f)(1) to also brew beer as this term is defined in § 57-5-101(b) on the same premises of the manufacturer of high alcohol content beer, upon meeting necessary federal, state and local license requirements.

(3) The general assembly hereby ratifies any action which may have been taken by the alcoholic beverage commission in issuing a license to a manufacturer of high alcohol content beer prior to June 10, 2011.

57-3-102. Traffic in intoxicating liquor permitted by local option.

(a) It is lawful to manufacture, store, sell, distribute and purchase alcoholic beverages or wine subject to proper licensing, payment of taxes, compliance with the limitation, regulations and conditions provided in this chapter, in counties or municipalities of this state that by local option elections so permit as provided in this chapter.

(b) It shall be lawful for an individual to transport up to five gallons (5 gals.) of alcoholic beverages or wine for personal or household use of the individual in counties or municipalities that have not permitted the sale of alcoholic beverages or wine by local option elections as provided in this chapter and amounts in excess of five gallons (5 gals.) if accompanied by a receipt or other documentation demonstrating legal purchase or transport from an entity licensed under § 57-3-203, § 57-3-204, § 57-3-207 or § 57-3-218.

57-3-103. Construction of chapter.

(a)(1) Nothing in this chapter is intended to relate to the manufacture, transportation, storage, sale, distribution, possession, or receipt of, or tax upon, any beverage of an alcoholic content of five percent (5%) by weight, or less, except wine or any liquid product manufactured or made with distilled alcohol, and no statute relating thereto shall be considered or construed as modified by this chapter, nor shall this chapter affect chapter 2 of this title.

(2) Alcoholic beverages lawfully manufactured pursuant to the provisions of chapter 2 of this title may be lawfully sold in Tennessee by a manufacturer to a wholesaler duly licensed, in those counties or municipalities which favor local option after election duly held and carried as hereinafter provided for. Any manufacturer now operating pursuant to chapter 2 of this title may continue to do so without being affected in any way by this chapter, except as otherwise expressly provided herein.

(b) Except as specifically permitted in §§ 57-3-207, 57-3-402 and 57-3-403, no person may store any alcoholic beverages, unless the person holds a license under § 57-3-203, § 57-3-204, § 57-3-218 or § 57-4-101, or is employed by the licensee, unless the alcoholic beverage is intended for that person's personal or social use.

(c) It is the intent of the general assembly to be certain that any product

containing or manufactured with distilled alcohol should be distributed only in those jurisdictions authorizing the sale of alcoholic beverages, and such distribution be subject to the rules and regulations of the commission.

57-3-201. License classifications.

The alcoholic beverage commission may issue, under this chapter, the following classes of licenses, in relation to alcoholic spirituous beverages exclusively, which shall consist of the following classes only:

(1) Manufacturer's or distiller's or rectifier's license;
(2) Liquor wholesaler's license;
(3) Liquor retailer's license;
(4) Winery license;
(5) Direct shipper's license;
(6) Alcoholic beverage collector's license;
(7) Winemaking on premises facility license; and
(8) Farm wine permit.

57-3-202. Manufacturer's or distiller's licenses — Qualifications of applicants — Fees — Permits to solicit orders — Penalty — Rules and regulations.

(a) A manufacturer's or distiller's license may be issued, as hereinafter provided, for the manufacturing of alcoholic spirituous beverages or vintage alcoholic beverages. Any person, firm, or corporation desiring to manufacture for commercial purposes any alcoholic spirituous beverages or vintage alcoholic beverages shall make application to the commission for a license to manufacture the same, which application shall be in writing and verified, on the forms herein authorized, to be prescribed and furnished; and, thereupon, the commission may grant such license, subject to the provisions of this chapter.

(b) All applicants if individuals must be citizens of the United States, and all stockholders of any corporate licensee must likewise be citizens of the United States.

(c) Such license shall not be issued unless and until there be paid to the commission a separate license fee of one thousand dollars ($1,000).

(d) Before a representative of any manufacturer, rectifier or importer may solicit orders from a licensed wholesaler in this state, such representative must be the holder of a permit issued by the commission. The fee for such permit shall be fifty dollars ($50.00). Such permit shall authorize the holder to solicit orders upon the premises of a licensed wholesaler. No representative may sell the products of, or represent more than one (1) manufacturer, rectifier or importer and its affiliates; that is, such subsidiaries as it may control by means of ownership or the ownership of a controlling stock interest.

(e) [Deleted by 2012 amendment.]

(f) "Vintage alcoholic beverages," as used in this section, means all wine sold by wholesalers licensed under § 57-3-203.

(g)(1) A manufacturer's license may be issued to a person, firm or corporation for the limited purpose of blending nonalcoholic products with alcoholic beverages on premises, either on its own behalf or on behalf of other entities pursuant to contract.

(2) A licensee under this subsection (g) may obtain the alcoholic beverages for use in its blending operations from any entity holding a license or permit

issued under this section, §§ 57-2-104, 57-3-203, and part 6 of this chapter.

(3) A license may be issued to a manufacturer, under this subsection (g), notwithstanding the requirements of § 57-3-106.

(4) A manufacturer, licensed under this subsection (g) for the limited purpose of blending, may sell, distribute or transport the product produced from its blending operations in accordance with this title.

(h) The commission is empowered to make such regulations, investigations and audits as it may deem necessary for enforcing and preventing violations of this chapter.

57-3-203. Wholesaler's licenses — Qualifications of applicants — Permits — Salespersons — Employees — Fees — Disposition of alcoholic beverages after nonlicensed persons secure title.

(a) Any person, or general or limited partnership desiring to sell at wholesale any alcoholic spirituous beverage shall make application to the commission for a license so to do, which application shall be in writing and verified, on the forms herein authorized to be prescribed and furnished; thereupon the commission may grant such license subject to the restrictions of this chapter.

(b) Each applicant for a wholesale license shall pay to the commission a one-time, non-refundable fee in the amount of three hundred dollars ($300) when the application is submitted for review. Such wholesaler's license, however, shall not be issued unless and until there shall be paid to the commission a separate license fee therefor of three thousand dollars ($3,000), and no license shall be issued except to individuals who are citizens of the state of Tennessee and either have been for at least the two (2) years next preceding citizens of the state of Tennessee or have been citizens of the state of Tennessee at any time for at least fifteen (15) consecutive years.

(c) No wholesale alcoholic spirituous beverage license shall be issued until the applicant has secured a basic permit to engage in the wholesale liquor business from the federal government.

(d) Each representative or salesperson of any wholesale licensee in this state must obtain a permit from the commission before soliciting orders from retail licensees. No other person shall be allowed to solicit orders for alcoholic beverages from retail licensees, and retail licensees shall not give an order to anyone other than the holder of a wholesale salesperson's permit.

(e) Every wholesale licensee shall, before employing any person to dispense alcoholic beverages, secure from the commission an employee's permit authorizing such person to serve as an employee in the place of business of such wholesaler. It is made the duty of the wholesaler to see that each person dispensing alcoholic beverages in the wholesaler's place of business has an employee's permit as above required, which permit must be on the person of such employee or upon the premises of the licensee at all times, subject to inspection by the commission or its duly authorized agent.

(f)(1) A wholesaler's license may, in the discretion of the commission, be issued to a corporation; provided, that no license shall be issued to any corporation unless such corporation meets the following requirements:

(A) All of its capital stock must be owned by individuals who have been residents of Tennessee for not less than five (5) years next preceding or who at any time have been residents of the state of Tennessee for at least fifteen (15) consecutive years, and who have not been convicted within a

period of five (5) years preceding acquisition of such stock for violation of either state or United States prohibition laws or revenue laws relating to intoxicating liquors;

(B) No person owning stock in such corporation shall have any interest as partner or otherwise in a business licensed to engage in the retail sale of intoxicating liquors in Tennessee;

(C) No stock of any corporation licensed under this subsection shall be transferred to any person who has not been a resident of Tennessee for at least five (5) years next preceding or who at any time has not been a resident of Tennessee for at least fifteen (15) consecutive years.

(2) The commission is hereby authorized to revoke the wholesale license of any corporation which fails to comply with the provisions of this subsection (f).

(g) Notwithstanding subsection (f), the commission, in its discretion, may issue a wholesale license to any corporation which has been domiciled in this state for twenty-five (25) years, or which has acquired substantially all of the assets of a Tennessee partnership (or limited liability company) which partnership (or limited liability company) has been continuously operating in this state for ten (10) years where such corporation has the majority of its assets located in this state and all of whose officers in actual control of the wholesale operations shall be actively present at the licensed premises and who are in actual charge of the operations of the wholesaler substantially full- time. If any officers of such corporation have been convicted of any violation of the criminal code or of any violation relating to the enforcement of the liquor laws, no license under this subsection (g) shall issue.

(h) If at any time subsequent to the granting of a wholesale liquor license to any such corporation, the majority of its assets shall cease to remain and be located in the state of Tennessee, and if any of its active officers shall cease to be residents of Tennessee, then the commission, within its discretion, shall have the right to revoke such license. The commission is further granted the right to make investigations at any time to ascertain if the majority of the assets of such corporation are located within the state of Tennessee and whether all of its active officers are residents of Tennessee, as above set out, and should its findings be in the negative, it may revoke such license. The foregoing shall apply irrespective of the provisions contained in § 57-3-404(d).

(i) No license entitling the holder thereof to sell or deal in alcoholic spirituous beverages at wholesale shall be granted except in respect to premises situated within a municipality having a population of not less than one hundred thousand (100,000) as shown by the federal census of 1960 or any succeeding federal census.

(j) When a person not licensed under the provisions of this chapter secures title to any alcoholic beverage owned by a wholesaler as a result of a default on loans or revocation of license, the manufacturer, rectifier, distiller or vintner who sold the alcoholic beverage to the wholesaler shall purchase the alcoholic beverage from the nonlicensed person who secured title in order that the creditors are satisfied. Any manufacturer, rectifier, distiller or vintner who fails within thirty (30) days following default or revocation of license of the wholesaler to effect the purchase from the nonlicensed person who secured title shall not be allowed to ship or sell any alcoholic beverage in this state until the purchase is effected.

57-3-204. Retailer's licenses — Fees — Permits for employees — Permit renewal — Disposition of alcoholic beverages after nonlicensed persons secure title — Sign required — Penalty for failure to comply.

(a) For the retail sale of alcoholic spirituous beverages, as in this chapter defined, a license may be issued as herein provided. Any person, firm, or corporation desiring to sell alcoholic spirituous beverages to patrons or customers, in sealed packages only, and not for consumption on the premises except for conducting tastings pursuant to § 57-3-404(h)(2), shall make application to the commission for a retailer's license, which application shall be in writing and verified, on forms herein authorized to be prescribed and furnished; and the commission may, subject to the restrictions of this chapter, issue such retailer's license. If the premises with respect to which the license is sought is owned by a person, firm or corporation not the applicant, the application shall include the name and address of the owner. If the ownership of the premises should change after a license is granted, the licensee shall, within ten (10) days after becoming aware of such change in ownership, notify the commission in writing of the name and address of the new owner.

(b)(1) Each applicant for a retail license shall pay to the commission a one-time, non-refundable fee in the amount of three hundred dollars ($300) when the application is submitted for review. A retailer's license under this section shall not be issued until the applicant shall have paid to the commission the annual license fee of eight hundred fifty dollars ($850).

(2) A retail license under this section may be issued to individuals who are residents of the state of Tennessee and either have been bona fide residents of the state for at least two (2) years next preceding or who have at any time been residents of the state of Tennessee for at least ten (10) consecutive years.

(3) The commission may, in its discretion, issue such a retail license to a corporation; provided, that no such license shall be issued to any corporation unless such corporation meets the following requirements:

(A) All of its capital stock must be owned by individuals who are residents of the state of Tennessee and either have been residents of the state for at least two (2) years next preceding or who have at any time been residents of the state of Tennessee for at least ten (10) consecutive years;

(B) No person owning stock in such corporation shall have any interest as partner or otherwise, either direct or indirect, in a business licensed to engage in the sale or distribution of intoxicating liquors in Tennessee; and

(C) No stock of any corporation licensed under this section shall be transferred to any person who is not a resident of the state of Tennessee and either has not been a resident of the state for at least two (2) years next preceding or who at any time has not been a resident of Tennessee for at least ten (10) consecutive years.

(4) A retailer's license under this section shall not be issued if the commission determines that any payments made or proposed to be made to any landlord, consultant, independent contractor, employee or agent is not reasonable or is paid in such a manner and amount so as to indicate a division of profits to such person. In aid of its responsibilities under this section, the commission is authorized to require any applicant to certify the reasonableness of payments it makes to any such landlord, consultant,

independent contractor, employee or agent, and may require the disclosure of all payments made during a previous year or years to such persons by any licensee seeking renewal of a license. The restriction in this subdivision (b)(4) does not apply to any lease entered into prior to January 1, 1990.

(c) Every retail licensee shall, before employing any person to dispense alcoholic beverages, secure from the commission an employee's permit authorizing such person to serve as an employee in the place of business of the retailer. It is made the duty of the retailer to see that each person dispensing alcoholic beverages in the retailer's place of business has an employee's permit as above required, which permit must be on the person of such employee or upon the premises of the licensee at all times subject to inspection by the commission or its duly authorized agent.

(d)(1) If a retail licensee ceases to do business through the voluntary or involuntary loss of the licensee's license, or if a person not licensed under this chapter obtains title to alcoholic beverages of a retail licensee as a result of a defaulted loan or execution, the wholesaler who sold the alcoholic beverages to the retailer shall purchase such alcoholic beverages from the retailer at a base price of the wholesalers' laid-in cost of such alcoholic beverage. A wholesaler shall be permitted an offset or charge against such payment for any outstanding obligation owed to the wholesaler by such licensee or for reasonable labor, restocking and transportation charges.

(2) Any licensee objecting to the reasonableness of the offset or charge may petition the commission to review such, and shall designate the wholesaler as a respondent. The commission shall conduct a contested case hearing pursuant to the Uniform Administrative Procedure Act, compiled in title 4, chapter 5, part 3, to consider the objection.

(3) The obligation imposed on a wholesaler under this section does not apply to any product which:

(A) Is damaged or cannot be legally sold in this state;

(B) Is not sold to a retailer within one hundred eighty (180) days of demand for repayment;

(C) The wholesaler from whom the product was purchased is not the designated distributor pursuant to § 57-3-301, at the time demand is made;

(D) Product contains a price tag not readily removable; or

(E) Is sold in a commemorative bottle, seasonal decanter or other novelty container.

(e) [Deleted by 2010 amendment.]

(f)(1) A manufacturer licensed under § 57-3-202, or under chapter 2 of this title, is authorized to obtain a license under this section for the retail sale of alcoholic beverages or products containing alcohol subject to the further restrictions of this subsection (f).

(2) A manufacturer seeking to obtain a retail license under this subsection (f) shall apply to the commission on such forms as the commission may prescribe.

(3) A retail license issued under this subsection (f) may be located only on the licensed premises of the manufacturers and may be located on such premises whether or not such premises is located in a jurisdiction which has authorized retail sale of alcoholic beverages pursuant to § 57-3-106.

(4) A manufacturer licensed to sell at retail at its retail location under this subsection (f) may sell only such products as are manufactured on the

manufacturer's premises; provided, that at such retail location no more than five gallons (5 gal.) or one-sixth (⅙) of a barrel of its products may be sold to any one (1) individual per visit to the premises.

(5) A retail license issued under this subsection (f) may be issued to a manufacturer, regardless of the residency or domicile of the manufacturer, notwithstanding the requirements imposed by subsection (b).

(6) Notwithstanding any other provision of law to the contrary, a retail licensee, held by a manufacturer or distiller, may serve samples of the product manufactured or distilled at the premises to any person of legal drinking age without cost or may include such samples as part of a tour of the manufacturer's or distiller's premises available to the public with or without cost. Such samples may be made available at either the premises of the retailer or at such other location on the premises of the manufacturer or distiller holding such retail license which other location has been disclosed to the commission and may be any location on the premises permitted by federal law.

(7) If the retail license under this subsection (f) is held by a manufacturer of high alcohol content beer authorized to manufacture such beverages, then:

(A) Notwithstanding any other provision of law, the retailer may sell its products at such retail location which are manufactured on the manufacturer's premises in accordance with subdivisions (f)(7)((B) and (C) in sizes and containers that are made available through the general wholesale/retail distribution system; provided, that the provisions of subsection (g) related to the delivery of alcoholic beverages by wholesalers shall be applicable;

(B)(i) Such retailer may also offer and sell beer, as beer is defined in § 57-5-101(b), for consumption on or off-premises, at the same physical location at which it offers samples of and sells its high alcohol content beer; provided, that such beer and high alcohol content beer is brewed on the manufacturer's premises located at the retail location, and further provided, that such manufacturer may distribute such beer as defined in § 57-5-101(b) only to wholesalers licensed pursuant to chapter 5 of this title. A wholesaler of such products may permit a manufacturer to deliver its products to the retail premises operated by such manufacturer directly; provided, that the wholesaler permitting such direct shipment must include the amounts delivered in its inventory and depletions for purposes of tax collections.

(ii) Notwithstanding any other provision of law to the contrary, the hours and days on which such beer or high alcohol content beer may be sold at retail by a manufacturer authorized to manufacture such beverages pursuant to § 57-2-103(f) shall be as set by the governing body of the local jurisdiction in which the manufacturer is located, and such governing body shall further have the authority to authorize the sale of high alcohol content beer and beer within the same store notwithstanding § 57-3-404(e)(1).

(C) Such retailer may sell no more than five gallons (5 gal.) or one-sixth (⅙) of a barrel of beer or high alcohol content beer or any combination of such beverages to any one (1) individual per visit to the premises.

(g)(1) A manufacturer licensed under chapter 2, or this chapter 3, may distribute alcoholic beverages or products containing alcohol only to a wholesaler licensed pursuant to § 57-3-203 where such alcoholic beverages

or products are intended for sale at retail in this state; provided, however, that, where such alcoholic beverages are not intended for resale, a manufacturer may make complimentary distributions as allowed by § 57-3-404 and on a periodic basis to its employee or employees in the normal course of employment and to others not licensed under this chapter for routine business or marketing purposes. A wholesaler may permit a manufacturer to deliver its products to the retail premises operated by such manufacturer directly; provided, that the wholesaler permitting such direct shipment must include the amounts delivered in its inventory and depletions for purposes of tax collections imposed pursuant to §§ 57-3-302, 57-6-201 and 57-3-501.

(2) No wholesaler may restrict the sale of its products to a retail license held by a manufacturer but must make its products available to any retailer licensed under § 57-3-204.

(h)(1) Subsection (f) applies only in those jurisdictions where the voters have approved the sale of alcoholic beverages for off premise consumption by referendum held pursuant to § 57-3-106 or where the voters have, by local option election, approved the issuance of such special retail license. A special local option election as authorized by this subsection (h), shall be conducted in the manner prescribed in § 57-3-106, provided that the question submitted to the voters shall be in the following form:

To permit licensed manufacturers to obtain a license to sell alcoholic beverages at retail in _____ (here insert jurisdiction).

Not to permit licensed manufacturers to obtain a license to sell alcoholic beverages at retail in _____ (here insert jurisdiction).

(2) In any county having within its boundaries a manufacturer, where the voters of municipalities located within such county have approved the sale of alcoholic beverages, pursuant to § 57-3-106, and where the total population of such municipalities exceeds fifty percent (50%) of the population of the county, no such referendum shall be required; provided, that the authorized retail sales by a manufacturer where no referendum is required is not effective until January 1, 1995.

57-3-207. Grape and Wine Law.

(a) This section shall be known and may be cited as the "Grape and Wine Law." This section shall prevail over any conflicting statutory provision.

(b) A winery license may be issued as provided in this section for the manufacture of alcoholic vinous beverages, as defined in § 57-3-101, upon a verified, written application to the commission on the proper form authorized to be prescribed and furnished in this section, and the application may be granted by the commission, subject to the restrictions of this chapter. Any winery license issued pursuant to this section shall authorize the holder of the license to manufacture, but not rectify, alcoholic vinous beverages, unless the holder of the license is also a distiller or rectifier, or both, holding a license to distill or rectify, or both, alcoholic spirituous beverages, and the winery license shall authorize the holder of the license to place the alcoholic vinous beverages in containers or bottles. Out-of-state wineries may apply for and obtain a winery license issued in accordance with this section.

(c) Each applicant for a winery license issued pursuant to this section shall pay to the commission a one-time, nonrefundable fee in the amount of three hundred dollars ($300) when the application is submitted for review. The

license shall not be issued until a license fee of one hundred and fifty dollars ($150) is paid to the commission by the winery, but issuance of the license is exempt from the requirements of § 57-3-106. The commission shall deposit collections with the state treasurer to be earmarked for and allocated to the commission for the purpose of the administration and enforcement of the duties, powers and functions of the commission.

(d) No winery license shall be issued except to persons who have not been convicted, and whose officers and principals have not been convicted, within a period of five (5) years preceding application of any felony or any violation of any state or federal laws relating to alcoholic beverages.

(e) Notwithstanding this section, a private individual in that person's own home may manufacture wine in an amount not in excess of that amount annually permitted as of March 22, 1973, by federal statute and regulations relative to household manufacture and consumption; provided, that the wine is for personal consumption by members of that person's household.

(f)(1) A winery licensed under this section may serve wine without charge as complimentary samples for tasting at the winery and may sell wine at retail in sealed containers at the winery, but not for consumption on the bonded premises.

(2) A winery licensed under this section may donate wine without charge to nonprofit religious, educational or charitable institutions or associations.

(g) A winery licensed under this section may exchange wine in bulk with other wineries and the bulk exchange, whether in return for wine or other consideration, shall not be considered a sale subject to tax.

(h) In addition to its own wine, a winery licensed under this section located in this state is authorized to sell the following items on the winery premises, and out-of-state wineries licensed under this section may sell the items as their state law permits:

(1) Juices or concentrates derived from juices, or any agricultural products;

(2) Items used in home winemaking; and

(3) Other gift, tourism, or wine-related items as defined by regulations duly promulgated by the commission.

(i) A winery licensed under this section located in this state may sell no more than five (5) cases or sixty (60) liters of wine to any single retail customer in one (1) day. It shall be legal for any purchaser of wine from a winery licensed under this section to transport into and within this state no more than five (5) cases or sixty (60) liters of wine in one (1) day. Any wine transported pursuant to this section must be accompanied by a bill of sale sufficiently identifying the nature, quantity, purchaser, date and place of purchase of the wine. Bills of sale purchased from out-of-state wineries licensed under this section must reflect that the wine was purchased for transport into this state and that Tennessee taxes have been paid. Any person transporting such wine in excess of five gallons (5 gals.) shall have with the shipment a receipt or other documentation demonstrating that the wine was purchased from a winery as licensed in this section.

(j) Any licensee or other person who sells, furnishes, disposes of, gives or causes to be sold, furnished, disposed of or given, any wine in this state or for transport into this state, to any person under the age of majority as established by § 57-4-203(b), commits a Class A misdemeanor.

(k) The commission is empowered and authorized to promulgate such rules

and regulations as may be necessary to carry out the duties of the commission as provided in this section, including, but not limited to, procedures governing the production, sale and transportation of wine. The commissioner of revenue shall establish procedures governing the keeping of records for tax purposes and the payment of taxes by a winery licensed under this section; and for any failure to comply with the procedures, the commissioner shall notify the commission, which is authorized to revoke or suspend the license of any winery.

(*l*) It is the duty of the commissioner of agriculture to disseminate the best information available as to the methods of cultivation of crops that may be utilized in Tennessee for the production of wine and the methods of making such wines. It is also the duty of the commissioner to establish reasonable procedures requiring proper sanitary conditions about the winery and to certify that these conditions have been met before the commission issues any license. The commissioner shall establish reasonable procedures requiring the process of producing wine to be carried on under proper sanitary conditions and in a sanitary manner; and for any failure to comply with the procedures, the commissioner shall notify the commission, which is authorized to revoke or suspend the license of any winery.

(m)(1) Any nonprofit association organized to encourage and support grape growing and winemaking with ten (10) or more wineries licensed under this section as members shall be allowed to hold not more than eight (8) wine festivals per calendar year. Each festival shall not exceed a period of seventy-two (72) hours.

(2) Any winery licensed under this section participating in a festival authorized by this subsection (m) shall be allowed to transport, serve and offer complimentary samples of their wines for tasting at the festival. The complimentary sample size shall be restricted to a one-ounce (1 oz.) serving with only one (1) sample per person for each type of wine. Any person serving wine at the festival shall possess a server permit from the commission as described in part 7 of this chapter.

(3) Any winery licensed under this section participating in a festival authorized by this subsection (m) shall be allowed to transport wine produced by that winery to sell at the festival for consumption off-premises.

(4)(A) Any nonprofit association authorized by this subsection (m) to hold a wine festival shall apply for a special occasion license as defined in § 57-4-102, in order for participating wineries licensed under this section to serve complimentary samples as described in subdivision (m)(2) and to sell wine produced by the wineries for consumption off-premises.

(B) Notwithstanding § 57-4-102(32)(A), a special occasion license issued for a wine festival authorized by this subsection (m) shall be for the duration of the festival for which application is made for a period not to exceed seventy-two (72) hours. A special occasion license issued pursuant to this subsection (m) shall only be available upon the payment of the fee as required by law for each separate day of the festival.

(C) A nonprofit association authorized to conduct a wine festival pursuant to this subsection (m) shall be permitted to hold the festival in any municipality or county of the state in the manner provided in subdivision (m)(5).

(5) A nonprofit association, as defined in subdivision (m)(1), is authorized to conduct a wine festival pursuant to this subsection (m) in a municipality

or county of this state that has approved the sale of alcoholic beverages or has a licensed winery located in that municipality or county, subject to complying with all permit requirements of the municipality or county, and in all other municipalities or counties upon receiving approval of the legislative body of the municipality or county to hold such a festival at a location and in such manner authorized by such legislative body.

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

(o)(1) As used in this subsection (o):

(A) "Farm" means a farming operation located in Tennessee consisting of commercial vineyards, fruit orchards or fruit gardens or any combination of such farming operations;

(B) "Farm wine producer" means a farm which produces its own locally grown product from a vineyard, fruit orchard or fruit garden or any combination of such farming operations to be used in the making of wine; and

(C) "Wine" means an alcoholic beverage containing a minimum of ninety-five percent (95%) of the product of vineyards, fruit orchards or fruit gardens grown and harvested at a farm as the wine being sold by the farm wine producer.

(2) A farm wine permit may be issued as provided in this subsection (o) to a farm wine producer, upon verified, written application to the commission on the proper form authorized to be prescribed and furnished by the commission, and the application may be granted by the commission, subject to the further restrictions of this chapter, other than § 57-3-106.

(3) Each applicant for a farm wine permit shall pay to the commission a one-time, nonrefundable fee in the amount of three hundred dollars ($300) when the application is submitted for review. The permit shall not be issued until a permit fee of one hundred and fifty dollars ($150) is paid to the commission by the farm wine producer, but issuance of the permit is exempt from the requirements of § 57-3-106. The commission shall deposit collections with the state treasurer to be earmarked for and allocated to the commission for the purpose of the administration and enforcement of the duties, powers and functions of the commission.

(4) The holder of a farm wine permit may:

(A) Transport or have transported produce grown on the farm to a winery licensed pursuant to subsection (b), for the manufacture, bottling and labeling of unfortified wine from such produce;

(B) Receive such wine back from the winery manufacturing, bottling and labeling the wine for the farm wine producer;

(C) Offer on the premises of the farm single servings of its wine without charge as a complimentary tasting; and

(D) Sell at retail on the premises of the farm sealed containers of wine made from the produce of its vineyard, orchard or fruit garden in a designated building or area where no wine is consumed.

(5) Wine sold in sealed containers on the premises of the farm may not be consumed within the building where such wine is sold.

(6) The provisions of subsections (d), (h), (i), (j), (m) and (n) which apply to

wineries shall also apply to farm wine permittees.

(p)(1) A winery licensed under this section is authorized to receive produce from a farm wine producer grown on the farm for the purpose of manufacturing, bottling and labeling of wine for such producer. The wine label shall indicate the name of the farm where the fruit was grown and harvested and the name of the winery manufacturing, bottling and labeling such wine.

(2) Such winery shall be responsible for the payment of the state gallonage tax imposed pursuant to § 57-3-302 and the federal alcoholic beverage excise taxes due and owing on the wine bottled by the winery prior to the bottled wine leaving the winery's bonded premises.

(3) The winery is authorized to transport the wine from the winery back to the farm wine permit holder, notwithstanding § 57-3-107(b) or any other law to the contrary. It is lawful for common carriers to transport from the winery which manufactured, bottled and labeled such wine to the farm permit holder pursuant to an agreement or contract with a licensed winery.

57-3-209. Collectors of containers that hold alcoholic beverages.

(a) For purposes of this section:

(1) "Alcoholic beverage collector" means an individual who collects commemorative bottles containing alcoholic beverages, wine or distilled spirits, where the individual displays the collection in a location available to the public, either by appointment or on a regular schedule, and who sells collectible alcoholic beverages for the purpose of collection, without the intent that the collectible alcoholic beverage be consumed; and

(2) "Collectible alcoholic beverage" means an alcoholic beverage, distilled spirit or wine in a unique or commemorative bottle, decanter or other container, not generally available at a licensee holding a permit issued pursuant to § 57-3-204.

(b) Any individual qualifying as an alcoholic beverage collector may apply to the commission for a license as an alcoholic beverage collector, authorizing that individual to purchase wine, distilled spirits and other alcoholic beverages from any entity authorized to sell such products and shall be authorized to sell, in a face to face transaction only, collectible alcoholic beverages, as defined in this section, to any person twenty-one (21) years of age or older. The license may be issued notwithstanding the requirements of § 57-3-106.

(c) No license shall be issued under this section to any person who has an interest, direct or indirect, in any business holding a license issued under chapter 2 of this title or pursuant to § 57-3-202, § 57-3-203, § 57-3-204, § 57-3-207, § 57-3-218 or § 57-4-101.

(d) Any sale of any alcoholic beverage, wine or distilled spirit by an individual licensed under this section shall be presumed not to be a sale of a collectible alcoholic beverage if the price of the sale is not at least three hundred percent (300%) of the price of the same brand, vintage, quantity and type of alcoholic beverage, distilled spirit or wine as is available at any licensee holding a license pursuant to § 57-3-204. The alcoholic beverage collector shall have the burden of proving that any sale authorized under this section satisfies the requirements of this section.

(e)(1) An alcoholic beverage collector shall be responsible for remitting all sales taxes due resulting from any sale by the collector under this section. Where the collector cannot demonstrate that the collectible alcoholic beverage was purchased from a licensee holding a license pursuant to § 57-3-204,

the collector shall also pay the taxes imposed pursuant to § 57-3-302.

(2) The taxes levied on sales made by an alcoholic beverage collector as authorized by this section shall become due and payable on the first day of each month following the month when the sales occur and shall become delinquent if not paid on or before the twentieth day of each following month. For the purpose of ascertaining the amount of tax payable, it is the duty of each alcoholic beverage collector to transmit to the commissioner of revenue a return on forms prescribed by the commissioner.

(f) Each applicant for an alcoholic beverage collector's license under this section shall pay to the commission a one-time, nonrefundable fee in the amount of three hundred dollars ($300) when the application is submitted for review. An alcoholic beverage collector's license under this section shall not be issued until the applicant has paid to the commission the annual license fee of one thousand dollars ($1,000).

57-3-220. License for military personnel living abroad to ship wine to this state.

(a) Any individual who has been stationed outside the United States while serving as a member of the armed forces of the United States or a member of a reserve or Tennessee national guard unit may apply to the commission for a one-time license allowing such individual to ship any wine such individual has purchased while residing outside the United States to this state.

(b) Each individual applying for a license under this section shall pay to the commission a one-time nonrefundable fee of one hundred dollars ($100). Each individual shall also pay the appropriate taxes required pursuant to § 57-3-302.

(c) The commission shall create a form for issuing a license under this section. The form shall contain any information the commission deems necessary for allowing shipment under this section and for ensuring the individual pays the appropriate taxes.

(d) Any individual who ships wine pursuant to this section is prohibited from reselling any wine shipped to this state.

57-3-401. Transportation, possession, importation, shipment or delivery of untaxed alcoholic beverages unlawful — Penalty.

(a)(1) It is an offense for any person, firm or corporation, other than a common carrier or entity licensed under this title, to transport, either in person or through an agent, employee or independent contractor, untaxed alcoholic beverages or wine as defined in § 57-3-101 within, into, through or from this state in quantities in excess of five gallons (5 gals.). Except as provided in § 57-3-103(b) authorizing a person to store alcoholic beverages intended for a person's personal or social use, it is an offense for any person, firm, corporation or association to possess untaxed alcoholic beverages or wine in quantities in excess of five gallons (5 gals.). A violation of this subdivision (a)(1) is a Class E felony.

(2) Any person, firm, corporation or association transporting any alcoholic beverages or wine within or into this state shall bear the burden of proof that the taxes imposed by this title on alcoholic beverages or wine have been paid, or, in the case of wine that is manufactured at a winemaking on premises facility licensed pursuant to § 57-3-218, that no such taxes are due. A receipt

or other documentation demonstrating legal purchase or transport from an entity licensed under § 57-3-203, § 57-3-204, § 57-3-207 or § 57-3-218 shall be adequate proof that such taxes have been paid or that no such taxes are due.

(b)(1) It is an offense for any person, firm, corporation or association to import, ship, deliver or cause to be imported, shipped or delivered into this state any alcoholic beverages upon which the tax imposed by this title has not been paid or where such transportation is not authorized under this title to an entity possessing a license issued under this title. A violation of this subdivision (b)(1) is a Class E felony.

(2) Except as provided in § 57-3-207 for purchases made by an individual at a winery licensed pursuant to § 57-3-207, and notwithstanding the prohibition in subdivision (b)(1), it shall be lawful for any individual to transport not more than five gallons (5 gals.) of alcoholic beverages or wine into or within this state for the personal or household use of that individual.

57-3-404. Regulations for purchase and sale of intoxicating liquors — Wholesalers — Check cashing — Ground floor location — Credit sales.

(a) It is unlawful for any person in this state to buy any alcoholic beverages herein defined from any person, who, to the knowledge of the buyer, does not hold the appropriate license under the laws of this state authorizing the sale of such beverages to the buyer.

(b) No retailer shall purchase any alcoholic beverages from anyone other than a licensed wholesaler, nor shall any wholesaler sell any alcoholic beverages to anyone other than a licensed retailer, or a licensed wholesaler; provided, that such alcoholic beverages sold by one (1) wholesaler to another wholesaler shall be transported by common carrier or by vehicle owned or leased and operated by either the consignor wholesaler or the consignee wholesaler.

(c) No manufacturer or distiller shall sell any alcoholic beverages to any person in this state except a licensed wholesaler and to another manufacturer or distiller, and no manufacturer shall hold a wholesaler's license.

(d)(1) No alcoholic beverage for sale to the retailer, or the retailer's representative, shall be sold except by a licensed wholesaler, who sells for resale on the wholesaler's premises and who carries on no other business, directly or indirectly, and whose wholesale business in alcoholic beverages is not operated as an adjunct to, or supplementary to, the business of any other person, either by way of lease of the wholesale premises or otherwise, for any business other than that permitted by the terms of such wholesaler's wholesale license.

(2) Notwithstanding the limitations and restrictions imposed by this section, a wholesaler may invest its business assets in other businesses, and may engage in the sale and distribution of products other than alcoholic beverages; provided, that gross revenues from such other businesses and from the sale of products other than alcoholic beverages may not exceed fifty percent (50%) of a wholesaler's total gross revenues. Nothing in this subdivision allows or authorizes a wholesaler to engage in activities covered by chapter 5 of this title.

(e)(1) No licensee shall sell intoxicating liquors at retail in connection with any wholesale business, or as a part of or in connection with any other

business or in the same store where any other business is carried on.

(2) Nothing in this subsection shall prohibit a licensee from cashing a check and other negotiable instrument, for a fee, when such service is made available only to a person over twenty-one (21) years of age, and when such service is conducted only on the premises of the licensee; provided, that no fee greater than three percent (3%) of the check shall be charged by any licensee or employee thereof; and provided further, that no postdated check may be cashed by a licensee or an employee thereof under the provisions of this section or any other law; and provided further, that any establishment assessing the charge above may not require a purchase of alcohol or products relating to alcohol as a condition for cashing a check.

(f) No wholesale or retail store shall be located except on the ground floor, and it shall have one (1) main entrance opening on a public street, and such place of business shall have no other entrance for use by the public except as hereafter provided. When a wholesale or retail store is located on the corner of two (2) public streets, such wholesale or retail store may maintain a door opening on each of the public streets. Any sales room adjoining the lobby of a hotel or other public building may maintain an additional door into such lobby so long as same shall be open to the public. Every wholesale and retail store shall be provided with whatever entrances and exits may be required by existing or future municipal ordinances. When the location of a wholesale or retail liquor store is authorized to be located or operated within an established shopping center or shopping mall, and such liquor store cannot and does not have a main entrance or door opening onto a public street, but the main entrance or door would open or front on a shopping center parking area, the commission in its discretion may approve the issuance of a liquor license to cover such location within the shopping center or shopping mall, irrespective of the fact that the main entrance or door does not or would not open onto a public street.

(g) No holder of a license for the sale of alcoholic beverages for wholesale or retail shall sell, deliver, or cause, permit or procure to be sold or delivered, any alcoholic beverages on credit, except that holders of wholesale licenses may sell on not more than ten (10) days' credit.

(h)(1) No alcoholic beverages shall be sold for consumption on the premises of the seller except as provided in §§ 57-4-101 — 57-4-203, and except as may be permitted by the regulations of the commission for the purpose of conducting consumer educational seminars by a licensee under § 57-3-204, conducted on the premises of a business licensed pursuant to §§ 57-4-101 — 57-4-203. A wholesaler licensed pursuant to § 57-3-203 or a person holding a permit as a representative or sales person pursuant to § 57-3-203(d) may conduct a sales demonstration on the premises of a licensed retailer and, for such limited purpose, may provide free samples to the employees of a licensed retailer for consumption on such premises. A retail licensee may conduct such a sales demonstration for the persons employed by such licensee holding permits issued pursuant to § 57-3-204(c) using products and samples provided by a wholesaler or wholesaler sales representative notwithstanding the absence of the wholesaler or wholesaler sales representative. All such sales demonstrations permitted consumption shall be permitted only for sales, education, and promotional purposes and no one other than a retail licensee, a person holding a permit issued pursuant to

§ 57-3-204(c), a wholesaler or a wholesaler sales representative, or a person holding a permit issued pursuant to § 57-3-202(d) may be present in the room where such demonstration is conducted or may receive a sample for consumption.

(2)(A) A retail licensee may offer complimentary samples of the products it sells for tastings to be held on the premises of the retail licensee. Such tastings shall be for sales, education and promotional purposes. No person holding a license under § 57-3-203 shall, directly or indirectly, provide any products, funding, labor, support or reimbursement to a retailer for the consumer tastings authorized by this subdivision (h)(2).

(B)(i) The tastings may be held at the option of the retail licensee during the hours the retail licensee is open for business, without filing any notice other than as provided in subdivision (h)(2)(B)(ii) with the commission, and no charge or fee may be assessed by the commission for a retail licensee to offer such complimentary samples.

(ii) With its annual renewal, the retail licensee shall notify the commission of its intention to conduct tastings during the year on the premises of the retail licensee. If following the date the license is renewed, the retail licensee makes a determination to offer tastings, the licensee shall notify the commission of its intention to conduct tastings for the remainder of the year.

(C) The size of each sample shall be no greater than approximately two ounces (2 oz.) for each wine or high alcohol content beer sample and no greater than approximately one-half ounce (½ oz.) for each liquor sample. It is the responsibility of the retail licensee to limit the number of tastings per customer and the number of products available for tasting.

(D) Notwithstanding any law or rule to the contrary, a retail licensee or employee of the licensee may participate in tastings.

(E) A server permit is not required for employees conducting tastings if the employee has a permit pursuant to § 57-3-703; provided, that every retail licensee which offers tastings is encouraged to ensure that any employee who is involved with the tastings understands that a violation of § 57-3-406(c) and (d) and § 57-3-412 related to retail sales apply equally to those customers who participate in the tastings.

57-3-406. Regulation of retail sales.

(a) No retailer licensed under § 57-3-204 shall, directly or indirectly, operate more than one (1) licensed retail business in this state. "Indirectly" means any kind of interest in such a retail business by way of stock ownership, loan, partner's interest or otherwise. A landlord shall be deemed to have an indirect interest in such a retail business when the lease agreement is based upon a percentage of profits or any other factor based upon sales of alcoholic beverages by the tenant as distinguished from being simply an interest in land for a period of time at a definite rate.

(b) Nothing in this chapter shall prohibit a retailer from offering a discount in such manner as the retailer deems appropriate as long as the discount being offered is not below the cost paid by the retailer to purchase the alcoholic beverages from the wholesaler.

(c) No retailer shall sell any alcoholic beverages to any person who is visibly intoxicated, nor shall any retailer selling alcoholic beverages sell to any person

accompanied by a person who is visibly intoxicated.

(d) No retailer shall sell any alcoholic beverages to a person known to be a minor.

(e) No retailer shall sell or give away any alcoholic beverage between eleven o'clock p.m. (11:00 p.m.) on Saturday and eight o'clock a.m. (8:00 a.m.) on Monday of each week. No retail store shall sell, give away or otherwise dispense alcoholic beverages except between the hours of eight o'clock a.m. (8:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Monday through Saturday. The store may not be open to the general public except during regular business hours. Likewise, all retail liquor stores shall be closed for business on Thanksgiving Day and Christmas Day.

(f) No retailer of alcoholic beverages shall keep or permit to be kept upon the licensed premises any alcoholic beverages in any unsealed bottles or other unsealed containers except such open bottles and containers of damaged and unmarketable product retained by the retail licensee for purpose of return to a wholesaler or such open bottles and containers required for conducting a sales demonstration as permitted by § 57-3-404(h).

(g) No retailer as herein defined shall own, store or possess upon the licensed premises any merchandise unless the retailer shall also possess such documentation as prescribed by the commission to demonstrate that the taxes imposed in this chapter have been paid.

(h) No retailer shall sell or give away any alcoholic beverages on the following holidays: Christmas, Thanksgiving, Labor Day, New Year's Day and the Fourth of July.

57-3-413. Criminal trespass charge in violation of § 39-14-405.

(a) A person may be charged with a violation of § 39-14-405, if the person is:

(1) Between eighteen (18) and twenty-one (21) years of age;

(2) Visibly intoxicated; or

(3) Otherwise disruptive; and

(4) Such person is asked by the owner or employee of an establishment that is licensed as a retail package store pursuant to § 57-3-204 to leave the premises, and that person remains on the premises.

(b) If a person is a minor under eighteen (18) years of age and is asked by the owner or employee of an establishment that is licensed as a retail package store pursuant to § 57-3-204 to leave the premises, and the minor remains on the premises, such minor commits a delinquent act.

57-3-604. Prohibited actions.

No holder of a nonresident seller's permit, nor any officer, director, agent, or employee of the holder, nor any affiliate of the holder, regardless of whether the affiliation is corporate or by management, direction, or control, may do any of the following:

(1) Have an interest, direct, or indirect in any business licensed under §§ 57-3-204 and 57-4-101;

(2) Fail to make or file a report with the commission as required by rule of the commission;

(3) Sell liquor for resale inside this state that fails to meet the standards of quality, purity, and identity prescribed by the commission;

(4) Advertise any liquor contrary to the laws of this state or to the rules of the commission, or sell liquor for resale in this state in violation of

advertising or labeling rules of the commission;

(5) Sell liquor for resale inside this state or cause it to be brought into the state in a size of container prohibited by this code or by rule of the commission;

(6) Solicit or take orders for liquor from a person not authorized to import liquor into this state for the purpose of resale;

(7) Induce, persuade, or influence, or attempt to induce, persuade or influence, a person to violate this code or a rule of the commission, or conspire with a person to violate this code or a rule of the commission; or

(8) Exercise a privilege granted by a nonresident seller's permit while an order or suspension against the permit is in effect.

57-3-608. [Repealed.]

57-3-704. Application requirements for server permits.

Any individual may be eligible for a server permit by completing an application for such permit on the forms provided by the commission. An applicant for a server permit must demonstrate to the commission that the applicant meets the following requirements:

(1) Other than for a crime described in subdivision (2), the applicant has not been convicted of a felony within the previous four (4) years;

(2)(A) The applicant has not been convicted of any crime relating to alcoholic beverages and beer, other than related to the sale of such beverages as provided in subdivision (2)(B), schedules 1 and 2 controlled substances, controlled substance analogues or any sex-related crime or embezzlement within the previous eight (8) years; or

(B)(i) Except as provided in subdivision (2)(B)(ii), the applicant has not been convicted of any crime relating to the sale of alcoholic beverages or beer occurring within eight (8) years prior to the date of the application;

(ii) If an applicant is charged with any crime described under this subdivision (2)(B) as a first offense and the applicant is placed on judicial diversion, the applicant may be issued a server permit upon successful completion of the judicial diversion;

(3) The applicant has not had an employee or server permit or similar permit issued in a foreign jurisdiction revoked by any issuing authority within the previous five (5) years;

(4) The applicant has not had any ownership interest in any licensee or permittee, licensed or permitted pursuant to § 57-3-203, § 57-3-204, § 57-4-101 or § 57-5-103 which has had its license or permit revoked by the issuing authority within the previous eight (8) years;

(5) Within one (1) year prior to the submission of the application the applicant has successfully completed a program of alcohol awareness training for persons involved in the direct service of alcohol, wine or beer by an entity certified by the commission to have an adequate training curriculum for alcohol awareness. If, in the determination of the commission, a state other than Tennessee is deemed to have an adequate program of alcohol awareness training, then the successful completion of such training in that state within one (1) year prior to the submission of an application to the commission for a server permit shall satisfy the requirement of alcohol awareness training; and

(6) The applicant is at least eighteen (18) years of age.

57-4-102. Chapter definitions.

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

(1) "Alcoholic beverage" or "beverage" means and includes alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, other than patented medicine or beer where the latter contains an alcoholic content of five percent (5%) by weight, or less. Notwithstanding any provision to the contrary in this title, "alcoholic beverage" or "beverage" also includes any liquid product containing distilled alcohol capable of being consumed by a human being manufactured or made with distilled alcohol irrespective of alcoholic content;

(2) "Aquarium exhibition facility" means an enclosed facility possessing each of the following characteristics:

(A) The facility is owned and operated by a bona fide charitable or nonprofit organization that also owns and operates a "public aquarium" as defined in subdivision (28);

(B) The facility contains a minimum area of ten thousand square feet (10,000 sq. ft.); and

(C) The facility is used for either or both of the following purposes:

(i) The exhibition to the public of artifacts, physical objects, pictures and movies; or

(ii) To aid in the education of the public by means of interactive displays or stations, learning laboratories, and classroom areas for instruction in the physical sciences, natural history or other educational disciplines;

(3) "Bed and breakfast establishment" has the same meaning as set forth in § 68-14-502(1)(A); provided, that such bed and breakfast establishment is located in a county having a population of not less than fifty-one thousand three hundred fifty (51,350) nor more than fifty-one thousand four hundred fifty (51,450), according to the 1990 federal census or any subsequent federal census and has eleven (11) furnished guest rooms;

(4) "Bona fide charitable or nonprofit organization" means any corporation which has been recognized as exempt from federal taxes under § 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)) or any organization having been in existence for at least two (2) consecutive years which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational or charitable purposes;

(5) "Bona fide political organization" means any political campaign committee as defined in § 2-10-102 or any political party as defined in § 2-13-101;

(6) "Caterer" means a business engaged in offering food and beverage service for a fee at various locations, which:

(A) Operates a permanent catering hall on an exclusive basis;

(B) Has a complete and adequate commercial kitchen facility; and

(C) Is licensed as a caterer by the Tennessee department of health;

(7) "Civic arts center" means a complex that serves as a community center for the arts and further possesses the following characteristics:

(A) Has a performance hall with at least one thousand one hundred (1,100) seats;

(B) Has a flexible theater;

(C) Consists of two (2) buildings and an outdoor plaza between the buildings;

(D) Allows alcoholic beverages to be served when the civic arts center is hosting ticketed events, private functions or is rented to another party hosting an event open to the public; and

(E) Is located in a county having a population of not less than one hundred five thousand eight hundred (105,800) nor more than one hundred five thousand nine hundred (105,900), according to the 2000 federal census or any subsequent federal census;

(8)(A) "Club" means a nonprofit association organized and existing under the laws of the state of Tennessee, which has been in existence and operating as a nonprofit association for at least two (2) years prior to the application for a license hereunder, having at least one hundred (100) members regularly paying dues, organized and operated exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any shareholder or member; and owning, hiring or leasing a building or space therein for the reasonable use of its members with suitable kitchen and dining room space and equipment and maintaining and using a sufficient number of employees for cooking, preparing and serving meals for its members and guests; provided that no member or officer, agent or employee of the club is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of spirituous liquors, wines, champagnes or malt beverages beyond the amount of such salary as may be fixed by its members at an annual meeting or by its governing body out of the general revenue of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The premises, as provided in § 57-4-101(a)(2) for a club, shall also include the golf course, tennis courts and the area immediately surrounding the swimming pool, if a club offers such amenities. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with the definition above;

(B) "Club" also means an organization composed of members of the Tennessee national guard, air national guard, or other active or reserve military units which operate facilities located on land owned or leased by the state of Tennessee and which are operated exclusively for the pleasure and recreation of such organization's members, dependents and guests and which are generally referred to as "NCO Clubs" or "Officers Clubs." Such NCO or officers clubs shall be subject to all of the requirements of subdivision (8)(A), except for those requirements relating to having a kitchen, kitchen equipment, and employees;

(C) "Club" also means a nonprofit association organized and existing under the laws of the state of Tennessee which is located in a county having a population of not less than twenty-eight thousand six hundred sixty (28,660) nor more than twenty-eight thousand six hundred ninety (28,690), according to the 1980 federal census or any subsequent federal census. Such club shall be located in a development containing no less than four hundred forty (440) acres and shall be organized and operated

exclusively for the pleasure, recreation and other nonprofit purposes of its members and their guests. No part of the net earnings of the association shall inure to the benefit of any shareholder or member. The club shall provide to its members a regulation golf course, tennis courts, and a swimming pool. The club shall own, hire or lease a building or buildings for the reasonable use of its members with suitable kitchen and dining room space and equipment. Such club shall maintain and use a sufficient number of employees for cooking, preparing and serving meals for its members and guests. No member or officer, agent or employee of the club shall be paid, or directly or indirectly receive in the form of salary or other compensation any profits from the sale of alcoholic beverage or malt beverage beyond the amount of such salary as may be fixed by its members at an annual meeting, or by its governing body out of the general revenues of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with this definition;

(D)(i) "Club" also means a for-profit recreational club organized and existing under the laws of the state of Tennessee and which has been in existence and operating for at least two (2) years prior to the application for a license. Such club shall have at least one hundred (100) members regularly paying dues, and shall be organized and operated exclusively for recreation, and providing to its members a regulation golf course and owning, hiring or leasing a building or buildings for the reasonable use of its members, with suitable kitchen and dining room space and equipment, and lodging facilities consisting of not less than ten (10) rooms. Such club shall maintain and use a sufficient number of employees for cooking, preparing and serving meals for its members and guests and providing lodging facilities to its members and guests. Other than the payment of dividends to the shareholders of the club from its net income derived from all of its operations, no member or officer, agent or employee of the club shall be paid, or shall directly or indirectly receive in the form of salary or other compensation, any profits from the sale of alcoholic beverages or malt beverages beyond the amount of such salary as may be fixed by the shareholders of the corporation at an annual meeting by its governing body out of the general revenues of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with this definition. The alcoholic beverage commission shall not issue a license to any for-profit recreational club which restricts membership based on race or religion or sex. In any proceeding concerning a license denial or revocation under this subdivision (8)(D)(i), no quota or numerical percentage shall be used to establish proof of the prohibited discrimination among the club's membership;

(ii) Notwithstanding the provisions of § 57-4-101(a)(2) to the contrary, this subdivision (8)(D) shall not apply in any municipality which has not approved the sale of alcoholic beverages for consumption on the premises pursuant to § 57-4-103;

(iii) The provisions of this subdivision (8)(D) shall only apply in counties having a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor more than two hundred eighty-seven thousand eight hundred (287,800), according to the 1980 federal census or any subsequent federal census;

(E)(i) "Club" also means a for-profit recreational club, organized and existing under the laws of the State of Tennessee, which has at least two hundred fifty (250) dues-paying members who pay dues of at least one hundred dollars ($100) a year. Such club shall have golf courses containing at least twenty-seven (27) holes, collectively, for the use of its members and guests, and have suitable kitchen and dining facilities. Such club shall serve at least one (1) meal daily, five (5) days a week. Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based upon the volume of such beverages sold. Such club shall not discriminate against any patron or potential member on the basis of gender, race, religion or national origin;

(ii) The provisions of this subdivision (8)(E) only apply in counties having a population of not less than eighty thousand (80,000) nor more than eighty-three thousand (83,000), according to the 1990 federal census or any subsequent federal census;

(F)(i) "Club" also means a for-profit recreational club, organized and existing under the laws of the state of Tennessee, which has at least two hundred twenty-five (225) dues-paying members who pay dues of at least three hundred dollars ($300) a year. Such club shall have a clubhouse with not less than five thousand square feet (5,000 sq. ft.), golf courses containing at least eighteen (18) holes, collectively, for the use of its members and guests, and have suitable kitchen and dining facilities. Such club shall serve at least one (1) meal daily, five (5) days a week. Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based upon the volume of such beverages sold. Such club shall not discriminate against any patron or potential member on the basis of gender, race, religion or national origin. It is the express intention of the general assembly that the provisions of law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of age be strictly enforced in such clubs;

(ii) The provisions of this subdivision (8)(F) only apply in any county having a population of:

not less than	nor more than
21,800	22,100
22,600	23,000
34,850	35,000
80,000	83,000

according to the 1990 federal census or any subsequent federal census;

(G) "Club" also means a clubhouse owned and operated by a for-profit corporation, which is open to the public but has at least one hundred fifty (150) private members and seats at least one hundred (100) persons, that is a planned part of a residential development consisting of no less than two hundred fifty (250) acres and at least one hundred ninety (190) residential units, and such development contains an eighteen-hole golf course under separate ownership; provided, that such club is located in a county having a population of not less than one hundred three thousand one hundred (103,100) nor more than one hundred three thousand four hundred (103,400), according to the 1990 federal census or any subsequent federal census and in a municipality which lies within two (2) contiguous counties;

(H) "Club" also means a facility owned by a for-profit corporation incorporated in Tennessee prior to September 30, 2000, as a private club which does not discriminate against members or potential members or bona fide guests of such members on the basis of gender, race, religion or national origin, and further possesses the following characteristics:

(i) Is located within three (3) miles of a municipal golf course owned and operated by a home-rule municipality located in a county having a charter form of government and having a population of not less than three hundred eighty-two thousand (382,000) nor more than three hundred eighty-two thousand one hundred (382,100), according to the 2000 federal census or any subsequent federal census;

(ii) Has, on July 3, 2002, a minimum of three hundred (300) members paying annual dues with a copy of membership applications on file on the premises, and which issues to its members a membership card which authorizes admittance of the member and bona fide guests of such member; and

(iii) Has a kitchen and dining area having a minimum seating capacity of seventy-five (75) in a building having at least eighteen hundred square feet (1800 sq. ft.);

(I) "Club" also means a for-profit recreational club organized and existing under the laws of the state of Tennessee which has been in existence and operating for at least two (2) years prior to June 11, 2003, and which is located in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census, and further possesses the following characteristics:

(i) Has at least one hundred seventy-five (175) members paying annual dues and does not discriminate against members or potential members or bona fide guests of such members on the basis of gender, race, religion or national origin;

(ii) Is organized and operated exclusively for recreation and providing a regulation eighteen-hole golf course for the use of its members and guests, and also offers for the use of its members and guests a swimming pool and tennis facility; and

(iii) Has a clubhouse with not less than three thousand square feet (3,000 sq. ft.) with suitable kitchen, dining facilities and equipment, serving at least one (1) meal daily, at least five (5) days a week;

Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based

upon the volume of such beverages sold;

It is the express intention of the general assembly that the provisions of law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of age be strictly enforced by such club;

(J) "Club" also means a for-profit recreational club, organized and existing under the laws of the state of Tennessee, which is located in any county having a population of not less than one hundred thirty thousand (130,000) nor more than one hundred thirty-one thousand (131,000), according to the 2000 federal census or any subsequent federal census, and further possesses the following characteristics:

(i) The club shall be adjacent to a residential development consisting of at least one hundred (100) residential units, and the club property and such residential development shall consist of at least two hundred (200) acres;

(ii) The residential development shall be adjacent to a lake with an area greater than twenty (20) acres;

(iii) The club shall be organized and operated to provide to its members, their guests, and others an eighteen-hole golf course and amenities provided by other similar clubs;

(iv) The club shall serve at least one (1) meal daily, five (5) days a week;

(v) The club shall have a clubhouse with not less than three thousand square feet (3,000 sq. ft.) with suitable kitchen, dining facilities and equipment; and

(vi) The club shall not discriminate against any person on the basis of gender, race, religion or national origin;

(K)(i) "Club" also means a for-profit recreational club organized and existing under the laws of this state that has been in existence and operating for at least two (2) years prior to March 31, 2003, and that is located in any county not having a metropolitan form of government and having a population of not less than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, and further possesses the following characteristics:

(a) Has at least two hundred twenty-five (225) members paying monthly or annual dues, or both, and does not discriminate against members or potential members or bona fide guests of the members on the basis of gender, race, religion or national origin;

(b) Is organized and operated exclusively for recreation and provides a regulation eighteen-hole golf course for the use of its members and guests, and may or may not also provide for the use of its members and guests a swimming pool and tennis facility; and

(c) Has a clubhouse with not less than ten thousand square feet (10,000 sq. ft.) with suitable kitchen, dining facilities and equipment, serving at least one (1) meal daily, at least five (5) days a week;

(d) The club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based on the volume of those beverages sold;

(ii) It is the express intention of the general assembly that the provisions of law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of age be strictly

enforced by the club;

(9) "Commercial airline" includes any airline operating in interstate commerce under a certificate of public convenience and necessity issued by the appropriate federal or state agency, or under an exemption from the requirement of obtaining a certificate of public convenience and necessity but otherwise regulated by an appropriate federal or state agency, with adequate facilities and equipment for serving passengers, on regular schedules, or charter trips, while moving through any county of the state, but not while any such commercial airline is stopped in a county or municipality that has not legalized such sales;

(10) "Commercial airline travel club" means an organization established and operated by or for a commercial airline as defined in this section for the convenience and comfort of airline passengers;

(11) "Commercial passenger boat company" means a company that operates one (1) or more passenger vessels for hire upon navigable waterways and is licensed by the United States Coast Guard to carry not less than fifty (50) passengers on a single vessel. Such company shall operate out of any county that has a population in excess of two hundred eighty-five thousand (285,000) or not less than eighty-three thousand three hundred (83,300) nor more than eighty-three thousand four hundred (83,400), according to the 1980 federal census or any subsequent federal census. No commercial passenger boat company licensed pursuant to this chapter shall sell any type of alcoholic beverage or beer while such boat is docked within the boundaries of any local government which has not approved the sale of alcoholic beverages pursuant to § 57-4-103;

(12) "Commission" means the alcoholic beverage commission, created pursuant to chapter 1 of this title;

(13)(A) "Community theater" means a facility or theater possessing each of the following characteristics:

(i) The community theater is at least eight (8) years old;

(ii) The theater is operated by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)) as amended, where no member or officer, agent or employee of any community theater shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the community theater, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the theater. No alcoholic beverages or beverages of any kind shall be possessed or consumed inside the auditorium of such theater during performances in such auditorium;

(iii) The theater provides or leases facilities for theatrical programs of cultural, civic and educational interest; and

(iv) The theater is located in any county having a population of not less than seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census;

(B) "Community theater" also includes a facility or theater possessing each of the following characteristics:

(i) The facility has a performance hall seating not less than two hundred fifty (250) persons, a resource library, rehearsal rooms, and permanent exhibition space of not less than nine thousand square feet (9,000 sq. ft.);

(ii) The facility is operated by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)) as amended, where no member or officer, agent or employee of any community theater shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the facility, and in furtherance of the purposes of the organization;

(iii) The facility provides or leases facilities for concerts and programs of cultural, civic and educational interest; and

(iv) The facility is located in any county having a population of not less than two hundred eighty-five thousand (285,000) nor more than two hundred eighty-six thousand (286,000), according to the 1990 federal census or any subsequent federal census;

(C) Alcoholic beverages may be sold at a community theater only during one (1) performance or benefit program a day and only one (1) hour before, during and one (1) hour after the performance or benefit program;

(D) "Community theater" also includes a facility or theater possessing each of the following characteristics:

(i) The facility is located in a building that is at least eighty (80) years old;

(ii) The facility has a performance hall seating approximately two hundred fifty (250) persons;

(iii) The facility is operated by a not-for-profit corporation that is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), and no member or officer, agent or employee of any community theater is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond the amount of the salary as may be fixed by its governing body for the reasonable performance of the person's assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation, renovation, refurbishing and maintenance of the facility, and in furtherance of the purposes of the organization;

(iv) Alcoholic beverages shall only be sold before or after performances or during intermissions in the performances, and no alcoholic beverages shall be consumed inside the auditorium of the facility; and

(v) The facility is located within a municipality that has authorized the sale of alcoholic beverages for consumption on the premises, in a referendum in the manner prescribed by § 57-3-106, in any county having a population of not less than thirty-three thousand five hundred twenty-five (33,525) nor more than thirty-three thousand six hundred (33,600), according to the 2000 federal census or any subsequent federal

census;

(E) "Community theater" also includes a privately owned facility possessing each of the following characteristics:

(i) Is a community theater in continuous operation since 1943;

(ii) Is primarily a volunteer organization with limited salaried staff;

(iii) Has an auditorium with more than three hundred (300) seats;

(iv) Is located on an historic square and is allowed to sell alcoholic beverages at up to five (5) special events annually that are held on the historic square along with being allowed to sell alcoholic beverages as provided in subdivision (13)(C); and

(v) Is located in any county having a population of not less than seventy-one thousand three hundred (71,300) nor more than seventy-one thousand four hundred (71,400), according to the 2000 federal census or any subsequent federal census;

(F) "Community theater" also includes a facility or theater possessing each of the following characteristics:

(i) The facility is at least twenty-seven (27) years old;

(ii) The facility has a performance hall seating not less than one hundred fifty (150) persons and not more than five hundred (500) persons;

(iii) The facility is operated by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954, codified in 26 U.S.C. § 501(c), as amended, where no member or officer, agent or employee of any community theater is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond the amount of the salary as may be fixed by its governing body for the reasonable performance of the person's assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation, renovation, refurbishing and maintenance of the facility, and in furtherance of the purposes of the organization; and

(iv) The facility is located in any county having a population of not less than one hundred thirty-four thousand seven hundred (134,700) nor more than one hundred thirty-four thousand eight hundred (134,800), according to the 2000 federal census or any subsequent federal census; and

(G) "Community theater" also includes a municipally owned facility possessing each of the following characteristics:

(i) Is a community theater in continuous operation since 1980;

(ii) Has an auditorium with more than three hundred (300) seats;

(iii) Provides or leases facilities for concerts, plays and programs of cultural, civic and education interest; and

(iv) The facility is located in any municipality that has authorized the sale of alcoholic beverages for consumption on the premises, in a referendum in the manner prescribed by § 57-3-106, and the municipality has a population of not less than twenty-three thousand nine hundred twenty (23,920), nor more than twenty-three thousand nine hundred thirty (23,930), according to the 2000 federal census or any subsequent federal census;

(14)(A) "Convention center" means a facility possessing each of the following characteristics:

(i) Owned by the state, municipal and/or county government, or a nonprofit, tax exempt, charitable organization that operates a symphony orchestra, and leased or operated by that government or by a nonprofit charitable corporation established to operate such facility;

(ii) Designed and used for the purposes of holding meetings, conventions, trade shows, classes, dances, banquets and various artistic, musical or other cultural events;

(a) A convention center does not include a building located within one thousand (1,000) yards of both a student museum and a zoological park; provided, that any restaurant, located within a former world's fair site or a zoological park and which meets the requirements of subdivision (29), shall be eligible for licensure under this chapter as long as the requirements of this chapter are otherwise met;

(b) A convention center also does not include a building which is more than twenty (20) years old and is located in any county having a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor more than two hundred eighty-seven thousand eight hundred (287,800), according to the 1980 federal census or any subsequent federal census;

(iii)*(a)* Except as provided for in (14)(A)(iii)(*b*), which state-owned facility, operated by a nonprofit charitable corporation established to operate such facility, has a designated, restricted area outside the seating area of any theater within which area the consumption of such alcoholic beverages shall be permitted. The sale of such alcoholic beverages in such facility is limited to no more than one (1) hour and fifteen (15) minutes prior to a meeting, show, performance, reception, or other similar event, and to no later than thirty (30) minutes after such event; and

(b) In a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census, which state-owned facility, operated by a nonprofit charitable corporation established to operate such facility, or facility owned by a nonprofit, tax exempt, charitable organization that operates a symphony orchestra, has designated an area within or adjacent to any theatre or meeting space, or adjacent to the facility within which area the consumption of alcoholic beverages shall be permitted. Nothing herein shall restrict the ability of a convention center, as defined herein, from adjusting the designated area within or adjacent to its theatre areas, upon adequate prior notice to the commission;

(iv) Located in a municipality having a population in excess of one hundred fifty thousand (150,000) and in a county having a population in excess of two hundred thousand (200,000), or both, according to the 1980 federal census or any subsequent federal census;

(v) A convention center licensed under this subdivision (14)(A) shall have the privilege of granting a franchise for the provision of food or beverage, including alcoholic beverages, on its premises, and the holder of the franchise shall also be considered a convention center under this subdivision (14)(A);

(B) "Convention center" also means a facility meeting the criteria of subdivision (14)(A)(i) and (ii) and located in a premiere resort city as

defined by § 67-6-103(a)(3)(B)(i);

(C) "Convention center" also means a facility possessing each of the following characteristics:

(i) Owned by a county public building authority at the time of development;

(ii) Designed and used for the purposes of attracting conventions, business travelers, tourists and other visitors to promote economic development;

(iii) Located at the intersection of Interstate 24 and Highway 41 near mile marker 114;

(iv) Occupies an area of not less than approximately thirteen thousand five hundred square feet (13,500 sq. ft.); and

(v) Includes a full commercial kitchen to provide meals and catering services;

(D) "Convention center" also means a facility possessing each of the following characteristics:

(i) Is owned by a quasi-governmental development agency;

(ii) Is designed and used for the purposes of attracting conventions, business travelers and tourists to the area and is vital in promoting economic development, fostering community activities, providing training and seminar space for business and industries and in encouraging tourism;

(iii) Is available for community, industry and private events;

(iv) Is the only one of its kind in the area;

(v) Has a seating capacity of approximately three hundred (300) and is fully equipped with tables, chairs, linens, dishware and a catering kitchen;

(vi) Occupies an area of approximately eight thousand five hundred square feet (8,500 sq. ft.) on acreage surrounding Tellico Lake; and

(vii) Is located in a county having a population of not less than forty-four thousand five hundred (44,500) nor more than forty-four thousand six hundred (44,600), according to the 2010 federal census or any subsequent federal census; and

(E) No member or officer, agent or employee of any convention center as defined by this section shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of spirituous liquors, wines, champagnes, malt beverages or any other alcoholic beverage beyond the amount of such salary as may be fixed by its governing body out of the general revenue of the center. All profits from the sale of such alcoholic beverages shall be used for the operation and maintenance of the convention center;

(15) "Country club located on an historic property" means a country club that is located in a county having a population of not less than forty-four thousand five hundred (44,500) nor more than forty-five thousand (45,000), according to the 1990 federal census or any subsequent federal census, and has the following characteristics:

(A) Sits on real property that was formerly the home of the International Printing Pressmen Union;

(B) Has a dining facility; and

(C) Is located adjacent to an eighteen-hole golf course;

(16)(A) "Historic inn" means a historic building that is located in a county having a population of not less than forty-four thousand five hundred (44,500) nor more than forty-five thousand (45,000), according to the 1990 federal census or any subsequent federal census, and has the following characteristics:

(i) Was built in 1824 and was formerly the oldest continuously operating inn in Tennessee;

(ii) Was once visited by United States Presidents Andrew Jackson, Andrew Johnson and James K. Polk, all of whom stayed and dined there; and

(iii) Has a dining facility and a total of nine (9) rooms and suites;

(B) "Historic inn" also means a country inn that is located in any county having a population of not less than seventy-one thousand one hundred (71,100) nor more than seventy-one thousand two hundred (71,200), according to the 2000 federal census or any subsequent federal census, and has the following characteristics:

(i) Has been in operation since 1938;

(ii) Is located within one half (½) mile of the Great Smoky Mountains National Park;

(iii) Has a total of twenty-four (24) guest rooms and a dining facility offering fine dining to guests and other patrons with a seating capacity of no more than sixty (60); and

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(C) "Historic inn" also means an inn that has all of the following characteristics:

(i) Contains at least ten (10) transient guest rooms in the main house;

(ii) Has a separate meeting lodge and facility that also houses at least four (4) transient suites;

(iii) Has at least two (2) kitchens on the premises and offers at least two (2) meals daily;

(iv) Has an open-air, outdoor, sylvan chapel suitable for the accommodation of wedding ceremonies;

(v) Provides entertainment in the form of cooking demonstrations, storytelling and dulcimer playing;

(vi) Is listed in Distinguished Inns of North America, 16th Edition, by Select Registry;

(vii) Is located in any county having a population of not less than one hundred five thousand eight hundred (105,800) nor more than one hundred five thousand nine hundred (105,900), according to the 2000 federal census or any subsequent federal census; and

(viii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(17) "Historic interpretive center" means a facility possessing each of the following characteristics:

(A) The center is located in an historic area of town where structures listed on the national register of historic places are located;

(B) The center operates as a not-for-profit corporation that is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)) as amended, where no member or officer, agent or employee of any historic interpretive center shall be paid, or directly or

indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of the assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the historic interpretive center, and in furtherance of the purposes of the organization. Alcoholic beverages may be consumed inside the center at locations designated by the board of the not-for-profit corporation;

(C) The center provides facilities for programs of cultural, civic, and educational interest, including, but not limited to, musical concerts, films, receptions, exhibitions, seminars or meetings; and

(D) The center is located in any county having a population of not less than seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census;

(18) "Historic mansion house site" means the buildings and grounds of a historic mansion house, located in any county having a metropolitan form of government, included in the Tennessee register of historic places, and operated by the Association for the Preservation of Tennessee Antiquities, and including Association for the Preservation of Tennessee Antiquities sites owned by the state of Tennessee. "Historic mansion house site" also means the buildings and grounds of an historic mansion house located in any county having a metropolitan form of government which has been conveyed by the state of Tennessee in trust to a board of trustees created and appointed in accordance with §§ 4-13-103 and 4-13-104, and for admission to which reasonable fees are charged as provided in § 4-13-105. This subdivision (18) shall apply only to counties having a population of four hundred fifty thousand (450,000) or greater, according to the 1980 federal census or any subsequent census;

(19)(A) "Historic performing arts center" means a facility possessing each of the following characteristics:

(i) The center is located in a restored theater that is at least fifty (50) years old and listed on the national register of historic places;

(ii) The center is operated by a for-profit corporation, or not-for-profit corporation which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)) as amended, where no member or officer, agent or employee of any historic performing arts center shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the historic performing arts center, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a for-profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the center. Alcoholic beverages shall only be sold before or after performances or during intermissions in such performances. No alcoholic beverages shall be consumed inside the auditorium of such center;

(iii) The center provides facilities for programs of cultural, civic, and educational interest, including, but not limited to, stage plays, musical concerts, films, dance performances, receptions, exhibitions, seminars or

meetings; and

(iv) The center is located in any county having a population of:

not less than	nor more than
143,900	144,000
300,000	400,000
700,000	

according to the 1980 federal census or any subsequent federal census;

(B) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) The center is located in a restored theater or music hall that is at least fifty (50) years old and listed on the national register of historic places;

(ii) The center is operated by a for-profit organization, or a not-for-profit organization that is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954, codified in 26 U.S.C. § 501(c), as amended, and where no member, officer, agent or employee of the not-for-profit organization receives any incentive compensation relating directly to the sale of alcoholic beverages beyond the amount of such salary and other compensation as may be fixed by the not-for-profit organization's governing body for the reasonable performance of such member's, officer's, agent's or employee's assigned duties. A portion of the profits from the sale of alcoholic beverages at the center shall be used for the operation, renovation, refurbishing or general maintenance of the center. Alcoholic beverages shall only be sold at the center before, during or after performances. Alcoholic beverages may be consumed inside the center at locations designated by its governing body;

(iii) The center provides facilities for programs of cultural, civic, and educational interest, including, but not limited to, stage plays, musical concerts, films, dance performances, receptions, exhibitions, seminars or meetings; and

(iv) The center is located in any county having a population in excess of five hundred thousand (500,000), which has a metropolitan form of government;

(C) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) Was opened in 1921;

(ii) Is on the national register of historic places;

(iii) Is located on Broad Street;

(iv) Provides programs of cultural, civic, and educational interest, including, but not limited to, operas and musical concerts;

(v) Is owned by a municipal or county government, or nonprofit, tax exempt, charitable organization. Alcoholic beverages shall only be sold at the center before, during or after performances; and

(vi) Is located in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(D) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) Was opened in 1924;

(ii) Was originally designed as a municipal auditorium and all-purpose exhibition hall;

(iii) Is located on McCallie Avenue;

(iv) Is owned by a municipal or county government, or nonprofit, tax exempt, charitable organization. Alcoholic beverages shall only be sold at the center before, during or after performances;

(v) Provides programs of cultural, civic, and educational interest, including, but not limited to, stage plays and musical concerts; and

(vi) Is located in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(E) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) Is on the national register of historic places;

(ii) Was built in 1937;

(iii) Is located on Main Street;

(iv) Is an entertainment venue for live performances, movies and other events. Alcoholic beverages shall only be sold at the center before, during or after the performances, movies or other events; and

(v) Is located in any county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census;

(F) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) Was built in 1931;

(ii) Is on the national register of historic places;

(iii) Is maintained by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954, codified in 26 U.S.C. § 501(c), as amended;

(iv) Has an auditorium that seats more than seven hundred fifty (750) people;

(v) Provides programs of cultural, civic, and educational interest, including, but not limited to, stage plays and musical concerts; and

(vi) Is located in any county having a population of not less than one hundred fifty-three thousand (153,000) nor more than one hundred fifty-three thousand one hundred (153,100), according to the 2000 federal census or any subsequent federal census;

(20)(A) "Hotel" (Motel) means every building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, in which fifty (50) or more rooms are used for the sleeping accommodations of such guests and having one (1) or more public dining rooms, with adequate and sanitary kitchen and a seating capacity of at least seventy-five (75) at tables, where meals are regularly served to such guests, such sleeping accommodations and dining rooms being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are

a part of the hotel operation. Motels meeting the qualifications set out herein for hotels shall be classified in the same category as hotels. Hotels shall have the privilege of granting franchises for the operation of a restaurant on their premises and the holder of such franchise shall be included in the definition of "hotel" hereunder; and property contiguous to a hotel, except property located in any county having a population of not less than seventy-seven thousand seven hundred fifty (77,750) nor more than seventy-seven thousand seven hundred ninety (77,790), according to the 1980 federal census or any subsequent federal census, which is owned by the same entity as the hotel and operated by the same entity as the hotel, which property either serves travelers and guests other than as a separate commercial establishment or is operated as a major entertainment complex serving in excess of one million (1,000,000) persons per year;

(B) "Hotel" also means and includes all entities previously described wherein sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which thirty (30) or more suites are used for sleeping accommodations of such guests and having eating facilities in each room for four (4) or more persons with an adequate and sanitary central kitchen from which meals are regularly prepared and served to guests in such suites. For the purpose of this section, "suite" is defined as a guest facility within a hotel where living, sleeping and dining are regularly provided for such guests within the individual units provided for guests. No such hotel or suite as defined in this subdivision (20)(B) shall be authorized to charge for, inhibit or otherwise interfere in any way with the rights of its guests or tenants to carry into rooms or suites rented by them their own bottles, packages or other containers of alcoholic beverages and/or to use or serve them to themselves, their own visitors or guests within the individual units rented or leased by them;

(C) "Hotel" also includes facilities owned and operated by an individual or event-management organization which plans and coordinates all phases of any function for retreats by groups of persons having similar backgrounds or purposes, and which offers meeting and banquet facilities, dining services, recreation and leisure activities in facilities which include a dining inn with seating capacity of three hundred (300), and a complex which includes meeting and banquet facilities with a seating capacity of two hundred (200), overnight accommodations for at least forty (40), and a fifty (50) acre tract of land with picnic accommodations for at least four thousand (4,000), and a facility with seating capacity of four hundred (400). The scope of any license authorized by this subdivision (20)(C) includes picnic service on the grounds of the complex owned and operated by the licensee;

(D) "Hotel" also includes a residence hotel located in the central business district of any municipality having a population of more than three hundred thousand (300,000), according to the 1990 federal census or any subsequent federal census and having a common smoking room and lobby area;

(E)(i) "Hotel" also includes a bed and breakfast establishment as defined in § 68-14-502, where meals are regularly served to guests and where sleeping accommodations and dining facilities being conducted in

the same buildings or structures used in connection therewith are on the same premises and are part of the hotel operation. The premises upon which such establishment is located shall be within the boundaries of a clearly defined arts district which is owned and operated by the same entity and having a common courtyard which is contiguous to all buildings and structures on the premises. The dining facilities, including beverages, may be served from an adequate and sanitary central kitchen and storage facility;

(ii) The provisions of this subdivision (20)(E) shall apply in any municipality having a population in excess of one hundred fifty thousand (150,000), according to the 1990 federal census or any subsequent federal census;

(F)(i) "Hotel" also includes a bed and breakfast establishment as defined in § 68-14-502, where meals are regularly served to guests and where sleeping accommodations and dining facilities being conducted in the same buildings or structures used in connection therewith are on the same premises and are part of the hotel operation. In such establishment there must be two (2) rooms for sleeping accommodations and a seating capacity of twenty-five (25) people at tables. The premises upon which such establishment is located shall have a business conference center;

(ii) The provisions of subdivision (20)(F)(i) apply in any county having a population of not less than eight hundred thousand (800,000) according to the 1990 federal census or any subsequent federal census;

(iii) "Hotel" also includes a facility located in a county which contains a population of not less than eighty-five thousand nine hundred (85,900) nor more than eighty-six thousand one hundred sixty (86,160) according to the 1990 federal census or any subsequent census, which facility contains the following characteristics:

(a) Contains at least forty (40) rooms for guest sleeping accommodations offered for adequate pay to travelers and guests;

(b) Contains at least three (3) separate dining rooms with adequate sanitary kitchen facilities, either common or separate, where meals are regularly served to guests;

(c) Is located on real property of at least one thousand fifty (1,050) acres, notwithstanding that such real property is not contiguous and may be divided by a public or private road;

(d) Contains a swimming pool, at least four (4) tennis courts, hiking trails, and biking trails for use by registered guests;

(e) Provides a full service spa for use by registered guests of the facility; and

(f) Any such hotel whose facilities are located on the premises of an area meeting the definition of a hotel under this subdivision (20)(F)(iii) may exercise the privileges authorized under this chapter anywhere within that area, and, in addition, may exercise the privilege authorized under this chapter on any location identified to the commission and held out to the public as part of such hotel property irrespective of the actual owner of the location, where the hotel is authorized by written contract or lease to provide hotel or resort services by the owner of such location;

A hotel under this subdivision (20)(F)(iii) must comply with all the requirements of this chapter and shall be subject to the restrictions

imposed upon licenses other than § 57-4-103;

(G)(i) "Hotel" also includes a facility that possesses the following characteristics:

(a) Was built in 1917;

(b) Is listed on the National Register of Historic Places;

(c) Has at least twelve (12) rooms for guest sleeping accommodations with at least one (1) room being handicap accessible;

(d) Has a dining area that seats at least one hundred sixty (160) people;

(e) Has a music and entertainment venue that is at least two thousand nine hundred square feet (2,900 sq. ft.);

(f) Has a two-acre meadow suitable for wedding ceremonies and other events; and

(g) Is located in any county having a population of not less than thirty-seven thousand five hundred (37,500) nor more than thirty-seven thousand six hundred (37,600), according to the 2000 federal census or any subsequent federal census.

(ii) A hotel under this subdivision (20)(G) must comply with all the requirements of this chapter and shall be subject to the restrictions imposed upon licenses other than § 57-4-103;

(H)(i) "Hotel" also means a facility that possesses all of the following characteristics:

(a) Offers to the public:

(1) At least thirty (30) rooms for the sleeping accommodations of guests for adequate pay; and

(2) A dining room;

(b) Is owned by and located on the campus of a private institution of higher education located on at least ten thousand (10,000) acres; and

(c) Is located in any county having a population of not less than thirty-nine thousand two hundred (39,200) nor more than thirty-nine thousand three hundred (39,300), according to the 2000 federal census or any subsequent federal census;

(ii) A hotel under this subdivision (20)(H) must comply with all the requirements of this chapter and shall be subject to the restrictions imposed upon licenses other than § 57-4-103;

(21) "Limited service restaurant" means a facility possessing each of the following characteristics:

(A) Is a public place which has a seating capacity for at least forty (40) patrons and that is kept, used, maintained, advertised and held out to the public as a place where during regular hours of operation:

(i) Alcoholic beverages, beer or wine are served to patrons;

(ii) A menu of prepared food is made available to patrons;

(iii) The gross revenue from the sale of prepared food is fifty percent (50%) or less than the gross revenue from the sale of alcoholic beverages and beer; provided, however, that gross revenue of more than fifty percent (50%) from the sale of prepared food shall not prevent a facility from receiving a "limited service restaurant" license or subject such facility to a fine from the commission for having gross revenue of more than fifty percent (50%) from the sale of prepared food. For purposes of determining the gross revenue from the sale of prepared food, chips, popcorn, pretzels, peanuts and similar snack items shall not be included

in gross revenue from the sale of prepared food sold;

(iv) The facility affirmatively establishes, to the satisfaction of the commission, that it has complied and will comply with the requirements of § 57-4-204;

(v) The facility provides adequate security during the regular hours of operation; and

(vi) Sleeping accommodations are not provided;

(B) Is located within the jurisdictional boundaries of a political subdivision which has authorized the sale of alcoholic beverages for consumption on the premises as provided in § 57-4-103; and

(C) Is located in an area which is properly zoned for facilities authorized to sell alcoholic beverages for consumption on the premises;

(22)(A) "Motor speedway" means a motor sports facility that possesses the following characteristics:

(i) Is located in a county having a population of not less than sixty-seven thousand six hundred (67,600) nor more than sixty-seven thousand nine hundred (67,900), according to the 1990 federal census or any subsequent federal census, and at least one (1) municipality located in such county has adopted liquor by the drink;

(ii) Contains a 1.33 mile superspeedway;

(iii) Is situated on a site of at least five hundred (500) acres; and

(iv) Has a seating capacity of fifty thousand (50,000) with the capability to expand to one hundred fifty thousand (150,000) grandstand seats and one hundred (100) luxury skyboxes;

(B) "Motor speedway" also means a motor sports facility that possesses the following characteristics:

(i) Is located in a county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census;

(ii) Contains a three-quarter-mile oval track with a seating capacity of sixteen thousand (16,000) seats; and

(iii) Contains a one-quarter-mile drag strip with a seating capacity of fifteen thousand (15,000) seats;

(23)(A) "Museum" means a building or institution serving as a repository of natural, scientific or literary curiosities or works of art for public display and further possesses the following characteristics:

(i) The museum is at least fifty (50) years old; and

(ii) The museum is located in a county having a population in excess of seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census;

(B) "Museum" also means an "art museum" which is a building or institution serving as a repository of works of art for public display and further possesses the following characteristics:

(i) The art museum is owned and operated by a bona fide charitable or nonprofit organization which has been in existence for at least twenty-five (25) years;

(ii) The art museum is located in a building which contains not less than fifty thousand square feet (50,000 sq. ft.); and

(iii) The art museum is located in a former world's fair site; and

(C) "Museum" also means a building or institution serving as a repository or exhibition facility for works of art for public display and further

possesses the following characteristics:

(i) The museum is owned and operated by a bona fide charitable or non-profit organization;

(ii) The museum is located in a building which contains not less than one hundred thousand square feet (100,000 sq. ft.);

(iii) The museum is located in a building that previously served as a United States postal service facility; and

(iv) The museum is located in a municipality or county having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census;

(D) "Museum" also means a building or institution serving as a tribute to soul music and which houses a music academy and further possesses the following characteristics:

(i) The museum and music academy is located on the original site of a recording studio; and

(ii) The museum and music academy is located in a county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census;

(E) "Museum" also means an "art museum" which is a building or institution serving as a repository of works of art for public display and further possesses the following characteristics:

(i) The art museum is owned and operated by a bona fide charitable or nonprofit organization;

(ii) The museum has been in existence for at least fifty (50) years;

(iii) The museum focuses on American art from the colonial period to the present day;

(iv) The museum is located in a historical mansion and a sleek contemporary building on the bluffs overlooking the Tennessee River; and

(v) The museum does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) The museum is located in a county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(F) "Museum" also means a building or institution dedicated to the public display, preservation, and promotion of fine metalwork and further possesses the following characteristics:

(i) The museum opened to the public in 1979;

(ii) The museum is located on at least three (3) acres overlooking the Mississippi River;

(iii) The museum features a fully operational blacksmith shop and sand-casting foundry;

(iv) The museum is owned and operated by a bona fide charitable or nonprofit organization; and

(v) The museum is located in a county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census;

(24) "Paddlewheel steamboat company" means a company that operates one (1) or more paddlewheel steamboats for hire in interstate commerce upon navigable waterways and is licensed by the United States coast guard

to carry not less than one hundred (100) passengers on a single vessel, with adequate facilities and equipment for serving regular meals, on regular schedules, or charter trips, while moving through or docked in any county of the state; provided, however, no paddlewheel steamboat company licensed pursuant to this chapter shall sell any type of alcoholic beverage or beer while such paddlewheel steamboat is docked within the boundaries of any local government which has not approved the sale of alcoholic beverages pursuant to § 57-4-103;

(25) "Passenger train" includes any passenger train operating in interstate commerce under a certificate of public convenience and necessity issued by the appropriate federal or state agency, with adequate facilities and equipment for serving passengers, on regular or special schedules, or charter trips, while moving through any county of the state, but not while any such passenger train is stopped in a county or municipality that has not legalized such sales;

(26) A "premier type tourist resort" means:

(A) A commercially operated recreational facility possessing each of the following characteristics:

(i) Ownership and operation by a profit type corporation having a capitalization of not less than ten million dollars ($10,000,000);

(ii) Situated in a geographical area wholly controlled by the operator of the facility and having not less than six thousand (6,000) acres of contiguous land, not less than five thousand (5,000) acres of which is to be developed and maintained in accordance with sound ecological and environmental practices, such requirement to be subject at all times to the oversight and approval of the department of environment and conservation, which shall not less often than once a year make a written report thereof to the commission. Satisfactory compliance with this requirement and certification thereof by the department to the commission shall be a condition precedent to the issuance or renewal of permit provided for in § 57-4-201;

(iii) Continuous maintenance of lodging accommodations consisting of not less than two hundred (200) hotel or motel rooms in a building or buildings designed for such purpose;

(iv) Continuous maintenance of facilities for the accommodation of conventions of not less than four hundred (400) persons;

(v) Maintenance within the recreational area of at least one (1) of the following types of sporting facilities:

(a) A golf course of at least eighteen (18) holes;

(b) A lake covering not less than one hundred (100) acres adapted for boating and fishing;

(c) A ski slope;

(vi) Maintenance, in addition to one (1) or more of the facilities enumerated in subdivision (26)(A)(v), of two (2) or more of the following types of recreational facilities:

(a) Area for camping;

(b) Tennis courts;

(c) Swimming pool;

(d) Trails for hiking and/or horseback riding;

(e) Equestrian center;

(vii) A twenty-four-hour per day security force approved as to ad-

equacy by the commission;

(B) A hotel, motel or restaurant located within a municipality having a population of one thousand (1,000) or more persons, according to the federal census of 1970 or any subsequent federal census in which at least fifty percent (50%) of the assessed valuation (as shown by the tax assessment rolls or books of the municipality) of the real estate in the municipality consists of hotels, motels, and tourist courts accommodations, providing the voters of the municipality have heretofore by referendum pursuant to § 57-4-103, approved the sale of alcoholic beverages for consumption on the premises, and such referendum shall be authorized, notwithstanding the population requirements set forth in § 57-3-106. For purposes of implementation of this subdivision (26)(B), the sale of alcoholic beverages shall be limited to hotels, restaurants, and clubs as defined in this section. To ensure proper control and development of the tourist industry of such municipality, any applicant for a license under this subdivision (26)(B) shall first obtain approval from a majority of the legislative body of the municipality, which may adopt rules and regulations governing its procedure and setting forth limitations and restrictions including, but not limited to, the number and location of licensed establishments and requiring approval by the legislative body as to the good moral character of each applicant for a license;

(C)(i) A commercially operated recreational facility containing all of the following characteristics:

(a) Ownership and operation by a profit type corporation or partnership;

(b) Situated in a geographical area controlled by the operator of the facility, having not less than two thousand five hundred (2,500) acres of land;

(c) Continuous maintenance of lodging accommodations consisting of not less than one hundred (100) hotel or motel rooms in a building or buildings designed for such purpose;

(d) The maintenance of a ski slope with necessary lifts or tows for use during skiing season;

(e) Continuous maintenance of restaurant facilities for seating at tables of not less than two hundred (200) persons, with adequate kitchen facilities; and

(f) Located within a municipality with a population of not less than one thousand fifty (1,050) nor more than one thousand seventy-five (1,075), according to the 1980 or any subsequent census;

(ii) To ensure proper control and development of the tourist industry of such municipality, any applicant for a license under this subdivision (26)(C) shall first obtain approval from a majority of the legislative body of the municipality, which may adopt rules and regulations governing its procedure and setting forth limitations and restrictions including, but not limited to, the number and location of licensed establishments and requiring approval by the legislative body as to the good moral character of each applicant for a license;

(D) A commercially operated recreational facility containing all of the following characteristics:

(i) Ownership and development by a for-profit corporation or partnership;

(ii) Situated in a geographical area controlled by the corporation or partnership, having not less than four hundred (400) acres of land contiguous to a federally protected forest, such as the Cherokee National Forest;

(iii) Continuous maintenance of lodging accommodations consisting of not less than two hundred (200) hotel or motel rooms or residential or rental cabins in a building or buildings designed for such purpose;

(iv) Continuous maintenance of facilities for the accommodations of conventions of not less than four hundred (400) persons;

(v) Maintenance within the recreational area of at least two (2) of the following types of recreational facilities:

(a) A golf course of at least eighteen (18) holes;

(b) Tennis courts;

(c) Swimming pool;

(vi) [Deleted by 2010 amendment.]

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(viii) Is located in any county having a population of not less than one hundred five thousand eight hundred (105,800) nor more than one hundred five thousand nine hundred (105,900), according to the 2000 federal census or any subsequent federal census; and

(ix) Any restaurant or recreational facility owned by the corporation or partnership and open to the public that is located on the premises described under this subdivision (26)(D) may exercise the privileges authorized under this chapter;

(E) A commercially operated recreational facility containing all of the following characteristics:

(i) Ownership and operation by a for-profit corporation or partnership;

(ii) Located in a geographic area managed by the operator of the facility, containing a minimum area of one hundred fifty (150) contiguous acres;

(iii) Continuous maintenance of lodging accommodations of not less than fifty (50) rooms available for guests, tourists or for business meetings located in a building or buildings designed for accommodations or business meetings;

(iv) Maintenance of lakeside marina facilities, a golf course of not less than eighteen (18) holes, and riding trails and stables on the premises;

(v) Located within a municipality with a population of not less than six thousand three hundred seventy-five (6,375) nor more than six thousand four hundred (6,400), according to the 1980 or any subsequent federal census; and

(vi) Whose manager shall have been specifically approved by a majority of the legislative body of the municipality in which such licensee is located as being an individual of good moral character;

(F) A facility, whether open to the public or limited to members and guests of the development on which it is located, owned or operated, pursuant to a license by a homeowners or residential association, which facility is kept, used and maintained as a place where meals are served and where meals are actually and regularly served, with adequate and sanitary kitchen facilities and which facility meets all of the following

characteristics:

(i) The facility must be located in a county having a population of not less than forty-seven thousand (47,000) nor more than forty-seven thousand five hundred (47,500), according to the 1990 federal census or any subsequent federal census;

(ii) The facility must be located on the premises of a planned, gated residential development of at least eighty (80) acres with at least nine thousand (9,000) lineal feet of water frontage on an established and designated navigable waterway; and

(iii) The facility must be located within the limits of a development which contains a marina and tennis court facilities; and

(G) A club, either for profit or not for profit, which has been in existence for two (2) consecutive years during which time it has maintained a membership of at least three thousand (3,000) members and which maintains club facilities on or adjacent to property offering recreational services available to its members, which services shall include one (1) or more of the following:

(i) Golf course with at least eighteen (18) holes;

(ii) Tennis courts;

(iii) Marina facilities with a minimum of four hundred (400) slips.

Any such club whose club facilities are located on the premises of an area meeting the definition of a "premier type tourist resort" under this section may exercise its privileges authorized under this chapter anywhere within such area;

(H) A commercially operated recreational facility, whether open to the public or limited to members and guests of an association or of the development on which it is located, owned and operated by an association or corporation and in connection with an eighteen-hole golf course, which facility is kept, used and maintained as a place where meals are actually and regularly served, with adequate and sanitary kitchen facilities, and which facility meets all of the following characteristics:

(i) The facility must be located in a county having a population of not less than thirty-four thousand seven hundred thirty (34,730) nor more than thirty-four thousand seven hundred sixty (34,760), according to the 1990 federal census or any subsequent federal census;

(ii) The facility must be located in a development containing no less than four hundred twenty (420) acres and no more than four hundred fifty (450) acres;

(iii) The facility must be located within limits of a development which contains an eighteen-hole golf course;

(iv) The facility must have no less than five thousand (5,000) enclosed square feet (5,000 sq. ft.);

(v) The facility must be located no less than one-half (½) mile from the right-of-way of an interstate highway; and

(vi) The facility must be located within the limits of a development which contains a lake of not less than twenty-eight (28) acres which is entirely within the limits of the development;

(I) A commercially operated recreational facility possessing each of the following characteristics:

(i)*(a)* Ownership and development by a for profit corporation;

(b) Situated in a geographic area controlled by such entity and having not less than twenty-five (25) contiguous acres of land which is

divided by a four-lane highway;

(c) Designed to contain picnic facilities, museum buildings, retail sales areas, retail food dispensing outlets, and restaurant areas;

(d) Maintenance of a limited access area containing a former residence, a swimming pool, a handball court, and stables where no pedestrian access is allowed and all guests entering must be carried by a motor vehicle; and

(e) Location within a county having a population of not less than seven hundred seventy thousand (770,000), according to the 1990 federal census or any subsequent federal census;

(ii) "Premier type tourist resort," as defined in this subdivision (26)(I), shall be authorized to sell or serve alcoholic beverages on the premises of such resort only at special functions, wherein attendance is limited to invited guests or groups and not to the general public;

(J) An entity operating a commercial golf related recreational facility, whether open to the public or limited to members and guests of an association or owners and guests of a development upon or adjacent to which the facility is located, which entity or facility meets all of the following criteria:

(i) The facility is located in a county having a population of not less than thirty-four thousand seven hundred thirty (34,730) nor more than thirty-four thousand eight hundred (34,800), according to the 1990 federal census or any subsequent federal census;

(ii) The facility is operated in conjunction with an eighteen (18) hole golf course;

(iii) The facility is kept, used and maintained as a place where meals are actually and regularly served with such adequate and sanitary kitchen facilities as might be needed to meet the reasonable requirements of its patrons, members, or guests;

(iv) The entity does not discriminate or limit the use of the facilities solely on the basis of race, creed, sex, or national origin, and has provided to the commission a written certification of its policy;

(v) Such facility has enclosed clubhouse space of at least five thousand square feet (5,000 sq. ft.);

(vi) Such facility is located no less than seven (7) miles and no more than eight (8) miles from an interchange of an interstate highway; and

(vii) Such facility is located on a geographic area, owned or operated by the entity, which area contains not less than one hundred fifty-five (155) acres nor more than one hundred seventy (170) acres; and

(K) A commercially operated recreational facility whether open to the public or limited to members and guests of an association or of the development on which it is located, owned and operated by an association or corporation and in connection with an eighteen-hole golf course, which facility is regularly kept, used and maintained as a place where meals are actually and regularly served, with adequate and sanitary kitchen facilities, and which facility meets all the following characteristics:

(i) The facility must be located in or adjacent to a real estate development containing no less than one thousand, one hundred (1,100) acres and no more than two thousand (2,000) acres;

(ii) The facility must have no less than nine thousand (9,000) enclosed square feet;

(iii) The facility must be located within the limits of a development which is contiguous to a water reservoir operated and maintained by the United States army corps of engineers during 1998 or any subsequent years; and

(iv) Maintenance within the recreational area of the following types of recreational facilities:

(a) Golf course of at least eighteen (18) holes;

(b) Swimming pool;

(c) Tennis court; and

(d) Walking trails;

(L) A resort containing all of the following characteristics:

(i) Has a restaurant, with a current overall seating capacity of 280, including outside dining service, and which serves over 75,000 patrons per year;

(ii) Is located immediately adjacent to the Cherokee National Forest, the only national forest in Tennessee and the Cherohala Skyway, one of only twenty highways in the country designated as a national scenic byway;

(iii) Is located along the scenic Tellico River, a tributary of the Little Tennessee River;

(iv) Currently operates nine cabins, a river walk, and an open-air chapel and pavilion;

(v) After a proposed expansion will include at least thirty (30) cottages, a full-service health and wellness spa, a championship golf course, racquet club, adventure club for canoeing, kayaking, hiking, biking and other outdoor activities, an equestrian club, conference facilities, a hunt and fish club, crafts and education, and history tours; and

(vi) Is located within a county having a population of not less than 38,900 nor greater than 39,000, according to the 2000 federal census or any subsequent federal census;

(M) A commercially or privately operated recreational facility containing all of the following characteristics:

(i) The facility is located within a platted housing subdivision of not less than four hundred (400) acres nor greater than five hundred twenty-five (525) acres;

(ii) The facility is located on or adjacent to an eighteen-hole golf course located within the development;

(iii) The facility is located within a development that operates a recreational swimming pool of at least sixty thousand gallons (60,000 gals.);

(iv) The facility operates and maintains tennis courts for use by homeowners, visitors, tourists, or guests;

(v) The facility operates a clubhouse for the use of homeowners, visitors, tourists, or guests of at least five thousand total square feet (5,000 sq. ft.) and the clubhouse houses a restaurant with seating at tables for at least forty (40) people and such restaurant has adequate kitchen facilities;

(vi) The facility is located within a county with a population of not less than thirty-nine thousand fifty (39,050) nor more than thirty-nine thousand one hundred fifty (39,150), according to the 2000 federal

census or any subsequent federal census; and

(vii) The facility shall have been providing some or all of the described recreational services for a continuous period of at least four (4) years at the time of licensing;

(N) A commercially operated recreational facility, located adjacent to a navigational river which contains all of the following characteristics:

(i) Such facility has direct access to a navigable waterway;

(ii) Such facility contains a minimum of two hundred (200) slips for boats;

(iii) Such facility provides boat fuel, boat rental and repair;

(iv) Such facility is located upon or adjacent to a public park or preserve, which park is at least one hundred (100) acres in size, and which park contains a swimming pool, tennis courts and at least a nine (9) hole golf course; and

(v) Such facility is located within a county with a population of at least three hundred eighty thousand (380,000), according to the 2000 federal census or any subsequent federal census;

(O) An entity granted a franchise for the operation of a restaurant or food and beverage services on the premises of the premier type tourist resort, and for such purposes a premier type tourist resort shall have the privilege of granting such franchises;

(P) A commercially operated facility which contains all of the following characteristics:

(i) Such facility is licensed as a health club;

(ii) Such facility only allows members and their invited guests;

(iii) Such facility has two (2) swimming pools with one pool having at least fifteen thousand square feet (15,000 sq. ft.) of water surface;

(iv) Such facility provides volleyball courts, a basketball court and a recreation area with food service;

(v) Such facility is located within fifteen (15) miles of an airport;

(vi) Such facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Such facility is located within a county having a population of not less than three hundred eighty-two thousand (382,000) nor more than three hundred eight-two thousand one hundred (382,100), according to the 2000 federal census or any subsequent federal census;

(Q) A commercially operated facility which contains all of the following characteristics:

(i) Such facility is located no more than three and one-half (3 ½) miles from the right of way of Interstate 40 and fronting on State Highway 92 and has a minimum of eight (8) acres of lake front property with a minimum of fifty-eight hundred feet (5,800′) of shore line;

(ii) Such facility has at least eighty (80) boat slips and forty-eight (48) dry slips, a boat launching ramp, a full service restaurant seating at least one hundred seventy-five (175) people inside with outside patio dining, a ships store offering boat supplies and gasoline, and an outdoor pavilion;

(iii) Such facility provides accommodations consisting of at least twenty (20) lakeside hotel/motel units in a building or buildings designed for such purposes;

(iv) Such facility is located within a county having a population of not less than forty-four thousand (44,000) nor more than forty-four thousand nine hundred (44,900), according to the 2000 federal census or any subsequent federal census; and

(v) Such facility shall also include any commercial boat for charter that departs from any such facility if the boat is licensed by the United States Coast Guard to carry not less than fifty (50) passengers on a single vessel and has adequate facilities and equipment for serving regular meals, on regular schedules, or charter trips, while moving through or docked in any county of the state;

(R) A commercially operated facility which at a minimum contains all of the following characteristics:

(i) Such facility is located within one (1) mile of the right-of-way of Interstate 40 and in an area zoned by the municipality as B-3; and

(ii) [Deleted by 2010 amendment.]

(iii) Such facility is located within a county having a population of not less than forty-four thousand (44,000) nor more than forty-four thousand nine hundred (44,900), according to the 2000 federal census or any subsequent federal census;

(S) A commercially operated facility which contains all of the following characteristics:

(i) Such facility is located no more than one half (½) mile from the right of way of Interstate 75 and accessible to State Highway 68;

(ii) Such facility has at least nine thousand square feet (9,000 sq. ft.) of conference space;

(iii) Such facility provides accommodations consisting of at least one hundred twenty-five (125) hotel or motel rooms in a building or buildings designed for such purposes;

(iv) Such facility provides recreational facilities including an indoor swimming pool;

(v) Such facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) Such facility is located within a county having a population of not less than thirty-eight thousand nine hundred (38,900) nor more than thirty-nine thousand (39,000), according to the 2000 federal census or any subsequent federal census;

(T) A nine-hundred-sixty-acre peninsula gated community located on a lake with ten (10) miles of shoreline, and which facility contains all of the following characteristics:

(i) Has an eighteen-hole golf course and tennis courts;

(ii) Has a club house, restaurant, lounge, fitness center, and swimming pool;

(iii) Maintains a community garden, community and neighborhood docks and a boat ramp;

(iv) Has an equestrian facility with extensive riding trails;

(v) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) Is located in two (2) counties one (1) county having a population of not less than thirty-eight thousand nine hundred (38,900) nor more than thirty-nine thousand (39,000) and the other county having a population of not less than thirty-nine thousand fifty (39,050), nor more than thirty-nine thousand one hundred fifty (39,150), both according to

the 2000 federal census or any subsequent federal census;

(U) A facility which contains all the following characteristics:

(i) Has resort lodge condominiums, homes and vacation cottages;

(ii) Has an eighteen hole golf course and tennis courts with a pro shop;

(iii) Has a swimming pool;

(iv) Has rock climbing, hiking and biking trails;

(v) Has a full service spa;

(vi) Has banquet and dining services and a business service center;

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(viii) Is located in a county having a population of not less than thirty-nine thousand eight hundred (39,800) nor more than thirty nine thousand eight hundred seventy-five (39,875), according to the 2000 federal census or any subsequent federal census;

(V) It is lawful for any establishment located in a premier type tourist resort as defined in § 67-6-103(a)(3)(B)(iii) which is licensed to serve beer to also serve wine to be consumed on the premises, subject to the further provisions of this chapter other than § 57-4-103;

(W) It is lawful for any establishment located in a municipality which:

(i) Has an approved Tourist Development Zone as set forth in title 7, chapter 88, part 1;

(ii) Has a AA minor league baseball team; and

(iii) Is located in a county with an amusement park, a ski resort, and a national park,

which is licensed to serve beer to also serve wine to be consumed on the premises, subject to the further provisions of this chapter other than § 57-4-103;

(X) A commercially operated recreational facility, located adjacent to a navigable river, that has all of the following characteristics:

(i) Contains at least one hundred (100) boating slips available for lease, rental, or use by guests;

(ii) Has one (1) or more restaurant facilities with a combined seating capacity of at least two hundred (200);

(iii) Has a lodge with at least fifteen (15) units available for transient lodging; and

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(Y) A commercially operated facility that has all of the following characteristics:

(i) Is located no more than six (6) miles from Interstate 40 at exit 427, and on both sides of a county highway known as Harrison Ferry Road. The facility contains a minimum of one hundred forty-three (143) acres, and includes a minimum of twenty-two (22) acres of land zoned commercial for future development at the corner of Back Nine Drive and Mountain View Lane;

(ii) Has an eighteen-hole golf course, two (2) practice putting greens, a practice chipping green and a practice area for golf instruction. The facility also contains a large swimming pool, a boat ramp into Douglas Lake, and two (2) tennis courts;

(iii) Has a clubhouse with a fully-equipped pro shop, a full-service restaurant seating at least one hundred fifty (150) persons inside, with

an outside patio that seats at least seventy (70) persons;

(iv) Provides accommodations, consisting of at least twelve (12) hotel/motel units and at least nine (9) villa units; and

(v) Is located within an incorporated municipality having a population of less than five hundred (500), according to the 2000 federal census or any subsequent federal census, within a county having a population of not less than forty-four thousand two hundred (44,200) nor more than forty-four thousand three hundred (44,300), according to the 2000 federal census or any subsequent federal census; and

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(Z) An inn that has all of the following characteristics:

(i) Contains at least twelve (12) transient guest rooms in the main house;

(ii) Has a separate meeting lodge and facility that also houses at least four (4) new French country transient suites;

(iii) Has at least two (2) kitchens on the premises and offers at least two (2) meals daily;

(iv) Has an open-air, outdoor, sylvan chapel suitable for the accommodation of wedding ceremonies;

(v) Provides entertainment in the form of cooking demonstrations, storytelling and dulcimer playing;

(vi) Is listed in Distinguished Inns of North America, 16th Edition, by Select Registry; and

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(AA) A commercially operated facility that has all of the following characteristics:

(i) Is a full service colonial mansion located on an eighty-one-acre estate;

(ii) Contains no fewer than eight (8) transient rooms and seventeen (17) bathrooms;

(iii) Contains a dining room with capacity for fifty (50) persons that serves at least two (2) meals daily;

(iv) Has a heated swimming pool, a fitness center, a sauna, a tennis court and a billiard room;

(v) Has a system of hiking and walking trails;

(vi) Is listed in Distinguished Inns of North America, 16th Edition, by Select Registry; and

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(BB) A facility that has nine (9) acres of shoreline development on Watts Bar Lake and that has all of the following characteristics:

(i) Has one- to three-bedroom cottages;

(ii) Has a marina with two hundred fifty (250) slips, both wet and dry;

(iii) Has a restaurant and lounge;

(iv) Has a swimming pool;

(v) Has rental boats;

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Is located in a county having a population of not less than twenty-eight thousand three hundred fifty (28,350) nor more than twenty-eight thousand four hundred fifty (28,450), according to the 2000 federal census or any subsequent federal census;

(CC) A development that has all the following characteristics:

(i) Has a well established marina with boat rentals, gasoline, guide services, etc., and a resort operating for more than fifty (50) years;

(ii) Includes more than two hundred (200) acres on Watts Bar Lake;

(iii) Has forty (40) cottages rented on a daily or weekly basis;

(iv) Has a restaurant;

(v) Has walking and nature trails;

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Is located in a county having a population of not less than twenty-eight thousand three hundred fifty (28,350) nor more than twenty-eight thousand four hundred fifty (28,450), according to the 2000 federal census or any subsequent federal census;

(DD) Any facility located in a municipality that has a civil war battlefield:

(i) Of which more than one thousand four hundred (1,400) acres have been designated in the National Register of Historic Places;

(ii) For which a management contract has been entered into between the municipality and the Tennessee historical commission;

(iii) Which has a self-guided driving tour;

(iv) For which long-range plans include walking trails, interpretive signs and a visitor's center with a museum;

(v) At which, every two (2) years, a living history and reenactment of the battle fought in December, 1862 is presented;

(vi) That is famous for the southern general's order to his troops to "Charge them both ways"; and

(vii) Is located in a county having a population of not less than twenty-five thousand four hundred fifty (25,450) nor more than twenty-five thousand five hundred fifty (25,550), according to the 2000 federal census or any subsequent federal census;

(EE) [Deleted by 2012 amendment.]

(FF) A facility that has at least fourteen (14) acres located on a lake of at least eight thousand (8,000) acres and that has the following characteristics:

(i) Contains at least three hundred and fifty (350) boat slips;

(ii) Contains a dry storage facility;

(iii) Provides boat rentals;

(iv) Contains a marine store;

(v) Contains a full service restaurant with seating for at least one hundred fifty (150) people, as well as a private banquet facility;

(vi) Has motel rooms and cabins for rent;

(vii) Contains a swimming pool;

(viii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(ix) Is located in a county having a population of not less than fifty-six thousand seven hundred (56,700) nor more than fifty-six thousand eight hundred (56,800), according to the 2000 federal census or any subse-

quent federal census;

(GG) A facility that has three hundred eighty-five (385) acres of development on J. Percy Priest Lake and that has all the following characteristics:

(i) Has a water park;

(ii) Has a marina with more than three hundred twenty (320) slips;

(iii) Has a recreational vehicle (RV) campground;

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(v) Is located in a county having a population of not less than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(HH) A development that has all of the following characteristics:

(i) Has a well established marina with boat slip rentals, gasoline, etc.;

(ii) Includes three hundred eighty-five (385) acres on J. Percy Priest Lake;

(iii) Has a water park;

(iv) Has a recreational vehicle (RV) campground;

(v) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) Is located in a county having a population of not less than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(II) A commercially operated facility that has all of the following characteristics:

(i) Is a fully-staffed lodge that is open twenty-four (24) hours a day, located on thirty-six (36) acres of land, that offers at least one (1) meal per day, along with hiking, biking, and horseback riding;

(ii) Has twelve (12) oversized rooms with king beds, private baths, and has high speed internet access in the main lodge;

(iii) Has seventeen (17) one- and two-bedroom cabins that have full kitchens, wood burning fireplaces, hot tubs, and high speed internet access;

(iv) Has a one thousand eight hundred square-foot meeting facility with a capacity of up to one hundred twenty-five (125) persons, and a board room with a capacity of up to twelve (12) persons, both of which have high speed internet access;

(v) Has a volleyball court, a horseshoe pit, and picnic areas throughout the property; and

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(JJ) A commercially operated facility containing all of the following characteristics:

(i) The facility has a marina with approximately one hundred sixty-six (166) wet slips and approximately one hundred thirty-three (133) dry storage units;

(ii) The facility is located within a lake-resort, gated residential development of at least one thousand two hundred (1,200) acres having in excess of four hundred fifty (450) single family homes and condominium units;

(iii) The facility is located on a lake that has over eight hundred

thirty-four (834) miles of shore line;

(iv) The facility will have a restaurant with a seating capacity of at least fifty (50) people, serving at least two (2) meals a day;

(v) The facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) The facility is located within a county having a population of not less than thirty-nine thousand eight hundred (39,800) nor more than thirty-nine thousand eight hundred seventy-five (39,875), according to the 2000 federal census or any subsequent federal census;

(KK)(i) A commercially-operated facility containing all of the following characteristics:

(a) The facility has on its premises a marina that has at least two hundred fifty (250) covered or uncovered wet slips and at least seventy-five (75) dry rack slips;

(b) The facility has on its premises property leased or available for lease to a boating, yachting or water-based recreational club;

(c) The facility has on its premises a restaurant, providing food service to the public or for private events, with seating in the restaurant for at least fifty (50) persons at tables, whether or not the seating is inside or on a deck or patio adjacent to the restaurant;

(d) The facility has the capacity to serve as a home berth location for a commercial vessel for hire or for public cruises of at least seventy-five feet (75′) in length;

(ii) When used in this subdivision (26)(KK), the "facility" under subdivision (26)(KK)(i) shall include any location within the property designated by the licensee;

(iii) A facility under this subdivision (26)(KK) shall also include any passenger sternwheel paddleboat, licensed by the United States coast guard, with rated passenger capacity of not less than one hundred (100) passengers and which paddleboat shall be at least seventy-five feet (75′) in length, which may use the marina facilities as described in subdivision (26)(KK)(i) for its home or principal secondary port dock. The authority conferred under this subdivision (26)(KK)(iii), authorizing the sale or distribution of alcoholic beverages, including beer, on any qualified sternwheel paddleboat shall extend only so long as the paddleboat is located at the marina facility described in subdivision (26)(KK)(i) or is within one hundred (100) miles of the marina facility;

(iv) For purposes of obtaining a license under this subdivision (26)(KK), the commission shall be authorized to issue a license solely to the owner or operator of a sternwheel paddleboat, meeting the qualifications of subdivision (26)(KK)(iii), whether or not the facility described in subdivision (26)(KK)(i) receives a license under this chapter;

(LL) A commercially operated restaurant located within a county having a population of not less than thirty-nine thousand seven hundred fifty (39,750) nor more than forty thousand (40,000) and also located within the corporate limits of a municipality having a population of not less than seven thousand seven hundred fifty (7,750) nor more than eight thousand (8,000), according to the 2000 federal census or any subsequent federal census, and in addition to satisfying the requirements of subdivision (29)(A), also meets the following additional requirements:

(i) The facility is in a structure of not less than six thousand square

feet (6,000 sq. ft.);

(ii) The facility has seating at tables, for at least two hundred (200) persons; and

(iii) The facility serves at least two (2) meals a day, five (5) days a week, with the exception of holidays, vacations and periods of redecorating;

(MM) A commercially operated recreational facility containing all of the following characteristics:

(i) Owning and operating one (1) or more golf courses, that include practice putting greens, chipping greens and a driving range;

(ii) Operating a clubhouse facility, of at least eight thousand square feet (8,000 sq. ft.), containing a commercial quality kitchen and seating for at least one hundred (100) persons at tables;

(iii) Operating a private clubhouse of at least five thousand square feet (5,000 sq. ft.), with seating at tables for at least eighty (80) persons, and which private clubhouse contains a full service kitchen;

(iv) Located on a minimum of one hundred thirty-seven (137) acres; and

(v) Located within a county through which a major interstate passes, supports a Tennessee board of regents university of approximately nine thousand three hundred (9,300) students for the 2006 academic year and whose sports teams are nicknamed the golden eagles;

(NN) A facility operated either commercially or on a nonprofit basis as a club containing all of the following characteristics:

(i) A clubhouse having not less than approximately five thousand eight hundred square feet (5,800 sq. ft.);

(ii) An eighteen-hole golf course for use by its members and their guests;

(iii) A restaurant with a suitable kitchen, dining facilities and equipment serving two (2) meals daily and open six (6) days a week;

(iv) Is part of a planned unit development;

(v) Has at least one hundred (100) members regularly paying dues;

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Is located in a county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census; and

(OO) It is lawful for a facility providing full service dining to serve wine to be consumed on the premises, subject to the further provisions of this chapter, other than § 57-4-103, that contains the following characteristics:

(i) The facility provides seating at tables for not less than one hundred twenty-five (125) persons and is located on approximately three (3) acres;

(ii) The dining area is at least four thousand eight hundred square feet (4,800 sq. ft.);

(iii) The facility provides seating, on a deck or a patio, for at least forty (40) persons, weather permitting, which deck or patio is in close proximity to a river or waterway; and

(iv) The facility is located in a county with a population of not less than twenty-three thousand (23,000) nor more than twenty-three thousand two hundred (23,200), according to the 2000 federal census or any subsequent federal census;

(PP) A commercially operated facility containing all of the following characteristics:

(i) The facility has overnight accommodations for at least thirty-two (32) people in at least twelve (12) private guest rooms with en-suite bathrooms;

(ii) The facility has a main dining room which seats at least thirty-two (32) people;

(iii) The facility has meeting and conference space, including at least two (2) dedicated conference rooms;

(iv) The facility has a historic water-operated grist mill;

(v) The facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(QQ) A commercially operated facility containing all of the following characteristics:

(i) The facility has a marina with at least four hundred thirty-five (435) wet slips;

(ii) The facility has a minimum of four hundred twelve (412) paved single car parking spaces and in addition at least thirty (30) car/trailer paved parking spaces;

(iii) The facility has a restaurant with inside seating for at least seventy-eight (78) persons and patio dining for at least fifty-four (54) persons;

(iv) The facility is located within one great circle mile of Tennessee highway 56;

(v) The facility is located on a lake with at least eighteen thousand (18,000) acres of water and at least three hundred forty-two (342) miles of shore line; and

(vi) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(RR) A commercially operated facility containing all of the following characteristics:

(i) Owning and operating a golf course that is open to the public, that includes practice putting and chipping greens and a driving range;

(ii) Operating a clubhouse facility of approximately four thousand square feet (4,000 sq. ft.), containing a commercial quality kitchen and seating for at least eighty-three (83) persons inside at tables;

(iii) The facility is located at the intersection of State Highway 55 and Pete Sain Road;

(iv) The facility does not discriminate against any patron on the basis of gender, race, religion or national origin; and

(v) The facility is located within a county having a population of not less than forty-eight thousand (48,000) nor more than forty-eight thousand one hundred (48,100), according to the 2000 federal census or any subsequent census;

(SS) A commercially operated recreational facility on at least ninety (90) acres of land that borders the Cherokee National Forest that offers lodging, recreation and restaurant packages to patrons containing all of the following characteristics:

(i) A rustic lodge with at least five (5) private overnight rooms that all possess a king-sized bed, mini-refrigerator, coffee maker, microwave, television, sitting area and private full bathroom, all of which have views of the mountains and are situated in a lodge with a shared great room and hot tub;

(ii) At least ten (10) cabins for overnight stays that sleep multiple persons, some of which are company-owned and some of which are privately-owned but rented by the company, and include the following amenities: television, outdoor hot tub on private deck, heat and air conditioning, gas grill, cookware, fireplace, linens and towels and large and small appliances including washer/dryer and all common kitchen appliances;

(iii) Riding stables with at least twenty-two (22) stalls for both horses owned by the resort and for overnight lease for or by guests, on-site guided trail rides provided by the owners, a horse arena with a bathroom, mountain biking, hiking, fishing including an on-site stocked pond and swimming in the guest swimming pool;

(iv) A dining restaurant that possesses a kitchen and is currently permitted to serve beer that is attached to a larger multi-purpose hall that hosts banquets, dining, dancing, music, live bands and other types of entertainment, all of which are connected to two (2) bars and at least one (1) private room and includes dining upstairs and downstairs and multiple outdoor seating decks, all of which possess a combined seating of at least two hundred (200) persons, that serves at least nine (9) meals on a weekly basis, with the exceptions of closures for private groups that include the year-round hosting of reunions, weddings and corporate workshops and seasonal closures, vacations, general maintenance and remodeling by the owners;

(v) A building that contains an administrative office and a general store complete with all sorts of merchandise for use on and off of the premises of the resort, a building that contains a tack store that sells all sorts of horse-related merchandise and a building that contains a game room;

(vi) An outdoor pavilion that possesses a grill and in which other outdoor cooking devices may be used and that is used to serve meals outdoors in combination with foods prepared in the kitchen;

(vii) A gazebo used for outdoor weddings;

(viii) When used in this subdivision (26)(SS), "facility" includes any location within the property designated by the licensee;

(ix) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(x) Is located within a county having a population of not less than thirty-three thousand five hundred twenty-five (33,525) nor more than thirty-three thousand six hundred (33,600), according to the 2000

federal census or any subsequent federal census;

(TT)(i) A commercially operated recreational facility, whether open to the public or limited to members and guests of a corporation, limited liability company, association or of the development in which it is located, owned and operated by a corporation, limited liability company or association, having all of the following characteristics:

(a) The facility must be located in or adjacent to a residential real estate development containing no less than one thousand (1,000) acres and no more than two thousand (2,000) acres, inclusive of the facility;

(b) The facility must have at least three (3) permanent structures, open to the public or to members and their guests, with the largest structure having at least thirty thousand square feet (30,000 sq. ft.) of enclosed space;

(c) The closest boundary of the real estate development in which the facility is located must be located no more than two thousand feet (2,000′) from the right-of-way of Interstate 840 and must be directly adjacent to Arno Road;

(d) The facility must maintain the following types of recreational amenities:

(1) A golf course having at least eighteen (18) holes;

(2) At least one (1) swimming pool;

(3) At least one (1) tennis court; and

(4) A fitness facility;

(e) The facility must have at least one (1) room or rooms that are regularly kept, used and maintained as a place where meals are regularly served, with adequate and sanitary kitchen facilities and seating at tables for at least seventy-five (75) persons;

(f) The facility must be located in a county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census; and

(g) The facility must not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(ii) The premises of any facility licensed under this subdivision (26)(TT) means any or all of the property that constitutes the facility, including swimming pools, tennis courts, golf courses, paths and road crossings. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(UU)(i) A commercially operated recreational facility which contains each of the following characteristics:

(a) Is located within a county with a population of not less than seventeen thousand (17,000) nor greater than eighteen thousand (18,000), according to the 2010 federal census or any subsequent federal census;

(b) Has located on its premises, stables for the temporary or permanent stabling of horses with a capacity of at least two hundred twenty (220) horses;

(c) Consists of property of at least ten thousand (10,000) acres,

contiguous and noncontiguous;

(d) Has located upon its premises trails and horseback riding, wagon trails, campsites with electrical service, bathhouses and a pavilion for cookouts; and

(e) Has a restaurant facility for the preparation and serving of food and beverages to guests of the facility located at the facility;

(ii) The rights of the facility as to activities permitted under this chapter may be held by the entity which owns the facility, the entity which leases the facility, or an entity operating the restaurant pursuant to a written contract with the entity which owns or leases the facility;

(iii) The facility may be a contiguous parcel of property or may be noncontiguous; provided, that any part of the facility which is noncontiguous to any other part of the facility is separated only by a roadway or street; and

(iv) The entity excising the rights of the facility shall be authorized to engage in the activities permitted under this chapter anywhere on the premises of the facility as disclosed to the commission;

(VV) A privately owned facility possessing each of the following characteristics:

(i) Is located on at least twenty (20) acres;

(ii) Has a restaurant facility with at least twelve hundred square feet (1,200 sq. ft.) that seats at least one hundred (100) patrons at tables located both inside and outside the facility;

(iii) Has a marina with at least one hundred (100) slips and that provides house boat rentals of at least four (4) house boats;

(iv) Has at least four (4) cabins, seven (7) camping slots and at least three (3) RV slots;

(v) Has a boat repair shop and a store that carries boating and skiing type items;

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Is located within any county having a population of not less than seventeen thousand eight hundred (17,800) nor more than seventeen thousand eight hundred seventy-five (17,875), according to the 2000 federal census or any subsequent federal census;

(WW) A commercially operated facility containing all of the following characteristics:

(i) The facility has a marina with at least two hundred forty (240) wet slips;

(ii) The facility has a minimum of nine (9) housing units for rent containing nineteen (19) bedrooms;

(iii) The facility has a campground with twelve (12) sites containing electric and sewer hookups;

(iv) The facility has a minimum of one hundred forty-seven (147) paved single car parking spaces;

(v) The facility has a restaurant with inside seating for at least twenty-eight (28) persons and patio dining for at least forty (40) persons;

(vi) The facility has an outdoor pavilion which seats one hundred fifty (150) persons;

(vii) The facility is located on Jefferson Road, approximately six and one-tenth (6.1) miles from the intersection with Highway 288/Kelton-

burg Road and thirteen (13) miles from Highway 70;

(viii) The facility is located on a lake with at least eighteen thousand (18,000) acres of water and at least three hundred forty-two (342) miles of shore line; and

(ix) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(XX) A commercially operated facility containing all of the following characteristics:

(i) The facility has a minimum of eighty seven (87) parking spaces;

(ii) The facility has a restaurant open year-round with inside seating for at least sixty (60) persons and outside seating for at least one hundred nineteen (119) persons;

(iii) The facility is located on Highway 96 less than one (1) mile from Center Hill Lake; and

(iv) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(YY) A commercially operated facility containing all of the following characteristics:

(i) The facility has a minimum of eighty five (85) parking spaces;

(ii) The facility has a restaurant open year-round at least six (6) days a week with inside seating for at least one hundred (100) persons and outside seating for at least one hundred twenty (120) persons;

(iii) The facility is located on Highway 70 less than three (3) miles from Center Hill Lake; and

(iv) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(ZZ) A commercially operated facility containing all of the following characteristics:

(i) The facility owns and operates an eighteen (18) hole golf course that is open to the public, which includes putting greens and a driving range;

(ii) The facility operates a clubhouse facility of approximately five thousand (5,000) square feet, with seating at tables for at least eighty (80) persons and which clubhouse contains a full-service kitchen;

(iii) The facility operates a swimming pool;

(iv) The facility is located on a minimum of one hundred thirty-three (133) acres;

(v) The facility is located adjacent to old Highway 45W and is situated within a county having a population of not less than forty-eight thousand one hundred twenty-five (48,125) nor more than forty-eight thousand two hundred (48,200), according to the 2000 federal census or any subsequent federal census; and

(vi) The facility does not discriminate against any patron on the basis of gender, race, religion or national origin;

(AAA) A commercially operated facility owned by a not-for-profit orga-

nization possessing each of the following characteristics:

(i) Is located on the Cumberland Plateau, within one (1) mile of a national river and recreation area;

(ii) Offers historic interpretation of Victorian-era British architecture, lifestyle, and settlement on the Cumberland Plateau in the 1880s and thereafter;

(iii) Operates public education programs year round in multiple historic buildings built from 1880 to 1884, including the oldest unchanged and preserved public library in America;

(iv) Preserves the historic character of a British settlement on the Cumberland Plateau in the 1880s through a board of directors engaged in land acquisition and management, design review of new construction and renovation, and the public enjoyment of period crafts, music, and folklife through the organization of festivals, support for local artists through the sale of arts and crafts in a commissary;

(v) Owns, sells, and develops home sites for construction of design-approved homes;

(vi) Offers year-round overnight accommodations to visitors in historic inn and cottage settings;

(vii) Operates a year-round restaurant serving breakfast, lunch, and dinner to visitors, community residents, guests, and members of the public;

(viii) Attracts thousands of visitors annually from around the world;

(ix) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(x) Is located within any county having a population of not less than nineteen thousand five hundred (19,500) nor more than nineteen thousand seven hundred seventy five (19,775), according to the 2000 federal census or any subsequent federal census;

(BBB) A commercially operated facility containing all of the following characteristics:

(i) The facility has a marina with at least five hundred thirty (530) wet slips;

(ii) The facility has a minimum of two hundred fifty (250) paved single car parking spaces;

(iii) The facility has a restaurant with inside seating for at least eighty (80) persons and outside seating for at least sixty (60) persons;

(iv) The facility is located on a lake with at least eighteen thousand (18,000) acres of water and at least three hundred forty-two (342) miles of shore line; and

(v) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(CCC) A commercially operated facility containing all of the following characteristics:

(i) The facility includes a one hundred forty-seven thousand square foot (147,000 sq. ft.) boat and RV showroom and service center with retail sales of all types of camping and boating equipment as well as a boat and RV parts department;

(ii) The facility has a two hundred fifty (250) seat full service

restaurant;

(iii) The facility has a two hundred fifty (250) site campground with two (2) swimming pools, cabins and a lodge;

(iv) The facility is a travel center with a store, pizzeria, delicatessen, fuel center;

(v) The facility has an arcade;

(vi) The facility is located at 2475 Westel Road; and

(vii) The facility is located within a county having a population of not less than forty-six thousand eight hundred (46,800) nor more than forty-six thousand nine hundred (46,900), according to the 2000 federal census or any subsequent federal census;

(DDD) A commercially operated facility containing all of the following characteristics:

(i) The facility has a marina with at least one hundred one (101) wet slips;

(ii) The facility has a minimum of sixty (60) paved single car parking spaces;

(iii) The facility has a restaurant with adequate and sanitary kitchen facilities with inside seating for at least forty (40) persons and outside seating for at least one hundred fifty (150) persons and is kept, used and maintained as a place where meals are served and where meals are actually and regularly served when the facility is opened for business; and

(iv) The facility is located within a county having a population of not less than thirty-one thousand one hundred (31,100) nor more than thirty-one thousand two hundred (31,200), according to the 2000 federal census or any subsequent federal census;

(EEE) A commercially operated facility which contains all of the following characteristics:

(i) Is a bed and breakfast homestay, as defined in § 68-14-502(1)(B), that opened in 2008;

(ii) Has at least two (2) rooms available for overnight guests;

(iii) Is able to prepare on-site custom meals for up to thirty (30) persons;

(iv) Offers cooking classes; and

(v) Is located within any county having a population of not less than one hundred eighty-two thousand (182,000) nor more than one hundred eighty-two thousand one hundred (182,100), according to the 2000 federal census or any subsequent federal census;

(FFF) A commercially operated recreational facility whether open to the public or limited to members and guests of an association or of the development on which it is located, owned, and operated by an association or corporation and in connection with an eighteen-hole golf course which facility is regularly kept, used, and maintained as a place where meals are actually and regularly served, with adequate and sanitary kitchen facilities, and which facility meets all the following characteristics:

(i) The facility must have a clubhouse with no less than six thousand enclosed square feet (6,000 sq. ft.);

(ii) The facility must be located within the limits of a development that is within five hundred yards (500 yds.) of a water reservoir operated and maintained by the United States Army corps of engineers during

1998 or any subsequent years;

(iii) The facility must be located within at least three (3) miles of an airport with lighted runway of at least three thousand feet (3000′) in length;

(iv) Maintenance within the recreational area of the following types of recreational facilities:

(a) Golf course of at least eighteen (18) holes;

(b) Swimming pool; and

(c) Tennis court; and

(v) The facility is located within a county having a population of not less than twenty-nine thousand eight hundred (29,800) nor more than twenty-nine thousand nine hundred (29,900), according to the 2000 federal census or any subsequent federal census;

(GGG) A privately-owned resort and recreational facility possessing each of the following characteristics:

(i) Has at least ninety-five (95) acres located approximately five (5) miles south of Interstate 40 on Tennessee State Highway 13;

(ii) Is fronted on the west side by Tennessee State Highway 13 and bordered on the south side by a scenic river as defined in title 11, chapter 13, part 1;

(iii) Has at least four (4) cabins;

(iv) Has at least thirty (30) recreational vehicle pads and sites with full electrical, water and sewer hookups;

(v) Has at least a forty-seat restaurant which has been approved by the local health department that has an approved beer permit and has food available, with exceptions of closures for private groups or events, seasonal closures, vacations, general maintenance and remodeling by the owners;

(vi) When used in this subdivision (26)(GGG), the "facility" shall include any location within the property designated by the licensee;

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(viii) Is located within any county having a population of not less than seven thousand six hundred (7,600) nor more than seven thousand seven hundred (7,700), according to the 2000 census or any subsequent federal census; and the legislative body of such county adopts a resolution endorsing such resort and recreational facility as a premier type tourist resort as defined in this subdivision (26);

(HHH) A commercially operated facility containing all of the following characteristics:

(i) Has a restaurant serving an upscale menu featuring lobster tail, crab legs and fresh cut steaks;

(ii) Is located on a lake by a marina;

(iii) Has a boat dock within walking distance of the restaurant;

(iii) Has indoor seating for approximately one hundred thirty (130) diners and outdoor dining on the patio with seating for approximately one hundred eighty (180);

(iv) Offers live entertainment on the patio at its Tiki Bar; and

(v) Is located in any county having a population of not less than forty-four thousand two hundred (44,200) nor more than forty-four thousand three hundred (44,300), according to the 2000 federal census

or any subsequent federal census;

(III) A privately-owned resort and recreational facility possessing each of the following characteristics:

(i) Has a dock with marina which has at least one hundred seventy (170) boat slips which is located on or near the four hundred eighty-two (482) mile marker on the Tennessee River;

(ii) Has an outside gazebo which is used for various functions;

(iii) Has a restaurant with a dining room of at least four thousand two hundred square feet (4,200 sq. ft.), which seats at least two hundred (200) persons both indoors and outdoors, including an outdoor balcony; and which serves meals at least four (4) days on a weekly basis including Sunday brunch, with exceptions of closures for private groups or events; and seasonal closures, vacations, general maintenance and remodeling by the owners;

(iv) When used in this subdivision (III), the "facility" shall include any location within the property designated by the licensee; and

(v) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(JJJ) A commercially operated facility containing all of the following characteristics:

(i) Regularly serves meals at tables and continuously maintains adequate kitchen facilities;

(ii) Has indoor seating for approximately one hundred twenty (120) diners and outdoor seating for approximately one hundred thirty (130);

(iii) Is located on the banks of the Cumberland River;

(iv) Has a transient boat dock within walking distance of the restaurant;

(v) Specializes in serving catfish and is often referred to as "the Catfish Place under the bridge"; and

(vi) Is located in any county having a population of not less than thirty-nine thousand one hundred (39,100) nor more than thirty-nine thousand two hundred (39,200), according to the 2010 federal census or any subsequent federal census;

(KKK) A bed and breakfast possessing each of the following characteristics:

(i) The house is approximately ten thousand square feet (10,000 sq. ft.) and has rooms for approximately twelve (12) guests to stay overnight;

(ii) Has a smaller upper level patio and a larger, lower level patio;

(iii) Has a main dining room on the first floor which can accommodate approximately seventy (70) guests. The main dining room is one (1) large room with floor to ceiling windows providing one hundred eighty degrees (180°) of lakefront viewing;

(iv) Has accommodations for an additional forty (40) guests for outside dining;

(v) Is located in the Long Branch portion of Dale Hollow Lake;

(vi) The property on which the bed and breakfast is situated has space for weddings, family reunions and other large gatherings on the large outside portion of the property; and

(vii) Is located in any county having a population of less than seven thousand eight hundred fifty-one (7,851) nor more than seven thousand eight hundred sixty-five (7,865), according to the 2010 federal census or

any subsequent federal census;

(LLL) A hotel possessing all of the following characteristics:

(i) Contains at least twenty five (25) rooms for the sleeping accommodations of guests;

(ii) Is registered as a national historic landmark;

(iii) Is located within a central business improvement district; and

(iv) Is located in any county having a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four hundred thirty-two thousand three hundred (432,300), according to the 2010 federal census or any subsequent federal census;

(MMM) A commercially operated recreational facility possessing each of the following characteristics:

(i) Is located at least two hundred feet (200′) from a natural lake that is located in or near a state park, which has waterfowl hunting and fishing is available year round;

(ii) Has a restaurant which has:

(a) A beer license;

(b) A commercial kitchen; and

(c) Seating for at least seventy-five (75); and

(iii) Has a boat ramp and boat dock; and

(NNN) A commercially operated facility containing all of the following characteristics:

(i) The facility has a restaurant open year-round with inside seating for at least seventy-five (75) persons;

(ii) The facility has a minimum of eighty-five (85) parking spaces;

(iii) The facility is located on Highway 70 less than three (3) miles from Center Hill Lake; and

(iv) The facility is located within a county having a population of not less than eighteen thousand seven hundred (18,700) nor more than eighteen thousand seven hundred fifty (18,750), according to the 2010 federal census or any subsequent federal census;

(27) "Premises," when:

(A) Referring to an establishment licensed under this chapter;

(B) Such establishment is located within an historical district which has been designated as a national historic landmark;

(C) Such a national historic landmark centers around a public street or right-of-way; and

(D) Such a public street or right-of-way is closed to motor vehicular traffic on a regular basis;

includes the area encompassed by the boundaries of the historic district; provided, that the granting of a license for a business location within such historical district shall not preclude the granting of another license to another establishment located within the boundaries of the historic district. The provisions of this subdivision (27) shall apply only to counties with a population of more than four hundred thousand (400,000) according to the 1980 census, but those counties having a metropolitan form of government shall be exempt from the provisions of this subdivision (27). In such county, only for the purposes of the hours of sale provided in § 57-4-203(d)(4), "premises" also includes any establishment located within four (4) blocks west of the western boundary of the historic district and on the same public

street or right of way as the historic district; provided, that the requirement of closing the street or right-of-way to motor vehicular traffic on a regular basis shall not apply to the extension of the premises established by this sentence;

(28) "Public aquarium" means a facility which contains a collection of living aquatic animals whose sole or primary habitat is water and which facility provides for care and housing for public exhibition, and also possesses the following characteristics:

(A) The exhibits containing live aquatic animals for public viewing are housed in a building having at least one hundred thousand square feet (100,000 sq. ft.) of interior space;

(B) The exhibits containing live aquatic animals for public viewing contain a minimum total of five hundred thousand gallons (500,000 gals.) of water as the living environment of the animals; and

(C) The public aquarium is located in a county having a population in excess of two hundred fifty thousand (250,000), according to the 1990 federal census or any subsequent federal census;

(29)(A) "Restaurant" means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and seating capacity of at least forty (40) people at tables, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. An establishment shall be eligible for licensure as a restaurant in accordance with this part, if the establishment is open at least three (3) days a week, with the exception of holidays, vacations, periods of redecorating and seasonal closings, as defined in subdivision (35), for those restaurants located within a jurisdiction that has elected Tennessee River resort district status, and more than fifty percent (50%) of the gross revenue of the restaurant is generated from the serving of meals;

(B) "Restaurant" also means any bowling center that was licensed as of January 1, 1983, to sell alcoholic beverages for consumption on the premises;

(C)(i) Within a national historical landmark district or urban park center, as defined by this section, restaurant licensees shall not be required to meet any requirements of this section which make food service, maintenance of a kitchen, or a dining room a prerequisite to the issuance of a restaurant permit to serve liquor by the drink. The provisions of this subdivision (29)(C) shall apply only to counties with a population of more than four hundred thousand (400,000) according to the 1980 census, but those counties having a metropolitan form of government shall be exempt from the provisions of this subdivision (29)(C);

(ii) Within a sports authority facility as defined in this section, restaurant licensees shall not be required to meet any of the requirements of subdivision (29)(A) which make food service, maintenance of a kitchen, or a dining room a prerequisite for the issuance of a permit to serve liquor by the drink;

(D) Notwithstanding the minimum seating capacity established in subdivision (29)(A), for the purpose of a permit to serve wine, "restaurant"

means any lodge or resort with sleeping accommodations where meals are served that is located on land which is owned by the United States department of the interior, is operated by the national park service or its agents or contractors and is located in a county with a population of not less than forty-one thousand four hundred (41,400) nor more than forty-one thousand five hundred (41,500), according to the 1980 federal census or any subsequent federal census;

(E) Notwithstanding the minimum seating capacity established in subdivision (29)(A), a restaurant with a seating capacity of at least forty (40) people at tables may be licensed as a gourmet restaurant under this chapter. To be licensed as a gourmet restaurant, the establishment must obtain:

(i) Not less than two thirds (⅔) of its annual gross sales from the sale of food; and

(ii) Not less than two thirds (⅔) of its annual alcoholic beverage sales from the sale of wine;

(F) "Restaurant" also means a facility located in any municipality having a population in excess of one hundred thousand (100,000), according to the 1990 federal census, or any subsequent federal census, in which coffees, teas, pastries, and other foodstuffs are offered for sale for consumption on the premises, which facility has a seating capacity of at least thirty (30) seats and which facility obtains at least fifty percent (50%) of its annual gross sales from the sale of coffees, teas and pastries. Any restaurant licensed under this subdivision (29)(F) shall be authorized to sell alcoholic beverages for consumption on the premises only when such beverages are mixed with coffees, teas and other beverages. A restaurant licensed under this subdivision (29)(F) need not meet the requirement of subdivision (29)(A);

(G) "Restaurant" also means a facility:

(i) Located within one-half (½) mile of the railroad tracks in the unincorporated area of any county having a population of not less than thirty thousand two hundred (30,200) nor more than thirty thousand four hundred seventy-five (30,475), according to the 1990 federal census or any subsequent federal census;

(ii) Whose primary source of income is from serving meals to its patrons, both indoors and out-of-doors, and has a total seating capacity of at least seventy-five (75) people at tables;

(iii) Located in a building having a total square footage of at least two thousand five hundred square feet (2,500 sq. ft.) which was constructed prior to 1925; and

(iv) Which is located on a site used during the Civil War or within two (2) miles of two (2) or more Civil War sites, or is within one and one-half (1 ½) miles of a home that was built in 1884, and which is preserved as the area's best example of the Queen Anne and Eastlake architectural styles;

(H) "Restaurant" also means a facility:

(i) Located off U.S. Highway 421 in any county having a population of not less than seventeen thousand four hundred seventy-five (17,475) nor more than seventeen thousand five hundred seventy-five (17,575), according to the 2000 federal census or any subsequent federal census;

(ii) Whose primary source of income is from serving meals to its patrons and has a total seating capacity of at least one hundred fifty

(150) people; and

(iii) Which is located next to an eighteen-hole golf course;

(I) "Restaurant" also means a facility:

(i) Located on Highway 243 in a county having a population of not less than sixty-nine thousand four hundred (69,400) nor more than sixty-nine thousand five hundred (69,500), according to the 2000 federal census or any subsequent federal census;

(ii) That has seating for not more than one hundred forty (140) people;

(iii) That has a music and entertainment orientation;

(iv) Whose primary source of income is derived from serving meals to its patrons;

(v) That has a historic working original malt and soda fountain;

(vi) That is located in a historical structure formerly used as a town hall as well as a practice venue for Grand Ole Opry hopefuls; and

(vii) That does not discriminate against any patron on the basis of age, gender, race, religion or origin;

(J)(i) Restaurant also means a facility that:

(a) Is owned, operated or leased by a for-profit organization organized under the laws of this state;

(b) Does not discriminate against any patron on the basis of gender, race, religion or national origin;

(c) Provides food service to the public or for private events and catering with seating capacity for at least two hundred fifty (250) persons at tables, whether or not the seating is inside or on a deck or patio;

(d) Is open at least five (5) days a week serving two (2) meals daily with the exception of holidays, vacations, seasonal conditions and periods of redecorating, with suitable kitchen, dining facilities and equipment;

(e) Is in the center of a full service marina and resort located on the Tennessee River at mile marker 477.5; which full service marina has at least six hundred (600) dry storage slips and wet slips up to eighty feet (80′) that offers two (2) cabins completely furnished and an inn with twelve (12) rooms that overlooks the Tennessee River; and

(f) Is located in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(ii) A restaurant under this subdivision (29)(J) must comply with all the requirements of this chapter and shall be subject to the restrictions imposed upon licenses other than § 57-4-103; and

(K) "Restaurant" also means a facility:

(i) Located on State Route 46, Old Hillsboro Road, in any county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census;

(ii) Which is located 1.66 miles from the Natchez Trace Parkway Exit off of Pinewood Road;

(iii) Whose primary source of income is from serving meals to its

patrons;

(iv) Which first opened as a restaurant in 1968;

(v) Which does not operate as a grocery store; and

(vi) Which does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(30) "Retirement Center" means a facility that contains each of the following characteristics:

(A) The center is located in a county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census;

(B) The center is located on a single parcel of land not less than forty eight (48) acres and not more than forty-nine (49) acres in area;

(C) The center will consist of individual living unit apartments, individual living unit villas, an assisted living facility, a nursing home facility, a club house and common areas;

(D) The center will have a club house that houses a health club, game room, lounge and a dining facility;

(E) The center's lounge in the club house will offer to the center's residents and their guests only food, non-alcoholic beverages, mixed alcoholic drinks, wine and beer, as well as make available in the dining facility and other areas within the center's property, for the center's residents and guests only, mixed alcoholic drinks, wine and beer; and

(F) The center does not discriminate against any patron on the basis of gender, race, religion or national origin;

(31) "Special historic district" means any area with specific boundaries that possesses the following characteristics:

(A) Was organized pursuant to a municipal urban planning and development board;

(B) Contains within such special historic district an historic district listed on the national register of historic places;

(C) Is located on a trolley line; and

(D) Is located in any county having a population of eight hundred thousand (800,000) or more, according to the 2000 federal census or any subsequent federal census;

(32)(A) "Special occasion license" means a license which the commission may issue to a bona fide charitable, nonprofit or political organization. Such license shall be issued for no longer than one (1) twenty-four-hour period, subject to the limitations of hours of sale which may be imposed by law or regulation, and such license may be issued in advance of its effective date;

(B) If a bona fide charitable or nonprofit organization owns and maintains a permanently staffed facility which:

(i) Is used for the periodic showing or exhibition of animals;

(ii) Has a seating capacity of not less than twenty-five thousand (25,000) persons; and

(iii) Has a separate permanently constructed clubhouse or meeting room located on the grounds,

then a special occasion license may be issued for use at the clubhouse or meeting room for the duration of the particular show or exhibit for which application is made, and such organization shall not be subject to the

numeric limitation contained in the last sentence of this subdivision (32). This license shall only be available upon the payment of the fee as required by law for each separate day of the show;

(C) Such license shall not be issued unless and until there shall have been paid to the commission for each such license a license fee of one hundred dollars ($100), and there shall have been submitted an application which designates the premises upon which alcoholic beverages shall be served. No such charitable, nonprofit or political organization shall be eligible to receive more than twelve (12) special occasion licenses in any calendar year;

(D) A special occasion license under this section may also be issued to a nonprofit historical society for the purpose of serving complimentary samples of homemade wine manufactured in the Swiss tradition by a society member or members, the complimentary samples not to exceed one ounce (1 oz.) per wine type per person to be served at an annual festival conducted by a society celebrating the Swiss heritage at a farm museum in any county having a population of not less than fourteen thousand three hundred (14,300) nor more than fourteen thousand four hundred (14,400), according to the 2000 federal census or any subsequent federal census;

(E) Any entity holding a special occasion license issued under this subdivision (32) or members of the licensee may transport wine and other alcoholic beverages to the location for which the special occasion license is issued;

(F) "Special occasion license" also means a license, issued by the commission, to a bona-fide charitable organization, recognized as exempt from taxation by the internal revenue service pursuant to § 501(c)(3) of the Internal Revenue Code, codified in 26 U.S.C. § 501(c)(3), which organization has been in continuous operation as a tax-exempt entity for at least twenty (20) years, and which organization has an annual budget of at least one million dollars ($1,000,000). A special occasion license issued pursuant to this subdivision (32)(F) shall be authorized to sell wine in closed containers for consumption on or off the premises notwithstanding the restrictions of § 57-4-203. Any licensee holding a license issued pursuant to § 57-3-202, § 57-3-203, § 57-3-204, § 57-3-207, § 57-3-605 or § 57-4-101 may donate wine to an organization holding a special occasion license issued pursuant to this subdivision (32)(F) for an event conducted by the special occasion licensee. Any resident of Tennessee may donate wine, which brand of wine has been registered pursuant to § 57-3-301, to an organization holding a special occasion license issued pursuant to this subdivision (32)(F) for sale or consumption at an event conducted by the special occasion licensee;

(G) A special occasion license under this section may also be issued to a bona fide charitable organization that benefits charities which support women and children in Middle Tennessee and which:

(1) Holds the event in a county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census, on property used as a veterinary clinic located on a six and sixty-five one hundredths (6.65) acre lot that shares a common boundary between a municipality and the unincorporated area of such county;

(2) Jurisdictions within the boundaries of such county have by referendum adopted both the sale of alcoholic beverages at retail package stores and for consumption on the premises;

(3) Is a one-day annual event restricted to persons twenty-one (21) years of age or older;

(4) Holds a grape stomp contest with teams made up of four (4) stompers and one (1) swabbie, who collects the juice created by the stompers in a jar, with the team producing the most juice winning the contest;

(5) Includes numerous food vendors;

(6) Has wine and spirits tastings; and

(7) Where alcoholic beverages are served but not sold;

(H) A special occasion license under this section may also be issued to a nonprofit community association for the purpose of serving samples of wine to persons holding a pre-sold ticket for an annual fundraiser, the samples not to exceed two ounces (2 oz.) per wine per person to be served at the annual fundraiser conducted by the community association in any county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census. The fundraiser shall be an insured event with at least ten (10) wineries or restaurants participating in the event and food shall be available to attendees;

(33) "Sports authority facility" means a facility possessing the following characteristics:

(A) The facility is owned or operated by a sports authority established under title 7, chapter 67, a public building authority or a governmental entity;

(B) The facility is designed and used for presentation of professional sporting events and other activities, such as amateur sporting events, recreational activities and entertainment events and activities, and includes retail sales areas and retail food dispensing outlets, including, but not limited to, restaurant areas to accommodate liquor by the drink as well as food patronage;

(C) A major league professional baseball (American or National League), football (National Football League), basketball (National Basketball Association) or hockey (National Hockey League) franchise has entered into a long-term agreement to play its home games in the facility; and

(D) The facility is located in a municipality or county having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census;

(34) "Suite" means any room or group of rooms, leased by the operator of a sports authority facility or a convention center, physically located within such facility or center, where access to such room or rooms is restricted to the lessee or such lessee's guests;

(35) "Tennessee River resort district" means a club, hotel, motel, restaurant or limited service restaurant located within a jurisdiction that has elected Tennessee River resort district status pursuant to the provisions of § 67-6-103(a)(3)(F); provided, that for the purposes of this chapter, such district shall only extend inland for three (3) miles from the nearest bank of

the Tennessee River. No entity licensed to sell alcoholic beverages within the boundaries of any such resort district shall discriminate against any patron on the basis of age, gender, race, religion, or national origin. A restaurant within a jurisdiction that has elected Tennessee River resort district status also means a restaurant located within such district which has an indoor seating capacity of at least forty (40) and an outdoor seating capacity of at least seventy-five (75); in addition with respect to such a restaurant, the term "seasonal closing" as used in subdivision (29)(A), means the period from November 1 to March 1 or a period of time, if different from such dates, as filed by the restaurant with the alcoholic beverage commission;

(36) "Terminal building of a commercial air carrier airport" means a building, including any concourses thereof, used by commercial airlines and their customers for sale of airline tickets, enplaning and deplaning of airline passengers, loading and unloading of baggage and cargo, and for providing other related services for the convenience of airline passengers and others, located in any airport which is served by one (1) or more commercial airlines, and:

(A) Is operated by a board of commissioners whose membership is appointed by the legislative bodies of five (5) or more local governments or whose membership is appointed pursuant to § 42-4-105; or

(B) Is located in a municipality where the provisions of this chapter have become effective in that municipality;

(37)(A) "Theater" means any establishment in which motion pictures are exhibited to the public regularly for a charge. Such theater shall have an area that is enclosed by glass and which is accessed through a set of double doors by patrons who must be twenty-one (21) years of age or older to enter. Such theater shall be part of a retail and entertainment complex located one (1) block from a historical district that has been designated as a national historic landmark that centers around a public street or right-of-way. Such theater shall be located in a county having a population of eight hundred thousand (800,000) or more, according to the 1990 federal census or any subsequent federal census;

(B) "Theater" also means any establishment in which motion pictures are exhibited to the public regularly for a charge and which possesses the following characteristics:

(i) Is a twelve (12) auditorium theater that is one hundred percent (100%) digital;

(ii) Is certified by the United States Green Building Council as the nation's first stand-alone theater boasting energy and environmental sensitive design;

(iii) Has one (1) auditorium restricted to patrons twenty-one (21) years of age or older; and

(iv) Is located downtown near a river in a county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(38)(A) "Urban park center" means a facility possessing the following characteristics:

(i) The center is owned, operated, or leased by a municipal or county government, or any agency or commission thereof;

(ii) The center is designed to contain outdoor recreational facilities, public museum buildings, exhibition buildings, retail sales areas, retail

food dispensing outlets including, but not limited to, sale of package alcoholic and malt beverages, and restaurant areas to accommodate liquor-by-the-drink as well as food patronage; and

(iii) The center is located in a municipality or county having a population in excess of six hundred thousand (600,000), according to the 1970 federal census or any subsequent census;

(B)(i) "Urban park center" also means an outdoor fixed structure amphitheater utilized as a performance venue, containing fixed seating for at least five thousand one hundred (5,100) persons. Such facility shall be secured by adequate perimeter fencing.

(ii) The provisions of this subdivision (38)(B) apply in any county with a metropolitan form of government with a population of not less than five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census;

(C) "Urban park center" also means a facility that possesses the following characteristics:

(i) Consists of at least two (2) theater spaces in which live theater, concerts, and films are presented;

(ii) Contains at least ten thousand square feet (10,000 sq. ft.);

(iii) Contains permanent fixed seating for at least three hundred forty-nine (349) persons;

(iv) Contains one (1) performance space constructed prior to 1930 that contains a stage with a fly tower for stage rigging with a height of at least thirty feet (30′);

(v) Is operated by a not-for-profit corporation that qualifies as tax exempt under the Internal Revenue Code, § 501(c)(3), (26 U.S.C. § 501(c)(3)), and such facility is not a religious organization or a secondary or elementary school;

(vi) A major street is located not more than one hundred feet (100′) from the nearest exterior wall of such facility; and

(vii) Is located within the jurisdictional limits of a county with a metropolitan form of government having a population of not less than five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census;

(D) "Urban park center" also includes a facility possessing each of the following characteristics:

(i) Is owned, operated or leased by a municipal or county government, or any agency or commission thereof;

(ii) Has an outdoor fixed structure amphitheater utilized as a performance venue;

(iii) Provides or leases facilities for concerts, plays and programs of cultural, civic and educational interest; and

(iv) Is located in any municipality that has authorized the sale of alcoholic beverages for consumption on the premises, in a referendum in the manner prescribed by § 57-3-106, and the municipality has a population of not less than twenty-three thousand nine hundred twenty (23,920), nor more than twenty-three thousand nine hundred thirty (23,930), according to the 2000 federal census or any subsequent federal census;

(39) "Wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and

necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed twenty-one percent (21%) by volume. No other product shall be called "wine" unless designated by appropriate prefixes descriptive of the fruit or other product from which the same was predominantly produced, or an artificial or imitation wine; and

(40)(A) "Zoological institution" means a facility which contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is owned, operated, or leased by a municipal or county government;

(ii) The zoo is at least fifty (50) years old; and

(iii) The zoo is located in a county having a population in excess of seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census.

(B) "Zoological institution" means a facility that contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is operated on property leased by a county having a metropolitan form of government and has been opened to the public on that property at least since 1997;

(ii) The zoo has been accredited by and maintains the accreditation of the Association of Zoos and Aquariums (AZA); and

(iii) The zoo is located in a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(C) "Zoological institution" means a facility that contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is operated on property owned by a city and has been opened to the public on that property at least since 1937;

(ii) The zoo has been accredited by and maintains the accreditation of the Association of Zoos and Aquariums (AZA); and

(iii) The zoo is located in a county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census; and

(D) "Zoological institution" means a facility that contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is operated on property owned by a city and has been opened to the public on that property at least since 1948;

(ii) The zoo has been accredited by and maintains the accreditation of the Association of Zoos and Aquariums (AZA); and

(iii) The zoo is located in a county having a population of not less than three hundred eighty two thousand (382,000) nor more than three

hundred eighty two thousand one hundred (382,100), according to the 2000 federal census or any subsequent federal census.

57-4-103. Applicability of chapter — Referendum — Form of question.

(a)(1) The provisions of this chapter shall be effective in any jurisdiction which authorizes the sale of alcoholic beverages for consumption on the premises in a referendum in the manner prescribed by § 57-3-106; provided, that, in addition to any other method authorized for holding an election pursuant to § 57-3-106, an election may be held for such sales upon adoption of a resolution by a two-thirds (⅔) vote of the legislative body of a county or municipality.

(2)(A) Except as provided in subdivision (a)(2)(B), if the county election commission receives the necessary resolution or the petition requesting the referendum not less than forty five (45) days before the date on which an election is scheduled to be held, except for referenda scheduled to be held with the regular November general election which shall be held pursuant to § 2-3-204, the county election commission shall include the referendum question contained in subsection (b) on the ballot.

(B) In counties having a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000) according to the 1990 federal census or any subsequent federal census, if the county election commission receives the necessary petition requesting the referendum not less than thirty (30) days before the date on which an election is scheduled to be held, the county election commission shall include the referendum question contained in subsection (b) on the ballot.

(3) If any county has authorized the sale of alcoholic beverages for sale for consumption off premises pursuant to § 57-3-106, then any municipality wholly or partially within the boundaries of the county may conduct a referendum to authorize the sale of alcoholic beverages for consumption on the premises within the corporate boundaries of the municipality.

(4)(A) If a municipality which has created a tourism development zone as defined in § 7-88-103 has not authorized the sale of alcoholic beverages for consumption on the premises in a referendum, then such municipality is authorized to conduct a referendum to authorize the sale of alcoholic beverages for consumption on the premises within the corporate boundaries of such municipality in accordance with this subdivision (a)(4). Notwithstanding § 57-3-106(c) and (f)(2), the county election commission shall place the question on the ballot of the November 2012, general election; provided, that all costs associated with the referendum election shall be paid for by the municipality to which this subdivision (a)(4) applies.

(B) The question submitted to the voters shall be in the following form for this election:

For legal sale of alcoholic beverages for consumption on the premises in _____ (here insert name of political subdivision).

Against legal sale alcoholic beverages for consumption on the premises in _____ (here insert name of political subdivision).

(5) When a municipality is located partly within a county that has a metropolitan form of government and the county has approved sales of alcoholic beverages for consumption on the premises and partly within another county that has not approved sales of alcoholic beverages for consumption on the premises, a referendum in the municipality shall be held only in that portion of the municipality located in the county that has not approved sales of alcoholic beverages for consumption on the premises. The referendum result shall not affect the sale of alcoholic beverages for consumption on the premises in the portion of the municipality located in the county having a metropolitan form of government.

(6) If any municipality located in any county having a population of not less than sixty-six thousand two hundred (66,200) nor more than sixty-six thousand three hundred (66,300), according to the 2010 federal census or any subsequent federal census, has authorized the sale of alcoholic beverages for consumption on the premises in a referendum in the manner prescribed by § 57-3-106, then any municipality having a population of not less than eight hundred fifty-five (855) nor more than eight hundred sixty-five (865) located within the boundaries of such county may conduct a referendum to authorize the sale of alcoholic beverages for consumption on the premises within the corporate boundaries of such municipality, notwithstanding the population requirements of § 57-3-101(a)(13) or § 57-3-106(b)(1). The referendum shall be conducted in the manner prescribed by § 57-3-106.

(b) At any such election, the only question submitted to the voters shall be in the following form:

For legal sale of alcoholic beverages for consumption on the premises in _____ (here insert name of political subdivision).

Against legal sale of alcoholic beverages for consumption on the premises in _____ (here insert name of political subdivision).

57-4-201. Alcoholic beverage commission to administer law — Permits — Procedure — Rules and regulations.

(a)(1) The commission created pursuant to chapter 1 of this title, has the authority to administer the provisions of parts 1-3 of this chapter.

(2) The commission shall make regulations, not inconsistent with this chapter, for clarifying, interpreting, carrying out and enforcing the terms of this chapter, for ensuring the proper and orderly conduct of business by licensees, and for regulating all advertising of alcoholic beverages by licensees.

(3) Expiration of the licenses granted pursuant to this chapter shall be as provided by § 57-3-213(a), (b) and (c).

(4) Further, all the provisions of §§ 57-3-214 and 57-3-404(a) and (b), shall apply to licensees under this chapter.

(b)(1) Any person, firm or corporation owning any hotel, convention center, premiere type tourist resort, restaurant, club, historic performing arts center, community theater, theater, historic interpretive center, urban park center, zoological institution, public aquarium, museum, historic mansion house site or commercial passenger boat company as defined in § 57-4-102, desiring to sell wine or other alcoholic beverages for consumption on its

premises where food may be served, shall make application to the commission in duplicate on forms furnished by the commission for a permit so to do. The commission is authorized to issue a limited permit to a restaurant making application under § 57-4-101(c)(1), authorizing such restaurant to serve wine but not any other alcoholic beverages. Any person, firm or corporation desiring to sell wine or other alcoholic beverages for consumption on the premises of any terminal building of a commercial air carrier airport as defined in § 57-4-102, or of a commercial airline travel club as defined in § 57-4-102, or of a sports authority facility as defined in § 57-4-102, shall make application to the commission in duplicate on forms furnished by the commission for a permit to do so. No person, firm or corporation shall be authorized to engage in making such sales until the permit therefor is approved and issued by the commission.

(2) No license may be granted hereunder to any establishment when any person, firm or corporation having at least a five percent (5%) ownership interest in the establishment has been convicted within ten (10) years prior to the application for a license hereunder of a violation of the laws governing the sale or manufacture of alcoholic beverages or of any felony.

(3)(A) If a license has been issued to an establishment as a restaurant pursuant to § 57-4-102 and such licensee desires to exchange its license as a restaurant for a license as a limited service restaurant, the commission may issue the establishment a license as a limited service restaurant in accordance with Chapter 1133 of the Public Acts of 2010, upon the filing of an application by the licensee for the issuance of a license as a limited service restaurant, together with the payment of the application fee required pursuant to § 57-4-301(b)(1) and a sworn statement indicating the gross revenue from the previous year derived from food sales and the gross revenue derived from liquor sales, and, if approved, paying the license fee, or the prorated difference between its restaurant license fee and the license fee, if applicable, required pursuant to § 57-4-301(b)(1)(W). Such statement shall determine the appropriate license fee to be paid. It is the intent that on-premises licenses permitting the sale of alcoholic beverages at restaurants shall not be required to fulfill any other requirements in order to be issued a license to serve alcoholic beverages as a limited service restaurant.

(B) Should the commission find that any restaurant fails to satisfy the requirements of § 57-4-102(29)(A) but would otherwise qualify as a limited service restaurant, such establishment shall be permitted thirty (30) days following such finding to elect to exchange its license for a limited service restaurant license upon paying to the commission a new application fee and the prorated difference between its restaurant license fee and the license fee required pursuant to § 57-4-301(b)(1)(X).

(C) For purposes of exchanging a restaurant license as a limited service restaurant license, if the licensee had been issued a license by the alcoholic beverage commission as a restaurant, the initial license fee shall be based on the percentage of gross sales the establishment generated from the service of meals during the year previous to the year the license as a limited service restaurant is requested.

(D) Any establishment applying for a renewal of its license shall submit a sworn statement indicating the gross revenue from the previous year derived from food sales and the gross revenue derived from liquor sales. Such statement shall determine the license fee to be paid pursuant to

§ 57-4-301(b)(1)(X).

(E)(i) If a license is requested by an applicant who does not hold an existing license as a restaurant, it shall be a rebuttable presumption that the amount of gross sales from prepared food will be at least fifteen percent (15%) but not more than twenty percent (20%). An applicant may rebut the presumption by including with the application a business plan which indicates the gross sales from prepared food will be higher than twenty percent (20%). The commission shall advise each applicant of the applicant's right to include with the application a business plan which includes a projection of the amount of gross sales of prepared food and in such case, the commission shall assess the appropriate license fee based on such projection.

(ii) Any establishment applying for a renewal of its license as a limited service restaurant shall submit a sworn statement indicating the percentage of gross revenue for the previous year derived from food sales and the gross revenue derived from sales of alcoholic beverages. If the statement indicates the gross sales from prepared food was higher than the initial projection or higher than the amount actually sold in the previous year, requiring the payment of a lower licensure fee, the commission shall refund the difference to the licensee within thirty (30) days of the date the statement is filed with the commission. If the statement indicates the gross sales from prepared food was less than the projection or than the amount actually sold in the previous year, requiring the payment of a higher licensure fee, the commission shall require the licensee to pay to the commission the difference between the licensure fee actually paid at the time the renewal fee is paid.

(c)(1) Any club seeking to obtain a license under this chapter shall, as a condition precedent to its obtaining such license, cause to be printed in a newspaper of general circulation in the county or municipality where such club is located a public notice that the club is seeking a license from the commission to sell liquor by the drink. The notice shall include the name and address of each officer of such club, the address of the location of the club, an indication of the number of regular dues paying members, and the name and address of the individual to be in actual charge of the sale of alcoholic beverages. The commission is authorized to promulgate rules and regulations further establishing the content and format of such notice.

(2) Any club seeking to obtain a license under this chapter shall submit with its application a certificate signed by the county executive or chairman of the county commission in which the club is located if outside the corporate limits of a municipality or, if within a municipality, from the mayor or a majority of the commission, city council or legislative body of the municipality by whatsoever name designated, or if the municipality has no mayor, from the highest executive of the municipality. The certificate must state that the persons to be in actual charge of the sale of alcoholic beverages are of good moral character and are personally known to the official or officials signing the certificate, or that such official or officials have made careful investigation of the person's or persons' general character, and from such investigation it is found to be good. In the event the club is unable to obtain such certificate from the proper certifying official, the applicant shall file with the commission with the applicant's application a petition in duplicate stating that the applicant has made application to the certifying official for

the certificate and same has been wrongfully, illegally or arbitrarily refused, and otherwise setting forth reasons why the applicant is entitled to such license, notwithstanding the refusal aforementioned, and the manner in which the refusal is wrongful, illegal or arbitrary. The commission shall hold a hearing to determine whether the license shall be issued. The hearing shall be conducted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commission shall make such order granting or refusing the license as, in its discretion, the entire record at such hearing shall justify, and such order shall be effective from its date.

(3) The provisions of this subsection (c) shall not be applicable to any club having a license on May 1, 1980, or to the renewal of a license for such club.

(d) The commission shall have authority to require an applicant, under oath, to disclose the following information:

(1) The name of the applicant;

(2) Location of the hotel, convention center, premiere type tourist resort, restaurant, club, historic performing arts center, community theater, theater, historic interpretive center, urban park center, zoological institution, public aquarium, museum, historic mansion house site, terminal building of a commercial air carrier airport, commercial airline travel club, commercial passenger boat company, or sports authority facility;

(3) Sufficient data to establish that applicant meets the requirements of §§ 57-3-110, 57-4-101, 57-4-102;

(4) The true owner thereof;

(5) That neither the applicant nor any person to be employed in the serving of beverages authorized herein shall be a person who has been convicted of any violation of the laws against possession, sale, manufacture or transportation of intoxicating liquor or of any felony within eight (8) years prior to the application for a license hereunder;

(6) That the manager and/or operator of the hotel, convention center, premiere type tourist resort, restaurant, club, zoological institution, public aquarium, museum, community theater, theater, historic interpretive center, historic performing arts center, establishment in a terminal building of a commercial air carrier airport, commercial airline travel club, commercial passenger boat company, or sports authority facility seeking such permit is of good moral character; and

(7) Such other relevant information as may be required by the commission.

(e) The commission is authorized to promulgate rules and regulations governing its procedure but it shall consider all applications promptly.

(f)(1) Notwithstanding any provision of this title to the contrary, an entity holding a license to manufacture high alcohol content beer issued by the commission shall be authorized to also obtain a license as a restaurant or a limited service restaurant located on the premises of the manufacturer. The premises of any restaurant or limited service restaurant licensed under this subsection (f) shall mean any or all of the property on which the restaurant is located, including exterior areas. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing.

(2) Notwithstanding any law to the contrary, any manufacturer to whom a restaurant or limited service restaurant license is issued pursuant to subdivision (f)(1), shall also be authorized to sell beer as this term is defined

in § 57-5-101(b) at such restaurant or limited service restaurant upon meeting necessary federal, state and local license requirements.

57-4-202. Revocation or suspension of permits — Pilot project concerning local and municipal beer boards.

(a) The commission shall have authority to revoke or suspend any permit granted herein for the violations of the provisions of any applicable provision of this chapter, and any person aggrieved by the action of this commission in revoking or suspending a permit, or in refusing to grant a permit, may have such action reviewed as provided by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b)(1) As a pilot project to terminate July 1, 2014, unless extended by the general assembly, if, pursuant to § 57-5-108(n), a local or municipal beer board responsible for controlling the sale of beer or malt beverages within any county included within subsection (d), sends a certified letter, return receipt requested to the executive director of the alcoholic beverage commission providing notice that the beer board has suspended or revoked the permit of an establishment for a violation of chapter 5 of this title, upon receipt of the certified letter, the executive director of the alcoholic beverage commission shall:

(A) Schedule a show-cause hearing for the next regularly scheduled meeting of the commission to be held at least fourteen (14) days following the date the executive director receives the certified letter to provide an opportunity for the licensee to appear and show cause why the license to sell alcoholic beverages on the premises should not be suspended or revoked for violations of this chapter based on actions taken by the beer board pursuant to § 57-5-108(n); and

(B) Notify the individual or business entity, which is listed as the licensee at the same location where the beer permit had been suspended or revoked, of the date and time of the show-cause hearing.

(2) If the alcoholic beverage commission finds that a sufficient violation or violations of this chapter have occurred at such location, then the commission shall suspend or revoke the license of the establishment to the same extent and at least for the same period of time as the beer board has suspended or revoked the permit of the establishment pursuant to § 57-5-108(n).

(3) If the licensee fails to appear or decides to surrender the license to the alcoholic beverage commission in lieu of appearing at the show-cause hearing, the license shall be suspended or revoked by the commission, and no license to sell alcoholic beverages on the premises shall be issued by the commission to any person for the location where the beer board suspended or revoked the license or permit pursuant to § 57-5-108(n) for the period of time included in the decision of the beer board.

(4) Notwithstanding § 57-1-201(b)(1), the alcoholic beverage commission shall not have the authority to and shall not issue a fine in lieu of suspending or revoking the license of an establishment whose license had been suspended or revoked by the beer board pursuant to § 57-5-108(n).

(5) The decision of the alcoholic beverage commission is final, and any party aggrieved thereby may appeal the decision of the commission in accordance with the Uniform Administrative Procedures Act.

(c)(1)(A) As a pilot project to terminate July 1, 2014, unless extended by the general assembly, when the alcoholic beverage commission suspends the license to sell alcoholic beverages on the premises at any establishment within any county included within subsection (d), for any violation or violations, as defined in this chapter, the commission is authorized to notify the local or municipal beer board responsible for controlling the sale of beer or malt beverages within such county by certified mail, return receipt requested, of the action taken by the commission. Such notice shall include the record of evidence and the determination made by the alcohol beverage commission in suspending or revoking the license.

(B) Upon receipt of such notice, the local or municipal beer board shall take the actions required pursuant to § 57-5-108(o) with respect to violations as defined in chapter 5 of this title related to the permit for the sale of beer or malt beverages for consumption on the premises at the location where the violation of this chapter occurred.

(2) The suspension or revocation decision of the commission made pursuant to subdivision (c)(1)(A) is final, and any party aggrieved thereby may appeal the decision of the commission in accordance with the Uniform Administrative Procedures Act.

(d) The pilot project established by subsections (b) and (c) shall only apply in counties having a population, according to the 2010 federal census or any subsequent federal census, of:

not less than	nor more than
6,800	6,900
19,100	19,150
22,600	22,675
32,200	32,300
35,600	35,700
51,400	51,500
56,800	56,900
336,400	336,500
432,200	432,300

(e) The executive director of the alcoholic beverage commission shall file a report with the state and local government committees of each house no later than March 15, 2014, on the success or failure of the pilot project created pursuant to subsections (b) and (c) and § 57-5-108(n) and (o), together with the executive director's recommendations as to whether the pilot project should be extended, continued or terminated and recommendations for legislative action, if any are required, based on the executive director's findings. The report, at a minimum, shall contain:

(1) The number of permits or licenses suspended or revoked;

(2) Whether such suspensions or revocations were appealed;

(3) The extent to which a court upheld or overturned such suspensions or revocations;

(4) Whether licensees or permittees surrendered their license or permit in lieu of having a license suspended or revoked;

(5) Whether a new license or permit was issued to the same person or business entity for a new or the same location, if such person or business entity had previously surrendered a license or permit in accordance with

subdivision (e)(4); and

(6) The effect the implementation of the pilot project had on the activities of the establishments holding licenses and permits issued by the alcoholic beverage commission or the local or municipal beer board responsible for controlling the sale of beer within the locality impacted by the pilot project.

57-4-203. Prohibited practices — Hours of sale — Authority of commission — Penalties.

(a) **Exterior Signs.**

(1) No licensee shall place any sign of any description on the exterior of the licensee's hotel, convention center, premier type tourist resort, restaurant, or club which is not in compliance with all duly adopted local ordinances relative to such exterior signs.

(2) A violation of subdivision (a)(1) is a Class C misdemeanor.

(b) **Sales to Minors Prohibited.**

(1)(A) Any licensee or other person who sells, furnishes, disposes of, gives, or causes to be sold, furnished, disposed of, or given, any alcoholic beverage to any person under twenty-one (21) years of age commits a Class A misdemeanor and shall be punished in accordance with § 39-15-404, as well as any other applicable section.

(B) Any licensee engaging in business regulated hereunder or any employee thereof who sells, furnishes, disposes of, gives, or causes to be sold, furnished, disposed of, or given any beer or malt beverage as defined in § 57-6-102 to any person under twenty-one (21) years of age is guilty of a Class A misdemeanor.

(2) Any person under the age of twenty-one (21) years who:

(A) Purchases, attempts to purchase, receives, or has in such person's possession in any public place, any alcoholic beverage, commits a Class A misdemeanor; or

(B) Knowingly makes a false statement or exhibits false identification to the effect that the licensee is twenty-one (21) years of age or older to any person engaged in the sale of alcoholic beverages for the purpose of purchasing or obtaining the same commits a Class A misdemeanor.

(i) If a person violating this subdivision (b)(2)(B) is less than eighteen (18) years of age, such person shall be punished by a fine of fifty dollars ($50.00) or not less than twenty (20) hours of community service work, which fine or penalty shall not be suspended or waived. The fine imposed by this subdivision (b)(2)(B)(i) shall apply regardless of whether the violator cooperates with law enforcement officers by telling them the place the alcohol was purchased or obtained or from whom it was purchased or obtained.

(ii) If the person violating this subdivision (b)(2)(B) is eighteen (18) years of age or older but less than twenty-one (21) years of age, such person shall be punished by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200) or by imprisonment in the local jail or workhouse for not less than five (5) days nor more than thirty (30) days. The penalties imposed by this subdivision (b)(2)(B)(ii) apply regardless of whether the violator cooperates with law enforcement officers by telling them the place the alcohol was purchased or obtained or from whom it was purchased or obtained.

(C)(i) In addition to any criminal penalty established by this section, a court in which a person younger than twenty-one (21) years of age is convicted of the purchase, attempt to purchase or possession of alcoholic beverages, or the making of a false statement or exhibition of false identification for the purpose of purchasing or obtaining alcoholic beverages in violation of this section, shall prepare and send to the department of safety, driver control division, within five (5) working days of the conviction an order of denial of driving privileges for the offender.

(ii) The court and the department of safety shall follow the same procedures and utilize the same sanctions and costs for an offender younger than twenty-one (21) years of age but eighteen (18) years of age or older as provided in title 55, chapter 10, part 7, for offenders younger than eighteen (18) years of age but thirteen (13) years of age or older.

(3) The provisions of this chapter do not prohibit any person eighteen (18) years of age or older from selling, transporting, possessing or dispensing alcoholic beverages in the course of such person's employment.

(c) **Other Prohibited Sales.**

(1) It is unlawful for any licensee or other person to sell or furnish any alcoholic beverage to any person who is known to be insane or mentally defective, or to any person who is visibly intoxicated, or to any person who is known to habitually drink alcoholic beverages to excess, or to any person who is known to be an habitual user of narcotics or other habit-forming drugs.

(2) A violation of subdivision (c)(1) is a Class A misdemeanor.

(d) **Hours of Sale.**

(1) Except as provided in subdivision (d)(5), hotels, clubs, zoological institutions, public aquariums, museums, motels, convention centers, restaurants, community theaters, theater, historic interpretive centers, sports authority facilities, and urban park centers, licensed as provided herein to sell alcoholic beverages, and/or malt beverages, and/or wine may not sell, or give away, alcoholic beverages and/or malt beverages and/or wine between the hours of three o'clock a.m. (3:00 a.m.) and eight o'clock a.m. (8:00 a.m.) on weekdays, or between the hours of three o'clock a.m. (3:00 a.m.) and twelve o'clock (12:00) noon on Sundays.

(2) Except as provided in subdivision (d)(5), hotels, motels and restaurants, licensed under § 57-4-102(26)(B) may not sell or give away alcoholic beverages, and/or malt beverages and/or wine between the hours of one o'clock a.m. (1:00 a.m.) and eight o'clock a.m. (8:00 a.m.) on weekdays or between the hours of one o'clock a.m. (1:00 a.m.) and twelve o'clock (12:00) noon on Sundays.

(3) Except as provided in subdivision (d)(5), establishments in a terminal building of a commercial air carrier airport and commercial airline travel clubs licensed as provided herein to sell alcoholic beverages, and/or malt beverages, and/or wine, may not sell, or give away, alcoholic beverages and/or malt beverages and/or wine between the hours of three o'clock a.m. (3:00 a.m.) and eight o'clock a.m. (8:00 a.m.) on weekdays or between the hours of three o'clock a.m. (3:00 a.m.) and noon (12:00) on Sundays.

(4) Except as provided in subdivision (d)(5), licensees under § 57-4-102(27) may not sell or give away alcoholic beverages and/or malt beverages and/or wine between the hours of five o'clock a.m. (5:00 a.m.) and eight o'clock a.m. (8:00 a.m.) on weekdays or between the hours of five o'clock a.m.

(5:00 a.m.) and twelve o'clock (12:00) noon on Sundays.

(5) The commission is authorized to extend the hours of sale in the jurisdictions which have approved the sale of liquor by the drink by referendum; provided, however, such extension of hours as well as § 57-5-301(b)(5) shall apply to Sunday sales of beer within the area of the county outside a municipality which approves liquor by the drink by referendum unless the county legislative body by a two-thirds (⅔) vote sets the hours for Sunday sales of beer in accordance with § 57-5-301(b)(1) to apply within such area. Upon petition by any licensee or group of licensees under this chapter, the commission may, after conducting a rule-making hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, adopt rules expanding the hours during which it is legal to sell or give away alcoholic beverages, malt beverages and wine, pursuant to this chapter. The commission is hereby directed to consider such factors as the hours of sales in contiguous states and the need to compete with jurisdictions elsewhere in the country for convention and tourism business. The governing body of any municipality or metropolitan government which has approved liquor by the drink by referendum may, at any time, opt out of any extension of hours adopted under this section by passage of a resolution. Further, any municipality or metropolitan government that has opted out may, at a later date, opt in by passage of a resolution.

(e) **Restrictions on Sealed or Unsealed Packages, or Gifts.**

(1) No licensee hereunder shall sell any wine or other alcoholic beverage in any sealed or unsealed package to any patrons or customers for consumption off its premises. Notwithstanding the foregoing, a restaurant licensed under this chapter may permit a customer who purchases an unsealed package of wine in conjunction with a food purchase and consumes a portion of the wine on the premises to remove the partially filled package from the premises. In addition, a licensee holding a license issued pursuant to §§ 57-4-102(14) and (33) may sell and distribute alcoholic beverages and wine in unsealed containers to the occupant of a suite located within a sports authority facility or a convention center; provided, that such occupant is at least twenty-one (21) years of age, is authorized by the lessee of the suite to receive such alcoholic beverages and wine, and the alcoholic beverage or wine is not removed from the sports authority facility or convention center.

(2) No licensee shall give away any such sealed package or any drink of wine or alcoholic beverage to any patron or customer; provided, that any hotel licensed under this chapter may include as part of the accommodations to a registered guest the provision of four (4) seven hundred fifty milliliter (750 ml.) complimentary sealed packages of wine or alcoholic beverages which must have all appropriate taxes paid upon them.

(3) The tax required by chapter 4, part 3 of this title shall be paid upon the normal sales price of any such packages of wines provided under this subsection (e).

(f) **Method of Sale.** Sales of wine and alcoholic beverages by licensees hereunder shall be conducted in the same manner as the sale of food is regularly conducted by such hotels, convention centers, premier type tourist resorts, restaurants, or clubs, except that no curb service of such beverages is lawful.

(g) **Ownership of Alcoholic Beverages Sold.**

(1) It is a Class C misdemeanor for any licensee hereunder to sell or serve on the licensee's premises any wine or other alcoholic beverage unless such

beverage is owned outright by the licensee.

(2) It is unlawful for any person, firm or corporation to sell wine or other alcoholic beverage as authorized herein without complying with the applicable provisions of this chapter.

(h) **Restrictions on Employment.** No entity holding a license issued pursuant to § 57-4-101 shall employ any person in the serving of beer, wine or other alcoholic beverages who does not possess a server permit from the commission. It is made the duty of the licensee to see that each person dispensing or serving alcoholic beverages, wine or beer in the licensee's establishment possesses such a permit, which permit must be on the person of such employee or on the premises of the licensed establishment and subject to inspection by the commission or its duly authorized agent when the employee is engaged in the performance of that employee's duties for the licensee.

(i) **Premises Must Be Licensed — Exception for Conventions, Social Gatherings and Catered Events.**

(1)(A) Except with respect to a caterer licensed under this chapter, it is unlawful for any person, firm, corporation, partnership, or association to allow the dispensing of alcoholic beverages except sacramental wines and beer, in any establishment unless such establishment is licensed under this title.

(B) A violation of subdivision (i)(1)(A) is a Class B misdemeanor.

(2) Bona fide conventions or meetings, however, may bring their own alcoholic beverages onto the licensed premises if the same beverages are served to delegates or guests without cost. All other provisions of this chapter shall be applicable to such premises. The provisions of this section have no application to social gatherings in a private home or a private place which is not of a commercial nature or where goods or services may be purchased or sold or any charge or rent or other thing of value is exchanged for the use thereof, excepting it be for sleeping quarters. Nothing herein shall preclude the serving of alcoholic beverages to guests without cost in rooms or suites or banquet rooms of a hotel or club licensed pursuant to this chapter.

(3) A restaurant, hotel, or caterer holding a valid catering license may sell or distribute wine, beer, and other alcoholic beverages at social or commercial events, catered by the restaurant, hotel, or caterer where the restaurant, hotel, or caterer is providing food service at such event; provided, that, the restaurant, hotel, or caterer shall notify the commission as to the time, location and duration of the catered event before the commencement of the event. Nothing in this subdivision (i)(3) or chapter shall be interpreted to require a person who holds a valid caterer license under this chapter to also be licensed as a restaurant or hotel.

(j) **Penalties Invoked.**

(1) Any person, firm or corporation who violates any provision of parts 1 and 2 of this chapter is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000); and, in the discretion of the court, imprisoned not less than thirty (30) days, nor more than six (6) months, and each violation constitutes a separate offense.

(2) Any person, firm or corporation who shall sell wine or other alcoholic beverages for consumption on its premises except as authorized by parts 1 and 2 of this chapter is guilty of a misdemeanor and punishable as provided

in this section.

(3) Upon conviction of a second offense under the provisions of this chapter, the permit of any licensee so convicted shall be automatically and permanently revoked.

(4) Upon the second conviction of any person, firm, or corporation for violation of the provisions of subdivision (b)(1), such person, firm, or corporation is guilty of a Class E felony. In addition, upon the second such conviction, the permit of such licensee shall be automatically and permanently revoked regardless of any other punishment actually imposed.

(k) [Deleted by 2010 amendment.]

(*l*) **Purchases by Special Occasion Licensees.** No charitable, nonprofit or political organization possessing a special occasion license shall purchase for sale or distribution under such license any alcoholic beverages from any source other than a licensee under § 57-3-204. This subsection (*l*) shall not apply to homemade wine made in the Swiss tradition by a member or members of a special occasion permit holder issued a license pursuant to § 57-4-102(32)(D). The member may supply the wine notwithstanding the limitations of § 57-3-207(e).

(m) **Commercial Airline Travel Clubs.** A commercial airline travel club licensed under this chapter may provide complimentary drinks of wine and alcoholic beverages to its patrons, customers, and guests. Such commercial airline travel club must have a separate area, other than the gate and ticket areas, designated as a club area for use by its members. The tax required by part 3 of this chapter shall be paid upon the normal sales price of all such complimentary drinks of wine and alcoholic beverages provided under this subsection (m).

(n) **Discounts.** Nothing in this chapter shall prohibit a licensee from offering a discount in such manner as the licensee deems appropriate as long as the discount being offered is not below the cost paid by the licensee to purchase the alcoholic beverages from the retailer.

57-4-301. Privilege taxes — Tax on retail sales — Carrier license fees — Mixing bar tax.

(a) It is hereby declared the legislative intent that every person is exercising a taxable privilege who engages in the business of selling at retail in this state alcoholic beverages for consumption on the premises.

(b)(1) Each applicant for an on-premises consumption license shall pay to the commission a one-time, non-refundable fee in the amount of three hundred dollars ($300) when the application is submitted for review. Further, once a license is approved, for the exercise of such privilege, the following taxes are levied to be earmarked for and allocated to the commission for the purpose of the administration and enforcement of the duties, powers, and functions of the commission, and are to be paid annually, as follows:

	Effective	
	July 2003	July 2004
(A) Private club	$ 300	$ 500
(B) Convention center	$ 500	$1000
(C) Premier type tourist resort	$1500	$2000

	Effective July 2003	July 2004
(D) Historic performing arts center	$ 300	$ 150
(E) Urban park center	$ 500	$ 150
(F) Commercial passenger boat company	$ 750	$1250
(G) Historic mansion house site/Historic inn	$ 300	$ 150
(H) Historic interpretive center	$ 300	$ 150
(I) Community theater	$ 300	$ 150
(J) Zoological institution	$ 300	$ 150
(K) Museum	$ 300	$ 150
(L) Establishment in a terminal building of a commercial air carrier airport	$1000	$1500
(M) Commercial airline travel club	$ 500	$1000
(N) Public aquarium	$ 300	$ 150
(O) Motor speedway	$1000	$2000
(P) Sports facility	$1000	$2000
(Q) Theater	$ 300	$ 150

Further, for the exercise of such privilege, the following taxes are hereby levied to be earmarked for and allocated to the commission for the purpose of administration and enforcement of the duties, powers, and functions of the commission, and are to be paid in accordance with the following schedule:

(R) Restaurant, according to seating capacity, on licensed premises:

(i)	40 — 74 seats	$ 650
(ii)	75 — 125 seats	$ 750
(iii)	126 — 175 seats	$ 925
(iv)	176 — 225 seats	$ 975
(v)	226 — 275 seats	$1100
(vi)	276 seats and more	$1200

Wine-only restaurant, according to seating capacity on licensed premises:

	July 2003	July 2004	July 2005	July 2006
(vi) 40 — 125 seats	$ 120	$ 170	$ 220	$ 270
(vii) 126 — 175 seats	$ 150	$ 200	$ 250	$ 300
(viii) 176 — 225 seats	$ 160	$ 210	$ 260	$ 310
(ix) 226 — 275 seats	$ 180	$ 230	$ 280	$ 330
(x) 276 seats and more	$ 200	$ 250	$ 300	$ 350

(S) Caterers:

July 2003	July 2004	July 2005	July 2006
$ 500	$ 550	$ 575	$ 625

(T) Hotels, according to room capacity, on licensed premises:

	July 2003	July 2004	July 2005	July 2006
(i) 0 — 99 rooms	$1000	$1000	$1000	$1000
(ii) 100 — 399 rooms	$1000	$1000	$1200	$1250
(iii) 400 rooms and over	$1000	$1200	$1400	$1500

(U) Retirement center $150

(V) Civic arts center $150

(W) Limited service restaurant, based on the gross sales of prepared food:

(i) At least 30% of gross sales $2,000.00

(ii) At least 20% but not more than 30% of gross sales $3,000.00

(iii) At least 15% but not more than 20% of gross sales $4,000.00

(2) Each county or municipality within which such privilege is exercised is authorized to levy and collect the privilege tax separately. However, such privilege tax collected by the county or municipality will remain at the 2003 level and any monetary increase of the privilege tax in fiscal years beginning July 1, 2004, and thereafter, as provided in this subsection (b) will be solely used for the purpose of the administration and enforcement of the duties, powers, and functions of the Tennessee alcoholic beverage commission. Provided, however, that in any county where metropolitan government prevails, the urban service district shall constitute the municipality and the general service district shall constitute the county insofar as this chapter is concerned.

(c) In addition to the privilege taxes levied in subdivision (b)(1), there is further levied a tax equal to the rate of fifteen percent (15%) of the sales price of all alcoholic beverages sold for consumption on the premises, the tax to be computed on the gross sales of alcoholic beverages for consumption on the premises for the purpose of remitting the tax due the state, and to include each and every retail thereof.

(d) Commercial airlines, paddlewheel steamboat companies and passenger trains shall, in lieu of taxes levied under subsections (b) and (c), pay annually to the state, for state purposes, a license fee of twelve hundred fifty dollars ($1250). Commercial airlines, paddlewheel steamboat companies and passenger trains which have paid the annual license fee under this section may bring into and store in this state alcoholic beverages on which the Tennessee alcoholic beverage taxes levied under § 57-3-302, have not been paid, but must comply with subdivisions (d)(1) and (2):

(1) Commercial airlines, paddlewheel steamboat companies and passenger trains that bring into, or possess in this state alcoholic beverages on which taxes levied by this state have not been paid are liable for such taxes on the alcoholic beverages;

(2) The liability of commercial airlines, paddlewheel steamboat companies and passenger trains for taxes levied under § 57-3-302, is determined

by multiplying the:

(A) Quantity of each type of alcoholic beverage purchased within the operating system of each commercial airline, paddlewheel steamboat company or passenger train by the ratio of its revenue passenger miles in Tennessee to the total revenue passenger miles within its system; and

(B) Respective results obtained under subdivision (d)(2)(A), by the applicable tax rate for each type under § 57-3-302, and the rules and regulations promulgated pursuant thereto;

(3) Monthly reports of the liability, determined under subdivision (d)(2), shall be submitted to the department of revenue on forms designated by the commissioner, on or before the last day of each month following the month during which any tax liability arises under this subsection (d). A commercial airline, paddlewheel steamboat company or passenger train that fails to file the report required, or to pay the tax payable under this section in a timely manner as defined by rules and regulations promulgated by the department, is liable for interest and penalties as provided by law; and

(4) The provisions of this subsection (d) do not apply to commercial airline travel clubs.

(e) No tax authorized or imposed by this section shall be levied or assessed from any charitable, nonprofit, or political organization selling alcoholic beverages at retail pursuant to a special occasion license.

(f) A restaurant, hotel, or caterer licensed under this chapter may obtain a catering license upon the payment of an additional privilege tax in accordance with subdivision (b)(1)(S), for state purposes, to be paid annually.

(g) A special historic district authorized to serve wine under § 57-4-101 shall pay an annual privilege tax of one hundred dollars ($100) for the privilege of serving wine within such district.

57-5-105. Licenses or permits to sell outside of town or city limits — Applications — Temporary permits — Hearings.

(a) The owner of a business desiring to sell, distribute, manufacture, or store beer in any Class A county outside the limits of any incorporated city or town shall file an application for a permit with the county legislative body or a committee appointed by the county legislative body.

(b) In order to receive a permit, an applicant must establish that:

(1) No beer will be sold except at places where such sale will not cause congestion of traffic or interference with schools, churches, or other places of public gathering, or otherwise interfere with public health, safety and morals, the county legislative body having the right to forbid such storage, sale or manufacture at places within two thousand feet (2,000′) of such places of public gatherings in its discretion. Nothing in this subdivision (b)(1) shall apply to places of business that are located in the terminal or main building at public airports serviced by commercial airlines with regularly scheduled flights;

(2) No sale shall be made to minors;

(3) No person, firm, corporation, joint-stock company, syndicate, or association having at least a five percent (5%) ownership interest in the applicant has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance or controlled substance analogue, or any

crime involving moral turpitude within the past ten (10) years;

(4) No person employed by the applicant in such distribution or sale has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance that is listed in Schedules I through V in title 39, chapter 17, part 4, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance analogue, or any crime involving moral turpitude within the past ten (10) years; and

(5) No sale shall be made for on-premise consumption unless the application so states.

(c) An applicant shall disclose the following information in the application:

(1) Name of the applicant;

(2) Name of applicant's business;

(3) Location of business by street address or other geographical description to permit an accurate determination of conformity with the requirements of this section;

(4) If beer will be sold at two (2) or more restaurants or other businesses pursuant to the same permit as provided by § 57-5-103(a)(4), a description of all such businesses;

(5) Persons, firms, corporations, joint-stock companies, syndicates, or associations having at least a five percent (5%) ownership interest in the applicant;

(6) Identity and address of a representative to receive annual tax notices and any other communication from the county legislative body or its committee;

(7) That no person, firm, joint-stock company, syndicate, or association having at least a five percent (5%) ownership interest in the applicant nor any person to be employed in the distribution or sale of beer has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years;

(8) Whether or not the applicant is seeking a permit which would allow the sale of beer either for on-premises consumption or for off-premises consumption, or both of the foregoing. If a holder of a beer permit for either off-premises consumption or on-premises consumption desires to change the permit holder's method of sale, the permit holder shall apply to the county legislative body or committee appointed by such body for a new permit; and

(9) Such other relevant information as may be required by the county legislative body or its committee. An applicant or permit holder shall be required to amend or supplement its application promptly if a change in circumstances affects the responses provided in its application.

(d) Any applicant making a false statement in the application shall forfeit such applicant's permit and shall not be eligible to receive any permit for a period of ten (10) years.

(e) Any applicant seeking a license or permit under this section and who complies with the conditions and provisions of this section shall have issued to such applicant the necessary license or permit, and in the event the license or permit is refused, the applicant shall be entitled to a hearing on the application for the issuance of a license or permit. The refusal to grant a license or permit,

or the refusal to grant a hearing upon a person's application for a license or permit, may be reviewed by the circuit or chancery court in the manner as authorized under § 57-5-108.

(f) Before any county legislative body or committee appointed by the county legislative body shall issue a license or permit under this section, it may cause to be published in a newspaper of general circulation a notice in which the name of the applicant and the address of the location for such license or permit, whether the application is for the sale of alcoholic beverages for on-premises consumption and the date and time of its meeting at which such application shall be considered. Such meeting shall be a public hearing for the purpose of hearing the statement of any person or such person's attorney on any application for a license or permit.

(g)(1) Temporary beer licenses or permits not to exceed thirty (30) days' duration may be issued at the request of the applicant upon the same conditions governing permanent permits. Such a temporary license or permit shall not allow the sale, storage or manufacture of beer on publicly owned property.

(2) Notwithstanding the prohibition concerning beer sales on publicly owned property in this subsection (g), in Class B counties and counties having a population in excess of three hundred thousand (300,000) according to the 2000 federal census or any subsequent federal census a temporary permit authorizing the sale of beer on public property may be issued to a bona fide charitable or nonprofit or political organization as defined in § 57-4-102, subject to the approval of the appropriate governmental authority charged with the management of such publicly owned property and the approval of the county beer board.

(h) Where a permit or license has been refused three (3) times, the applicant shall not be allowed to apply again for a permit or license on the same premises until after the expiration of one (1) year from the date of the third refusal. Nothing in this subsection (h) shall be construed as prohibiting or in any manner limiting the right of any refusal to be reviewed by the circuit or chancery court in the manner as authorized under § 57-5-108.

(i) Class A counties, by resolution of their county legislative bodies, may forbid the sale of beer within three hundred feet (300′) of a residential dwelling, measured from building to building; provided, that the owner of the residential dwelling appears in person before the county beer board and objects to the issuance of such permit or license. This provision shall not apply to locations where beer permits or licenses have been issued prior to the date of adoption of such a resolution by the county legislative body, or to an application for a change in the licensee or permittee at such locations.

(j) A county legislative body may impose training or certification restrictions or requirements on employees of a permit holder, but such restrictions or requirements shall not apply to any employee who is possessed of a server permit issued by the alcoholic beverage commission pursuant to chapter 3, part 7 of this title.

57-5-108. Revocation or suspension of permits or licenses — Civil penalty — Review of orders — Pilot project concerning local and municipal beer boards.

(a)(1)(A) Permits or licenses issued under this chapter by any county legislative body or any committee or board created by any county legisla-

tive body may be revoked or suspended in accordance with this section by the county legislative body, committee or board which issued the permit or license.

(B) Permits or licenses issued under this chapter by any board or commission created by the metropolitan council of any Class B county may be revoked or suspended in accordance with this section by such board or commission.

(C) Permits or licenses issued under this chapter by the governmental body of any incorporated city, or by any committee or board created by such governmental body may be revoked or suspended in accordance with this section by the governmental body, committee or board which issued the permit or license.

(2)(A) A city, Class A county, or Class B county, or any committee, board, or commission created by these governmental bodies, shall not, pursuant to § 57-5-608, revoke or suspend the permit of a responsible vendor for a clerk's illegal sale of beer to a minor, if the permit or license holder and the clerk making the sale have complied with the requirements of § 57-5-606 as a responsible vendor under this part, but may impose on the responsible vendor a civil penalty not to exceed one thousand dollars ($1,000) for each offense of making or permitting to be made any sales to minors or for any other offense.

(B) The prohibition of subdivision (a)(2)(A) concerning the revocation or suspension of the vendor's permit shall not apply to any vendor who is not a responsible vendor under this part, or to a participating vendor, if the vendor or clerk making a sale to a minor fails to comply with the requirements of § 57-5-606. With respect to such permit or license holder, the committee, board, or commission may, at the time it imposes a revocation or suspension, offer the permit or license holder the alternative of paying a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each offense of making or permitting to be made any sales to minors, or a civil penalty not to exceed one thousand dollars ($1,000) for any other offense.

(C) Permanent revocation of beer permits may only be applied when the permit holder has at least two (2) violations within a twelve-month period.

(D) Revocation of beer permits applies only to that permit holder, or agents of the permit holder, at that location. Revocation of beer permits shall not stay with the property if the property changes hands, nor may a city, Class A county or Class B county, or any committee, board or commission created by these governmental bodies, apply penalties, suspensions or revocations to other beer permits held by the permittee at other locations.

(E) Revocation of a beer permit at one (1) location should not be the sole disqualifying factor when considering the issuance of beer permits at other locations.

(F) If, at any location that has been affected by permanent beer permit revocation, the property changes hands and no longer belongs to the permit holder, or agents of the permit holder, the new property owner may apply to the beer board for release of revocation.

(G) If a civil penalty is offered as an alternative to revocation or suspension, where allowed subdivision (a)(2)(B), the holder shall have seven (7) days within which to pay the civil penalty before the revocation

or suspension shall be imposed. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn. The holder's payment of a civil penalty shall not affect the holder's ability to seek review of the civil penalty pursuant to subsection (d).

(3) A city or county may at any time accept the payment of a civil penalty, not to exceed the amounts set forth in subdivision (a)(2)(B), by a permit or license holder charged with a violation of this chapter, which payment shall be an admission by the holder of the violation so charged and shall be paid to the exclusion of any other penalty that the city or county may impose.

(b) No permit or license shall be revoked on the grounds the operator or any person working for the operator sells beer to a minor over the age of eighteen (18) years if such minor exhibits an identification, false or otherwise, indicating the minor's age to be twenty-one (21) or over, if the minor's appearance as to maturity is such that the minor might reasonably be presumed to be of such age and is unknown to such person making the sale. The license or permit may be suspended for a period not to exceed ten (10) days or a civil penalty up to one thousand five hundred dollars ($1,500) may be imposed pursuant to subdivision (a)(3). However, this shall not be construed in any way to relieve the minor from liability for making such illegal purchase as provided in § 57-5-301.

(c) Such revocation, suspension, or imposition of civil penalty may be made for any violation of any provision of this chapter or whenever it shall satisfactorily appear that the premises of any person, firm or corporation holding a permit or license under this chapter are being maintained and operated in such manner as to be detrimental to public health, safety or morals. The board in considering the suspension or revocation of a license shall consider repeated violations of any local ordinance or state law involving prohibited sexual contact on the premises of an adult oriented establishment.

(d) The action of such agency in connection with the issuance of any order of any kind, including the revocation or suspension of a license or permit, imposition of a civil penalty or the refusal to grant a license or permit under §§ 57-5-105, 57-5-106 and this section, may be reviewed by statutory writ of certiorari, with a trial de novo as a substitute for an appeal, the petition of certiorari to be addressed to the circuit or chancery court of the county in which any such order was issued.

(e) Immediately upon the grant of the writ of certiorari, the agency revoking or suspending a license or permit or imposing a civil penalty shall cause to be made, certified and forwarded to the court a complete transcript of the proceedings in the cause.

(f) The provisions of this section shall be the sole remedy and exclusive method of review of any action or order that may have been issued by any county legislative body, or any committee appointed by any county legislative body, or from any board or commission authorized under §§ 57-5-105 and 57-5-106, including the refusal or failure to grant any license or permit or the imposition of a civil penalty. The provisions of the Tennessee Rules of Civil Procedure shall be applicable in connection with such review. Any party dissatisfied with the decree of the court may, upon giving bond as required in other cases, appeal, where the cause shall be heard upon the transcript of the records from the circuit court.

(g) A judge of any court of record shall have the authority to supersede, stay or enjoin any order of an agency revoking, suspending or imposing a civil penalty made under the authority of this chapter for good cause shown on part

of the petitioning party thereof. No circuit or chancery judge shall have the authority to grant any such extraordinary writ except the judge of a court of record to which the petition for certiorari is addressed.

(h) If a final judgment is entered by the trial court superseding the revocation or suspension order or order imposing a civil penalty, and the cause is appealed by the agency, the final judgment of the trial court shall remain in force until final appellate disposition of the cause.

(i) In instances involving only wholesale beer permits or licenses, or certificates of registration, the order of the agency suspending, revoking or failing to renew such wholesale beer permits or licenses or certificates of registration or imposing civil penalties shall as a matter of law be stayed or superseded, and the order will not be effective until final judicial review, including all available appeals, of the matter. In instances where no appeal is taken or perfected by the wholesaler within the required time as prescribed by law, the order of the agency shall become effective.

(j) The remedy provided by this section shall be the only method of reviewing orders of county legislative bodies, governing bodies or municipal corporations, boards or committees revoking or suspending licenses issued under this chapter or imposing civil penalties.

(k) Where a permit or license is revoked, no new license or permit shall be issued to permit the sale of beer on the same premises until after the expiration of one (1) year from the date the revocation becomes final and effective. The board, in its discretion, may determine that issuance of a license or permit before the expiration of one (1) year from the date of revocation becomes final is appropriate, if the individual applying for such issuance is not the original holder of the license or any family member who could inherit from such individual under the statute of intestate succession.

(*l*) Powers to suspend, revoke, or impose civil penalties conferred in this section upon county legislative bodies and governmental bodies of incorporated cities and any committees, commissions, or boards created by such bodies and/or governmental bodies are likewise conferred upon the commissioner of revenue as they may relate to certificates of registration and transportation permits issued by the commissioner under provisions of this chapter to any licensed brewer, wholesaler or distributor for the failure of any such person to file with the commissioner any report required by this chapter, or for the filing of a false report, or the failure to pay tax due by any such licensee under the provisions of this chapter and rules and regulations promulgated pursuant thereto, or for the receipt, possession, storage or transportation of beer in violation of this chapter, or any rule and regulation promulgated by the commissioner thereunder, and for no other reason. The remedy provided by this section shall likewise be the only method of reviewing orders of the commissioner revoking or suspending certificates of registration and transportation permits issued under this chapter or imposing civil penalties.

(m) Any county, municipal or metropolitan beer board or committee may, at its discretion, revoke or suspend the permit of or impose a civil penalty pursuant to subdivision (a)(3) on any beer retailer within its jurisdiction who is found to possess beer on which the state beer barrelage tax, imposed by § 57-5-201, and the city and county wholesale beer tax, imposed by § 57-6-103, has not been paid. The burden of proof shall be upon the retail beer permit holder to show that the two (2) taxes on the beer in the permit holder's possession have been paid by showing that the beer was purchased from a

Tennessee beer wholesaler, which fact shall be shown by the retailer providing a bill of sale or invoice for the beer which shall include the name and address of the wholesaler, the name and address of the retailer, the number of containers of each brand of beer purchased by the retailer, and which shall be signed by the retailer.

(n)(1)(A) As a pilot project to terminate July 1, 2014, unless extended by the general assembly, when a local or municipal beer board responsible for controlling the sale of beer or malt beverages within any county included within subsection (p), finds violations, as defined in this chapter, in the sale of beer or malt beverages consumed on-premises of an establishment located within the local or municipal beer board's jurisdiction that result in the beer board suspending the operation of or revoking the permit of the establishment where the violation occurred, the beer board is authorized to notify the executive director of the alcoholic beverage commission by certified mail, return receipt requested, of the action taken by the beer board. Such notice shall include the record of evidence and the determination made by the beer board in suspending or revoking the permit.

(B) Upon receipt of such notice, the executive director of the alcoholic beverage commission shall take the actions required pursuant to § 57-4-202(b) with respect to violations as defined in chapter 4 of this title related to the license for the sale of alcoholic beverages for consumption on the premises at the location where the violation of this chapter occurred.

(2) The suspension or revocation decision of the beer board made pursuant to subdivision (n)(1)(A) is final, and any party aggrieved thereby may appeal the decision of the beer board in accordance with the appeal procedures of this chapter.

(o)(1) As a pilot project to terminate July 1, 2014, unless extended by the general assembly, if, pursuant to § 57-4-202(c), the alcoholic beverage commission sends a certified letter, return receipt requested to the local or municipal beer board responsible for controlling the sale of beer or malt beverages within any county included within subsection (p), providing notice that the commission has suspended or revoked the license of an establishment for a violation of chapter 4 of this title, upon receipt of the certified letter, the beer board shall:

(A) Schedule a hearing for the next regularly scheduled meeting of the beer board to be held at least fourteen (14) days following the date the beer board receives the certified letter to provide an opportunity for the permit holder to appear and show cause why the permit to sell beer on the premises should not be suspended or revoked for violations of this chapter based on actions taken by the alcoholic beverage commission pursuant to § 57-4-202(c); and

(B) Notify the individual or business entity, which is listed as the permit holder at the same location where the alcoholic beverage license had been suspended or revoked, of the date and time of the hearing.

(2) If the beer board finds that a sufficient violation or violations of this chapter have occurred at such location, then the beer board shall suspend or revoke the permit to the same extent and at least for the same period of time as the alcoholic beverage commission has suspended or revoked the license of the establishment pursuant to § 57-4-202(c).

(3) If the permit holder fails to appear or decides to surrender the permit to the beer board in lieu of appearing at the hearing, the permit shall be

suspended or revoked by the beer board, and no permit to sell beer or malt beverages on the premises shall be issued by the beer board to any person for the location where the alcoholic beverage commission had suspended or revoked the license pursuant to § 57-4-202(c) for the period of time included in the decision of the alcoholic beverage commission.

(4) The decision of the beer board is final, and any party aggrieved thereby may appeal the decision of the beer board in accordance with this chapter.

(p) The pilot project established by subsections (n) and (o) shall only apply in counties having a population, according to the 2010 federal census or any subsequent federal census, of:

not less than	nor more than
6,800	6,900
19,100	19,150
22,600	22,675
32,200	32,300
35,600	35,700
51,400	51,500
56,800	56,900
336,400	336,500
432,200	432,300

57-5-205. Distribution of state privilege tax — Special census by municipality or county.

The state privilege tax collected under §§ 57-5-201 — 57-5-204 shall be paid into the state treasury and shall be divided as follows:

(1) From the proceeds of the amount so collected, ten and five hundredths percent (10.05%) shall be paid to the several counties equally to be used by them for general purposes, ten and five hundredths percent (10.05%) shall be divided between the existing incorporated municipalities according to population to be used by them for general purposes, and forty-one hundredths percent (.41%) shall be reserved and transferred to the department of mental health and substance abuse services to assist municipalities and counties in carrying out the provisions of the "Comprehensive Alcohol and Drug Treatment Act of 1973", compiled as title 33, chapter 10, title 39, chapter 17, part 4, §§ 53-11-408 and 57-3-306 and this section. Any municipality or county shall have the right to take not more than four (4) special censuses at its own expense at any time during the interim between the regular decennial federal census. Such right shall include the current decennium. Any such census shall be taken by the federal bureau of the census, or in a manner directed by and satisfactory to the department of economic and community development. The population of the municipality or county shall be revised in accordance with the special census for purposes of distribution of such funds, effective on July 1, following the certification of the census results by the federal bureau of the census, or the department of economic and community development to the commissioner of finance and administration; the aggregate population shall likewise be adjusted in accordance with any such special census, effective July 1, following certification; and

(2) The remainder of the tax collected under this section shall become a

part of the general fund of the state.

(3) [Deleted by 2006 amendment.]

(4) [Deleted by 2006 amendment.]

57-5-206. Records — Reports to commissioner of revenue — Rules and regulations.

(a) Every person, firm, corporation, joint-stock company, syndicate or association in this state engaged in the storage, sale, distribution by sale or gift and/or manufacture in this state of such beer and/or other beverage shall keep invoices and all other memoranda fully descriptive thereof, and shall permit the commissioner or the commissioner's authorized agents, representatives or employees to inspect, at any time during the business hours of the day, all such articles, containers, packages, invoices, books, papers and memoranda as may be deemed necessary in the opinion of the commissioner, or the commissioner's authorized agent, representative or employee, in ascertaining whether or not the state privilege tax levied under the provisions of §§ 57-5-201 — 57-5-203 has been paid or in determining the amount of such tax as may be due.

(b) The original bill of sale or invoice or a digital copy thereof shall be kept by the wholesaler for at least two (2) years and the duplicate bill of sale or invoice shall be retained by the retailer for at least two (2) years, subject to inspection by the department or the county, municipal or metropolitan government involved.

(c) The commissioner shall have the power to require any person engaged in the storage, sale, distribution by sale or gift, and/or manufacture, in this state, of such beer and/or any other such beverages, as described above, to furnish any reports, statements or information, under oath, which may be deemed, in the opinion of the commissioner, necessary for the purpose of enforcing a compliance herewith.

(d) The commissioner is authorized and has the duty to make rules and regulations necessary, in the commissioner's opinion, to effectuate the purposes and carry out the provisions hereof, which rules and regulations shall have the force and effect of law if not in conflict with express statutory provision.

57-5-605. Vendor certification — Rules and regulations — Monitoring and enforcing compliance — Statistical reports by beer boards and commission.

(a) A vendor who seeks certification as a responsible vendor shall provide to the commission, pursuant to procedures adopted by the commission, evidence of compliance with the requirements of this part. Upon satisfactory proof that the vendor has complied with the requirements, the commission shall certify the vendor as a responsible vendor. Certification as a responsible vendor shall be renewed every year. Responsible vendors may have their own training programs certified, or send their employees to any training program certified by the commission.

(b) The commission shall adopt rules and regulations for monitoring compliance by responsible vendors and for revoking or suspending a responsible vendor's certification for noncompliance with this part.

(c) The commission is authorized to monitor and enforce compliance with this part. The commission may impose fines on responsible vendors whose

training programs fail to satisfy or maintain the requirements of this part or commission rules. The commission may further impose fines on vendors who hold themselves out as being a responsible vendor when in fact they do not hold that status. The commission may also impose fines on responsible vendors who willfully fail to comply with the requirements of this part.

(d) Determination of compliance with the responsible vendor program is the sole province of the commission.

(e)(1) As used in this subsection (e), "beer board" means the local legislative body or committee appointed by the local legislative body having authority to issue licenses or permits under this chapter.

(2) To the extent the beer board has access to the information required pursuant to this subsection (e), the beer board shall file with the alcoholic beverage commission an annual statistical report by February 1 of each year based on the previous calendar year's information detailing the following:

(A) The total number of beer permits or licenses issued by the beer board for off-premises consumption;

(B) The number of violations for the sale of beer for off-premises consumption to a person under twenty-one (21) years of age resulting from:

(i) A "sting" conducted pursuant to § 39-15-413; and

(ii) Arrests made under conditions not related to a "sting";

(C) Whether the violation of subdivision (B) occurred at an establishment participating in the responsible vendor program;

(D) Whether if a "sting" was conducted pursuant to § 39-15-413 at an establishment participating in the responsible vendor program, the underage person used in the "sting" was unsuccessful in making the purchase;

(E) The type and number of violations other than the sale of beer for off-premises consumption to a person under twenty-one (21) years of age occurred at establishments selling beer for off-premises consumption;

(F) The name of the license or permit holder at the location where the violation occurred; and

(G) The specific penalty imposed by the beer board for each violation upon a finding that a violation occurred.

(3) The alcoholic beverage commission shall compile the statistical information received from the beer boards and file a report with the state and local government committees of each house by March 15 of the year in which the report is received, together with recommendations for legislative changes related to the responsible vendor program, if any are recommended by the commission.

(4) The report made pursuant to subdivision (3) shall be made available by the alcoholic beverage commission to any person filing a written request for a copy of the report.

57-6-105. Records and reports.

(a) The department shall promulgate rules and regulations covering reports to be made, records to be kept, and other matters pertaining to the administration and enforcement of this part.

(b) Without limitation as to other matters to be covered, such rules and regulations shall require each wholesaler to report monthly to the department

the quantities of the wholesale sales, broken down by unit prices and sizes and types of containers, within each county and municipality in which the wholesaler does business, and to send the tax collecting official of each county and municipality a copy of this report, provided wholesalers shall not be required to report sales to individual retailers.

(c) Such rules and regulations shall also require each retailer or the retailer's agent to sign a delivery ticket each time when beer is received from a wholesaler; the wholesaler shall keep the signed original or a digital copy, and the retailer shall retain the duplicate of each such delivery ticket for at least two (2) years, subject to inspection by the department, county or municipality.

(d) Each wholesaler shall keep records showing dates of sale, unit prices, quantities, and sizes and types of containers of beer sold to each individual retailer with whom the wholesaler does business, and such records shall be retained for at least two (2) years, subject to audit by the department, and/or county and/or municipality.

57-9-201. Beverages owned, possessed or sold by unlicensed persons deemed contraband — Untaxed alcoholic beverages — Seizure and sale — Vehicles subject to confiscation.

(a) All alcoholic beverages of more than five percent (5%) alcohol in excess of five gallons (5 gals.) that are owned or possessed by any person in any county of this state, whether or not such county has authorized the sale or distribution of alcohol within its jurisdiction, without the same having been purchased or obtained from an entity holding a license issued under § 57-3-204, § 57-3-203 or § 57-3-207, or manufactured at an entity holding a license issued under § 57-3-218, are declared to be contraband goods, and the same may be seized by the representative, agent or employee of the commission, or sheriff or deputy sheriffs of any such county, and such goods shall be delivered to the alcoholic beverage commission for sale by the commissioner of general services in accordance with §§ 12-2-201 — 12-2-204. The reference to "sheriff or deputy sheriffs" in the preceding sentence also includes "constables" in those counties of this state enumerated in § 57-9-101. All alcoholic beverages, which are sold or stored in wet counties for the purpose of sale by a person who does not hold a state liquor license shall be contraband within the meaning of this part, and subject to seizure as provided herein. No bids shall be received on such contraband beverages except from persons duly licensed by the state to handle alcoholic beverages of more than five percent (5%).

(b) Any vehicle, aircraft or boat not a common carrier which may be used for transportation or storage, either in wet or dry counties, for the purpose of distribution, gift or sale of untaxed alcoholic beverages shall likewise be subject to confiscation and sale in the manner herein provided. Should any untaxed alcoholic beverages be found in any vehicle, aircraft or boat, same shall be prima facie evidence that it was there for gift, sale or distribution.

(c) Vehicles and any other articles of personal property which may be found at a still, still site, or place of storage, which still, still site or place of storage is being used by persons known or unknown who have failed to procure a state liquor license, or have failed to pay the taxes imposed by § 57-3-302 are declared to be contraband goods and shall likewise be subject to confiscation and sale in the manner herein provided; however, before any vehicle declared

to be contraband, under the provisions of this part, is sold as provided herein, a copy of notice of seizure shall be sent by registered mail to the owner and lienholder as of record in the motor vehicle division of the department of revenue. Such notice shall state a general description of the seized vehicle, the reasons for the seizure, the procedure by which recovery of the vehicle may be sought, including the time period in which a claim for recovery must be presented, and the consequences of failing to file within the time period. A copy of the notice shall be filed in the office of the commission and shall be open to the public for inspection.

(d) The provisions hereof shall be applicable to dry counties in like manner as to wet counties.

(e) In the case of any vehicle, aircraft, or boat not a common carrier seized by any law enforcement officer of any incorporated municipality or of any county and turned over to the commission for confiscation, fifty percent (50%) of the amount received from the sale thereof shall be paid to the municipality or to the county served by such law enforcement officer, as the case may be.

(f) The presence of alcoholic beverages at a still, still site or place of storage in excess of one gallon (1 gal.) without a bill of lading or receipt from a licensed retailer, wholesaler, winery or manufacturer shall create a rebuttable presumption that the taxes imposed by § 57-3-302 have not been paid.

58-1-119. Offense of impersonating a member of the United States armed forces.

(a) It is an offense for a person to falsely impersonate or represent to another, whether by conduct, dress, verbally or in writing, that such person or a third party is or was a member of the armed forces of the United States with the intent to deceive or cause another to believe the representation when the person knows it to be false.

(b) It is not a defense to prosecution under this section that the person making the false representation received no benefit or monetary thing or value from it.

(c) This section shall not apply to wearing the dress of a member of the armed forces if done for the following purposes:

(1) Instructional;

(2) Law enforcement;

(3) Theatrical, motion picture or entertainment;

(4) Historical, ceremonial or educational; or

(5) As a costume if worn in accordance with or not prohibited by regulations promulgated pursuant to law.

(d) Nothing in this section shall be construed to prohibit prosecution under any other applicable statute if the person derives a benefit or thing of value from the impersonation.

(e) Impersonation of a member of the armed forces is a Class B misdemeanor.

58-3-113. Tennessee Fallen Heroes Medal.

(a) A Tennessee Fallen Heroes Medal may be awarded on behalf of the people of this state to an individual serving on active duty who has been killed in action, while:

(1) Engaged in an action against an enemy of the United States;

(2) Engaged in military support operations involving conflict with an opposing foreign force;

(3) Serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party; or

(4) Serving in a combat zone as designated by presidential order.

(b) The recipient's name shall be entered on the medal's case of the Tennessee Fallen Heroes Medal recipient.

(c) Individuals eligible to receive the Tennessee Fallen Heroes Medal include all active duty military who are legal residents of this state.

(d) The Tennessee Fallen Heroes Medal shall be awarded solely by the governor of this state or the governor's designee to the immediate survivor of the recipient.

58-8-105. Request for aid and assistance — Confirmation — Request for mutual aid for emergency medical services.

(a) When a governmental entity is affected by an occurrence that its resources will not be adequate to handle, the governmental entity may request aid through the appropriate emergency management employee or official, or a county or municipality may declare a local state of emergency as provided in § 58-8-104 and request assistance by communicating the request to a potential responding party or multiple potential responding parties. Requests for aid or for assistance must be made by the appropriate official or employee to the emergency communications dispatch center of potential responding parties or other officials authorized by the potentially responding party to respond to requests under this chapter.

(b) Each request for aid or assistance may be made verbally and should, to the extent possible, include the following:

(1) A statement that an occurrence is imminent, in progress, or has occurred. The statement should also indicate whether a declaration of a state of emergency has been made and give a general description of the occurrence or emergency, including an initial estimate of the damages and injuries sustained or expected;

(2) Identification of the service functions for which aid or assistance is needed and the particular type of aid or assistance needed;

(3) The amount of personnel, equipment, materials, and supplies needed; and

(4) An estimated time and place for a representative of the requesting party to meet the responding party.

(c) Each request for aid or assistance may include the following if known or necessary:

(1) An estimate of the amount of time, aid, or assistance that will be needed.

(2) Identification of the types of infrastructure for which aid or assistance is needed, e.g., water and sewer, streets, gas, electric, or other infrastructure; and

(3) Identification of the need for sites, structures, or other facilities outside the requesting party's jurisdiction to serve as relief centers or staging areas for incoming emergency goods or services.

(d) All requests for assistance shall be confirmed in writing to the responding party or parties within thirty (30) days of the initial request. Parties shall

keep records of all requests made for assistance under this chapter.

(e) In addition to any agreement for mutual aid made under title 5 or title 12, a governmental entity is authorized to request mutual aid for emergency medical services provided under title 68, chapter 140, from the emergency communications dispatch center of a county that is contiguous to the requesting county or governmental entity for occurrences that involve serious injuries or possible loss of life in instances that might not reasonably lead to a declared emergency.

58-8-107. Discretion of participating entities to respond — Withdrawal of aid or assistance — Mutual aid for emergency medical services.

(a) This chapter does not create a duty on participating governmental entities to respond to a request for aid or assistance nor to stay at the scene of an occurrence or emergency for any length of time. Upon receipt of a request for aid or assistance, a potential responding party shall determine whether and to what extent it will provide the aid or assistance. If the potential responding party determines in its complete discretion that it is not in its best interest to provide aid or assistance, it shall notify the requesting party of its decision as soon as possible. If the potential responding party determines that aid or assistance can be provided, it shall communicate the following information to the requesting party as soon as possible:

(1) A description of what personnel, equipment, and other resources it will provide;

(2) An estimate of the length of time aid or assistance will be available; and

(3) An estimated time of arrival at the scene or designated meeting place.

(b) The responding party may withdraw aid or assistance at any time. The responding party shall notify the requesting party as soon as possible of any decision to withdraw aid or assistance.

(c) The provisions of this section that require certain actions are directory rather than mandatory and do not create a public or special duty on the part of any participating governmental entity.

(d) In addition to any agreement for mutual aid made under title 5 or title 12, a governmental entity is authorized to respond to a request for mutual aid for emergency medical services under § 58-8-105(e) from a county that is contiguous to the requesting county or governmental entity for occurrences that involve serious injuries or possible loss of life in instances that might not reasonably lead to a declared emergency. A county is authorized to enter into a mutual aid agreement under title 12 to permit routine and automatic approval of and response to such requests.

60-1-101. Chapter definitions.

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

(1) "Board" means the Tennessee board of water quality, oil and gas created by § 69-3-104;

(2) "Casinghead gas" means any gas or vapor, or both, indigenous to an oil stratum and produced from such stratum with oil. It shall be treated as gas, if sold, for the purpose of paying privilege tax;

(3) "Condensate" means liquid hydrocarbons that were in the gaseous phase in the reservoir in initial reservoir conditions. It shall be treated as oil

for the purpose of paying privilege tax;

(4) "Field" means the general area which is underlain or appears to be underlain by at least one pool and including the pool or pools beneath the area;

(5) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil, including condensate because it originally was in a gaseous phase in the reservoir;

(6) "Oil" means crude petroleum that was originally in an oil phase in the reservoir;

(7) "Operator" means any person who owns or is directly responsible for a business involved in some phase of the production, manufacture, refining or distribution of petroleum oil or natural gas;

(8) "Owner" means the person who has the right to drill into and to produce from any pool, and to appropriate the production for such person or others;

(9) "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind;

(10) "Pool" means an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of the general structure which is completely separated from any other zone in the structure is covered by the term "pool" as used in this chapter;

(11) "Producer" means the owner of a well or wells capable of producing oil or gas, or both, in paying quantities;

(12) "Supervisor" means the commissioner of environment and conservation or the commissioner's designee; and

(13) "Waste," in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the oil and gas industry. It includes:

(A) Underground waste and inefficient, excessive, or improper use or dissipation of reservoir energy, including gas energy and water drive, of any pool; and the locating, spacing, drilling, equipping, operating, or producing of any oil well or gas ultimately recoverable from any pool; and

(B) Surface waste and the inefficient storing of oil and the locating, spacing, drilling, equipping, operating or producing of oil wells or gas wells in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of oil or gas.

60-1-103. Permits — Applications — Operators' plans.

(a) No person shall drill any well for oil or gas, or conduct any surface disturbances incidental to or in preparation for such drilling, until a permit application has been submitted to the supervisor. The supervisor shall not issue a permit until the conditions established by this subsection have been met.

(1) An application for a permit to drill shall be filed with the supervisor. The supervisor shall prescribe the form of the application.

(2) The application shall include the exact location of the well, the name and address of the person or persons responsible for the drilling operations, the proposed depth of the well, the location of all existing or proposed roads providing access to the well site, and the location of all blue-line streams within one-half (½) mile of the well site or access roads.

(3) The application shall also include a plan for erosion control prevention of pollution of surface waters, and reclamation of all areas disturbed by the operations, including access roads. The plan shall conform to the requirements of part 7 of this chapter. The plan must be sufficiently detailed to allow an inspector to locate the site of the facilities to be constructed and to estimate the expected environmental impact, but does not have to include detailed engineering design drawings.

(4) No drilling shall begin until the permit has been approved.

(5) A processing fee for permits shall be submitted with the application in an amount specified in rules promulgated by the board, which shall not exceed the amount stated in § 68-203-103(h) for an oil and gas permit.

(b) All funds received by the commissioner under this chapter, except those under parts 3 and 4 of this chapter, together with any interest earned on the funds, shall be deposited into a separate account in the environmental protection fund created by § 68-203-101.

(c) The supervisor may require or approve modifications in the operator's plan if such modifications are necessary to prevent pollution or to promote reclamation.

(d) Upon approval, the operator's plan shall be a condition of the operator's permit. Failure to comply with the plan shall be grounds for revocation of the permit and forfeiture of the bond.

60-1-201. [Repealed.]

60-1-202. Powers of board.

(a) The board has jurisdiction and authority:

(1) Over all persons and property necessary to enforce the provisions of this chapter;

(2) To make such inquiries as necessary to determine whether or not waste exists or is imminent;

(3) To collect data; to make investigations and inspections; to examine properties, leases, papers, books, and records including drilling records and logs; to examine, check, test, and gauge oil and gas wells, tanks, refineries, and modes of transportation; to hold hearings; to provide for the keeping of records and making of reports; and to take such action as may be necessary to enforce the provisions of this chapter;

(4) To make rules, regulations, and orders for the following purposes:

(A) To require the drilling, casing, and plugging of wells in such manner as to prevent the escaping of oil and gas out of one (1) stratum to another; to prevent intrusion of water to oil and gas strata; to prevent pollution of fresh water by oil, gas, or salt water; to protect potentially minable coal and other minerals; and to require bond for the plugging of each dry or abandoned well;

(B) To require notification to the supervisor, upon such forms as the supervisor may prescribe, of the intention to drill any well for oil or gas;

(C) To require the filing of logs, including electrical logs and drilling records, cores and drill cutting samples, and all other downhole surveys and information, within thirty (30) days following the cessation of drilling operations of the well;

(D) To prevent wells from being drilled, operated, and produced in such

manner as to cause injury to neighboring leases or property;

(E) To prevent the drowning by water of any oil and gas stratum in paying quantities, and to prevent the premature and irregular encroachment of water which would affect the total ultimate recovery of oil and gas;

(F) To require the operation of wells with efficient gas-oil ratios and to fix such ratios;

(G) To prevent "blow outs," "caving" and "seepage" in the same sense that conditions indicated by such terms are generally understood in the oil and gas business;

(H) To prevent fires;

(I) To identify ownership of oil and gas wells, producing leases, refineries, tanks, plants, structures, and all storage and transportation equipment and facilities;

(J) To regulate the "shooting" and chemical treatment of wells;

(K) To regulate secondary recovery methods;

(L) To regulate the spacing of wells;

(M) To provide for the forced integration of separately owned tracts and other property ownership into drilling and production units;

(N) To provide that the board may, in the absence of a voluntary agreement and after a sixty-day notice to owners, force a volumetric or surface poolwide unit, provided that the pool producers owning more than fifty percent (50%) of the pool acreage request such unitization of the pool;

(O) In the absence of an acceptable plan of unitization by the operators, the board may shut in the pool to prevent waste and to protect correlative rights until an acceptable plan is presented by the operators;

(P) To regulate and prescribe procedures with respect to applications for and determinations of whether natural gas produced from a well qualifies for a requested status under § 102, 103, 107 or 108 of the Natural Gas Policy Act of 1978, Public Law No. 95-621, 92 Stat. 3350 (including any act of Congress which amends or supersedes those sections of that act);

(Q) To require that any person conducting oil or gas operations, or causing surface disturbances preparatory to or incidental to such operations, conduct such operations in a manner which will prevent or mitigate adverse environmental impacts, such as soil erosion and water pollution, and perform reclamation of all areas disturbed by the operations, including access roads, as prescribed by part 7 of this chapter; and

(R) To require that any person conducting oil and gas operations, or causing surface disturbances preparatory to or incidental to such operations, for wells permitted and drilled after July 1, 1987, post a bond or bonds to secure compliance with the requirements of this chapter and the rules promulgated under this chapter, both for plugging of the wells and reclamation of the surface in an amount not to exceed fifteen thousand dollars ($15,000) per single well site. At sites with more than one (1) well, the portion of the bond or bonds to secure compliance with plugging requirements shall not exceed ten thousand dollars ($10,000) per well. The bond shall be filed with the supervisor at the time an operator's permit application is submitted, and shall be effective from the time the initial surface disturbances begin. As an alternative to the performance bond required in this subdivision (a)(4)(R), a person may submit:

(i) A federally insured certificate of deposit issued by any financial institution in this state to be placed in a separate departmental account

that shall not revert to the general fund;

(ii) An irrevocable letter of credit issued by any federally insured bank or savings and loan association; or

(iii) Other cash or securities in an amount mutually agreed to by the supervisor and the operator, to be placed in a separate departmental account that shall not revert to the general fund.

(b) The applicant for any permit must swear to facts set out in any application for a permit to drill or deepen a well, or reopen a plugged or abandoned well, under the rules made by the board pursuant to this title.

61-2-904. Name — Registered office and agent.

(a) A foreign limited partnership may register with the secretary of state under any name (whether or not it is the name under which it is registered in the jurisdiction of its organization) that includes the words "Limited Partnership" or the abbreviation "L.P." and that could be registered by a domestic limited partnership.

(b) Except as authorized by subsection (c), the name of a foreign limited partnership that registers to do business in this state, shall be distinguishable upon the records of the secretary of state from the respective names of or for every other entity, whether true, assumed, reserved or registered, to the extent the use or reservation of such names is evidenced by a filing with the secretary of state under applicable law.

(c) A foreign limited partnership may apply to the secretary of state for authorization to use a name that is not distinguishable upon his records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the name applied for if:

(1) The person holding the right to use the previously filed name described in subsection (b) consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to cancel its reservation of such name or change such name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or

(3) The person holding the right to use the previously filed name described in subsection (b) consents in writing to the use of such name by the applicant, and both the other person and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent.

(d) Each foreign limited partnership shall continuously maintain in the state of Tennessee:

(1) A registered office which may but need not be a place of its business in the state of Tennessee; and

(2) A registered agent, which agent may be either an individual resident of the state of Tennessee whose business office is identical with the limited partnership's registered office, or a domestic corporation or a foreign corporation authorized to transact business in the state of Tennessee having a business office identical with such registered office.

(e) A foreign limited partnership authorized to transact business in this state may change its registered office or registered agent by delivering to the

secretary of state for filing a statement of change that sets forth:

(1) Its name;

(2) The street address, including the zip code, of its current registered office;

(3) If the current registered office is to be changed, the street address, including the zip code, of its new registered office and the county in which the office is located;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of its new registered agent; and

(6) That after the change or changes are made, the street addresses, including zip codes, of its registered office and the business office of its registered agent will be identical.

(f) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any foreign limited partnership for which he is a registered agent by notifying the limited partnership in writing of the change and signing (either manually or in facsimile) and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (e) and recites that the limited partnership has been notified of the change.

(g) Each foreign limited partnership authorized to transact business in this state shall comply with the provisions of § 61-2-104(e).

(h) The registered agent of a foreign limited partnership may resign his agency appointment by signing and filing with the secretary of state an original statement of resignation accompanied by his certification that he has mailed a copy thereof to the principal office of the limited partnership by certified mail. The statement or resignation may include a statement that the registered office is also discontinued. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed by the secretary of state.

62-2-107. Employment of licensees on public works — Excluded public works.

(a) Neither the state, nor any county, city, town or village or other political subdivision of the state, shall engage in the construction or maintenance of any public work involving architecture, engineering or landscape architecture for which the plans, specifications and estimates have not been made by a registered architect, registered engineer or registered landscape architect.

(b)(1) Nothing in this section shall be held to apply to such public work if:

(A) The contemplated expenditure for the complete project does not exceed twenty-five thousand dollars ($25,000), and the work does not alter the structural, mechanical or electrical system of the project; or

(B) The contemplated expenditure for the complete project does not exceed one hundred thousand dollars ($100,000), the project is located in a state park, and the work is solely maintenance, as defined in the policy and procedures of the state building commission.

(2) For a public work located in a state park, existing plans may be used as a basis of design if the plans have been designed and sealed by a registered architect, engineer, or landscape architect and a registered architect, engineer, or landscape architect reviews such plans for compliance

with all applicable codes and standards and appropriateness for the site conditions of the project, makes changes if required, and seals the plans in accordance with the requirements of this chapter.

(c) For the purposes of this chapter, "public work" does not include construction, reconstruction or renovation of all or any part of an electric distribution system owned or operated directly or through a board by a municipality, county, power district or other subdivision of this state that is to be constructed, reconstructed or renovated according to specifications established in the American National Standard Electrical Safety Code, the National Electrical Code or other recognized specifications governing design and construction requirements for such facilities. Notwithstanding this subsection (c), "electrical distribution system" does not include any office buildings, warehouses or other structures containing walls and a roof that are to be open to the general public.

62-2-201. Board of examiners — Composition — Terms of members.

(a) There is created a state board of examiners for architects and engineers, called the board in this part and parts 3-8 of this chapter.

(1) The board shall include, where possible, at least one (1) female and at least one (1) member of a racial minority.

(2) This board shall consist of eight (8) members to be appointed by the governor, three (3) to be registered architects who may be appointed from lists of qualified persons submitted by interested architect groups including, but not limited to, the representative professional architects of the state, three (3) to be registered engineers who may be appointed from lists of qualified persons submitted by interested engineering groups including, but not limited to, the representative professional engineering society of the state, one (1) to be a registered landscape architect who may be appointed from lists of qualified persons submitted by interested landscape architect groups including, but not limited to, the representative professional landscape architecture society of the state, and one (1) to be a registered interior designer who may be appointed from lists of qualified persons submitted by interested interior design groups including, but not limited to, the representative professional interior design society of the state. The governor shall consult with interested statewide architect, engineering, landscape architect, and interior design groups including, but not limited to, the professional societies listed in this subdivision (a)(2) to determine qualified persons to fill the positions. This subdivision (a)(2) shall not apply to the appointment of the public member of the board.

(3) In the event of a vacancy on the board for any reason and the governor failing to appoint a successor within three (3) months after the vacancy occurs, the board is empowered to fill that vacancy from the lists of qualified persons submitted by the interested groups, including, but not limited to, the respective societies, until the governor makes an appointment as provided in subdivision (a)(2).

(4) Two (2) of the members, one (1) a registered architect and one (1) a registered engineer, shall be appointed from each grand division of the state, to serve for a period of four (4) years. The successor of any member shall be appointed from the grand division of that member. The member who is a registered landscape architect shall be appointed to serve for a period of four

(4) years; provided, that the successor of that member shall be appointed from a grand division different from that member's predecessor. The member who is a registered interior designer shall be appointed to serve for a period of four (4) years.

(5) Appointments to the board shall be in such manner that the terms of members in the same profession shall expire at different times.

(6) Terms of office begin on July 1 of the year of appointment, except that successors may at any time qualify and serve for the remainder of the given term.

(b) In addition to members serving on the board under the authority of subsection (a), the board of architects and engineers shall also include one (1) member who is not engaged in the practice of architecture, engineering or landscape architecture. That member shall be a resident of the state and shall possess good moral character. The member shall be appointed by the governor, shall serve for a period of four (4) years and, except as provided in § 62-2-302, shall be a full member of the board relative to all board matters. The member is subject to removal by the governor for misconduct, incapacity or neglect of duty.

(c)(1) In addition to members serving on the board under the authority of subsections (a) and (b), the board shall also include as associate members three (3) registered engineers, who may be appointed by the governor from lists of qualified persons submitted by interested engineering groups, including, but not limited to, the representative professional engineering society of the state. The governor shall consult with such interested engineering groups to determine qualified persons to fill the positions.

(2) An associate engineer member shall be appointed from each grand division, to serve for a period of four (4) years; provided, that the first two (2) members appointed under this subsection (c) shall serve for periods of one (1) and two (2) years, respectively. The successor of any associate engineer member shall be appointed from the grand division of the member.

(3) Appointments to the board under this subsection (c) shall be in a manner that the terms of the associate engineer members shall expire at different times.

(4) Terms of office begin on July 1 of the year of appointment, except that successors may at any time qualify and serve for the remainder of the given term.

(5) Associate engineer board members appointed under this subsection (c) shall be subject to § 62-2-202.

(6) Associate engineer members approved under this subsection (c) shall assist the board with routine matters and responsibilities as requested by the board. Associate engineer members shall attend board meetings, committee meetings and other board functions only as required by the board. The associate engineer members shall have no voting privileges and are not to be considered as members for quorum or election purposes.

(7) Associate engineer members shall render technical assistance to the board and staff as authorized by the board.

62-2-202. Qualifications of board members — Removal — Vacancies.

(a) The members of the board appointed under § 62-2-201(a) shall each have had at least ten (10) years' experience in the practice of architecture as a

registered architect, ten (10) years' experience in the practice of engineering as a registered engineer, ten (10) years' experience in the practice of interior design as a registered interior designer or ten (10) years' experience in the practice of landscape architecture as a registered landscape architect, with no record of any formal disciplinary action. Such members shall each have been in responsible charge of work for at least five (5) years, and shall each have demonstrated an interest in improving the profession by involvement in a statewide association directly related to their profession for at least five (5) years. Each member shall be a citizen of the United States and shall have been a resident of Tennessee for five (5) years at the time of appointment. The ten-year requirement of experience as a registered practitioner shall not apply to the registered interior designer member until January 1, 2014; provided, however, that the member shall have been a registered interior designer for five (5) years and shall have ten (10) years' experience as an interior designer.

(b) The governor may remove any member of the board for misconduct, incapacity or neglect of duty.

(c) Vacancies on the board shall be filled for the unexpired term as prescribed in § 62-2-201.

62-2-401. General provisions.

(a) The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as an engineer:

(1) **Graduation from Approved Engineering Curriculum, Experience and Examination.** A graduate of an engineering curriculum of four (4) years or more, approved by the board as being of satisfactory standing, and with a specific record of four (4) years or more of progressive experience on engineering projects of a grade and character that indicates to the board that the applicant may be competent to practice engineering, and who has obtained certification as an engineer intern, shall be admitted to a minimum eight-hour written examination prepared by the National Council of Examiners for Engineering and Surveying in the principles and practice of engineering. Upon passing the examination, the applicant shall be granted a certificate of registration to practice engineering in this state; provided, that the applicant is otherwise qualified; or

(2) **Long Established Practice.** A graduate of an approved engineering curriculum of four (4) years or more, with a specific record of twelve (12) years or more of progressive experience on engineering projects of a grade and character that indicates to the board that the applicant may be competent to practice engineering shall be admitted to a minimum eight-hour written examination prepared by the National Council of Examiners for Engineering and Surveying, in the principles and practice of engineering. Upon passing the examination, the applicant shall be granted a certificate of registration to practice engineering in this state; provided, that the applicant is otherwise qualified.

(3) [Deleted by 2007 amendment, effective June 30, 2012.]

(b) Notwithstanding any provision to the contrary, the board may in its discretion grant up to one (1) year of qualified experience obtained in an established cooperative education program that is carried out within the framework of an approved engineering curriculum and that has been approved by the board.

62-5-201. Creation — Appointment and terms of members.

(a) There is created a state board to be known and designated as the board of funeral directors and embalmers for this state. The board shall consist of seven (7) members who shall possess good moral character, shall be residents of the state and shall be appointed by the governor. Four (4) of the members shall be licensed as both funeral directors and embalmers and two (2) of the members shall be licensed as either funeral directors or embalmers, all of whom shall possess a minimum of five (5) consecutive years' experience in this state immediately preceding their appointment. At least one (1) member may be appointed from lists of qualified nominees submitted by interested funeral director and embalmer groups including, but not limited to, the Tennessee Funeral Directors Association. At least one (1) member may be appointed from lists of qualified nominees submitted by interested funeral director and mortician groups including, but not limited to, the Tennessee State Funeral Directors and Morticians Association. The governor shall consult with such interested groups to determine qualified persons to fill the positions. One (1) of the seven (7) members serving on the board shall be a person who is not engaged in the business of a funeral director or embalmer or otherwise commercially associated with any funeral establishment. There shall be at least two (2) members but no more than three (3) members from each grand division. In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(b) On January 1 of each year, the governor shall appoint a person who shall serve as a member of the board for a period of four (4) years or until a successor is appointed and qualified. It is the purpose of this section that at least one (1) member shall retire from the board at the end of each year, thereby creating a rotating board.

(c) A member of the board shall not be eligible for at least one (1) term for reappointment to membership on the board.

(d) Vacancies occurring on the board shall be filled in accordance with this section for the balance of the unexpired term.

62-5-312. Registration as an apprentice.

(a) When beginning the required apprenticeship, the person shall file an apprentice registration form with the board and shall pay a fee in the amount to be established by the board. The registration shall be valid for a period of two (2) years from the date of registration.

(b) The apprentice registration form shall contain the name of the registrant, showing that the registrant:

(1) Has attained eighteen (18) years of age;

(2) Is a citizen of the United States;

(3) Is of good moral character;

(4) Has graduated from a high school or has earned a GED® recognized by a state education department; and

(5) Is a bona fide paid employee of an establishment working no less than forty (40) hours per week in the presence of and under the direction and supervision of a licensed funeral director or embalmer.

(c) All persons who are apprentice funeral directors, apprentice embalmers

and mortuary school students registered by the board and who are in the process of fulfilling their apprenticeship and educational requirements on or before December 31, 2007, shall not be required to complete the apprenticeship requirements that become effective on January 1, 2008. The apprentices and mortuary school students shall complete all requirements to become licensed by the board as a funeral director or embalmer on or before June 30, 2011.

(d) When beginning the required course of study, the person shall file a student registration form with the board and shall pay a fee in the amount to be established by the board. The registration shall be valid for a period of two (2) years from the date of registration.

62-5-316. Invalidity of unrenewed license — Renewal, reinstatement or reapplication.

(a) Any license that is not renewed by its expiration date becomes invalid. The holder of the invalid license shall not practice the profession for which the license was issued, nor shall an establishment be operated if the establishment's license has become invalid, until such time as the license has been renewed or reinstated or a new license has been issued.

(b) When any license issued by the board becomes invalid because of nonrenewal, the executive director shall send a written notice to the license holder at the license holder's last known address, informing the license holder that the license holder cannot practice that profession or operate that establishment until the invalid license is renewed or reinstated or a new license is issued. The notice shall also state that the license may be renewed or reinstated at any time within ninety (90) days of the license expiration date by payment of the renewal fee and of a penalty fee in an amount to be established by the board. Any license not renewed or reinstated within ninety (90) days of the license expiration date shall not be subject to renewal or reinstatement and the license holder shall reapply as for an initial license; provided, that any examination shall be limited to this chapter and any rules promulgated pursuant to this chapter, and that the education requirements in § 62-5-305(b)(6) and § 62-5-307(b)(6) are not applicable.

62-5-502. [Repealed.]

62-5-504. Prerequisites to cremation.

No operator of a crematory facility shall cremate or allow the cremation at a crematory facility of a dead human body, other than one that was donated to science for purposes of medical education or research, until all of the following have occurred:

(1) The requirements of § 62-5-513 have been met, unless the decedent having died from a virulent communicable disease, the department of health or board of health having territorial jurisdiction where the death of the decedent occurred requires by rule or order the cremation to occur prior to those requirements being met;

(2) The operator has received a permit for cremation of human remains that authorizes the cremation of the decedent; and

(3) The operator has received any other documentation required by this state or a political subdivision of this state.

62-5-701. Part definitions.

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

(1) "Disposition directions" means a legible written instrument signed by the decedent and acknowledged by a notary or witnessed by two (2) persons who are qualified adults; provided, that such written instrument may be, but is not limited to, a letter of instructions, a will, a trust document, or an advance directive;

(2) "Qualified adult" means a person who is eighteen (18) years of age or older and of sound mind; and

(3) "Right of disposition" means the right to determine the disposition of the remains of a decedent, including the location, manner, and conditions of disposition and arrangements for funeral goods and services.

62-5-702. Disposition of human remains and arrangements for funeral goods and services — Cancellation or revision of disposition directions or pre-need funeral contract.

(a) A qualified adult, by entering into disposition directions or a pre-need funeral contract executed pursuant to part 4 of this chapter, may direct the location, manner and conditions of disposition of the adult's remains, and the arrangements for funeral goods and services to be provided upon the adult's death.

(b) No disposition directions or pre-need funeral contract shall be subject to cancellation or substantial revision unless the cancellation or substantial revision has been ordered by a person authorized to act as the lawful representative in § 62-5-703, or the pre-need funeral contract as the person authorized to cancel or revise the terms of the disposition directions or the pre-need funeral contract, or unless any resources set aside or available to fund the disposition directions or the pre-need funeral contract are insufficient to carry out the funeral and disposition arrangements set forth in the disposition directions or pre-need funeral contract.

62-5-703. Order in which rights to control vest.

Except as set forth in § 62-5-704, and in the absence of disposition directions or a pre-need funeral contract, the right to control the disposition of the decedent's remains, the location, manner and conditions of disposition, and arrangements for funeral goods and services to be provided vests in the following persons in the order named; provided, that such person is a qualified adult:

(1) An attorney in fact designated in a durable power of attorney for health care who is acting pursuant to § 34-6-204;

(2) The surviving spouse;

(3) The sole surviving child of the decedent, or if there is more than one (1) child of the decedent, the majority of the surviving children. However, less than one half (½) of the surviving children shall be vested with the rights of this section if they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of any opposition to those instructions on the part of more than one half (½) of all surviving children;

(4) The surviving parent of the decedent. If one (1) of the surviving parents is absent, the remaining parent shall be vested with the rights and duties of this section after reasonable efforts have been unsuccessful in

locating the absent surviving parent;

(5) The surviving sibling of the decedent, or if there is more than one (1) sibling of the decedent, the majority of the surviving siblings. However, less than the majority of surviving siblings shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving siblings of their instructions and are not aware of any opposition to those instructions on the part of more than one half (½) of all surviving siblings;

(6) The surviving grandchild of the decedent, or if there is more than one (1) surviving grandchild, the majority of the grandchildren. However, less than the majority of the surviving grandchildren shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving grandchildren of their instructions and are not aware of any opposition to those instructions on the part of more than one half (½) of all surviving grandchildren;

(7) The surviving grandparent of the decedent, or if there is more than one (1) surviving grandparent, the majority of the grandparents. However, less than the majority of the surviving grandparents shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any opposition to those instructions on the part of more than one half (½) of all surviving grandparents;

(8) The guardian of the person of the decedent at the time of the decedent's death, if one (1) had been appointed;

(9) The personal representative of the estate of the decedent;

(10) The person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one (1) person of the same degree, any person of that degree may exercise the right of disposition;

(11) If the disposition of the remains of the decedent is the responsibility of the state or a political subdivision of the state, the public officer, administrator or employee responsible for arranging the final disposition of the decedent's remains; or

(12) In the absence of any person listed in subdivisions (1)-(11), any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the funeral director with custody of the body, after attesting in writing that a good faith effort has been made to no avail to contact the individuals listed in subdivisions (1)-(11).

62-5-704. Circumstances under which rights forfeited.

A person entitled under § 62-5-703 to the right of disposition shall forfeit that right, and the right shall pass on to the next person in accordance with § 62-5-703, in the following circumstances:

(1) Any person convicted of an offense described in § 39-13-202, § 39-13-210, or § 39-13-211, in connection with the decedent's death, and whose conviction or convictions are known to the funeral director; or

(2) Any person who does not exercise the right of disposition within seventy-two (72) hours of notification of the decedent's death or within one hundred and sixty-eight (168) hours of the decedent's death, whichever is earlier.

62-5-705. Petition to court with probate jurisdiction to make determination in case of dispute concerning disposition — Considerations in determination.

If two (2) or more persons hold the right of disposition pursuant to § 62-5-703, and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of such persons or a funeral establishment with custody of the remains may file a petition asking the court with probate jurisdiction to make a determination in the matter. If a funeral establishment brings an action under this section, or relies upon this section to defend itself in a related lawsuit, the court may award legal fees and court costs associated with a petition under this section to the cost of final disposition. The court with probate jurisdiction for the county where the decedent resided may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition, and may make decisions regarding the decedent's remains if those sharing the right of disposition cannot agree. The court may consider the following in making such determination:

(1) The reasonableness and practicality of the proposed funeral arrangements and disposition;

(2) The degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;

(3) The desires of the person who is ready, able and willing to pay the cost of the funeral arrangements and disposition;

(4) The convenience and needs of other families and friends wishing to pay respects;

(5) The desires of the decedent; and

(6) The degree to which the funeral arrangements would allow maximum participation by all wishing to pay respect.

62-5-706. No liability of funeral establishment when parties in dispute until court order.

(a) In the event two (2) or more persons hold the right of disposition pursuant to § 62-5-703, and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, no funeral establishment is liable for refusing to accept, inter or otherwise dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the funeral establishment receives a court order or other written agreement signed by the parties to the dispute that determines the final disposition of the remains. If the funeral establishment retains the remains for final disposition while the parties are in disagreement, the funeral establishment may shelter, refrigerate or embalm the body, or all, in order to preserve the body while awaiting the final decision of the probate court. However, the funeral establishment may not charge for embalming unless expressly agreed to by the parties. Neither this section, nor § 62-5-705, shall be construed to require or to impose a duty upon a funeral establishment to bring an action under this section or § 62-5-705. No funeral establishment or its employees shall be held criminally or civilly liable for choosing not to bring an action under this section or § 62-5-705.

(b)(1) Except to the degree it may be considered by the court under § 62-5-705(3), the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and final disposition does not give that person a greater right to the right of disposition than the person would otherwise have.

(2) The personal representative of the estate of the decedent does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the person would otherwise have.

62-5-707. Funeral establishment's right to rely on contract or authorization.

Any person signing a funeral service agreement, cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of, and the party's authority to order such disposition. A funeral establishment shall have the right to rely on such funeral service contract or authorization and shall have the authority to carry out the instructions of the person whom the funeral establishment reasonably believes holds the right of disposition. No funeral establishment is responsible for contacting or independently investigating the existence of any next-of-kin or relative of the decedent.

62-5-708. Reasonable reliance upon instructions.

No funeral establishment or funeral director who relies reasonably in good faith upon the instructions of a person claiming the right of disposition shall be subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with the instructions unless the funeral establishment or funeral director knew or had reason to know that the person did not have the right of disposition.

62-6-601. Part definitions.

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

(1) "Agent" means any officer, director, owner, employee, contractor or any other person authorized to act on behalf of a residential roofing services provider;

(2) "Contract" means a contract in this state between a person and a residential roofing services provider for the provision of goods or services related to the repair or replacement of a roof system the costs of which the residential roofing services provider represents are to be paid, or are likely to be paid, in whole or in part, from the proceeds of a property and casualty insurance policy;

(3) "Emergency repairs" means goods or services provided for the purpose of making urgent and necessary repairs to the roof system of residential real estate if, without such repairs, damage to the residential real estate would occur;

(4) "Person" means an individual or entity;

(5) "Residential real estate" means a new or existing building constructed for habitation by one to four (1-4) families, and includes the building's garage, even if the garage is detached from such building;

(6) "Residential roofing services provider":

(A) Means a person in the business of contracting or offering to contract with owners of residential real estate to repair or replace roof systems, or the agent of such person; and

(B) Does not mean a person engaged in the demolition of a structure or cleanup of construction waste and debris that contains roofing material; and

(7) "Roof system" means a roof covering, roof sheathing, roof weatherproofing, roof framing, roof ventilation system, or insulation for residential real estate.

62-6-602. Cancellation of contract if claim or contract not covered loss under insurance policy.

(a) If a person enters into a contract and the person has received written notice from the person's insurer that all or any part of the claim or contract is not a covered loss under an insurance policy, then the person may cancel the contract as provided in subsection (b).

(b) To cancel a contract, a person shall:

(1) Provide a written notice of cancellation to the residential roofing services provider prior to midnight on the third business day after receipt of a written notice of no or partial coverage from the insurer; and

(2) Mail or deliver the written notice of cancellation to the residential roofing services provider at the business address, facsimile number, or electronic mail address provided by the residential roofing services provider pursuant to § 62-6-603.

(c) A written notice of cancellation:

(1) Need not contain particular language provided that it is signed and dated by the person and indicates, by any form of written expression, the intent of the person not to be bound by the contract; and

(2) Shall be effective upon receipt by the residential roofing services provider. However, if the person:

(A) Mails the written notice of cancellation, postage prepaid and properly addressed to the residential roofing services provider, then the cancellation is effective upon the date of the postmark; or

(B) Delivers the written notice through electronic transmission properly addressed to the facsimile number or electronic mail address of the residential roofing services provider, then the cancellation is effective upon the time the person transmits the notice.

62-6-603. Required written statement from residential roofing service provider.

Prior to entering into a contract, a residential roofing services provider shall, in writing, furnish a person with:

(1) The residential roofing services provider's:

(A) Business mailing address for cancellation purposes;

(B) Telephone number;

(C) License or registration number of any contractor, home improvement contractor, or public adjuster license or registration held in this or any other state; and

(D) Electronic mail address or facsimile number for cancellation pur-

poses, if available;

(2) A detailed description of all damage or repairs to be claimed or covered by the contract and the location of such damage;

(3) A written statement in boldface type of a minimum size of ten (10) points, containing language substantially similar to the following:

You may cancel this contract at any time before midnight on the third business day after you have received written notification from your insurer that all or any part of the claim or contract is not a covered loss under your insurance policy. This right to cancel is in addition to any other rights of cancellation which may be found in state or federal law or regulation. See the attached notice of cancellation form for an explanation of this right.

; and

(4) A form in duplicate, captioned "NOTICE OF CANCELLATION", attached in an easily detachable manner to the contract, that contains in boldface type of a minimum size of ten (10) points the following statement or language substantially similar:

NOTICE OF CANCELLATION

If you are notified by your insurer that all or any part of the claim or contract is not a covered loss under your insurance policy, you may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other signed and dated written notice to _____ (name of residential roofing services provider) at _____ (business mailing address) or _____ (if available, facsimile number or electronic mail address of residential roofing services provider) at any time prior to midnight on the third business day after you have received such notice from your insurer. If you cancel, any payments made by you under the contract, except those for emergency repairs already performed by the residential roofing services provider, will be returned to you within ten (10) business days following receipt by the residential roofing services provider of your cancellation notice.

I HEREBY CANCEL THIS TRANSACTION.

_____ (date)

_____ (person's signature).

62-6-604. Payments and deposits — Emergency repairs.

(a) No residential roofing services provider shall require any payments from a person pursuant to a contract until the person has received written notice from the insurer that the contract or claim is fully covered or the three-day cancellation period required pursuant to this part has expired.

(b) Within ten (10) business days after a person cancels a contract in accordance with this part, the residential roofing services provider shall tender to the:

(1) Payor any payments, partial payments, or deposits made to the residential roofing services provider except those made pursuant to subsection (c); and

(2) Person any note or other evidence of the person's indebtedness to the residential roofing services provider except indebtedness incurred pursuant to subsection (c).

(c)(1) Notwithstanding subsection (a), if the residential roofing services provider has made any emergency repairs, acknowledged by the contracting person in writing to be necessary to prevent damage to the residential real estate, then the residential roofing services provider shall be entitled to collect the amount due from the person for the emergency repairs at the time the repairs are rendered. Any provision in a contract that requires the payment of any fee for any good or service except those provided in relation to emergency repairs shall not be enforceable against any person who has canceled a contract in accordance with this part.

(2) No residential roofing services provider shall misrepresent that emergency repairs are necessary to prevent damage to the residential real estate owned or possessed by such person.

62-6-605. Valid public adjuster license required for certain representations and negotiations.

No residential roofing services provider shall represent or negotiate on behalf of, or offer or advertise an offer to represent or negotiate on behalf of, an owner or possessor of residential real estate on any insurance claim in connection with the repair or replacement of a roof system on the residential real estate unless the residential roofing services provider holds a valid public adjuster license issued in accordance with title 56, chapter 6, part 9.

62-6-606. Violations.

A violation of this part is an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1; and, as such, the private right of action remedy under the Tennessee Consumer Protection Act of 1977 shall be available to any person who suffers an ascertainable loss of money or property, real, personal or mixed, or any other article, commodity or thing of value wherever situated as a result of the violation.

62-9-101. Chapter definitions.

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

(1) "Commissioner" means the commissioner of commerce and insurance or the commissioner's designee or, in the event of the commissioner's or designee's absence or vacancy in the office of the commissioner, the deputy commissioner;

(2) "Department" means the department of commerce and insurance;

(3) "Licensed HVAC contractor" means a person holding a license from the state board for licensing contractors with a CMC, MC, CMC-C, or MC-C classification;

(4) "Scrap metal" means any ferrous or nonferrous metal that is no longer used for its original purpose and is capable of being processed for reuse by a metal recycling facility, including, but not limited to, iron, brass, wire, cable, copper, bronze, aluminum, platinum, lead, solder, steel, stainless steel, catalytic converters or other similar obsolete ferrous or nonferrous metals,

but shall not include recyclable aluminum cans; and

(5) "Scrap metal dealer" means a person who buys, exchanges or deals in scrap metal or an employee or agent of that dealer who has the express or implied authority to buy, exchange or deal in scrap metal on behalf of the dealer.

62-9-102. Scrap metal dealer and location registration — Declaration by registrant whether ever convicted of violations or offenses involving scrap metal — Prohibition against registering for period of time after conviction.

(a) No scrap metal dealer shall purchase, deal, or otherwise engage in the scrap metal business unless the dealer and any location used by the dealer to purchase, deal or otherwise engage in the scrap metal business is registered with the department. All registrations under this chapter shall expire two (2) years from the date of the registration or the renewal of the registration. The commissioner may promulgate and adopt rules and regulations that are reasonably necessary to carry out this chapter. The commissioner shall establish registration and renewal fees that are adequate to cover the administrative costs associated with the registration program.

(b) Included on each registration and renewal form shall be a section in which the registrant must declare, under penalty of perjury pursuant to § 39-16-702(a)(3), whether the registrant has ever been convicted of a violation of this chapter or convicted of the criminal offense of theft, burglary or vandalism, where the offense involves scrap metal.

(c) An applicant who has been convicted of a violation of this chapter or has a conviction for the criminal offense of theft, burglary or vandalism, where the offense involves scrap metal, shall be prohibited from registering under this chapter for five (5) years from the date of conviction.

62-9-105. Maintenance of scrap metal transaction records — Inspection of scrap metals and records by law enforcement or commissioner — Search warrant.

(a) As used in this section, "scrap metal transaction record" includes the information required to be obtained by §§ 62-9-103(b) and 62-9-104(b)(2).

(b) A dealer shall be required to maintain each scrap metal transaction record for a period of three (3) years following the transaction.

(c)(1) During the usual and customary business hours of a scrap metal dealer, a law enforcement officer or the commissioner shall have the right to inspect, without a warrant or subpoena, either of the following:

(A) Any purchased scrap metals in the possession of the dealer; and

(B) Any records required to be maintained by the dealer pursuant to this chapter.

(2) Notwithstanding subdivision (c)(1), a search warrant or judicial subpoena may be executed at any time for inspection of the items set out in subdivision (c)(1).

(3) All records required to be made available pursuant to subdivision (c)(2) shall be maintained on the site where the transaction occurred for a period of three (3) years from the date of the transaction.

62-9-106. Offense to sell or for dealer to purchase certain types of scrap metal — Exceptions — Uniform scrap metal marking system — Committee to develop marking system — Violations — Prosecution for other offenses.

(a) Except as provided in subsection (b), it is an offense to knowingly sell or attempt to sell to a scrap metal dealer or for a scrap metal dealer to knowingly purchase or attempt to purchase the following types of scrap metal:

(1) Scrap metal marked with the initials of an electric, telephone, cable or other public utility or an electric or telephone cooperative;

(2) Utility access covers;

(3) Street light poles and fixtures;

(4) Road and bridge guard rails;

(5) Highway or street signs;

(6) Water meter covers;

(7) Traffic directional and control signs;

(8) Traffic light signals;

(9) Any scrap metal visibly marked or painted with the name of a government entity, business, company or the name of the owner of the metal;

(10) Property owned by a telephone, cable, electric, water or other utility, an electric or telephone cooperative or a railroad, and marked or otherwise identified as such; and

(11) Unused and undamaged historical markers or grave markers and vases.

(b) It is an exception to application of this section that the person attempting to sell the scrap metal provides reasonable, written documentation that the seller is the owner of the scrap metal or is an employee, agent or other person authorized to sell the scrap metal on behalf of the owner. The dealer shall make a photo copy of any documentation provided pursuant to this subsection (b) and retain the copy as part of the transaction record.

(c) In order for this section to apply to items of scrap metal covered by subdivision (a)(9), the scrap metal must be marked or painted in accordance with a uniform scrap metal marking system to be devised by the department as part of its rules and regulations. In devising the marking system, the department may consult with, or request recommendations from, other state or local government departments or private companies that currently mark property. The commissioner of commerce and insurance may also appoint a committee to develop the uniform scrap metal marking system. If so appointed, the committee shall consist of at least five (5) members but no more than seven (7) members with at least one (1) member selected from each of the following groups: the scrap metal industry, the Tennessee Association of Chiefs of Police, the Tennessee Sheriffs' Association, the Home Builders Association of Tennessee, and a member of the public who is not engaged in law enforcement, the scrap metal industry or the home building industry.

(d)(1)(A) Any person selling or attempting to sell metal to a scrap metal dealer in violation of this section shall be guilty of a Class A misdemeanor unless the value of the metal, in its original and undamaged condition, in addition to any costs which are, or would be, incurred in repairing or in the attempt to recover any property damaged in the theft or removal of such metal, is in an aggregate amount which exceeds five hundred dollars ($500), in which case such person shall be guilty of a Class E felony and, upon conviction, shall be punished only by a fine of not more than five

thousand dollars ($5,000).

(B) Any scrap metal dealer purchasing or attempting to purchase scrap metal in violation of this section shall be guilty of a Class A misdemeanor.

(2) Nothing in this section shall be construed to preclude a person violating this section from also being prosecuted for theft or any other applicable offense.

62-9-109. Offense of engaging in business of buying scrap metal without registration — Other offenses — Violations.

(a) It is an offense for a person to engage in the business of buying scrap metal without registering as a scrap metal dealer with the department or falsely registering with the department as a dealer.

(b) A person engaged in the business of buying scrap metal, as a registered scrap metal dealer or otherwise, commits an offense who knowingly:

(1) Purchases scrap metal:

(A) That was not property of the seller and the seller did not have the authorization to sell the metal; or

(B) That was unlawfully obtained by the seller; or

(2) Commits any other act in violation of this chapter.

(c) A violation of subsection (a) or (b) is a Class A misdemeanor, punishable only by fine, unless the value of the metal, in its original and undamaged condition, in addition to any costs which are, or would be, incurred in repairing or in the attempt to recover any property damaged in the theft or removal of such metal, is in an aggregate amount which exceeds five hundred dollars ($500). In such instance, such scrap metal dealer shall be guilty of a Class E felony and, upon conviction, shall be punished only by a fine of not more than five thousand dollars ($5,000).

(d)(1) It is an offense for a person to sell or attempt to sell scrap metal knowing that the metal is stolen, whether by the person selling or by some other person.

(2) A violation of subdivision (d)(1) shall be punished as theft and graded according to the value of the metal sold or attempted to be sold as provided in § 39-14-105.

(3) In determining the value of the metal sold or attempted to be sold for purposes of grading in subdivision (d)(2), the metal shall be valued in its original and undamaged condition, in addition to any costs which are, or would be, incurred in repairing or in the attempt to recover any property damaged in the theft or removal of such metal and not the amount by which the defendant sold or attempted to sell the metal.

62-9-110. Revocation of registration upon conviction of violations — Denial of application or suspension, revocation, or refusal to issue or renew registration by commissioner — Civil penalty.

(a) The scrap metal registration of a person convicted of a violation of this chapter, or the criminal offense of theft, burglary or vandalism if the offense involved scrap metal, shall be immediately revoked by operation of law upon conviction. A copy of the judgment of conviction shall be transmitted to the commissioner of commerce and insurance by the law enforcement agency responsible for the conviction.

(b) The commissioner may deny an application for registration or may

suspend, revoke or refuse to issue or renew any registration issued under this chapter upon finding that the holder or applicant is guilty of any violation enumerated in § 62-9-114(a) or any rule properly promulgated by the commissioner. In addition to or in lieu of any other lawful disciplinary action under this section, the commissioner may assess a civil penalty of up to one thousand dollars ($1,000) for each violation. Each day of continued violation constitutes a separate violation.

62-9-114. Investigation of unregistered activity.

(a) The commissioner is authorized to investigate, and shall investigate upon the verified complaint in writing of any person, a scrap metal dealer for an alleged violation of an unregistered activity pursuant to § 62-9-102, purchase restrictions pursuant to §§ 62-9-106 and 62-9-107 or payment restrictions pursuant to §§ 62-9-104(c) and 62-9-107(d); provided, that a written complaint shall require evidence, documentary or otherwise, presented in connection with the written complaint, that makes out a prima facie case of a violation of unregistered activity, or purchase restrictions, or payment restrictions as determined by the commissioner.

(b) If, after investigation, the commissioner finds a scrap metal dealer to be in violation of any of the statutes enumerated in subsection (a), then the commissioner shall notify the dealer in writing of the dealer's right to a hearing prior to imposing any sanction permitted under this chapter. If the dealer fails to notify the commissioner in writing within ten (10) days from the date of the commissioner's notice that the dealer seeks a hearing, then such hearing shall be waived and the commissioner may impose upon the dealer any sanction or discipline permitted by this chapter. All hearings conducted pursuant to this subsection (b) shall be in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) In the event the matter contained in the complaint has been filed or made a part of a case pending in any court in this state, the commissioner may withhold its investigation or decision until the court action has been concluded.

62-11-104. Registration or licensing requirement — Identification requirement — Broad construction — Financial institutions.

(a)(1) No partnership, association, company, or corporation shall engage in, or hold itself out as engaging in, the business of locksmithing in this state without first registering as a locksmith business in accordance with this chapter. No person, partnership, association, corporation, or local or state governmental employee shall engage in, or hold themselves out as engaging in, the business of locksmithing in this state without first registering or licensing any employee, agents, or contractors operating as locksmith apprentices or locksmiths in accordance with this chapter; provided, however, that employees of state higher education institutions may provide locksmithing services at facilities operated by the board of trustees of the University of Tennessee or the state board of regents in accordance with Chapter 54 of the Public Acts of 2011.

(2) When a person, partnership, association, corporation or local or state governmental employee files an application for licensure or for renewal, such person or entity shall provide a permanent fixed business location in Tennessee for such license.

(b) Persons who are not licensed under this chapter shall not provide any

locksmithing services in violation of this chapter or any rule adopted pursuant to this chapter. No person or business who is not licensed under this chapter shall use the designation "locksmith," "locksmith apprentice" or "locksmith company," a designation which compounds, modifies or qualifies the words "locksmith," "locksmith apprentice" or "locksmith company" or which gives or is designed to give the impression that the person or business using such designation is a locksmith, locksmith apprentice or locksmith company.

(c) No locksmith may participate in a joint venture to provide equipment or services that require licensing under this chapter, unless all parties to the joint venture are licensed in accordance with this chapter.

(d) No locksmith may subcontract the provision of equipment or services requiring a license under this chapter to any unlicensed person, firm, association or corporation, except as provided in § 62-11-105.

(e) No locksmith shall employ, hire, contract with or associate with any person who is required to be licensed or registered with the commissioner in accordance with this chapter, unless the employee, agent or contractor is properly licensed or registered with the commissioner in compliance with § 62-11-111 or § 62-11-112.

(f) No locksmith shall retain as a registered employee any person known not to be of good moral character.

(g) No person who is not licensed under this chapter shall possess, use, sell or offer to sell any code book, lock picking tool, manipulation key, try-out key, safe opening tool or car opening tool; provided, that the provisions of this subsection (g) restricting the possession or use of the items listed in this subsection (g) shall not apply to students involved in locksmithing training programs or courses, so long as those tools are not used by the students other than in accordance with the programs.

(h) No person shall sell, offer to sell or give to any person not licensed under this chapter any code book, lock picking tool, manipulation key, try-out key, safe opening tool or car opening tool.

(i) No person who is not licensed under this chapter shall design, make, manufacture or install any master key or any system of change keys and master keys.

(j) No locksmith shall open any vehicle or real property, whether or not a fee is charged, without first obtaining personal identification from the person requesting the service. The personal identification may include, but is not limited to, personal knowledge, a driver license or other photo identification, address, telephone number, reference from any reliable source or a description of specific or unusual items that may be found upon entry. The information shall be recorded on a work order or invoice and shall be made available to a law enforcement officer with a properly executed court order at any reasonable time during normal business hours.

(k) Notwithstanding any provision of law to the contrary, no locksmith licensed under this chapter shall be prohibited from providing locksmithing services because of the manner of construction or operation of the lock or because of the location of the lock or application of the lock, whether the lock is applied to any door, window, hatch, lid, gate or other opening in or on any safe, vault, building, vehicle, aircraft or boat. It is the intent of the general assembly that this subsection (k) shall be construed in their broadest possible sense; provided, however, that nothing in this section shall authorize a locksmith to provide services for any bank, savings and loan association or trust company without the consent of the bank, savings and loan association or

trust company.

(*l*) All persons or entities licensed pursuant to this chapter shall provide the department of commerce and insurance with a permanent, fixed business location. The failure to provide such shall cause such persons or entities to be in violation of the Consumer Protection Act, compiled in title 47, chapter 18.

62-11-106. Duties of the commissioner.

In accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the commissioner shall:

(1) Promulgate rules reasonably necessary to implement and administer this chapter in an efficient and effective manner, including rules to require submission of reports and information by licensees and registrants under this chapter and promulgate rules and regulations that the commissioner deems necessary for internal management and control;

(2)(A) Establish fees sufficient to pay the annual direct and indirect anticipated expenses of this chapter, including:

(i) A nonrefundable application fee to include the cost of a Tennessee bureau of investigation (TBI) and federal bureau of investigation (FBI) background check for licensure;

(ii) A nonrefundable fee for licensure;

(iii) A biennial licensure renewal fee; and

(iv) An identification card replacement fee;

(B)(i) Notwithstanding any other law to the contrary, all moneys collected pursuant to this chapter shall be deposited in the state treasury in a separate fund to be known as the "locksmith and private security regulatory fund";

(ii) Disbursements from the fund shall be made solely for the purpose of defraying expenses incurred in the implementation and enforcement of this chapter, and the Private Protective Services Licensing and Regulatory Act, compiled in chapter 35 of this title;

(iii) No such expenses shall be payable from the general fund of the state;

(iv) Any part of the locksmith and private security regulatory fund remaining at the end of a fiscal year shall not revert to the general fund, but shall be carried forward to defray future expenses until all the funds are expended in accordance with this chapter and the Private Protective Services Licensing and Regulatory Act;

(3) Establish categories of licensing, such as general locksmithing, safe and vault work and automotive work, that may have different initial qualification and continuing education requirements;

(4) Establish minimum qualifications, minimum education, experience and training standards for applicants for licensure under this chapter. The commissioner may seek assistance from the locksmith organizations of this state, including the Tennessee Organization of Locksmiths, Middle Tennessee Locksmith Association, East Tennessee Locksmith Association, West Tennessee Chapter of ALOA, and any independent locksmiths willing to provide the assistance to the commissioner;

(5) Investigate and approve applicants to be licensed or registered under this chapter including a background check conducted by the commissioner and investigation by the TBI and FBI;

(6) Prepare a written examination. In preparing the examination, the commissioner may appoint a testing advisory board. Members of the testing advisory board shall serve without compensation. The testing advisory board shall include two (2) licensed locksmiths from each grand division of the state who are each members of a Tennessee professional locksmith association or organization and one (1) licensed locksmith appointed from those organizations from any of the grand divisions, as well as other members whom the commissioner may select;

(7) Promulgate rules to establish the minimum necessary standards for continuing education, with such minimum standards to include twelve (12) hours of continuing education, two (2) of which shall be dedicated to life safety;

(8) Conduct investigations regarding alleged violations and make evaluations as may be necessary to determine if licensees and registrants under this chapter are complying with this chapter;

(9) Investigate allegations regarding possible violations of this chapter by unregistered persons and seek enforcement under § 62-11-109;

(10) Investigate complaints containing allegations of violations of applicable laws and rules;

(11) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records and documents;

(12) Deny, suspend or revoke any license, licensure, or renewal issued or to be issued under this chapter to any applicant, registrant, or licensee who fails to satisfy the requirements of this chapter or for any of the reasons stated in § 62-11-109, or who fails to follow the rules established by the commissioner;

(13) Seek civil remedies at law or equity to restrain or enjoin any unauthorized practice or other violation of this chapter; and

(14) Maintain a registry of licensed locksmithing businesses, whether a sole proprietorship, partnership, association, corporation or other entity offering locksmithing services to the public in the state, showing who is licensed and employed by those businesses as locksmiths and apprentices.

62-11-118. Locksmiths licensed in another state or territory.

(a) Except as provided in subsection (b), a locksmith, licensed in another state or territory, who relocates to this state, shall apply for licensure pursuant to this chapter and meet all requirements set forth in this chapter, and all rules promulgated thereto, prior to providing locksmithing services in this state.

(b) No locksmith, licensed in another state or territory, shall have to meet the initial qualification education requirements for licensure in this state or be required to pass the administrated locksmith exam if such locksmith has any one (1) of the following American Locksmith of America (ALOA) certified designations:

(1) Certified registered locksmith (CRL);

(2) Certified professional locksmith (CPL); or

(3) Certified master locksmith (CML).

62-13-104. Exemptions — Firm licenses for vacation lodging services.

(a)(1) This chapter does not apply to:

(A) An owner of real estate with respect to property owned or leased by

such person;

(B) An attorney-in-fact under a duly executed and recorded power of attorney from the owner or lessor;

(C) The services rendered by an attorney at law in the performance of duties as an attorney at law;

(D) A person acting as receiver, trustee in bankruptcy, administrator, executor or guardian, trustee acting under a trust agreement, deed of trust or will or while acting under a court order or instrument;

(E) A resident manager for a broker or an owner, or employee of a broker, who manages an apartment building, duplex or residential complex where the person's duties are limited to supervision, exhibition of residential units, leasing or collection of security deposits and rentals from the property. The resident manager or employee shall not negotiate the amounts of security deposits or rentals and shall not negotiate any leases on behalf of the broker; or

(F) A corporation, foreign or domestic, acting through an officer duly authorized to engage in a real estate transaction, where the transaction occurs as an incident to the management, lease, sale or other disposition of real estate owned by the corporation; however, this exemption does not apply to a person who performs an act described in § 62-13-102(4)(A), either as a vocation or for compensation, if the amount of the compensation is dependent upon, or directly related to, the value of the real estate with respect to which the act is performed.

(2) In addition, except as provided in subsection (b), no other provisions of this chapter or any rules and regulations promulgated pursuant thereto shall apply to vacation lodging services.

(b)(1) As used in this section, unless the context otherwise requires:

(A) "Designated agent" means an owner, principal, officer or upper level manager of a vacation lodging service firm;

(B) "Person" means any natural person, corporation, company, partnership, firm or association; and

(C) "Vacation lodging service" means any person that engages in the business of providing the services of management, marketing, booking and rental of residential units owned by others as sleeping accommodations furnished for pay to transients or travelers staying no more than fourteen (14) days.

(2) Each vacation lodging service shall be required to have a vacation lodging service firm license but shall not be required to have a licensed real estate broker supervising the business. The application for the license shall be filed in the office of the real estate commission on forms that the commission may prescribe and shall be accompanied by a fee for the issuance of the license as specified in § 62-13-308.

(3)(A) Vacation lodging service firm licenses for vacation lodging services shall be granted to all applicants who bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of providing vacation lodging services in a manner to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. No license shall be denied any person because of race, color, religion, sex or national origin, handicap or familial status.

(B)(i) Upon application for a firm license for a vacation lodging service and each renewal of the license, the firm shall designate one (1)

individual from that firm who shall be individually licensed as a designated agent through the Tennessee real estate commission. Such designated agent shall be responsible for the completion of training programs to be taught by an individual in the vacation lodging services business or other person who meets qualifications set by the Tennessee real estate commission. Such training programs shall consist of instruction in the fundamentals of this subsection (b) and related topics. No person shall be licensed by the commission as a designated agent until such person completes the required eight-hour introductory course.

(ii) Every two (2) years, as a requisite for the reissuance of a firm license for a vacation lodging service and for reissuance of the designated agent license, the firm shall furnish certification that the designated agent for the firm has completed eight (8) classroom hours in training programs approved by the commission.

(iii) No examination shall be required for the issuance or renewal of a firm license for a vacation lodging service.

(C) Upon application for a firm license for a vacation lodging service and each renewal of the license, the firm shall provide proof of the establishment of the firm's escrow account satisfactory to the commission. Every firm shall, in accordance with the rules promulgated by the commission under § 62-13-203, keep an escrow or trustee account of funds deposited with the firm relating to vacation lodging services. The vacation lodging service shall maintain for a period of at least three (3) years accurate records of the account showing:

(i) The depositor of the funds;

(ii) The date of deposit;

(iii) The payee of the funds; and

(iv) Other pertinent information that the commission may require.

(D)(i) No funds shall be distributed from the escrow/trustee account until the customer's stay is complete, unless the distribution is in accordance with terms disclosed to the renter in writing at the time of making the reservation or within a reasonable time thereafter not to exceed three (3) days, mailed to the renter through the United States postal service or transmitted to the renter via electronic mail, facsimile or other tangible form of communication. Commissions earned by the firm and the revenue due owners shall be disbursed at least monthly. Funds held in escrow shall be disbursed in a prompt manner without unreasonable delay.

(ii) A vacation lodging service may be exempt from the requirements of subdivision (b)(3)(C) by submitting with its application for a firm license renewal an irrevocable letter of credit from a state or national bank or state or federal savings and loan association having its principal office in this state or any state or national bank or state or federal savings and loan association that has its principal office outside this state and that maintains one (1) or more branches in this state that are authorized to accept federally insured deposits. The terms and conditions of any irrevocable letter of credit shall be subject to the approval of the commission. At the discretion of the bank or savings and loan association, the form of the irrevocable letter of credit shall be provided by the bank or savings and loan association and may be based on either the Uniform Commercial Code, compiled in title 47, chapter 5, or the

ICC Uniform Customs and Practice for Documentary Credits (UCP 500). In lieu of the irrevocable letter of credit, the commission is authorized to accept equivalent security. The irrevocable letter of credit or equivalent security shall be in the amount of the vacation lodging service's average advanced monthly deposits or other lesser amount that is reasonably determined by the commission to protect the renters and owners. The commission may draw upon the irrevocable letter of credit or equivalent security to reimburse renters or owners for funds owed to them by the vacation lodging service. The commission shall offer the vacation lodging service a contested case hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, before drawing upon the irrevocable letter of credit or equivalent security if the vacation lodging service continues to maintain the letter of credit or equivalent security during the contested case hearing process. If the vacation lodging service does not continue to maintain the irrevocable letter of credit or equivalent security during the contested case hearing process and the irrevocable letter of credit or equivalent security is subject to expiring during the contested case hearing process, the commission may draw upon the irrevocable letter of credit or equivalent security before conducting the contested case hearing. Where the commission draws upon the irrevocable letter of credit or equivalent security before conducting a contested case hearing, the commission shall offer the vacation lodging service a prompt hearing to be conducted before it distributes the proceeds. A vacation lodging service firm working under an irrevocable letter of credit must submit satisfactory proof of such letter of credit by April 1 of each year. The commission may impose a penalty for failure to disclose such proof by such date.

(4) All firm and designated agent licenses for vacation lodging services shall expire two (2) years from the date the license was issued or renewed. The firm license and the license for the designated agent for the firm, and all renewals thereof, shall expire at the same time. If a license is issued to a designated agent following the date the firm license is issued or renewed, the license for the designated agent shall be issued or renewed so that it expires on the date the license of the firm is to expire. The commission is authorized to pro-rate the license for the designated agent or extend the date for the renewal of such a license to ensure the licenses expire concurrently. The licenses must be renewed on or before the expiration date by remitting to the commission the fee as set by the commission together with proof of the existence of the firm's escrow account satisfactory to the commission and certification of satisfactory completion of training pursuant to subdivision (b)(3)(B).

(5) Each vacation lodging service shall have an office at a fixed location with adequate facilities located to conform with zoning laws and ordinances. Within ten (10) days after any change of location of the office, the vacation lodging service shall notify the commission in writing of the new business address.

(6) Whenever any lodging rental customer or lodging rental owner claiming to have been injured or damaged by the gross negligence, incompetency, fraud, dishonesty or misconduct on the part of any licensee following the calling or engaging in the business of providing vacation lodging services files suit upon the claim against the licensee in any court of record in this

state and recovers judgment on the claim, the court may, as a part of its judgment or decree in such cases, if it deems it a proper case in which so to do, revoke the certificate of license granted under this chapter; and the certificate of license shall not be reissued to the licensee except upon the consenting vote of six (6) members in favor of reissuance.

(7)(A) The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth a cause of action under this section, ascertain facts and, if warranted, hold a hearing for reprimand or for the suspension or revocation of a license.

(B) The commission has the power to refuse a license for cause or to suspend or revoke a license where it has been obtained by false representation or by fraudulent act or conduct, or where a licensee, in performing or attempting to perform any of the acts mentioned in this section, is found guilty of:

(i) Making any substantial and willful misrepresentation;

(ii) Making any promise of a character likely to influence, persuade or induce any person to enter into any contract or agreement when the licensee could not or did not intend to keep the promise;

(iii) Pursuing a continued and flagrant course of misrepresentation or making of false promises through other persons, any medium of advertising or otherwise;

(iv) Misleading or untruthful advertising, including use of the term "realtor" by a person not authorized to do so, or using any other trade name, insignia or membership in any real estate association or organization of which the licensee is not a member. No vacation lodging service doing business under this subsection (b) may advertise or hold itself out as a full service real estate business. The authority of the business is limited to those activities described within this subsection (b);

(v) Failing, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession that belong to others;

(vi) Failing to preserve for three (3) years accurate records of the firm's escrow account as prescribed by subdivision (b)(3)(C);

(vii) Failing to furnish a copy of any contract to provide vacation lodging services to all signatories of the contract at the time of execution;

(viii) Using or promoting the use of any contract to provide vacation lodging services for a residential unit that fails to specify a definite termination date;

(ix) Being convicted in a court of competent jurisdiction of this or any other state or federal court of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses;

(x) Violating any federal, state or municipal law prohibiting discrimination in the rental of real estate because of race, color, religion, sex or national origin;

(xi) Violating this subsection (b) or the terms of any lawful order entered by the commission;

(xii) Engaging in the unauthorized practice of law; or

(xiii) Any conduct, whether of the same or of a different character from that specified in this subdivision (b)(7)(B), that constitutes im-

proper, fraudulent or dishonest dealing.

(C) The director of the division of regulatory boards or the director's duly authorized representatives may, at all reasonable hours, examine and copy the books, accounts, documents or records that are relevant to a determination of whether a licensee has properly maintained and disbursed funds from escrow or trustee accounts required in this subsection (b). In the case of refusal to permit the access accorded by this subsection (b), the director or the director's authorized representatives may pursue the remedies provided by § 4-5-311(b) for disobedience to any lawful agency requirement for information. Refusal shall also constitute grounds for the commission to suspend or revoke a license.

(D) Whenever any licensee pleads guilty or is convicted of any criminal offense enumerated in this section, the licensee must within sixty (60) days notify the commission of that conviction and provide the commission with certified copies of the conviction. The licensee's license shall automatically be revoked sixty (60) days after the licensee's conviction unless the licensee makes a written request to the commission for a hearing during that sixty-day period. Following any hearing held pursuant to this section, the commission in its discretion may impose upon that licensee any sanction permitted by this section.

(8)(A)(i) Before refusing to issue a license or suspending or revoking an existing license upon the verified written complaint of any person setting out a cause of action under subdivision (b)(7), the commission shall, in writing, notify the accused applicant or licensee of its receipt of the complaint, enclosing a copy.

(ii) The accused applicant or licensee shall, within ten (10) days, file with the commission the applicant's or licensee's answer to the complaint, a copy of which shall be transmitted to the complainant.

(iii) If, after investigation, the commission determines that the matter should have a hearing, a time and place for the hearing shall be set.

(B) All notices and answers required or authorized to be made or filed under this subsection (b) may be served or filed personally, or by registered mail, to the last known business address of the addressee. If served personally, the time shall run from the date of service and if by registered mail, from the postmarked date of the letter enclosing the document.

(C) The affirmative vote of a majority of the commission shall be necessary to reprimand a licensee or revoke or suspend a license.

(D) In the event that the matter contained in the complaint has been filed or made a part of a case pending in any court in this state, the commission may then withhold its decision until the court action has been concluded.

(9)(A) If a designated agent, as designated by a vacation lodging service firm, leaves or moves from the vacation lodging service firm, the firm or designated agent for such firm must notify the Tennessee real estate commission within ten (10) days of such action. The vacation lodging service firm must replace the designated agent within sixty (60) days of such action and notify the commission of the name of the new designated agent. During such time period, all rules or regulations related to a vacation lodging service firm shall remain in full force and effect with respect to such a vacation lodging service firm until a designated agent is replaced. Any obligation or duty required to be fulfilled by the designated agent shall be fulfilled by another person in the vacation lodging service

firm.

(B) A designated agent may serve as a designated agent for multiple offices of the same vacation lodging service firm within a fifty (50) mile radius of the principal office of the firm, but may not serve as a designated agent for multiple firms.

(10) The Tennessee real estate commission is authorized to promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement this subsection (b).

62-18-103. Establishment of board — Professional members.

(a)(1) To carry out the provisions of this chapter, there is hereby created a state board of examiners for land surveyors. This board shall consist of three (3) members to be appointed by the governor under the conditions described as follows: initially the governor shall appoint on the board three (3) land surveyors, qualified as herein required, one (1) of whom shall come from each of the three (3) grand divisions, designating one (1) of those persons to serve for a period of two (2) years, one (1) for a period of four (4) years and one (1) for a period of six (6) years.

(2) Shortly before the expiration of the term of each member, a successor shall be appointed from the same grand division.

(3) The term of office of all members shall begin on July 1 following their appointment, except those appointed to fill vacancies, but each member shall hold office until a successor is appointed and qualified.

(4) Each appointment after the first shall be for a period of six (6) years.

(b) The board is attached for administrative purposes to the division of regulatory boards in the department of commerce and insurance.

(c)(1) Appointments to the board may be made by the governor from lists of qualified nominees submitted by interested land surveyor groups, including, but not limited to, the Tennessee Association of Professional Surveyors. The lists shall be submitted at least sixty (60) days before the expiration of any term or, in the case of vacancies occurring during terms of office, within thirty (30) days following the occurrence of the vacancy. The governor shall consult with such interested groups to determine qualified persons to fill the positions.

(2) In making appointments to the board under the authority of this section or under the authority of § 62-18-104, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(d)(1) The three (3) members of the board shall each have had at least ten (10) years' experience in the practice of land surveying and shall have been in responsible charge of work for at least five (5) years.

(2) Each member of the board shall be a citizen of the United States and shall have been a resident of this state for five (5) years at the time of appointment, and shall be at least thirty-five (35) years of age.

(e) The governor may remove any member of the board for misconduct, incapacity or neglect of duty.

62-28-102. Monthly records — Annual report.

Each registered ginseng dealer shall submit monthly purchase records for

the period of September 1 through March 31 of each year and an annual report of purchases and sales of ginseng.

62-32-303. Part definitions.

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

(1) "Alarm system" means any mechanical, electrical or electronic system, or any combination of those systems, designed to:

(A) Record, view, monitor, protect against, avoid or reduce the probability of personal or property loss or injury resulting from fire, smoke, heat, burglary, theft, shoplifting, pilferage or other losses of that type;

(B) Monitor, detect or prevent intrusion; or

(C) Detect and summon aid for other emergencies;

(2) "Alarm systems contractor" means any person, firm, association or corporation that sells or attempts to sell, installs, services or monitors alarm systems, signal devices, fire alarms, burglar alarms, television cameras or still cameras used to detect fire, burglary, breaking or entering, intrusion, shoplifting, pilferage or theft;

(3) "Alarm verification" means an attempt by a monitoring company or its representative to contact a burglar alarm location or a burglar alarm user by telephone or other electronic means to determine whether a burglar alarm signal is valid in an attempt to avoid unnecessary police response before requesting law enforcement to be dispatched to the location. Alarm verification further means that at least a second call shall be made to a different number if the first attempt fails to reach an alarm user;

(4) "Board" means the state board for licensing alarm systems contractors created by § 62-32-306;

(5) "Burglar alarm system" means an alarm or monitoring system that has the primary function of detecting or responding to emergencies other than fire;

(6) "Business entity" means each location from which alarm systems are sold, installed or serviced;

(7) "Certification" means the authority granted by the board to do business as an alarm systems contractor;

(8) "Fire alarm system" means an alarm or monitoring system that is intended to respond to or detect fire, heat, smoke or other byproducts of combustion;

(9)(A) "Good moral character" means an individual with high legal, moral and ethical values;

(B)(i) The following shall be prima facie evidence that an individual does not have good moral character:

(a) Conviction by any local, state, federal or military court of any crime involving the illegal use, possession, sale, manufacture, distribution or transportation of a controlled substance, controlled substance analogue, drug or narcotic;

(b) Conviction of a crime involving felonious assault;

(c) Conviction of a crime involving unlawful breaking or entering, burglary, larceny or arson;

(d) Conviction as an habitual criminal; or

(e) An addiction to alcohol or a narcotic drug;

(ii) For purposes of subdivision (9)(B)(i), "conviction" means and includes the entry of a plea of guilty, plea of no contest or a verdict

rendered in open court by a judge or jury;

(10) "Installation" means the installation, maintenance, service and repair of alarm systems;

(11) "Monitoring" means any off-site central monitoring station or location that receives electronic burglar alarm, closed circuit television or fire alarm signals from multiple locations and notifies or dispatches, or both, other persons to emergency burglaries, hold ups, thefts, vandalism, civil unrest, personal emergencies or fire alarm conditions; and

(12) "Qualifying agent" means any individual licensed by the board whose qualifications have been demonstrated to the board for overseeing and supervising alarm systems contractor operations of any classification or combination of classifications.

62-32-306. Board for licensing alarm systems contractors.

(a)(1) There is created a state board for licensing alarm systems contractors, called the "board" in this part. The board shall be composed of five (5) members, to be appointed by the governor. At least one (1) member shall be a person who is not engaged in the contracting business in any county of this state. The remaining members of the board shall be alarm systems contractors as defined in § 62-32-303, all of whom shall have been actively engaged in the business for a period of no less than four (4) years next preceding their appointment and may be appointed from lists of qualified persons submitted by interested burglar and fire alarm organizations, including, but not limited to, the Tennessee Burglar and Fire Alarm Association. No more than two (2) members of the board shall be residents of the same grand division of the state. In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(2) The governor shall consult with interested groups including, but not limited to, the organizations listed in subdivision (a)(1) to determine qualified persons to fill positions on the board.

(b) All subsequent appointments of successor members shall be made by the governor at the expiration of the respective terms of the members.

(c) In the event of a vacancy on the board for any reason and the governor failing to appoint a successor within ninety (90) days after the vacancy occurs, the board is empowered to fill that vacancy from lists of nominees submitted by the interested burglar and fire alarm organizations described in subsection (a), until the governor makes an appointment.

62-35-117. Registration cards — Qualifications of applicants.

Each applicant for a registration card must:

(1) Be at least twenty-one (21) years of age if applying for an armed registration card or at least eighteen (18) years of age if applying for unarmed registration;

(2) Be a citizen of the United States or resident alien;

(3) Not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease unless a court of competent jurisdiction has since declared the applicant competent;

(4) If convicted in any jurisdiction of any of the crimes listed in this subdivision (4), have completed serving sentence or court ordered probation at least five (5) years prior to application. Conviction of the following crimes shall disqualify an applicant, subject to the conditions stated in this section:

(A) Any felony; or

(B) Any misdemeanor involving:

(i) Shooting a firearm or other weapon;

(ii) Shoplifting;

(iii) Assault and battery or other act of violence against persons or property;

(iv) Crimes involving the sale, manufacture or distribution of controlled substances, controlled substance analogues, drugs or narcotics;

(v) Theft of property; or

(vi) Theft of services;

(5) Not be suffering from habitual drunkenness or narcotics addiction or dependence;

(6) Not have any disability that, in the opinion of the commissioner, prevents the applicant from performing the duties of a security guard/officer; and

(7) Be of good moral character.

62-35-137. Locksmith and private security regulatory fund.

(a) Notwithstanding any other law to the contrary, all moneys collected pursuant to this chapter shall be deposited in the state treasury in a separate fund to be known as the "locksmith and private security regulatory fund."

(b) Disbursements from the fund shall be made solely for the purpose of defraying expenses incurred in the implementation and enforcement of the Locksmith Licensing Act of 2006, compiled in chapter 11 of this title, and this chapter.

(c) No such expenses shall be payable from the general fund of the state.

(d) Any part of the locksmith and private security regulatory fund remaining at the end of a fiscal year shall not revert to the general fund, but shall be carried forward to defray future expenses until all the funds are expended in accordance with the Locksmith Licensing Act of 2006 and this chapter.

62-38-206. Posting studio certificate permit and copy of statutes.

(a) It is the duty of the owner or operator of a tattoo establishment to post the current studio certificate permit in a conspicuous place where it may be readily observed by the public.

(b) It is the duty of the owner or operator of a tattoo establishment to post a copy of the statutes contained in this part in a conspicuous place where it may be readily observed by the public.

62-38-207. Records — Signed acknowledgement by parent or guardian of minor — Attestations — Instructions.

(a)(1) A record showing the date of a client's visit, the client's name, with the client's signature, address and date of birth, design of the tattoo, its location on the client's body and the name of the tattoo artist who performed the service shall be maintained by tattoo studios for two (2) years.

(2) If tattooing services are provided to a minor pursuant to § 62-38-211, the tattoo artist performing such services shall obtain a signed acknowledgement from the minor's parent or guardian that such parent or guardian has reviewed the statutes contained in this part, and the tattoo studio where such services are performed shall send a copy of both the signed acknowledgement and the record made pursuant to subdivision (a)(1) to the department. The department shall maintain any copy of a record and accompanying signed acknowledgement that it receives pursuant to this subdivision (a)(2) until two (2) years following the eighteenth birthday of the minor who is the subject of the record.

(b) Records shall be entered in ink and shall be made available to the local health department upon request, at a reasonable time, for examination.

(c) Clients receiving a tattoo shall attest to the fact that they are not under the infuence of drugs or alcohol.

(d) Printed instructions on the care of skin shall be given to each client after tattooing and a copy of the instructions shall be posted in a conspicuous place in the tattoo studio.

62-38-208. Violation for operating without a permit or with a revoked or suspended permit.

(a) Any person who does not obtain a permit as required in § 62-38-202 or whose permit has been revoked or suspended and who continues to tattoo or operate a tattoo establishment commits a Class B misdemeanor punishable only by a fine of five hundred dollars ($500).

(b) Any suspension or revocation may be appealed to the local health officer who shall then conduct a hearing of the appeal in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The decision made by the local health officer concerning the appeal may be appealed to the commissioner, the appeal to the commissioner being limited to the issue of determining whether a material error of law was made at the hearing level.

(c) The department is encouraged to utilize its existing resources to collaborate with local law enforcement to identify and assess administrative penalties against persons who violate this part.

62-38-210. Local regulations superseded — Applicability to physicians and surgeons.

(a) This part shall supersede all county and local regulations concerning tattooing to give uniformity in compliance within this state.

(b) This part does not apply to any physician, surgeon or any person under the supervision of a physician or surgeon who is licensed to practice medicine in this state.

(c) The commissioner shall promulgate rules governing implementation of this chapter.

62-38-211. Tattoos for persons under 18 years of age — Reporting tattooing of minors — Tattoos to cover up existing tattoos for minors 16 years of age or older — False statements of age or exhibiting false identification by minors for purpose of obtaining tattoos.

(a) Except as provided in subsection (c), it is a Class A misdemeanor to

tattoo a person under eighteen (18) years of age.

(b)(1) Any parent, legal guardian, teacher or medical provider or school resource officer for a minor under eighteen (18) years of age, who discovers that a minor has been tattooed is encouraged to report such discovery to the department within three (3) weekdays of making such discovery. Any report made pursuant to this subdivision (b)(1) shall be accompanied by the following information, to the extent that such information is known to the person making the report:

(A) The name, mailing address, telephone number, and email address of the minor's parent or legal guardian; and

(B) The name, mailing address, telephone number, and email address of the person who tattooed the minor.

(2) Within fourteen (14) days of receiving a report that is made pursuant to subdivision (b)(1), which report includes the name and mailing address of the parent or legal guardian of the minor who is the subject of the report, the department shall provide to the minor's parent or legal guardian, by first class United States mail, a written acknowledgement of receipt of the report.

(3) The department shall establish by rule a process whereby the reports that are required by this subsection (b) may be made by telephone. The department is authorized to establish by rule processes whereby the reports that are required by this subsection (b) may be made in person or by mail, email or other means of communication.

(c)(1) With the written consent of the parent or legal guardian, a minor sixteen (16) years of age or older may be tattooed to cover up an existing tattoo. A parent or legal guardian must present proof of guardianship or custody of the minor, an acknowledgement of receipt of a report provided pursuant to subdivision (b)(2), and must be present during the procedure.

(2) For purposes of subdivision (c)(1), "proof of guardianship or custody" includes a copy of an order of guardianship, a decree for custody, a birth certificate or any other form of proof of guardianship or custody that is permitted by rule of the department of health.

(d) Any person under eighteen (18) years of age who knowingly makes a false statement or exhibits false identification to the effect that the person is eighteen (18) years of age or older to any person providing tattoo services licensed or permitted under this part for the purpose of purchasing or obtaining the same commits delinquent acts taken through juvenile courts and the person shall be punished by a fine of not less than fifty dollars ($50.00) nor more than two hundred fifty dollars ($250) and not less than twenty (20) hours of community service work, which fine or penalty shall not be suspended or waived.

62-38-212. Possession of tattoo paraphernalia.

(a) For the purposes of this section, "tattoo paraphernalia" includes, but is not limited to, any equipment, design patterns or needles used or intended for use in tattooing, whether professionally made or homemade, with the intent to permanently mark or color the skin with any pigment, ink, or dye that leaves a visible scar on the skin.

(b)(1) Except when used or possessed with the intent to use by a person licensed under title 62, chapter 38, part 2, it is unlawful for any person to use, or to possess with intent to use, tattoo paraphernalia.

(2) Any person who violates this subsection (b) commits a Class A misdemeanor.

62-43-101. Short title.

This chapter shall be known and may be cited as the "Tennessee Professional Employer Organization Act."

62-43-102. Chapter definitions.

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

(1) "Applicant" means a person seeking an initial or renewal registration pursuant to this chapter;

(2) "Audit" means an engagement performed in accordance with the Statements on Auditing Standards (SAS);

(3) "Client" means any person who enters into a professional employer agreement with a professional employer organization;

(4) "Co-employer" means either a professional employer organization or a client;

(5) "Co-employment relationship" means a relationship which is intended to be an ongoing relationship rather than a temporary or project specific one, wherein the rights, duties, and obligations of an employer which arise out of an employment relationship have been shared and allocated between co-employers pursuant to a professional employer agreement and this chapter;

(6) "Covered employee":

(A) Means an individual having a co-employment relationship with a professional employer organization and a client who meets all of the following criteria:

(i) The individual has received written notice of co-employment with the professional employer organization; and

(ii) The individual's co-employment relationship results pursuant to a professional employer agreement; and

(B) Includes individuals who are officers, directors, shareholders, partners, and managers of the client; provided, that such individuals meet the criteria of subdivision (6)(A) and act as operational managers or perform day-to-day operational services for the client, unless the professional employer organization and the client have expressly agreed in the professional employer agreement that such individuals shall not be covered employees;

(7) "Department" means the department of commerce and insurance;

(8) "Local governmental entity" means a governing body, board, commission, committee or department of a municipality or county;

(9) "Person" has the same meaning as in § 1-3-105 and as amended;

(10) "Professional employer agreement" means a written contract between a client and a professional employer organization that provides:

(A) For the co-employment of covered employees;

(B) For the allocation of employer rights and obligations between the client and the professional employer organization with respect to covered employees; and

(C) That the professional employer organization and the client assume the responsibilities required by this chapter;

(11) "Professional employer organization":

(A) Means any person engaged in the business of providing professional employer services, regardless of the use of the term or conducting business as a "professional employer organization," "PEO," "staff leasing company," "registered staff leasing company," "employee leasing company," "administrative employer," or any other name; and

(B) Includes a professional employer organization group;

(12) "Professional employer organization benefit and welfare plan" means a plan offered to covered employees of a professional employer organization registered pursuant to this chapter;

(13) "Professional employer organization group" means two (2) or more professional employer organizations that are majority owned or commonly controlled by the same entity, parent or controlling person;

(14) "Professional employer services" means the service of entering into co-employment relationships under this chapter in which all or a majority of the employees providing services to a client, a division or work unit of a client are covered employees;

(15) "Registrant" means a professional employer organization registered under this chapter;

(16) "Small operations" means an applicant or registrant with less than fifty million dollars ($50,000,000) in annualized wages;

(17) "Temporary help services" means services consisting of a person:

(A) Recruiting and hiring its own employees;

(B) Finding other organizations that need the services of its employees;

(C) Assigning its employees:

(i) To perform work at or services for the other organizations to support or supplement the other organizations' workforces;

(ii) To provide assistance in special work situations such as, but not limited to, employee absences, skill shortages or seasonal workloads; or

(iii) To perform special assignments or projects; and

(D) Customarily attempting to reassign its employees to other organizations when they finish each assignment; and

(18) "Working capital" means the excess of current assets over current liabilities as determined by generally accepted accounting principles.

62-43-103. Rules — Creation of professional employer organization advisory council — Composition of council — Officers — Compensation — Powers and duties — Administration — Recommendations for appointments to council.

(a)(1) The department may promulgate rules and prescribe forms reasonably necessary for the administration and enforcement of §§ 62-43-106, 62-43-107 and 62-43-112.

(2) Rules shall be promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5 and as amended.

(b)(1) The professional employer organization advisory council is created and shall consist of five (5) members to be appointed by the governor to four (4) year terms. A term shall become effective on appointment and continue until a successor has been appointed. A vacancy shall be filled by appointment to the unexpired term by the governor.

(2)(A) Three (3) members of the council shall be individuals owning or

working for a professional employer organization.

(B) The remaining two (2) members shall:

(i) Be residents of this state; and

(ii) Not be, or ever have been, connected with a professional employer organization.

(C) Among the members described in subdivision (b)(2)(B):

(i) One (1) such member shall represent the consumer interests of this state; and

(ii) One (1) such member shall be a representative of the department.

(3) The council shall elect a chair and other officers to a term of one (1) year or until a successor is elected. Meetings may be called by the chair or by any two (2) members. A meeting may be held by electronic means. Three (3) members shall constitute a quorum to conduct business. Whenever vacancies prevent a quorum, the remaining members shall constitute a quorum for the purposes of recommending to the governor appointments to the council.

(4) Members shall serve without compensation.

(5) The following are the powers and duties of the council:

(A) Determine its rules of order and procedure;

(B) Recommending to the governor appointments to the council;

(C) Send notice of its agenda and proceedings to any requesting person;

(D) Petition the department, pursuant to § 4-5-201 and as amended; and

(E) Advise the department on this chapter.

(6)(A) The council is attached to the department for the purposes of administration and cooperation.

(B) The department shall notify the council of any action pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5 and as amended, relating to a rule promulgated pursuant to this chapter.

(C) Any nonprofit organization representing five (5) or more professional employer organizations registered in this state may recommend appointments to the council.

62-43-104. Confidentiality.

All records, reports and other information obtained from an applicant or registrant under this chapter, except to the extent necessary for the proper administration of this chapter by the department, shall be confidential and shall not be published or open to public inspection other than to public employees in the actual performance of their public duties

62-43-105. Chapter or professional employer agreements do not affect collective bargaining agreements, or federal or state labor relations law — Limits on chapter or professional employer agreements — Determination of tax credits and economic incentives.

(a) Nothing contained in this chapter or in any professional employer agreement shall affect, modify or amend any collective bargaining agreement, or the rights or obligations of any client, professional employer organization or covered employee under:

(1) The National Labor Relations Act, compiled in 29 U.S.C. §§ 131 et seq. and as amended;

(2) The Railway Labor Act, compiled in 45 U.S.C. §§ 151 et seq. and as amended; or

(3) Applicable state labor relations law, compiled in titles 12 and 50 and as amended.

(b) Nothing in this chapter or in any professional employer agreement shall:

(1) Diminish, abolish or remove rights of covered employees to a client or obligations of such client to a covered employee existing prior to the effective date of the professional employer agreement;

(2) Affect, modify or amend any contractual relationship or restrictive covenant between a covered employee and any client in effect at the time a professional employer agreement becomes effective;

(3) Prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a client and a covered employee;

(4) Impose responsibility or liability on a professional employer organization in connection with, or arising out of, any such existing or new contractual relationship or restrictive covenant between the client and a covered employee unless the professional employer organization has specifically agreed otherwise in writing; or

(5) Create any new or additional enforceable right of a covered employee against a professional employer organization that is not specifically provided by the professional employer agreement or this chapter.

(c) Nothing contained in this chapter or any professional employer agreement shall affect, modify or amend any state, local governmental entity or federal licensing, registration, or certification requirement applicable to any client or covered employee.

(1) A covered employee who must be licensed, registered or certified according to law or regulation is deemed solely an employee of the client for purposes of any such license, registration or certification requirement.

(2) A professional employer organization shall not be deemed to engage in any occupation, trade, profession or other activity that is subject to licensing, registration or certification requirements, or is otherwise regulated by a local governmental entity solely by entering into and maintaining a co-employment relationship with a covered employee who is subject to such requirements or regulation.

(3) A client shall have the sole right of direction and control of the professional or licensed activities of covered employees and of the client's business. Such covered employees and clients shall remain subject to regulation by the state or local governmental entity responsible for licensing, registration or certification of such covered employees or clients.

(d)(1) For purposes of determination of tax credits and other economic incentives provided by this state or a local government entity and based on employment, covered employees shall be deemed employees solely of the client.

(2) A client shall be entitled to the benefit of any tax credit, economic incentive or other benefit arising as the result of the employment of covered employees of such client.

(3) Notwithstanding that the professional employer organization is the W-2 reporting employer, the client shall continue to qualify for such benefit, incentive or credit.

(4) If the grant or amount of any such credit, incentive or benefit is based on the number of employees, then each client shall be treated as employing

only those covered employees co-employed by the client. Covered employees working for other clients of the professional employer organization shall not be counted.

(5) Each professional employer organization shall provide, upon request by a client, an agency or department of this state or local governmental entity, employment information reasonably required by any agency or department of this state responsible for administration of any such tax credit, economic incentive or benefit and necessary to support any request, claim, application or other action by a client seeking any such tax credit, economic incentive or benefit.

(e) With respect to a bid, contract, purchase order or agreement entered into with this state or a local governmental entity, a client company's status or certification as a Tennessee small business, minority-owned business, Tennessee service-disabled veteran-owned business, disadvantaged business or woman-owned business, or as a historically underutilized business enterprise, is not affected because the client company has entered into an agreement with a professional employer organization or uses the services of a professional employer organization.

(f) In a co-employment relationship:

(1) The professional employer organization is entitled to enforce only such employer rights, and is subject to only those obligations, specifically allocated to the professional employer organization by the professional employer agreement or this chapter;

(2) The client is entitled to enforce:

(A) The rights, and obligated to provide and perform the employer obligations, allocated to the client by the professional employer agreement and this chapter; and

(B) Any right or obligation, not specifically allocated to the professional employer organization by the professional employer agreement or this chapter.

(g) A person is not a professional employer organization if the person:

(1)(A) Engages in a principal business activity that does not involve entering into professional employer arrangements;

(B) Does not hold itself out as a professional employer organization; and

(C) Shares employees with a commonly owned company within the meaning of §§ 414(b) and (c) of the Internal Revenue Code of 1986, as amended;

(2) Provides temporary help services; or

(3) Assumes responsibility through independent contractor arrangements for the product produced or service performed by such person or such person's agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under such arrangements.

62-43-106. Registration.

(a)(1) No person shall provide, advertise or otherwise hold itself out as providing professional employer services in this state unless such person is registered under this chapter.

(2) The department shall register an applicant meeting the requirements of this chapter.

(3)(A) If the department denies registration to an applicant, the department shall provide written notice that includes the reasons for the denial. The applicant shall have sixty (60) days from the date the notice was sent to:

(i) Submit proof to the department that the reasons for the denial have been cured; or

(ii) Request, in writing, reconsideration from the commissioner.

(B) The department shall provide written notice of its determination after considering the applicant's submission or request under subdivisions (a)(3)(A)(i) or (a)(3)(A)(ii) within thirty (30) days of receiving a submission or request.

(C)(i) After submission of a written request for consideration, an initial applicant shall have the right to appear before the commissioner or the commissioner's designee to present the applicant's request for reconsideration. If an applicant wishes to appear before the commissioner or the commissioner's designee to present their request for reconsideration, then the department shall provide written notice of its determination within thirty (30) days after such appearance; provided, that it is the commissioner's decision as to whether or not the defect or defects have been cured and whether or not to issue the registration.

(ii) An applicant who is not an initial applicant may request a hearing pursuant to § 4-5-320 before the commissioner makes a final determination to deny a renewal registration.

(4) Registration under this chapter shall remain in force for two (2) years from the date of issuance of registration.

(b) Each applicant for initial registration under this chapter shall submit to the department the following:

(1) Any name under which the applicant conducts business;

(2) The address of the principal place of business of the applicant and of each office it maintains in this state;

(3) The applicant's taxpayer or employer identification number;

(4) A list by state of each name under which the applicant has operated in the preceding five (5) years, including any alternative names, names of predecessors and, if known, successor business entities;

(5) A statement of ownership, which shall include the name, address and principal occupation of any person that, individually or acting in concert with one (1) or more other persons, owns or controls, directly or indirectly:

(A) Twenty percent (20%) or more of the equity interests of the applicant who is a publicly traded entity; or

(B) Ten percent (10%) or more of the equity interest of the applicant who is not a publicly traded entity;

(6) A statement of management, which shall include the name, address and principal occupation of any person who serves as president, chief executive officer or otherwise has the authority to act as a senior executive officer of the applicant;

(7) If the applicant or a person listed in subdivisions (b)(5) or (6) has in any jurisdiction:

(A) Been convicted of or entered a plea of nolo contendere to a crime relating to the operation of a professional employer organization;

(B) Been disciplined relating to the operation of a professional employer organization;

(C) Been convicted of or entered a plea of nolo contendere to an offense relating to bribery, dishonesty or fraud;

(D) Been convicted of or entered a plea of nolo contendere to any felony; or

(E) Been found liable for civil fraud;

(8) A financial statement setting forth the financial condition of the applicant; provided, that:

(A) The applicant shall submit the most recent audit of the applicant with its initial application;

(B) No financial statement submitted with the initial application shall be older than thirteen (13) months from the date of the report of the auditor;

(C) Within one hundred eighty (180) days of the close of an applicant's fiscal year, the applicant shall submit its most recent financial statement; provided, that an applicant may apply to the department for additional time to submit its financial statements, and such a request shall be accompanied by a letter from the auditors stating the reasons for the delay and the anticipated audit completion date;

(D) Financial statements submitted pursuant to this subdivision (b)(8) shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located; provided, that no resulting report of the auditor shall include:

(i) A qualification or disclaimer of opinion as to adherence to generally accepted accounting principles; or

(ii) A statement expressing substantial doubt about the ability of the applicant to continue as a going concern;

(E) An applicant may submit combined or consolidated audited financial statements to meet the requirements of this section;

(F) Notwithstanding subdivision (b)(8)(D)(i):

(i) An applicant that has not had sufficient operating history to have financial statements based upon at least twelve (12) months of operating history shall meet the financial capacity requirements in subsection (c) and submit financial statements reviewed by an independent certified public accountant; and

(ii) If an applicant is a subsidiary or is related to a variable interest entity, then the applicant may submit financial statements of the professional employer organization, professional employer organization group or the controlling organization;

(G)(i) In lieu of audited financial statements required by this subdivision (b)(8), an applicant or registrant with small operations may submit financial statements compiled by an independent certified public accountant.

(ii) The department shall consider an applicant or registrant a professional employer organization with small operations if the applicant or registrant submits to the department:

(a) A request to be deemed a PEO with small operations on a form prescribed by the department; and

(b) The most recent fourth quarter federal Form 941 of the applicant or registrant and any related person that offers professional employer services; provided, the aggregate annualized wages shall be

less than fifty million dollars ($50,000,000).

(iii) The form required in subdivision (b)(8)(G)(ii) shall be submitted to the department in any year the applicant or registrant seeks to be considered a professional employer organization with small operations.

(iv) In any year that an applicant or registrant with small operations does not meet the requirements to maintain such status, that applicant or registrant shall have six (6) months from the close of the current fiscal year of the applicant or registrant to either:

(a) Meet the requirements of this subdivision (b)(8)(G); or

(b) Submit audited financial statements;

(9) Evidence of workers' compensation coverage for covered employees in this state who are subject to the Tennessee Workers' Compensation Law, compiled in title 50, chapter 6 and as amended; and

(10) A written statement in regards to whether the applicant sponsors a self-insured health plan.

(c) Except as provided by subdivision (b)(8)(F)(i) and subsection (f), an applicant shall maintain either:

(1) Positive working capital at registration as reflected in the financial statements submitted to the department under subdivision (b)(8); or

(2) An applicant that does not have positive working capital may provide a bond, irrevocable letter of credit or securities with a minimum market value equaling the deficiency plus one hundred thousand dollars ($100,000) to the department; provided, that such instruments are to be held by an institution designated by the department, securing payment by the applicant of all taxes, wages, benefits or other entitlements due to or with respect to covered employees if the applicant does not make such payments when due.

(d)(1) No later than one hundred eighty (180) days after the applicant's fiscal year that is the second year of its current registration, the applicant may renew its registration by:

(A) Notifying the department of any changes in the information submitted under subsection (b); and

(B) Submitting the financial statement required under subdivision (b)(8) or the alternatives under subdivision (b)(8)(G) or subsection (c), as applicable.

(2) An applicant's existing registration shall remain in effect during the pendency of a renewal application.

(e) An applicant who is a professional employer organization group may satisfy the requirements in this section on a combined or consolidated basis; provided, that each member of the professional employer organization group guarantees the financial capacity obligations under this chapter of each other member of the professional employer organization group. In the case of a professional employer organization group that submits a combined or consolidated audited financial statement including entities that are not professional employer organizations or that are not in the professional employer organization group, the controlling entity of the professional employer organization group under the consolidated or combined statement shall guarantee the obligations of the professional employer organizations in the professional employer organization group.

(f)(1) An applicant is eligible for a limited registration under this chapter if such applicant:

(A) Submits a request for limited registration to the department;

(B) Is domiciled outside this state and is licensed or registered as a professional employer organization in another state;

(C) Does not maintain an office in this state or directly solicits clients located or domiciled within this state; and

(D) Does not have more than fifty (50) covered employees employed or domiciled in this state.

(2) Limited registration is valid for two (2) years and may be renewed.

(3) An applicant seeking limited registration under this subsection (f) shall provide the department with information and documentation necessary to show that the applicant qualifies for a limited registration.

(4) Subdivision (b)(8) and subsection (c) shall not apply to applicants for limited registration.

(g) Notwithstanding § 62-43-104, the department shall maintain a list of registrants that is readily available to the public by electronic or other means.

(h)(1) The department shall to the extent practical, permit the acceptance of electronic filings in conformance with the Uniform Electronic Transactions Act, compiled in title 47, chapter 10 and as amended, including applications, documents, reports and other filings required by this chapter.

(2) The department may provide for the acceptance of electronic filings and other assurance by an independent and qualified assurance organization approved by the department that provides satisfactory assurance of compliance acceptable to the department consistent with or in lieu of the requirements in subsections (b) and (c), and other requirements of this chapter or the rules promulgated pursuant to it.

(3) The department may permit an applicant to authorize such an approved assurance organization to act on the applicant's behalf in complying with the registration requirements of this chapter, including electronic filings of information and payment of registration fees; provided, that use of such an approved assurance organization shall be optional and not mandatory for an applicant.

(4) Nothing in this subsection (h) shall limit or change the department's authority to register or terminate registration of a registrant or applicant or to investigate or enforce this chapter.

(i) A registrant shall:

(1) Submit to the department, within ninety (90) days of the end of each calendar quarter, a statement by an independent certified public accountant or independent public accountant that for the quarter all applicable payroll taxes have been paid on a timely basis. Upon a showing of reasonable cause, one (1) thirty-day extension per quarter shall be granted by the department;

(2) Maintain and make available for the department's inspection any and all records concerning the registrant's conduct of business under its registration, which records shall be maintained for a period of three (3) years after termination of the professional employer agreement;

(3) Notify the department in writing of a change in the information submitted under subdivisions (b)(1)-(7) within thirty (30) days of such change;

(4) Post the registration issued under this chapter in a conspicuous place in the principal place of business and display in clear public view in each registrant's office in this state a notice stating that the professional employer organization is licensed and regulated by the department and that any

questions or complaints should be directed to the department; and

(5) Submit a written response to a written inquiry from the department within thirty (30) days of receiving the inquiry.

62-43-107. Fees.

(a) The department may establish the following fees by rule:

(1) Initial application fee;

(2) Initial registration fee, which includes a fee for limited registration, as applicable; and

(3) Renewal registration fee.

(b) No fee charged pursuant to this section shall exceed the amount reasonably necessary for the administration of this chapter. All fees collected by this state pursuant to this chapter shall be used by the department to implement and administer this chapter. The fees shall be deposited in a reserve for such purposes and the principal and interest of the reserve shall not revert on June 30 of any year.

(c) Fees under this section shall be:

(1) Remitted with the application or with the hearing request;

(2) Payable to this state; and

(3) Nonrefundable.

62-43-108. Basis of co-employment relationship.

(a)(1) The co-employment relationship shall be based on a written professional employer agreement between the client and the professional employer organization setting forth the responsibilities and duties of each co-employer. The professional employer agreement shall disclose to the client the services to be rendered, including charges and fees, the respective rights and obligations of the parties and provide that the professional employer organization:

(A) Reserves a right of direction and control over covered employees of the client; however, the client may retain sufficient direction and control over covered employees that is necessary to conduct the client's business and without which the client would be unable to conduct its business, discharge any fiduciary responsibility that it may have or comply with any applicable licensure, regulatory or statutory requirement of the client;

(B) Pursuant to this section, assumes responsibility for the payment of wages of its covered employees, its payroll-related taxes and its employee benefits from its own accounts without regard to payments by the client to the professional employer organization; and

(C) Retains a right to hire, terminate and discipline covered employees.

(2) A professional employer organization shall give written notice of the general nature of the relationship between the professional employer organization and the client to each covered employee.

(3) A professional employer organization shall be deemed an employer of its covered employees and shall pay wages to covered employees; withhold, collect, report and remit payroll-related and unemployment taxes; and, to the extent the professional employer organization has assumed responsibility in the professional employer agreement, make payments for employee benefits for covered employees. As used in this section, the term "wages" does not include any obligation between a client and a covered employee for

payments beyond or in addition to the covered employee's salary, draw, or regular rate of pay, such as bonuses, commissions, severance pay, deferred compensation, profit sharing or vacation, sick or other paid time off pay, unless the professional employer organization has expressly agreed to assume liability for such payments in the professional employer agreement.

(b) Except to the extent otherwise expressly provided by the applicable professional employer agreement:

(1) A client shall be solely responsible for the quality, adequacy or safety of the goods or services produced or sold in client's business;

(2) A client shall be solely responsible for directing, supervising, training and controlling the work of the covered employees with respect to the business activities of the client and solely responsible for the acts, errors or omissions of the covered employees with regard to such activities;

(3) A client shall not be liable for the acts, errors, or omissions of a professional employer organization, or of any covered employee of the client and a professional employer organization when such covered employee is acting under the express direction and control of the professional employer organization;

(4) A professional employer organization shall not be liable for the acts, errors, or omissions of a client or of any covered employee of the client when such covered employee is acting under the express direction and control of the client;

(5) Nothing in this subsection (b) shall serve to limit any contractual liability or obligation specifically provided in the written professional employer agreement; and

(6) A covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability which is not covered by workers' compensation, or liquor liability insurance carried by the professional employer organization unless the covered employees are included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract or bond.

(c)(1) A professional employer organization may sponsor and maintain employee benefit and welfare plans for the benefit of its covered employees. Any of those plans that are plans of insurance shall comply with the applicable provisions of the insurance laws of this state. The self-insured plans developed under this section are not subject to premium taxes. The department may promulgate rules regulating self-insured plans under this section.

(2) An applicant or registrant shall disclose to the department, to each client company and to all eligible covered employees the following information relating to any benefit plan of insurance provided for the benefit of its covered employees:

(A) The type of coverage and a copy of the insurance policy or certificate or summary plan description;

(B) The identity of each insurer for each type of coverage;

(C) The amount of benefits for each type of coverage and to whom or on whose behalf benefits will be paid; and

(D) The policy limits on each insurance policy.

(3) Nothing in this subsection (c) shall require a professional employer organization to provide comparable benefits to covered employees located at

different clients.

(4) The sale of professional employer services in conformance with this chapter shall not constitute the sale of insurance within the meaning of applicable state law.

62-43-109. Professional employer organization deemed employer.

(a) A professional employer organization shall be deemed an employer of its covered employees and shall pay state unemployment premiums as required by the Tennessee Employment Security Law, compiled in title 50, chapter 7 and as amended.

(b) A professional employer organization shall keep separate records and submit separate state unemployment insurance wage and premium reports with payments pursuant to title 50, chapter 7, part 4 and as amended, to report the covered employees of each client by using the client's state employer account number as provided for in subsection (c) and using the premium rate based on the aggregate reserve ratio of the professional employer organization as provided in subsection (d).

(c)(1) For each professional employer organization having one (1) or more covered employees with a client in this state, such professional employer organization shall file an application with the chief administrative officer of the division of employment security of the department of labor and workforce development for an account number for each client having one (1) or more covered employees in this state; provided, the application shall include:

(A) The aggregate state number assigned to the professional employer organization, along with the name, address and phone number of the professional employer organization;

(B) The name, physical address and phone number of the client;

(C) The name of the client's owner, partners, corporate officers, limited liability company members and managers, if board managed, or general partners;

(D) The federal identification number of the client;

(E) The signature of the client's principal or attorney in fact;

(F) A brief description of the client's major business activity, listing any products produced or sold, or service provided; and

(G) Any other information which may be required by the department of labor and workforce development.

(2) The professional employer organization shall notify the department of labor and workforce development in writing of any additions or deletions of clients during the quarter in which such changes occur.

(3) All information furnished to the department of labor and workforce development under this subsection (c) shall be treated as confidential information as provided in § 50-7-701 and as amended.

(d) A professional employer organization shall determine the aggregate reserve ratio of a professional employer organization by using one (1) of the following two (2) methods:

(1)(A) Total all the state unemployment premiums paid on both the state taxable wages of a professional employer organization and on the state taxable wages of all the clients of such professional employer organization for all years during which the professional employer organization has been subject to title 50, chapter 7 and all the years each individual client has been a client of the professional employer organization as of the compu-

tation date, as provided in § 50-7-403(k)(1) and as amended;

(B) Subtract therefrom the total of all benefits charged to the aggregate reserve account of the professional employer organization for all years, including the benefits charged resulting from benefits paid to covered employees of each individual client for all the years each client has been a client of the professional employer organization as of the computation date;

(C) Divide the difference determined in subdivision (d)(1)(A)(ii) by the average taxable payroll for the three (3) most recently completed calendar years, ending on the computation date, of the professional employer organization, plus the average taxable payroll of each client for that portion of the three-year period during which such client was a client of the professional employer organization;

(D) The resulting quotient shall be the aggregate reserve ratio of the professional employer organization beginning the July 1 following the computation date; and

(E) The employer premium rate for the professional employer organization shall be determined by matching its aggregate reserve ratio to the appropriate premium rate table pursuant to title 50, chapter 7 and as amended; or

(2) In cases where the aggregate reserve account of a professional employer organization has not been chargeable with benefits for thirty-six (36) consecutive months ending on the computation date, the professional employer organization shall be assigned the new employer premium rate based upon the reserve ratio of the professional employer organization's industrial classification as determined pursuant to § 50-7-403(b)(1)(B) and as amended.

(e) A professional employer organization shall not be considered a successor employer, within the meaning of title 50, chapter 7 and as amended, to any client and shall not acquire the experience history of any client with whom there is not any common ownership, management or control. The client, upon terminating its relationship with the professional employer organization, shall not be considered a successor employer, within the meaning of title 50, chapter 7 and as amended, to the professional employer organization and shall not acquire any portion of the experience history of the aggregate reserve account of the professional employer organization with whom there is not any common ownership, management or control. For purposes of this subsection (e), the existence of professional employer agreement, without other evidence of common control, shall not constitute common ownership, management or control.

(f)(1) A client shall be jointly and severally liable with a professional employer organization for state unemployment premiums for each of the client's covered employees; provided, however, that a client shall be relieved of joint and several liability for state unemployment premiums if the professional employer organization has posted a corporate surety bond, as described in this subsection (f), with the administrator of the division of employment security of the Tennessee department of labor and workforce development in the amount of one hundred thousand dollars ($100,000) for so long as the bond remains in force.

(2) The corporate surety bond shall be in form and content approved by the department of labor and workforce development as evidenced by the department's written consent thereto, and shall be issued by an organization

currently licensed and authorized to issue the bond in this state.

(3) The bond shall be conditioned for the benefit of the department of labor and workforce development, who may enforce the bond to collect unpaid unemployment insurance premiums, interest and penalties owed by the professional employer organization pursuant to title 50, chapter 7, part 4 and as amended.

(4) Any surety is required to provide the administrator of the division of employment security of the department of labor and workforce development sixty (60) days' notice of cancellation of the bond.

(5) If after three (3) full calendar years, throughout which a professional employer organization has paid all unemployment insurance premiums due in a timely manner and has a positive unemployment insurance reserve account, the bond may be reduced to an amount no less than thirty-five thousand dollars ($35,000) as determined and approved by the administrator conditioned upon the total taxable payroll for the previous calendar year and other factors deemed relevant by the administrator.

(6) Any reduced bond shall be subject to review on no less than an annual basis by the administrator, who may adjust the required amount of the bond as is deemed appropriate.

62-43-110. Duties of professional employer organization.

(a) A professional employer organization shall:

(1) Ensure that its Tennessee covered employees are covered by workers' compensation insurance provided in accordance with title 50 and the applicable Tennessee insurance laws and regulations as amended;

(2) Notify the department and its clients within ten (10) days of any notice of cancellation of its workers' compensation coverage; and

(3) Notify the department and its workers' compensation carrier, if applicable, of the termination of the professional employer organization's relationship with any client with covered employees in this state.

(b) The professional employer organization shall be entitled along with the client to the exclusivity of the remedy under both the workers' compensation and employer's liability provisions of a workers' compensation policy or plan that either party has secured.

62-43-111. Collecting and assessing sales tax.

(a) Covered employees whose services are subject to sales tax shall be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the covered employee. Nothing contained in this chapter shall relieve a client of any sales tax liability with respect to its goods or services.

(b) Any tax or assessment imposed upon professional employer services or any business license or other fee which is based upon "gross receipts" shall allow a deduction from the gross income or receipts of the business derived from performing professional employer services that is equal to that portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement.

(c) Any tax assessed or assessment or mandated expenditure on a per capita

or per employee basis shall be assessed against the client for covered employees and against the professional employer organization for its employees who are not covered employees co-employed with a client. Benefits or monetary consideration that meet the requirements of mandates imposed on a client and that are received by covered employees through the professional employer organization either through payroll or through benefit plans sponsored by the professional employer organization shall be credited against the client's obligation to fulfill such mandates.

(d) In the case of a tax or an assessment imposed or calculated upon the basis of total payroll, the professional employer organization shall be eligible to apply any small business allowance or exemption available to the client for the covered employees for purpose of computing the tax.

(e) Except to the extent provided otherwise in the professional employer agreement with a client, a professional employer organization is not liable for the general debts, obligations, loss of profits, business goodwill or other consequential special or incidental damages of a client with which it has entered into a professional employer agreement.

(f) This section applies to this state and local governmental entities.

62-43-112. Violations — Grounds for action

(a) No person shall:

(1) Submit false information to the department;

(2) Make a materially false entry in the records of a professional employer organization; or

(3) Violate this chapter.

(b) The following constitute grounds for which the department may take action under subsection (c) against a person subject to this chapter:

(1) Being convicted of an offence or disciplined as described in § 62-43-106(b)(7);

(2) Committing a prohibited act under subsection (a);

(3) Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular, statement, advertisement, sales presentation, omission or comparison that misrepresents the benefits, advantages, conditions or terms of any professional employer services or is otherwise untrue, deceptive or misleading;

(4) Entering into any agreement to commit or, by any concerted action, committing any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of employee leasing; or

(5) Permitting to be used or using, permitting to be filed or filing, any name, trade name, fictitious name or business identity which is the same as, similar to or may be confused with the name, trade name, fictitious name or business identity of an existing licensee, any governmental agency or any nonprofit organization.

(c) For violating subsection (a) or when grounds exist under subsection (b), the department may:

(1) Issue an order:

(A) To comply with the chapter; or

(B) To cease and desist;

(2) Impose an administrative penalty not to exceed one thousand dollars

($1,000) for each set of facts constituting a separate violation;

(3) Restrict or suspend a registration;

(4) Place the registrant on probation for a period of time not to exceed the next full term of registration where the registrant is subject to the terms and conditions determined by the department;

(5) Deny an application or revoke a registration; or

(6) Enjoin or restrain by bringing an action in the chancery court of Davidson County.

(d) If the department finds that a violation has occurred or that grounds exist to take an action under subsection (c), the department shall consider the following when determining what action to take:

(1) Whether the person committing the act or failing to act did so:

(A) Knowingly;

(B) Recklessly;

(C) Repeatedly; or

(D) Relying on information of another person or was subject to an illegal act;

(2) The materiality and severity of the violation; and

(3) The person's actions to cure the violation.

(e) If the action under subdivision (c)(5) is taken by the department:

(1) The department shall notify:

(A) The department of labor and workforce development; and

(B) Each client of which the department has knowledge of the department's action; and

(2) The person with a revoked registration shall:

(A) Immediately cease soliciting clients for professional employer services;

(B) Not execute additional professional employer agreements or enter into any arrangement wherein it agrees to provide professional employer services;

(C) Wind down the operations of the professional employer organization so that the professional employer organization will no longer be in operation sixty (60) days after the effective date of the revocation; and

(D) Return the registration that was revoked to the department.

(f)(1) The department may make or cause to be made investigations, audits or reviews within or without this state as the department deems necessary:

(A) To determine whether a person has violated or is in danger of violating this chapter, including any regulation or rule promulgated under this chapter; or

(B) To aid in the enforcement of this chapter.

(2) All material compiled by the department in any investigation, audit or review under this section shall be confidential and exempt from public disclosure pursuant to title 10, chapter 7 and as amended, until ten (10) days after a finding of probable cause resulting from the investigation, audit or review; however, financial information, including, but not limited to, client lists, obtained by the department in connection with investigations, audits or reviews shall be kept confidential and exempt from the public disclosure requirements of title 10, chapter 7.

(3) The department may impose upon the person found to have violated this chapter the cost of investigation and prosecution, including reasonable attorney fees.

(g) The Uniform Administrative Procedures Act, compiled in title 4, chapter

5 and as amended, governs all matters and procedures regarding the hearing and judicial review of any contested case arising under this chapter.

62-43-113. Severability.

The provisions of this chapter are severable. If any provision of this chapter or application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application.

62-43-114. Rules of the former Tennessee Employee Leasing Act remain in effect — Effect of current licenses — Recent appointments to advisory board.

(a) Rules promulgated pursuant to the Tennessee Employee Leasing Act, that are in effect prior to May 21, 2012, shall remain in effect unless such rules are in conflict with this chapter or until modified or repealed by the department.

(b) A plan, adopted by a study committee establishing criteria for a staff leasing company sponsoring and maintaining a plan for self-insurance for health benefits on or before January 1, 1998, shall be deemed a rule of the department and shall remain in effect unless such rule is in conflict with this chapter or until modified or repealed by the department.

(c) A current license in effect at May 21, 2012, shall remain in effect until one hundred eighty (180) days after the close of the licensee's current fiscal year.

(d) The most recent appointments to the advisory board under the Tennessee Employee Leasing Act shall be considered appointments to the advisory council unless the governor appoints a successor to an expired term.

62-43-115. [Repealed.]

62-43-116. [Repealed.]

62-43-117. [Repealed.]

62-43-118. [Repealed.]

62-43-119. [Repealed.]

62-43-120. [Repealed.]

62-43-121. [Repealed.]

62-76-101. Notice to applicants of where to obtain applicable statutes, rules and regulations. [Effective until January 1, 2013. See the version effective on January 1, 2013.]

(a) Each board, commission, agency or other governmental entity created pursuant to this title shall notify each applicant for a license, certification or registration from the board, commission, agency or other governmental entity where to obtain a copy of any statutes, rules, policies and guidelines setting

forth the prerequisites for the license, certification or registration and shall, upon request, make available to the applicant a copy of the statutes, rules, policies and guidelines.

(b) Each board, commission, agency or other governmental entity created pursuant to this title shall notify each holder of a license, certification or registration from the board, commission, agency or other governmental entity of changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines, upon the issuance and upon each renewal of the holder's license, certification or registration.

(c) Each board, commission, agency or other governmental entity created pursuant to this title shall establish and maintain a link or links on the entity's web site to the statutes, rules, policies and guidelines that are implemented or enforced by the entity and that impact an applicant for, or a holder of, a license, certification or registration from the entity.

62-76-101. Notice to applicants and holders of licenses, certifications, and registrations — Web site links to statutes, rules, policies and guidelines — Electronic notices. [Effective on January 1, 2013. See the version effective until January 1, 2013.]

(a) Each board, commission, agency or other governmental entity created pursuant to this title shall notify each applicant for a license, certification or registration from the board, commission, agency or other governmental entity where to obtain a copy of any statutes, rules, policies and guidelines setting forth the prerequisites for the license, certification or registration and shall, upon request, make available to the applicant a copy of the statutes, rules, policies and guidelines.

(b) Each board, commission, agency or other governmental entity created pursuant to this title shall notify each holder of a license, certification or registration from the board, commission, agency or other governmental entity of changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines, upon the issuance and upon each renewal of the holder's license, certification or registration.

(c) Each board, commission, agency or other governmental entity created pursuant to this title shall establish and maintain a link or links on the entity's web site to the statutes, rules, policies and guidelines that are implemented or enforced by the entity and that impact an applicant for, or a holder of, a license, certification or registration from the entity.

(d)(1) Each board, commission, agency or other governmental entity created pursuant to this title shall allow each holder of a license, certification or registration from the board, commission, agency or other governmental entity to have the option of being notified by electronic mail of:

(A) Renewals of the holder's license, certification or registration;

(B) Any fee increases;

(C) Any changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines; and

(D) Any meeting where changes in rules or fees are on the agenda. For purposes of this subdivision (d)(1)(D), the electronic notice shall be at least forty-five (45) days in advance of the meeting, unless it is an emergency meeting then the notice shall be sent as soon as is practicable.

(2) Each board, commission, agency or other governmental entity created pursuant to this title shall notify each holder of a license, certification or registration of the availability of receiving electronic notices pursuant to subdivision (d)(1) upon issuance or renewal of the holder's license, certification or registration.

63-1-109. Display of license or certificate of registration — Terminology used in signs and written material.

(a) Every person licensed or registered to practice one of the healing arts, or any branch thereof, as delineated in this section shall keep an original or copy of the person's license or certificate of registration displayed in the office or place in which the person practices, in a conspicuous place, and shall place and keep placed in a conspicuous place at the entrance of the person's office, a sign in intelligible lettering and not less than one inch (1″) in height, containing the name of such person immediately followed by the recognized abbreviation indicating the professional degree, if any, held by such person, and containing immediately below the person's name, in equal size lettering, the word or words:

(1) "Chiropractor," "chiropractic physician" or "doctor of chiropractic" for practitioners of chiropractic;

(2) "Dentist," "doctor of dental surgery" or "doctor of dental medicine" for practitioners of dentistry;

(3) "Medical doctor," "physician," "medical doctor and surgeon," "medicine" or "surgeon," as applicable, for practitioners of medicine and surgery;

(4) "Optometrist," "doctor of optometry" or "optometric physician" for practitioners of optometry;

(5) "Osteopathic physician," "osteopathic physician and surgeon," "doctor of osteopathic medicine" or "doctor of osteopathy" for practitioners of osteopathy;

(6) "Podiatrist," "podiatric physician," "doctor of podiatry," "doctor of podiatric medicine" or "doctor of podiatric medicine and surgery" for practitioners of podiatry;

(7) "Advanced practice nurse," "nurse practitioner," "nurse anesthetist," "nurse midwife" or "clinical nurse specialist," as applicable, for those practicing advanced practice nursing;

(8) "Physician assistant" or "orthopedic physician assistant," as applicable, for those licensed as a physician assistant;

(9) "Psychologist" or "doctor of psychology" for practitioners of psychology;

(10) "Acupuncturist" for practitioners of acupuncture; and

(11) "Certified professional midwife" for those practitioners of midwifery.

(b) Any recognized specialist in any branch of the healing arts, which special field is recognized or approved by the appropriate board licensing that profession, may substitute the specialist designation for the words indicated in subsection (a).

(c) A healthcare practitioner listed in subsection (a) shall also affirmatively communicate the practitioner's specific licensure, as defined in this section by

one (1) of the following methods:

(1) The healthcare practitioner shall wear a photo identification name tag during all patient encounters that shall include a recent photograph of the licensee, the licensee's full name, and the type of license. The name tag shall be of sufficient size and be worn in a conspicuous manner so as to be visible and apparent; or

(2) After January 1, 2012, the healthcare practitioner shall communicate to a patient the practitioner's full name and type of license in writing at the patient's initial office visit.

(d) For purposes of subsection (c), the type of license shall enunciate one (1) or more of the words listed in subsection (a).

(e) A healthcare practitioner who practices in more than one (1) office shall be required to comply with the requirements in each practice setting.

(f) A healthcare practitioner who does not have an office setting can satisfy the requirements of this section by meeting the conditions set forth in subsection (c).

(g) Healthcare practitioners working in facilities licensed pursuant to title 68, chapter 11, or working in facilities licensed pursuant to title 33, chapter 2, are not subject to the requirements of this section.

(h) Healthcare practitioners working in no-patient care settings and who have no direct patient care interactions are not subject to the requirements of this section.

(i) Any healthcare practitioner who violates this section is guilty of unprofessional conduct and shall be subject to disciplinary action in accordance with the appropriate licensure provisions governing the respective healthcare practitioner. A violation of this section shall not create a private right of action by a patient.

(j) Notwithstanding the imposition of any other penalty, the board which has licensed a particular healthcare practitioner may seek injunctive or other relief as appropriate against that practitioner or any entity for a violation of this section.

(k) A healthcare practitioner, who provides information regarding healthcare services on an Internet web site that is directly controlled or administered by the healthcare practitioner or the practitioner's agent, shall prominently display on the Internet web site the practitioner's full name and type of license using one (1) or more of the words listed in subsection (a).

63-1-139. Rules and regulations. [Effective until January 1, 2013. See the version effective on January 1, 2013.]

(a) Each board, commission, committee, agency or other governmental entity created pursuant to this title, title 68, chapter 24, and title 68, chapter 140, part 3 shall notify each applicant for a license, certification or registration from such board, commission, committee, agency or other governmental entity where to obtain a copy of any statutes, rules, policies and guidelines setting forth the prerequisites for such license, certification or registration and shall, upon request, make available to the applicant a copy of such statutes, rules, policies and guidelines.

(b) Each board, commission, committee, agency or other governmental entity created pursuant to this title, title 68, chapter 24 and title 68, chapter 140, part 3 shall notify each holder of a license, certification or registration

from the board, commission, committee, agency or other governmental entity of changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines, upon the issuance and upon each renewal of the holder's license, certification or registration.

(c) Each board, commission, committee, agency or other governmental entity created pursuant to this title, title 68, chapter 24 and title 68, chapter 140, part 3 shall establish and maintain a link or links on the entity's web site to the statutes, rules, policies and guidelines that are implemented or enforced by the entity and that impact an applicant for, or a holder of, a license, certification or registration from the entity.

63-1-139. Rules and regulations. [Effective on January 1, 2013. See the version effective until January 1, 2013.]

(a) Each board, commission, committee, agency or other governmental entity created pursuant to this title, title 68, chapter 24, and title 68, chapter 140, part 3 shall notify each applicant for a license, certification or registration from such board, commission, committee, agency or other governmental entity where to obtain a copy of any statutes, rules, policies and guidelines setting forth the prerequisites for such license, certification or registration and shall, upon request, make available to the applicant a copy of such statutes, rules, policies and guidelines.

(b) Each board, commission, committee, agency or other governmental entity created pursuant to this title, title 68, chapter 24 and title 68, chapter 140, part 3 shall notify each holder of a license, certification or registration from the board, commission, committee, agency or other governmental entity of changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines, upon the issuance and upon each renewal of the holder's license, certification or registration.

(c) Each board, commission, committee, agency or other governmental entity created pursuant to this title, title 68, chapter 24 and title 68, chapter 140, part 3 shall establish and maintain a link or links on the entity's web site to the statutes, rules, policies and guidelines that are implemented or enforced by the entity and that impact an applicant for, or a holder of, a license, certification or registration from the entity.

(d)(1) Each board, commission, committee, agency or other governmental entity created pursuant to this title, title 68, chapter 24 and title 68, chapter 140, part 3 shall allow each holder of a license, certification or registration from the board, commission, committee, agency or other governmental entity to have the option of being notified by electronic mail of:

(A) Renewals of the holder's license, certification or registration;

(B) Any fee increases;

(C) Any changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines; and

(D) Any meeting where changes in rules or fees are on the agenda. For purposes of this subdivision (d)(1)(D), the electronic notice shall be at least forty-five (45) days in advance of the meeting, unless it is an emergency meeting then the notice shall be sent as soon as is practicable.

(2) Each board, commission, agency or other governmental entity created pursuant to this title, title 68, chapter 24 and title 68, chapter 140, part 3 shall notify each holder of a license, certification or registration of the availability of receiving electronic notices pursuant to subdivision (d)(1) upon issuance or renewal of the holder's license, certification or registration.

63-1-148. Covenants not to compete signed by healthcare providers.

(a)(1) A restriction on the right of an employed or contracted healthcare provider to practice the healthcare provider's profession upon termination or conclusion of the employment or contractual relationship shall be deemed reasonable if:

(A) The restriction is set forth in an employment agreement or other written document signed by the healthcare provider and the employing or contracting entity; and

(B) The duration of the restriction is two (2) years or less and either:

(i) The maximum allowable geographic restriction is the greater of:

(a) A ten-mile radius from the primary practice site of the healthcare provider while employed or contracted; or

(b) The county in which the primary practice of the healthcare provider while employed or contracted is located; or

(ii) There is no geographic restriction, but the healthcare provider is restricted from practicing the healthcare provider's profession at any facility at which the employing or contracting entity provided services while the healthcare provider was employed or contracted with the employing or contracting entity.

(2) [Deleted by 2011 amendment, effective January 1, 2012.]

(b) An agreement entered into in conjunction with the purchase or sale of a healthcare provider's practice, or all or substantially all of the assets of the healthcare provider's practice, may restrict the healthcare provider's right to practice the healthcare provider's profession; provided, that the duration of the restriction and the allowable area of the restriction are reasonable under the circumstances. There shall be a rebuttable presumption that the duration and area of restriction agreed upon by the parties in such an agreement are reasonable.

(c) This section shall apply to healthcare providers licensed under chapters 3, 4, 5, 6, 8, 9 and 11 of this title.

(d) This section shall not apply to physicians who specialize in the practice of emergency medicine.

63-1-301. Part definitions.

For purposes of this part, unless the context requires otherwise:

(1) "Advanced practice nurse" means any person licensed under chapter 7 of this title, who meets the requirements of § 63-7-126;

(2) "Department" means the department of health;

(3) "Medical doctor" means any person licensed under chapter 6 of this title;

(4) "Osteopathic physician" means any person licensed under chapter 9 of this title;

(5) "Pain management clinic" means a privately-owned facility in which a majority of the facility's patients, seen by any or all of its medical doctors,

osteopathic physicians, advanced practice nurses with certificates of fitness to prescribe, or physician assistants, are provided pain management services by being prescribed or dispensed, opioids, benzodiazepines, barbiturates, or carisoprodol, but not suboxone, for more than ninety (90) days in a twelve-month period; and

(6) "Physician assistant" means any person licensed under chapter 19 of this title.

63-1-302. Exemptions from part.

This part does not apply to:

(1) A medical or dental school, an osteopathic medical school, a nursing school, a physician assistant program or an outpatient clinic associated with any of the foregoing schools or programs, including, but not limited to, clinics that have an agreement to train residents by members of that clinic who are appointed as adjunct faculty of the school or program;

(2) A hospital as defined in § 68-11-201, including any outpatient facility or clinic of a hospital if such outpatient facility or clinic is regulated under title 68;

(3) Hospice services as defined in § 68-11-201;

(4) A nursing home as defined in § 68-11-201;

(5) A facility maintained or operated by this state; or

(6) A hospital or clinic maintained or operated by the federal government.

63-1-306. Medical director — Operation certificate — Disciplinary action.

(a) A pain management clinic, as defined in this part, must have a medical director who is a physician that practices in this state under an unrestricted and unencumbered license issued pursuant to § 63-6-201 or § 63-9-104.

(b) In the event that the medical director, for whatever reason, no longer meets the requirements of this part, the pain management clinic must notify the department, within ten (10) business days, of the identity of another physician who meets the requirements of this part and will act as medical director. A change of majority ownership of a certified pain management clinic requires the submission of a new application for a certificate. Failure to notify the department within ten (10) business days may be the basis for a summary suspension of the clinic's certification.

(c) Every pain management clinic shall submit an application to the department, on a form prescribed by the department, for a certificate to operate the clinic.

(d) Each clinic location shall be certified separately regardless of whether the clinic is operated under the same business name, ownership or management as another clinic.

(e) The department shall issue a certificate if the department finds that the pain management clinic meets the requirements of this part and that the fee required by the department has been paid.

(f)(1) If the department finds that a pain management clinic which was issued a certificate no longer meets any requirement of this part, including, but not limited to, any violation of any rule promulgated by the department pursuant to this part, the department may impose lawful disciplinary action against the pain management clinic, including, but not limited to, the

revocation or suspension of its certificate, and the imposition of a civil penalty of up to one thousand dollars ($1,000) per day for each day of continued violation. The pain management clinic shall be entitled to a hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Further, the department has the discretion to lift the suspension of a certificate when the clinic demonstrates compliance to the department.

(2) Any board which assesses any discipline or penalty against a provider that it licenses for a violation of rules promulgated under this part shall inform the department of any penalty or discipline imposed on such a provider for a violation of rules promulgated under this part within thirty (30) days of imposing the discipline or penalty, and the department may consider such discipline or penalty as a basis for disciplinary action against the pain management clinic pursuant to this subsection (f).

(g) The clinic shall post the certificate in a conspicuous location so as to be clearly visible to patients.

(h) The department is authorized to charge a fee for the issuance of a certificate.

(i) The department and each board identified in § 63-1-303(b) shall post on its web site an announcement of the requirement that a pain management clinic obtain a certificate from the department, and each board identified in § 63-1-303(b) shall include information about such requirement in a routine communication sent by each board to its licensees.

(j) A pain management clinic operating on or before January 1, 2012, may continue to operate as long as an application for certification is timely filed on or before October 1, 2012. This provision shall apply retroactively to applications for certification filed since January 1, 2012.

(k) The department shall have the authority to adopt rules, including emergency rules if deemed necessary, to implement this part for which the department has responsibility.

63-1-309. Disclosures — Restrictions on ownership — Documentation of controlled substances dispensed or prescribed — Required medical director hours. [Effective until January 1, 2013, and after July 1, 2016. See the version effective from January 1, 2013, until July 1, 2016.]

(a)(1) In the application for a certificate or within ten (10) days of the occurrence of any of the events listed in subdivisions (a)(1)(A)-(C), a pain management clinic shall disclose whether any person who owns, co-owns or operates, or otherwise provides services in the clinic, an employee of the clinic, or a person with whom the clinic contracts for services:

(A) Has ever been denied, by any jurisdiction, a license under which the person may prescribe, dispense, administer, supply or sell a controlled substance;

(B) Has ever held a license issued by any jurisdiction, under which the person may prescribe, dispense, administer, supply or sell a controlled substance that has been restricted; or

(C) Has ever been subject to disciplinary action by any licensing entity for conduct that was the result of inappropriately prescribing, dispensing, administering, supplying or selling a controlled substance.

(2) The department may deny a certificate or renewal of a certificate to a pain management clinic under any of the circumstances listed in subdivision (a)(1). An applicant who is denied a certificate or a renewal of a certificate may appeal the decision in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) A pain management clinic may not be owned wholly or partly by a person who has been convicted of, pled nolo contendere to, or received deferred adjudication for:

(1) An offense that constitutes a felony; or

(2) An offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance or controlled substance analogue as defined in § 39-17-402.

(c) If any practitioner providing services at a pain management clinic dispenses or prescribes more than a seventy-two-hour dose of controlled substances for the treatment of chronic nonmalignant pain, the practitioner must document in the patient's record the reason for prescribing or dispensing that quantity.

(d) A medical director shall be on-site at least twenty percent (20%) of the clinic's weekly total number of operating hours.

63-1-309. Disclosures — Restrictions on ownership — Documentation of controlled substances dispensed or prescribed — Required medical director hours. [Effective from January 1, 2013 until July 1, 2016. See the version effective until January 1, 2013, and on July 1, 2016.]

(a)(1) In the application for a certificate or within ten (10) days of the occurrence of any of the events listed in subdivisions (a)(1)(A)-(C), a pain management clinic shall disclose whether any person who owns, co-owns or operates, or otherwise provides services in the clinic, an employee of the clinic, or a person with whom the clinic contracts for services:

(A) Has ever been denied, by any jurisdiction, a license under which the person may prescribe, dispense, administer, supply or sell a controlled substance;

(B) Has ever held a license issued by any jurisdiction, under which the person may prescribe, dispense, administer, supply or sell a controlled substance that has been restricted; or

(C) Has ever been subject to disciplinary action by any licensing entity for conduct that was the result of inappropriately prescribing, dispensing, administering, supplying or selling a controlled substance.

(2) The department may deny a certificate or renewal of a certificate to a pain management clinic under any of the circumstances listed in subdivision (a)(1). An applicant who is denied a certificate or a renewal of a certificate may appeal the decision in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) A pain management clinic may not be owned wholly or partly by a person who has been convicted of, pled nolo contendere to, or received deferred adjudication for:

(1) An offense that constitutes a felony; or

(2) An offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance or

controlled substance analogue as defined in § 39-17-402.

(c) If any practitioner providing services at a pain management clinic dispenses or prescribes controlled substances for the treatment of chronic nonmalignant pain, the practitioner must document in the patient's record the reason for prescribing or dispensing that quantity.

(d) A medical director shall be on-site at least twenty percent (20%) of the clinic's weekly total number of operating hours.

63-1-310. Payments.

(a) A pain management clinic may accept only a check, credit card or money order in payment for services provided at the clinic, except as provided in subsection (b).

(b) A payment may be made in cash for a co-pay, coinsurance or deductible when the remainder of the charge for the services will be submitted to the patient's insurance plan for reimbursement.

63-1-311. Violations — Penalties.

(a) A violation of this part, or a rule adopted under this part, is grounds for disciplinary action against a practitioner providing services at a pain management clinic certified under this part by the board which licensed that practitioner.

(b) A practitioner who provides pain management services at an uncertified pain management clinic is subject to an administrative penalty of one thousand dollars ($1,000) per day, imposed by the board which licensed that practitioner, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Before such a penalty may be assessed by the board, the board shall give at least thirty (30) days notice to the practitioner of the alleged violation of this part.

63-1-312. Voluntary inactivation of certificate.

(a) If, prior to the renewal of a certificate pursuant to § 63-1-308, a registered pain management clinic wishes to voluntarily inactivate its certificate, it shall file notification with the department. The notification shall state the date on which the pain management clinic did or will cease to operate as a pain management clinic (the inactive date). In no case shall a certificate be considered inactivated on any date on which the clinic operated or will operate as a pain management clinic. No fees will be refunded as a result of the filing of an inactivity notice.

(b) The department may charge a fee to process inactivity notices received from pain management clinics.

(c) This section shall not be used to circumvent enforcement or inspection activities conferred by this part to the department or a board for any alleged offense occurring during the time the pain clinic was registered or was required to be registered as a pain management clinic.

(d) If the pain management clinic thereafter wishes to register, it shall submit a new application, pay the requisite registration fee and meet such other reasonable requirements as deemed necessary by the department as if an original application was filed.

63-3-119. Suspension or revocation of license — Enforcement.

(a) The board has the duty and authority to suspend for a specified time, within the discretion of the board or to revoke any license to practice podiatry or to otherwise discipline any licensee or refuse to grant any certificate of fitness whenever the licensee or applicant is found guilty of any of the following acts or offenses:

(1) Fraud in procuring a license or certificate;

(2) Conviction of a felony, conviction of any offense under state or federal drug laws or conviction of any offense involving moral turpitude;

(3) Habitual intoxication or personal misuse of any drugs;

(4) Immoral, unethical, unprofessional or dishonorable conduct;

(5) Solicitation by agents or persons or profiting by the acts of those representing themselves to be agents of the licensee or the certificate holder;

(6) Division of fees or agreeing to split or divide fees received for professional services with any person for bringing or referring a patient;

(7) Professional connection or association with any person, firm or corporation in any manner in an effort to avoid and circumvent the provisions of this chapter or lending one's name to another for the illegal practice of podiatry by such person;

(8) Violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any lawful order of the board issued pursuant thereto, or any criminal statute of the state of Tennessee;

(9) Giving of testimonials, directly or indirectly, concerning the supposed virtue of secret therapeutic agents or proprietary preparations, such as remedies, vaccines or other articles or materials that are offered to the public, claiming radical cure or prevention of disease by their use;

(10) Any other unprofessional or unethical conduct that may be specified by the board from time to time by means of rules and regulations duly published and promulgated by the board or the violation of any provision of this chapter;

(11) Making false statements or representations or being guilty of fraud or deceit in the practice of podiatry;

(12) Invasion of a field of practice in which the licensee is not licensed to practice or is not within the limits of the licensee's respective callings;

(13) Dispensing, prescribing or otherwise distributing any controlled substance or any other drug not in the course of professional practice or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease;

(14) Dispensing, prescribing or otherwise distributing any controlled substance, controlled substance analogue or any other drug to any person in violation of any law of the state or of the United States;

(15) Practicing podiatry under any trade name or a name designating a given location or the name of another podiatrist or any name other than that which appears on the practitioner's license or using any title other than "podiatrist"; provided, that "foot specialist" may be used as an explanatory term of the title "podiatrist" and not alone or as a substitute for the title "podiatrist";

(16) Willful violation of the rules and regulations that may be promulgated by the board of podiatric medical examiners to regulate advertising by

practitioners who are under the jurisdiction of the board;

(17) Making or signing in one's professional capacity any certificate that is known to be false at the time one makes or signs such certificate;

(18) Engaging in the practice of podiatry when mentally or physically unable to safely do so; or

(19) Gross health care liability or a pattern of continued or repeated health care liability, ignorance, negligence or incompetence in the course of the practice of podiatry.

(b) The board of podiatric medical examiners may adopt rules and regulations to regulate the nature, manner, content and extent of advertising by practitioners who are under the jurisdiction of the board. All methods must be allowed such as: newspaper, radio and television.

(c) For purposes of enforcement of this section, the board shall, upon probable cause, have authority to compel an applicant or licensee to submit to a mental and or physical examination by a designated committee of at least three (3) practicing physicians, including a psychiatrist where a question of mental condition may be involved.

(1) The applicant or licensee shall have the right to have an independent medical practitioner present during such examination and to have an independent physical or mental examination, the report of which shall be filed with the board for consideration.

(2) The committee will submit a report of its findings to the board, which will then hold a hearing as provided in § 63-3-120.

63-3-204. Powers of the board.

(a) The board shall have the power to:

(1) Deny, restrict or condition a license;

(2) Permanently or temporarily withhold issuance of a license;

(3) Suspend, limit or restrict a previously issued license, for such time and in such manner as the board may determine;

(4) Reprimand, suspend, revoke or take such other disciplinary action in relation to an applicant or license holder as the board, in its discretion, may deem proper; or

(5) Permanently revoke a license.

(b) The grounds upon which the board shall exercise such power include, but are not limited to, circumstances in which the person:

(1) Is guilty of fraud or deceit in the procurement or holding of the license;

(2) Has been convicted of a felony in a court of competent jurisdiction, either within or outside of this state, unless the conviction has been reversed and the holder of the license discharged or acquitted or if the holder has been pardoned with full restoration of civil rights, in which case the license shall be restored;

(3) Is or has been afflicted with any medical problem, disability or addiction that, in the opinion of the board, would impair professional competence;

(4) Has knowingly aided and abetted a person who is not a license holder or is not otherwise authorized pursuant to this chapter to perform the duties of a license holder under this chapter;

(5) Has undertaken or engaged in any practice beyond the scope of duties permitted a license holder under this chapter;

(6) Has impersonated a license holder or former license holder or is under an assumed name performing the duties authorized to be performed only by a licensed person;

(7) Has been found guilty of violations of a code of ethics, which the board shall establish by regulation;

(8) Is or has been found guilty of incompetence or negligence in performance as a license holder;

(9) Acts in a manner unprofessional, dishonorable or unethical or has been found guilty of unprofessional, dishonorable or unethical conduct;

(10) Violates, or attempts to violate, directly or indirectly, or assists or aids in the violation of, or conspires to violate, any provision of this chapter or any lawful order of the board issued pursuant to this chapter or any of the rules or regulations promulgated pursuant to this chapter, or any criminal statute of the state;

(11) Is habitually intoxicated or engages in personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, controlled substance analogues or other drugs or stimulants in such manner as to adversely affect the person's ability to practice; or

(12) Has received disciplinary action from another state or territory of the United States that has licensed or certified the person to practice in that state for any acts or omissions that would constitute grounds for discipline of a person licensed in this state. A certified copy of the initial or final order, or other equivalent document memorializing the disciplinary action from the disciplining state or territory, shall constitute prima facie evidence of violation of this section and shall be sufficient grounds upon which to deny, restrict or condition licensure or renewal or to discipline a person licensed in this state.

63-4-114. Denial, suspension or revocation of license or certificate.

The board has the duty and authority to suspend for a specified time, within the discretion of the board, or to revoke any license to practice chiropractic, or to otherwise discipline any licensee or refuse to grant any certificate of fitness, whenever the licensee or applicant is found guilty of any of the following acts or offenses:

(1) Fraud in procuring a license or certificate;

(2) Conviction of a felony for violations of any law of the state or of the United States;

(3) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, controlled substance analogues or other drugs or stimulants in such manner as to adversely affect the person's ability to practice chiropractic;

(4) Immoral, unethical, unprofessional or dishonorable conduct;

(5) Solicitation, in person or by live telephone contact, by a licensee, or by an agent, servant, employee, or independent contractor of a licensee, of a patient with whom a licensee has no family or prior professional relationship; however, this shall not prohibit solicitation by targeted direct mail advertising or other forms of written, radio, or television advertising; provided, that the advertising does not involve coercion, duress or harassment and is not false, deceptive or misleading;

(6) Division of fees or agreeing to split or divide fees received for

professional services with any person for bringing or referring a patient;

(7) Professional connection or association with any person, firm or corporation in any manner in an effort to avoid and circumvent the provisions of this chapter or lending one's name to another for the illegal practice of chiropractic by such person;

(8) Rebating or offering to rebate to an insured any payment by the insured's third-party payor to the licensee for services or treatments rendered under the insured's policy;

(9) Submitting to any third-party payor a claim for a service or treatment at an inflated fee or charge or a greater fee or charge than the usual fee the licensee charges for that service or treatment when the service or treatment is rendered without third-party reimbursement;

(10) Submitting to any third-party payor a claim for a service or treatment at a fee or charge in an amount greater than that advertised for such service or treatment at the time of the rendering of the service or treatment that is the subject matter of the claim;

(11) Knowingly or purposefully incorrectly reporting services rendered, reporting incorrect treatment dates or reporting charges for services not rendered for the purpose of obtaining payment from a third-party payor;

(12) Any other unprofessional or unethical conduct that may be specified by the board from time to time by means of rules and regulations duly published and promulgated by the board or the violation of any provision of this chapter;

(13) The advertising of chiropractic business in which untrue or misleading statements are made or causing the publication or circulation of fraudulent advertising relative to any disease, human ailment or condition;

(14) Invasion of a field of practice in which the licensee is not licensed to practice or is not within the limits of the licensee's respective callings as determined by the board;

(15) Gross health care liability or a pattern of continued or repeated health care liability, ignorance, negligence or incompetence in the course of chiropractic practice; and

(16) Making false, fraudulent, misleading, extravagant or grossly improbable claims or statements as to the efficacy or value of the science or practice of chiropractic.

63-5-103. Appointment of members — Term of office — Removal.

(a)(1) The dentist members of the board may be appointed by the governor from lists of qualified nominees submitted by interested dentist groups including, but not limited to, the Tennessee Dental Association. No person is eligible for appointment as a dentist member of the board unless such person has been an actual and bona fide resident and a legally licensed practicing dentist of this state for a period of five (5) years or more immediately preceding such appointment.

(2) The dental hygienist members may be appointed by the governor from lists of qualified nominees submitted by interested dental hygienist groups including, but not limited to, the Tennessee Dental Hygienists Association. No person is eligible for appointment as a dental hygienist member of the board unless that person has been an actual and bona fide resident and a legally licensed practicing dental hygienist of this state for a period of five (5)

years or more immediately preceding such appointment.

(3) The dental assistant member may be appointed by the governor from lists of qualified nominees submitted by interested dental assistant groups including, but not limited to, the Tennessee Dental Assistants' Association. No person is eligible for appointment as a dental assistant member of the board unless that person has been an actual and bona fide resident and has been a legally registered and practicing dental assistant of this state for a period of five (5) years or more immediately preceding such appointment.

(b) The governor shall consult with interested dental groups, including, but not limited to, the Tennessee Dental Association, the Tennessee Dental Hygienists Association and the Tennessee Dental Assistants' Association to determine qualified persons to fill the positions as provided in subsection (a).

(c) The terms of members of the board are three (3) years, with the terms staggered so that the terms of no more than three (3) members expire each year. No member is eligible to serve on the board for more than three (3) consecutive full terms, but any person thus ineligible shall thereafter be eligible for nomination and appointment to the board, as provided in this section, after three (3) years have elapsed since that person's previous service on the board.

(d)(1) The governor shall make appointments to the board not later than one (1) month after the expiration of the term of office of any member and such or further delay in the appointment shall be deducted from the term of the appointment. All vacancies occurring in the board by such reasons as death or resignation shall be filled by the governor for the unexpired term from lists submitted to the governor as provided in this section. If such vacancy is not filled within thirty (30) days by the governor, the board itself shall fill such vacancy for the unexpired term. No person is eligible to appointment to the board who is regularly employed by or is a member of the governing body of any dental school, college or dental department of any university or any school of dental hygiene or dental assisting or with any dental supply business or dental laboratory.

(2) In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(e) Members of the board shall continue in office until the expiration of the terms for which they were respectively appointed and until such time as their successors have been duly appointed.

(f)(1) A member of the board may be removed upon one (1) or more of the following grounds:

(A) The refusal or inability for any reason of a board member to perform that member's duties as a member of the board in an efficient, responsible and professional manner;

(B) The misuse of office by a member of the board to obtain personal, pecuniary or material gain or advantage for that member or another through such office; or

(C) The violation of this chapter or of any of the rules and regulations of the board hereafter properly promulgated.

(2) The proceedings for such removal shall be in accordance with title 8, chapter 47.

63-5-108. Practice of dentistry and dental hygiene defined.

(a) Dentistry is defined as the evaluation, diagnosis, prevention and/or treatment, by nonsurgical, surgical or related procedures, of diseases, disorders and/or conditions of the oral cavity, maxillofacial area and/or the adjacent and associated structures and their impact on the human body, provided by a dentist within the scope of such dentist's education, training, and experience, in accordance with the ethics of the profession and applicable law.

(b) Any person is deemed to be practicing dentistry who, either gratuitously or for a salary, fee, money or other remuneration, paid or to be paid, directly to the operator or to any person or agency:

(1) Diagnoses, prescribes for or treats any disease, pain, deformity, deficiency, injury, disorder and condition of the oral cavity, maxillofacial area and the adjacent and associated structures and their impact on the human body. Such diagnosis and treatment may include the use of a complete or limited physical evaluation of patients by a board eligible or board certified oral and maxillofacial surgeon or a resident in an approved oral and maxillofacial surgery program practicing in a hospital setting;

(2) Extracts human teeth;

(3) Repairs or fills cavities in human teeth;

(4) Corrects malformations of human teeth or of the jaws;

(5) Performs any oral and maxillofacial surgery;

(6) Subject to the provisions of subsection (d), takes an impression of the human tooth, teeth or jaws, leading to either:

(A) The fabrication of a model upon which will be constructed a replacement of natural teeth by artificial substitutes; or

(B) The fabrication of a cosmetic metal apparatus to be worn in the human mouth, whether or not the apparatus features silver, gold or platinum caps, jeweled inlays or any other cosmetic features;

(7) Furnishes, supplies, constructs, alters, reproduces or repairs any prosthetic denture, bridge, crown, appliance or any other structure to be used or worn in the human mouth as a substitute for natural teeth, except on the written work order of a licensed and registered dentist;

(8) Places or adjusts such appliance or structure in the human mouth;

(9) Delivers the same to any person other than the licensed and registered dentist upon whose written work order the work was performed;

(10) Offers to the public by any method to furnish, supply, construct, reproduce, reline, repair or otherwise process any prosthetic denture, bridge, appliance or other structure to be worn in the human mouth;

(11) Gives interpretations of dental radiographs;

(12) Administers an anesthetic, except for a topical anesthetic in connection with a dental operation; provided, however, that a duly licensed dentist may delegate the administration of local anesthetic to dental hygienists who possess a permit to do so issued by the board. The board shall establish the qualifications, criteria and curricula required for issuance of permits to administer local anesthetic, by infiltration or by block, to duly licensed dental hygienists;

(13) Uses the words, "Dentist," "Dental Surgeon," "Oral Surgeon," "Oral and Maxillofacial Surgeon," or letters "D.D.S.," "D.M.D.," or any other words, letters, title, or descriptive matter that in any way represents the person as being able to diagnose, treat, prescribe or operate for any disease, pain,

deformity, deficiency, injury, disorder, and condition of the oral cavity, maxillofacial area and the adjacent and associated structures and their impact on the human body;

(14) States, or permits to be stated by any means or method whatsoever, that the person can or will attempt to perform dental operations or services or to render diagnosis in connection therewith; or

(15) Is the operator of a place where dental operations or dental services are performed.

(c)(1) A dental hygienist is an individual who has graduated from a dental hygiene program accredited by the American Dental Association's Commission on Dental Accreditation (CODA) and is licensed under this chapter to practice dental hygiene.

(2) The practice of dental hygiene means the performance of preventive, educational, and therapeutic services including the removal of all hard and soft deposits and the stain from the human teeth to the depth of the gingival sulcus, polishing natural and restored surfaces of teeth, performing clinical examination of teeth and surrounding tissues for diagnosis by the dentist, and performing other procedures that may be delegated by the dentist, under the supervision of a licensed dentist.

(3) No person shall practice dental hygiene in a manner that is separate or independent from a supervising dentist, or establish or maintain an office or a practice that is primarily devoted to the provision of dental hygiene services.

(4) A dental hygienist shall perform, under direct supervision only, root planing, subgingival curettage, administering nitrous oxide, and local anesthesia.

(5) Under general supervision a dental hygienist may provide to patients, for not more than fifteen (15) consecutive business days, all other dental hygiene services not otherwise limited to direct supervision by this chapter or rules adopted by the board, if all of the following requirements are met:

(A) The dental hygienist has at least one (1) year, full-time, or an equivalent amount of experience practicing dental hygiene;

(B) The dental hygienist complies with written protocols for emergencies that the supervising dentist establishes;

(C) The supervising dentist examined the patient not more than eleven (11) months prior to the date the dental hygienist provides the dental hygiene services;

(D) The dental hygienist provides dental hygiene services to the patient in accordance with a written treatment plan developed by the supervising dentist for the patient; and

(E) The patient is notified in advance of the appointment that the supervising dentist will be absent from the location and that the dental hygienist cannot diagnose the patient's dental health care status.

(d) Any duly licensed and registered dentist may assign to duly licensed and registered dental hygienists, registered dental assistants and/or practical dental assistants, as defined by the board in rules and regulations, any tasks or procedures to be performed in the dentist's office for which a licensed and registered dentist exercises direct supervision and full responsibility, except those procedures requiring the professional judgment or skill of a dentist; provided, that duties involving the removal of hard and soft deposits by scaling or curretage from the surfaces of human teeth are assigned only to duly

licensed and registered dental hygienists. The board has the authority to permit registered dental assistants to apply sealants to and to polish human teeth, and the board has the discretion to establish criteria and curricula as necessary to ensure that such registered dental assistants are qualified to apply sealants and perform polishing. For eligibility to perform polishing, passage of a clinical and didactic examination is required. The board is authorized to permit licensed and registered dental hygienists and registered dental assistants to insert, pack, carve and finish amalgam and intracoronal nonmetallic restorations and take final impressions for fixed and removable prosthetic appliances, under the direct supervision and full responsibility of a licensed dentist, and the board shall establish such criteria and curricula as it determines in its discretion are necessary or appropriate to ensure that such hygienists and assistants are qualified to perform such procedures. Tasks and procedures assignable to licensed and registered dental hygienists shall include those enumerated in the board's regulations as of January 1, 1990, and such other additional tasks and procedures as the board may deem appropriate in the future. Procedures requiring professional judgment or skill not assignable to such dental hygienists and dental assistants include the following:

(1) Diagnosis and treatment planning; oral surgery, the cutting of hard and/or soft tissues, excluding any cutting of such tissues involved in subgingival scaling, root planing and gingival curettage, and any intra-oral procedures that would affect the function and/or efficiency of an appliance that, when worn by the patient, would come in direct contact with hard or soft tissue and that could result in tissue irritation or injury;

(2) The placing of permanent fillings or restorations in or on teeth except as provided in this subsection (d); and

(3) Administration of a general or local anesthetic, except for a topical anesthetic in connection with a dental operation; provided, however, that dental hygienists who possess a permit issued pursuant to subdivision (b)(12) may administer a local anesthetic but only under the direct supervision of a licensed and registered dentist who is physically present at the same office location and time and in accordance with rules and regulations of the board.

(e) Notwithstanding any provision of law to the contrary, a dental hygienist may administer nitrous oxide analgesia if directed by a dentist to do so, in accordance with rules and regulations of the board of dentistry, under the direct supervision of a licensed and registered dentist. Patients who have been administered nitrous oxide shall be monitored appropriately.

(f) A licensed dentist may not allow, under general supervision, more than three (3) dental hygienists to work at any one (1) time.

(g) Any duly licensed and registered dentist who uses general anesthesia, deep sedation or conscious sedation in that dentist's practice, at a level to be determined by the board, must secure a permit from the board by meeting the standards as set in rules and regulations and by paying fees set by the board. Such permit is subject to renewal at intervals upon payment of a fee as set by the board in rules and regulations. Any dental facility in which general anesthesia, deep sedation or conscious sedation is administered by such dentist is subject to standards as may be specified in rules and regulations of the board, including, but not limited to, a facility permit.

63-5-115. Employment of and practice by hygienists and assistants.

(a) A duly licensed and registered dentist may employ licensed and registered dental hygienists, registered dental assistants and practical dental assistants. Such licensed and registered dental hygienists may practice as authorized in this section or § 63-5-108 only in the office of and under the direct and/or general supervision of a licensed and registered dentist, in authorized public health programs or at other locations otherwise authorized by this chapter. Such registered and/or practical dental assistants may practice as authorized in this section or § 63-5-108 only in the office of and under the direct supervision of a licensed and registered dentist except in authorized public health programs. No provisions in this chapter shall be construed as authorizing any licensed and registered dental hygienists, registered dental assistants or practical dental assistants to practice as such except as provided in this section.

(b) Definitions.

(1) **Direct Supervision.** As used in this chapter regarding supervision of licensed and registered dental hygienists or registered dental assistants, "direct supervision" means the continuous presence of a supervising dentist within the physical confines of the dental office when licensed and registered dental hygienists or registered dental assistants perform lawfully assigned duties and functions;

(2) **General Supervision.** As used in this chapter, "general supervision" is defined as those instances when the dentist is not present in the dental office or treatment facility while procedures are being performed by the dental hygienist, but the dentist has personally diagnosed the condition to be treated, has personally authorized the procedures being performed and will evaluate the performance of the dental hygienist.

(c) Licensed and registered dental hygienists and registered dental assistants are specifically permitted to participate unsupervised in educational functions involving organized groups or health care institutions regarding preventive oral health care. Dental hygienists are permitted to participate in health screenings and similar activities; provided, that no remuneration is given by the organized group to any hygienist or the hygienist's employer for participating in these activities.

(d)(1) Settings in which licensed and registered hygienists may engage in the provision of preventive dental care under the general supervision of a dentist through written protocol include nursing homes, skilled care facilities, nonprofit clinics and public health programs. Dental hygienists licensed and registered pursuant to this chapter are specifically permitted to render such preventive services as authorized in § 63-5-108 or by regulation of the board, as prescribed by the supervising dentist under a written protocol. Dental hygienists rendering such services shall be under the general supervision of a licensed dentist as specified in a written protocol between the supervising dentist and the hygienist which must be submitted in advance to the board. No dentist may enter into a written protocol with more than three (3) dental hygienists at any one time nor may any hygienist be engaged in a written protocol with more than three (3) dentists at any one time. The supervising dentist must process all patient billings. Each written protocol will be valid for a period of two (2) years at which time it must be renewed through resubmission to the board. Should a dentist cease to be the

employer/supervisor of a dental hygienist where a written protocol is in force and on file with the board, the dentist must notify the board within ten (10) working days by certified mail, return receipt requested or electronic mail that the written protocol is no longer in force.

(2) Licensed and registered dental hygienists working under written protocol, in addition to those requirements enumerated under the general supervision as authorized by § 63-5-108(c)(5), must have actively practiced as a licensed dental hygienist for at least five (5) years and have practiced two thousand (2,000) hours in the preceding five (5) years or taught dental hygiene courses for two (2) of the proceeding three (3) years in a dental hygiene program accredited by the American Dental Association's Commission on Dental Accreditation and completed six (6) hours of public health continuing education within the past two (2) years; provided, that, after satisfying the requirement of this subsection (d), in subsequent years the hygienist may work on a part-time basis.

(3) Each written protocol, required for off-site practice under general supervision, shall be submitted to the board by certified mail, return receipt requested and shall include at a minimum:

(A) The name, address, telephone number and license number of the employer (supervising) dentist;

(B) The name, address, telephone number and license number of the dental hygienist;

(C) The name, address, telephone number and other pertinent identification from all locations where the dental hygiene services are to be performed; and

(D) A statement signed by the dentist that the dentist and the dental hygienist that meets all minimum standards for general supervision as well as those required for practice under a written protocol as stipulated in this section and § 63-5-108.

(4) The board will receive each written protocol submitted and keep those on file which meet the minimum requirements enumerated in subdivision (d)(3). Those received by the board and determined not to be complete shall be returned to the submitting dentist within thirty (30) days of receipt with a request for the additional information required. The dentist may then resubmit an amended written protocol to the board.

63-5-124. Grounds for denial, suspension or revocation of licenses — Examinations — Investigations of reports — Civil penalties — Costs — Oaths and subpoenas.

(a) The board has the power and it is its duty to deny, suspend, revoke or otherwise restrict or condition the license of, assess a civil penalty for each separate violation against or otherwise lawfully discipline the holder of any license to practice dentistry or any certificate to practice a dental specialty, any license to practice dental hygiene or practice as a registered dental assistant, whenever the licensee or certificate holder is guilty of violating any of the provisions of this chapter or of the following acts or offenses:

(1) Unprofessional, dishonorable or unethical conduct;

(2) A violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any lawful order of the board issued pursuant thereto or any

criminal statute of the state of Tennessee;

(3) Making false or misleading statements or representations, being guilty of fraud or deceit in obtaining admission to practice or in being guilty of fraud or deceit in the practice of dentistry or dental hygiene or as a registered dental assistant;

(4) Gross health care liability or a pattern of continued or repeated health care liability, ignorance, negligence or incompetence in the course of professional practice;

(5) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, controlled substance analogues or other drugs or stimulants, such as, but not limited to, nitrous oxide sedation, in such manner as to adversely affect the person's ability to practice dentistry, dental hygiene or as a registered dental assistant;

(6) Conviction of a felony, conviction of any offense under state or federal drug laws or conviction of any offense involving moral turpitude;

(7) Making or signing in one's professional capacity any certificate that is known to be false at the time one makes or signs such certificate;

(8) Dispensing, prescribing or otherwise distributing any controlled substance or any other drug not in the course of professional practice, or not in good faith to relieve pain and suffering or not to cure an ailment, physical infirmity or disease;

(9) Engaging in the practice of dentistry, dental hygiene or as a registered dental assistant when mentally or physically unable to safely do so;

(10) Solicitation by agents or persons of professional patronage or profiting by the acts of those representing themselves to be agents of the licensee or the certificate holder;

(11) Division of fees or agreeing to split or divide fees received for professional services with any person for bringing or referring a patient;

(12) Conducting the practice of dentistry so as to permit directly or indirectly an unlicensed person to perform services or work that under the provisions of this chapter can be done legally only by persons licensed to practice dentistry or dental hygiene or as a registered dental assistant;

(13) Professional connection or association with any person, firm or corporation in any manner in an effort to avoid and circumvent the provisions of this chapter, or lending one's name to another for the illegal practice of dentistry by such person;

(14) Claiming to the public to be a specialist in some particular branch of dentistry without being certified by the board as such;

(15) Payment or acceptance of commissions in any form or manner on fees for professional services, references, consultations, pathological reports, radiographs, prescriptions or on other services or articles supplied to patients;

(16) Having work done by or obtaining work from a dental laboratory without issuing a written work order as provided in § 63-5-108;

(17) Giving of testimonials, directly or indirectly, concerning the supposed virtue of secret therapeutic agents or proprietary preparations, such as remedies, vaccines, mouth washes, dentifrices or other articles or materials that are offered to the public, claiming radical cure or prevention of diseases by their use;

(18) Any other unprofessional or unethical conduct that may be specified by the board by the means of rules and regulations duly published and

promulgated by the board or the violation of any provision of this chapter;

(19)(A) A dentist shall not, on behalf of that dentist, that dentist's partner or associate or any other dentist affiliated with that dentist or that dentist's facility, use or participate in the use of any form of public communication containing a false, fraudulent, misleading or deceptive statement or claim;

(B) Moreover, the fact of promulgation of any forms of public communication covered or prohibited in this section or the rules and regulations promulgated hereunder shall be prima facie evidence that the dentist named either used or permitted the use of the public communication;

(C) A licensed dentist is authorized to use personal professional cards, appointment cards, announcements and related materials and appropriate signs and listings indicating the dentist's office and specialty in accordance with rules and regulations promulgated by the board;

(20) Dispensing, prescribing or otherwise distributing any controlled substance, controlled substance analogue or other drug to any person in violation of any law of the state or of the United States; or

(21) Disciplinary action against a person licensed to practice dentistry or dental hygiene or registered to practice as a dental assistant by another state or territory of the United States for any acts or omissions that would constitute grounds for discipline of a person licensed or registered in this state. A certified copy of the initial or final order, or other equivalent document memorializing the disciplinary action from the disciplining state or territory, shall constitute prima facie evidence of a violation of this section and shall be sufficient grounds upon which to deny, restrict or condition licensure/registration or renewal and/or discipline a person licensed in this state.

(b)(1) In enforcing this section, the board shall, upon probable cause, have the authority to compel an applicant or license or certificate holder to submit to a mental and/or physical examination, by a designated committee of at least three (3) practicing physicians, including a psychiatrist where a question of mental condition is involved. The applicant or license or certificate holder may have an independent physical or mental examination, which examination report shall be filed with the board for consideration. The committee will submit a report of its findings to the board for use in any hearing that may thereafter ensue.

(2) The board may, upon finding of probable cause, require a dentist, dental hygienist or dental assistant to complete drug and/or alcohol treatment through a program designated by, or contracting with, the board. The board in its discretion is authorized to share information, interviews, reports, statements, memoranda or other data at the program director's request. Information shared between the board and the program director shall be deemed not to violate laws requiring confidentiality of investigations or peer review records protected under § 63-5-131.

(c) The board, on its own motion, may investigate any report indicating that a dentist, dental hygienist or dental assistant is or may be in violation of the provisions of this chapter. Any dentist, dental hygienist, dental assistant, dental or dental related society or association, or any other person who in good faith reports to the board any information that a dentist, dental hygienist or dental assistant is or may be in violation of any provisions of this chapter, is not subject to suit for civil damages as a result thereof.

(d) In assessing a civil penalty pursuant to this chapter, the board should

consider the following:

(1) The harm or potential harm of the violation to the public health and welfare;

(2) The extent to which the public was exposed to such harm or potential harm;

(3) The rate, duration and severity of the violations;

(4) The value of the penalty as a deterrent to future violations;

(5) Attempts by the violator to mitigate the harm to the public; and

(6) Such other specific criteria as the board may wish to establish by duly promulgated regulation.

(e) The board, pursuant to duly promulgated rules, may, whenever a final order is issued after a disciplinary contested case hearing that contains findings that a licensee or other person has violated any provision of this chapter, assess the costs directly related to the prosecution of the case, including investigatory costs, against the licensee or person.

(f)(1) Any elected officer of the board or any duly appointed or elected chair has the authority to administer oaths to witnesses. Upon probable cause being established, the board, by a vote of two thirds (⅔) of the members to which the board is entitled, may issue subpoenas for the attendance of witnesses and the production of documents and records.

(2) Service of a subpoena issued by the board shall be made by the sheriff of the county of residence of the licensee or person upon whom the subpoena is served.

(3)(A) A licensee or person served by subpoena shall have thirty (30) days to request in writing a hearing before the board for the sole purpose of making a special appearance to quash or modify the subpoena. The subpoena for attendance of the person or the production of books and records shall be stayed until the board votes upon the request to quash or modify the subpoena. A majority vote of the members to which the board is entitled is required to quash or modify a subpoena.

(B) A motion to appeal from a decision by the board regarding a request to quash or modify a subpoena shall be made to the chancery court in Davidson County within fifteen (15) days of such decision.

(4) If any witness fails or refuses to obey a subpoena issued by it, the board is authorized to make application to any court of record in this state within the jurisdiction of which the witness is found or resides; and the court shall have power to attach the body of the witness and compel the witness to appear before the board and give testimony or produce books, records or papers as ordered. Any failure to obey the court order may be punished by the court issuing the order as a civil contempt.

(5) Each witness who appears before the board by order of the board shall receive for attendance the compensation provided by law for attendance of witnesses in a court of record, which shall be paid from the funds of the board in the same manner as all other expenses of the board are paid.

63-6-102. Appointment — Terms — Vacancies — Removal.

(a)(1)(A) The members of the board shall be appointed by the governor for terms of five (5) years' duration, which terms shall commence on May 1 and expire on April 30, five (5) years thereafter. All board members subsequently added to the board after May 2, 1993, shall be appointed so

as to serve staggered terms of from one (1) to four (4) years, with one (1) member appointed to a one-year term, the second member appointed to a two-year term, the third member appointed to a three-year term, and the fourth member appointed to serve a four-year term.

(B) The members appointed by the governor in 1988 shall be appointed as follows:

(i) One (1) member shall be appointed to a one-year term expiring on April 30, 1989;

(ii) One (1) member shall be appointed to a two-year term expiring on April 30, 1990;

(iii) One (1) member shall be appointed to a three-year term expiring on April 30, 1991;

(iv) One (1) member shall be appointed to a four-year term expiring on April 30, 1992; and

(v) One (1) member shall be appointed to a five-year term expiring on April 30, 1993.

(2) Members of the board shall, upon expiration of their terms of office, be eligible for reappointment to successive terms.

(3) In making appointments to the board, the governor shall give due regard to the geographic distribution of the membership of the board to assure, to the extent feasible, that all grand divisions of the state are adequately represented on the board.

(4) Board members may be selected from lists of qualified persons submitted to the governor by interested medical groups including, but not limited to, the Tennessee Medical Association. The governor shall consult with such groups to determine qualified persons to fill the positions on the board.

(b) All vacancies occurring on the board by reason of death or resignation shall be filled by the board itself for the unexpired term.

(c) In making appointments to the board, the governor shall, to the extent feasible, strive to ensure the full twelve-member board is composed of at least one (1) person who is sixty (60) years of age or older, one (1) person who is female and one (1) person who is an African-American.

(d) When a board member is absent without excuse from the board business portion of three (3) meetings within any twelve-month period of time, that member shall, after formal action by the board, be removed from office by the governor. A new member shall be appointed by the governor to serve out the remaining term of the member being replaced. An absence shall be deemed excused if it is caused by a health problem or condition verified in writing by a physician or by an accident or similar unforeseen tragedy or event immediately prior to or during the board meeting.

63-6-204. "Practice of medicine" defined.

(a)(1) Any person shall be regarded as practicing medicine within the meaning of this chapter who treats, or professes to diagnose, treat, operates on or prescribes for any physical ailment or any physical injury to or deformity of another.

(2) Nothing in this section shall be construed to apply to the administration of domestic or family remedies in cases of emergency or to the laws regulating the practice of dentistry.

(3) This chapter shall not apply to surgeons of the United States army, navy, air force or marine hospital service, or to any registered physician or surgeon of other states when called in consultation by a registered physician of this state, or to midwives, veterinary surgeons, osteopathic physicians or chiropractors not giving or using medicine in their practice or to opticians, optometrists, chiropodists or Christian Scientists.

(b) Nothing in this chapter shall be so construed as to prohibit service rendered by a physician assistant, registered nurse or a licensed practical nurse if such service is rendered under the supervision, control and responsibility of a licensed physician or to prohibit the provision of anesthesiology services in licensed health care facilities by a dentist licensed in the state of Tennessee who completed a residency program in anesthesiology at an accredited medical school in years 1963 through 1977.

(c) Nothing in this section shall be construed to prohibit a person, corporation, organization or other entity from employing a physician to treat only the entity's full-time, part-time and contract employees, the entity's retirees and dependents of the entity's employees or retirees; provided, however, that the employment relationship between the physician and the person, corporation, organization or other entity is evidenced by a written contract, job description or documentation, containing language which does not restrict the physician from exercising independent medical judgment in diagnosing and treating patients. Under this section, such person, corporation, organization or other entity shall not be deemed to be engaged in the practice of medicine.

(d) Nothing in this section shall be construed to prohibit a community mental health center as defined in § 33-1-101 from employing a psychiatrist; provided, that the employment relationship between the psychiatrist and the community mental health center is evidenced by a written contract, job description or documentation, containing language which does not restrict the psychiatrist from exercising independent medical judgment in diagnosing and treating patients.

(e)(1) Nothing in this section shall be construed to prohibit a federally qualified health center from employing a physician; provided, that the employment relationship between the physician and the federally qualified health center is evidenced by a written contract, job description or documentation, containing language that does not restrict the physician from exercising independent medical judgment in diagnosing and treating patients.

(2) For the purposes of this subsection (e), the term "federally qualified health center" means such entities as defined under §§ 1861(aa) and 1905 of the federal Social Security Act, codified in 42 U.S.C. §§ 1395x and 1396d, respectively.

(f)(1) Notwithstanding the provisions of this section, nothing shall prohibit a hospital licensed under title 68, chapter 11, or title 33, chapter 2, or an affiliate of a hospital, from employing licensed physicians other than radiologists, anesthesiologists, pathologists, or emergency physicians, to provide medical services, subject to the following conditions:

(A) Employing entities shall not restrict or interfere with medically appropriate diagnostic or treatment decisions;

(B) Employing entities shall not restrict or interfere with physician referral decisions unless:

(i) The physician so employed has agreed in writing to the specific

restrictions at the time that the contract is executed;

(ii) The restriction does not, in the reasonable medical judgment of the physician, adversely affect the health or welfare of the patient; and

(iii) The employing entity discloses any such restrictions to the patient; and

(C) In the event that there is any dispute relating to subdivision (f)(1)(A) or (B), the employing entity shall have the burden of proof.

(2) Employing entities shall not restrict the employed physician's right to practice medicine upon the termination or conclusion of the employment relationship, except as follows:

(A) For physicians from whom the employing entity has made a bona fide purchase of the physician's practice, the employing entity may impose reasonable geographic restrictions upon the employed physician's practice; provided, that:

(i) The maximum allowable area of the restriction is the greater of:

(a) The county in which the primary practice site is located; or

(b) A ten (10) mile radius from the primary practice site;

(ii) The duration of the restriction is two (2) years or less, unless a longer period, not to exceed five (5) years, is determined by mutual agreement of the parties in writing to be necessary to comply with federal statutes, rules, regulations, or IRS revenue rulings or private letter rulings;

(iii) Any employment agreement or medical practice sale agreement restricting the right of a physician to practice shall:

(a) Allow the physician to buy back the physician's medical practice for the original purchase price of the practice, or, in the alternative, if the parties agree in writing, at a price not to exceed the fair market value of the practice at the time of the buy back, at which time any such restriction on practice shall be void; and

(b) Not require that the physician give more than thirty-day's notice to exercise the repurchase option; provided, that this provision shall not otherwise affect the contract termination notice requirements; and

(iv) If the buy back provision is dependent upon a determination of the fair market value of the practice, the contract shall specify the method of determining fair market value by independent appraisal, in the event that the parties cannot agree as to the fair market value. The contract shall also include the following language:

"In the event that the employing entity and the physician cannot agree upon the fair market value of the practice within ten (10) business days of the physician's notice of intent to repurchase the practice, the physician may remove any contractual restrictions upon the physician's practice by tendering to the employing entity the amount that was paid to the physician for the practice. The employing entity or the physician may then seek a determination of the fair market value of the practice by the independent appraisal method specified by contract."

(B) For physicians employed independently of a bona fide practice purchase, employing entities shall not restrict the employed physician's right to practice medicine upon the termination or conclusion of the employment relationship, except as allowed by § 63-1-148 or any succes-

sor section.

(C) [Deleted by 2011 amendment.]

(3) Notwithstanding the foregoing, in the event that the employment contract with a physician employed independently of a bona fide practice purchase is terminated by the employing entity for reasons other than breach by the employee, any such restrictions shall be void.

(4) In any event, nothing in this section shall prohibit any of the following from employing physicians:

(A) A licensed physician; or

(B) A group of licensed physicians, including, but not limited to, either of the following:

(i) A physicians' professional corporation registered under title 48, chapter 101; or

(ii) A domestic nonprofit public benefit corporation:

(a) That is recognized as exempt under § 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), or any successor section;

(b) A purpose of which is to engage in medical education and medical research in conjunction with a college or university operating an accredited medical school in Tennessee;

(c) Whose physician-employees are restricted to the medical faculty of such a college or university; and

(d) Which operates as a "faculty practice plan" for purposes of Title XVIII of the federal Social Security Act, 42 U.S.C., Chapter 7, subchapter XVIII, and regulations promulgated in connection therewith;

Provided, that with respect to any such domestic nonprofit public benefit corporation, physician employees of any such faculty practice plan who practice in the specialties of radiology, pathology, anesthesiology and/or emergency medicine shall be restricted to practice as faculty practice plan employees in those health care institutions, including but not limited to hospitals or surgery centers, in which they were practicing as employees of the nonprofit public benefit corporation on May 30, 1997.

(5) A hospital affiliate that employs physicians shall not engage in any business other than the employment of physicians, the management of physicians and health care facilities, or the ownership of property and facilities used in the provision of health care services. An affiliate of a hospital that employs physicians pursuant to this part shall be subject to the authority of the applicable licensing board under either title 68, chapter 11, or title 33, chapter 2 in connection with employment of physicians. Any violation of this statute by an affiliate shall subject any hospital at which the physician has staff privileges, and that controls or is under common control with the affiliate to the penalties and sanctions applied to hospitals that employ physicians.

(6)(A) No radiologist, anesthesiologist, pathologist, or emergency physician may be employed by a hospital or an affiliate of a hospital, and no hospital or an affiliate of a hospital, may employ any physician to provide medical services provided by radiologists, anesthesiologists, pathologists, or emergency physicians; provided, that a physician may be employed to provide emergency medical services if such physician is employed to provide other medical services.

(B) Notwithstanding the provisions of subdivisions (f)(6)(A) and (f)(1), a "research hospital," as defined in this section, may employ radiologists, anesthesiologists, or pathologists under the same terms and conditions as other physicians.

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

(A) "Affiliate" of a hospital means an entity that directly or indirectly is controlled by, or is under common control with, a hospital licensed under title 68, chapter 11 or title 33, chapter 2. "Affiliate" does not mean, however, a health maintenance organization licensed under title 56, chapter 32, part 2;

(B) "Anesthesiologist" is a physician who has completed a residency in anesthesiology and whose practice is primarily limited to anesthesiology, including, without limitation, nerve block, pain management, cardiac and respiratory resuscitation, respiratory therapy, management of fluids, electrolyte and metabolic disturbances, or a dentist licensed in the state of Tennessee who completed a residency program in anesthesiology at an accredited medical school in years 1963 through 1977;

(C) "Emergency physician" is a physician who has either completed a residency in emergency medicine, or practiced emergency medicine full time for a three year period, and whose practice is limited to emergency medicine. "Emergency physician" does not include, however, a physician who has been previously employed to provide non-emergent medical services who, over a period of twelve (12) months or more, becomes a full time emergency physician and who remains employed by mutual agreement;

(D) "Employing entity" means a hospital licensed under title 68, chapter 11, or title 33, chapter 2, or an affiliate of such an entity, that employs one (1) or more physicians. "Employing entity" does not mean, however, a health maintenance organization licensed under title 56, chapter 32;

(E) "Pathologist" is a physician who has completed a residency in pathology and whose practice is primarily limited to pathology, including, without limitation, anatomic and clinical pathology;

(F) "Psychiatrist" means a physician who has completed a residency in psychiatry and whose practice is primarily limited to psychiatry.

(G) "Physician" means a person licensed pursuant to chapter 6 or 9 of this title;

(H) "Radiologist" is a physician who has completed a residency in radiology and whose practice is primarily limited to radiology, including, without limitation, diagnostic radiology, radiation therapy, and radiation oncology; and

(I) "Research hospital" means a hospital at which fifty percent (50%) or more of the inpatients treated during the previous calendar year were treated pursuant to research protocols.

(g)(1) Notwithstanding this section, nothing shall prohibit a renal dialysis clinic licensed under title 68, chapter 11 or an affiliate of a renal dialysis clinic from employing licensed physicians other than radiologists, anesthesiologists, pathologists or emergency physicians to provide medical services, subject to the following conditions:

(A) Employing entities shall not restrict or interfere with medically appropriate diagnostic or treatment decisions;

(B) Employing entities shall not restrict or interfere with physician

referral decisions unless:

(i) The physician so employed has agreed in writing to the specific restrictions at the time that the contract is executed;

(ii) The restriction does not, in the reasonable medical judgment of the physician, adversely affect the health or welfare of the patient; and

(iii) The employing entity discloses the restrictions to the patient; and

(C) In the event that there is any dispute relating to subdivision (g)(1)(A) or (g)(1)(B), the employing entity shall have the burden of proof.

(2) Employing entities shall not restrict the employed physician's right to practice medicine upon the termination or conclusion of the employment relationship, except as allowed by § 63-1-148 or any successor section.

(3) Notwithstanding § 63-1-148 or any successor section, in the event that the employment contract with a physician employed independently of a bona fide practice purchase is terminated by the employing entity for reasons other than breach by the employee, the restrictions shall be void.

(4) In any event, nothing in this section shall prohibit any of the following from employing physicians:

(A) A licensed physician; or

(B) A group of licensed physicians, including, but not limited to, either of the following:

(i) A physicians' professional corporation registered under title 48, chapter 101; or

(ii)*(a)* A domestic nonprofit public benefit corporation:

(1) That is recognized as exempt under § 501(c)(3) of the Internal Revenue Code, codified in 26 U.S.C. § 501(c)(3) or any successor section;

(2) A purpose of which is to engage in medical education and medical research in conjunction with a college or university operating an accredited medical school in Tennessee;

(3) Whose physician-employees are restricted to the medical faculty of such a college or university; and

(4) That operates as a faculty practice plan for purposes of Title XVIII of the federal Social Security Act, 42 U.S.C. chapter 7, subchapter XVIII and regulations promulgated in connection therewith.

(b) Provided, that, with respect to the domestic nonprofit public benefit corporation, physician employees of the faculty practice plan who practice in the specialties of radiology, pathology, anesthesiology or emergency medicine shall be restricted to practice as faculty practice plan employees in those health care institutions, including, but not limited to, hospitals or surgery centers, in which they were practicing as employees of the nonprofit public benefit corporation on May 30, 1997.

(5) An affiliate of a renal dialysis clinic that employs physicians shall not engage in any business other than the employment of physicians, the management of physicians and health care facilities or the ownership of property and facilities used in the provision of health care services or a tissue bank or organ procurement agency. An affiliate of a renal dialysis clinic that employs physicians pursuant to this part shall be subject to the authority of the applicable licensing board under title 68, chapter 11, in connection with employment of physicians. Any violation of this subdivision (g)(5) by an

affiliate shall subject any renal dialysis clinic at which the physician has staff privileges and that controls or is under common control with the affiliate to the penalties and sanctions applied to renal dialysis clinics that employ physicians.

(6) No radiologist, anesthesiologist, pathologist or emergency physician may be employed by a renal dialysis clinic or an affiliate of a renal dialysis clinic, and no renal dialysis clinic or an affiliate of a renal dialysis clinic may employ any physician to provide medical services provided by radiologists, anesthesiologists, pathologists or emergency physicians; provided, that a physician may be employed to provide emergency medical services if the physician is employed to provide other medical services.

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

(A) "Affiliate" of a renal dialysis clinic means an entity that directly or indirectly is controlled by or is under common control with a renal dialysis clinic licensed under title 68, chapter 11. "Affiliate" does not mean, however, a health maintenance organization licensed under title 56, chapter 32, part 2;

(B) "Anesthesiologist" is a physician who has completed a residency in anesthesiology and whose practice is primarily limited to anesthesiology, including, without limitation, nerve block, pain management, cardiac and respiratory resuscitation, respiratory therapy, management of fluids, electrolyte and metabolic disturbances or a dentist licensed in this state who completed a residency program in anesthesiology at an accredited medical school in years 1963 through 1977.

(C) "Emergency physician" is a physician who has either completed a residency in emergency medicine or practiced emergency medicine full-time for a three year period and whose practice is limited to emergency medicine. "Emergency physician" does not include, however, a physician who has been previously employed to provide nonemergent medical services who, over a period of twelve (12) months or more, becomes a full-time emergency physician and who remains employed by mutual agreement;

(D) "Employing entity" means a renal dialysis clinic licensed under title 68, chapter 11 or an affiliate of such an entity that employs one (1) or more physicians. "Employing entity" does not mean, however, a health maintenance organization licensed under title 56, chapter 32;

(E) "Pathologist" is a physician who has completed a residency in pathology and whose practice is primarily limited to pathology, including, without limitation, anatomic and clinical pathology;

(F) "Physician" means a person licensed pursuant to chapter 6 or 9 of this title; and

(G) "Radiologist" is a physician who has completed a residency in radiology and whose practice is primarily limited to radiology, including, without limitation, diagnostic radiology, radiation therapy and radiation oncology.

(h)(1) The general assembly finds that there are special facts above and beyond ordinary competition that would give an unfair advantage to a physician when competing with the physician's former employer, if the former employer is a faculty practice plan. The existence of such special facts warrants protection of the faculty practice plan through restrictive covenants and prohibitions against an employed physician's right to practice

medicine upon the termination or conclusion of the employment relationship. The general assembly further finds that the faculty practice plan's right to be free of unfair competition from a former employed physician outweighs any financial hardship to the former employed physician resulting from the operation of any such restrictive convenants or prohibition. The general assembly further finds that restrictive covenants and prohibitions against an employed physician's right to practice medicine upon the termination or conclusion of the employment relationship with a faculty practice plan are reasonable and not inimical to the public interest, subject to the temporal and geographic limitations set forth in subdivision (h)(2).

(2) A faculty practice plan may impose restrictions or prohibitions upon an employed physician's right to practice medicine upon the termination or conclusion of the employment relationship provided that:

(A) The maximum area of the restrictions or prohibitions is the greater of:

(i) The county in which the primary practice site is located; or

(ii) A ten (10) mile radius from the primary practice site; and

(B) The maximum duration of the restrictions or prohibitions is two (2) years.

(3) As used in this subsection (h), "faculty practice plan" means a domestic nonprofit public benefit corporation as defined in subdivision (f)(4)(B)(ii).

(4) As used in this subsection (h), "primary practice site" includes any health care institution, including, but not limited to, a hospital, clinic, surgery center, or physicians' office, that the faculty practice plan or its affiliated college or university owned, leased, or operated within two (2) years before the termination or conclusion of the employment relationship between the physician and the faculty practice plan and at which the employed physician practiced medicine within such period of two (2) years.

(5) The provisions of this subsection (h) shall not apply:

(A) To any physician employee of a faculty practice plan who practices in the specialties of ophthalmology, pathology, anesthesiology and/or emergency medicine; or

(B) With respect to any physician employee of a faculty practice plan who practices as a primary care physician or in the specialties of obstetrics or general pediatrics in a health resources shortage area as determined in the health access plan most recently published by the department of health.

(6) The requirements of this subsection (h) shall not be construed to preclude the enforceability of any restrictive covenant or prohibition exceeding the requirements or conditions of this subsection (h) that is reasonable and not inimical to the public interest under the common law principles governing restrictive covenants.

(i) Notwithstanding the restrictions contained in this section, a nursing home or affiliate of a nursing home may employ a physician pursuant to § 68-11-205.

63-6-205. Practice of naturopathy.

(a) It is unlawful for any person to practice naturopathy in this state.

(b) "Naturopathy" means nature cure or health by natural methods and is defined as the prevention, diagnosis and treatment of human injuries, ail-

ments and disease by the use of such physical forces as air, light, water, vibration, heat, electricity, hydrotherapy, psychotherapy, dietetics or massage and the administration of botanical and biological drugs.

(c)(1) In no event shall naturopathy mean the sale of herbs or natural health information exchanges provided as a service so long as:

(A) The sale or provision of information exchanges is not conducted for the purpose of the prevention, diagnosis or treatment of any physical ailment or physical injury to or deformity of another; and

(B) In any instance involving natural health information exchanges, the seller obtains a signed acknowledgement from the buyer that the seller is neither a licensed practitioner of the healing arts in this state, nor meets the recognized qualification criteria that would allow the provision of any form of diagnosis, treatment recommendation or medical care in this state. For the purposes of meeting the requirements of this section, the seller shall keep the signed acknowledgement from the buyer on file for a period of three (3) years.

(2) [Deleted by 2012 amendment.]

(d) A violation of this section is a Class B misdemeanor.

(e) This section does not apply to persons who comply with the regulatory laws of the state with respect to the practice of the various healing arts.

63-6-207. Application for certificate — Special training licenses — St. Jude Children's Research Hospital global collaboration license. [Effective until June 30, 2013. See the version effective on June 30, 2013.]

(a) Persons desiring to practice medicine or surgery in this state shall make application in writing to the board, which application shall be accompanied by:

(1) If a United States or Canadian medical school graduate:

(A) A certificate from a medical school whose curriculum is approved by the American Medical Association or its extant accreditation program for medical education, or its successor;

(B) A nonrefundable application fee as set by the board and by an examination fee prescribed in this section;

(C) Evidence of the satisfactory completion of a one-year United States training program approved by the American Medical Association or its extant accreditation program for medical education, or its successor;

(D) Sufficient evidence of good moral character; and

(E) Evidence of being legally entitled to live and work in the United States if not a citizen of the United States or Canada;

(2) If an international medical school graduate:

(A) A certificate from a medical school whose curriculum is judged to be acceptable by the board;

(B) A copy of a permanent Educational Commission for Foreign Medical Graduates (E.C.F.M.G.) certificate;

(C) A nonrefundable application fee as set by the board and by an examination fee prescribed in this section;

(D) Sufficient evidence of good moral character;

(E) Evidence of being a citizen of the United States or Canada or legally entitled to live and work in the United States; and

(F) Evidence of satisfactory completion of a three-year residency program approved by the American Medical Association or its extant accredi-

tation program for medical education, or its successor. Such person may apply to the board for licensure and/or testing in accordance with this chapter within three (3) months of completion of the residency program if satisfactory performance in such residency is demonstrated to the satisfaction of the board.

(b) All applicants shall present themselves before the board or the board's administrative designee for examination. The board may question in such subjects as the board may deem appropriate. As its qualifying examination, the board accepts the Federation Licensing Examination (FLEX), and/or the National Board of Medical Examiners examination and/or the United States Medical Licensing Examination or its successor examination. Applicants shall successfully complete the United States Medical Licensing Examination within seven (7) years from the date of whichever step of the examination was completed first; provided, however, that the board shall grant an extension to an applicant who is licensed in good standing in at least three (3) other jurisdictions and who has otherwise met the requirements under this section. An applicant is considered to have successfully completed a step of the examination on the date that the step was taken and not the date on which the passing score was made public by the examination agency; provided, however, that the board is authorized to promulgate rules and regulations creating exceptions that will extend the seven-year time frame provided in this subsection (b). In addition, the board reserves the right to write its own state board examination or contract with other national testing organizations. The board reserves the right to designate its administrative staff to administer the licensing examinations and to collect such application and examination fees as the board, in its discretion, may deem necessary.

(c) The members of the board also have the right to examine all applicants in such oral examinations as they may deem necessary.

(d) The board is authorized in its discretion to issue special training licenses to medical interns, residents and fellows who have met all other qualifications for licensure contained in this chapter and the rules and regulations promulgated pursuant thereto, with the exception of having completed the necessary residency or training programs required by subdivision (a)(1)(C) and/or (a)(2)(F) and the licensure examination. The board also is authorized to promulgate rules and regulations to implement this new licensure category. The initial set of these rules may be processed as emergency rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. These special training licenses will be governed by the following:

(1) Such licenses shall be issued only to medical interns, residents and fellows while participating in a training program of one of the accredited medical schools or of one of such medical school's affiliated teaching hospitals in Tennessee, performing duties assigned to meet the requirements of such program, and while under the supervision and control of a physician fully licensed to practice medicine in Tennessee;

(A) No person holding a special training license is permitted to practice medicine outside of such person's duties and responsibilities in the training program without being fully licensed to practice medicine in Tennessee. Termination of participation in the training program for which the special license was issued for any reason terminates that license;

(B) It is the responsibility of the program director or the dean responsible for the training program to submit the necessary information and

applications on behalf of each applicant. It also is the responsibility of the program director or the dean to notify the board of the termination of the applicant's participation in the training program, whether by completion of the program or for any other reason;

(C) The board may impose fees to accompany each individual application for a special training license; and

(D) Recipients of the special training license shall not be subject to the occupational tax levied by § 67-4-1702(a)(4)(G).

(2) Notwithstanding the provisions of subdivision (d)(1), medical interns, residents and fellows who do not hold a special training license pursuant to this subsection (d) are exempt from the requirement of a license to practice medicine or surgery in this state when such medical interns, residents and clinical fellows are participating in a training program of one of the accredited medical schools or of one of its affiliated teaching hospitals in Tennessee, performing duties assigned to meet the requirements of such program, and while under the supervision and control of a physician fully licensed to practice medicine or surgery in the state of Tennessee. No such intern, resident or clinical fellow is permitted to practice medicine or surgery outside of that person's duties and responsibilities in such training program without being fully licensed to practice medicine or surgery in the state of Tennessee;

(A) It is the responsibility of the program director or the dean responsible for the training program to apply to the board for an exemption for each such medical intern, resident or clinical fellow. Moreover, it is the responsibility of such program director or dean to notify the board of the termination of the applicant's participation in the training program, whether by completion of the program or for any other reason;

(B) The board may impose a fee, to accompany each application for exemption; and

(C) Eligibility for the exemption provided for in this subdivision (d)(2) shall apply to all eligible persons in training on April 8, 1994, or thereafter.

(e) The board or the board's designee is specifically authorized to conduct applicant interviews periodically as it deems necessary on a case by case basis.

(f)(1)(A) The general assembly finds that St. Jude Children's Research Hospital is unique as a research center hospital in this state and this nation for protocol-based therapy and treatment of children and adolescents with newly diagnosed untreated or suspected cancer, HIV infections, or certain hematologic, immunologic, or genetic diseases. St. Jude Children's Research Hospital's experts are involved in research and treatment in the fields of hematology, oncology, bone marrow transplantation, immunology, genetic diseases and infectious diseases. The hospital's research involves both basic and clinical science and it is a National Cancer Institute Comprehensive Cancer Center. The general assembly finds that supporting research and treatment by qualified physicians and researchers at St. Jude Children's Research Hospital by means of a special St. Jude Children's Research Hospital global collaboration license would substantially benefit the state of Tennessee, the practice of medicine and the health of persons benefitting from treatment or research conducted at the hospital.

(B) The board is authorized in its discretion to issue a special St. Jude Children's Research Hospital global collaboration license to physicians

who have met all other qualifications for licensure contained in this chapter and the rules and regulation promulgated pursuant to this chapter, with the exception of having completed the necessary residency or training programs required by subdivision (a)(1)(C) or (a)(2)(F). The board is also authorized to promulgate rules and regulations to implement this new special licensure category.

(2) These special St. Jude Children's Research Hospital global collaboration licenses will be governed by the following:

(A) Such license shall be issued only to physicians while employed by St. Jude Children's Research Hospital;

(B) No person holding a special St. Jude Children's Research Hospital global collaboration license is permitted to practice medicine outside of such person's duties and responsibilities as an employee of St. Jude Children's Hospital without being fully licensed to practice medicine in Tennessee. Termination of employment with St. Jude Children's Research Hospital for any reason terminates the special license;

(C) It is the responsibility of St. Jude Children's Research Hospital to submit the necessary information and applications on behalf of each applicant. It is also the responsibility of St. Jude Children's Research Hospital to notify the board of the termination of the applicant's employment; and

(D) The board may impose fees to accompany each individual application for this special license.

63-6-207. Application for certificate — Special training licenses — St. Jude Children's Research Hospital global collaboration license. [Effective on June 30, 2013. See the version effective until June 30, 2013.]

(a) Persons desiring to practice medicine or surgery in this state shall make application in writing to the board, which application shall be accompanied by:

(1) If a United States or Canadian medical school graduate:

(A) A certificate from a medical school whose curriculum is approved by the American Medical Association or its extant accreditation program for medical education, or its successor;

(B) A nonrefundable application fee as set by the board and by an examination fee prescribed in this section;

(C) Evidence of the satisfactory completion of a one-year United States training program approved by the American Medical Association or its extant accreditation program for medical education, or its successor;

(D) Sufficient evidence of good moral character; and

(E) Evidence of being legally entitled to live and work in the United States if not a citizen of the United States or Canada;

(2) If an international medical school graduate:

(A) A certificate from a medical school whose curriculum is judged to be acceptable by the board;

(B) A copy of a permanent Educational Commission for Foreign Medical Graduates (E.C.F.M.G.) certificate;

(C) A nonrefundable application fee as set by the board and by an examination fee prescribed in this section;

(D) Sufficient evidence of good moral character;

(E) Evidence of being a citizen of the United States or Canada or legally entitled to live and work in the United States; and

(F) Evidence of satisfactory completion of a three-year residency program approved by the American Medical Association or its extant accreditation program for medical education, or its successor. Such person may apply to the board for licensure and/or testing in accordance with this chapter within three (3) months of completion of the residency program if satisfactory performance in such residency is demonstrated to the satisfaction of the board.

(b) All applicants shall present themselves before the board or the board's administrative designee for examination. The board may question in such subjects as the board may deem appropriate. As its qualifying examination, the board accepts the Federation Licensing Examination (FLEX), and/or the National Board of Medical Examiners examination and/or the United States Medical Licensing Examination or its successor examination. Applicants shall successfully complete the United States Medical Licensing Examination within seven (7) years from the date of whichever step of the examination was successfully completed first. An applicant is considered to have successfully completed a step of the examination on the date that the step was taken and not the date on which the passing score was made public by the examination agency; provided, however, that the board is authorized to promulgate rules and regulations creating exceptions that will extend the seven-year time frame provided in this subsection (b). In addition, the board reserves the right to write its own state board examination or contract with other national testing organizations. The board reserves the right to designate its administrative staff to administer the licensing examinations and to collect such application and examination fees as the board, in its discretion, may deem necessary.

(c) The members of the board also have the right to examine all applicants in such oral examinations as they may deem necessary.

(d) The board is authorized in its discretion to issue special training licenses to medical interns, residents and fellows who have met all other qualifications for licensure contained in this chapter and the rules and regulations promulgated pursuant thereto, with the exception of having completed the necessary residency or training programs required by subdivision (a)(1)(C) and/or (a)(2)(F) and the licensure examination. The board also is authorized to promulgate rules and regulations to implement this new licensure category. The initial set of these rules may be processed as emergency rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. These special training licenses will be governed by the following:

(1) Such licenses shall be issued only to medical interns, residents and fellows while participating in a training program of one of the accredited medical schools or of one of such medical school's affiliated teaching hospitals in Tennessee, performing duties assigned to meet the requirements of such program, and while under the supervision and control of a physician fully licensed to practice medicine in Tennessee;

(A) No person holding a special training license is permitted to practice medicine outside of such person's duties and responsibilities in the training program without being fully licensed to practice medicine in Tennessee. Termination of participation in the training program for which the special license was issued for any reason terminates that license;

(B) It is the responsibility of the program director or the dean responsible for the training program to submit the necessary information and applications on behalf of each applicant. It also is the responsibility of the program director or the dean to notify the board of the termination of the applicant's participation in the training program, whether by completion of the program or for any other reason;

(C) The board may impose fees to accompany each individual application for a special training license; and

(D) Recipients of the special training license shall not be subject to the occupational tax levied by § 67-4-1702(a)(4)(G).

(2) Notwithstanding the provisions of subdivision (d)(1), medical interns, residents and fellows who do not hold a special training license pursuant to this subsection (d) are exempt from the requirement of a license to practice medicine or surgery in this state when such medical interns, residents and clinical fellows are participating in a training program of one of the accredited medical schools or of one of its affiliated teaching hospitals in Tennessee, performing duties assigned to meet the requirements of such program, and while under the supervision and control of a physician fully licensed to practice medicine or surgery in the state of Tennessee. No such intern, resident or clinical fellow is permitted to practice medicine or surgery outside of that person's duties and responsibilities in such training program without being fully licensed to practice medicine or surgery in the state of Tennessee;

(A) It is the responsibility of the program director or the dean responsible for the training program to apply to the board for an exemption for each such medical intern, resident or clinical fellow. Moreover, it is the responsibility of such program director or dean to notify the board of the termination of the applicant's participation in the training program, whether by completion of the program or for any other reason;

(B) The board may impose a fee, to accompany each application for exemption; and

(C) Eligibility for the exemption provided for in this subdivision (d)(2) shall apply to all eligible persons in training on April 8, 1994, or thereafter.

(e) The board or the board's designee is specifically authorized to conduct applicant interviews periodically as it deems necessary on a case by case basis.

(f)(1)(A) The general assembly finds that St. Jude Children's Research Hospital is unique as a research center hospital in this state and this nation for protocol-based therapy and treatment of children and adolescents with newly diagnosed untreated or suspected cancer, HIV infections, or certain hematologic, immunologic, or genetic diseases. St. Jude Children's Research Hospital's experts are involved in research and treatment in the fields of hematology, oncology, bone marrow transplantation, immunology, genetic diseases and infectious diseases. The hospital's research involves both basic and clinical science and it is a National Cancer Institute Comprehensive Cancer Center. The general assembly finds that supporting research and treatment by qualified physicians and researchers at St. Jude Children's Research Hospital by means of a special St. Jude Children's Research Hospital global collaboration license would substantially benefit the state of Tennessee, the practice of medicine and the health of persons benefitting from treatment or research conducted at the hospital.

(B) The board is authorized in its discretion to issue a special St. Jude Children's Research Hospital global collaboration license to physicians

who have met all other qualifications for licensure contained in this chapter and the rules and regulation promulgated pursuant to this chapter, with the exception of having completed the necessary residency or training programs required by subdivision (a)(1)(C) or (a)(2)(F). The board is also authorized to promulgate rules and regulations to implement this new special licensure category.

(2) These special St. Jude Children's Research Hospital global collaboration licenses will be governed by the following:

(A) Such license shall be issued only to physicians while employed by St. Jude Children's Research Hospital;

(B) No person holding a special St. Jude Children's Research Hospital global collaboration license is permitted to practice medicine outside of such person's duties and responsibilities as an employee of St. Jude Children's Hospital without being fully licensed to practice medicine in Tennessee. Termination of employment with St. Jude Children's Research Hospital for any reason terminates the special license;

(C) It is the responsibility of St. Jude Children's Research Hospital to submit the necessary information and applications on behalf of each applicant. It is also the responsibility of St. Jude Children's Research Hospital to notify the board of the termination of the applicant's employment; and

(D) The board may impose fees to accompany each individual application for this special license.

63-6-214. Grounds for license denial, suspension or revocation — Reporting misconduct.

(a) The board has the power to:

(1) Deny an application for a license to any applicant who applies for the same through reciprocity or otherwise;

(2) Permanently or temporarily withhold issuance of a license;

(3) Suspend, or limit or restrict a previously issued license for such time and in such manner as the board may determine;

(4) Reprimand or take such action in relation to disciplining an applicant or licensee, including, but not limited to, informal settlements, private censures and warnings, as the board in its discretion may deem proper; or

(5) Permanently revoke a license.

(b) The grounds upon which the board shall exercise such power include, but are not limited to:

(1) Unprofessional, dishonorable or unethical conduct;

(2) Violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or, any lawful order of the board issued pursuant thereto or any criminal statute of the state of Tennessee;

(3) Making false statements or representations, being guilty of fraud or deceit in obtaining admission to practice or being guilty of fraud or deceit in the practice of medicine;

(4) Gross health care liability or a pattern of continued or repeated health care liability, ignorance, negligence or incompetence in the course of medical practice;

(5) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, controlled substance analogues or other drugs or stimulants in such manner as to adversely affect the person's ability to practice medicine;

(6) Violation of the laws governing abortion;

(7) Willfully betraying a professional secret;

(8) The advertising of medical business in which untrue or misleading statements are made or causing the publication or circulation of fraudulent advertising relative to any disease, human ailment or conditions;

(9) Willful violation of the rules and regulations promulgated by the board of medical examiners to regulate advertising by practitioners who are under the jurisdiction of such board;

(10) Conviction of a felony, conviction of any offense under state or federal laws relative to drugs or the practice of medicine, conviction of any offense involving moral turpitude or conviction of any offense for which the person is required to register as a sexual offender or violent sexual offender pursuant to title 40, chapter 39, part 2;

(11) Making or signing in one's professional capacity any certificate that is known to be false at the time one makes or signs such certificate;

(12) Dispensing, prescribing or otherwise distributing any controlled substance or any other drug not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease, or in amounts and/or for durations not medically necessary, advisable or justified for a diagnosed condition;

(13) Dispensing, prescribing or otherwise distributing to any person a controlled substance or other drug if such person is addicted to the habit of using controlled substances without making a bona fide effort to cure the habit of such patient;

(14) Dispensing, prescribing or otherwise distributing any controlled substance, controlled substance analogue or other drug to any person in violation of any law of the state or of the United States;

(15) Offering, undertaking or agreeing to cure or treat a disease, injury, ailment or infirmity by a secret means, method, device or instrumentality;

(16) Giving or receiving, or aiding or abetting the giving or receiving, of rebates, either directly or indirectly;

(17) Engaging in the practice of medicine under a false or assumed name, or the impersonation of another practitioner, or a like, similar or different name;

(18) Engaging in the practice of medicine when mentally or physically unable to safely do so;

(19) Using radiation in the treatment of any noncancerous disease, disorder or condition of the skin without first adequately warning the patient of the extent of any known risk of cancer associated with such treatment or repetition of such treatment. Receipt of such advance warning shall be acknowledged by signature of the patient or, in the case of a minor, the patient's parent or guardian and shall be retained by the physician for the period prescribed by the board;

(20) Disciplinary action against a person licensed to practice medicine by another state or territory of the United States for any acts or omissions that would constitute grounds for discipline of a person licensed in this state. A certified copy of the initial or final order or other equivalent document

memorializing the disciplinary action from the disciplining state or territory shall constitute prima facie evidence of violation of this section and be sufficient grounds upon which to deny, restrict or condition licensure or renewal and/or discipline a person licensed in this state;

(21)(A) Transferring of patient medical information to a person in another state who is not licensed to practice medicine or osteopathy in the state of Tennessee using any electronic, telephonic or fiber optic means or by any other method if such information is employed to diagnose and/or treat persons physically located within the state of Tennessee;

(B) Notwithstanding the provision of subdivision (b)(21)(A), the transfer of such information shall not be prohibited if such information is:

(i) To be used for a second opinion requested by a Tennessee licensed medical doctor or osteopathic physician;

(ii) To be used by an out-of-state physician for treatment of a person who is seeking treatment out of Tennessee;

(iii) Used to determine if such patient is covered by insurance;

(iv) Used by a physician in another state to provide occasional academic consultations to a medical school located in Tennessee;

(v) Used by insurance or related companies for risk evaluation, utilization review, claims processing and/or evaluation of claimants' rehabilitation, including establishing and administering rehabilitation plans. The establishing and administering of such rehabilitation plans shall not include the diagnosis and/or treatment of persons physically located within Tennessee as prohibited by subdivision (b)(21)(A); or

(vi) Used in clinical trials for drugs approved by the food and drug administration.

(C) The provisions of this subdivision (b)(21) do not apply to research hospitals, as defined in § 63-6-204(f)(7)(I).

(D) The provisions of this subdivision (b)(21) only apply to X-rays and medical imaging; and

(22) No person licensed in this state to practice medicine shall agree or contract with any clinical, bioanalytical or hospital laboratory, wherever located, to pay such laboratory for anatomic pathology services or cytology services and thereafter include such costs in the bill or statement submitted to the patient or any entity or person for payment, unless the practitioner is in compliance with the requirements of § 56-7-1015(g) and discloses on the bill or statement or in writing by a separate disclosure statement in a minimum print size of ten (10) font the name and address of the laboratory and the net amount or amounts paid or to be paid to the laboratory for the anatomic pathology services or cytology services. The provisions of this subdivision (b)(22) shall not apply to the state or any local government.

(c) In enforcing this section, the board shall, upon probable cause, have authority to compel an applicant or licensee to submit to a mental and/or physical examination by a designated committee of at least three (3) practicing physicians, including a psychiatrist where a question of mental condition is involved. The applicant or licensee may have an independent medical practitioner present during such examination, and the applicant may have an independent physical or mental examination, which examination report shall be filed with the board for consideration. The committee will submit a report of its findings to the board, which will then hold a hearing as provided in § 63-6-216.

(d) The board, on its own motion, may investigate any report indicating that

a doctor of medicine is or may be in violation of the provisions of subsection (b). Any doctor of medicine, any medical society or any other person who in good faith reports to the board any information that a doctor of medicine is or may be in violation of any of the provisions of subsection (b) shall not be subject to suit for civil damages as a result thereof.

(e) Within thirty (30) days after the conviction of a person known to be a physician, licensed or otherwise lawfully practicing within this state or applying to be so licensed or to practice, of a felony under the laws of this state, the clerk of the court of record in which the conviction was entered shall prepare and forward to the board a certified true and correct abstract of record of the court governing the case. The abstract shall include the name and address of the physician or applicant, the nature of the offense committed, the sentence and the judgment of the court. The board shall prepare the form of the abstract and shall distribute copies thereof to all clerks of courts of record within this state with appropriate instruction for preparation and filing.

(f) The board shall report within sixty (60) days its action regarding restriction, suspension or revocation of a physician's license, limitation on practice privileges or other disciplinary action of the board against any physician to appropriate federal and state agencies. The board may report any of the above-mentioned disciplinary actions to the Federation of State Medical Boards of the United States and the Tennessee Medical Association.

(g) For purposes of actions taken pursuant to subdivisions (b)(4), (12) and (13) or any other subsection in which the standard of care is an issue, any Tennessee licensed physician serving as a board member, hearing officer, designee, arbitrator or mediator is entitled to rely upon that person's own expertise in making determinations concerning the standard of care and is not subject to voir dire concerning such expertise. Expert testimony is not necessary to establish the standard of care. The standard of care for such actions is a statewide standard of minimal competency and practice that does not depend upon expert testimony for its establishment. However, to sustain actions based upon a violation of this standard of care, the board must, in the absence of admissions or other testimony by any respondent or such respondent's agent to the effect that the standard was violated, articulate what the standard of care is in its deliberations. The provisions of title 29, chapter 26, and specifically § 29-26-115, concerning the locality rule, do not apply to actions taken pursuant to this chapter.

(h)(1) All materials, documents and other matters relating to, compiled or created pursuant to an investigation conducted by the board's investigators against any health care practitioner under the board's jurisdiction, shall be exempt from the public records act until the filing of a notice of charges. After the filing of a notice of charges, only the information and those materials and documents upon which the charges are based are available for disclosure under the public records act; provided, that the identifying information of the following, as well as all investigator created documents and reports, shall remain confidential at all times unless and until introduced in the proceedings:

(A) A complainant;

(B) Any witness who requests anonymity;

(C) A patient; and

(D) Medical records.

(2) This section does not modify or limit the prehearing discovery provisions set forth in the Uniform Administrative Procedures Act, compiled in

title 4, chapter 5, part 3.

(i)(1) The board may utilize one (1) or more screening panels in its investigative and disciplinary process to assure that complaints filed and investigations conducted are meritorious and to act as a mechanism for diversion to professional peer review organizations and/or impaired professionals associations or foundations of those cases that the board, through established guidelines, deems appropriate; upon diversion, such entities shall retain the same immunity as provided by law for the board.

(2) The screening panels shall consist of as many members as the board directs, but shall include at least one (1) but no more than three (3) licensed physicians, who may be members of the board or may serve either voluntarily or through employment by or under contract with the board;

(3) The activities of the screening panels and any mediation or arbitration sessions shall not be construed as meetings of an agency for purposes of the open meetings law, compiled in title 8, chapter 44, and, to the extent required by subdivision (h)(2), shall remain confidential. The members of the screening panels, mediators and arbitrators have a deliberative privilege and the same immunity as provided by law for the board and are not subject to deposition or subpoena to testify regarding any matter or issue raised in any contested case, criminal prosecution or civil lawsuit that may result from or be incident to cases processed before them.

(j) Notwithstanding any provision of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to the contrary, hearing officers are authorized to and may hear board mediation, arbitration or disciplinary contested cases, but may not issue final orders in contested case matters. Notwithstanding any of the provisions of §§ 4-5-314 and 4-5-315 which may be or are inconsistent, such hearing officers may only issue findings of fact and conclusions of law, which shall be referred directly to the board or a duly constituted panel thereof for final action. The board or duly constituted panel, after hearing testimony and arguments from both parties regarding the appropriate disciplinary action and, if allowed by the board, arguments on any controversy raised by the hearing officer's or designee's order, shall issue a final order to include the imposition of what, if any, disciplinary action is deemed appropriate. Only the board or a duly constituted panel thereof shall have the authority to issue final orders that dispose of a pending contested case regardless of whether the issues resulting in the dispositive action are procedural, substantive, factual or legal. If a hearing officer is not available when a contested case, or any motion filed therein requiring action, is ready and scheduled to be heard or fails to timely prepare findings and conclusions pursuant to board established guidelines, the board or a duly constituted panel thereof may rule on the motions and/or hear the contested case or utilize the record compiled before the hearing officers and prepare its own findings of fact, conclusions of law and then issue a final order. With regard to findings and conclusions issued by the hearing officer, or any mediator or arbitrator, the board or any duly constituted panel thereof that reviews the case may do any of the following:

(1) Adopt the hearing officer's, mediator's or arbitrator's findings of fact and conclusions of law, in whole or in part;

(2) Make its own findings of fact and conclusions of law, based solely on the record and the expertise of the members of the board or panel, in addition to or in substitution of those made by the hearing officer, mediator

or arbitrator;

(3) Remand the matter back to the hearing officer, mediator or arbitrator for action consistent with the board or panel findings and conclusions in the matter; or

(4) Reverse the hearing officer's, mediator's or arbitrator's findings and/or dismiss the matter entirely.

(k) The board retains jurisdiction to modify or refuse to modify, upon request of any party, any of its orders issued pursuant to this section in compliance with procedures established by the board. The board, pursuant to duly promulgated rules, may, whenever a final order is issued after a disciplinary contested case hearing that contains findings that a licensee or other person has violated any provision of this chapter, assess the costs directly related to the prosecution of the case against the licensee or person.

(*l*) Any elected officer of the board, or any duly appointed or elected chair of any panel of the board, or any screening panel, and any hearing officer, arbitrator or mediator has the authority to administer oaths to witnesses and, upon probable cause being established, issue subpoenas for the attendance of witnesses and the production of documents and records.

(m) Notwithstanding any provision of this chapter or chapter 9 of this title, or any rule or regulation promulgated thereto to the contrary, it shall not be a violation for a physician or osteopathic physician to prescribe, order, sell or otherwise distribute the Schedule IV drugs fenfluramine, its salts and isomers, and salts of isomers and phentermine, for their currently accepted medical use in the United States.

(n) Notwithstanding any provision of this chapter or chapter 9 of this title, or any rule or regulation promulgated thereto to the contrary, whenever a physician is treating obesity in a child who is under eighteen (18) years of age with Schedule IV drugs fenfluramine, its salts and isomers, and salts of isomers and phentermine, the physician shall:

(1) Obtain the consent of the child's parent or guardian; and

(2) Determine that the child's body mass index (BMI) is at least twenty-seven (27), or is at least twenty-five (25) with co-morbidities, including, but not limited to:

(A) Diabetes;

(B) Hypertension;

(C) Dyslipidemia;

(D) Cardiovascular diseases; and

(E) Sleep apnea.

63-6-221. Office-based surgeries.

(a) For the purposes of this section, unless the context otherwise requires:

(1) "Board" means the board of medical examiners;

(2) "Level II office-based surgery" means Level II surgery, as defined by the board of medical examiners in its rules and regulations, that is performed outside of a hospital, an ambulatory surgical treatment center or other medical facility licensed by the department of health;

(3) "Office-based surgery" or "Level III office-based surgery" means Level III surgery requiring a level of sedation beyond the level of sedation defined by the board of medical examiners as Level II surgery that is performed outside a hospital, an ambulatory surgical treatment center or other medical

facility licensed by the department of health;

(4) "Physician" means any person licensed under this chapter; and

(5) "Surgical suite" means both the operating and recovery room or rooms located in a physician's office where Level III office-based surgery is to be performed.

(b) The board shall have the duty and responsibility to regulate the practice of office-based surgery, including the promulgation of rules necessary to promote patient health and safety in such practices, including, but not limited to, a mechanism by which all office-based surgical suites are surveyed and certified by the board.

(c) The board shall specifically identify in rules the parameters to be used in determining Level III surgical procedures and multiple procedures that may be performed in an office-based setting pursuant to the level of anesthesia involved in the procedures. In addition, the board shall promulgate age and risk classification criteria of patients eligible for Level III office-based surgical procedures.

(d) By December 30, 2007, the board shall adopt rules establishing a specific list of approved Level III surgical procedures that can be performed in a physician's office in this state. The ambulatory surgical center covered procedures list promulgated by the centers of medicare and medicaid shall be used as a guide. No physician shall perform any Level III surgical procedures that are not included on the list promulgated by the board. The board may modify the list as the board deems necessary. The board shall also promulgate rules addressing the minimum requirements deemed necessary by the board for the safe performance of office-based surgery.

(e) Using the rules established for ambulatory surgical treatment centers as guidelines, the board shall promulgate rules relative to infection control, life safety, patient rights, hazardous waste and equipment and supplies necessary to assure the safety of patients undergoing office-based surgery. Any provision in the ambulatory surgical treatment center rules addressing infection control, life safety, patient rights, hazardous waste and equipment and supplies that is not adopted by the board shall require a statement entered into the official minutes from the board justifying the board's decision.

(f) No more than three (3) patients undergoing Level III office-based surgery in a physician's office may be incapable of self-preservation at the same time. The board shall promulgate rules requiring physician offices that perform office-based surgery to adopt bylaws that put in place a management system and documentation that will ensure that no more than three (3) patients that are in surgery or recovery are incapable of self-preservation at the same time. The bylaws and documentation of the management system shall be included in the application for surgical suite certification.

(g) Except for emergencies, a surgical suite certified for office-based surgery may be utilized only by physician employees of the practice in which the surgical suite is located. Surgical suites may not be shared with other practices or other physicians.

(h) The board shall enter into a memorandum of understanding, contract or other written arrangement with the department of health such that the department:

(1) Provides a site survey of the surgical suites sought to be certified to perform office-based surgery. A physician office at which office-based surgeries are being performed as of October 1, 2007, shall submit both a request for

a site survey on an application form developed by the board and remit payment of the office-based surgery fee to the department by October 1, 2007. If the office makes a timely filing in accordance with this subdivision (h)(1), the physician's office may continue to be a site for office-based surgeries pending completion of a survey confirming compliance with board rules and subsequent issuance of a certification of the surgical suite or suites. A physician office at which office-based surgeries are not being performed as of October 1, 2007, shall not perform any such procedures until an application form and payment of the office-based surgery fee is submitted to the board and a site survey is completed by the department and a certification of the surgical suite is issued by the board;

(2) Is authorized to require plans of correction and to verify that the plans of correction have been implemented;

(3) Is authorized to initiate subsequent, unannounced site surveys during regular business hours as long as the physician office continues to be used to perform office-based surgeries, but no more frequently than once every twelve (12) months; and

(4) Is authorized to respond to any complaints made by patients or the public against a physician who performs office-based surgery or a physician's office at which office-based surgery is being performed at the request of the office of investigations.

(i) The results of all site surveys shall be transmitted by the department to the board. The results shall include any requirement for plans of correction, the department's determination of the acceptability of the submitted plans of correction and the department's verification that the plans of correction have been implemented. The board shall make a final determination on certifying the surgical suite for performance of office-based surgeries. The results of site surveys and board determinations shall be shared on a routine basis with the board for licensing health care facilities.

(j) The results of all complaint investigations by department staff shall be transmitted to the board for resolution; however, that information shall at all times be maintained as confidential and not available to the public except to the extent § 63-1-117(g) applies.

(k) Any physician office that desires to be certified to perform office-based surgery shall pay to the department an annual office-based surgery fee as set by the board.

(*l*) A physician office at which office-based surgery is being performed shall ensure that claims data is reported to the commissioner of health on a form approved by the department of health. The data shall be submitted through a third party approved by the department of health for the purpose of editing the data according to rules and regulations established by the commissioner. The physician office shall be responsible for the costs associated with processing of the data by the approved vendors. The claims data shall be reported at least quarterly to the commissioner. No information shall be made available to the public by the commissioner that reasonably could be expected to reveal the identity of any patient. The claims data reported to the commissioner under this section are confidential and not available to the public until the commissioner processes and verifies the data. The commissioner shall prescribe conditions under which the processed and verified data are available to the public.

(m)(1) Except as provided in subdivision (h)(1), a physician office surgical suite is required to be certified by the board in order to perform office-based

surgery. A physician office that proposes to perform office-based surgery shall submit to the board, on an application form provided by the board, at least the following:

(A) Level III procedures expected to be performed by each physician;

(B) The specialty board certification or board eligibility of the physician or physicians performing Level III procedures, if any;

(C) Verification of health care liability coverage for all physicians performing Level III procedures;

(D) Verification of hospital staff privileges for all physicians performing Level III procedures;

(E) The name of a responsible physician in whose name the surgical suite certification shall be issued for that office and a list of the physicians with the practice who are going to be performing Level III office-based surgeries; and

(F) The documentation required by subsection (f) regarding incapacitated patient limits.

(2) The form required by subdivision (m)(1) shall serve as an application form, but the information on the form shall be updated as appropriate when any information on it has changed.

(n) The board shall notify all physicians of the office-based surgery certification requirements. Failure of a physician performing office-based surgery or a physician office at which office-based surgery is being performed to abide by this section, any rules promulgated pursuant to this section or of § 68-11-211 may be grounds for disciplinary action or termination of either the rights of the physician to perform office-based surgery or the surgical suite's certification by the physician's licensing board, or both disciplinary action and termination. For purposes of § 4-5-320(c), the public health, safety and welfare imperatively require emergency action at any time that a previously authorized surgical suite fails to maintain the standards set by the board.

(o) Applicants for initial licensure or reinstatement of a previously issued license shall indicate to the board on the appropriate licensure application if they intend to perform Level II office-based surgery procedures as defined by the rules of the board of medical examiners and that are integral to a planned treatment regimen and not performed on an urgent or emergent basis.

(p) Licensed physicians who perform Level II office-based surgery at the time of licensure renewal shall indicate to the board on the licensure renewal application if the licensee currently performs Level II office-based surgery procedures as defined in the rules of the board of medical examiners and that are integral to a planned treatment regimen and not performed on an urgent or emergent basis.

(q) In order for health care providers and the board to work together to collect meaningful health care data, so as to minimize the frequency and severity of certain unexpected events and improve the delivery of health care services, each physician who performs any Level II office-based surgery or Level III office-based surgery that results in any of the following unanticipated events shall notify the board in writing within fifteen (15) calendar days following the physician's discovery of the event:

(1) The death of a patient during any Level II office-based surgery or Level III office-based surgery or within seventy-two (72) hours thereafter;

(2) The transport of a patient to a hospital emergency department except those related to a natural course of the patient's illness or underlying

condition;

(3) The unplanned admission of a patient to a hospital within seventy-two (72) hours of discharge, only if the admission is related to the Level II office-based surgery or Level III office-based surgery, except those related to a natural course of the patient's illness or underlying condition;

(4) The discovery of a foreign object erroneously remaining in a patient from a Level II office-based surgery or Level III office-based surgery at that office; or

(5) The performance of the wrong surgical procedure, surgery on the wrong site or surgery on the wrong patient.

(r) Records of reportable events should be in writing and should include at a minimum the following:

(1) The physician's name and license number;

(2) The date and time of the occurrence or discovery of the incident;

(3) The office and address where the incident took place;

(4) The name and address of the patient;

(5) The type of Level II office-based surgery or Level III office-based surgery that was performed;

(6) The type and dosage of sedation or anesthesia utilized during the procedure;

(7) The circumstances surrounding the incident; and

(8) The type or types of events required to be reported as provided in subsection (q).

(s) The filing of a report as required by subsection (q) does not, in and of itself, constitute an acknowledgement or admission of health care liability, error or omission. Upon receipt of the report, the board may, in its discretion, obtain patient and other records pursuant to authority granted to it in § 63-1-117. The reporting form and any supporting documentation reviewed or obtained by the board pursuant to this section and any amendments to the reports shall be confidential and not subject to discovery, subpoena or legal compulsion for release to any person or entity; nor shall they be admissible in any civil or administrative proceeding, other than a disciplinary proceeding by the board; nor shall they be subject to any open records request made pursuant to title 10, chapter 7, part 5 or any other law. This section shall not affect any of the provisions of or limit the protections provided by §§ 63-6-219 [repealed] and 63-9-114.

(t) Failure to comply with the requirements of subsections (o)-(s) constitutes grounds for disciplinary action by the board in its discretion pursuant to § 63-6-214.

63-6-234. Physicians serving as United States public health service commissioned officers.

A physician serving as a United States public health service commissioned officer who is trained as a national health service corps ready responder shall be authorized to practice medicine at federally qualified health centers while pursuing licensure as provided in this part under the following conditions:

(1) The physician has first filed an application for licensure as provided in this part;

(2) The physician, prior to commencing practice, submits a written statement to the board that all of the physician's medical licenses, including

the authority to practice in United States public health service, are unencumbered by disciplinary actions, unresolved disciplinary complaints or unresolved health care liability lawsuits; and

(3) The physician timely complies with all board rules governing the application process and immediately ceases practicing medicine until a license is subsequently granted should the initial licensure application be closed either for failure to provide timely required information or is denied by the board.

63-6-241. Physical presence of physician required for abortion.

Notwithstanding § 63-6-209(b) or any other provision of this chapter, no physician licensed under this chapter or chapter 9 of this title shall perform or attempt to perform any abortion, including a medically induced abortion, or shall prescribe any drug or device intended to cause a medical abortion, except in the physical presence of the pregnant woman. No drug or device intended to cause a medical abortion shall be administered or dispensed to a pregnant woman except in the physical presence of her physician

63-6-242. Employee or contractor's unauthorized use of medical doctor's DEA registration number to write prescriptions.

(a) Any medical doctor licensed pursuant to this chapter who has reason to believe that an employee or contractor of the doctor or the doctor's firm, partnership or corporation has used the doctor's federal drug enforcement administration (DEA) registration number without authorization to write prescriptions may make a report to a law enforcement agency.

(b) Any medical doctor, firm, partnership, or corporation making a report pursuant to subsection (a) shall be immune from any civil liability for making such report when made in good faith.

63-6-243. Hormone replacement therapy.

(a)(1) "Hormone replacement therapy clinic" or "hormone therapy clinic" means a medical office in which the clinicians are primarily engaged in hormone replacement or supplementation therapy or a medical office which holds itself out to the public as being primarily or substantially engaged in hormone replacement therapy. For the purposes of this definition, "primarily engaged" means that a majority of the clinic's patients receive hormone replacement therapy and may be further defined by the board by rule. "Hormone replacement therapy clinic" does not mean a medical office in which the clinicians are primarily engaged in obstetrics and gynecology (OB/GYN), urology or primary care.

(2) "Hormone replacement therapy" or "hormone therapy" means the branch of the practice of medicine whereby the patient is treated with medications that include, but are not limited to, creams or natural formulas taken through the skin, under the tongue, in subcutaneous pellets, or orally that contain hormones that have the same bioidentical or similar chemical formula as those produced naturally in the human body or that the provider thinks or claims to be similar or identical, but shall not include the treatment of patients with birth control pills.

(b) In hormone replacement therapy clinics:

(1) All hormone replacement therapy shall be performed by a physician licensed under this chapter or chapter 9 of this title, or delegated by such physician to a certified nurse practitioner licensed pursuant to chapter 7 of this title or a physician assistant licensed pursuant to chapter 19 of this title; and

(2) If hormone replacement therapy is delegated, the supervising physician shall ensure that written protocols are developed for licensees to whom hormone replacement therapy is delegated, that such protocols are updated as necessary and that the patient is informed of both the name and contact information of the supervising physician and an indication of whether the physician is available on-site or remotely.

(c) A physician supervising hormone replacement therapy in a hormone replacement therapy clinic shall ensure that for each patient all of the following requirements are met:

(1) Prior to the initial hormone replacement therapy or course of treatments, an appropriate physical examination shall be conducted;

(2) An appropriate medical history shall be taken and documented on the patient;

(3) A written order for hormone replacement therapy shall be entered by the treating provider in the patient's medical record documenting the diagnosis and medical reason for the patient's need for hormone replacement therapy. If the treating provider is not a physician, the supervising physician shall make a personal review of the historical, physical and therapeutic data gathered by the treating provider and shall so certify the review in the patient's chart within seven (7) days of the patient being served;

(4) The patient gives written consent for hormone replacement therapy, which includes notification of possible complications and reasonable expectations and any applicable FDA warnings associated with any part of the therapy; and

(5) The supervising physician shall be immediately notified upon discovery of a complication.

63-6-244. Interventional pain management. [Effective on July 1, 2013.]

(a) A physician licensed pursuant to this chapter may only practice interventional pain management if the licensee is either:

(1) Board certified through the American Board of Medical Specialties (ABMS) or the American Board of Physician Specialties (ABPS)/American Association of Physician Specialists (AAPS) in one of the following medical specialties:

(A) Anesthesiology;

(B) Neurological surgery;

(C) Orthopedic surgery;

(D) Physical medicine and rehabilitation;

(E) Radiology; or

(F) Any other board certified physician who has completed an ABMS subspecialty board in pain medicine or completed an ACGME-accredited pain fellowship;

(2) A recent graduate in a medical specialty listed in subdivision (a)(1) not yet eligible to apply for ABMS or ABPS/AAPS board certification; provided, that there is a practice relationship with a physician who meets the requirements of subdivision (a)(1) or an osteopathic physician who meets the

requirements of § 63-9-119(a)(1);

(3) A licensee who is not board certified in one of the specialties listed in subdivision (a)(1) but is board certified in a different ABMS or ABPS/AAPS specialty and has completed a post-graduate training program in interventional pain management approved by the board;

(4) A licensee who serves as a clinical instructor in pain medicine at an accredited Tennessee medical training program; or

(5) A licensee who has an active pain management practice in a clinic accredited in outpatient interdisciplinary pain rehabilitation by the commission on accreditation of rehabilitation facilities or any successor organization.

(b) For purposes of this section, "interventional pain management" is the practice of performing invasive procedures involving any portion of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine in any setting not licensed under title 68, chapter 11.

(c) The board is authorized to define through rulemaking the scope and length of the practice relationship established in subdivision (a)(2).

(d) A physician who provides direct supervision of an advanced practice nurse or a physician's assistant pursuant to § 63-7-126 or § 63-19-107 must meet the requirements set forth in subdivision (a)(1) or (a)(3).

(e) A physician who violates this section is subject to disciplinary action by the board pursuant to § 63-6-214, including, but not limited to, civil penalties of up to one thousand dollars ($1,000) for every day this section is violated.

63-6-807. Powers of the board.

(a) The board shall have the power to:

(1) Deny, restrict or condition a license;

(2) Permanently or temporarily withhold issuance of a license;

(3) Suspend, limit or restrict a previously issued license, for the time and in the manner that the board determines;

(4) Reprimand, suspend, revoke or take any other disciplinary action in relation to an applicant or license holder that the board, in its discretion, deems proper; or

(5) Permanently revoke a license.

(b) The grounds upon which the board shall exercise the powers in subsection (a) shall include, but are not limited to, circumstances in which the person:

(1) Is guilty of fraud or deceit in the procurement or holding of the license;

(2) Has been convicted of a felony in a court of competent jurisdiction, either within or outside of this state, unless the conviction has been reversed and the holder of the license was discharged or acquitted or if the holder has been pardoned with full restoration of civil rights, in which case the license shall be restored;

(3) Is or has been physically or mentally incapable of practicing at a level of competency that protects the public health, safety and welfare;

(4) Has knowingly aided and abetted a person who is not a license holder or is not otherwise authorized pursuant to this part to perform the duties of a license holder under this part;

(5) Has undertaken or engaged in any practice beyond the scope of practice stated in § 63-6-803;

(6) Has impersonated a license holder or former license holder or is under an assumed name performing the duties authorized to be performed only by

a licensed person;

(7) Has been found guilty of a violation of the code of ethics as provided in § 63-6-805;

(8) Is or has been found guilty of incompetence or negligence in performance as a license holder;

(9) Has been found guilty of unethical conduct;

(10) Violates or attempts to violate, directly or indirectly, or assists or aids in the violation of, or conspires to violate, any provision of this part or any lawful order of the board issued pursuant to this part, or any of the rules or regulations promulgated pursuant to this part or any criminal statute of the state;

(11) Is habitually intoxicated or engages in personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, controlled substance analogues or other drugs or stimulants in a manner that adversely affects the person's ability to practice; or

(12) Has received disciplinary action from another state for any acts or omissions that would constitute grounds for discipline of a person licensed in this state. A certified copy of the initial or final order or other equivalent document memorializing the disciplinary action from the disciplining state shall constitute prima facie evidence of violation of this section and shall be sufficient grounds upon which to deny, restrict or condition licensure or renewal or to discipline a person licensed in this state.

63-6-1102. Part definitions.

For the purposes of this part:

(1) "Board" means the board of medical examiners;

(2) "Chemical dependency" means:

(A) The abuse of alcohol, a controlled substance, or a controlled substance analogue;

(B) A pathological use of alcohol, a controlled substance, or a controlled substance analogue that chronically impairs the applicant's ability to competently provide legal advice or services; or

(C) A physiological or physical dependence on alcohol, a controlled substance, or a controlled substance analogue;

(3) "Intractable pain" means a pain state in which the cause of the pain cannot be removed or otherwise treated and, in which, in the generally accepted course of medical practice, no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts; and

(4) "Physician" means a physician licensee of the board of medical examiners or an osteopathic physician.

63-7-126. Advanced practice nurses. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) "Advanced practice nurse" means a registered nurse with a master's degree or higher in a nursing specialty and national specialty certification as a nurse practitioner, nurse anesthetist, nurse midwife or clinical nurse specialist.

(b) Nurse practitioners, nurse anesthetists, nurse midwives and clinical nurse specialists holding such education and practice credentials shall apply to the board for a certificate to practice as an advanced practice nurse, including

authorization to use the title "advanced practice nurse" or the abbreviation "APN". No other person shall assume such title or use such abbreviation or any other words, letters or signs to indicate that the person using the same is an advanced practice nurse.

(c) An applicant for a certificate to practice as an advanced practice nurse shall pay an initial fee as set by the board as well as a biennial renewal fee as set by the board.

(d) A nurse practitioner, nurse anesthetist, nurse midwife or clinical nurse specialist who holds a Tennessee registered nurse license in good standing and current national specialty certification in the advanced practice specialty shall be eligible for a certificate to practice as an advanced practice nurse on May 22, 2002, and shall be exempt from the requirement of a master's degree or higher in the nursing specialty if licensed in Tennessee and holding national specialty certification prior to July 1, 2005. Notwithstanding the previous requirements, a nurse anesthetist shall be eligible for a certificate to practice as an advanced practice nurse if the nurse anesthetist graduated prior to January 1, 1999, from a nurse anesthesia educational program approved by the American Association of Nurse Anesthetists Council on Accreditation.

(e) Nothing in this section shall be interpreted to alter or change the current law as it existed on May 22, 2002, regarding prescriptive rights, supervision or scope of practice for nurse anesthetists regulated under this title, nurse midwives as described in § 56-7-2407, clinical nurse specialists or certified nurse practitioners as defined in § 63-7-123. Nor shall anything in this section be interpreted to allow any board or other entity to promulgate rules that would alter or change the law as it existed on May 22, 2002, regarding such prescriptive rights, supervision or scope of practice.

63-7-126. Advanced practice nurses. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) "Advanced practice nurse" means a registered nurse with a master's degree or higher in a nursing specialty and national specialty certification as a nurse practitioner, nurse anesthetist, nurse midwife or clinical nurse specialist.

(b) Nurse practitioners, nurse anesthetists, nurse midwives and clinical nurse specialists holding such education and practice credentials shall apply to the board for a certificate to practice as an advanced practice nurse, including authorization to use the title "advanced practice nurse" or the abbreviation "APN". No other person shall assume such title or use such abbreviation or any other words, letters or signs to indicate that the person using the same is an advanced practice nurse.

(c) An applicant for a certificate to practice as an advanced practice nurse shall pay an initial fee as set by the board as well as a biennial renewal fee as set by the board.

(d) A nurse practitioner, nurse anesthetist, nurse midwife or clinical nurse specialist who holds a Tennessee registered nurse license in good standing and current national specialty certification in the advanced practice specialty shall be eligible for a certificate to practice as an advanced practice nurse on May 22, 2002, and shall be exempt from the requirement of a master's degree or higher in the nursing specialty if licensed in Tennessee and holding national specialty certification prior to July 1, 2005. Notwithstanding the previous requirements, a nurse anesthetist shall be eligible for a certificate to practice as an advanced

practice nurse if the nurse anesthetist graduated prior to January 1, 1999, from a nurse anesthesia educational program approved by the American Association of Nurse Anesthetists Council on Accreditation.

(e) With the exception of subsection (f), nothing in this section shall be interpreted to alter or change the current law as it existed on May 22, 2002, regarding prescriptive rights, supervision or scope of practice for nurse anesthetists regulated under this title, nurse midwives as described in § 56-7-2407, clinical nurse specialists or certified nurse practitioners as defined in § 63-7-123. Nor shall anything in this section be interpreted to allow any board or other entity to promulgate rules that would alter or change the law as it existed on May 22, 2002, regarding such prescriptive rights, supervision or scope of practice.

(f) An advanced practice nurse shall only perform invasive procedures involving any portion of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine in any setting not licensed under title 68, chapter 11 under the direct supervision of a Tennessee physician licensed pursuant to chapter 6 or 9 of this title who is actively practicing spinal injections and has current privileges to do so at a facility licensed pursuant to title 68, chapter 11. The direct supervision provided by a physician in this subsection (f) shall only be offered by a physician who meets the qualifications established in § 63-6-241(a)(1) or (a)(3) or § 63-9-119(a)(1) or (a)(3). For purposes of this subsection (f), "direct supervision" is defined as being physically present in the same building as the advanced practice nurse at the time the invasive procedure is performed. This subsection (f) shall not apply to an advanced practice nurse performing major joint injections except sacroiliac injections, or to performing soft tissue injections or epidurals for surgical anesthesia or labor analgesia in unlicensed settings.

63-7-202. Composition — Candidates — Qualifications — Vacancies.

(a) The governor shall appoint eleven (11) members to the board, as follows:

(1) Nine (9) members, one (1) from each congressional district, who are either an advanced practice nurse or a registered nurse at the time of their appointment. At least two (2) members shall be registered nurses. At least three (3) members shall be advanced practice nurses. For the purposes of this section, an advanced practice nurse shall not include registered nurses;

(2) One (1) member who is a licensed practical nurse at the time of such nurse's appointment; and

(3) One (1) consumer member.

(b) In making appointments to the board, the governor shall consider appointing members who work in a variety of healthcare positions, including the following practice settings:

(1) A Level I trauma center licensed pursuant to title 68, chapter 11, part 2;

(2) An acute care hospital;

(3) A critical access hospital or a rural hospital;

(4) A mental health facility licensed under title 33; and

(5) A long-term care facility.

(c) No more than three (3) members shall be engaged in an academic position at the time of their appointment to the board.

(d) In making appointments to the board, the governor should consider the

importance of geographical diversity to this board.

(e)(1) Members of the board may be appointed by the governor from lists of qualified persons submitted by interested nursing groups, including, but not limited to, their respective organizations. Each list may contain a minimum of three (3) times as many names as the number of appointments to be made. Lists of persons shall be submitted at least forty-five (45) days prior to the expiration of the term of office of any members of the board. The appointment provisions of this subdivision (e)(1) shall not apply to the public member serving on the board.

(2) In making appointments to the board in accordance with subdivision (e)(1), the governor shall consult with interested nursing groups, including, but not limited to, their respective organizations to determine qualified persons to fill the positions.

(f) Each licensee member appointed to serve on the board shall:

(1) Be a resident of this state for at least one (1) year immediately preceding appointment;

(2) Be currently licensed and in good standing with an unencumbered license;

(3) Be currently engaged in the practice of nursing; and

(4) Have no less than five (5) years of experience as an advanced practice nurse, registered nurse, or licensed practical nurse.

(g) The consumer member appointed to the board shall:

(1) Be a resident of this state for at least one (1) year immediately preceding their appointment;

(2) Not have a direct or indirect financial interest in healthcare services;

(3) Not have been a healthcare provider or be enrolled in any health-related educational program; and

(4) Not be a member or employee of any board of control of any public or private healthcare organization.

(h) A vacancy on the board shall be filled for the unexpired term by appointment by the governor in such a manner to ensure the requirements of this section are met.

(i) In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(j) Except as provided in subsection (k), members currently holding appointments on the board shall serve their full terms. As vacancies occur, new appointments shall be filled by the governor in accordance with this section.

(k) No member shall serve more than eight (8) continuous years on the board. A member shall be eligible to be reappointed after not serving on the board for four (4) years. The term of any member of the board with eight (8) or more years of service on the board on April 25, 2012, shall terminate January 1, 2013.

63-7-203. Terms of members.

Members of the board shall serve for a term of four (4) years or until their successor shall be appointed. No member may serve more than two (2) consecutive terms. At least four (4) years shall lapse before a member may be reappointed to the board or may serve in any capacity associated with the board.

63-8-105. Appointments to the board.

(a) The members of the board shall be appointed by the governor. Members may be appointed from lists of qualified nominees submitted by interested optometric groups, including, but not limited to, the Tennessee Association of Optometric Physicians. The governor shall consult with such interested groups to determine qualified persons to fill the positions.

(b) A member shall continue to serve until that member's successor is appointed. A vacancy created by the death, resignation or removal of a member shall be temporarily filled by the board after thirty (30) days. The person filling such vacancy shall serve until the governor makes the appointment as provided in this section. An appointment shall be for the remainder of the unexpired term.

63-8-120. Discipline of certificate holders.

(a) The board may refuse to issue an annual renewal certificate, may suspend or revoke any certificate issued by it, censure, reprimand, place on probation and assess a civil penalty up to one thousand dollars ($1,000) for each separate violation whenever the certificate holder is found guilty of any of the following acts or offenses:

(1) Fraud in procuring a license;

(2) Immoral, unprofessional or dishonorable conduct;

(3) Habitual intoxication or addiction or misuse of drugs;

(4) Conviction of a felony;

(5) Use of untruthful or improbable statements or flamboyant or extravagant claims concerning such licensee's professional excellence or abilities;

(6) Practicing under any other name than the certificate holder's own unless board approved;

(7) Failure to renew annual certificate;

(8) Solicitation of optometric services or ophthalmic materials in person or by agent by any means other than advertising authorized by this chapter;

(9) Gross health care liability or a pattern of continued or repeated health care liability, ignorance, negligence or incompetence in the practice of optometry;

(10) Practice beyond the scope of the certificate;

(11) Furnishing spectacle prescriptions that do not at least meet the informational requirements established by the board or refusing to furnish a copy of a spectacle prescription at no additional cost to the patient at the end of the examination;

(12) Advertising of optometric services or ophthalmic materials in any manner other than permitted by this chapter or rule and regulation of the board;

(13) Engaging in the practice of optometry as an employee of any person, firm or corporation not engaged primarily in health care delivery;

(14) Division of fees or agreeing to split or divide the fees received for professional services with any person for bringing or referring a patient;

(15) Peddle or sell ophthalmic materials as to render or attempt to render optometric services from house to house or door to door. This shall not prohibit, however, an optometrist from attending, prescribing and furnishing ophthalmic materials to a patient who, by reason of illness or physical or mental infirmity, is confined to the patient's place of abode or in a hospital or

other institution;

(16) Signing or making in one's professional capacity any certificate known to be false at the time it is signed or made;

(17) Committing any act that is made unlawful by § 63-8-113; or

(18) Committing any act contrary to the provisions of this chapter or the rules and regulations of the board.

(b) The board may set guidelines for the implementation of the discipline of certificate holders.

(c) The board may require a mental or physical examination of a certificate holder that the board believes may be a threat to that certificate holder or the public or incapable of practicing optometry in accordance with the provisions of this chapter and the standards established by the board.

(d) The board may provide conditions upon optometrists continuing to practice or upon the reinstatement of certificates. These conditions may include, but are not limited to, the payment of civil penalties, the attendance or completion of courses of study, the passage of examinations, the passage of physical or mental examinations and the treatment of any physical or mental ailments.

(e) The board shall promulgate rules governing the assessment of costs against a licensee or other person found by the board to have violated any provision of this chapter. The costs assessed by the board may include only those costs directly related to the prosecution of the charges against the licensee or other person, including investigatory costs where appropriate. The board shall determine the appropriate amount of costs, if any, to be assessed in a contested case. These costs shall be reasonable and proportionate in light of the violation committed by the licensee or other person.

(1) Any elected officer of the board, or any duly appointed or elected chair, has the authority to administer oaths to witnesses. Upon probable cause being established, the board, by a vote of two thirds (⅔) of the members to which the board is entitled, may issue subpoenas for the attendance of witnesses and the production of documents and records.

(2) Service of a subpoena issued by the board shall be made by the sheriff of the county of residence of the licensee or person upon whom the subpoena is served.

(3)(A) A licensee or person served by subpoena shall have thirty (30) days to request in writing a hearing before the board for the sole purpose of making a special appearance to quash or modify the subpoena. The subpoena for attendance of the person or the production of books and records shall be stayed until the board votes upon the request to quash or modify the subpoena. A majority vote of the members to which the board is entitled shall be required to quash or modify a subpoena.

(B) A motion to appeal from a decision by the board regarding a request to quash or modify a subpoena shall be made to the chancery court in Davidson County within fifteen (15) days of such decision.

(4) If any witness fails or refuses to obey a subpoena issued by it, the board is authorized to make application to any court of record in this state within the jurisdiction of which the witness is found or resides; and the court shall have power to attach the body of the witness and compel the witness to appear before the board and give testimony or produce books, records or papers as ordered. Any failure to obey the court order may be punished by the court issuing the order as a civil contempt.

(5) Each witness who appears before the board by order of the board shall receive for attendance the compensation provided by law for attendance of witnesses in a court of record, which shall be paid from the funds of the board in the same manner as all other expenses of the board are paid.

63-9-111. Denial, suspension and revocation of licenses or certificates — Enjoining violations — Enforcement — Investigations.

(a) The board has the power to:

(1) Deny an application for a license to any applicant who applies for the same through reciprocity or otherwise;

(2) Permanently or temporarily withhold issuance of a license;

(3) Suspend or limit or restrict a previously issued license for such time and in such manner as the board may determine;

(4) Reprimand or take such action in relation to disciplining an applicant or licensee as the board in its discretion may deem proper; or

(5) Permanently revoke a license.

(b) The grounds upon which the board shall exercise the powers set forth in subsection (a) include, but are not limited to:

(1) Unprofessional, dishonorable or unethical conduct;

(2) Violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any lawful order of the board issued pursuant thereto or any criminal statute of the state of Tennessee;

(3) Making false statements or representations, being guilty of fraud or deceit in obtaining admission to practice or in being guilty of fraud or deceit in the practice of medicine;

(4) Gross health care liability or a pattern of continued or repeated health care liability, ignorance, negligence or incompetence in the course of medical practice;

(5) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, controlled substance analogues or other drugs or stimulants in such manner as to adversely affect the person's ability to practice medicine;

(6) Violation of the laws governing abortion;

(7) The willful violation without legal justification of a privileged communication;

(8) Obtaining a fee as personal compensation or causing financial gain or benefit for an employer, person, partnership, corporation or any other legal entity by a fraudulent representation or by the use of a fraudulent diagnosis, therapy or treatment;

(9) Conviction of a felony, conviction of any offense under state or federal drug laws or conviction of any offense involving moral turpitude;

(10) The use of any false or fraudulent statement in any document connected with practice under this chapter;

(11) Dispensing, prescribing or otherwise distributing any controlled substance or any other drug not in the course of professional practice, or not in good faith to relieve pain and suffering or not to cure an ailment, physical infirmity or disease;

(12) Dispensing, prescribing or otherwise distributing to any person a controlled substance or other drug if such person is addicted to the habit of using controlled substances without making a bona fide effort to cure the

habit of such patient;

(13) Dispensing, prescribing or otherwise distributing any controlled substance, controlled substance analogue or any other drug to any person in violation of any law of the state or the United States;

(14) Engaging in the practice of medicine under a false or assumed name, or the impersonation of another practitioner, or a like, similar or different name;

(15) Knowingly performing any act that in any way assists an unlicensed person to unlawfully practice as provided under this chapter;

(16) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provisions of this chapter;

(17) The failure of the licensee to designate the licensee's professional degree in accordance with § 63-1-109;

(18) Should any person holding a license to practice hereunder be adjudged mentally incompetent or insane by any final order or adjudication of any court of competent jurisdiction, the license of such person shall forthwith be automatically suspended upon the entry of the order, and such suspension shall be effective and continue until the licensee is found or adjudged by such court to be mentally competent or until such person is duly discharged as restored to mental competence in any other manner provided by law;

(19) The advertising of medical business in which untrue or misleading statements are made or causing the publication or circulation of fraudulent advertising relative to any disease, human ailment or condition;

(20) Engaging in the practice of medicine when mentally or physically unable to safely do so;

(21) Disciplinary action against the licensee to practice medicine by another state or territory of the United States for any acts or omissions that would constitute grounds for discipline of a licensee licensed in this state. A certified copy of the initial or final order or other equivalent document memorializing the disciplinary action from the disciplining state or territory shall constitute prima facie evidence of a violation of this section and shall be sufficient grounds upon which to deny, restrict or condition licensure or renewal and/or discipline a licensee licensed in this state;

(22) No person licensed in this state to practice osteopathy shall agree or contract with any clinical, bioanalytical or hospital laboratory, wherever located, to pay such laboratory for anatomic pathology services or cytology services and thereafter include such costs in the bill or statement submitted to the patient or any entity or person for payment, unless the practitioner is in compliance with the requirements of § 56-7-1015(g) and discloses on the bill or statement, or in writing by a separate disclosure statement in a minimum print size of ten (10) font, the name and address of the laboratory and the net amount or amounts paid or to be paid to the laboratory for the anatomic pathology services or cytology services. The provisions of this subdivision (b)(22) shall not apply to the state or any local government; and

(23)(A) Transferring of patient medical information to a person in another state who is not licensed to practice medicine or osteopathy in Tennessee using any electronic, telephonic or fiber optic means or by any other method if such information is employed to diagnose and/or treat persons physically located within Tennessee is prohibited;

(B) Notwithstanding the provisions of subdivision (b)(23)(A), the transfer of such information shall not be prohibited if such information is:

(i) To be used for a second opinion requested by a Tennessee licensed medical doctor or osteopathic physician;

(ii) To be used by an out-of-state physician for treatment of a person who is seeking treatment out of Tennessee;

(iii) Used to determine if such patient is covered by insurance;

(iv) Used by a physician in another state to provide occasional academic consultations to a medical school located in Tennessee;

(v) Used by insurance or related companies for risk evaluation, utilization review, claims processing and/or evaluation of claimants' rehabilitation, including establishing and administering rehabilitation plans. The establishing and administering of such rehabilitation plans shall not include the diagnosis and/or treatment of persons physically located within Tennessee; or

(vi) Used in clinical trials for drugs approved by the food and drug administration;

(C) The provisions of this subdivision (b)(23) do not apply to research hospitals, as defined in § 63-6-204(f)(7)(I);

(D) The provisions of this subdivision (b)(23) only apply to X-rays and medical imaging.

(c) In enforcing this section, the board shall, upon probable cause, have authority to compel an applicant or licensee to submit to a mental and/or physical examination by a designated committee of at least three (3) practicing physicians, including a psychiatrist where a question of mental condition is involved.

(1) Failure of an applicant or a licensee to submit to such examination when ordered shall constitute an admission of the allegations against the applicant or licensee, unless such failure was due to circumstances beyond the applicant's or licensee's control.

(2) The applicant or licensee may have an independent medical practitioner present during such examination.

(3) The committee will submit a report of its findings to the board, which will then hold a hearing as provided in this section.

(d) All proceedings for disciplinary action against a licensee under this chapter shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(e)(1) In addition to the powers and duties expressly granted by this chapter in the matter of suspension or revocation of a license or certificate, the board is authorized and empowered to petition any circuit or chancery court having jurisdiction to enjoin any person who is practicing or attempting to practice osteopathy without possessing a valid license so to practice and to enjoin any unauthorized person, firm or corporation from performing any act or rendering any service in violation of the provisions of this chapter.

(2) Jurisdiction is conferred upon the circuit and chancery courts of the state to hear and determine such causes as chancery causes and to exercise full and complete jurisdiction in such injunctive proceedings.

(f) The board shall at all times have the power to call upon the district attorneys general in the various judicial districts to assist the board, and it is hereby declared to be the duty of all district attorneys general throughout the state to assist the board, upon its request, in any suit for injunction or

prosecution instituted by the board without charge or additional compensation to the district attorneys general. The attorney general and reporter and the attorney general and reporter's assistants shall serve as legal advisers to the board.

(g) The board, on its own motion, may investigate any report that an osteopathic physician is or may be in violation of the provisions of subsection (b). Any osteopathic physician, any medical society or any other person who in good faith shall report to the board any information that an osteopathic physician is or may be in violation of any of the provisions of subsection (b) shall not be subject to suit for civil damage as a result thereof.

(h) The board, pursuant to duly promulgated rules, may, whenever a final order is issued after a disciplinary contested case hearing that contains findings that a licensee or other person has violated any provision of this chapter, assess the costs directly related to the prosecution of the case against the licensee or person.

63-9-117. Office-based surgery.

(a) For the purposes of this section, unless the context otherwise requires:

(1) "Board" means the board of osteopathic examination;

(2) "Level II office-based surgery" means Level II surgery as defined by the board of osteopathic medical examination in its rules and regulations that is performed outside of a hospital, ambulatory surgical treatment center or other medical facility licensed by the department of health;

(3) "Office-based surgery" means Level III surgery requiring a level of sedation beyond the level of sedation defined by the board of medical examiners as Level II surgery that is performed outside a hospital, an ambulatory surgical treatment center or other medical facility licensed by the department of health;

(4) "Physician" means any person licensed under this chapter; and

(5) "Surgical suite" means both the operating and recovery room or rooms located in a physician's office where Level III office-based surgery is to be performed.

(b) The board shall have the duty and responsibility to regulate the practice of office-based surgery, including the promulgation of rules necessary to promote patient health and safety in such practices, including, but not limited to, a mechanism by which all office-based surgical suites are surveyed and certified by the board.

(c) The board shall specifically identify in rules the parameters to be used in determining Level III surgical procedures and multiple procedures that may be performed in an office-based setting pursuant to the level of anesthesia involved in the procedures. In addition, the board shall promulgate age and risk classification criteria of patients eligible for Level III office-based surgical procedures.

(d) By December 30, 2007, the board shall adopt rules establishing a specific list of approved Level III surgical procedures that can be performed in a physician's office in this state. The ambulatory surgical center covered procedures list promulgated by the centers of medicare and medicaid shall be used as a guide. No physician shall perform any Level III surgical procedures that are not included on the list promulgated by the board. The board may modify the list as the board deems necessary. The board shall also promulgate rules addressing the minimum requirements deemed necessary by the board for the

safe performance of office-based surgery.

(e) Using the rules established for ambulatory surgical treatment centers as guidelines, the board shall promulgate rules relative to infection control, life safety, patient rights, hazardous waste and equipment and supplies necessary to assure the safety of patients undergoing office-based surgery. Any provision in the ambulatory surgical treatment center rules addressing infection control, life safety, patient rights, hazardous waste and equipment and supplies that is not adopted by the board shall require a statement entered into the official minutes from the board justifying the board's decision.

(f) No more than three (3) patients undergoing Level III office-based surgery in a physician's office may be incapable of self-preservation at the same time. The board shall promulgate rules requiring physician offices that perform office-based surgery to adopt bylaws that put in place a management system and documentation that will insure that no more than three (3) patients that are in surgery or recovery are incapable of self-preservation at the same time. The bylaws and documentation of the management system shall be included in the application for surgical suite certification.

(g) Except for emergencies, a surgical suite certified for office-based surgery may be utilized only by physician employees of the practice in which the surgical suite is located. Surgical suites may not be shared with other practices or other physicians.

(h) The board shall enter into a memorandum of understanding, contract or other written arrangement with the department of health such that the department:

(1) Provides a site survey of the surgical suites sought to be certified to perform office-based surgery. A physician office at which office-based surgeries are being performed as of October 1, 2007, shall submit both a request for a site survey on an application form developed by the board and remit payment of the office-based surgery fee to the department by October 1, 2007. If the office makes a timely filing in accordance with this subdivision (h)(1), the physician's office may continue to be a site for office-based surgeries pending completion of a survey confirming compliance with board rules and subsequent issuance of a certification of the surgical suite or suites. A physician office at which office-based surgeries are not being performed as of October 1, 2007, shall not perform any such procedures until an application form and payment of the office-based surgery fee is submitted to the board and a site survey is completed by the department and a certification of the surgical suite is issued by the board;

(2) Is authorized to require plans of correction and to verify that the plans of correction have been implemented;

(3) Is authorized to initiate subsequent, unannounced site surveys during regular business hours as long as the physician office continues to be used to perform office-based surgeries, but no more frequently than once every twelve (12) months; and

(4) Is authorized to respond to any complaints made by patients or the public against a physician who performs office-based surgery or a physician's office at which office-based surgery is being performed at the request of the office of investigations.

(i) The results of all site surveys shall be transmitted by the department to the board. The results shall include any requirement for plans of correction, the department's determination of the acceptability of the submitted plans of

correction, and the department's verification that the plans of correction have been implemented. The board shall make a final determination on certifying the surgical suite for performance of office-based surgeries. The results of site surveys and board determinations shall be shared on a routine basis with the board for licensing health care facilities.

(j) The results of all complaint investigations by department staff shall be transmitted to the board for resolution; however, the information shall at all times be maintained as confidential and not available to the public except to the extent § 63-1-117(b) applies.

(k) Any physician office that desires to be certified to perform office-based surgery shall pay to the department an annual office-based surgery fee as set by the board.

(*l*) A physician office at which office-based surgery is being performed shall ensure that claims data is reported to the commissioner of health on a form approved by the department of health. The data shall be submitted through a third party approved by the department of health for the purpose of editing the data according to rules and regulations established by the commissioner. The physician office shall be responsible for the costs associated with processing of the data by the approved vendors. The claims data shall be reported at least quarterly to the commissioner. No information shall be made available to the public by the commissioner that reasonably could be expected to reveal the identity of any patient. The claims data reported to the commissioner under this section are confidential and not available to the public until the commissioner processes and verifies the data. The commissioner shall prescribe conditions under which the processed and verified data are available to the public.

(m)(1) Except as provided in subdivision (h)(1), a physician office surgical suite is required to be certified by the board in order to perform office-based surgery. A physician office that proposes to perform the surgery shall submit to the board, on an application form provided by the board, at least the following:

(A) Level III procedures expected to be performed by each physician;

(B) The specialty board certification or board eligibility of the physician or physicians performing Level III procedures, if any;

(C) Verification of health care liability coverage for all physicians performing Level III procedures;

(D) Verification of hospital staff privileges for all physicians performing Level III procedures;

(E) The name of a responsible physician in whose name the surgical suite certification shall be issued for that office and a list of the physicians with the practice who are going to be performing Level III office-based surgeries; and

(F) The documentation required by subsection (f) regarding incapacitated patient limits.

(2) The form required by subdivision (m)(1) shall serve as an application form, but the information on the form shall be updated as appropriate when any information on it has changed.

(n) The board shall notify all physicians of the office-based surgery certification requirements. Failure of a physician performing office-based surgery, or a physician office at which office-based surgery is being performed, to abide by this section, any rules promulgated pursuant to this section or of § 68-11-211

may be grounds for disciplinary action or termination of either the rights of the physician to perform office-based surgery or the surgical suite's certification by the physician's licensing board, or both disciplinary action and termination. For purposes of § 4-5-320(c), the public health, safety and welfare imperatively require emergency action at any time that a previously authorized surgical suite fails to maintain the standards set by the board.

(o) Applicants for initial licensure or reinstatement of a previously issued license shall indicate to the board on the appropriate licensure application if they intend to perform Level II office-based surgery procedures as defined by the rules of the board of osteopathic examination and that are integral to a planned treatment regimen and not performed on an urgent or emergent basis.

(p) Licensed osteopathic physicians who perform Level II office-based surgery at the time of licensure renewal shall indicate to the board on the licensure renewal application if the licensee currently performs Level II office-based surgery procedures as defined in the rules of the board of osteopathic examination and that are integral to a planned treatment regimen and not performed on an urgent or emergent basis.

(q) In order for health care providers and the board to work together to collect meaningful health care data, so as to minimize the frequency and severity of certain unexpected events and improve the delivery of health care services, each osteopathic physician who performs any Level II office-based surgery that results in any of the following unanticipated events shall notify the board in writing within fifteen (15) calendar days following the physician's discovery of the event:

(1) The death of a patient during any Level II office-based surgery or within seventy-two (72) hours thereafter;

(2) The transport of a patient to a hospital emergency department except those related to a natural course of the patient's illness or underlying condition;

(3) The unplanned admission of a patient to a hospital within seventy-two (72) hours of discharge, only if the admission is related to the Level II office-based surgery except those related to a natural course of the patient's illness or underlying condition;

(4) The discovery of a foreign object erroneously remaining in a patient from a Level II office-based surgery at that office; or

(5) The performance of the wrong surgical procedure, surgery on the wrong site or surgery on the wrong patient.

(r) Records of reportable events should be in writing and should include at a minimum the following:

(1) The physician's name and license number;

(2) The date and time of the occurrence or discovery of the incident;

(3) The office and address where the incident took place;

(4) The name and address of the patient;

(5) The type of Level II office-based surgery that was performed;

(6) The type and dosage of sedation or anesthesia utilized during the procedure;

(7) The circumstances surrounding the incident; and

(8) The type or types of events required to be reported as provided in subsection (q).

(s) The filing of a report as required by subsection (q) does not, in and of itself, constitute an acknowledgement or admission of health care liability,

error or omission. Upon receipt of the report, the board may, in its discretion, obtain patient and other records pursuant to authority granted to it in § 63-1-117. The reporting form and any supporting documentation reviewed or obtained by the board pursuant to this section and any amendments to the reports shall be confidential and not subject to discovery, subpoena or legal compulsion for release to any person or entity; nor shall they be admissible in any civil or administrative proceeding, other than a disciplinary proceeding by the board; nor shall they be subject to any open records request made pursuant to title 10, chapter 7, part 5 or any other law. This section shall not affect any of the provisions of or limit the protections provided by §§ 63-6-219 [repealed] and 63-9-114.

(t) Failure to comply with the requirements of subsections (o)-(s) constitutes grounds for disciplinary action by the board in its discretion pursuant to § 63-9-111.

63-9-119. Employee or contractor's unauthorized use of osteopathic physician's DEA registration number to write prescriptions.

(a) Any osteopathic physician licensed pursuant to this chapter who has reason to believe that an employee or contractor of the physician or the physician's firm, partnership or corporation has used the physician's federal drug enforcement administration (DEA) registration number without authorization to write prescriptions may make a report to a law enforcement agency.

(b) Any osteopathic physician, firm, partnership, or corporation making a report pursuant to subsection (a) shall be immune from any civil liability for making such report when made in good faith.

63-9-120. Hormone replacement therapy.

(a)(1) "Hormone replacement therapy clinic" or "hormone therapy clinic" means a medical office in which the clinicians are primarily engaged in hormone replacement or supplementation therapy or a medical office which holds itself out to the public as being primarily or substantially engaged in hormone replacement therapy. For the purposes of this definition, "primarily engaged" means that a majority of the clinic's patients receive hormone replacement therapy and may be further defined by the board by rule. "Hormone replacement therapy clinic" does not mean a medical office in which the clinicians are primarily engaged in obstetrics and gynecology (OB/GYN), urology or primary care.

(2) "Hormone replacement therapy" or "hormone therapy" means the branch of the practice of medicine whereby the patient is treated with medications that include, but are not limited to, creams or natural formulas taken through the skin, under the tongue, in subcutaneous pellets, or orally that contain hormones that have the same bioidentical or similar chemical formula as those produced naturally in the human body or that the provider thinks or claims to be similar or identical, but shall not include the treatment of patients with birth control pills.

(b) In hormone replacement therapy clinics:

(1) All hormone replacement therapy shall be performed by a physician licensed under chapter 6 of this title or this chapter, or delegated by such physician to a certified nurse practitioner licensed pursuant to chapter 7 of this title or a physician assistant licensed pursuant to chapter 19 of this title;

and

(2) If hormone replacement therapy is delegated, the supervising physician shall ensure that written protocols are developed for licensees to whom hormone replacement therapy is delegated, that such protocols are updated as necessary and that the patient is informed of both the name and contact information of the supervising physician and an indication of whether the physician is available on-site or remotely.

(c) A physician supervising hormone replacement therapy in a hormone replacement therapy clinic shall ensure that for each patient, all of the following requirements are met:

(1) Prior to the initial hormone replacement therapy or course of treatments, an appropriate physical examination shall be conducted;

(2) An appropriate medical history shall be taken and documented on the patient;

(3) A written order for hormone replacement therapy shall be entered by the treating provider in the patient's medical record documenting the diagnosis and medical reason for the patient's need for hormone replacement therapy. If the treating provider is not a physician, the supervising physician shall make a personal review of the historical, physical and therapeutic data gathered by the treating provider and shall so certify the review in the patient's chart within seven (7) days of the patient being served;

(4) The patient gives written consent for hormone replacement therapy, which includes notification of possible complications and reasonable expectations and any applicable FDA warnings associated with any part of the therapy; and

(5) The supervising physician shall be immediately notified upon discovery of a complication.

63-9-121. Interventional pain management. [Effective on July 1, 2013.]

(a) A physician licensed in this chapter may only practice interventional pain management if the licensee is either:

(1) Board certified through the American Osteopathic Association (AOA) or the American Board of Physician Specialties (ABPS)/American Association of Physician Specialists (AAPS) in one of the following medical specialties:

(A) Anesthesiology;

(B) Neuromusculoskeletal medicine;

(C) Orthopedic surgery;

(D) Physical medicine and rehabilitation;

(E) Radiology; or

(F) Any other board certified physician who has completed an ABMS subspecialty board in pain medicine or completed an ACGME-accredited pain fellowship;

(2) A recent graduate of a medical specialty listed in subdivision (a)(1) not yet eligible to apply for AOA or ABPS/AAPS specialty certification; provided, that there is a practice relationship with an osteopathic physician who meets the requirements of subdivision (a)(1) or a physician who meets the requirements of § 63-6-241(a)(1);

(3) A licensee who is not board certified in one of the specialties listed in subdivision (a)(1) but is board certified in a different AOA or ABPS/AAPS specialty and has completed a post-graduate training program in interven-

tional pain management approved by the board;

(4) A licensee who serves as a clinical instructor in pain medicine at an accredited Tennessee medical training program; or

(5) A licensee who has an active pain management practice in a clinic accredited in outpatient interdisciplinary pain rehabilitation by the commission on accreditation of rehabilitation facilities or any successor organization.

(b) For purposes of this section, interventional pain management is the practice of performing invasive procedures involving any portion of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine in any setting not licensed under title 68, chapter 11.

(c) The board is authorized to define through rulemaking the scope and length of the practice relationship established in subdivision (a)(2).

(d) An osteopathic physician who provides direct supervision of an advanced practice nurse or a physician's assistant pursuant to § 63-7-126 or § 63-19-107 must meet the requirements set forth in subdivision (a)(1) or (a)(3).

(e) An osteopathic physician who violates this section is subject to disciplinary action by the board pursuant to § 63-9-111, including, but not limited to, civil penalties of up to one thousand dollars ($1,000) for every day this section is violated.

63-10-301. Creation — Composition — Duties and powers — List of opioid drugs incorporating tamper or abuse resistant properties.

(a) There shall exist and be maintained within this state a board of pharmacy. The board shall consist of seven (7) members, one (1) of whom shall be a consumer, who shall enforce parts 2-5 of this chapter and all laws that pertain to the practice of pharmacy and shall cooperate with other state and federal governmental agencies regarding any violations of any pharmacy drug or drug-related laws. The board has all of the duties, powers, responsibilities and authority specifically granted or necessary to the enforcement of parts 2-5 of this chapter, as well as other duties, powers, responsibilities and authority that may be granted by law.

(b) The members of the board shall be entitled to a per diem of one hundred dollars ($100) for each day's service in attending meetings of the board and other administrative functions of the board, as well as the necessary expenses for traveling and subsistence while attending the meetings and performing the other administrative functions. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(c) The board of pharmacy shall publish a list of opioid drugs incorporating tamper or abuse resistance properties. Inclusion of a drug on such list shall not require that a drug bear a labeling claim with respect to reduction of tampering, abuse or abuse potential at the time of listing. The inclusion of a drug on the list shall not prohibit a pharmacist from substituting an opioid drug, brand or generic, that is otherwise eligible for interchange or substitution under title 53, chapter 10, part 2. The inclusion of a drug on the list shall require that the drug has been submitted to the United States food and drug administration with a study related to tamper or abuse resistance properties.

Following the publication of the initial list by the board of pharmacy, if the United States food and drug administration approves an opioid drug that bears in its label a claim to the drug's tamper or abuse resistance properties, such drug shall be added to the board of pharmacy list. This list shall be made available to prescribers, pharmacists, the commissioner of health, the commissioner of mental health and substances abuse services and the commissioner of safety.

63-10-302. Appointment — Qualifications — Term of appointment — Removal.

(a) The governor shall appoint the members of the board and shall make appointments so that the pharmacist members of the board shall be graduates of a recognized school or college of pharmacy. In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that one (1) person serving on the board is a member of a racial minority.

(b) No pharmacist shall be eligible for appointment to the board unless such person has been a pharmacist under this or some other law of this state for a period of at least five (5) years and, during the terms of such person's incumbency, shall be actively engaged in the practice of pharmacy.

(c) No consumer shall be eligible for appointment to the board to represent the public at large unless such person has been a resident of Tennessee for at least five (5) years, currently resides in Tennessee and is a non-health care professional by education. The consumer member shall not own or have any financial or other interest in any health care facility or business.

(d) The terms of appointment shall be for six (6) years, or until their successors have qualified, and no member of the board is eligible for reappointment.

(e) Interested pharmacist groups, including, but not limited to, the Tennessee Pharmacists Association, may annually recommend five (5) duly qualified persons for each vacancy from whom the governor may be requested to make appointments. The governor shall consult with such groups to determine qualified persons to fill the positions. The appointment provisions of this subsection (e) shall not apply to the consumer member serving on the board. Appointees shall, within ten (10) days after appointment, make oath or affirmation to be filed with the secretary of state that they will faithfully and impartially perform their duties.

(f) Members guilty of misconduct may be removed by the governor upon the recommendation of the remaining members. Vacancies occurring other than by expiration of terms may be filled as to unexpired terms by the governor from the most recent list of nominees of the interested pharmacist groups as provided in subsection (e).

63-11-102. Appointment and terms of members — Removal.

(a) Original appointments to the board are for terms as follows: One (1) practicing psychologist for a term of one (1) year, one (1) academic psychologist for a term of two (2) years, one (1) practicing psychologist for a term of three (3) years, one (1) academic psychologist for a term of four (4) years and one (1) practicing psychologist for a term of five (5) years. The original appointments to the board for the licensed psychological examiner member and citizen member shall be four (4) and five (5) years, respectively. All subsequent

appointments shall be for terms of five (5) years.

(b) Vacancies shall be filled for any unexpired terms, and members shall serve until their successors are appointed and have qualified. Only practicing psychologists shall be appointed to succeed practicing psychologists, and only academic psychologists shall be appointed to succeed academic psychologists. Board members shall be ineligible for reappointments for a period of five (5) years following completion of their terms.

(c)(1) Appointments to the board for the psychologist members may be made from lists of qualified candidates to be furnished to the governor by interested psychology groups, including, but not limited to, the Tennessee Psychological Association. Each list shall contain the names of academic psychologists and practicing psychologists. Appointments to the board for the psychological examiner and senior psychological examiner members may be made from lists of qualified candidates to be submitted to the governor from interested psychological examiner groups, including, but not limited to, the Tennessee Psychological Association Division of Psychological Examiners. Each list shall contain the names of psychological examiners and senior psychological examiners. All vacancies occurring in the board may be filled by the governor for the unexpired term from the lists of qualified candidates within thirty (30) days after the vacancy occurs. The governor shall consult with such interested groups to determine qualified persons to fill positions on the board.

(2) In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(d) Any board members may be removed by the governor after notice and hearing for incompetence, neglect of duty, malfeasance in office or moral turpitude.

63-11-206. Unlicensed practice — Penalties — Supervised practice — Evaluation techniques — Temporary permits — Provisional licenses.

(a) Any person who engages in the practice of psychology and does not then possess in full force and virtue a valid license to practice as psychological examiner or, psychologist or senior psychological examiner or a certificate to practice as a psychological assistant under the provisions of this chapter and the provisions of chapter 1 of this title commits a Class B misdemeanor.

(b) Nothing in this chapter shall be construed to prevent members of other recognized professions that are licensed, certified or regulated under the laws of this state from rendering services consistent with their professional training and code of ethics; provided, that they do not represent themselves to be psychologists or, psychological examiners or, senior psychological examiners or certified psychological assistants. Duly recognized members of the clergy shall not be restricted from functioning in their ministerial capacity; provided, that they do not represent themselves to be psychologists or, psychological examiners or, senior psychological examiners or certified psychological assistants.

(c)(1) Students of psychology, psychological interns and other persons preparing for the profession of psychological examiner or, psychologist or, senior psychological examiner or certified psychological assistant may perform as a part of their training the functions in §§ 63-11-202 and 63-11-203, but only

under qualified supervision.

(2) A person practices as a "certified psychological assistant" within the meaning of this chapter when the person claims to be a certified psychological assistant and/or renders to individuals or to the public for remuneration any service involving the application of recognized principles, methods and procedures of the science and profession of psychology and only under the direct employment and supervision of either the psychologist or senior psychological examiner employing the certified psychological assistant or the employing community mental health center or state governmental agency. Any and all work performed by a certified psychological assistant is supervised by a psychologist or senior psychological examiner as determined by the board.

(d) Use of psychological techniques by governmental institutions and by business and industrial organizations for employment placement, evaluation, promotion or job adjustment of their own officers or employees or by employment agencies for the evaluation of their own clients prior to recommendation for employment is also specifically allowed; however, no industrial or business firm or corporation may sell or offer to the public or to other firms or corporations for remuneration any psychological services as specified in §§ 63-11-202 and 63-11-203, unless such services are performed or supervised by individuals duly and appropriately licensed under this chapter.

(e)(1)(A) A temporary license may be issued by the board for an applicant who has successfully completed the academic course work and training for the license sought and who is scheduled for initial written examination. No temporary permit for a psychological examiner shall be issued for applications received by the board after December 31, 2004.

(B) The temporary license will allow the applicant to perform the functions specified in §§ 63-11-202 and 63-11-203, for which the applicant is seeking licensure under qualified supervision.

(C) In order to receive a temporary license, the applicant must submit a completed application for a temporary license with the applicant's completed application for the desired license, and all appropriate fees, to the board.

(2)(A)(i) A temporary license may be issued by the board for an applicant who has a current license from another state or territory. The temporary license will allow the applicant to perform under qualified supervision the functions specified in §§ 63-11-202 and 63-11-203.

(ii) In order to receive a temporary license, the applicant must submit a completed application for a temporary license with the applicant's completed application for the desired license, and all appropriate fees, to the board.

(iii) Applications for temporary licenses for applicants currently licensed in another state or territory shall be reviewed and approved or denied by a current member of the board designated by the board to perform this function.

(iv) If an applicant is issued a temporary license, the license shall remain valid until the board grants or denies the license application.

(v) However, no person shall be issued more than one (1) temporary license nor shall any temporary license be valid for a period of more than one (1) year.

(B) Such a temporary license may be issued to allow an applicant to

perform the functions specified in § 63-11-203 if the applicant has:

(i) Successfully completed an approved American Psychological Association academic course of study;

(ii) Previously taken and passed, according to Tennessee standards, the national licensing examination; and

(iii) A current license in another state or territory in good standing.

(C) Such a temporary license with designation as a health service provider may be issued to an applicant who meets the requirements of subdivision (e)(2)(B) and has:

(i) Successfully completed an American Psychological Association-approved internship; and

(ii) Had at least one (1) year of full-time postdoctoral experience delivering health services.

(D) Such a temporary license may be issued to allow an applicant to perform the functions specified in § 63-11-202 if the applicant has:

(i) Previously taken and passed, according to Tennessee standards, the national licensing examination; and

(ii) A current license in another state or territory in good standing.

(3) The fee for all temporary licenses shall be set by the board in an amount not to exceed one hundred dollars ($100). Until such time as the board establishes a fee by rule, the fee shall be fifty dollars ($50.00).

(f) Nothing in this chapter shall be construed to expand or limit in any way the practice of psychological examiners as provided in § 63-11-202 or, senior psychological examiners as provided in § 63-11-202 or certified psychological assistants as provided in subdivision (c)(2) and § 63-11-207(b), nor shall this chapter limit the use of the title "psychological examiner" for persons duly licensed as psychological examiners.

(g) Notwithstanding subsection (a), persons providing services in programs of the department of mental health and substance abuse services or the department of intellectual and developmental disabilities either as employees or through contract agencies are not engaged in the practice of psychology and need not be licensed or certified under this chapter unless they provide services as a psychological examiner or, as a psychologist, or, as a senior psychological examiner or certified psychological assistant.

(h)(1) A provisional license to practice as a psychologist with the designation as a health service provider may be issued by the board of examiners in psychology to an applicant who has successfully completed the academic and internship requirements of § 63-11-208(c)(3) and (d)(1)(A) and who is to be engaged in a one-year post-doctoral experience required by § 63-11-208(d)(2)(A). Such provisional licensure will allow the applicant to perform the functions specified in §§ 63-11-203 and 63-11-208(d)(2)(B) under the qualified supervision of a psychologist acceptable to the board and who is licensed in Tennessee with a designation as a health service provider in good standing.

(2) In order for a provisional license to remain valid, the licensee must take and pass the examination for professional practice in Tennessee (EPPP) at the level set for licensure as a psychologist in Tennessee within one (1) year of the issuance of the provisional license unless the applicant previously passed the EPPP at that level. A second failure of the EPPP after the issuance of a provisional license shall result in its revocation.

(3) In order for the provisional license to remain valid, the licensee must take and pass the oral and/or jurisprudence examination developed by the

board within two (2) years of the issuance of the provisional license. The second failure of the oral and/or jurisprudence examination will result in the revocation of the provisional license.

(4) The board may consider petitions of the licensee regarding extraordinary circumstances that would necessitate delay in taking the written or oral examination.

63-11-215. Denial, restriction, suspension or revocation of license or certificate — Disciplinary action.

(a) The board has the power to:

(1) Deny an application for a license or certificate to any applicant;

(2) Permanently or temporarily withhold issuance of a license or certificate;

(3) Suspend, limit or restrict a previously issued license or certificate for such time and in such manner as the board may determine;

(4) Reprimand or take such action in relation to disciplining an applicant or licensee or certified person as the board in its discretion may deem proper; or

(5) Permanently revoke a license or certificate.

(b) The grounds upon which the board shall exercise the powers enumerated in subsection (a) include, but are not limited to:

(1) Unprofessional, dishonorable or unethical conduct;

(2) Violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any lawful order of the board issued pursuant thereto, or any criminal statute of the state of Tennessee;

(3) Making false statements or representations, being guilty of fraud or deceit in obtaining admission to practice or being guilty of fraud or deceit in the course of professional practice;

(4) Gross health care liability or a pattern of continued or repeated health care liability, ignorance, negligence or incompetence in the course of practice;

(5) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, controlled substance analogues or other drugs or stimulants in such manner as to adversely affect the person's ability to practice the person's profession;

(6) Willfully betraying a professional secret;

(7) The advertising of psychological practice in which untrue or misleading statements are made or causing the publication or circulation of fraudulent advertising relative to any disease, human ailment or condition;

(8) Willful violation of the rules and regulations that may be promulgated by the board to regulate advertising by practitioners who are under the jurisdiction of such board;

(9) Conviction of a felony, conviction of any offense under state or federal drug laws or conviction of any offense involving moral turpitude;

(10) Making or signing in one's professional capacity any certificate that is known to be false at the time one makes or signs such certificate;

(11) Offering, undertaking or agreeing to cure or treat a disease, injury, ailment or infirmity by a secret means, method, device or instrumentality;

(12) Giving, receiving or aiding or abetting in the giving or receiving of rebates, either directly or indirectly;

(13) Engaging in practice under a false or assumed name or the impersonation of another practitioner of a like, similar or different name;

(14) Engaging in practice when mentally or physically unable to safely do so;

(15) Violation of chapter 6 of this title; and

(16) Practice of a level of psychology inappropriate or beyond the scope of the particular license or licenses or certification held by the licensee or certified person.

63-12-104. Creation of board — Appointment and removal of members.

(a) There is created the board of veterinary medical examiners, referred to as the board in this chapter.

(b) The board shall be composed of:

(1) Five (5) licensed doctors of veterinary medicine, who shall be graduates of an approved school of veterinary medicine and of good standing in their profession and who have had not less than five (5) years' actual experience in the practice of veterinary medicine;

(2) One (1) licensed veterinary technician who shall be a graduate of an approved veterinary technology program, is of good standing in the profession, and who has had not less than five (5) years' actual experience as a licensed veterinary technician; and

(3) One (1) member of the general public as provided by § 63-1-124.

(c) The members of the board shall be appointed by the governor for a term of five (5) years. Each member so appointed shall serve until the expiration of the particular five-year term to which the member is appointed and thereafter until the member's successor has been appointed by the governor. The governor shall appoint new members to the board to serve after the date of expiration of each of these terms until August 1 of the fifth calendar year thereafter. In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(d) In the event of a vacancy on the board, the governor shall appoint a new member to serve out the unexpired term. No member may be reappointed to the board until one (1) year after the expiration of the member's term of office, except that a person appointed for a term of less than five (5) years may be reappointed.

(e) Members of the board may be appointed by the governor from lists of qualified nominees submitted by interested veterinary groups, including, but not limited to, the Tennessee Veterinary Medical Association. The governor shall consult with such interested groups to determine qualified persons to fill the positions. This subsection (e) shall not apply to the appointment of the public member.

(f) No person who has been appointed a member of the board shall continue on the board if during the term of the member's appointment the member shall:

(1) Transfer the member's legal residence to another state;

(2) Be or become the owner of, or be employed by, any wholesale or jobbing house dealing in supplies, equipment or instruments used or useful in the practice of veterinary medicine; or

(3) Have the member's license to practice veterinary medicine rescinded for cause in accordance with the provisions of this chapter.

(g) The governor may suspend any member of the board for malfeasance, misfeasance, gross inefficiency or misconduct or upon any of the constitutional grounds upon which officers may be suspended by the governor.

(h) The state veterinarian, as appointed by the commissioner of agriculture, shall serve as a nonvoting, ex officio member of the board of veterinary medical examiners.

63-12-124. Denial, suspension or revocation of license — Investigation — Immunity of informants.

(a) The board, pursuant to the procedure prescribed in this section, has the power to deny, suspend or revoke any license or to otherwise discipline an applicant or licensee who is found guilty by the board of one (1) or more of the following:

(1) Willful or repeated violation of any provisions of this chapter or any rules of the board;

(2) Fraud or deceit in procuring or attempting to procure a license to practice veterinary medicine, or presenting to the board dishonest or fraudulent evidence of qualification or fraud or deception in the process of examination for the purpose of securing a license;

(3) The willful failure to display a license;

(4) Fraud, deception, misrepresentation, dishonest or illegal practices in or connected with the practice of veterinary medicine in any of its branches;

(5) Willfully making any misrepresentation in the inspection of food for human consumption;

(6) Fraudulently issuing or using any health certificate, vaccination certificate, inspection certificate, test chart or other blank form used in the practice of veterinary medicine to the dissemination of animal disease, transportation of diseased animals or the sale of inedible products of animal origin for human consumption;

(7) Fraud or dishonesty in applying, treating or reporting on tuberculin, diagnostic or other biological test;

(8) Failure to keep the equipment and premises of the business establishment in a clean and sanitary condition;

(9) Refusing to permit the board or any legal representative of the board to inspect the business premises of the licensee during regular business hours;

(10) Circulating knowingly untrue, fraudulent, misleading or deceptive advertising;

(11) Gross malpractice or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of veterinary medical practice;

(12) Unprofessional or unethical conduct or engaging in practices in connection with the practice of veterinary medicine that are in violation of the standards of professional conduct as defined in this section or prescribed by the rules of the board;

(13) Conduct reflecting unfavorably upon the profession of veterinary medicine;

(14) The willful making of any false statement as to a material matter in

any oath or affidavit that is required by this chapter;

(15) Revocation by another state of a license to practice veterinary medicine in that state, in which case the record of such revocation shall be conclusive evidence;

(16) Conviction on a charge of cruelty to animals;

(17) Conviction of a felony under federal or state law involving use, misuse, possession or sale of any controlled substance or controlled substance analogue;

(18) Conviction of a felony in the courts of this state, or of any other state, territory or country that, if committed in this state, would be a felony;

(A) The record of conviction in a court of competent jurisdiction shall be sufficient evidence for disciplinary action to be taken as may be considered proper by the board. For the purpose of this chapter, a conviction shall be considered to be a conviction that has been upheld by the highest appellate court having jurisdiction or a conviction upon which the time for filing an appeal has passed; and

(B) A record of conviction upon charges that involve the unlawful practice of veterinary medicine; and based upon such record of conviction, without any other testimony, the board may take temporary disciplinary action even though an appeal for review by a higher court may be pending;

(19) Permitting or allowing another to use the licensee's license for the purpose of treating or offering to treat sick, injured or affected animals;

(20) Engaging in the practice of veterinary medicine under a false or assumed name or the impersonation of another practitioner of a like, similar or different name;

(21) Has been guilty of employing or permitting any person who does not hold a license to practice veterinary medicine in this state to perform work that, under this chapter, can lawfully be done only by persons holding such license and permitted by law to practice veterinary medicine in this state. It shall be conclusively presumed that any unlicensed person, if employed by a licensed person, was employed for such purpose if the unlicensed person has attended any school of veterinary medicine or surgery, accredited or otherwise, for a period of over thirty (30) days;

(22) Addiction to the habitual use of intoxicating liquors, narcotics or other stimulants to such an extent as to incapacitate the applicant or licensee from the performance of the applicant's or the licensee's professional obligations and duties;

(23) Professional incompetence;

(24) Having been adjudged mentally incompetent by a court of competent jurisdiction and the disabilities of such person not having been restored or the voluntary commitment or admission to a state hospital or other mental institution. The record of adjudication, judgment, order or voluntary commitment is conclusive evidence of such mental illness; and upon receipt of a certified copy of any such adjudication, judgment, order or record of voluntary commitment by the board, it may suspend the license of the person so adjudicated or committed;

(25) Failure to report, as required by law, or making false report of, any contagious or infectious disease as referred to under the United States department of agriculture (U.S.D.A.) standards for accreditation of veterinarians in Tennessee and other states;

(26) Has been found guilty of using biologicals or other drugs that have deteriorated or after the expiration date of that particular lot or serial

number;

(27) Has been convicted of any crime involving moral turpitude; or

(28) Dispensing, prescribing or otherwise distributing any controlled substance or any other drug not in the course of the accepted practice of veterinary medicine.

(b) The board may, on its own motion, cause to be investigated any report indicating that a veterinarian is or may be in violation of the provisions of this chapter.

(c) Any person who in good faith shall report to the board any information that a veterinarian is or may be in violation of any provisions of this chapter shall not be subject to suit for civil damages as a result thereof.

63-13-209. Denial, suspension or revocation of license.

(a) The board of occupational therapy has the power and it is its duty to deny, suspend or revoke the license of or to otherwise lawfully discipline a licensee whenever the licensee is guilty of violating any of the provisions of this part or is guilty of any of the following acts or offenses:

(1) Unprofessional, dishonorable or unethical conduct;

(2) Violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this part or any lawful order of the board issued pursuant thereto or any criminal statute of the state of Tennessee;

(3) Making false or misleading statements or representations, being guilty of fraud or deceit in obtaining admission to practice or being guilty of fraud or deceit in the licensee's practice;

(4) Gross health care liability or a pattern of continued or repeated health care liability, ignorance, negligence or incompetence in the course of professional practice;

(5) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, controlled substance analogues or other drugs or stimulants in such a manner as to adversely affect the person's ability to practice;

(6) Conviction of a felony, conviction of any offense under state or federal drug laws or conviction of any offense involving moral turpitude;

(7) Making or signing in one's professional capacity any certificate that is known to be false at the time one makes or signs such certificate;

(8) Engaging in practice when mentally or physically unable to safely do so;

(9) Solicitation by agents or persons generally known as "cappers" or "steerers" of professional patronage or profiting by the acts of those representing themselves to be agents of the licensee;

(10) Division of fees or agreeing to split or divide fees received for professional services with any person for bringing or referring a patient;

(11) Conducting practice so as to permit, directly or indirectly, an unlicensed person to perform services or work that, under the provisions of this part, can be done legally only by persons licensed to practice;

(12) Professional connection or association with any person, firm or corporation in any manner in an effort to avoid and circumvent the provisions of this part or lending one's name to another for illegal practice;

(13) Payment or acceptance of commissions, in any form or manner, on fees for professional services, references, consultations, pathological reports,

prescriptions or on other services or articles supplied to patients;

(14) Giving of testimonials, directly or indirectly, concerning the supposed virtue of secret therapeutic agents or proprietary preparations, such as remedies, or other articles or materials that are offered to the public, claiming radical cure or prevention of diseases by their use;

(15) Violating the code of ethics adopted by the board;

(16) Any other unprofessional or unethical conduct that may be specified by the rules duly published and promulgated by the board or the violation of any provision of this part;

(17) On behalf of the licensee, the licensee's partner, associate or any other person affiliated with the licensee or the licensee's facility, use or participate in the use of any form of public communication containing a false, fraudulent, misleading or deceptive statement or claim; or

(18) Disciplinary action against a person licensed to practice occupational therapy by another state or territory of the United States for any acts or omissions that would constitute grounds for discipline of a person licensed in this state. A certified copy of the initial or final order or other equivalent document memorializing the disciplinary action from the disciplining state or territory shall constitute prima facie evidence of violation of this section and be sufficient grounds upon which to deny, restrict or condition licensure or renewal and/or discipline a person licensed in this state.

(b) In enforcing this section, the board of occupational therapy shall, upon probable cause, have the authority to compel an applicant or licensee to submit to a mental or physical examination, or both, by a designated board of at least three (3) practicing physicians, including a psychiatrist, where a question of mental condition is involved. The applicant or licensee may have an independent physical or mental examination, which examination report shall be filed with the board for consideration. The physicians' board shall submit a report of its findings to the board for use in any hearing that may thereafter ensue.

(c) The board, on its own motion, may cause to be investigated any report indicating that a licensee is or may be in violation of the provisions of this part. Any licensee, any occupational therapist or occupational therapy-related society or association or any other person who in good faith reports to the board any information that a licensee is or may be in violation of any provisions of this part shall not be subject to suit for civil damages as a result thereof.

63-13-312. Denial, suspension or revocation of licenses.

The board has the power, and it shall be its duty, to deny, suspend or revoke the license of, or to otherwise lawfully discipline, a licensee who is guilty of violating any of the provisions of this part or is guilty of the following acts or offenses:

(1) Practicing physical therapy in violation of the provisions of this chapter or any rule or written order adopted by the board;

(2) Practicing or offering to practice beyond the scope of physical therapy practice as defined in this chapter;

(3) Making false or misleading statements or representations, being guilty of fraud or deceit in obtaining admission to practice or being guilty of fraud or deceit in the licensee's practice;

(4) Engaging in the performance of substandard care by a physical therapist due to ignorance, incompetence or a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is

established;

(5) Engaging in the performance of substandard care by a physical therapist assistant, which includes exceeding the authority to perform the task selected and delegated by the supervising physical therapist, regardless of whether actual injury to the patient is established;

(6) Inadequately supervising or delegating duties that exceed the scope of practice for assistive personnel in accordance with this chapter and rules adopted by the board;

(7) Conviction of a felony or any offense involving moral turpitude in the courts of this state or any other state, territory or country. "Conviction," as used in this subdivision (7), includes a finding or verdict of guilt or a plea of nolo contendere;

(8) Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the use of controlled substances, controlled substance analogues, other habit-forming drugs, chemicals or alcohol;

(9) Disciplinary action against a person licensed to practice as a physical therapist or physical therapist assistant by another state or territory of the United States for any acts or omissions that would constitute grounds for discipline of a person licensed in this state. A certified copy of the initial or final order or other equivalent document shall constitute prima facie evidence of a violation of this section and be sufficient grounds upon which to deny, restrict or condition licensure or renewal and/or discipline a person licensed in this state;

(10) Engaging in sexual misconduct. "Sexual misconduct," for the purpose of this section, includes:

(A) Engaging in or soliciting sexual relationships, whether consensual or non-consensual, while a physical therapist or physical therapist assistant/patient relationship exists;

(B) Making sexual advances, requesting sexual favors and engaging in other verbal conduct or physical conduct or physical contact of a sexual nature with patients; and

(C) Intentionally viewing a completely or partially disrobed patient in the course of treatment, if the viewing is not related to patient diagnosis or treatment under current practice standards;

(11) Directly or indirectly requesting, receiving or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee or profiting by means of a credit or other valuable consideration, such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services. Nothing in this subdivision (11) prohibits the members of any regularly and properly organized business entity recognized by law and comprised of physical therapists from dividing fees received for professional services among themselves as they determine necessary to defray their joint operating expenses. Physical therapists employed by or contracting with a physician, physician group, as defined in accordance with the federal Physician Self-Referral Law, codified in 42 U.S.C. § 1395nn, or entity primarily owned by physicians and receiving wages or other compensation and/or benefits pursuant to the employment or contract shall not be deemed to be in violation of any provision under this chapter solely by virtue of the employment or contract and shall not be subject to licensure denial, suspension, revocation or any other disciplinary action or other penalty

described under this chapter solely by virtue of the employment or contract. This subdivision (11) shall not be interpreted in such a way as to create a prohibition on the corporate practice of any health care professional where no such prohibition previously existed;

(12) Failing to adhere to standards of ethics of the physical therapy profession;

(13) Charging unreasonable or fraudulent fees for services performed or not performed;

(14) Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter, or otherwise, in practice of the profession;

(15) Being under a current judgment of mental incompetency rendered by a court of competent jurisdiction;

(16) Aiding or abetting a person not licensed in this state who directly or indirectly performs activities requiring a license;

(17) Failing to report to the board any act or omission of a licensee, applicant or any other person which violates the provisions of this chapter;

(18) Interfering with, or refusing to cooperate in, an investigation or disciplinary proceeding, including willful misrepresentation of facts or by the use of threats or harassment against any patient or witness to prevent the patient or witness from providing evidence in a disciplinary proceeding or any legal action;

(19) Failing to maintain patient confidentiality without prior written consent or unless otherwise required by law;

(20) Failing to maintain adequate patient records that contain a minimum of an evaluation of objective finding, a physical therapy treatment diagnosis, the plan of care including desired outcomes, the treatment record, a discharge plan including results of intervention and sufficient information to identify the patient;

(21) Promoting unnecessary devices, treatment intervention or service for the financial gain of the practitioner or of a third party;

(22) Providing treatment intervention unwarranted by the condition of the patient, nor shall the licensee continue treatment beyond the point of reasonable benefit;

(23) A violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provisions of this chapter or any lawful order of the board issued pursuant thereto or any criminal statute of the state of Tennessee;

(24) Division of fees or agreeing to split fees or divide fees received for professional services with any person for bringing or referring a patient outside the scope of § 63-13-315; or

(25) Payment or acceptance of commissions, in any form or manner, on fees for professional services, references, consultations, pathological reports, prescriptions or on other services or articles supplied to patients.

63-13-316. Peer assistance program — Fees.

(a) In lieu of a disciplinary proceeding as set forth in this chapter, the board may permit a licensee pursuant to this part to actively participate in a board approved peer assistance program under the following conditions:

(1) The board has evidence that the licensee is impaired;

(2) The licensee has not been convicted of a felony relating to a controlled substance or controlled substance analogue in a court of law of the United

States or any other territory or country;

(3) The licensee enters into a written agreement with the board for a restricted license and complies with all the terms of the agreement, including making satisfactory progress in the program and adhering to any limitations on the licensee's practice imposed by the board to protect the public. Failure to enter into such an agreement shall activate an immediate investigation and disciplinary proceeding by the board; and

(4) As part of the agreement established between the licensee and the board, the licensee shall sign a waiver allowing the peer assistance program to release information to the board if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety.

(b) The board shall establish fees for all licensees to effect the purposes of this section.

63-16-102. Board of examiners — Composition.

(a) There is hereby created the board of examiners for nursing home administrators, which shall consist of eight (8) members to be appointed by the governor as follows:

(1) Four (4) members shall be representatives of the nursing home industry, three (3) of whom may be appointed from lists of qualified persons submitted to the governor by interested healthcare groups including, but not limited to, the Tennessee Health Care Association, and one (1) of whom shall be a nursing home administrator who may be appointed from lists of qualified persons submitted by interested hospital groups, including, but not limited to, the Tennessee Hospital Association;

(2) One (1) member shall be a hospital administrator who may be appointed from lists of qualified persons submitted by interested hospital groups, including, but not limited to, the Tennessee Hospital Association;

(3) One (1) member shall be a physician who may be appointed from a list of qualified physician nominees submitted by interested medical groups, including, but not limited to, the Tennessee Medical Association;

(4) One (1) member shall be a nurse representative who may be appointed from lists of qualified persons submitted by interested nursing groups, including, but not limited to, the Tennessee Nurses Association; and

(5) One (1) member shall be a consumer representative.

(b)(1) Each member shall serve for three (3) years, except that initially three (3) members shall be appointed for a term of three (3) years, three (3) members for a term of two (2) years, and two (2) members for a term of one (1) year. At the expiration of a member's term, each interested group may submit lists of qualified persons to the governor for appointment to that vacancy in the same manner as provided for initial appointments in subsection (a). Any vacancy occurring on the board prior to the expiration of a member's term may also be filled by the governor for the unexpired term from lists of qualified persons submitted by the interested groups as provided for initial appointments in subsection (a).

(2) In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(3) The governor shall consult with interested medical groups, including, but not limited to, the nominating associations for the respective classifications listed in subsection (a) to determine qualified persons to fill the positions. This subdivision (b)(3) shall not apply to the appointment of the consumer representative member.

(c) The commissioner of health or the commissioner's designated representative shall serve as an ex officio member and as the executive officer of the board.

(d) The governor may remove any member for misconduct, incapacity, incompetence or neglect of duty after the member so charged has been served with a written statement of charges and has been given an opportunity to be heard.

(e) Each member shall be reimbursed for actual expenses incurred in the performance of the member's official duties, in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter. In addition, each member shall be compensated fifty dollars ($50.00) per day for the member's services. All vouchers for the expenditure of any funds shall be signed by the executive officer of the board.

(f) The board shall meet at least annually and a majority of the board shall constitute a quorum.

(g) The division, as provided for in § 68-1-101, is the administrative agency for the board of examiners for nursing home administrators.

63-17-104. Board.

(a) There is hereby created a board of communications disorders and sciences.

(1) The board shall consist of seven (7) members who are appointed by the governor, who are residents of this state, five (5) of whom are currently practicing as speech language pathologists or audiologists and who have been engaged in rendering services, teaching or research in speech language pathology or audiology for a period of at least five (5) years, one (1) of whom shall be a consumer member who is not affiliated with the profession of speech language pathology and audiology and one (1) physician licensed by this state whose medical specialty is otolaryngology.

(2) Of the six (6) nonphysician members of the board, at least two (2) shall be audiologists and at least two (2) shall be speech language pathologists, the fifth member shall be either a speech language pathologist or audiologist and the sixth member shall be a consumer. The five (5) nonphysician members engaged in rendering services, teaching or research in speech language pathology or audiology shall hold an active and valid license in this state.

(b) The members of the board shall serve until the expiration of the term for which they have been appointed or until their successors are qualified. Their appointments shall be made as follows:

(1) Initially, of the six (6) nonphysician members of the board, two (2) shall be appointed for a term of one (1) year, two (2) members shall be appointed for a term of two (2) years and two (2) members shall be appointed for a term of three (3) years. The consumer member shall be appointed for a term of three (3) years. All appointments made thereafter shall be for a term of three

(3) years;

(2) The physician member of the board may be selected by the governor from lists of qualified nominees submitted by interested otolaryngology groups including, but not limited to, the Tennessee Academy of Otolaryngology and shall serve for a term of three (3) years. The governor shall consult with such interested groups to determine qualified persons to fill the position. If for any reason a vacancy occurs in the office of a physician member of the board, an appointment shall be made as provided in this section, and the person so appointed shall serve for the remainder of the unexpired term; and

(3) In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(c) The board shall reorganize annually and select a chair and a secretary. Four (4) members of the board constitute a quorum to do business.

(1) The board shall hold at least one (1) regular meeting each year. Additional meetings may be held upon call of the chair or after the written request of any two (2) members of the board.

(2) All meetings of the board shall be open and public, except that the board may hold executive sessions:

(A) To prepare, approve, grade or administer examinations; and

(B) Upon the request of an applicant who fails an examination, to prepare a response indicating the cause of the applicant's failure.

(3) No person shall be appointed to serve more than two (2) consecutive terms.

(4) When a vacancy in the office of one (1) of the five (5) nonphysician members engaged in rendering services, teaching or research in speech language pathology or audiology occurs, interested audiology and speech pathology groups including, but not limited to, the Tennessee Association of Audiologists and Speech Language Pathologists may submit lists of qualified nominees to be considered for the vacancy. The governor shall consult with such interested groups to determine qualified persons to fill the vacancy.

63-17-202. Council for licensing hearing instrument specialists.

(a) There is hereby created a council within the board to be known as the council for licensing hearing instrument specialists, with the duties and powers as provided in § 63-17-203.

(b)(1) The council shall consist of five (5) members, to be appointed by the governor. Such members shall possess the following qualifications:

(A) Three (3) members shall be qualified hearing instrument specialists and fitters of hearing instruments who have been duly licensed as such in Tennessee, and who are certified by the National Board for Certification — Hearing Instrument Sciences. Such members may be appointed from lists of qualified persons submitted to the governor by interested audiology groups including, but not limited to, the Tennessee Hearing Aid Society. The governor shall consult with such interested groups to determine qualified persons to fill the positions;

(B) One (1) member shall be a physician who has been duly licensed to practice medicine in Tennessee, and who has received certification from

the American Council of Otolaryngology. The member may be appointed from lists of qualified persons submitted to the governor by interested medical groups including, but not limited to, the Tennessee Medical Association. The governor shall consult with such interested groups to determine a qualified person to fill the position; and

(C) One (1) member shall be a person who has been a user of hearing instruments for a period of at least five (5) years preceding that person's appointment to the council and who shall never have been engaged in the practice of hearing instrument dispensing and fitting, audiology or medicine.

(2) In order that the terms may be appropriately staggered, initial appointments to the council for licensing hearing instrument specialists are for the following terms: one (1) member appointed pursuant to subdivision (b)(1)(A) shall be appointed to a term of one (1) year; one (1) member appointed pursuant to subdivision (b)(1)(A) shall be appointed for a term of two (2) years; one (1) member appointed pursuant to subdivision (b)(1)(A) shall be appointed for a term of four (4) years; the member appointed pursuant to subdivision (b)(1)(B) shall be appointed to a term of three (3) years; and the member appointed pursuant to subdivision (b)(1)(C) shall be appointed to a term of four (4) years. Thereafter, each member appointed to the council shall be appointed to a term of five (5) years. No person is eligible to serve successive terms on the council; provided, that those members appointed to a one- or two-year term under the provisions of this subsection (b) are eligible to succeed themselves for one (1) successive five-year term. In the event of a vacancy on the council, the governor shall appoint a person qualified under the appropriate subdivision of this subsection (b) to fill the unexpired vacancy. The initial appointments to the council shall include the current and immediate past board chair of the licensing board of hearing aid dispensers. In making appointments to the council, the governor shall strive to ensure that at least one (1) person serving on the council is sixty (60) years of age or older and that at least one (1) person serving on the council is a member of a racial minority.

(c) Each member of the council shall receive fifty dollars ($50.00) per diem expenses when actually engaged in the discharge of such member's official duties and, in addition, shall be reimbursed for attending any meeting of the council within this state, in accordance with the provisions of comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d) Such council shall be administratively attached to the board of communications disorders and sciences and the division of health related boards.

63-19-107. Restrictions on supervising physicians and assistants. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

A licensed physician supervising physician assistants shall comply with the following practices:

(1) More than one (1) physician may supervise the same physician assistant; provided, each physician assistant shall have a primary supervising physician and may have additional alternate supervising physicians who shall supervise the physician assistant in the absence or unavailability of

the primary supervising physician. Each physician assistant shall notify the committee of the name, address and license number of the physician assistants' primary supervising physician and shall notify the committee of any change in such primary supervising physician within fifteen (15) days of the change. The number of physician assistants for whom a physician may serve as the supervising physician shall be determined by the physician at the practice level, consistent with good medical practice. The supervising physician shall designate one (1) or more alternate physicians who have agreed to accept the responsibility of supervising the physician assistant on a prearranged basis in the supervising physician's absence;

(2)(A) In accordance with rules adopted by the board and the committee, a supervising physician may delegate to a physician assistant working under the physician's supervision the authority to prescribe and/or issue legend drugs and controlled substances listed in Schedules II, III, IV, and V of title 39, chapter 17, part 4. The rules adopted prior to March 19, 1999, by the board and the committee governing the prescribing of legend drugs by physician assistants shall remain effective after March 19, 1999, and may be revised from time to time as deemed appropriate by the board and the committee. The board and the committee may adopt additional rules governing the prescribing of controlled substances by physician assistants. A physician assistant to whom is delegated the authority to prescribe and/or issue controlled substances must register and comply with all applicable requirements of the drug enforcement administration;

(B) A physician assistant to whom the authority to prescribe legend drugs and controlled substances has been delegated by the supervising physician shall file a notice with the committee containing the name of the physician assistant, the name of the licensed physician having supervision, control and responsibility for prescriptive services rendered by the physician assistant and a copy of the formulary describing the categories of legend drugs and controlled substances to be prescribed and/or issued, by the physician assistant. The physician assistant shall be responsible for updating this information;

(C) The prescriptive practices of physician assistants and the supervision by physicians under whom such physician assistants are rendering service shall be monitored by the board and committee. As used in this section, "monitor" does not include the regulation of the practice of medicine or the regulation of the practice of a physician assistant, but may include site visits by members of the board and committee;

(D) Any complaints against physician assistants and/or supervising physicians shall be reported to the director of the division of health related boards, the committee on physician assistants and the board of medical examiners, as appropriate;

(E)(i) Every prescription order issued by a physician assistant pursuant to this section shall be entered in the medical records of the patient and shall be written on a preprinted prescription pad bearing the name, address and telephone number of the supervising physician and of the physician assistant, and the physician assistant shall sign each prescription order so written. Where the preprinted prescription pad contains the names of more than one (1) physician, the physician assistant shall indicate on the prescription which of those physicians is the physician assistant's primary supervising physician by placing a checkmark beside

or a circle around the name of that physician;

(ii) Any handwritten prescription order for a drug prepared by a physician assistant who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription. The handwritten prescription order must contain the name of the prescribing physician assistant, the name and strength of the drug prescribed, the quantity of the drug prescribed, handwritten in letters or in numerals, instructions for the proper use of the drug and the month and day that the prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing physician assistant must sign the handwritten prescription order on the day it is issued, unless it is a standing order issued in a hospital, a nursing home or an assisted care living facility as defined in § 68-11-201;

(iii) Any typed or computer-generated prescription order for a drug issued by a physician assistant who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription order. The typed or computer-generated prescription order must contain the name of the prescribing physician assistant, the name and strength of the drug prescribed, the quantity of the drug prescribed, recorded in letters or in numerals, instructions for the proper use of the drug and the month and day that the typed or computer-generated prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing physician assistant must sign the typed or computer-generated prescription order on the day it is issued, unless it is a standing order issued in a hospital, nursing home or an assisted care living facility as defined in § 68-11-201;

(iv) Nothing in this section shall be construed to prevent a physician assistant from issuing a verbal prescription order;

(v)(*a*) All handwritten, typed or computer-generated prescription orders must be issued on tamper-resistant prescription paper that meets the current centers for medicare and medicaid service guidance to state medicaid directors regarding § 7002(b) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, P.L. 110-28, and meets or exceeds specific TennCare requirements for tamper-resistant prescription paper;

(*b*) Subdivision (2)(E)(v)(*a*) shall not apply to prescriptions written for inpatients of a hospital, outpatients of a hospital where the doctor or other person authorized to write prescriptions writes the order into the hospital medical record and then the order is given directly to the hospital pharmacy and the patient never has the opportunity to handle the written order, a nursing home or an assisted care living facility as defined in § 68-11-201 or inpatients or residents of a mental health hospital or residential facility licensed under title 33 or individuals incarcerated in a local, state or federal correctional facility;

(F) No drugs shall be dispensed by a physician assistant except under the supervision, control and responsibility of the supervising physician;

(G) Any written, printed or computer-generated prescription order for a Schedule II controlled substance prepared by a physician assistant who is authorized by law to prescribe a drug must be legibly printed or typed as a separate prescription. The written, printed or computer-generated prescription order must contain all information otherwise required by law. The prescribing physician assistant must sign the written, printed or

computer-generated prescription order on the day it is issued;

(3) The patient of any physician receiving services from that physician assistant shall be fully informed that the individual is a physician assistant and/or a sign shall be conspicuously placed within the office of the physician indicating that certain services may be rendered by a physician assistant; and

(4) A physician who does not normally provide patient care is not authorized to supervise or utilize the services of a physician assistant.

63-19-107. Restrictions on supervising physicians and assistants. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

A licensed physician supervising physician assistants shall comply with the following practices:

(1) More than one (1) physician may supervise the same physician assistant; provided, each physician assistant shall have a primary supervising physician and may have additional alternate supervising physicians who shall supervise the physician assistant in the absence or unavailability of the primary supervising physician. Each physician assistant shall notify the committee of the name, address and license number of the physician assistants' primary supervising physician and shall notify the committee of any change in such primary supervising physician within fifteen (15) days of the change. The number of physician assistants for whom a physician may serve as the supervising physician shall be determined by the physician at the practice level, consistent with good medical practice. The supervising physician shall designate one (1) or more alternate physicians who have agreed to accept the responsibility of supervising the physician assistant on a prearranged basis in the supervising physician's absence;

(2)(A) In accordance with rules adopted by the board and the committee, a supervising physician may delegate to a physician assistant working under the physician's supervision the authority to prescribe and/or issue legend drugs and controlled substances listed in Schedules II, III, IV, and V of title 39, chapter 17, part 4. The rules adopted prior to March 19, 1999, by the board and the committee governing the prescribing of legend drugs by physician assistants shall remain effective after March 19, 1999, and may be revised from time to time as deemed appropriate by the board and the committee. The board and the committee may adopt additional rules governing the prescribing of controlled substances by physician assistants. A physician assistant to whom is delegated the authority to prescribe and/or issue controlled substances must register and comply with all applicable requirements of the drug enforcement administration;

(B) A physician assistant to whom the authority to prescribe legend drugs and controlled substances has been delegated by the supervising physician shall file a notice with the committee containing the name of the physician assistant, the name of the licensed physician having supervision, control and responsibility for prescriptive services rendered by the physician assistant and a copy of the formulary describing the categories of legend drugs and controlled substances to be prescribed and/or issued, by the physician assistant. The physician assistant shall be responsible for updating this information;

(C) The prescriptive practices of physician assistants and the supervision by physicians under whom such physician assistants are rendering service shall be monitored by the board and committee. As used in this section, "monitor" does not include the regulation of the practice of medicine or the regulation of the practice of a physician assistant, but may include site visits by members of the board and committee;

(D) Any complaints against physician assistants and/or supervising physicians shall be reported to the director of the division of health related boards, the committee on physician assistants and the board of medical examiners, as appropriate;

(E)(i) Every prescription order issued by a physician assistant pursuant to this section shall be entered in the medical records of the patient and shall be written on a preprinted prescription pad bearing the name, address and telephone number of the supervising physician and of the physician assistant, and the physician assistant shall sign each prescription order so written. Where the preprinted prescription pad contains the names of more than one (1) physician, the physician assistant shall indicate on the prescription which of those physicians is the physician assistant's primary supervising physician by placing a checkmark beside or a circle around the name of that physician;

(ii) Any handwritten prescription order for a drug prepared by a physician assistant who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription. The handwritten prescription order must contain the name of the prescribing physician assistant, the name and strength of the drug prescribed, the quantity of the drug prescribed, handwritten in letters or in numerals, instructions for the proper use of the drug and the month and day that the prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing physician assistant must sign the handwritten prescription order on the day it is issued, unless it is a standing order issued in a hospital, a nursing home or an assisted care living facility as defined in § 68-11-201;

(iii) Any typed or computer-generated prescription order for a drug issued by a physician assistant who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription order. The typed or computer-generated prescription order must contain the name of the prescribing physician assistant, the name and strength of the drug prescribed, the quantity of the drug prescribed, recorded in letters or in numerals, instructions for the proper use of the drug and the month and day that the typed or computer-generated prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing physician assistant must sign the typed or computer-generated prescription order on the day it is issued, unless it is a standing order issued in a hospital, nursing home or an assisted care living facility as defined in § 68-11-201;

(iv) Nothing in this section shall be construed to prevent a physician assistant from issuing a verbal prescription order;

*(v)**(a)** All handwritten, typed or computer-generated prescription orders must be issued on tamper-resistant prescription paper that meets the current centers for medicare and medicaid service guidance to state medicaid directors regarding § 7002(b) of the U.S. Troop Readiness,*

Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, P.L. 110-28, and meets or exceeds specific TennCare requirements for tamper-resistant prescription paper;

(b) *Subdivision (2)(E)(v)(a) shall not apply to prescriptions written for inpatients of a hospital, outpatients of a hospital where the doctor or other person authorized to write prescriptions writes the order into the hospital medical record and then the order is given directly to the hospital pharmacy and the patient never has the opportunity to handle the written order, a nursing home or an assisted care living facility as defined in § 68-11-201 or inpatients or residents of a mental health hospital or residential facility licensed under title 33 or individuals incarcerated in a local, state or federal correctional facility;*

(F) No drugs shall be dispensed by a physician assistant except under the supervision, control and responsibility of the supervising physician;

(G) Any written, printed or computer-generated prescription order for a Schedule II controlled substance prepared by a physician assistant who is authorized by law to prescribe a drug must be legibly printed or typed as a separate prescription. The written, printed or computer-generated prescription order must contain all information otherwise required by law. The prescribing physician assistant must sign the written, printed or computer-generated prescription order on the day it is issued;

(3) The patient of any physician receiving services from that physician assistant shall be fully informed that the individual is a physician assistant and/or a sign shall be conspicuously placed within the office of the physician indicating that certain services may be rendered by a physician assistant;

(4) A physician who does not normally provide patient care is not authorized to supervise or utilize the services of a physician assistant; and

(5)(A) A physician assistant shall only perform invasive procedures involving any portion of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine in any setting not licensed under title 68, chapter 11 under the direct supervision of a Tennessee physician licensed pursuant to chapter 6 or 9 of this title who is actively practicing spinal injections and has current privileges to do so at a facility licensed pursuant to title 68, chapter 11. The direct supervision provided by a physician in this subdivision (5)(A) shall only be offered by a physician who meets the qualifications established in § 63-6-241(a)(1) or (a)(3) or § 63-9-119(a)(1) or (a)(3).

(B) For purposes of this subdivision (5), "direct supervision" is defined as being physically present in the same building as the physician assistant at the time the invasive procedure is performed.

(C) This subdivision (5) shall not apply to a physician assistant performing major joint injections except sacroiliac injections, or to performing soft tissue injections or epidurals for surgical anesthesia or labor analgesia in unlicensed settings.

63-23-108. Denial, suspension or revocation of licenses.

(a) The board has the power, which is its duty, to deny, suspend or revoke any license, or to otherwise discipline, an applicant or holder of a license who is found guilty by the board of one (1) or more of the following:

(1) Willful or repeated violation of any provisions of this chapter or any

rules of the board;

(2) Fraud or deceit in procuring or attempting to procure a license, presenting to the board dishonest or fraudulent evidence of qualification, or fraud or deception in the process of examination for the purpose of securing a license;

(3) Willful failure to display a license;

(4) Fraud, deception, misrepresentation, dishonest or illegal practices in or connected with the practice of social work;

(5) Circulating knowingly untrue, fraudulent, misleading or deceptive advertising;

(6) Gross health care liability, or a pattern of continued or repeated health care liability, ignorance, negligence or incompetence in the course of practice;

(7) Unprofessional or unethical conduct, or engaging in practices in connection with the practice of social work that are in violation of the standards of professional conduct, as defined in this section or prescribed by the rules of the board;

(8) Incapacity or impairment that prevents a licensee from engaging in the practice of social work with reasonable skill, competence, and safety to the public;

(9) Conduct reflecting unfavorably upon the profession of social work;

(10) Willful making of any false statement as to material in any oath or affidavit that is required by this chapter;

(11) Revocation by another state of a license or certificate to practice in that state in which case the record of the revocation shall be conclusive evidence;

(12) Conviction of a felony under federal or state law involving use, misuse, possession or sale of any controlled substance or controlled substance analogue;

(13) Conviction of a felony in the courts of this state or any other state, territory or country that, if committed in this state, would be a felony:

(A) The record of conviction in a court of competent jurisdiction is sufficient evidence for disciplinary action to be taken as may be considered proper by the board. For the purpose of this chapter, a conviction is considered to be a conviction that has been upheld by the highest appellate court having jurisdiction, or a conviction upon which the time for filing an appeal has passed; and

(B) A record of conviction upon charges that involve unlawful practice. Based upon the record of conviction, without any other testimony, the board may take temporary disciplinary action even though an appeal for review by a higher court may be pending;

(14) Permitting or allowing another to use the license for the purpose of treating or offering to treat patients;

(15) Engaging in practice under a false or assumed name, or the impersonation of another practitioner of a like, similar or different name;

(16) Employing or permitting any person who does not hold a license to practice social work in this state to perform work that, under this chapter, can lawfully be done only by persons holding the license and permitted by law to practice social work in this state; or

(17) Addiction to the habitual use of intoxicating liquors, narcotics or other stimulants to such an extent as to incapacitate the applicant or holder from the performance of the applicant's or holder's professional obligations

and duties.

(b) The board may on its own motion cause to be investigated any report indicating that a license holder is or may be in violation of this chapter. Any person who in good faith reports to the board any information that a license holder is or may be in violation of this chapter is not subject to suit for civil damages as a result of the good faith report.

(c) All administrative proceedings for disciplinary action against a licensee undertaken pursuant to this chapter shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

63-25-106. Board of dietitian/nutritionist examiners.

(a) There is hereby created the board of dietitian/nutritionist examiners to consist of five (5) members appointed by the governor, each of whom shall be a resident of this state and shall have had at least five (5) years' experience in the actual practice or teaching of dietetics and/or nutrition. Appointments may be made from lists of qualified persons submitted to the governor by interested dietitian/nutritionist, hospital and medical groups, including, but not limited to, the Tennessee Dietetic Association, the Tennessee Hospital Association, and the Tennessee Medical Association, and shall represent such areas of practice as administrative dietetics, clinical dietetics, dietetic education, community nutrition and consultation and private practice. The governor shall consult with such interested groups to determine qualified persons to fill the positions.

(b) Of the initial appointments to the board, two (2) members shall be appointed for a term of three (3) years, two (2) members for a term of two (2) years, and one (1) member for a term of one (1) year. All regular appointments thereafter shall be for terms of three (3) years each. No member shall be eligible for appointment for more than two (2) consecutive terms, and each member shall serve on the board until a successor is appointed. Vacancies shall be filled by appointment of the governor for the unexpired term. In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(c) The board shall organize annually and select a chair and a secretary. A quorum of the board shall consist of three (3) members, and meetings of the board shall be held as frequently as its duties may require. The division shall perform administrative functions for the board.

(d) Each member of the board shall receive compensation for services in an amount determined by the department, not to exceed fifty dollars ($50.00) per diem when actually engaged in the discharge of their official duties, and, in addition, shall be reimbursed for all travel expenses in accordance with the comprehensive state travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

63-25-110. Disciplinary action.

(a) The board is empowered to deny or refuse to renew a license, or suspend or revoke a license or permit, or issue orders to cease and desist from certain conduct or to otherwise lawfully discipline an applicant, a licensee, a permittee or a person found guilty of violating any provisions of this chapter when such person has:

(1) Attempted or obtained licensure by fraud or misrepresentation;

(2) Engaged in unethical or unprofessional conduct, including, but not limited to, willful acts, negligence or a pattern of continued and repeated health care liability, negligence or incompetence in the course of professional practice;

(3) Engaged in habitual intoxication or personal misuse of any drug, narcotic, controlled substance or controlled substance analogue so as to adversely affect the person's ability to practice;

(4) Been convicted of a felony or any offense under state or federal laws involving moral turpitude;

(5) Violated any lawful order, rule or regulation rendered or adopted by the board; or

(6) Violated any provision of this chapter.

(b) All administrative proceedings for disciplinary action against a license holder or permittee shall be conducted by the board in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The board shall promulgate rules governing the assessment of costs against a licensee or other person found by the board to have violated any provision of this chapter. The costs assessed by the board may include only those costs directly related to the prosecution of the charges against the licensee or other person, including investigatory costs where appropriate. The board shall determine the appropriate amount of costs, if any, to be assessed in a contested case. These costs shall be reasonable and proportionate in light of the violation committed by the licensee or other person.

(d)(1) Any elected officer of the board, or any duly appointed or elected chair has the authority to administer oaths to witnesses. Upon probable cause being established, the board, by a vote of two thirds (⅔) of the members to which the board is entitled, may issue subpoenas for the attendance of witnesses and the production of documents and records.

(2) Service of a subpoena issued by the board shall be made by the sheriff of the county of residence of the licensee or person upon whom the subpoena is served.

(3)(A) A licensee or person served by subpoena shall have thirty (30) days to request in writing a hearing before the board for the sole purpose of making a special appearance to quash or modify the subpoena. The subpoena for attendance of the person or the production of books and records shall be stayed until the board votes upon the request to quash or modify the subpoena. A majority vote of the members to which the board is entitled shall be required to quash or modify a subpoena.

(B) A motion to appeal from a decision by the board regarding a request to quash or modify a subpoena shall be made to the chancery court in Davidson County within fifteen (15) days of such decision.

(4) If any witness fails or refuses to obey a subpoena issued by it, the board is authorized to make application to any court of record in this state within the jurisdiction of which the witness is found or resides, and the court shall have power to attach the body of the witness and compel the witness to appear before the board and give testimony or produce books, records or papers as ordered. Any failure to obey the court order may be punished by the court issuing the order as a civil contempt.

(5) Each witness who appears before the board by order of the board shall receive for attendance the compensation provided by law for attendance of witnesses in a court of record, which shall be paid from the funds of the board in the same manner as all other expenses of the board are paid.

63-26-123. Grounds for suspending, revoking or denying a license.

The commissioner has the authority to suspend, revoke or otherwise deny a license whenever a licensee is found guilty of any of the following acts or offenses:

(1) Fraud in procuring a license;

(2) Conviction of a felony;

(3) Habitual intoxication or addiction to the use of narcotic drugs or controlled substances or controlled substance analogues;

(4) Immoral, unprofessional, unethical or dishonorable conduct; or

(5) Professional connection or association with any person, firm or corporation in any manner in an effort to avoid and circumvent the provisions of this chapter, or lending one's name to another for the illegal practice of electrology by such person.

63-27-103. Board of respiratory care.

(a) A board is created, which shall be known as the board of respiratory care. This board shall consist of eight (8) members, who shall be appointed by the governor in the manner and for the terms of office as provided in this section.

(b) The board shall be composed of four (4) members who are respiratory care practitioners holding a credential from the National Board for Respiratory Care, at least two (2) of whom shall be registered respiratory therapists; one (1) member who is a currently practicing physician having expertise in pulmonary medicine; one (1) member who is a hospital administrator; one (1) member who is a hospital employee licensed as a registered respiratory therapist; and one (1) citizen member who is not commercially or professionally associated with the health care field.

(c) Each member of the board shall:

(1) Be a resident of Tennessee for at least one (1) year immediately preceding appointment and during the member's term;

(2) Be currently licensed in good standing in Tennessee, in the case of a professional member; and

(3) Have had at least three (3) years of experience in that profession (in the case of a professional member).

(d) The governor may consider for appointment to the board the names of qualified persons recommended by interested respiratory care groups, including, but not limited to, the professional organizations for each profession represented on the board. The Tennessee Society for Respiratory Care may submit a list of three (3) names for each position to be filled by a respiratory care practitioner. The Tennessee Medical Association may submit a list of three (3) names for the position to be filled by a physician having expertise in pulmonary medicine. The Tennessee Hospital Association (THA), an association of hospitals and health systems, may submit a list of three (3) names for the position to be filled by a hospital administrator and a list of three (3) names for the position to be filled by a hospital employee licensed as a registered respiratory therapist. The governor shall consult with the interested respiratory care groups to determine qualified persons to fill the positions.

(e) Each member shall serve a term of three (3) years, except that initially the members of the council on respiratory care shall become members of the board and shall remain members of the board until their terms on the council on respiratory care would have expired. The governor shall stagger the terms

of the remaining members appointed to the board, so that the terms of either two (2) or three (3) members shall expire each year. A vacancy occurring on the board shall be filled by the board itself for the unexpired term of that member. At or before the expiration of a member's term, an organization named in subsection (d) may submit three (3) names to the governor for appointment to that position. Each member shall serve until a successor is appointed. Members are eligible for reappointment to successive terms.

(f) In making appointments to the board, the governor shall strive to ensure that at least one (1) member is sixty (60) years of age or older, that at least one (1) member is a member of a racial minority, and that the gender balance of the board reflects the gender balance of the state's population.

(g) Each member shall be reimbursed for actual expenses incurred in the performance of official duties on the board, and in addition thereto, shall be entitled to a per diem of fifty dollars ($50.00) for each day's services in conducting the business of the board. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(h) Annually, the board shall choose a chair and a secretary from among its members.

(i) The board shall hold at least one (1) regular meeting each year and such other meetings as the board determines necessary to conduct its business.

(j) A majority of the members of the board shall constitute a quorum for the transaction of business. No action of the board shall be valid unless approved by a majority of members present at a meeting at which there is a quorum.

(k) The governor has the power to remove from office any member of the board for neglect of duties required by this chapter, for malfeasance in office, for incompetence, or for unprofessional conduct.

(*l*) The board shall deposit all moneys received by the board into the state treasury, and the department shall make such allotments out of the board's account in the general fund as the department deems proper for the necessary expenses of the board.

(m) The division shall provide administrative, investigatory, and clerical services to the board as are necessary to implement and enforce the provisions of this chapter.

(n) On and after January 1, 1999, the board shall assume and fulfill all powers and duties heretofore assigned to the council on respiratory care and the board of medical examiners, and the rules heretofore adopted by the council on respiratory care and the board of medical examiners shall become the rules of the board on January 1, 1999, without further action by the board. The board shall consult with respiratory care professional organizations in the development of any additional regulations.

63-27-112. Disciplinary sanctions — Complaints of violations — Civil penalties — Use of witnesses.

(a) The board has the power to impose any of the disciplinary sanctions set forth in this section whenever the licensee is found guilty of violating any of the provisions of this chapter or committing any of the following acts or offenses:

(1) Making false or misleading statements or committing fraud in procuring a license;

(2) Immoral, unethical, unprofessional or dishonorable conduct;

(3) Habitual intoxication or personal misuse of narcotics, controlled substances, controlled substance analogues or any other drugs or the use of alcoholic beverages or stimulants in such manner as to adversely affect the person's ability to practice respiratory care;

(4) Conviction of a felony or of any offense involving moral turpitude or of any violation of the drug laws of this state or of the United States;

(5) Violation or attempted violation, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any lawful order of the board or any criminal statute of this state;

(6) Gross health care liability, ignorance, negligence or incompetence in the course of professional practice;

(7) Making or signing in one's professional capacity any document that is known to be false at the time it is made or signed;

(8) Engaging in the practice of respiratory care when mentally or physically unable to safely do so;

(9) Making false statements or representations or being guilty of fraud or deceit in the practice of respiratory care;

(10) Having disciplinary action imposed by another state or territory of the United States for any acts or omissions that would constitute grounds for discipline of a person licensed to practice respiratory care in this state; provided, further, that a certified copy of the order or other document memorializing the disciplinary action by the other state or territory shall constitute prima facie evidence of a violation of this section; or

(11) Any other unprofessional or unethical conduct specified in the rules of the board.

(b) Complaints alleging violations of the provisions of this chapter, or the provisions of any rule duly promulgated pursuant to § 63-27-104, shall be filed with the board, shall be referred by the board to the division for investigation, and shall be resolved by the board in accordance with the provisions of this chapter and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. A file shall be maintained on each such complaint filed with the board and shall reflect all activities taken by the board and division in response to such complaint.

(c) The board may impose one (1) or more of the following penalties for violations of the provisions of this chapter or the provisions of any rule duly promulgated pursuant to § 63-27-104:

(1) Denial of an application for licensure;

(2) Revocation or suspension of licensure;

(3) Imposition of an administrative fine not to exceed five hundred dollars ($500) for each count or separate offense;

(4) Placement of the certified respiratory therapist, respiratory assistant or registered respiratory therapist on probation for such length of time and subject to such conditions as the board may specify, including requiring the certified respiratory therapist, respiratory assistant or registered respiratory therapist to submit to treatment, to attend continuing education courses, or to work under the supervision of another certified respiratory therapist or registered respiratory therapist; or

(5) Issuance of a reprimand.

(d) The board shall be empowered to refuse to reinstate licensure or cause a license to be issued to a person it has deemed unqualified, until such time as

it finds that such person has complied with all the terms and conditions set forth in the final order rendered pursuant to subsection (a) and that the respiratory assistant, certified respiratory therapist or registered respiratory therapist is capable of safely engaging in the delivery of respiratory care services.

(e) The chair of the board has the authority to administer oaths to witnesses and, upon probable cause being established, to issue subpoenas for the attendance of witnesses and the production of documents and records.

63-28-112. Committee members — Term of office — Compensation — Removal.

(a) To assist the board of medical examiners in the performance of its duties, there is hereby established the committee for clinical perfusionists, composed of seven (7) members who are each appointed by the governor. The committee shall approve the examination required by this chapter. The chair of the committee shall be a perfusionist.

(b) The committee shall consist of four (4) perfusionist members, one (1) hospital administrator from a licensed healthcare facility in Tennessee in which cardiac surgery is performed, one (1) licensed physician who shall be either a cardiac surgeon or a cardiac anesthesiologist, and one (1) public member. The public member shall be a resident of Tennessee for one (1) year and shall be a registered voter. The public member shall be a person who is not and never was a member of any medical profession or the spouse of a medical professional. The public member shall not be a member of, or a consultant to, any trade association in the field of health care. The public member shall not have or have had a material financial interest in either the provision of professional services specified by this chapter, or any activity or organization directly related to any licensed profession specified in this chapter. Perfusionist members may be appointed from lists of qualified persons submitted to the governor by interested perfusionist groups and the committee for clinical perfusionists. The governor shall consult with such groups and the committee to determine qualified persons to fill the positions. The members of the committee shall be appointed for terms of six (6) years, except those first appointed, of whom one (1) shall be appointed for a term of one (1) year, one (1) shall be appointed for a term of two (2) years, two (2) shall be appointed for a term of three (3) years, one (1) shall be appointed for a term of four (4) years, one (1) shall be appointed for a term of five (5) years and one (1) shall be appointed for a term of six (6) years. The perfusionist committee members shall be residents of the state of Tennessee for at least one (1) year, shall be United States citizens and shall meet all the requirements for licensing provided in this chapter. In making appointments to the committee, the governor shall ensure that the committee is representative of the environments in which perfusionists practice. The hospital administrator member and the physician member shall be residents of Tennessee. In making appointments to the committee, the governor shall strive to ensure that at least one (1) person serving on the committee is sixty (60) years of age or older and that at least one (1) person serving on the committee is a member of a racial minority. Of the total membership of the committee, no less than two (2) members shall be from each grand division of the state. In making the initial appointments to the committee, the perfusionist members shall not be required to be licensed but shall apply for a license from the committee within ninety (90) days of the

issuance of licenses by the committee.

(c) If a member of the committee shall, during the member's term as a committee member, remove the member's domicile from the state of Tennessee, then the committee shall immediately notify the governor and the seat of that committee member shall be declared vacant. All such vacancies shall be filled by appointment in the same manner as provided in subsection (b).

(d) No member of the committee shall be entitled to any compensation for the performance of the member's official duties but shall receive compensation for travel expenses pursuant to the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(e) A member of the committee may be removed by the governor, if the member:

(1) Does not have, at the time of appointment, the qualifications required for appointment to the committee;

(2) Does not maintain during service on the committee the qualifications required for appointment to the committee;

(3) Violates any provision of this chapter;

(4) Cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) Is absent from more than one half (½) of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year, unless the absence is excused by a majority vote of the committee.

63-30-111. Revocation or suspension of registration — Civil penalties — Complaints.

(a) The registration of a certified reflexologist may be revoked or suspended by the division or the division may impose a civil penalty upon a finding that the person is guilty of any one (1) or more of the following:

(1) The practitioner is guilty of gross health care liability or incompetence;

(2) The practitioner's mental or physical health endangers public health or safety;

(3) The practitioner is guilty of false or deceptive advertising;

(4) The practitioner engages in unprofessional conduct;

(5) The practitioner falsifies any requirements for registration as set forth;

(6) The practitioner is convicted of a felony;

(7) The practitioner is subject to disciplinary action in another state; or

(8) The unauthorized practice of reflexology.

(b) Any person may file with the department of health's office of investigations a written complaint against a registered reflexologist for any violation of this chapter.

(c) Complaints alleging violations of the provisions of this chapter, or the provisions of any rule duly promulgated pursuant to § 63-30-112, shall be filed with the division, and shall be resolved by the division in accordance with the provisions of this chapter and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. A file shall be maintained on each such complaint filed with the division and shall reflect all activities taken by the division in response to such complaint.

63-31-109. Power of board to impose sanctions.

The board has the power to impose any sanctions on a licensee, up to and including license revocation, if the licensee is found guilty of violating any of the provisions of this chapter or of committing any of the following acts or offenses:

(1) Making false or misleading statements or committing fraud in procuring a license;

(2) Moral turpitude;

(3) Habitual intoxication or personal misuse of narcotics, controlled substances, controlled substance analogues or any other drugs or the use of alcoholic beverages or stimulants in a manner that adversely affects the person's ability to practice polysomnography;

(4) Conviction of a felony or of any offense involving moral turpitude or any violation of the drug laws of this or any other state or of the United States;

(5) Violation or attempted violation, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate, this chapter or any lawful order of the board or any criminal statute of this state;

(6) Gross health care liability, ignorance, negligence or incompetence in the course of professional practice;

(7) Making or signing in one's professional capacity any document that is known to be false at the time it is made or signed;

(8) Engaging in the practice of polysomnography when mentally or physically unable to safely do so;

(9) Making false statements or representations or being guilty of fraud or deceit in the practice of polysomnography when mentally or physically unable to safely do so;

(10) Having disciplinary action imposed by another state or territory of the United States for any acts or omissions that would constitute grounds for discipline of a person licensed to practice polysomnography in this state; provided, that a certified copy of the order or other document memorializing the disciplinary action by the other state or territory constitutes prima facie evidence of a violation of this section;

(11) Undertaking any duties that are outside the authorized scope of practice of a licensed polysomnographic technologist, as set forth in this chapter;

(12) Violating the code of ethics adopted by the committee for polysomnographic technologists;

(13) Use or attempted use of a polysomnographic procedure or equipment for which the licensee has not received sufficient education or training in the proper use of that procedure or equipment;

(14) Promoting the sale of services, drugs, devices, appliances, or goods to a patient to exploit the patient for financial gain;

(15) Willfully failing to file, or willfully impeding the filing of, any report or record that is required by law;

(16) Knowingly engaging in the practice of polysomnography with an unlicensed person, knowingly aiding an unlicensed person in the practice of polysomnography, or knowingly delegating a task involved in the practice of polysomnography to an unlicensed person;

(17) Knowingly failing to meet appropriate standards for the delivery of

polysomnographic services;

(18) Breaching patient confidentiality;

(19) Paying or agreeing to pay any sum or providing any form of remuneration or material benefit to any person for bringing or referring a patient, or accepting or agreeing to accept any form of remuneration or material benefit from a person for bringing or referring a patient; or

(20) Any other unprofessional or unethical conduct specified in the rules of the board.

63-51-105. Information for public dissemination.

(a) Each board regulating a provider, as defined in § 63-51-102(b), shall collect the following information and provide to the department of health in order for the department to create individual profiles on licensees, in a format created by the department that shall be available for dissemination to the public:

(1) A description of any criminal convictions for felonies and, as determined by the board, serious misdemeanors, within the most recent ten (10) years. For the purposes of this subsection (a), a person shall be deemed to be convicted of a crime if such person was found or adjudged guilty by a court of competent jurisdiction. Misdemeanor convictions later expunged by a court of competent jurisdiction shall be stricken from the provider's profile;

(2) A description of any final board disciplinary actions within the most recent ten (10) years, which actions shall include final board action as defined by § 4-5-314, and reprimand action taken pursuant to a board practice act;

(3) A description of any final disciplinary actions of licensing boards in other states within the most recent ten (10) years;

(4) A description of revocation or involuntary restriction of hospital privileges for reasons related to competence or character that has been taken by the hospital's governing body or any other official action of the hospital after procedural due process has been afforded, or the resignation from or nonrenewal of medical staff membership or the restriction of privileges at a hospital taken in lieu of or in settlement of a pending disciplinary case related to competence or character in that hospital, all as taken pursuant to procedures promulgated by the board for licensing health care facilities. Only cases that have occurred within the most recent ten (10) years shall be disclosed by the department to the public;

(5)(A) All health care liability court judgments, all health care liability arbitration awards in which a payment is awarded to a complaining party and all settlements of health care liability claims in which a payment is made to a complaining party beginning with reports for 1998 and each subsequent year; provided, such reports shall not be disseminated beyond the most recent ten-year period, but shall include the most recent ten-year period for which reports have been filed. Each provider licensing board shall set by rule adopted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, a threshold amount below which judgments or settlements shall not be reportable; provided, such threshold shall, for chapter 6 or 9 of this title licensees, be set at seventy-five thousand dollars ($75,000), for doctors of chiropractic, regulated pursuant to chapter 4 of this title, be set at fifty thousand dollars ($50,000), for

dentists, regulated pursuant to chapter 5 of this title, be set at twenty-five thousand dollars ($25,000), and for all other licensees under this title be set at ten thousand dollars ($10,000). Dispositions of paid claims shall be reported in a minimum of three (3) graduated categories indicating the level of significance of the award or settlement. Information concerning paid health care liability claims shall be put in context by comparing an individual licensee's health care liability judgment awards and settlements to the experience of other providers within the same specialty. Information concerning the existence of a court-sealed settlement shall be reported in cases involving such a settlement. Information concerning all settlements shall be accompanied by the following statement: "Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the provider. A payment in settlement of a health care liability action or claim should not be construed as creating a presumption that health care liability has occurred." Nothing in this subdivision (a)(5) shall be construed to limit or prevent the department from providing further explanatory information regarding the significance of categories in which settlements are reported;

(B) Pending health care liability claims shall not be disclosed by a board to the public. Nothing in this subdivision (a)(5) shall be construed to prevent a board from investigating and disciplining a licensee on the basis of health care liability claims that are pending;

(6) Names of medical schools or professional and training schools and dates of graduation;

(7) Graduate medical education or other graduate-level training;

(8) Specialty board certification as determined by the relevant board;

(9) Names of the hospitals where the licensee has privileges;

(10) Appointments to medical school faculties and indication as to whether a licensee has a responsibility for graduate medical education within the most recent ten (10) years;

(11) Information regarding publications in peer-reviewed medical literature;

(12) Information regarding professional or community service associations, activities and awards;

(13) The location of the licensee's primary practice setting;

(14) The identification of any translating services that may be available at the licensee's primary practice location;

(15) An indication of which managed care plans in which the licensee participates;

(16) An indication of TennCare plans in which the licensee participates; and

(17) No information that is otherwise privileged under this title, and that is generated by any peer review program, provider health program, or impaired professionals program operated or administered by a provider association or foundation that such association has created for peer review purposes, shall be included in any profile unless such information is not contemplated by the particular title 63 statute as being privileged.

(b) Each board shall provide individual licensees with a copy of their profiles prior to release to the public. A licensee shall be provided a reasonable time to correct factual inaccuracies that appear in such profile.

(c) A provider may elect to have the provider's profile omit certain informa-

tion provided pursuant to subdivisions (a)(10)-(12), inclusive, concerning academic appointments and teaching responsibilities, publications in peer-reviewed journals and professional and community service awards. In collecting information for such profiles and in disseminating such profiles, each board shall inform providers that they may choose not to provide such information required pursuant to subdivisions (a)(10)-(12), inclusive.

(d) The department shall develop formats for dissemination of such information to the public, which, at a minimum shall include electronic media, including the World Wide Web of the Internet, and a toll-free telephone line.

(e) On or before January 1, 1999, the division of health related boards of the department shall become a participant in the national practitioners databank.

(f) Individual profiles posted pursuant to § 63-51-107 shall not contain the licensee's home address and social security number, unless such home address is provided by the licensee, along with a request that it be contained in the profile, as their official mailing or practice address. Notwithstanding any provision of this subsection (f), a record containing the home address of the licensee on file with the department of health concerning the provisions of this chapter shall continue to remain a public record.

63-51-111. Annual report and provider profiles — Availability.

(a) The annual report required by § 56-32-110(b)(4), and information required for a profile by this section shall be made available to consumers by the department of health through the World Wide Web of the Internet or a toll-free telephone line. Such information shall be made available by May 1, 1999, and shall be updated by May 1 of each succeeding year.

(b) The information made available by the department pursuant to subsection (a) shall be based on reports filed with the department of commerce and insurance pursuant to § 56-32-110, and shall include, to the extent practicable, the following:

(1) A description of the grievance review system;

(2) The total number of grievances handled through such grievance review system, and a compilation of the causes underlying the grievances filed;

(3) The ratio of the number of adverse decisions issued to the number of grievances received;

(4) The ratio of the number of successful grievance appeals to the total number of appeals;

(5) The average of:

(A) The number of enrollees at the beginning of the calendar year; and

(B) The number of enrollees at the end of the calendar year; and

(6) The number, amount and disposition of health care liability claims made by enrollees that resulted in settlements, court judgments and arbitration awards by the plans during the calendar year.

(c) For each year the reports are filed, the information described in subdivisions (b)(2)-(6) shall be shown for a period of five (5) consecutive calendar years. The information for more than five (5) calendar years shall not be required.

(d) The profile of managed care organizations regulated pursuant to title 56, chapter 32, maintained by the department shall include:

(1) The number of years in existence;

(2) A summary of the financial information, including profits or losses, as reported by the plan in its annual statement filed with the commissioner of commerce and insurance;

(3) The geographic plan area for which the plan is authorized;

(4) The composition of the provider network, including names, addresses and specialties of providers;

(5) Identification of those providers that have notified the plan that they are not accepting new patients;

(6) Measures of quality and consumer satisfaction if the commissioner of health determines by rule that such measures are valid and comparable among organizations;

(7) The certification and accreditation status of the organization, if any;

(8) Procedures governing access to specialists and emergency care services; and

(9) The information voluntarily submitted by the managed care organization to the commissioner relative to consumer satisfaction and quality standards or measures.

63-51-117. Provision of information prior to licensure.

(a) Each licensed provider, as defined in § 63-51-102(b), must provide the information required by this chapter to be compiled into provider profiles by the department of health.

(b) Each provider, as defined in § 63-51-102(b), seeking licensure must provide the information required by this chapter before licensure will be granted.

(c) Before the issuance of the licensure renewal notice, the department shall send a notice to each licensed provider at the provider's last known address of record with the department regarding the requirements for information to be submitted by such provider pursuant to this chapter.

(d) Each provider who has submitted information pursuant to this chapter must update that information in writing by notifying the department within thirty (30) days after the occurrence of an event or the attainment of a status that is required to be reported. With respect to updated information required to be submitted pursuant to § 63-51-105(a)(5)(A), the department shall accept information updating a profile as it relates only to a physician licensed pursuant to chapter 6 or 9 of this title if the information is received within thirty (30) days of final payment in writing from either the provider or the provider's health care liability carrier and the carrier attests, in writing to the department, that it is the provider's health care liability carrier that has made the payment and that the carrier has confirmed in writing to the provider that the information has been reported to the department for purposes of updating the provider's profile.

(e) Failure by a provider to comply with these requirements to submit information and to update information constitutes a ground for disciplinary action under the respective practice act for that profession. For such failure to comply, the department or board may:

(1) Refuse to issue a license to any provider applying for initial licensure who fails to submit or update the required information;

(2) Refuse to renew a license to any provider who fails to submit or update the required information; and/or

(3) Process any licensed provider before the board who fails to submit and/or update the required information for formal disciplinary action, and may assess a penalty against the provider of up to fifty dollars ($50.00) for each day that the provider is not in compliance with this subsection (e).

64-1-602. Board of directors — Officers — Meetings — Expenses.

(a) The organization of the agency shall be as follows:

(1) The agency shall be governed by a board of directors consisting of twelve (12) members;

(2)(A) The governor shall appoint one (1) director from each county named in § 64-1-601(b). Each director shall be chosen from a list of three (3) candidates nominated by majority vote of the county legislative bodies of each county. Candidates shall include persons active in municipal, industrial, agricultural, commercial and citizen organizations, such as the Upper Duck River development association, and active in promoting comprehensive unified development of the resources and economic growth of the Upper Duck River watershed. The presiding officer of the governing body of each county shall certify such nominations to the governor. From the nominations, the governor shall appoint three (3) directors for terms of three (3) years and two (2) directors for terms of four (4) years. Successors shall be appointed for terms of six (6) years. Directors shall serve until their successors are appointed. If a vacancy occurs, the governor shall appoint a successor for the unexpired term;

(B) The governor shall designate a member of the governor's staff or cabinet to serve as a director during the governor's term of office;

(C) The governor shall designate county mayors from two (2) counties of the area to serve as directors for two-year terms;

(D) The governor shall designate mayors of two (2) incorporated cities or towns of the area to serve as directors for two-year terms; and

(E) The governor shall appoint two (2) additional directors for terms of four (4) years. The governor may choose from a list of six (6) at-large candidates nominated by the board of directors. There is no residency requirement for the two (2) additional directors other than to be citizens of the state; and

(3) The board of directors shall elect a chair, vice chair and secretary-treasurer and set a regular time and place for meetings of the board.

(b) Directors serve without compensation, except reimbursement for actual traveling expenses and other necessary expenses incurred in the performance of their official duties, such expenses to be reimbursed from such funds as may be available to the agency. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

64-5-202. Board of directors.

The authority shall be governed by a board of directors, referred to as the "board" in this part. The board shall make policy, which shall be implemented by the executive director, if such position is established.

64-5-203. Membership of board — Proxy voting — Executive committee — Board meetings open to public.

(a)(1) Effective July 1, 2012, the membership of the board shall be as follows:

(A)(1) The county mayor of each county in the region shall be an ex officio voting member of the board. The term of office on the board of the county mayor shall be coextensive with the term of office as county mayor; or

(2) In lieu of serving as a member of the board, the county mayor is authorized to appoint a person to serve in the mayor's stead. The term of office of such appointed person shall be coextensive with the term of office of the county mayor making the appointment;

(B) One (1) person who resides within the region shall be appointed by the speaker of the house of representatives, to be appointed for a term of two (2) years; and

(C) One (1) person who resides within the region shall be appointed by the speaker of the senate, to be appointed for a term of two (2) years.

(2) The board in existence on July 1, 2012, shall terminate at midnight June 30, 2012.

(b) Any member of the board may authorize someone to represent that member and vote by proxy upon written notification of the same to the chair of the board prior to commencement of the board meeting in which the member is to be absent.

(c) The board may establish an advisory committee consisting of twenty-five (25) members, with five (5) members from each of the five (5) counties in the region selected in such manner as the board determines to provide a wide range of viewpoints. The board shall endeavor to have the advisory committee reflect a broad range of socioeconomic backgrounds in its membership. The terms of the members of the advisory committee shall be set by a resolution of the board in such manner as to create a staggered-term system to provide continuity on the advisory committee.

(d) At least annually, the board shall hold a meeting at which members of the general public are allowed to address the board. Further, prior to the adoption of any resolution authorizing a bond issue pursuant to the provisions of this part, the board shall hold a public hearing to examine the opinions of members of the general public on the issue.

(e) All meetings of the board and advisory committee shall be public and shall comply with the state law on open meetings compiled in title 8, chapter 44.

64-5-204. Election of officers.

The board, at its organizational meeting and annually thereafter, shall elect one (1) of its members to the office of chair, one (1) of its members to the office of vice chair and one (1) of its members to the office of secretary-treasurer.

64-5-205. Vacancies.

Vacancies on the board shall be filled according to the method of original election or appointment.

64-5-207. [Repealed.]

64-7-112. Operations.

The regional council shall adopt and operate under the following:

(1) Subject to the approval of the commissioner of finance and administration, adopt statewide uniform travel regulations, and the regional council shall reimburse its officers and employees for official travel in conformance with such regulations;

(2) Develop a system of competitive bidding on purchases of supplies and equipment and other contracts and submit the written procedures governing such system to the state procurement commission for approval;

(3) Develop written personnel procedures to be filed with the commissioner of finance and administration for the hiring, promotion, demotion and dismissal of all employees and shall include an employee compensation plan based on a salary comparability analysis that takes into account state salary schedules, local government salary schedules and regional private market variations; and

(4) Submit, annually, to the chairs of the finance, ways and means committees of the senate and house of representatives and to the office of legislative budget analysis a work program and budget.

64-8-202. Part definitions.

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

(1) "Authority" means a regional transportation authority created pursuant to this part or reconstituted pursuant to § 64-8-203(b);

(2) "Board" means the board of directors of an authority;

(3) "Creating municipality" means any metropolitan form of government, city, town or county that creates an authority pursuant to this part;

(4) "Executive officer" means the mayor, county mayor or other chief executive officer of any creating municipality;

(5) "Governing body" means the chief legislative body of any creating municipality;

(6) "Mass transit system" means, without limitation, a combination of real and personal property, structures, improvements, buildings, terminals, parking facilities, equipment, plans, and rights-of-way, public rail and fixed guideway transportation facilities, rail or fixed guideway access to, from or between other transportation terminals, and commuter railroads and commuter rail facilities, or any combination thereof or addition thereto, used, directly or indirectly, useful or convenient for the purpose of public transportation by automobile, truck, bus, rapid transit vehicle, light rail or heavy rail;

(7) "Metropolitan government" means the political entity created by consolidation of all, or substantially all, of the political and corporate functions of a county and a city or town or cities or towns;

(8) "Metropolitan planning organization" means the federally designated regional transportation planning agency established for urbanized areas of at least fifty thousand (50,000) people to develop a long-range regional transportation plan and short-range transportation improvement program;

(9) "Regional transportation authority of Middle Tennessee" means the regional transportation authority created by part 1 of this chapter and

composed of certain counties and the cities and towns contained in those counties, those counties being Davidson, Sumner, Williamson, Wilson, Robertson, Cheatham, Maury, Dickson and Rutherford;

(10) "State" means the state of Tennessee;

(11) "Transit adjacent development" means development near or next to a transit station that promotes or takes advantage of transit ridership but is not designed specifically around a transit station; and

(12) "Transit oriented development" or "TOD" means, without limitation, land use development centrally located around a transit station, sometimes part of the station or where the station is a prominent feature of the development, that has a mixture of land uses in close proximity to one another, including office, residential, retail, public and civic uses, occurring at a relatively high density. TOD is designed to be walkable and easy to navigate by bicycles and other nonmotorized modes of transportation.

64-8-207. Powers granted for financing the mass transit and transportation plans.

In order to finance the construction, operation, maintenance, and management of the mass transit and transportation plans and plans for transit adjacent or transit oriented development established by the authority, the authority shall have the following powers:

(1) To fix, alter, establish and collect rates, fares, fees, rentals, tolls and other charges for the services planned, financed, constructed, operated, maintained or managed by the authority associated with transit and transit oriented development, including, but not limited to, demand-response transit services, vanpool programs, rideshare programs, local bus services, regional bus services, bus rapid transit services, light rail transit services, commuter rail services, park-and-ride lots, transit oriented development nodes and all infrastructure that would be required to support or sustain such facilities or services. These rates, fares, fees, rentals, tolls, sales and other charges shall always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to this part;

(2) To solicit, accept and expend grants, appropriations, contributions or other funds from any source, public or private, and maintain an accounting of such receipts and expenditures, subject to audit by the comptroller of the treasury;

(3) To sell, convey, exchange, lease as a lessor, transfer or otherwise dispose of any real or personal property, or interest in real or personal property, acquired by the authority, including air rights, or to purchase, lease or otherwise acquire real property as needed for the construction or operation of mass transit or transportation services and to implement transit adjacent or transit oriented development plans;

(4)(A) The authority shall have power and is authorized to issue its bonds in order to finance:

(i) The costs of any project authorized by this part;

(ii) The payment of the costs of issuance of such bonds, including underwriter's discount, financial advisory fees, preparation of the definitive bonds, preparation of all public offering and marketing materials, advertising, credit enhancement, and legal, accounting, fiscal and other similar expenses;

(iii) Reimbursement of the authority for moneys previously spent by the authority for any of the purposes set forth in subdivision (4)(A)(ii);

(iv) The establishment of reasonable reserves for the payment of debt service on such bonds, for repair and replacement of any project, or for such other purposes as the board deems necessary and proper in connection with the issuance of any bonds and operation of any project for the benefit of which the financing is being undertaken; and

(v) The contribution of the authority's share of the funding for any joint undertaking for the purposes set forth in this subdivision (4);

(B)(i) The authority shall have the power and is authorized to issue its bonds to refund and refinance outstanding bonds of the authority heretofore or hereafter issued or lawfully assumed by the authority. The proceeds of the sale of the bonds may be applied to:

(a) The payment of the principal amount of the bonds being refunded and refinanced;

(b) The payment of the redemption or tender premium thereon, if any;

(c) The payment of unpaid interest on the bonds being refunded, including interest in arrears, for the payment of which sufficient funds are not available, to the date of delivery or exchange of the refunding bonds;

(d) The payment of fees or other charges incident to the termination of any interest rate hedging agreements, liquidity or credit facilities or other agreements related to the bonds being refunded and refinanced;

(e) The payment of interest on the bonds being refunded and refinanced from the date of delivery of the refunding bonds to maturity or to, and including, the first or any subsequent available redemption date or dates on which the bonds being refunded may be called for redemption;

(f) The payment of the costs of issuance of the refunding bonds, including underwriter's discount, financial advisory fees, preparation of the definitive bonds, preparation of all public offering and marketing materials, advertising, credit enhancement, and legal, accounting, fiscal and other similar expenses, and the costs of refunding the outstanding bonds, including the costs of establishing an escrow for the retirement of the outstanding bonds, trustee and escrow agent fees in connection with any escrow, and accounting, legal and other professional fees in connection therewith; and

(g) The establishment of reserves for the purposes set forth in subdivision (4)(A)(iv);

(ii) Refunding bonds may be issued to refinance and refund more than one issue of outstanding bonds, notwithstanding that the outstanding bonds may have been issued at different times. Refunding bonds may be issued jointly with other refunding bonds or other bonds of the authority. The principal proceeds from the sale of refunding bonds may be applied either to the immediate payment and retirement of the bonds being refunded or, to the extent not required for the immediate payment of the bonds being refunded, to the deposit in escrow with a bank or trust company to provide for the payment and retirement at a later date of the bonds being refunded;

(C) No bonds shall be issued under this subdivision (4) unless authorized to be issued or assumed by resolution of the governing board of the authority. Bonds authorized to be issued under this subdivision (4) may be issued in one (1) or more series, may bear such date or dates, mature at such time or times, not exceeding forty (40) years from their respective dates, bear interest at such rate or rates, payable at such time or times, be in such denominations, be in such form, either coupon or registered, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Bonds may be issued for money or property at competitive or negotiated sale for such price or prices as the governing board, or its designee, shall determine. The authority may enter into such agreements in connection with the issuance of any bonds as its governing board may approve, including, without limitation, agreements related to municipal bond insurance, credit or liquidity facility agreements, remarketing agreements and bond purchase agreements;

(D) Bonds may be repurchased by the authority out of any available funds at such price as the governing board shall determine, and all bonds so repurchased shall be cancelled or held as an investment of the authority as the governing board may determine;

(E) Pending the preparation or execution of definitive bonds, interim receipts or certificates or temporary bonds may be delivered to the purchasers of bonds;

(F)(i) With respect to all or any portion of any issue of bonds issued under this subdivision (4), at any time during the term of the bonds, and upon receipt of a report of the comptroller of the treasury or the comptroller's designee finding that the contracts and agreements authorized in this subdivision (4) are in compliance with the guidelines, rules or regulations adopted or promulgated by the state funding board, as set forth in § 9-21-130, the authority, by resolution of the governing board, may authorize and enter into interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings, or both, and other interest rate hedging agreements under such terms and conditions as the governing board may determine, including, without limitation, provisions permitting the authority to pay to, or receive from, any person or entity any loss of benefits under such agreement upon early termination of the agreement or default under the agreement;

(ii) The authority may enter into an agreement to sell bonds, other than its refunding bonds, under this part providing for delivery of its bonds on a date greater than ninety (90) days and not greater than five (5) years or such greater period of time if approved by the comptroller of the treasury or the comptroller's designee, from the date of execution of the agreement or to sell its refunding bonds providing for delivery of the refunding bonds on a date greater than ninety (90) days from the date of execution of the agreement and not greater than the first optional redemption date on which the bonds being refunded can be optionally redeemed resulting in cost savings or at par, whichever is earlier, only upon receipt of a report of the comptroller of the treasury or the comptroller's designee finding that the agreement or contract of the authority to sell its bonds as authorized in this subdivision (4) is in

compliance with the guidelines, rules or regulations adopted or promulgated by the state funding board in accordance with § 9-21-130. Agreements to sell bonds and refunding bonds for delivery ninety (90) days or less from the date of execution of the agreement do not require a report of the comptroller of the treasury or the comptroller's designee;

(iii) Prior to the adoption by the governing board of a resolution authorizing a contract or agreement described in subdivision (4)(F)(i) or (4)(F)(ii), a request shall be submitted to the comptroller of the treasury or the comptroller's designee for a report finding that the contract or agreement is in compliance with the guidelines, rules or regulations of the state funding board. Within fifteen (15) days of receipt of the request, the comptroller of the treasury or the comptroller's designee shall determine whether the contract or agreement substantially complies with the guidelines, rules or regulations and shall report on compliance to the authority. If the report of the comptroller of the treasury or the comptroller's designee finds that the contract or agreement complies with the guidelines, rules or regulations of the state funding board or the comptroller of the treasury shall fail to report within the fifteen-day period, then the authority may take such action with respect to the proposed contract or agreement as it deems advisable in accordance with this section and the guidelines, rules or regulations of the state funding board. If the report of the comptroller of the treasury or the comptroller's designee finds that the contract or agreement is not in compliance with the guidelines, rules or regulations, then the authority is not authorized to enter into the contract or agreement. The guidelines, rules or regulations shall provide for an appeal process upon a determination of noncompliance;

(iv) When entering into any contracts or agreements facilitating the issuance and sale of bonds, including contracts or agreements providing for liquidity and credit enhancement and reimbursement agreements relating thereto, interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings, or both, other interest rate hedging agreements, and agreements with the purchaser of the bonds, evidencing a transaction bearing a reasonable relationship to this state and also to another state or nation, the authority may agree in the written contract or agreement that the rights and remedies of the parties to the contract or agreement shall be governed by the laws of this state or the laws of such other state or nation; provided, that jurisdiction over the authority shall lie solely in the courts of any participating metropolitan government, county, city or town;

(G)(i) All bonds issued by the authority shall be payable out of the revenue and receipts derived from any projects, or of any portion of projects owned, operated or leased to or from the authority, as may be designated by the board of directors of the authority, or from any revenues to be derived directly or indirectly by the authority from such projects, or from any revenues derived directly or indirectly by the authority from the allocation, transfer, contribution or pledge of tax revenues or other moneys of any nature by the state or any county, municipality or other public instrumentality thereof;

(ii) The principal of and interest on any bonds issued by the authority shall be secured, as may be designated by the governing board, by a

pledge of revenues and receipts of the authority described in subdivision (4)(G)(i), by a pledge of the authority's rights under agreements, leases and other contracts, or by a mortgage or deed of trust covering all or any part of the projects from which the revenues or receipts so pledged may be derived. The proceedings under which the bonds are authorized to be issued and any such pledge agreement or mortgage or deed of trust may contain any agreements and provisions respecting the maintenance of the projects covered by the bonds, the fixing and collection of rents for any portions of projects leased by the authority to others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the governing board deems advisable and not in conflict with this part. Each pledge, agreement, or mortgage or deed of trust made for the benefit or security of any of the bonds of the authority shall continue effective until the principal of and interest on the bonds for the benefit of which the pledge, agreement, or mortgage or deed of trust were made shall have been fully paid. In the event of default in the payment or in any agreement of the authority made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any mortgage or deed of trust executed as security for the bonds, the payment or agreement may be enforced by suit, mandamus, the appointment of a receiver in equity or by foreclosure of any such mortgage or deed of trust, or any one (1) or more of these remedies;

(H) The authority may issue interim certificates, bond anticipation notes or other temporary obligations pending the issuance of its revenue bonds, which temporary obligations shall be payable out of revenues and receipts of the authority in like manner as the revenue bonds and shall be retired from the proceeds of such bonds upon the issuance of the revenue bonds, and shall be in such form and contain such terms, conditions and provisions consistent with the provisions of this part as the governing board may determine;

(I) Bonds and notes of the authority shall be executed in the name of the authority by such officers of the authority and in such manner as the governing board may direct and shall be sealed with the corporate seal of the authority. If so provided in the proceedings authorizing the bonds, the facsimile signature of any of the officers executing the bonds and a facsimile of the corporate seal of the authority may appear on the bonds in lieu of the manual signature of the officer and the manual impress of the seal;

(J) Any bonds and notes of the authority may be sold at public or private sale, for such price and in such manner and from time to time as may be determined by the governing board of directors of the authority to be most advantageous; and the authority may pay all expenses, premiums and commissions that its board of directors may deem necessary or advantageous in connection with the issuance of the bonds;

(K) Any participating metropolitan government, county, city or town is authorized to aid or otherwise provide assistance to an authority created pursuant to this part, including entering into leases of projects, or parts of projects with an authority, for such term or terms and upon such conditions as may be determined by resolution of the governing body of the metropolitan government, county, city or town, notwithstanding and

without regard to the restrictions, prohibitions or requirements of any other law, whether public or private, or granting, contributing or pledging revenues of the metropolitan government, county, city or town to or for the benefit of the authority derived from any source;

(L) Any participating metropolitan government, county, city or town is authorized, upon recommendation of the governing board of the authority, to issue and sell its bonds to finance the acquisition, construction, improvement or expansion of the facilities authorized in this part, and to refund bonds previously issued by the metropolitan government, county, city or town or by the authority, or refinance indebtedness previously incurred for such purposes. The facilities authorized by this part shall be deemed to be public works projects for purposes of § 9-21-105 of the Local Government Public Obligations Act of 1986 (LGPOA), compiled in title 9, chapter 21, and any such bonds issued by a participating metropolitan government, county, city or town under this part shall be issued, and the proceeds of the bonds applied, in accordance with the applicable provisions of the LGPOA. Notwithstanding this subdivision (4)(L), prior to the issuance of any general obligation bonds by a metropolitan government, county, city or town under the authority of this part, a referendum shall be held concurrently with a general election in the metropolitan government, county, city or town. The referendum shall in all other respects be conducted in compliance with the requirements of the LGPOA, specifically with those contained in §§ 9-21-205 — 9-21-209;

(M) Each participating metropolitan government, county, city or town, upon approval by resolution of its governing body, is authorized to enter into such agreements with the authority and the other participating metropolitan governments, counties, cities or towns as may be determined by the governing body of the metropolitan government, county, city or town to be convenient or necessary to accomplish the purposes set forth in subdivisions (4)(K) and (L);

(N) Except to the extent of any revenues that may be specifically allocated, transferred, contributed or pledged by a participating metropolitan government, county, city or town in accordance with this part and laws, rules and regulations applicable to this part, no metropolitan government, county, city or town shall in any event be liable for the payment of the principal of or interest on any bonds of the authority or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever that may be undertaken by the authority, and none of the bonds of the authority or any of its agreements or obligations shall be construed to constitute an indebtedness of a participating metropolitan government, county, city or town within the meaning of any constitutional or statutory provision whatsoever;

(O) Nothing in this part shall be construed to allow the governing board of the authority to pledge unilaterally the full faith and credit and unlimited taxing power of any metropolitan government, county, city or town as surety to the payment of the authority's bonds or to impose unilaterally an ad valorem tax in any metropolitan government, county, city or town;

(5) To delineate and create a special district in all or portions of the areas of the regional transportation authority for the purposes of facilitating the raising of revenues to be dedicated to the authority for the implementation

of the authority's plan within the special district. A special district may be created only in those areas of the authority that have or are planned to have a benefit from services being provided by the authority and shall be permitted to include multiple metropolitan governments, counties, cities and towns. An authority may create more than one (1) special district and special districts may overlap. Local governments, by majority vote of their governing bodies, shall have the right to opt out of a special district created by the board of an authority prior to the levy of any tax or assessment within the special district;

(6) To accept funds from taxes or assessments levied by local governments served by the authority or act of the general assembly in order to provide funding for the plan adopted by the authority pursuant to § 64-8-206(a). The act of the general assembly may be initiated upon either:

(A) A formal request made by local governing bodies within the authority in the form of a local resolution; or

(B) The receipt of the certified results of a nonbinding advisory election. For such an election to be held, the governing body is authorized to direct the county election commission in the affected local governments to place the question on the ballot to be submitted to the voters in the affected local governments on the matter of general and vital concern of whether a particular tax or assessment with a certain rate should be levied within a special district of the authority by means of the general assembly in order to obtain the advice and direction of the voters as to such matters. The expense of any special election held within the territory of the special district of the authority shall be borne by the authority. The results of the election shall be advisory and nonbinding; and

(7) To petition its participating local governments to levy any tax or assessment authorized by law for state, county or municipal purposes and not prohibited by the Tennessee constitution and dedicate the proceeds of such tax or assessment to the authority. Any city or county government levying a tax pursuant to this subdivision (7) may limit the levy of the tax to the area included within the special district created by the regional transportation authority. Any local government levying a tax pursuant to this subdivision (7) may make the levy subject to approval by the qualified voters in the area subject to the tax in accordance with § 2-3-204 in the following manner:

(A)(i) Any ordinance or resolution of a participating local government levying the tax under authority of this part shall not become operative until approved in an election provided under this subdivision (7) in such local government;

(ii) The county election commission shall hold an election on the question pursuant to § 2-3-204, providing options to vote "FOR" or "AGAINST" the ordinance or resolution, after the receipt of a certified copy of such ordinance or resolution, and a majority vote of those voting in the election shall determine whether the ordinance or resolution is to be operative; and

(iii) If the majority vote is for the ordinance or resolution, it shall be deemed to be operative on the date that the county election commission makes its official canvass of the election returns; provided, however, that no tax shall be collected under any such ordinance or resolution until the first day of a month occurring at least thirty (30) days after the operative

date;

(B)(i) If a county legislative body adopts a resolution to levy the tax at the same rate that is operative in a city or town in the county, the election under this section to determine whether the county tax is to be operative shall be open only to the voters residing outside of the city or town. If the county tax is at a higher rate than the rate of the city or town tax, the election shall also be open to the voters of the city or town; and

(ii) Should any county or city or town hold an election under this subdivision (7), and the ordinance or resolution is rejected, no other election on the tax or assessment shall be held by the county, city or town for a period of six (6) months from the date of the holding of the prior election.

65-1-101. Creation — Directors — Qualifications — Appointments — Vacancies — Term of office.

(a) There is created the Tennessee regulatory authority consisting of five (5) part-time directors. The directors shall be appointed as follows: one (1) director shall be appointed by the governor, one (1) director shall be appointed by the speaker of the senate, one (1) director shall be appointed by the speaker of the house of representatives, and two (2) directors shall be appointed by joint agreement among the governor, the speaker of the senate and the speaker of the house of representatives. In making the appointments pursuant to this subsection (a), the governor, the speaker of the senate and the speaker of the house of representatives shall strive to ensure that the Tennessee regulatory authority is composed of directors who are diverse in professional or educational background, ethnicity, geographic residency, perspective and experience.

(b) Each director of the authority shall have at a minimum a bachelor's degree and at least three (3) years' experience in a regulated utility industry, in executive level management, or in one (1) or more of the following fields:

(1) Economics;

(2) Law;

(3) Finance;

(4) Accounting; or

(5) Engineering.

(c) The directors of the authority shall be state officers and, except for the staggered terms provided in subsection (h), shall serve six-year terms.

(d) The governor, the speaker of the senate, and the speaker of the house of representatives shall make appointments by April 1, prior to the expiration of the terms of office of the directors.

(e) The term of office of each director shall commence on July 1, following such director's appointment.

(f) All appointments of the directors shall be confirmed by joint resolution adopted by each house of the general assembly within thirty (30) days after the appointment.

(g) Any vacancy on the authority shall be filled by the original appointing authority for such position to serve the unexpired term and each appointment shall be confirmed in the same manner as the original appointment. If, however, the general assembly is not in session and a vacancy occurs, the appropriate appointing authority shall fill such vacancy by appointment and

the appointee shall serve the unexpired term, unless the appointment is not confirmed within thirty (30) days after the general assembly convenes following the appointment to fill such vacancy.

(h) The terms of current directors appointed during 2008 and directors appointed during 2012 shall be staggered and shall expire as follows:

(1) The terms of the existing directors appointed by the speaker of the house of representatives and the speaker of the senate shall expire on June 30, 2014;

(2) The term of the existing director appointed by the governor shall expire on June 30, 2017;

(3) The terms of the joint directors commencing on July 1, 2012, shall expire on June 30, 2018.

(i) A director shall continue to serve until the director's successor is appointed.

65-1-103. Meetings.

(a) The directors shall convene regular monthly meetings and shall remain in session until all business before them is disposed of, and shall hold other sessions at such times and places as may be necessary for the proper discharge of their duties. If the business of the authority does not require a monthly meeting, a majority of the directors may waive the requirement of a meeting.

(b) All decisions of the Tennessee regulatory authority pertaining to dispositions to or from any deferred revenue account shall be made in a public meeting of the authority. The attorney general and reporter and any other interested party shall be given adequate notice of the meeting and shall be given the opportunity to present oral and written testimony. As used in this section, "deferred revenue account" means any account created for the excess earnings from utilities regulated by the Tennessee regulatory authority.

65-1-104. Quorum — Chair and vice chair — Panels.

(a) A majority of the directors of the Tennessee regulatory authority shall constitute a quorum for the transaction of business. The authority shall elect one (1) of its directors to be the chair of the authority for a two-year term and shall elect one (1) of its directors to be the vice chair of the authority for a two-year term. The vice chair shall assume the role of chair at the expiration of the chair's two-year term.

(b) The chair and vice chair of the authority may be removed by a majority vote of the disinterested directors.

(c) The chair shall have the primary responsibility of formulating the broad strategies, goals, objectives, long-range plans and policies of the authority, in conjunction with the directors. The chair shall also have the power and duty to conduct ordinary and necessary business in the name of the authority. Such duties include, but are not limited to, the following:

(1) Giving notice of, and agendas for, all meetings of the authority to all directors in advance of the meeting;

(2) Assigning matters to be heard by panels in accordance with § 65-1-104;

(3) Preparing and calling the docket items to be heard during each scheduled meeting of the authority;

(4) Keeping the official, full and correct record of all proceedings and

transactions of the authority;

(5) Serving as the designated contact for all media inquiries to the authority;

(6) Ensuring that orders by the authority are issued in a timely manner and in accordance with the rules and procedures established by the executive director;

(7) Conducting a yearly performance evaluation of the executive director, which shall be submitted to the governor;

(8) Delegating duties of the chair to the vice chair; and

(9) Performing such other duties as the authority may assign or as may be required by statute, rule or regulation.

(d) The chair shall assign each matter before the authority to a panel of three (3) voting members, from among the directors. The remaining two (2) voting members of the authority, who are not assigned to a particular panel, shall not vote or deliberate regarding such matters. The authority shall establish reasonable procedures for rotating the directors for assignments to panels in an efficient manner. Such procedures shall ensure that all voting members of the authority serve on a substantially equal number of panels in a random fashion, to the extent practicable.

65-1-105. Compensation — Expenses.

(a) The compensation of each director of the Tennessee regulatory authority shall be thirty-six thousand dollars ($36,000) per year payable monthly out of the state treasury on the warrant of the commissioner of finance and administration. When directors are assigned to serve on a panel lasting more than one (1) day, the director shall be compensated one hundred forty dollars ($140) for each day, or portion of a day, following the first day, for the duration of the matter. Such compensation shall be in addition to reimbursement for actual travel expenses on official business under subsection (b).

(b) The five (5) directors shall be reimbursed for their actual travel expenses on official business in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

65-1-109. Executive director.

(a) The executive director shall be appointed by joint agreement among the governor, the speaker of the senate and the speaker of the house of representatives for the initial term. Thereafter, the directors of the authority shall appoint the executive director. The term of the executive director shall be three (3) years. The executive director shall have at a minimum a bachelor's degree and either a minimum of five (5) years' experience in the regulated utility industry or a minimum of five (5) years' experience in executive-level management, with a preference toward experience in economics, law, finance, accounting or engineering. The executive director shall not be a director of the authority.

(b) The authority may remove the executive director by a majority vote of the directors.

(c) The executive director shall have the principal responsibility of implementing the broad strategies, goals, objectives, long-range plans and policies of the authority. Among the executive director's duties, which are not limited to

the following list, are:

(1) Serving as chief operating officer of the authority responsible for the day to day management of the authority and the supervision and hiring of all staff members within the limits of available funds authorized from time to time by the legislature;

(2) Administering, monitoring, and reviewing the operating procedures of each division of the authority, ensuring that each employee and division of the authority fully executes in an efficient and economical manner, the separate duties assigned to each;

(3) Submitting rules and policies for approval by the authority;

(4) Implementing and administering rules and policies for the efficient and economical internal management of the authority;

(5) Coordinating the preparation of the report to the general assembly as required by § 65-1-111;

(6) Supervising the expenditure of funds and being responsible for complying with all applicable provisions of state and federal law in the receipt and disbursement of funds; and

(7) Performing such other duties as the authority may require, from time to time, or as may be required by statute.

(d) The governor shall set the compensation of the executive director for the initial term of office of the executive director, which shall not exceed the compensation established for the commissioners of the claims commission. Thereafter, the directors of the authority shall set the compensation of the executive director.

(e) The executive director shall submit an annual report to the general assembly comparing telecommunications, electricity, natural gas, water and wastewater utility rates between Tennessee and the southeastern states. For the purpose of reporting rates in the report, the TRA shall make comparisons on the basis of market choices made by consumers without regard to whether the services chosen are regulated or non-regulated services.

65-1-111. Report to general assembly — Report comparing rates.

(a) The Tennessee regulatory authority shall, on the first Monday of February each year, make a report to the general assembly and to the governor of all matters relating to its office for the preceding year, and such as will disclose the practical workings of companies under its jurisdiction in this state, along with such suggestions as it may deem proper, together with an abstract of the minutes of all of its meetings.

(b) The Tennessee regulatory authority shall prepare an annual report comparing, for the preceding fiscal year, the rates of municipal utilities, cooperatives, and utility districts providing water, gas or electricity to the rates of water, gas and electric utilities regulated by the authority. No later than October 1, 2012, and prior to October 1 of each subsequent year, the report shall be submitted to the governor, the speaker of the senate, the speaker of the house of representatives, and the members of the finance, ways and means committees of the senate and the house of representatives.

65-1-115. Members of former public service commission included in the executive service.

In addition to the designations of preferred and executive service employees in § 8-30-202, the following members of the former public service commission

shall be included in the executive service:

(1) Members of the Tennessee regulatory authority;

(2) The executive director of the Tennessee regulatory authority;

(3) The personal staff of the members of the Tennessee regulatory authority;

(4) The division directors and assistant division directors of the Tennessee regulatory authority; and

(5) Any attorneys employed by the Tennessee regulatory authority.

All actions of the department of personnel in regard to the Tennessee regulatory authority personnel transactions may, upon request of a majority of the authority directors, be reviewed and revised, modified or reversed by action of the house finance, ways and means committee and the senate finance, ways and means committee.

65-1-116. Directors deemed state employees eligible for insurance benefits.

Tennessee regulatory authority directors shall be deemed state employees as defined in § 8-27-201(g) and shall be eligible for participation in group insurance for state officials and employee plans as approved by the general assembly.

65-4-405. Database of persons objecting to solicitation — Regulations — Enforcement actions.

(a) The authority shall establish and provide for the operation of a database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations. It shall be the duty of the authority to have such database in operation no later than May 1, 2000. Such database may be operated by the authority or by another entity under contract with the authority.

(b) No later than January 1, 2000, the authority shall promulgate regulations which:

(1) Require each local exchange company to semi-annually inform its residential subscribers of the opportunity to provide notification to the authority or its contractor that such subscriber objects to receiving telephone solicitations;

(2) Specify the methods by which each residential subscriber may give notice to the authority or its contractor of such subscriber's objection to receiving such solicitations or revocation of such notice;

(3) Specify the length of time for which a notice of objection shall be effective and the effect of a change of telephone number on such notice;

(4) Specify the methods by which such objections and revocations shall be collected and added to the database;

(5) Specify the methods by which any person or entity desiring to make telephone solicitations will obtain access to the database as required to avoid calling the telephone numbers of residential subscribers included in the database; and

(6) Specify such other matters that the authority deems necessary to implement this part.

(c) If, pursuant to 47 U.S.C. § 227(c)(3), the federal communications commission establishes a single national database of telephone numbers of

subscribers who object to receiving telephone solicitations, the authority shall include the part of such single national database that relates to Tennessee in the database established under this part.

(d)(1) A person or entity desiring to make telephone solicitations to any residential subscriber shall pay to the authority by certified check or money order, on or before March 15, 2000, an annual registration fee of five hundred dollars ($500) to defray regulatory and enforcement expenses. Such annual registration fee shall allow access to the Do Not Call Register compiled from the database established under this part; such registration and access shall be limited to the time period April 1, 2000 until June 30, 2001, or any part thereof. Thereafter, the registration deadline and annual time period shall be determined by rule duly promulgated by the authority.

(2) Unlimited electronic copies of the Do Not Call Register shall be available to persons or entities upon their payment of the annual registration fee. A fee shall be established by rule of the authority for paper copies of the Do Not Call Register.

(3) Fifteen (15) days after the registration deadline, the non-payment of any required fee is a violation of this part. The telephone solicitation of any residential subscriber listed in the Do Not Call Register compiled from the database established under this part, by any person or entity who is not duly registered and who is not otherwise exempted by law, is a violation of this part.

(4) As used in this subsection (d), "entity" includes any parent, subsidiary, or affiliate of a person.

(e) Information contained in the database established under this part shall not be subject to public inspection or disclosure under title 10, chapter 7. Such information shall be used only for the purpose of compliance with this part or in a proceeding or action under this part.

(f) The authority is authorized to initiate proceedings relative to a violation of this part or any rules and regulations promulgated pursuant to this part. Such proceedings include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars ($2,000) for each knowing violation, and to seek additional relief in any court of competent jurisdiction. Each violation shall be calculated in a liberal manner to deter violations and to protect consumers. Each violation may include each telephone solicitation made to a residential subscriber that was on the list that the violator telephoned. The authority is authorized to issue investigative demands, issue subpoenas, administer oaths, and conduct hearings in the course of investigating a violation of this part, in accordance with this title. All civil penalties assessed pursuant to this part shall be deposited in the public utilities account in the state treasury.

(g) No later than January 1, 2000, the authority shall hold a hearing to receive testimony from entities subject to this part who employ independent contractors to make telephone solicitations to determine if the authority should authorize such independent contractors to access the database at a reduced fee. The authority is authorized to allow such access and develop a fee schedule for access to the database by independent contractors and the entity which employs such contractors.

(h) As supplementary to the authority granted in this part, the attorney general, at the request of the authority, may bring an action in any court of competent jurisdiction in the name of the state against any person or entity

relative to a violation of this part or any rules and regulations promulgated pursuant to this part. The courts are authorized to issue orders and injunctions to restrain and prevent violations of this part, and such orders and injunctions shall be issued without bond. In any action commenced by the state, the courts are authorized to order reasonable attorneys' fees and investigative costs be paid by the violator to the state. An action brought by the attorney general may also include other causes of action such as but not limited to a claim under the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1.

(i) Upon request of any person, the authority shall initiate a rulemaking proceeding establishing the rules pursuant to which a registrant may share the Do Not Call Register with persons affiliated with the registrant as an independent contractor or member.

(j) On and after January 1, 2012, for purposes of this section, "residential subscriber" also means a state government telephone subscriber.

65-4-410. Do Not Call Register.

(a) Residential telephone subscribers may enroll on the Tennessee Do Not Call Register in the manner prescribed by the authority. Enrollment shall take effect thirty (30) days following the first day of the succeeding month of enrollment by the subscriber.

(b) State government telephone subscribers may enroll on the Tennessee Do Not Call Register in a manner prescribed by the authority; provided, that only the administrative head, or such person's designee, for each state department, agency, board, commission and other entity of the state, including the legislative branch and the judicial branch, may designate telephone numbers for such department, agency, board, commission or other entity of the state to be enrolled on the register. Enrollment shall take effect thirty (30) days following the first succeeding month of enrollment.

65-15-106. Powers of department.

(a) The department of safety is vested with the power and authority, and it is its duty, to license, supervise and regulate every motor carrier in the state and promulgate rules and regulations pertaining thereto.

(b)(1) The department of safety shall designate enforcement officers charged with the duty of policing and enforcing the provisions of this part, and such enforcement officers have authority to make arrests for violation of any of the provisions of this part, orders, decisions, rules and regulations of the department of safety, or any part or portion thereof, and to serve any notice, order or subpoena issued by any court, the department of safety, its secretary or any employee authorized to issue same, and to this end shall have full authority throughout the state.

(2) Such enforcement officers while enforcing and policing the provisions of this part also have authority to make arrests for any violations of the Tennessee Drug Control Act of 1989, compiled in title 39, chapter 17, part 4, and for violations of title 55, chapter 10, part 4, and § 55-50-408, when such violations are committed by a driver or an occupant of a vehicle regulated under this part.

(3) Such enforcement officers, upon reasonable belief that any motor vehicle is being operated in violation of any provisions of this part, shall be

authorized to require the driver thereof to:

(A) Stop and exhibit the registration certificate issued for such vehicle;

(B) Submit to such enforcement officer for inspection any and all bills of lading, waybills, invoices or other evidences of the character of the lading being transported in such vehicle; and

(C) Permit such officer to inspect the contents of such vehicle for the purpose of comparing same with bills of lading, waybills, invoices or other evidence of ownership or of transportation for compensation.

(4) It is the further duty of such enforcement officers to impound any books, papers, bills of lading, waybills and invoices which would indicate the transportation service being performed is in violation of this part, subject to the further orders of the court having jurisdiction over the alleged violation.

(5) Such enforcement officers shall also have the above authority with respect to anyone who procures, aids or abets any motor carrier in violation of this part or in such carrier's failure to obey, observe or comply with this part, or any such order, decision, rule, regulation, direction or requirement of the department of safety, or any part or portion thereof.

(6) In a case in which a penalty is not otherwise provided for in this part, such person commits a Class B misdemeanor and, upon conviction, shall be punished as provided for in § 65-15-122.

(c)(1) It is lawful for enforcement officers of the department of safety, regularly employed by the department of safety, acting through its director, to wear or carry pistols or other firearms at such times as they are in uniform or on active duty, in like manner as city or metropolitan police officers, wildlife resources agency officers and Tennessee highway patrol officers.

(2) Department of safety enforcement officers may charge any person who is a driver, operator or occupant of a vehicle subject to department of safety jurisdiction pursuant to the provisions of this chapter, and who has been charged with an offense involving the consumption or possession of alcoholic beverages, controlled substances or controlled substance analogues with a violation of § 39-17-1307, for the unlawful carrying or possession of a weapon. Any weapon possessed in violation of § 39-17-1307, may be confiscated by the arresting officer in accordance with § 39-17-1317. Weapons confiscated pursuant to this subsection (c), and declared contraband by the court of record exercising criminal jurisdiction, may be disposed of upon petition of the department of safety by the same procedure provided for weapon confiscations of the department of safety in § 39-17-1317.

(3) Those enforcement officers authorized to carry firearms while on duty may retain after twenty-five (25) years of honorable service and upon retirement from the department of safety their service weapon in recognition of their many years of good and faithful service.

(d) Except as inconsistent with the express terms and provisions of this part, the Tennessee regulatory authority has the same power as to and over rates, practices, regulation, control and operation of motor vehicles, to which this part is applicable, as the department of safety now has under present law, with reference to railroads and utilities; provided, that nothing in this subsection is intended to impose regulations upon contract carriers except insofar as the nature and character of their business so justify under the constitutions of Tennessee and the United States and the valid laws made pursuant thereto.

(e) The department is authorized to apply for federal funds that may be

available and to conduct any new entrant audits and review and compliance inspections that may be required by regulations promulgated by the United States department of transportation.

65-15-128. Passenger transportation services.

(a) Notwithstanding any provision of this title or title 7, chapter 51, to the contrary, each for-hire motor carrier providing passenger transportation service in a motor vehicle or motor vehicles designed or constructed to accommodate and transport passengers, eight (8) or more in number, services exclusive of the driver, or any motor vehicle transporting passengers who are TennCare enrollees eligible for such transportation services under TennCare, excluding those vehicles licensed and permitted pursuant to title 68, chapter 140, part 3, shall at a minimum:

(1) Maintain a policy of liability insurance in the amount of not less than one million dollars ($1,000,000) in value, which shall bind the obligors under the policy to make compensation for injury to persons and for loss of or damage to property resulting from the negligent operation by the driver, unless the transportation provider is a self insured local government or public transportation provider;

(2) Conduct a program of mandatory random drug testing for the operators of its motor vehicles in accordance with regulations promulgated by the United States department of transportation;

(3) Require the operators of its motor vehicles to submit to physical examination every two (2) years, in accordance with regulations promulgated by the United States department of transportation;

(4) Subject each transportation provider operating in the capacity as a passenger transportation service to an annual safety examination compliance review to be conducted by the department of safety. For purposes of this section, "compliance review" means reviewing:

(A) Proof of insurance or self insured status;

(B) Employee random drug testing documents;

(C) Employee physical examination documents; and

(D) Vehicle maintenance records; and

(5) Comply with all other requirements deemed necessary to protect the public safety and welfare as specified by the department of safety in its promulgation of rules and regulations to effectuate such purpose.

(b) The commissioner of safety is authorized to promulgate rules and regulations to effectuate the purposes of this section. The rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

65-21-117. Interference with emergency calls.

(a) An individual commits an offense if the individual knowingly prevents another individual from placing a telephone call to 911 or from requesting assistance in an emergency from a law enforcement agency, medical facility, or other agency or entity the primary purpose of which is to provide for the safety of individuals.

(b) An individual commits an offense if the individual intentionally renders unusable a telephone that would otherwise be used by another individual to place a telephone call to 911 or to request assistance in an emergency from a law enforcement agency, medical facility, or other agency or entity, the primary

purpose of which is to provide for the safety of individuals.

(c) An offense under this section is a Class A misdemeanor.

(d) In this section, "emergency" means a condition or circumstance in which any individual is or is reasonably believed by the individual making a telephone call to be in fear of imminent assault or in which property is or is reasonably believed by the individual making the telephone call to be in imminent danger of damage or destruction.

66-24-115. Name of preparer of instrument.

(a)(1) No instrument by which the title to real estate or personal property, or any interest therein, or lien thereon, is conveyed, created, encumbered, assigned or otherwise affected, or disposed of, nor any power of attorney, including, but not limited to, any durable power of attorney for health care, shall be received for record, or filing, by the county register unless the name and address of the person or the governmental agency, if any, that prepared such instrument, appears within the instrument, and such name is either printed, typewritten, stamped, or signed in a legible manner.

(2) An instrument will be in compliance with this section if it contains a statement in the following form: "This instrument was prepared by (name) _____ (address) _____"; provided, that the receiving for record, or filing, of any such instrument by the county register without complying with the provisions of this section shall not prevent the instrument from becoming notice as now provided by law.

(b) [Deleted by 2012 amendment.]

(c) This section does not apply to any instrument executed prior to July 1, 1965, nor to any decree, order, judgment, writ of any court, will or death certificate.

(d) This section shall not apply to any Uniform Commercial Code instrument, including instruments intended as or that relate to a fixture filing pursuant to § 47-9-409.

66-28-102. Application.

(a) This chapter applies only in counties having a population of more than seventy-five thousand (75,000), according to the 2010 federal census or any subsequent federal census.

(b) This chapter applies to rental agreements entered into or extended or renewed after July 1, 1975. Transactions entered into before July 1, 1975, and not extended or renewed after that date, and the rights, duties and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though the amendment or repeal has not occurred.

(c) Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(3) Transient occupancy in a hotel, or motel or lodgings subject to city, state, transient lodgings or room occupancy under the Excise Tax Act, compiled in title 67, chapter 4, part 20;

(4) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative; or

(5) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

(d) This chapter shall not apply to any occupancy in a public housing unit or other housing unit that is subject to regulation by the department of housing and urban development and owned by a governmental entity or non-profit corporation to the extent such regulation conflicts with state law, but shall apply to the extent that any such regulations defer to the application of state law.

66-28-301. Security deposits.

(a) All landlords of residential property requiring security deposits prior to occupancy are required to deposit all tenants' security deposits in an account used only for that purpose, in any bank or other lending institution subject to regulation by the state of Tennessee or any agency of the United States government.

(b) Except as otherwise provided in subdivision (b)(2)(B), the tenant shall have the right to inspect the premises to determine the tenant's liability for physical damages that are the basis for any charge against the security deposit. An inspection of the premises to determine the tenant's liability for physical damages that are the basis for any charge against the security deposit and the landlord's estimated costs to repair such damage shall be conducted as follows:

(1)(A) Upon request by the landlord for a tenant to vacate or within five (5) days after receipt by the landlord of written notice of the tenant's intent to vacate, the landlord may provide notice to the tenant of the tenant's right to be present at the inspection of the premises. Such notice may advise the tenant that the tenant may request a time of inspection to be set by the landlord during normal working hours. The landlord may require the inspection to be after the tenant has completely vacated the premises and is ready to surrender possession and return all means of access to the entire premises; provided, that the inspection shall be either on the day the tenant completely vacates the premises or within four (4) calendar days of the tenant vacating the premises. If the landlord provides written notice of the tenant's right to be present at the landlord's inspection and the tenant schedules an inspection, but fails to attend such inspection, the tenant waives the right to contest any damages found by the landlord as a result of such inspection by the landlord; provided, that notice of the tenant's waiver upon such circumstances is set out in the rental agreement.

(B) If a tenant requests a mutual inspection as provided in subdivision (b)(1)(A), the landlord and tenant shall then inspect the premises and compile a comprehensive listing of any presently ascertainable damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing the damage. The landlord and tenant shall sign the listing. Except as provided in subsection (g), the signatures

of the landlord and the tenant on the listing shall be conclusive evidence of the accuracy of the listing. If the tenant refuses to sign the listing, the tenant shall state specifically in writing the items on the list to which the tenant dissents.

(2)(A) If the tenant has acted in any manner set out in subdivisions (b)(2)(B)(i)-(vi), the landlord may inspect the premises and compile a comprehensive listing of any presently ascertainable damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing the damage without providing the tenant an opportunity to inspect the premises; provided, that the landlord provides a written copy, sent by certificate of mailing to the tenant, of the listing of any damages and estimated cost of repairs to the tenant upon the tenant's written request.

(B) The tenant shall not have a right to inspect the premises as provided in this section if the tenant has:

(i) Vacated the rental premises without giving written notice;

(ii) Abandoned the premises;

(iii) Been judicially removed from the premises;

(iv) Not contacted the landlord after the landlord's notice of right to mutual inspection of the premises;

(v) Failed to appear at the arranged time of inspection as provided in subdivision (b)(1); or

(vi) If the tenant has not requested a mutual inspection pursuant to subsection (b) or is otherwise inaccessible to the landlord.

(c) No landlord shall be entitled to retain any portion of a security deposit if the security deposit was not deposited in an account as required by subsection (a) and a listing of damages is not provided as required by subsection (b).

(d) A tenant who disputes the accuracy of the final damage listing given pursuant to subsection (b) may bring an action in a circuit or general sessions court of competent jurisdiction of this state. The tenant's claim shall be limited to those items from which the tenant specifically dissented in accordance with the listing or specifically dissented in accordance with subsection (b); otherwise the tenant shall not be entitled to recover any damages under this section.

(e) Should a tenant vacate the premises with unpaid rent or other amounts due and owing, the landlord may remove the deposit from the account and apply the moneys to the unpaid debt.

(f) In the event the tenant leaves not owing rent and having any refund due, the landlord shall send notification to the last known or reasonable determinable address, of the amount of any refund due the tenant. In the event the landlord shall not have received a response from the tenant within sixty (60) days from the sending of such notification, the landlord may remove the deposit from the account and retain it free from any claim of the tenant or any person claiming in the tenant's behalf.

(g) Nothing in this section precludes the landlord from recovering the costs of any and all contractual damages to which the landlord may be entitled, plus the cost of any additional physical damages to the premises that are discovered after an inspection that has been completed pursuant to subsection (b); provided, however, that costs of any physical damage to the premises may only be recovered if the damage was discovered by the landlord prior to the earlier of:

(1) Thirty (30) days after the tenant vacated or abandoned the premises;

or

(2) Seven (7) days after a new tenant takes possession of the premises.

(h) Notwithstanding subsection (a), all landlords of residential property shall be required to notify their tenants at the time such persons sign the lease and submit the security deposit, of the location of the account required to be maintained pursuant to this section, but shall not be required to provide the account number to such persons.

66-28-517. Termination by landlord for violence or threats to health, safety, or welfare of persons or property.

(a) A landlord may terminate a rental agreement within three (3) days from the date written notice is received by the tenant if the tenant or any other person on the premises with the tenant's consent:

(1) Willfully or intentionally commits a violent act;

(2) Behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants or persons on the premises; or

(3) Creates a hazardous or unsanitary condition on the property that affects the health, safety or welfare or the life or property of other tenants or persons on the premises.

(b) The notice required by this section shall specifically detail the violation which has been committed and shall be effective only from the date of receipt of the notice by the tenant.

(c) Upon receipt of such written notice, the tenant shall be entitled to immediate access to any court of competent jurisdiction for the purpose of obtaining a temporary or permanent injunction against such termination by the landlord.

(d) Nothing in this section shall be construed to allow a landlord to recover or take possession of the dwelling unit by action or otherwise including willful diminution of services to the tenant by interrupting or causing interruption of electric, gas or other essential service to the tenant except in the case of abandonment or surrender.

(e) If the landlord's action in terminating the lease under this provision is willful and not in good faith, the tenant may in addition recover actual damages sustained by the tenant plus reasonable attorney's fees.

(f) The failure to bring an action for or to obtain an injunction may not be used as evidence in any action to recover possession of the dwelling unit.

66-28-519. Towing of vehicles.

(a) A landlord may have the following vehicles towed or otherwise removed from real property leased or rented by such landlord for residential purposes, upon giving a ten-day written notice by posting the same upon the subject vehicle:

(1) A vehicle with one (1) or more flat or missing tires;

(2) A vehicle unable to operate under its own power;

(3) A vehicle with a missing or broken windshield or more than one (1) broken or missing window;

(4) A vehicle with one (1) or more missing fenders or bumpers; or

(5) A motor vehicle that has not been in compliance with all applicable local or state laws relative to titling, licensing, operation, and registration

for more than thirty (30) days.

(b) If the owner of the vehicle is not present, then prior to removing the vehicle pursuant to this section, the person, firm or entity that actually tows the vehicle shall notify local law enforcement of the vehicle identification number (VIN), registration information, license plate number and description of the vehicle. Local law enforcement shall keep a record of all such information which shall be available for public inspection.

66-34-103. Withholding of retainage — Violations — Penalties.

(a) All construction contracts on any project in this state, both public and private, may provide for the withholding of retainage; provided, however, that the retainage amount may not exceed five percent (5%) of the amount of the contract.

(b) The owner, whether public or private, shall release and pay all retainages for work completed pursuant to the terms of any contract to the prime contractor within ninety (90) days after completion of the work or within ninety (90) days after substantial completion of the project for work completed, whichever occurs first. As used in this subsection (b), work completed shall be construed to mean the completion of the scope of the work and all terms and conditions covered by the contract under which the retainage is being held. The prime contractor shall pay all retainages due any subcontractor within ten (10) days after receipt of the retainages from the owner. Any subcontractor receiving the retainage from the prime contractor shall pay to any subsubcontractor or material supplier all retainages due the subsubcontractor or material supplier within ten (10) days after receipt of the retainages.

(c) Any default in the making of the payments shall be subject to those remedies provided in this part.

(d) In the event that an owner or prime contractor withholds retainage that is for the use and benefit of the prime contractor or its subcontractors pursuant to § 66-34-104(a) and (b), neither the prime contractor nor any of its subcontractors shall be required to deposit additional retained funds into an escrow account in accordance with § 66-34-104(a) and (b).

(e)(1) It is an offense for a person, firm or corporation to fail to comply with subsection (a) or (b) or § 66-34-104(a).

(2)(A) A violation of this subsection (e) is a Class A misdemeanor, subject to a fine only of three thousand dollars ($3,000).

(B) Each day a person, firm or corporation fails to comply with subsection (a) or (b) or § 66-34-104(a) is a separate violation of this subsection (e).

(C) Until the violation of this subsection (e) is remediated by compliance, the punishment for each violation shall be consecutive to all other such violations.

(3) In addition to the fine imposed pursuant to subdivisions (e)(2)(A) and (B), the court shall order restitution be made to the owner of the retained funds. In determining the appropriate amount of restitution, the formula stated in § 40-35-304 shall be used.

66-34-104. Retention of portion of contract price in escrow — Applicability — Mandatory compliance.

(a) Whenever, in any contract for the improvement of real property, a certain amount or percentage of the contract price is retained, that retained amount shall be deposited in a separate, interest-bearing, escrow account with a third party which must be established upon the withholding of any retainage.

(b) As of the time of the withholding of the retained funds, the funds shall become the sole and separate property of the prime contractor or remote contractor to whom they are owed, subject to the rights of the person withholding the retainage in the event the prime contractor or remote contractor otherwise entitled to the funds defaults on or does not complete its contract.

(c) In the event that the party withholding the retained funds fails to deposit the funds into an escrow account as provided herein, such party shall be responsible for paying the owner of the retained funds an additional three hundred dollar ($300) penalty per day for each and every day that such retained funds are not deposited into such escrow account.

(d) The party with the responsibility for depositing the retained amount in a separate, interest-bearing, escrow account with a third party shall have the affirmative duty to provide written notice that it has complied with the requirements of this section to any prime contractor upon withholding the amount of retained funds from each and every application for payment, including:

(1) Identification of the name of the financial institution with whom the escrow account has been established;

(2) Account number; and

(3) Amount of retained funds that are deposited in the escrow account with the third party.

(e) Upon satisfactory completion of the contract, to be evidenced by a written release by the owner or prime contractor owing the retainage, all funds accumulated in the escrow account together with all interest on the account shall be paid immediately to the prime contractor or remote contractor to whom the funds and interest are owed.

(f) In the event the owner or prime contractor, as applicable, fails or refuses to execute the release provided for in subsection (c), then the prime contractor or remote contractor, as applicable, may seek any remedy in a court of proper jurisdiction and the person holding the fund as escrow agent shall bear no liability for the nonpayment of the fund to the prime contractor or remote contractor; provided, however, that all claims, demands, disputes, controversies, and differences that may arise between the owner, prime contractor or prime contractors, and remote contractor or remote contractors regarding the funds may be, upon written agreement of all parties concerned, settled by arbitration conducted pursuant to the Tennessee Uniform Arbitration Act, compiled in title 4, chapter 5, part 3, or the Federal Arbitration Act, 9 U.S.C. § 1, et seq., as may be applicable.

(g) In contracts to which the state or any department, board or agency of the state, including the University of Tennessee, is a party, interest shall be paid on the retained amounts at the same rate interest is paid on the funds of local governments participating in the local government investment pool established pursuant to § 9-4-704, for the contract period.

(h) The provisions of this section shall be applicable to the state, any

department, board or agency of the state, including the University of Tennessee, and all counties and municipalities and all departments, boards or agencies of the counties and municipalities, including all school and education boards, and any other subdivision of the state.

(i) This section shall be applicable to all prime contracts and all subcontracts thereunder for the improvement of real property when the contract amount of such prime contract is five hundred thousand dollars ($500,000) or greater, notwithstanding the amount of such subcontracts.

(j) Compliance with this section shall be mandatory, and may not be waived by contract.

(k) Failure to deposit the retained funds into an escrow account as provided herein, within seven (7) days' receipt of written notice regarding such failure, is a Class A misdemeanor.

67-1-114. Extension of due date for certain tax returns.

(a) With respect to taxes imposed under chapter 2 of this title, under chapter 4, part 20 or 21 of this title, or under chapter 8, part 1 of this title, whenever the due date for filing the return occurs on a legal holiday as defined under 26 U.S.C. § 7503, the commissioner of revenue is authorized, in the commissioner's discretion, to extend the due date of such return to the next succeeding day that is not a Saturday, Sunday or legal holiday.

(b) With respect to taxes administered and collected by the commissioner of revenue, whenever the internal revenue service generally extends for all taxpayers the due date of a federal return or extends the due date of such return for a specified group of taxpayers such as, but not limited to, those affected by a federally declared disaster, the commissioner of revenue is authorized, in the commissioner's discretion, to extend the due date for the filing of specified returns to a date that shall not be later than the last day of the extension period specified by the internal revenue service.

(c) For purposes of this section, "return" shall be deemed to include any remittance or other tax document, including, but not limited to, quarterly estimated payments and extension requests.

67-1-115. Electronic submission of documents and payments.

(a) The commissioner is authorized to require that any return, report, claim, statement, application, or other document filed with the department, including any payment or remittance that accompanies such document, be submitted electronically in a manner approved by the commissioner beginning no sooner than ninety (90) days after the commissioner has certified that a system is in place for the electronic submission of such document or payment. Such certification shall be accomplished by the commissioner prominently posting a notice on the department's web site.

(b) If an electronic filing requirement imposed pursuant to the authority granted in subsection (a) creates a hardship upon the person subject to the requirement, such person shall be permitted to file the applicable document in paper form. The commissioner is authorized to require that any such paper filing be accompanied by a manual handling fee, not to exceed twenty-five dollars ($25.00), that is reasonably calculated by the department to account for the additional cost of preparing, printing, receiving, reviewing and processing any paper filing so permitted.

(c) This section shall apply to any tax, regulatory, or other law administered

by the department of revenue under this or any other title. This section shall not, however, be construed to supersede or otherwise affect any electronic filing or payment requirement already provided by law on January 1, 2012, including any penalty or waiver provisions connected therewith, and shall not require the certification of any system already in place before January 1, 2012.

(d) Notwithstanding any law to the contrary, the cumulative total of manual handling fees charged to any one (1) taxpayer for all tax filings in any twelve-month period shall not exceed fifty dollars ($50.00).

(e) The department shall notify each taxpayer that the cumulative total of all manual handling fees for all paper returns, reports, claims, statements, applications, or other documents filed with the department, including any payments or remittances that accompany such documents, shall not exceed fifty dollars ($50.00) for all such filings in any twelve-month period. The department shall include such notice in any one (1) regularly scheduled communication between the department and the taxpayer.

67-1-116. Fees for processing of documents and payments.

Notwithstanding any law to the contrary, the commissioner is authorized to deduct and retain from the proceeds of any tax administered and collected by the commissioner an amount necessary to offset the fee paid to a third party for the processing of documents and payments that are submitted electronically to the department.

67-1-117. Commissioner's authority to permit filing, submission or retention of documents in digital format.

Notwithstanding any provision to the contrary, when any provision administered by the commissioner requires that any document be filed, submitted, or retained in paper, microfiche, or any other nondigital format, the commissioner is authorized to permit the filing, submission, or retention of such document in a digital format.

67-1-505. Surety bond.

(a)(1) Each county assessor, before entering into the duties of office, shall enter into an official bond prepared in accordance with title 8, chapter 19, payable to the state of Tennessee, in the sum of fifty thousand dollars ($50,000), to be approved by the county mayor, conditioned in such manner as required by § 8-19-111. The bond shall be approved by the county legislative body, recorded in the office of the county register of deeds and transmitted to the office of the county clerk for safekeeping.

(2) [Deleted by 2012 amendment.]

(b) Each county assessor of the state shall, on or before the January 1 following election, execute and enter into a new bond in the amounts provided by law and conditioned as directed in subsection (a), and it is unlawful after that date for any assessor to perform the duties of assessor without giving such bond. If such bond is not made by that date, that office shall become vacant and shall be filled as may be provided by law.

(c) [Deleted by 2012 amendment.]

67-1-804. Delinquency — Negligence — Fraud — Dishonor of check — Exceptions.

(a)(1) When any person fails to timely make any return or report or fails to timely pay any taxes shown to be due on the return or report, there shall be imposed against that person a penalty in the amount of five percent (5%) of the unpaid tax amount for each thirty (30) days or fraction thereof that the tax remains unpaid subsequent to the delinquency date, up to a maximum of twenty-five percent (25%) of the unpaid amount. Where a return or report is delinquent, the minimum penalty shall be fifteen dollars ($15.00), regardless of the amount of tax due or whether there is any tax due.

(2) A return, report, or payment shall be considered untimely if not made on or before the delinquency date under the applicable statutes, including any extensions of time granted. In the case of an untimely return, report, or payment, the penalty shall be calculated as of the original delinquency date, without reference to any extensions granted.

(3) In the case of quarterly tax payments made pursuant to § 67-4-308, the penalty shall be calculated as provided by that section.

(4) In the case of quarterly estimated tax payments made pursuant to § 67-4-2015, the penalty shall be calculated as provided by that section.

(5) In the case of an extension of time granted under § 67-4-2015, the penalty shall be calculated as provided by that section.

(b)(1) When any person fails to report and pay the total amount of taxes determined to be due by the commissioner, if such failure is determined by the commissioner to be due to negligence, there shall be imposed a penalty in the amount of ten percent (10%) of the underpayment.

(2) When any person, upon the initial filing of the person's franchise and excise tax return, fails to comply with the requirements described in § 67-4-2006(d) or (e) and such failure is determined by the commissioner to be due to negligence, there shall be imposed a penalty equal to the greater of ten thousand dollars ($10,000) or fifty percent (50%) of any adjustment to the initially filed return made under § 67-4-2006(b)(1)(K) or (e). The commissioner is authorized to waive the penalty, in whole or in part, for good and reasonable cause under § 67-1-803. Any penalty imposed under this subdivision (b)(2) shall be disregarded for purposes of determining the taxpayer's filing record under subdivision (d)(3).

(3) When any person fails to pay the tax required by § 67-4-2007(f), if such failure is determined by the commissioner to be due to negligence, there shall be imposed a penalty in the amount of fifty percent (50%) of the underpayment.

(4) For the purpose of this section, "negligence" includes, but is not limited to, any failure to make a reasonable attempt to comply with the provisions of any law relating to any tax collected or administered by the commissioner.

(5) A determination by the commissioner that a taxpayer has been negligent shall be deemed presumptively correct. Such determination may be rebutted only if the taxpayer makes a showing of due care. For purposes of this subdivision (b)(5), "due care" means that care that an ordinarily prudent business person would have exercised under the circumstances.

(6) This penalty is in addition to all other penalties provided by law, except as provided in subsection (c).

(c)(1) When any person fails to report and pay the total amount of taxes determined to be due by the commissioner, if such failure is determined by the commissioner to be due to fraud, there shall be imposed against the taxpayer a penalty in the amount of one hundred percent (100%) of the underpayment.

(2) For the purpose of this subsection (c), "fraud" includes any deceitful practice or willful device resorted to with intent to evade the tax.

(3) A failure to pay the tax by one who charges or passes on the tax to others constitutes a presumption of fraud. Such presumption may be rebutted only if the taxpayer makes an affirmative showing of intent to pay the tax and comply with all other requirements of the taxing statute.

(4) Imposition of this penalty shall be in lieu of all other penalties imposed by the commissioner, except those provided in subsection (d) and part 14 of this chapter.

(d)(1) If any check or money order in payment of any amount receivable under any law administered by the commissioner is dishonored, there shall be imposed a penalty upon the taxpayer in an amount equal to one percent (1%) of the amount of such check; provided, that the penalty imposed shall be in an amount equal to ten percent (10%) of the amount of such check for each dishonored check in excess of two (2) issued by any one (1) person within one (1) calendar year. The minimum amount of the penalty imposed under this subdivision (d)(1) shall be fifteen dollars ($15.00). This subdivision (d)(1) does not apply if the person tendered such check in good faith and with reasonable cause to believe that it would be duly paid.

(2) This penalty shall be in addition to all other penalties provided by law.

(e) For all purposes, the penalties imposed by any law administered by the commissioner shall be considered a part of the tax imposed.

(f) In no event shall judicial review of the commissioner's imposition of any penalty be other than as provided in part 18 of this chapter.

(g) This section shall apply to all taxes administered or collected by the commissioner, except that subsection (a) shall not apply to the tax imposed in § 67-4-409(b).

(h) Notwithstanding the provisions of this section, the penalty added to delinquent highway user fuel tax due shall be computed in accordance with § 67-3-1208.

(i) Subdivision (a)(1) shall not apply to litigation taxes to be collected by the clerk of the appellate courts.

67-2-104. Exemptions.

(a) The tax imposed by this chapter does not apply to the first one thousand two hundred fifty dollars ($1,250) for each individual return or two thousand five hundred dollars ($2,500) of combined income for persons who file jointly, of income otherwise taxable under this chapter.

(b) For tax years beginning January 1, 1999, any person sixty-five (65) years of age or older having a total annual income derived from any and all sources of fourteen thousand dollars ($14,000) or less, or any persons who file a joint return and either spouse is sixty-five (65) years of age or older having a total annual joint income derived from any and all sources of not more than twenty-three thousand dollars ($23,000), are exempt from the income tax imposed by this chapter upon submission of evidence deemed acceptable by the

commissioner to establish the age and income limitations stated in this subsection (b). For tax years beginning January 1, 2000, and thereafter, the income limitations stated in this subsection (b) shall change to sixteen thousand two hundred dollars ($16,200) for single filers and to twenty-seven thousand dollars ($27,000) for persons filing jointly. For tax years beginning January 1, 2012, and thereafter, the income levels specified in the previous sentence in this subsection (b) shall change to twenty-six thousand two hundred dollars ($26,200) for single filers and to thirty-seven thousand dollars ($37,000) for persons filing jointly.

(c) The income from stocks and bonds, mortgages, and notes owned and held by blind persons, or by persons certified, in writing, by a medical doctor to be a quadriplegic, and where such income is derived from circumstances resulting in the individual becoming a quadriplegic, are exempt from the tax imposed by this chapter.

(d) No Tennessee citizen declared by the United States department of defense to be a prisoner of war is liable for payment of the tax provided for by this chapter during the time of such person's capture and imprisonment, nor for sixty (60) days upon such person's release, whenever it should occur.

(e)(1) Nothing contained in this chapter shall be construed or held to authorize the levy of an income tax on obligations of the United States, whether evidenced by bonds or otherwise and/or on shares of stock in corporations that are arms and agencies directly of the United States, insofar as such bonds and stocks are exempt from such taxation by the constitution or laws of the United States; or on the income derived from bonds of the state of Tennessee, or any county or municipality or other political subdivision of the state of Tennessee not subject to ad valorem taxation.

(2) Nothing contained in this chapter shall be construed or held to authorize the levy of an income tax on dividends from a regulated investment company qualified as such under Subtitle A, chapter 1, subchapter M of the Internal Revenue Code, compiled in 26 U.S.C. § 851 et seq.; provided, that a part of the value of the investments of such regulated investment company shall be in any combination of bonds or securities of the United States government or any agency or instrumentality of the United States government or in bonds of the state of Tennessee, or any county or any municipality or political subdivision of the state of Tennessee, including any agency, board, authority or commission of the United States or the state of Tennessee. Such dividends shall be exempt from the levy of an income tax only in proportion to the income of the regulated investment company attributable to interest on bonds or securities of the United States government or any agency or instrumentality of the United States government or on bonds of the state of Tennessee, or any county or any municipality or political subdivision of the state of Tennessee, including any agency, board, authority or commission of the United States or the state of Tennessee.

(3) No corporation shall be required to pay any income tax that otherwise would be assessable under this chapter on any stocks and/or bonds that constitute a part of the aggregate of its corporate property on which it is now assessed or shall be assessed for ad valorem taxes; nor when such stocks and/or bonds constitute a part of the assets that determine the value of the shares that are now or shall hereafter be assessed for ad valorem taxes to the stockholder.

(4) No person shall be assessed with this tax on income from any stock in any corporation where the value of the shares is assessed ad valorem to the stockholder by this state.

(5) No person shall be assessed with this tax on income from any stock in any corporation licensed to do business in this state as an insurance company.

(6) No person shall be assessed with this tax on income from any stock in any bank, state or federally chartered, doing business in this state.

(7) No distribution of capital shall be taxed as income under this chapter, and no distribution of surplus by way of stock dividend shall be taxable in the year such distribution is made; but all other distributions out of earned surplus shall be taxed as income when and in whatever manner made, regardless of when such surplus was earned. Stock dividends issued within one (1) year of liquidation shall be taxable in the year received to the extent made out of earned surplus; provided, that gains over and above the par or original pro rata capital value of original shares held shall be taxed to the shareholder upon any transfer of stock to nonresidents in the year of such transfer, when such transfer occurs within one (1) year prior to liquidation or redemption. There shall, however, be exempt from taxation under the provision of this section, distribution made pursuant to decrees ordering divestiture of stock in enforcement of antitrust statutes.

(8) The income from stocks and bonds of educational, religious or other like institutions organized for the general welfare and not for profit or individual gain that are exempt from taxation under the Assessment Act, codified in § 67-5-212, shall be exempt from the taxes imposed by this chapter; provided, that if any educational, religious or other like institution issues stocks or bonds, the income or profit or any part of which goes to private individuals or corporations for profit or gain and not purely for educational, religious or charitable purposes, such income or profit shall be subject to the tax imposed in this chapter.

(9) The income from stocks and bonds of pension trusts and profit sharing trusts that are exempt from federal income taxation is exempt from the taxes imposed by this chapter.

(10) The income from stocks and bonds held by a fiduciary and paid to or irrevocably set aside for the benefit of educational, religious, or other like institutions organized for the general welfare and not for profit or individual gain that are exempt from taxation under the Assessment Act, codified in § 67-5-212, is exempt from the taxes imposed by this chapter.

(11) All income from interest on loans to qualified businesses for improvements, expansions, operations, or real property within an enterprise zone, as defined in title 13, chapter 28, part 2 shall be exempt from tax.

(12) The income derived from the trust funds in a trust created for the perpetual care of a cemetery pursuant to title 46 shall be exempt from the taxes imposed by this chapter.

(13) Nothing contained in this chapter shall be construed or held to authorize the levy of any tax on earnings or distributions from an investment fund organized as a unit investment trust taxable as a grantor trust under 26 U.S.C. §§ 671-677, or organized as a limited partnership taxable under 26 U.S.C. §§ 701-761 and registered under the Investment Company Act of 1940, compiled in 15 U.S.C. § 80a-1 et seq.; provided, that a part of the value of the investments of such investment fund shall be in any combina-

tion of bonds or securities of the United States government, or any agency or instrumentality of the United States government, or in bonds of the state of Tennessee, or any county or any municipality or political subdivision of the state of Tennessee, including any agency, board, authority or commission of the United States or the state of Tennessee. Such earnings or distributions shall be exempt from the levy of an income tax only in proportion to the income of the investment fund attributable to interest on bonds or securities of the United States government, or any agency or instrumentality of the United States government, or on bonds of the state of Tennessee, or any county or any municipality or political subdivision of the state of Tennessee, including any agency, board, authority or commission of the United States or the state of Tennessee.

(14) Nothing contained in this chapter shall be construed or held to authorize the levy of any tax on earnings or distributions from an education individual retirement account as defined in § 213 of Public Law 105-34, so long as such earnings or distributions were not subject to federal income tax.

(15) Nothing contained in this chapter shall be construed or held to authorize the levy of any tax on earnings or distributions from a Roth IRA as defined in Section 302 of Public Law 105-34, so long as such earnings or distributions are not subject to federal income tax.

(16) The tax imposed by this chapter does not apply to an entity that satisfies both of the following requirements:

(A) It:

(i) Is classified as a partnership or trust in accordance with 26 U.S.C. § 7701, and the federal regulations and rulings promulgated under 26 U.S.C. § 7701;

(ii) Has elected to be treated as a real estate mortgage investment conduit (REMIC) under 26 U.S.C. § 860D;

(iii) Has elected to be treated as a financial asset securitization investment trust (FASIT) under 26 U.S.C. § 860L; or

(iv) Is a business trust, as defined in § 48-101-202(a), or is classified as a trust under the laws of the state in which it is created and is disregarded for federal income tax under 26 U.S.C. § 7701, and the federal regulations and rulings promulgated under 26 U.S.C. § 7701, when the commercial domicile of the trustee is not in this state; and

(B)(i) The sole purpose of the entity, except for foreclosures and dispositions of the assets of foreclosures, is the asset-backed securitization of debt obligations, such as first or second mortgages, including home equity loans, trade receivables, whether an open account or evidenced by a note or installment or conditional sales contract, obligations substituted for trade receivables, credit card receivables, personal property leases treated as debt for purposes of the Internal Revenue Code of 1986, compiled in 26 U.S.C., home equity loans, automobile loans or similar debt obligations.

(ii) "Trade receivables" as used in subdivision (e)(16)(B)(i) means obligations arising from the sale of inventory in the ordinary course of business.

(17) The income from stock in any publicly traded real estate investment trust, as defined in § 67-4-2004, is exempt from the tax imposed by this chapter.

(18) The income from stocks and bonds of trusts for perpetual care or improvement of private cemeteries, graves, or burial grounds are exempt from the taxes imposed by this chapter.

67-3-103. Chapter definitions. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

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

(1) "Agricultural purposes" means operating tractors or other farm equipment used exclusively, whether for hire or not, in plowing, planting, harvesting, raising or processing of farm products at a farm, nursery or greenhouse; or operating farm irrigation systems; when such vehicles or equipment are not operated upon the public highways of this state;

(2) "Alternative fuel" means a liquefied petroleum gas or compressed natural gas product used in an internal combustion engine or motor to propel any form of motor vehicle, machine, or mechanical contrivance. "Alternative fuel" includes all forms of fuel commonly known as butane, propane, or compressed natural gas;

(3) "Biodiesel" means mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats that meet the registration requirements for fuels and fuel additives established by the environmental protection agency under the Clean Air Act, compiled in 42 U.S.C. § 7401 et seq., and that conform to ASTM D6751 specifications for use in diesel engines. Biodiesel is a clean burning, biodegradable, nontoxic, alternative fuel, produced from domestic, renewable resources, especially agricultural products. Pure biodiesel contains no petroleum, but it can be blended at any level with petroleum diesel to create a biodiesel blend (B%) that can be used in compression-ignition, diesel engines;

(4) "Blend stock" means any petroleum product component of gasoline, such as naphtha, reformate, or toluene, that can be blended for use in a motor fuel. However, "blend stock" does not include any substance that will be ultimately used for consumer non-motor fuel use and is sold or removed in drum quantities of not more than fifty-five gallons (55 gals.) at the time of the removal or sale;

(5) "Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a minimal amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle;

(6) "Blender" means any person that produces blended motor fuel outside the bulk transfer/terminal system;

(7) "Blending" means the mixing of one (1) or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use or otherwise sold for use in the generation of power to propel a motor vehicle, an airplane, a motorboat, or other mechanical contrivance. "Blending" does not include blending that occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oil and greases;

(8) "Bonded importer" means a person with a valid bonded importer's license under § 67-3-606;

(9) "Bulk end user" means a person who receives into the person's own storage facilities, for the person's own consumption, transport lots of taxable

motor fuel;

(10) "Bulk export" means the movement of petroleum products from a point in Tennessee to another state by means of transport truck, pipeline, marine vessel or rail, including any quantity of petroleum product placed by the manufacturer into the vehicle fuel supply tank of a newly manufactured motor vehicle;

(11) "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack;

(12) "Bulk transfer" means any transfer of a petroleum product within the bulk transfer/terminal system from one location to another by pipeline or marine delivery;

(13) "Bulk transfer/terminal system" means the motor fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Thus, gasoline in a refinery, pipeline, vessel, or terminal is in the bulk transfer/terminal system. Taxable motor fuel in the fuel supply tank of any engine, or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system;

(14) "Commissioner" means the commissioner of revenue or the commissioner's designated subordinate official;

(15) "Computer-type pump" means a pump used to dispense fuel, that has meters for registering the total sales price and gallons sold, and displays the price per gallon on the dispenser;

(16) "Customer-controlled pump" means a pump used for dispensing motor fuel directly to a customer who can access the pump by way of a personal key, an identification number, or a customer card that is assigned to the customer by a licensed wholesaler;

(17) "Dead storage" means the amount of taxable motor fuel that will not be pumped out of a storage tank because the motor fuel is below the mouth of the draw pipe. For this purpose, a vendor may assume that the amount of motor fuel in dead storage is two hundred gallons (200 gals.) for a tank with a capacity of less than ten thousand gallons (10,000 gals.), and four hundred gallons (400 gals.) for a tank with a capacity of ten thousand gallons (10,000 gals.) or more;

(18) "Department" means the department of revenue;

(19) "Destination state" means the state, territory, or foreign country to which petroleum products are directed for resale or use;

(20) "Diesel fuel" means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle. "Diesel fuel" does not include jet fuel or kerosene unless sold for use in a diesel-powered highway vehicle or used in such vehicles, in which case the fuel shall be deemed diesel fuel for taxation purposes. With regard to jet fuel, it is further provided that the buyer must be registered to purchase jet fuel subject to federal taxes applicable to jet fuel, and the vendor must obtain certification of such fact satisfactory to the department prior to making the sale;

(21) "Diesel-powered highway vehicle" means a motor vehicle, propelled by a diesel-powered engine, that is operated, or intended to be operated, on a highway;

(22) "Distributor report" means the report required under § 67-3-701;

(23) "Diverted shipment" means any shipment of a petroleum product where the movement of that product by a transporter is changed from the original point of destination to another point of destination;

(24) "Dyed diesel fuel" means diesel fuel dyed under United States environmental protection agency rules for high sulfur diesel fuel, or dyed under internal revenue service rules for low sulphur fuel, or dyed pursuant to any other requirements subsequently set by the environmental protection agency or internal revenue service, including any invisible marker requirements;

(25) "Ethanol" means fuel grade ethanol;

(26) "Export" means to obtain petroleum products in this state for sale, use, or distribution in another state. In applying this definition, the delivery of petroleum products outside Tennessee by or for the vendor constitutes an export by the vendor, and the delivery of petroleum products outside Tennessee by or for the purchaser constitutes an export by the purchaser;

(27) "Exporter" means any person, other than a supplier, who purchases or otherwise holds title to taxable petroleum products in this state for the purpose of transporting or delivering the products to another state or country;

(28) "Farm products" means flowers and plants, including cut flowers, flowering plants, potted plants, vegetables and vegetable plants, trees, shrubs, vines, ornamentals, sod, and mushrooms. "Farm products" also means livestock and poultry raised for food, including dairy products;

(29) "Fuel alcohol" means any alcohol used or intended for use as fuel in a combustion engine or heating oil system;

(30) "Fuel grade ethanol" means a product that meets the American Society for Testing and Materials (ASTM) standard in effect on January 1, 1995, and any successor rule, as the D-4806 specification for denatured fuel grade ethanol, for blending with gasoline for use as automatic spark-ignition engine fuels;

(31) "Fuel transportation vehicle" means a vehicle designed for highway use that is also designed or used to transport motor fuels, including transport trucks and tank wagons;

(32) "Gallon" or "net gallon" means the amount of petroleum product, corrected to a temperature of sixty degrees Fahrenheit (60°F) and a pressure of fourteen and seven tenths pounds per square inch (14.7 p.s.i.), necessary to completely fill a standard United States gallon liquid measure;

(33) "Gasohol" means a blended fuel composed of gasoline and ethanol;

(34) "Gasoline" means all products commonly or commercially known or sold as gasoline that are suitable for use as a motor fuel, but does not include any product that is sold as a product other than gasoline and has an ASTM octane number of less than seventy-five (75) as determined by the "motor method"; and does not include aviation gasoline; provided, that the buyer is registered to purchase aviation gasoline free of tax, and the vendor obtains certification of such fact satisfactory to the department prior to making the sale;

(35) "Governmental agency" means a department of a local, state or federal government, where such department is organized by and accountable to the authority of the executive, legislative, or judicial branch of that government; but does not include a private organization, association, or contractor, whether for profit or not, unless specifically identified in this

chapter. For the purpose of this chapter, "governmental agency" includes a rescue squad chartered by the state as a nonprofit corporation or association and that is a member of the Tennessee Association of Rescue Squads, and a volunteer fire department chartered by the state as a nonprofit corporation or association;

(36) "Gross gallons" means the total measured product, exclusive of any temperature or pressure adjustments, considerations or deductions;

(37) "Heating oil" means a motor fuel that is burned in a boiler, furnace, or stove for heating or industrial processing purposes;

(38) "Highway vehicle" means a self-propelled vehicle that is designed for use on a highway;

(39) "Import" means to bring petroleum products into this state by any means of conveyance other than in the fuel supply tank of a motor vehicle. In applying this definition, the delivery of petroleum products into this state from outside Tennessee by or for the vendor constitutes an import by the vendor, and the delivery of petroleum products into this state from outside Tennessee by or for the purchaser constitutes an import by the purchaser;

(40) "In this state" means the area inside the boundaries of Tennessee, but does not include the midstream of waterways that border the state;

(41) "Invoiced gallons" means the gallons actually billed on an invoice from a vendor;

(42) "K-1 kerosene" means burner fuel designed for unvented space heaters which meets ASTM standard D-3699, in effect on January 1, 1995, and any successor rule, as the specification for K-1 kerosene;

(43) "Kerosene" has the same meaning as defined by the ASTM standards for kerosene;

(44) "Liquid" means any substance that is liquid at temperatures in excess of sixty degrees Fahrenheit (60°F) and at a pressure of fourteen and seven-tenths pounds per square inch (14.7 p.s.i.) absolute;

(45) "Local transit company" means a person that is a scheduled, common carrier, public passenger, land transportation service, serving regular routes within a municipality and the territory adjacent to the municipality, or within a metropolitan government created under title 7, chapters 1-3, and that generates at least sixty percent (60%) of the total passenger fare from such routes; provided, that the operation is supervised, regulated, and controlled as a street railway company, under § 65-16-101 [repealed], and all legislative and statutory provisions applicable thereto;

(46) "Local transit service" means service furnished by a local transit company;

(47) "Motor fuel" means gasoline, diesel fuel and blended fuel;

(48) "Motor fuel transporter" means a person who transports motor fuel by transport truck, railroad tank car, marine vessel or pipeline;

(49) "Motor vehicle" means a vehicle that is propelled by an internal combustion engine or motor and is designed to permit the vehicle's use on highways. "Motor vehicle" does not include:

(A) Farm machinery, including machinery designed for off-road use but capable of movement on roads at low speeds;

(B) A vehicle operated on rails; or

(C) Machinery designed principally for off-road use, unless such machinery is licensed to operate on Tennessee highways;

(50) "Permissive supplier" means any person who is not subject to the

general taxing jurisdiction of this state, but who:

(A) Is a position holder in a federally qualified terminal located outside this state;

(B) Is registered under § 4101 of the Internal Revenue Code, compiled in 26 U.S.C. § 4101, for transactions in taxable motor fuels in the bulk transfer/terminal distribution system; and

(C) Acquires product in such out-of-state terminals from position holders in transactions that otherwise qualify as two-party exchanges;

(51) "Person" means a natural person, partnership, firm, association, corporation, limited liability company, court appointed representative, state, political subdivision or any other entity, group, or syndicate;

(52) "Petroleum products" means all benzol, gasoline, burning oil, distillate, fuel oil, gas oil, kerosene, naphtha, or any other volatile substance, excluding propane, reflecting a gravity of sixteen degrees (16°) or above on the American Petroleum Institute (API) scale; with the exception of those substances with a kinematic viscosity greater than seventy (70) centistokes at one hundred twenty-two degrees Fahrenheit (122°F) and a flash point greater than one hundred fifty degrees Fahrenheit (150°F); produced from petroleum, natural gas, oil shale or coal, by whatever trade name known, or substitutes therefor, including fuel alcohol, sold or used or stored in this state, separately or in combination, for any purpose whatever, by any user or storer, whether or not manufactured in this state;

(53) "Position holder" means the person who holds the inventory position in petroleum products in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in petroleum products when that person has a contract with the operator for the use of storage facilities and terminaling services for petroleum products at the terminal. "Position holder" includes a terminal operator who owns petroleum products in the terminal;

(54) "Public highway" means the entire width between boundary lines of each public-maintained way in this state, including streets and alleys in cities and towns, when any part of the way is open to the public use for vehicle travel;

(55) "Qualified terminal" means a qualified terminal as defined under the Internal Revenue Code, regulation and practices, that has been assigned a terminal control number (TCN) by the internal revenue service;

(56) "Rack" means a mechanism for delivering motor fuel from a refinery, terminal, or bulk plant into a railroad tank car, a transport truck or another means of bulk transfer outside of the bulk transfer/terminal system;

(57) "Refiner" means a person that owns, operates, or otherwise controls a refinery within the United States;

(58) "Refinery" means a facility used to produce motor fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons, and from which motor fuel may be removed by pipeline, by marine vessel, or at a rack; provided, that "refinery" also means a facility used to produce fuel alcohol;

(59) "Removal" means any physical transfer other than by evaporation, loss, or destruction, of petroleum products from a terminal, manufacturing plant, customs custody, pipeline, marine vessel (e.g., barge or tanker), refinery or any receptacle that stores petroleum products;

(60) "Retail station" means any service station, garage, truck stop or other outlet dispensing motor fuel from a container equipped with a computer-type

pump that measures fuel passing through it;

(61) "Retailer" means a person that engages in the business of selling or distributing petroleum products to the end user within this state through a retail station;

(62) "State" means the state of Tennessee;

(63)(A) "Supplier" means a person that meets all the following conditions:

(i) Is subject to the general taxing jurisdiction of this state;

(ii) Is registered under § 4101 of the Internal Revenue Code, compiled in 26 U.S.C. § 4101, for transactions in taxable motor fuels in the bulk transfer/terminal system; and

(iii) Is one (1) of the following:

(a) Is the "position holder" in a terminal or refinery in this state, or is one who receives fuel or fuel alcohol from a position holder within a terminal or refinery in this state;

(b) Imports taxable petroleum products into this state from a foreign country;

(c) Acquires taxable petroleum products from a terminal or refinery outside this state for import into this state on such person's account;

(d) Produces fuel alcohol or alcohol derivative substances in this state; or

(e) Is the receiving supplier on a two-party exchange;

(B) A terminal operator shall not be considered a "supplier" merely because the terminal operator handles taxable petroleum products consigned to it within a terminal. When used in this chapter, other than in this section, "supplier" shall be deemed to also refer to the term "permissive supplier" unless provided otherwise;

(64) "Tank wagon" means a straight truck having multiple compartments designed or used to carry petroleum products;

(65) "Taxable motor fuel" means gasoline, diesel fuel, kerosene, and blends thereof, and any other substance blended with any of these fuels;

(66) "Terminal" means a storage and distribution facility for taxable motor fuel, supplied by pipeline or marine vessel, that is registered as a qualified terminal by the internal revenue service;

(67) "Terminal bulk transfer" means a transfer of petroleum products in any of the following instances:

(A) Marine barge movements of fuel from a refinery or terminal to a refinery or terminal;

(B) Pipeline movements of fuel from a refinery or terminal to a refinery or terminal;

(C) Rail movements of fuel from a refinery or terminal to a refinery or terminal;

(D) Book transfers of product within a terminal between suppliers prior to completion of removal across the rack; or

(E) Two-party exchanges between licensed suppliers within a terminal;

(68)(A) "Terminal operator" means a person that:

(i) Owns, operates, or otherwise controls a terminal; and

(ii) Does not use a substantial portion of the taxable motor fuel that is transferred through or stored in the terminal for its own use, i.e., for its own consumption or in the manufacture of products other than motor fuel;

(B) A terminal operator may own the taxable motor fuel that is

transferred through or stored in the terminal;

(69) "Transmix" means the buffer or interface between two (2) different products in a pipeline shipment, or a mix of two (2) different products within a refinery or terminal that results in an off-grade mixture;

(70) "Transport truck" means a semi-trailer combination rig or tank wagon designed or used for the purpose of transporting petroleum products over the highways;

(71) "Transporter" means any operator of a pipeline, barge, railroad or transport truck engaged in the business of transporting petroleum products;

(72) "Two-party exchange" means a transaction in which a petroleum product is transferred from one licensed supplier or licensed permissive supplier to another licensed supplier or licensed permissive supplier pursuant to an exchange agreement:

(A) Which transaction includes a transfer from the person that holds the inventory position for taxable motor fuel in the terminal as reflected on the records of the terminal operator; and

(B) The exchange transaction is completed prior to removal of the product from the terminal by the receiving exchange partner;

(73) "Undyed diesel fuel" means diesel fuel not dyed under United States environmental protection agency rules for high sulfur diesel fuel nor dyed under internal revenue service rules for low sulphur fuel, nor pursuant to any other requirements subsequently set by the environmental protection agency or internal revenue service;

(74) "Vehicle fuel supply tank" means any receptacle on a motor vehicle designed to supply fuel for the propulsion of the motor vehicle or from which fuel is supplied for the propulsion of the motor vehicle;

(75) "Vessel" means a barge or other marine conveyance used to transport petroleum products in bulk; and

(76) "Wholesaler" means a person who acquires petroleum products from a supplier, importer or from another wholesaler, for subsequent sale and distribution at wholesale by tank cars, transport trucks or vessels.

67-3-103. Chapter definitions. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

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

(1) "Agricultural purposes" means operating tractors or other farm equipment used exclusively, whether for hire or not, in plowing, planting, harvesting, raising or processing of farm products at a farm, nursery or greenhouse; or operating farm irrigation systems; when such vehicles or equipment are not operated upon the public highways of this state;

(2) "Alternative fuel" means a liquefied petroleum gas or compressed natural gas product used in an internal combustion engine or motor to propel any form of motor vehicle, machine, or mechanical contrivance. "Alternative fuel" includes all forms of fuel commonly known as butane, propane, or compressed natural gas;

(3) [Deleted by 2007 amendment, effective July 1, 2013.]

(4) "Blend stock" means any petroleum product component of gasoline, such as naphtha, reformate, or toluene, that can be blended for use in a motor fuel. However, "blend stock" does not include any substance that will be ultimately used for consumer non-motor fuel use and is sold or removed in drum quantities of not more than fifty-five gallons (55 gals.) at the time of the

removal or sale;

(5) "Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a minimal amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle;

(6) "Blender" means any person that produces blended motor fuel outside the bulk transfer/terminal system;

(7) "Blending" means the mixing of one (1) or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use or otherwise sold for use in the generation of power to propel a motor vehicle, an airplane, a motorboat, or other mechanical contrivance. "Blending" does not include blending that occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oil and greases;

(8) "Bonded importer" means a person with a valid bonded importer's license under § 67-3-606;

(9) "Bulk end user" means a person who receives into the person's own storage facilities, for the person's own consumption, transport lots of taxable motor fuel;

(10) "Bulk export" means the movement of petroleum products from a point in Tennessee to another state by means of transport truck, pipeline, marine vessel or rail, including any quantity of petroleum product placed by the manufacturer into the vehicle fuel supply tank of a newly manufactured motor vehicle;

(11) "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack;

(12) "Bulk transfer" means any transfer of a petroleum product within the bulk transfer/terminal system from one location to another by pipeline or marine delivery;

(13) "Bulk transfer/terminal system" means the motor fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Thus, gasoline in a refinery, pipeline, vessel, or terminal is in the bulk transfer/terminal system. Taxable motor fuel in the fuel supply tank of any engine, or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system;

(14) "Commissioner" means the commissioner of revenue or the commissioner's designated subordinate official;

(15) "Computer-type pump" means a pump used to dispense fuel, that has meters for registering the total sales price and gallons sold, and displays the price per gallon on the dispenser;

(16) "Customer-controlled pump" means a pump used for dispensing motor fuel directly to a customer who can access the pump by way of a personal key, an identification number, or a customer card that is assigned to the customer by a licensed wholesaler;

(17) "Dead storage" means the amount of taxable motor fuel that will not be pumped out of a storage tank because the motor fuel is below the mouth of the draw pipe. For this purpose, a vendor may assume that the amount of motor fuel in dead storage is two hundred gallons (200 gals.) for a tank with a capacity of less than ten thousand gallons (10,000 gals.), and four hundred gallons (400 gals.) for a tank with a capacity of ten thousand gallons (10,000

gals.) or more;

(18) "Department" means the department of revenue;

(19) "Destination state" means the state, territory, or foreign country to which petroleum products are directed for resale or use;

(20) "Diesel fuel" means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle. "Diesel fuel" does not include jet fuel or kerosene unless sold for use in a diesel-powered highway vehicle or used in such vehicles, in which case the fuel shall be deemed diesel fuel for taxation purposes. With regard to jet fuel, it is further provided that the buyer must be registered to purchase jet fuel subject to federal taxes applicable to jet fuel, and the vendor must obtain certification of such fact satisfactory to the department prior to making the sale;

(21) "Diesel-powered highway vehicle" means a motor vehicle, propelled by a diesel-powered engine, that is operated, or intended to be operated, on a highway;

(22) "Distributor report" means the report required under § 67-3-701;

(23) "Diverted shipment" means any shipment of a petroleum product where the movement of that product by a transporter is changed from the original point of destination to another point of destination;

(24) "Dyed diesel fuel" means diesel fuel dyed under United States environmental protection agency rules for high sulfur diesel fuel, or dyed under internal revenue service rules for low sulphur fuel, or dyed pursuant to any other requirements subsequently set by the environmental protection agency or internal revenue service, including any invisible marker requirements;

(25) "Ethanol" means fuel grade ethanol;

(26) "Export" means to obtain petroleum products in this state for sale, use, or distribution in another state. In applying this definition, the delivery of petroleum products outside Tennessee by or for the vendor constitutes an export by the vendor, and the delivery of petroleum products outside Tennessee by or for the purchaser constitutes an export by the purchaser;

(27) "Exporter" means any person, other than a supplier, who purchases or otherwise holds title to taxable petroleum products in this state for the purpose of transporting or delivering the products to another state or country;

(28) "Farm products" means flowers and plants, including cut flowers, flowering plants, potted plants, vegetables and vegetable plants, trees, shrubs, vines, ornamentals, sod, and mushrooms. "Farm products" also means livestock and poultry raised for food, including dairy products;

(29) "Fuel alcohol" means any alcohol used or intended for use as fuel in a combustion engine or heating oil system;

(30) "Fuel grade ethanol" means a product that meets the American Society for Testing and Materials (ASTM) standard in effect on January 1, 1995, and any successor rule, as the D-4806 specification for denatured fuel grade ethanol, for blending with gasoline for use as automatic spark-ignition engine fuels;

(31) "Fuel transportation vehicle" means a vehicle designed for highway use that is also designed or used to transport motor fuels, including transport trucks and tank wagons;

(32) "Gallon" or "net gallon" means the amount of petroleum product, corrected to a temperature of sixty degrees Fahrenheit (60°F) and a pressure of fourteen and seven tenths pounds per square inch (14.7 p.s.i.), necessary to completely fill a standard United States gallon liquid measure;

(33) "Gasohol" means a blended fuel composed of gasoline and ethanol;

(34) "Gasoline" means all products commonly or commercially known or sold as gasoline that are suitable for use as a motor fuel, but does not include any product that is sold as a product other than gasoline and has an ASTM octane number of less than seventy-five (75) as determined by the "motor method"; and does not include aviation gasoline; provided, that the buyer is registered to purchase aviation gasoline free of tax, and the vendor obtains certification of such fact satisfactory to the department prior to making the sale;

(35) "Governmental agency" means a department of a local, state or federal government, where such department is organized by and accountable to the authority of the executive, legislative, or judicial branch of that government; but does not include a private organization, association, or contractor, whether for profit or not, unless specifically identified in this chapter. For the purpose of this chapter, "governmental agency" includes a rescue squad chartered by the state as a nonprofit corporation or association and that is a member of the Tennessee Association of Rescue Squads, and a volunteer fire department chartered by the state as a nonprofit corporation or association;

(36) "Gross gallons" means the total measured product, exclusive of any temperature or pressure adjustments, considerations or deductions;

(37) "Heating oil" means a motor fuel that is burned in a boiler, furnace, or stove for heating or industrial processing purposes;

(38) "Highway vehicle" means a self-propelled vehicle that is designed for use on a highway;

(39) "Import" means to bring petroleum products into this state by any means of conveyance other than in the fuel supply tank of a motor vehicle. In applying this definition, the delivery of petroleum products into this state from outside Tennessee by or for the vendor constitutes an import by the vendor, and the delivery of petroleum products into this state from outside Tennessee by or for the purchaser constitutes an import by the purchaser;

(40) "In this state" means the area inside the boundaries of Tennessee, but does not include the midstream of waterways that border the state;

(41) "Invoiced gallons" means the gallons actually billed on an invoice from a vendor;

(42) "K-1 kerosene" means burner fuel designed for unvented space heaters which meets ASTM standard D-3699, in effect on January 1, 1995, and any successor rule, as the specification for K-1 kerosene;

(43) "Kerosene" has the same meaning as defined by the ASTM standards for kerosene;

(44) "Liquid" means any substance that is liquid at temperatures in excess of sixty degrees Fahrenheit (60°F) and at a pressure of fourteen and seven-tenths pounds per square inch (14.7 p.s.i.) absolute;

(45) "Local transit company" means a person that is a scheduled, common carrier, public passenger, land transportation service, serving regular routes within a municipality and the territory adjacent to the municipality, or within a metropolitan government created under title 7, chapters 1-3, and that generates at least sixty percent (60%) of the total passenger fare from

such routes; provided, that the operation is supervised, regulated, and controlled as a street railway company, under § 65-16-101 [repealed], and all legislative and statutory provisions applicable thereto;

(46) "Local transit service" means service furnished by a local transit company;

(47) "Motor fuel" means gasoline, diesel fuel and blended fuel;

(48) "Motor fuel transporter" means a person who transports motor fuel by transport truck, railroad tank car, marine vessel or pipeline;

(49) "Motor vehicle" means a vehicle that is propelled by an internal combustion engine or motor and is designed to permit the vehicle's use on highways. "Motor vehicle" does not include:

(A) Farm machinery, including machinery designed for off-road use but capable of movement on roads at low speeds;

(B) A vehicle operated on rails; or

(C) Machinery designed principally for off-road use, unless such machinery is licensed to operate on Tennessee highways;

(50) "Permissive supplier" means any person who is not subject to the general taxing jurisdiction of this state, but who:

(A) Is a position holder in a federally qualified terminal located outside this state;

(B) Is registered under § 4101 of the Internal Revenue Code, compiled in 26 U.S.C. § 4101, for transactions in taxable motor fuels in the bulk transfer/terminal distribution system; and

(C) Acquires product in such out-of-state terminals from position holders in transactions that otherwise qualify as two-party exchanges;

(51) "Person" means a natural person, partnership, firm, association, corporation, limited liability company, court appointed representative, state, political subdivision or any other entity, group, or syndicate;

(52) "Petroleum products" means all benzol, gasoline, burning oil, distillate, fuel oil, gas oil, kerosene, naphtha, or any other volatile substance, excluding propane, reflecting a gravity of sixteen degrees (16°) or above on the American Petroleum Institute (API) scale; with the exception of those substances with a kinematic viscosity greater than seventy (70) centistokes at one hundred twenty-two degrees Fahrenheit (122°F) and a flash point greater than one hundred fifty degrees Fahrenheit (150°F); produced from petroleum, natural gas, oil shale or coal, by whatever trade name known, or substitutes therefor, including fuel alcohol, sold or used or stored in this state, separately or in combination, for any purpose whatever, by any user or storer, whether or not manufactured in this state;

(53) "Position holder" means the person who holds the inventory position in petroleum products in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in petroleum products when that person has a contract with the operator for the use of storage facilities and terminaling services for petroleum products at the terminal. "Position holder" includes a terminal operator who owns petroleum products in the terminal;

(54) "Public highway" means the entire width between boundary lines of each public-maintained way in this state, including streets and alleys in cities and towns, when any part of the way is open to the public use for vehicle travel;

(55) "Qualified terminal" means a qualified terminal as defined under the Internal Revenue Code, regulation and practices, that has been assigned a

terminal control number (TCN) by the internal revenue service;

(56) "Rack" means a mechanism for delivering motor fuel from a refinery, terminal, or bulk plant into a railroad tank car, a transport truck or another means of bulk transfer outside of the bulk transfer/terminal system;

(57) "Refiner" means a person that owns, operates, or otherwise controls a refinery within the United States;

(58) "Refinery" means a facility used to produce motor fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons, and from which motor fuel may be removed by pipeline, by marine vessel, or at a rack; provided, that "refinery" also means a facility used to produce fuel alcohol;

(59) "Removal" means any physical transfer other than by evaporation, loss, or destruction, of petroleum products from a terminal, manufacturing plant, customs custody, pipeline, marine vessel (e.g., barge or tanker), refinery or any receptacle that stores petroleum products;

(60) "Retail station" means any service station, garage, truck stop or other outlet dispensing motor fuel from a container equipped with a computer-type pump that measures fuel passing through it;

(61) "Retailer" means a person that engages in the business of selling or distributing petroleum products to the end user within this state through a retail station;

(62) "State" means the state of Tennessee;

(63)(A) "Supplier" means a person that meets all the following conditions:

(i) Is subject to the general taxing jurisdiction of this state;

(ii) Is registered under § 4101 of the Internal Revenue Code, compiled in 26 U.S.C. § 4101, for transactions in taxable motor fuels in the bulk transfer/terminal system; and

(iii) Is one (1) of the following:

***(a)** Is the "position holder" in a terminal or refinery in this state, or is one who receives fuel or fuel alcohol from a position holder within a terminal or refinery in this state;*

***(b)** Imports taxable petroleum products into this state from a foreign country;*

***(c)** Acquires taxable petroleum products from a terminal or refinery outside this state for import into this state on such person's account;*

***(d)** Produces fuel alcohol or alcohol derivative substances in this state; or*

***(e)** Is the receiving supplier on a two-party exchange;*

(B) A terminal operator shall not be considered a "supplier" merely because the terminal operator handles taxable petroleum products consigned to it within a terminal. When used in this chapter, other than in this section, "supplier" shall be deemed to also refer to the term "permissive supplier" unless provided otherwise;

(64) "Tank wagon" means a straight truck having multiple compartments designed or used to carry petroleum products;

(65) "Taxable motor fuel" means gasoline, diesel fuel, kerosene, and blends thereof, and any other substance blended with any of these fuels;

(66) "Terminal" means a storage and distribution facility for taxable motor fuel, supplied by pipeline or marine vessel, that is registered as a qualified terminal by the internal revenue service;

(67) "Terminal bulk transfer" means a transfer of petroleum products in any of the following instances:

(A) Marine barge movements of fuel from a refinery or terminal to a refinery or terminal;

(B) Pipeline movements of fuel from a refinery or terminal to a refinery or terminal;

(C) Rail movements of fuel from a refinery or terminal to a refinery or terminal;

(D) Book transfers of product within a terminal between suppliers prior to completion of removal across the rack; or

(E) Two-party exchanges between licensed suppliers within a terminal;

(68)(A) "Terminal operator" means a person that:

(i) Owns, operates, or otherwise controls a terminal; and

(ii) Does not use a substantial portion of the taxable motor fuel that is transferred through or stored in the terminal for its own use, i.e., for its own consumption or in the manufacture of products other than motor fuel;

(B) A terminal operator may own the taxable motor fuel that is transferred through or stored in the terminal;

(69) "Transmix" means the buffer or interface between two (2) different products in a pipeline shipment, or a mix of two (2) different products within a refinery or terminal that results in an off-grade mixture;

(70) "Transport truck" means a semi-trailer combination rig or tank wagon designed or used for the purpose of transporting petroleum products over the highways;

(71) "Transporter" means any operator of a pipeline, barge, railroad or transport truck engaged in the business of transporting petroleum products;

(72) "Two-party exchange" means a transaction in which a petroleum product is transferred from one licensed supplier or licensed permissive supplier to another licensed supplier or licensed permissive supplier pursuant to an exchange agreement:

(A) Which transaction includes a transfer from the person that holds the inventory position for taxable motor fuel in the terminal as reflected on the records of the terminal operator; and

(B) The exchange transaction is completed prior to removal of the product from the terminal by the receiving exchange partner;

(73) "Undyed diesel fuel" means diesel fuel not dyed under United States environmental protection agency rules for high sulfur diesel fuel nor dyed under internal revenue service rules for low sulphur fuel, nor pursuant to any other requirements subsequently set by the environmental protection agency or internal revenue service;

(74) "Vehicle fuel supply tank" means any receptacle on a motor vehicle designed to supply fuel for the propulsion of the motor vehicle or from which fuel is supplied for the propulsion of the motor vehicle;

(75) "Vessel" means a barge or other marine conveyance used to transport petroleum products in bulk; and

(76) "Wholesaler" means a person who acquires petroleum products from a supplier, importer or from another wholesaler, for subsequent sale and distribution at wholesale by tank cars, transport trucks or vessels.

67-3-423. Biodiesel manufacturers' incentive fund. [Effective until July 1, 2013.]

(a) The department of revenue, in consultation with the department of economic and community development, is authorized to create the Tennessee biodiesel manufacturers' incentive fund. Disbursements from the fund shall be subject to appropriations being made from the fund in the general appropriations act. Amounts remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain available for expenditure in subsequent fiscal years. Money in the fund shall be invested by the state treasurer pursuant to title 9, chapter 4, part 6, for the sole benefit of the fund. All earnings attributable to the investments shall be credited to the fund. Money in the biodiesel manufacturers' incentive fund may be used by the department of economic and community development for program administration, marketing expenses and program evaluation; however, the expenses shall not exceed five percent (5%) of the total amount appropriated for the fund in any fiscal year.

(b) In any fiscal year in which funds are available in the biodiesel manufacturers' incentive fund and appropriated by the general appropriations act, the department of economic and community development shall make incentive payments to Tennessee biodiesel manufacturers for product manufactured in Tennessee and sold to a Tennessee distributor. The payments shall be made monthly beginning the first day of September of each fiscal year in which funds are available and appropriated. The amount of the payments shall be determined annually by the department of economic and community development, in consultation with the department of revenue, based on the funds then available in the biodiesel manufacturers' incentive fund. Each manufacturer shall be eligible for payment for no more than ten million gallons (10,000,000 gals.) per year.

67-3-706. Reports by electronic data interchange.

(a) The commissioner may require those responsible for filing reports under this part to file such reports by means of electronic data interchange. All payments accompanying these reports shall be remitted by means of electronic funds transfer as required by § 67-3-515.

(b) In addition to any other penalty provided by law, the commissioner may assess on any person required to file reports by means of electronic data interchange a penalty, not to exceed five hundred dollars ($500), for each instance of reporting by any other means.

67-3-1101. Alternative fuels — Part definitions.

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

(1) "Commercial purposes" means use in a trade or business;

(2) "Dealer" means an entity or person who:

(A) Is the operator of a retail station or other retail outlet and who delivers liquified gas into the fuel supply tanks of motor vehicles;

(B) Delivers liquified gas into a dispenser capable of fueling motor vehicles; or

(C) Dispenses compressed natural gas to the public;

(3) "Liquified gas" means all combustible gases that exist in the gaseous state at sixty degrees Fahrenheit (60°F) and at a pressure of fourteen and seven-tenths pounds per square inch (14.7 p.s.i.) absolute, but does not include gasoline or diesel fuel or compressed natural gas;

(4) "Motor vehicle" means a self-propelled vehicle licensed for highway use;

(5) "Passenger car" means a motor vehicle designed for carrying ten (10) or fewer passengers and used for the transportation of persons;

(6) "Taxable sales or deliveries" means the delivery in Tennessee of liquified gas or compressed natural gas into the fuel supply tank of a motor vehicle that does not have affixed a current user permit; and

(7) "User" means a person who operates a motor vehicle in this state that is propelled by liquified gas or compressed natural gas.

67-3-1114. Compressed natural gas — User's permits.

(a) A user of compressed natural gas shall apply to and obtain from the commissioner a compressed natural gas user permit, unless the user purchases compressed natural gas from a dealer defined in § 67-3-1101.

(b) A compressed natural gas user's permit shall be issued by the commissioner to a person who uses compressed natural gas in a licensed motor vehicle in this state. To procure a permit, each person shall file with the commissioner an application and meet the bonding provisions of part 6 of this chapter.

(c) A holder of a compressed natural gas user's permit shall provide written notice to the commissioner of intent to terminate the permit. Such permit shall be terminated effective on the date of the notice.

67-3-1119. Nonassignable compressed natural gas dealer permit.

(a) A dealer shall file an application with the commissioner for a compressed natural gas dealer permit, which is not assignable.

(b) An application for a permit shall be filed on a form provided by the commissioner.

(c) The permit shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the permittee. A dealer permittee shall reproduce the permit and display it in a conspicuous place at each additional place of business from which natural gas is sold, delivered or used in motor vehicles.

(d) Application for a permit shall be accompanied by a bond, payable to this state, as provided in part 6 of this chapter.

(e) A permit is permanent and valid as long as the permittee furnishes timely reports and remits the taxes when due, or until surrendered by the holder or cancelled by the commissioner.

67-3-1120. Definition of "qualified natural gas dispenser" — Collection, remittance and reporting of taxes — Keeping of records — Inspections.

(a) "Qualified natural gas dispenser" means a dispenser that measures the amount dispensed by means of a National Type Evaluation Program (NTEP) certified fuel meter.

(b) A natural gas dealer permit authorizes a dealer to collect and remit taxes

on compressed natural gas delivered into the fuel supply tanks of motor vehicles by means of a qualified natural gas dispenser with meter capability. When compressed natural gas is delivered by a dealer to a customer's vehicle by means of a qualified natural gas dispenser, user permits under this part are not required.

(c) Dealers shall be legally responsible for collecting the tax imposed by § 67-3-1113 at the time of delivery to a vehicle.

(d) For the purpose of reporting the amount of tax imposed by § 67-3-1113 on metered compressed natural gas, each dealer shall file with the commissioner, on a form prescribed by the commissioner, a monthly report on or before the twenty-fifth day of the month following the month of activity, whether or not fuel is used or sold, and remit the tax due and collected. The report shall be executed under a declaration of penalty of perjury and shall state the total amount of compressed natural gas dispensed by the permittee within the state.

(e) A dealer shall keep for four (4) years, open to inspection at all times by the department and the attorney general and reporter, a complete record of all metered compressed natural gas received and used or sold.

(f) Meters and qualified natural gas dispensers are subject to inspection and verification by the department of agriculture's weights and measures in accordance with title 47, chapter 26, part 9 and such part's enforcement provisions.

67-4-310. Transfer of vending machine business.

(a) Notwithstanding § 67-4-309(b), the transferee of a vending machine business upon which the transferor has paid tax on an annual basis under the provisions of § 67-4-506, desiring to continue to operate under the option as afforded by such section, shall, within thirty (30) days after the date of transfer, or the next following July 1, whichever is sooner, notify the department of its intent and also register the new business and each transferred vending machine with the department in the name of the transferee. In connection with the transfer, the transferee shall pay such costs and fees as provided in § 67-4-506, but no additional gross receipts tax shall be due for any remaining period for which the transferor has paid applicable gross receipts taxes. However, when any such transferee desiring to continue to exercise the option afforded in § 67-4-506 shall fail to notify the department and to register, as required, the transferee shall not be permitted to exercise such option prior to the next following July 1, until and unless there shall have been paid, in addition to the costs and fees provided in § 67-4-506, a specific penalty in the amount of one dollar ($1.00) for each transferred vending machine for each month, or any fractional part thereof, during which such failure continues following expiration of the thirty (30) days after the transfer. Furthermore, if the option to pay the tax under the provisions of § 67-4-506 is not exercised as provided prior to the next July 1 following the transfer, then such transferee shall be required to pay the sales tax as provided by law for a period of not less than twelve (12) months.

(b) The transferee of a vending machine business taxable under the provisions of § 67-4-506, shall notify the department of the transfer and also register each transferred vending machine with the department under the provisions of § 67-4-506 as set out in subsection (a), whether or not the transferor of such machines was operating under the option referred to in

subsection (a). Such notification and registration shall be made within the period specified in subsection (a), and the operation of any transferred machine beyond such period without compliance with these requirements is unlawful and the transferee shall be subject to the imposition of penalties otherwise provided for in § 67-4-220.

67-4-409. Recordation tax.

(a) **Transfers of Realty.** On all transfers of realty, whether by deed, court deed, decree, partition deed, or other instrument evidencing transfer of any interest in real estate, there shall be paid for the privilege of having the same recorded a tax, for state purposes only, of thirty-seven cents (37¢) per one hundred dollars ($100), as follows:

(1) On the transfer of a freehold estate, the tax shall be based on the consideration for the transfer, or the value of the property, whichever is greater. "Value of the property," as used in this section, means the amount that the property transferred would command at a fair and voluntary sale, and no other value;

(2) No transfer tax shall be due or paid on the transfer of a leasehold estate;

(3) No such tax shall be levied on the transfer of any real estate where such:

(A) Is creation or dissolution of a tenancy by the entirety:

(i) By the conveyance from one (1) spouse to the other;

(ii) By the conveyance from one (1) spouse or both spouses to the original grantor or grantors in the instrument and the original grantor's spouse; or

(iii) By the conveyance from one (1) spouse or both spouses to a trustee and immediate reconveyance by the trustee in the same instrument as tenants in common, tenants in common with right of survivorship, joint tenants or joint tenants with right of survivorship;

(B) Are deeds of division in kind of realty formerly held by tenants in common;

(C) Is release of a life estate to the beneficiaries of the remainder interest;

(D) Are deeds executed by an executor to implement a testamentary devise;

(E) Are domestic settlement decrees and/or domestic decrees and/or deeds that are an adjustment of property rights between divorcing parties;

(F) Are transfers by a transferor of real estate to a revocable living trust created by the same transferor or by a spouse of the transferor, or transfers by the trustee of a revocable living trust back to the same transferor or to the transferor's spouse; or

(G) Are deeds executed by the trustee of a revocable living trust to implement a testamentary devise by the trustor of the trust;

(4) In the case of quitclaim deeds, the tax shall be based only on the actual consideration given for that conveyance;

(5) No oath of value shall be required in any transaction that is exempt from tax;

(6) This tax shall be paid by the grantee or transferee of the interest in real estate, as shown on the instrument evidencing the transfer of such interest; and it shall be collected by the register of the county in which the

instrument is offered for recordation;

(A) The grantee, the grantee's agent, or a trustee acting for the grantee shall be required to state under oath upon the face of the instrument offered for record in the presence of the register, or before an officer authorized to administer oaths, the actual consideration or value, whichever is greater, for the transfer of a freehold estate;

(B) The making under oath of any false statement known to be false respecting the consideration or value of property transferred shall be punishable as perjury;

(C) A person who obtains several deeds or other instruments of conveyance for the same transfer of one and the same tract or parcel of real estate shall pay only one (1) state tax with respect to such transfer;

(D) The register is forbidden to record the transfer until this tax has been paid; and

(7) No tax is due under this subsection (a) until the title to the property is transferred by deed.

(b) **Mortgages, Deeds of Trust and Other Instruments.** Prior to the public recordation of any instrument evidencing an indebtedness, including, but not limited to, mortgages, deeds of trust, conditional sales contracts, financing statements contemplated by the Uniform Commercial Code, compiled in title 47, and liens on personalty, other than on motor vehicles, there shall be paid a tax, for state purposes only, of eleven and one half cents (11.5¢) on each one hundred dollars ($100) of the indebtedness so evidenced.

(1) The tax shall not be required for the recordation of judgment liens, contractors' liens, subcontractors' liens, furnishers' liens, laborers' liens, mechanics' and materialmen's liens, financing statements filed pursuant to the Uniform Commercial Code, compiled in title 47, that secure an interest solely in investment property, as defined in § 47-9-102(a), as amended by Acts 2000, Ch. 846, § 1, and mortgages or deeds of trust issued under the Home Equity Conversion Mortgage Act, as compiled in title 47, chapter 30, and that are labeled on the face under the provision of such chapter.

(2) In any case where the consideration or stipulation of indebtedness does not appear on the face of the instrument being offered for record, the recording official shall require a separate statement, to be made under oath, indicating the amount of the indebtedness so secured.

(3) This tax shall be paid to and collected by county registers, the secretary of state, and any other official who may receive any instrument other than for liens on motor vehicles in accordance with the motor vehicle title law of this state, for recordation in accordance with the laws of this state, and registration is forbidden until such tax has been paid.

(4) The incidence of the tax provided by this section is declared to be upon the mortgagor, grantor or debtor, evidenced by the instrument offered for recordation. It shall not, however, apply with respect to the first two thousand dollars ($2,000) of the indebtedness.

(5)(A) As used in this section, "indebtedness" means the principal debt or obligation which is reasonably contemplated by the parties to be included within the terms of the agreement. "Indebtedness" does not include any amount of interest, collection expense including, but not limited to, attorney's fees and expenses incurred in preserving, protecting, improving, or insuring property which serves as collateral for the indebtedness, or any other amount, other than the principal debt or obligation, for which

a debtor becomes liable unless such amount is added to the principal debt or obligation, and is used to calculate additional interest pursuant to refinancing, reamortization, amendment or similar transaction or occurrence.

(B) If the instrument is given to secure the performance by the mortgagor, grantor, debtor or any other person of an obligation other than the payment of a specific sum of money, and a maximum amount secured is not expressed in the instrument, such instrument shall be taxable upon the value of the property covered by the instrument, which value shall be deemed to be the indebtedness secured by such instrument for such purposes. Such instrument shall not be recorded, unless, at the time of presenting the instrument, there is filed a sworn statement by the owner of the property covered thereby of the value of the property. Such amount shall be the basis of assessing the tax imposed under this subsection (b). No subsequent change in the value of the property shall result in the imposition of additional tax.

(C) Every recorded instrument evidencing an indebtedness must contain, either on the face of the instrument or in an attached sworn statement, the following language: "Maximum principal indebtedness for Tennessee recording tax purposes is $____." The holder of the indebtedness shall state the amount of the indebtedness, and that amount shall be the basis of assessing the tax imposed by this subsection (b). Such statement may be relied upon only by the department of revenue and by the receiving official charged with the duty of recordation and collection of tax, and such statement shall not constitute notice of any kind to any other party of the amount of indebtedness secured by the instrument. Notwithstanding the provisions of this subdivision (b)(5)(C), an instrument described in subdivision (b)(5)(B) shall instead contain, either on the face of the instrument or in an attached sworn statement, the following language: "Secures obligation other than payment of specific sum — valuation statement submitted herewith." Notwithstanding any other law to the contrary, an official charged with the collection of the tax imposed by this subsection (b) shall not record any instrument evidencing an indebtedness, unless it contains the statement required by this subdivision (b)(5)(C) and tax is properly paid, based upon the amount contained in that statement or in the valuation statement, as appropriate.

(D) When the instrument being offered for registration, recording, or filing secures, or evidences the securing of, a line of credit or other indebtedness arising from more than one (1) advance or extension of credit, the amount of which will, or may, vary from time to time, the tax shall be computed and paid on the maximum amount of the indebtedness as stated in the instrument or the accompanying sworn statement, and the reduction or subsequent increasing of the amount of the indebtedness within such limits shall not result in additional tax.

(6) Imposition of a transfer tax as levied under subsection (a) with respect to an instrument evidencing an indebtedness shall not operate to exonerate such instrument from the tax levied under this subsection (b), if such tax would otherwise be appropriate. Furthermore, an instrument evidencing transfer of any interest in real estate that is subject to the transfer tax shall, nevertheless, be subject to the tax levied under this subsection (b) also, when such instrument evidences an indebtedness either by showing in the

instrument that a vendor's lien is retained, or by referring in the instrument to such a lien being evidenced by another instrument not being offered for public recordation.

(7)(A)(i) If some of the property securing the payment of the indebtedness is located in Tennessee and some is located outside of Tennessee, as an optional method of computing the tax, the tax may be apportioned and paid on the basis of the ratio of the value of the Tennessee collateral to the value of all collateral, by applying the following mathematical formula:

value of Tennessee collateral / value of total collateral = ____ % x indebtedness = taxable Tennessee indebtedness

(ii) If the tax is apportioned pursuant to this subdivision (b)(7), no evidence of the calculation or statement of tax shall be required in addition to the statement required by subdivision (b)(5)(C), which shall be completed with the amount resulting from the calculation made pursuant to subdivision (b)(7)(A)(i).

(B) For purposes of the apportionment calculation allowed in subdivision (b)(7)(A)(i):

(i) "Collateral" means any real property or personal property securing the indebtedness evidenced by the instrument to be filed or recorded;

(ii) "Mobile goods" means goods that are mobile and that are of a type normally used in more than one (1) jurisdiction, such as trailers, rolling stock, airplanes, shipping containers, road building and construction machinery, commercial harvesting machinery and the like;

(iii) "Taxable Tennessee indebtedness" means the amount of indebtedness on which tax is to be calculated as provided in subdivision (b)(4), with the two-thousand-dollar ($2,000) exemption to be applied to the taxable Tennessee indebtedness;

(iv) "Tennessee collateral" means all collateral in which a security interest, deed of trust, mortgage lien or other consensual lien is perfected by filing or recording one or more instruments in the state of Tennessee or by other methods where the laws of the state of Tennessee govern perfection; provided, however, that the Tennessee collateral of a debtor that is located in Tennessee, as determined pursuant to § 47-9-307, does not include such debtor's interests in:

(a) Any personal property physically located outside the state of Tennessee, including goods, other than mobile goods, and any property that is of a type in which a security interest could be perfected by possession under Tennessee law if such property were located in Tennessee, such as certificated securities, chattel paper, documents, instruments and money; or

(b) Any intangible property and mobile goods, unless such debtor's chief executive office is also located in the state of Tennessee. Any subsequent change in the location of the debtor or any collateral, in the facts supporting the categorization of any particular collateral, or in the relative quantities or values of collateral shall not in itself result in the imposition of additional tax;

(v) "Total collateral" means all collateral, including the Tennessee collateral; and

(vi) "Value" of collateral means the value that the collateral would command at a fair and voluntary sale.

(8) In the event of an increase in the indebtedness beyond the amount stated subsequent to the filing or recordation of the instrument, the holder of the indebtedness shall pay the tax on the amount of the increase. Such a payment shall be due on the date the increase occurs, but may be made without penalty if made within sixty (60) days after the increase occurs. Thereafter, such payment may be made only upon payment of the penalty provided in subdivision (b)(12) based on the amount of the increase in the indebtedness.

(9) Sections 67-4-206 and 67-4-217 shall not apply to the tax imposed by this subsection (b).

(10)(A) Nonpayment or underpayment of tax on an indebtedness, or failure timely to pay tax on an increase in indebtedness, shall not affect or impair the effectiveness, validity, priority, or enforceability of the security interest or lien created or evidenced by the instrument, it being declared the legislative intent that the effectiveness, validity, priority, and enforceability of security interest and liens are governed solely by law applicable to security interests and liens, and not by this title.

(B) Such nonpayment, underpayment, or failure to pay, until cured, shall result in the imposition of a tax lien, in the amount of any tax and penalties unpaid and owing under this subsection (b), in favor of the department of revenue as described in subdivision (b)(11), shall subject the holder of the indebtedness to a penalty as described in subdivision (b)(12), and shall subject the holder of the indebtedness to the disability described in subdivision (b)(13).

(11) The tax lien described in subdivision (b)(10) shall arise at the time the tax is due and shall at that time attach to any property, either real or personal, tangible or intangible, subject to the instrument until:

(A) The lien or security interest of the instrument is released with respect to any property; or

(B) Any property is transferred in settlement or realization of the lien or security interest, whereupon the tax lien shall automatically be released from such property and attach to any proceeds thereof. The department may not levy upon or sell any property subject to the tax lien until notice of the tax lien has been recorded pursuant to § 67-1-1403, but notwithstanding such section, the department otherwise shall not be required to record any notice of the tax lien. The tax lien shall be superior to all liens and security interest under Tennessee law, except:

(i) Those enumerated in § 67-1-1403(c)(2)-(4) that were recorded, filed or perfected, respectively, prior to attachment of the tax lien; and

(ii) County and municipal ad valorem taxes.

(12) It is the duty of every holder of an indebtedness, including an individual, business entity of any organizational structure, or governmental entity, to collect the tax imposed by this subsection (b) from the debtor and to remit the tax as required by this subsection (b). Except as provided in subdivision (b)(8), if the holder of the indebtedness fails to pay or underpays the tax imposed by this subsection (b), the holder of the indebtedness shall be liable for a penalty, in addition to the tax, in the amount of two hundred fifty dollars ($250) or double the unpaid tax due, whichever is greater.

(13) The holder of an indebtedness evidenced or secured by an instrument upon the recording or filing of which tax is owing under this section may not maintain an action on such indebtedness, other than an action limited to the

enforcement of the holder's security interest or lien, against the debtor until such nonpayment is cured. If such an action is commenced and a cure is not effected within a time limit set by the court, the debtor may obtain a dismissal of such action, without prejudice to refiling in the event of a subsequent cure of nonpayment. Notwithstanding the terms of the instrument, if a cure is not effected until after the filing of a motion or pleading in which the holder's noncompliance with this subsection (b) is raised, the holder may not thereafter charge the debtor with the costs of curing such noncompliance.

(c) Any oath required in subsections (a) and (b) shall not be introduced as evidence in any proceeding conducted in connection with any condemnation action for the purpose of indicating the value of such real property.

(d) **Reports and Payment of Tax to the Commissioner.**

(1) The county register and other officials charged with the collection of taxes imposed under this section shall report all collections to the department on forms prescribed by the commissioner, in the same manner and under the same conditions as county clerks collect and report revenue under the provisions of parts 2-6 of this chapter.

(2)(A) For collecting and reporting taxes levied under this section, county registers shall be entitled to retain as commission five percent (5%) of the taxes so collected.

(B) Notwithstanding subdivision (d)(2)(A) or any other provision of law to the contrary, fifty-two percent (52%) of the five percent (5%) commission provided by subdivision (d)(2)(A) shall be remitted to the state treasurer and credited to the general fund of the state.

(3) The county registers shall also be entitled to receive as a fee for issuing each receipt for taxes imposed in this section the sum of one dollar ($1.00), to be paid when the tax receipt is issued. The fee, however, shall not be applicable nor collectible by any state officials charged with the collection of taxes imposed under this section.

(e) Instruments made pursuant to mergers, consolidations, sales or transfers of substantially all of the assets in this state of corporations, pursuant to plans of reorganization, are exempt from this section.

(f)(1) The recording and rerecording of all transfers of realty in which a municipality is the grantee or transferee and all instruments evidencing an indebtedness in which a municipality is the holder or owner of the indebtedness shall be exempt from this section. The recording and rerecording of all instruments evidencing an indebtedness of any health and educational facility corporation formed pursuant to title 48, chapter 101, part 3 shall also be exempt from this section.

(2) For the purposes of this subsection (f), "municipality" means the state of Tennessee or any county or incorporated city or town, utility district, school district, power district, sanitary district, or other municipal, quasi-municipal, or governmental body or political subdivision in this state, and any agency, authority, branch, bureau, commission, corporation, department or instrumentality thereof now or later authorized to be created.

(3) The recording or rerecording of any transfer of realty to or from any municipality and any evidence of indebtedness of or to any municipality, as defined in subsection (a), prior to May 11, 1971, and otherwise validly made, is declared to be valid and effective, notwithstanding any failure to pay the tax formerly imposed by this section, and any such recording or rerecording is ratified, approved and confirmed, and no tax shall be imposed or collected

on account of any such recording or rerecording.

(g) **Wetland Acquisition Fund.**

(1) Three and one fourth cents (3.25¢) of the tax levied by subsection (a) shall be credited to a special agency account in the state general fund known as the 1986 wetland acquisition fund; provided, that such funds shall not be obligated or expended to acquire any interest in real property through condemnation or the power of eminent domain. Expenditures from such fund shall only be made to implement and effectuate the purposes of title 11, chapter 14, part 4. The fund may be expended to maintain property purchased pursuant to such part. Funds deposited in such fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

(2) Notwithstanding any provision of this section to the contrary, the commissioner of finance and administration, with the written approval of the executive director of the Tennessee wildlife resources agency, is authorized, subject to legislative appropriation, to transfer funds from the 1986 wetland acquisition fund to the Tennessee heritage conservation trust fund, created in title 11, chapter 7, part 1. For the purposes of § 11-7-103(h), "other available sources" also shall not include any funds transferred to the Tennessee heritage conservation trust fund from the 1986 wetland acquisition fund pursuant to this subdivision (g)(2).

(h) **Exception for Certain Facilities.**

(1) With respect to any facility as defined in subdivision (h)(2)(A):

(A) The taxes paid under subsection (a) shall not exceed one hundred thousand dollars ($100,000) in the aggregate; and

(B) The taxes paid under subsection (b) shall not exceed five hundred thousand dollars ($500,000) in the aggregate.

(2)(A) As used in this subsection (h), "facility" means any real or personal property that is constructed, acquired or developed for the principal purpose of manufacturing, processing, fabricating or assembling any manufactured products and includes, but is not limited to, all or any part of or any interest in any land and building, including office, administration or other buildings, any improvement to the facilities and all real and personal properties, including, but is not limited to, equipment and machinery deemed necessary in connection with the facility, whether or not now in existence.

(B) As used in this subsection (h), "related indebtedness" means indebtedness relating to or incurred to finance a portion of or otherwise in connection with a facility, which shall be evidenced by instruments, including, but not limited to, mortgages, deeds of trust, conditional sales contracts, financing statements contemplated by the Uniform Commercial Code, compiled in title 47, and liens on personalty, notwithstanding the fact that portions of such indebtedness may be held by different holders, owners, trustees or other secured parties (holders) of indebtedness or portions of indebtedness relating to the facility.

(3) In order to qualify for the exception provided under this subsection (h), prior to the public recordation of any instrument evidencing a transfer of an interest in realty or of any instrument evidencing a related indebtedness under this section, the grantee or transferee of the interest in such realty or the holder of related indebtedness must submit a sworn statement declaring

the amount of tax paid for recording instruments by or on behalf of the person, corporation, or other entity that owns, leases or otherwise operates the facility, referred to in this subsection (h) as the taxpayer, under both subsection (a), with respect to the transfer of realty pertaining to the facility, and subsection (b), with respect to related indebtedness, and a copy of each receipt for the taxes paid for recording such instruments or other evidence of such payments. No tax will be due, if the taxes paid by or on behalf of the taxpayer for recording such instruments pursuant to subsections (a) and (b) relating to the facility and any related indebtedness equal an aggregate amount of one hundred thousand dollars ($100,000) or five hundred thousand dollars ($500,000), as the case may be. If less than the aggregate amount of one hundred thousand dollars ($100,000) or five hundred thousand dollars ($500,000), as the case may be, in taxes for recording instruments pursuant to subsections (a) and (b) relating to the facility and any related indebtedness has been paid by or on behalf of the taxpayer prior to the proposed recordation of any instrument evidencing a transfer of an interest in realty or related indebtedness, the grantee or transferee of an interest in such realty or the holder of related indebtedness must pay or cause to be paid the amount of tax due, calculated in accordance with this section, which amount shall be no more than the difference between one hundred thousand dollars ($100,000) or five hundred thousand dollars ($500,000), and the aggregate amount of such taxes paid by or on behalf of the taxpayer for recording instruments pertaining to the facility and any related indebtedness pursuant to subsections (a) and (b). In no event, however, shall the aggregate amount of taxes paid for recording instruments relating to transfers of an interest in realty under subsection (a) and related indebtedness under subsection (b) exceed one hundred thousand dollars ($100,000) or five hundred thousand dollars ($500,000) by or on behalf of the taxpayer.

(i) **Local Parks Land Acquisition Fund.**

(1) One and three fourths cents (1.75¢) of the tax levied by subsection (a) shall be credited to a special agency account in the state general fund known as the local parks land acquisition fund. The moneys in this fund shall be used only for grants to county and municipal governments to implement and carry out the purposes set forth in subdivision (i)(3); provided, that the commissioner of environment and conservation may allocate not more than three and one-half percent (3.5%) of the moneys in this fund for the administration of the fund. Funds deposited in such fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

(2)(A) The commissioner of environment and conservation, the commissioner of agriculture and the director of the wildlife resources agency shall jointly establish priorities for the appropriate allocation of funds, deposited in the local parks land acquisition fund. No project shall receive any such funds unless each such official has approved such expenditure. Such officials shall consider applications from county and municipal governments throughout the state.

(B) At least sixty percent (60%) of the funds allocated annually shall go to municipal governments.

(3) County and municipal governments may use the funds allocated under this section for the purchase of land for parks, natural areas,

greenways, and for the purchase of land for recreation facilities. Such funds may also be used for trail development and capital projects in parks, natural areas, and greenways.

(4)(A) Any county or municipal government that receives a grant under this section must match the grant with an equal amount of money for each project. The matching money provided by the local government may be used to purchase additional land or to develop facilities on the land that is purchased with the grant. Rather than providing matching money, the local government may provide as its match a tract of land not previously used for park or recreational purposes that will be dedicated entirely for park or recreational purposes after receipt of the grant and that is independently appraised as having the same, or greater, value as the amount of the state grant.

(B) Rather than providing matching money, the local government may also provide as all or part of its match volunteer services, materials, and equipment that are donated to the local government by a third party at the time the state grant is made, that are used for trail construction or other development on the tract of land for which the state grant is sought, and that are valued in a manner specified by the department.

(5) If an application from a county or municipal government has been submitted for a grant from the local parks land acquisition fund and the county or municipal government subsequently purchases the land or constructs the trail for which the grant was sought before the grant is acted upon, the grant may still be awarded as a reimbursement; provided, that the application was submitted by the local government no more than twelve (12) months prior to the award of the grant.

(6) The commissioner of environment and conservation, the commissioner of agriculture and the director of the wildlife resources agency may promulgate regulations to implement this subsection (i).

(7) No funds deposited in the local parks land acquisition fund from the tax levied by subsection (a) shall be obligated or expended to acquire any interest in real property through condemnation or the power of eminent domain.

(j) **State Lands Acquisition Fund.**

(1) One and one half cents (1.5¢) of the tax levied by subsection (a) shall be credited to a special agency account in the state general fund known as the state lands acquisition fund. Expenditures from such fund shall be made only to implement and carry out the purposes set forth in subdivision (j)(2). Funds deposited in such fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

(2)(A) The commissioner of environment and conservation shall expend the funds which are deposited in the state lands acquisition fund only for the acquisition of land for any area designated as an historic place as evidenced by its inclusion on the National Register of Historic Places, state historic areas or sites, state parks, state forests, state natural areas, boundary areas along state scenic rivers, the state trails system, and for the acquisition of easements to protect any of the foregoing state areas. Such funds may also be used for trail development in the foregoing areas. Such funds may also be used for the redevelopment, renovation and restoration of historic theaters owned by a governmental entity or a not-for-profit corporation or its controlled affiliate and listed on the

National Register of Historic Places.

(B) No funds deposited in the state lands acquisition fund from the tax levied by subsection (a) shall be obligated or expended to acquire any interest in real property through condemnation or the power of eminent domain.

(3) The first three hundred thousand dollars ($300,000) deposited in the state lands acquisition fund shall be transferred and credited to the compensation fund created under § 11-14-406. Following the procedure set forth in that section, the commissioner of finance and administration shall annually reimburse each city and county the amount of lost property tax revenue resulting from any purchase of land by the department of environment and conservation which renders such land tax exempt.

(4) The commissioner of environment and conservation, the commissioner of agriculture and the director of the wildlife resources agency shall jointly establish priorities for the appropriate allocation of funds deposited in the state lands acquisition fund. No project shall receive any such funds unless each such official has approved such expenditure. The commissioner of environment and conservation, the commissioner of agriculture and the director of the wildlife resources agency may promulgate regulations to implement this subsection (j).

(5) Acquisition pursuant to this subsection (j) of property classified under chapter 5, part 10 of this title, shall not constitute a change in the use of the property, and no rollback taxes shall become due solely as a result of such acquisition.

(6) Notwithstanding any provision of this section to the contrary, the commissioner of finance and administration, with the written approval of the commissioner of environment and conservation, is authorized, subject to legislative appropriation, to transfer funds from the state lands acquisition fund to the Tennessee heritage conservation trust fund, created in title 11, chapter 7, part 1. For the purposes of § 11-7-103(h), "other available sources" also shall not include any funds transferred to the Tennessee heritage conservation trust fund from the state lands acquisition fund pursuant to this subdivision (j)(6).

(k) **Revenue Stream.** The moneys deposited in the 1986 wetlands acquisition fund and the moneys deposited in the state lands acquisition fund may be used as the revenue stream to pay the principal of and interest on revenue bonds that are sold by the state of Tennessee to generate funds to fulfill the purposes for which the moneys deposited in each of these funds may be used.

(*l*) **Agricultural Resources Conservation Fund.**

(1) One and one half cents (1.5¢) of the tax levied by subsection (a) shall be credited to a special agency account in the state general fund known as the agricultural resources conservation fund. Expenditures from such fund shall be made only to implement and carry out the purposes set forth in subdivision (*l*)(2). Funds deposited in such fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the funds not otherwise expended shall be returned to and made a part of the fund.

(2) The commissioner of agriculture shall expend the funds that are deposited in the agricultural resources fund for purposes of landowner assistance, to address point and nonpoint source water quality issues, as well as nuisance problems, including, but not limited to, odor, noise, dust and

similar concerns. The commissioner of environment and conservation, commissioner of agriculture and the director of the wildlife resources agency shall jointly establish priorities for the appropriate allocation of funds deposited in the agricultural resources conservation fund. No project shall receive any such funds unless each such official has approved such expenditure. The commissioner of agriculture may promulgate regulations to implement this subsection (*l*).

(3) Expenditures from the agricultural resources conservation fund shall be made for the promotion and implementation of agricultural management practices that conserve and protect natural resources associated with agricultural production, including, but not limited to, soil, water, air, plants and animals. The commissioner of agriculture may spend up to five percent (5%) of the annual appropriations from this fund on education of landowners, producers and managers concerning conservation and protection practices. No more than ten percent (10%) of the annual appropriation from this fund may be used for management costs associated with technical assistance to accomplish the purposes of the fund and/or the administration of the fund. It is the intent of the general assembly that the highest priority of the agricultural resources conservation fund is to abate and prevent nonpoint source water pollution that may be associated with agricultural production; therefore, the commissioner of agriculture may spend no more than fifteen percent (15%) of the annual appropriations from the fund for the combined purposes of preventing or remedying air, noise, dust, and odor pollution, or similar nuisance type environmental problems associated with agricultural production. The commissioner of agriculture may expend agricultural resources conservation funds as matching dollars to secure additional funding to fulfill the purposes for which the fund was established.

(4) The commissioner of agriculture shall seek advice from the commissioner of environment and conservation in determining the most effective ways to abate nonpoint pollution from agricultural activities.

(m) **Reports of Expenditures.**

(1)(A) By February 1 of every odd-numbered year, the commissioner of environment and conservation shall file with the energy and environment committee of the senate and the conservation and environment committee of the house of representatives a report detailing expenditures made from the state lands acquisition fund and grants made to local governments from the local parks land acquisition fund.

(B) By February 1 of every odd-numbered year, the fish and wildlife commission shall file with the energy and environment committee of the senate and the conservation and environment committee of the house of representatives a report detailing expenditures made from the wetlands acquisition fund.

(C) By February 1 of every odd-numbered year, the commissioner of agriculture shall file with the energy and environment and commerce, labor and agriculture committees of the senate and the agriculture and conservation and environment committees of the house of representatives a report detailing expenditures made from the agricultural resources conservation fund.

(2)(A) Once every five (5) years, beginning in 1996, the commissioner of environment and conservation and the fish and wildlife commission shall reevaluate their land acquisition goals and priorities and shall incorporate

their findings and conclusions into a written plan. This plan shall be submitted to the energy and environment committee of the senate and the conservation and environment committee of the house of representatives, which shall conduct public hearings on the plan.

(B) Once every five (5) years, beginning in 2002, the commissioner of agriculture shall reevaluate the progress and accomplishments of the agricultural resources conservation fund and shall incorporate the conclusions and recommendations of such reevaluation into a written plan. This plan shall be submitted to the energy and environment and commerce, labor and agriculture committees of the senate and the agriculture and conservation and environment committees of the house of representatives, which shall hold public hearings on the plan.

(n) **Management Policies.** The commissioner of environment and conservation and the fish and wildlife commission shall establish policies for the management of land acquired with funds from the state lands acquisition fund and the wetlands acquisition fund, which policies shall be designed to foster a good relationship with nearby private landowners and to prevent adverse impacts on adjoining property. These policies shall be publicized to nearby private landowners.

67-4-601. Rights of local governments preserved — Amount of tax — Liability — Application — Scott County pilot project.

(a) It is the expressed intent of the general assembly that counties and municipalities shall continue to have the authority to levy a local litigation tax and that no provision of Acts 1981, ch. 488 shall be construed to limit or repeal such authority.

(b)(1) Notwithstanding any other law to the contrary, each county by resolution of its legislative body, adopted by two-thirds (⅔) majority vote, may levy a privilege tax on litigation in all civil and criminal cases instituted in the county, other than those instituted in municipal courts, in addition to all other such privilege taxes authorized by law. Any tax levy adopted under this subsection (b) shall not exceed ten dollars ($10.00) per case; and the proceeds shall be used exclusively for the purposes of jail or workhouse construction, reconstruction or upgrading, or to retire debt, including principal and interest and related expenses, on such construction, reconstruction or upgrading or for courthouse renovation.

(2) Any tax levy adopted under this subsection (b) shall only be effective until such time as all expenses of the construction, reconstruction, upgrading or renovation project have been paid, or until such time as the debt for such project has been retired. For the purposes of this subsection (b), debt includes principal, interest, origination costs and related expenses, as well as any debt issued for the purposes of refinancing the original indebtedness.

(3) Notwithstanding any other law to the contrary, the state shall not be liable for or pay the tax levied under this subsection (b) in any civil or criminal case on behalf of any individual because such individual is indigent.

(4) Notwithstanding any provision of law to the contrary, this subsection (b) shall not apply to any publicly owned hospital in any county having a population of not less than seventy-three thousand six hundred (73,600) and not more than seventy-three thousand nine hundred (73,900), if the county commission for such county by majority vote provides that any such hospital

shall be exempt.

(5) Notwithstanding any law to the contrary, upon the adoption of a resolution by a two-thirds (⅔) majority vote of a county legislative body, a privilege tax on litigation in all civil and criminal cases may be levied in an amount not to exceed twenty-five dollars ($25.00) per case.

(6) Notwithstanding any law to the contrary, upon the adoption of a resolution by a two-thirds (⅔) majority vote of a county legislative body, a privilege tax on litigation in all civil and criminal cases may be levied in an amount not to exceed twenty-five dollars ($25.00) per case, to be used exclusively for court house security, in addition to those purposes identified in subdivision (b)(1).

(7)(A) Notwithstanding any other law to the contrary, a county may adopt the privilege tax in subdivision (b)(5) or (b)(6), or both.

(B)(i) Notwithstanding the exclusive use restriction in subdivision (b)(6), a county that adopts the privilege tax in subdivision (b)(5) or (b)(6), or both, may also adopt a resolution by a two-thirds (⅔) majority vote of the legislative body, to use those funds, in addition to other purposes as permitted under this section, for the purpose of obtaining and maintaining software and hardware associated with collecting, receiving and maintaining records for law enforcement agencies, including county sheriff offices, jails and municipal or metropolitan police departments. This project may include computerizing agency operations, replacing existing systems with high technology systems that collect and share data on criminal activity and historical data with other law enforcement agencies, including fusion centers, and collecting and sharing biometric information for positive criminal or inmate identification. New or replacement systems shall incorporate modern software concepts and architecture, which shall include n-tier architecture, source code compliant with object-oriented programming concepts, and the use of a relational database management system for data storage.

(ii) Any use of a privilege tax for purposes under this subdivision (b)(7)(B) shall only be permitted until such time as all expenses for the purchase, installation, training, maintenance and associated costs for the project as described under subdivision (b)(7)(B)(i) have been paid, or until such time as the debt for that project has been retired.

(iii) For purposes of this subdivision (b)(7)(B), "debt" includes principal, interest, origination costs and related expenses, as well as any debt issued for the purposes of refinancing the original indebtedness.

(8) Any legislative body that had adopted a resolution by a two-thirds (⅔) vote under subdivision (b)(5) or (b)(6) prior to August 27, 2008, shall not be required to adopt another resolution for this section to continue to apply in such county.

(9) Notwithstanding any law to the contrary, in any county having a population of not less than sixteen thousand eight hundred (16,800) nor more than sixteen thousand nine hundred (16,900), according to the 2000 federal census or any subsequent federal census, upon the adoption of a resolution by two-thirds (⅔) majority vote of the county legislative body, a privilege tax on litigation in all civil and criminal cases may be levied in an amount not to exceed twenty-five dollars ($25.00) per case to be used for equipment and personnel costs of the county sheriff's department or for those purposes identified in subdivision (b)(1).

(c)(1) Notwithstanding any provision of law to the contrary, a pilot project concerning drug testing in public schools may be conducted in accordance with this subsection (c).

(2) For the purposes of such pilot project, Scott County, or any municipality within such county, is authorized, by a two-thirds (⅔) vote of its legislative body, to levy an additional litigation tax per case, to be set by the county commission or municipal legislative body, as applicable, and to be denominated as part of the court costs, in matters before the local general sessions, juvenile, and municipal courts.

(3) Any revenue generated by Scott County, or a municipality within such county, pursuant to subdivision (c)(2), shall be used exclusively to support local nonprofit drug testing programs authorized to operate in the public school system, and shall be distributed on a monthly basis by the county or municipality to such authorized local nonprofit drug testing program.

(4) The taxes levied by this subsection (c) shall be in addition to any other taxes levied on litigation.

(5) The department of education is authorized to request information from Scott County on the results of the pilot project, and to recommend to the general assembly, or other local education agency, any element of the pilot project which may have statewide applicability.

(d) Notwithstanding any other provision of law to the contrary, any county having a population of not less than sixteen thousand six hundred (16,600) nor more than sixteen thousand seven hundred (16,700), according to the 2000 federal census or any subsequent federal census, may, by a two-thirds (⅔) vote of its legislative body, levy an additional litigation tax of twenty-five dollars ($25.00) in all criminal cases instituted in the county. Such tax is in addition to all other such privilege taxes authorized by law. Any revenue collected pursuant to this subsection (d) shall be deposited in the county general fund for the sole purpose of providing grants for services in support of physically and sexually abused children.

(e) Notwithstanding any other law to the contrary, any county having a population of not less than thirty nine thousand fifty (39,050) nor more than thirty nine thousand one hundred fifty (39,150), according to the 2000 federal census or any subsequent federal census, may, by a two-thirds (⅔) vote of its legislative body, levy an additional litigation tax of five dollars ($5.00) in all civil and criminal cases instituted in the county. Such tax is in addition to all other such privilege taxes authorized by law. Any revenue collected pursuant to this subsection (e) shall be deposited in the county general fund for the sole purpose of providing grants for services to children provided by the Tennessee Court Appointed Special Advocates Association (CASA).

67-4-602. Tax imposed.

(a) There is levied a privilege tax on litigation instituted in this state, of twenty-nine dollars and fifty cents ($29.50) on all criminal charges, upon conviction or by order.

(b) There is levied a privilege tax on litigation of twenty-three dollars and seventy-five cents ($23.75) in all civil cases in this state in chancery court, circuit court, probate court, general sessions court when exercising state court jurisdiction, or in any other court exercising state court jurisdiction in a civil case in this state other than the court of appeals or the supreme court. When

a general sessions court is exercising state court jurisdiction, except with regard to cases in juvenile court, there is levied an additional privilege tax of one dollar ($1.00).

(c) There is levied a privilege tax on litigation of seventeen dollars and seventy-five cents ($17.75) in all civil cases in this state in general sessions court, when not exercising state court jurisdiction.

(d) There is levied a privilege tax on litigation of thirteen dollars and seventy-five cents ($13.75) in all civil cases in this state in the court of appeals or the supreme court.

(e) In all civil cases in municipal courts in this state, the clerk of the court shall collect a litigation tax in accordance with § 16-18-305. When a municipal court is exercising general sessions jurisdiction, the clerk of the court shall collect a privilege tax on litigation in those cases that is the same as the tax collected by other general sessions courts in comparable cases.

(f)(1) In addition to any other tax imposed by this chapter, there is levied a privilege tax on litigation of three dollars ($3.00) on all criminal charges, upon conviction or by order, instituted in the general sessions court in any county having a population of not less than three hundred nineteen thousand six hundred twenty-five (319,625), nor more than three hundred nineteen thousand seven hundred twenty-five (319,725), according to the 1980 federal census or any subsequent federal census. Notwithstanding the apportionment provisions of § 67-4-606, each levy of this tax shall be paid into the office of the county clerk of such county, with the proceeds to be credited to a separate reserve account in the county fund. The proceeds shall be disbursed to expand the use of the appropriate law enforcement officers for walking patrols within public housing subdivisions, and in localities within such county that traditionally experience greater incidence of crime. The proceeds may also be used by the respective police department to fund police cadet programs conducted by such department, in localities within such county that traditionally experience greater incidence of crime.

(2) Five percent (5%) of the proceeds collected under subdivision (f)(1) shall be retained by the office of the county clerk collecting the tax, for the purpose of effectuating this subsection (f).

(g)(1) In addition to any other tax levied by this chapter, there is levied an additional privilege tax on litigation of one dollar ($1.00) on all criminal charges, upon conviction or by order, instituted in any state or county court, for any violation of title 55, chapter 8, or for a violation of any ordinance governing use of public parking space.

(2) Notwithstanding the provisions of this chapter, or any private act or resolution of a county legislative body to the contrary, no litigation taxes shall apply to any charge prosecuted for an offense under § 55-8-188.

(h)(1) There is imposed an additional privilege tax on litigation of one dollar ($1.00) on all criminal charges, upon conviction or by order, instituted in any state or general sessions court. Effective July 1, 2012, the privilege tax on litigation imposed by this subdivision (h)(1) is increased in the amount of two dollars ($2.00), for a total of three dollars ($3.00), which shall be deposited to the statewide automated victim information and notification system fund created by subdivision (h)(2).

(2)(A) There is created a special account in the state treasury to be known as the statewide automated victim information and notification system fund, referred to as the victim notification fund in this section.

(B) Notwithstanding the apportionment of revenue formula in § 67-4-606, there shall be deposited in the victim notification fund proceeds from the one-dollar ($1.00) privilege tax on litigation imposed by subdivision (h)(1).

(3) Moneys in the victim notification fund may be invested by the state treasurer in accordance with § 9-4-603.

(4) Notwithstanding any law to the contrary, interest accruing on investments and deposits of the victim notification fund shall be credited to the fund, shall not revert to the general fund and shall be carried forward into the subsequent fiscal year.

(5) Any balance remaining unexpended at the end of a fiscal year in the victim notification fund shall not revert to the general fund but shall be carried forward into the subsequent fiscal year.

(6) Money in the victim notification fund may be expended only in accordance with annual appropriations approved by the general assembly and in accordance with § 40-38-505.

(i) The privilege taxes imposed by § 40-24-107 are deemed litigation taxes, collectible by the respective court clerks as otherwise provided in § 67-4-603, and subject to apportionment according to § 67-4-606; however, the designation of these taxes as litigation taxes shall not change the clerk's fee provided for in § 40-24-107, nor shall the designation of the taxes as litigation taxes alter the priority of collection or distribution of monies collected by the clerk in cases where these taxes are levied.

(j) The privilege tax imposed by § 39-13-709, after deduction for administrative costs under § 39-13-709(c)(1), is deemed a litigation tax, collectible by the respective court clerks, as otherwise provided in § 67-4-603, and subject to apportionment according to § 67-4-606; however, the designation of these taxes as litigation taxes shall not change the clerk's fee provided for in § 39-13-709(c)(1), nor shall the designation of the taxes as litigation taxes alter the priority of collection or distribution of monies collected by the clerk in cases where these taxes are levied.

(k)(1) In addition to any other tax imposed by this chapter, there is levied a privilege tax on litigation of two dollars ($2.00) on all criminal charges, upon conviction or by order, instituted in the general sessions court of any county served by a judicial commissioner.

(2)(A) There is created a special account in the state treasury to be known as the judicial commissioner continuing education account, referred to as the judicial commissioner fund in this subsection (k).

(B) Notwithstanding the apportionment of revenue formula in § 67-4-606, there shall be deposited in the judicial commissioner fund proceeds from the two-dollar privilege tax on litigation imposed by subdivision (k)(1).

(3) Moneys in the judicial commissioner fund may be invested by the state treasurer in accordance with § 9-4-603.

(4) Notwithstanding any law to the contrary, interest accruing on investments and deposits of the judicial commissioner fund shall be credited to the fund, shall not revert to the general fund and shall be carried forward into the subsequent fiscal year.

(5) Any balance remaining unexpended at the end of a fiscal year in the judicial commissioner fund shall not revert to the general fund but shall be carried forward into the subsequent fiscal year.

(6) Moneys in the judicial commissioner fund may be expended only in accordance with annual appropriations approved by the general assembly for the purposes described in § 40-1-111(f)(7).

(*l*) Every person from whom the clerks of the various courts are required to collect the tax imposed by this section shall be liable for the tax imposed by this section.

(m) Subsections (k) and (*l*) shall not apply in counties having a population of not less than 66,200 nor more than 66,300, according to the 2010 federal census or any subsequent federal census.

67-4-604. Courts to which tax applies.

(a) The privilege tax levied by § 67-4-602 shall be applicable to the supreme court and to the following courts, except as stated in subsection (b):

(1) Court of appeals;

(2) Chancery court;

(3) Circuit court;

(4) Criminal court;

(5) Probate court;

(6) Court of law and equity;

(7) County court;

(8) Court of general sessions;

(9) Trial justice court;

(10) Magistrate court;

(11) City court; and

(12) Any other inferior court as the general assembly shall from time to time ordain and establish, either presently in existence or created later; provided, however that, notwithstanding any provision of this section, this part or any other law to the contrary, privilege taxes levied by § 67-4-602, shall not be applicable to a proceeding in any municipal court, unless, and only to the extent that, the proceeding necessitates exercise of the court's duly conferred concurrent general sessions jurisdiction.

(b) The privilege tax levied by § 67-4-602 shall not be due in any of the following proceedings:

(1) Any original proceeding in a juvenile court, as such court is defined in § 37-1-102, when such court exercises the jurisdiction granted by title 37, chapter 1; provided, that no proceeding in a court, which court exercises the jurisdiction granted by title 37, chapter 1, shall be exempt when the proceeding is brought pursuant to any jurisdiction other than that granted by title 37, chapter 1; or

(2) Any hearing before the Tennessee board of judicial conduct.

67-4-605. Liability of clerks for uncollected taxes.

(a)(1) Any privilege tax imposed by § 67-4-602 that the clerk of the court fails to collect and pay over to the department of revenue shall be a debt of the clerk.

(2) Any privilege tax imposed by § 67-4-602 that the clerk of any city court fails to collect and pay over to the department shall be a debt of the clerk.

(3) The failure of the clerk of the supreme court or the clerk of the court of appeals to collect and pay over to the department any privilege tax

imposed by § 67-4-602 shall not be a debt of the county.

(b) Any clerk of the court failing or refusing to collect and pay over to the department the tax imposed by § 67-4-602 shall be liable for the tax and the clerk's official bondsman shall also be liable for the tax and the commissioner or the commissioner's delegate may collect the amount of the tax from the clerk or the clerk's official bondsman pursuant to chapter 1, part 14 of this title.

(c) If the judge of any court suspends, releases, waives, remits or orders the clerk of the court not to collect any privilege tax on litigation, or in any other manner releases any party from liability for any privilege tax on litigation, the clerk of the court shall immediately report such suspension, release, waiver, remission, or order to not collect such tax, to the department in such manner as shall be prescribed by the department, and the commissioner or the commissioner's delegate shall immediately, upon receipt of such a report from any clerk of a court, present such information to the board of judicial conduct, which court shall take appropriate action pursuant to title 17, chapter 5. The commissioner or the commissioner's delegate shall also report such information to the council on pensions and insurance.

67-4-715. When taxes due and payable — Transmission of returns — Due dates of returns — Consolidating taxes.

(a) The taxes levied by this part that are collected and administered by the commissioner shall be due and payable annually on the following dates:

(1) December 31 for persons taxable under § 67-4-708(1);

(2) March 31 for persons taxable under § 67-4-708(2);

(3) June 30 for persons taxable under § 67-4-708(3);

(4) September 30 for persons taxable under § 67-4-708(4); and

(5) December 31 for persons taxable under § 67-4-708(5).

(b) For the purpose of ascertaining the amount of tax payable under this part, it shall be the duty of all persons to transmit to the commissioner, on forms prescribed by the commissioner, a return for each county, in the case of taxes levied by the county, and a return for each city, in the case of taxes levied by the city, showing the gross receipts arising from all sales taxable under this part during the period covered by each return. The return shall also include the applicable deductions or credits specifically allowed under this part and any other information required by the commissioner to determine the amount of tax properly due. The returns shall be transmitted to the commissioner on or before the following dates:

(1) February 28 for persons taxable under § 67-4-708(1);

(2) May 31 for persons taxable under § 67-4-708(2);

(3) August 31 for persons taxable under § 67-4-708(3);

(4) November 30 for persons taxable under § 67-4-708(4); and

(5) February 28 for persons taxable under § 67-4-708(5).

(c) At the time of transmitting to the commissioner the return required by this part, the person shall remit to the commissioner with the return the amount of tax due under the applicable provisions of this part, and failure to so remit the tax shall cause the tax to become delinquent.

(d)(1) Any taxpayer that is required to file its sales and use tax returns electronically under § 67-6-504 is likewise required to file the returns required by this section electronically, and remit the tax electronically, using a method approved by the commissioner.

(2) In addition, when a taxpayer is required to remit payments electronically as set forth in § 67-1-703(b) because the taxpayer's liability under this part is one thousand dollars ($1,000) or more, then all returns required by this chapter that are associated with such payments shall be filed electronically using a method approved by the commissioner. When any taxpayer is required to file returns and remit payments electronically for any one (1) outlet, location or other place of business, the commissioner may require the taxpayer to file returns and remit payments electronically for each place of business of the taxpayer. The requirement to file electronically shall continue thereafter until such time as the commissioner advises the taxpayer to file by another method.

(3) In addition to any other penalty provided by law, the commissioner is authorized to assess any taxpayer required to file returns by electronic means under this subsection (d) a penalty, not to exceed five hundred dollars ($500), for each instance of filing a return by any other means. The penalty shall be subject to waiver under § 67-1-803. In extenuating circumstances, the commissioner is authorized to waive the electronic payment and filing requirements under this subsection (d) and permit the taxpayer to file the return in paper form. The commissioner is authorized to require that any such paper filing be accompanied by a manual handling fee, not to exceed twenty-five dollars ($25.00), that is reasonably calculated by the department to account for the additional cost of preparing, printing, receiving, reviewing and processing any paper filing so permitted.

(e) Each taxpayer who operates more than one (1) place of business in a city or county may apply to the commissioner for permission to file a consolidated tax return for all business locations in a single taxing jurisdiction.

(f) The failure of any person to secure the forms mentioned in this section shall not relieve the person from the payment of the tax at the time and in the manner provided in this section.

(g) Notwithstanding subsections (a) and (b), the commissioner is authorized to change the tax period established by this part to correspond to the taxpayer's fiscal year. The commissioner is further authorized to change the due date of the associated tax return to a date that is not less than two (2) calendar months following the end of such tax period. Such change is authorized to occur no sooner than ninety (90) days after the commissioner has certified that a system is in place for the electronic submission of all tax returns required by this part. Such certification shall be accomplished by the commissioner prominently posting a notice on the department's web site.

67-4-1001. Part definitions.

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

(1) "Cigar" or "cigars" includes any roll of tobacco, for smoking, irrespective of the tobacco being flavored or adulterated, or mixed with other ingredients, where such a roll has a wrapper made chiefly of tobacco, except "cigar" or "cigars" does not include rolls of tobacco for smoking defined in this section as "cigarettes";

(2)(A) "Cigarette" or "cigarettes" means and includes all rolled, shredded, or cut tobacco, or any substitute therefor, wrapped in paper, or substitute therefor, and all rolled, shredded or cut tobacco, or any substitute therefor, wrapped in homogenized tobacco wrapper, and being within customary

cigarette sizes and marketed in cigarette type packages;

(B) "Cigarette" includes any cigarette produced by a cigarette rolling machine at a retail establishment;

(3)(A) "Cigarette rolling machine" means a machine at a retail establishment that enables any person to process at that establishment tobacco or any product that is made or derived from tobacco into a roll or tube;

(B) "Cigarette rolling machine" does not mean any hand-held, manually operated cigarette rolling machine, equipment, or device, if such machine, equipment, or device is held by the retail establishment solely for the sale to consumers for off-premises use in making cigarettes for personal consumption;

(4) "Cigarette rolling machine operator" means a person that purchases or leases for use, or controls, possesses or maintains, a cigarette rolling machine at a retail establishment that enables any person to process at that establishment tobacco or any product that is made or derived from tobacco into a roll or tube. A cigarette rolling machine operator is deemed to be a tobacco distributor for purposes of this part;

(5) "Commissioner" means the commissioner of revenue;

(6) "Consumer" means an individual who is not a cigarette retail dealer or a licensed cigarette distributor. "Consumer" includes any person, including a cigarette retailer or licensed distributor, who purchases cigarettes for personal consumption;

(7) "Dealer" or "distributor" has the exact same meaning as "person" as defined in this section;

(8)(A) "Delivery sale" means any sale of cigarettes to a consumer in this state when either:

(i) The purchaser submits the order for such sale by means of a telephonic or other method of voice transaction, the mails, or any other delivery service, or the Internet or other online service; or

(ii) The cigarettes are delivered by use of the mails or other delivery service;

(B) A sale of cigarettes shall be a delivery sale regardless of whether the seller is located within or without the state;

(9) "Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers and is not a seller, dealer or distributor;

(10) "Department" means the department of revenue;

(11) "Drop shipment plan or system" means any device whereunder a manufacturer or sales agency or drop shipment depot ships tobacco products to points in the state to be billed or collected for by some person other than the manufacturer or sales agency, or drop shipment depot, or person shipping such products;

(12) "Loose tobacco" means tobacco that is not contained in rolls or tubes and that has been removed from its original packaging;

(13) "Manufacturing distributor" means any person, with a plant located in this state, engaged in the business of manufacturing or processing consumable tobacco products, taxed by this part;

(14) "Nonresident" means any person who is not a bona fide domiciliary of this state and/or who maintains no plant, warehouse, or other tobacco products storage facility in this state;

(15) "Person" means and includes every individual, firm, association,

joint-stock company, syndicate and corporation;

(16) "Possess" means to have in one's actual and physical control, or to have the exclusive detention and control of, to own or be entitled to, or to have responsibility for the storage of in the capacity of a warehouseman;

(17) "Resident agent" means a resident of this state, designated in writing by the commissioner to either sell unaffixed or to affix revenue stamps to tobacco products as provided for in this part;

(18) "Retail dealer" means each tobacco vending machine, place, store, booth, concession, truck or vehicle, or person that in any way sells or makes available tobacco products directly to the ultimate consumer;

(19) "Sale" means, in addition to its usual meaning, any sale, use, transfer, exchange, barter, gift, or offer for sale and distribution, in any manner or by any means whatsoever;

(20) "Stamp" means the impression, device, stamp, label or print manufactured, printed or made as prescribed by the commissioner;

(21) "Tobacco distributor" means any person who receives, purchases, sells or otherwise handles tobacco products as a secondary wholesaler and who acquires all that person's tobacco products on which, prior to receipt by the person, the tobacco tax required by Tennessee and any other state has been previously paid by a Tennessee wholesaler that is also a Tennessee appointed and bonded affixing agent, and who sells or otherwise makes available such tobacco products to retailers in this and perhaps other states at a wholesale price for the purpose of resale to the consumer;

(22) "Tobacco manufacturer's warehouse" means any warehouse, building or structure or space therein, whether publicly or privately owned, leased or rented, where any tobacco products are stored as a function of the distribution of such products, but are maintained separate from the manufacturer's operation, and where title to and control of distribution of the tobacco products stored therein remain with the manufacturer or processor;

(23) "Tobacco products" means cigars, cigarettes, manufactured tobacco and snuff, but not tobacco produced and processed by the grower for the grower's own use and not for sale;

(24) "Vending machine" means any money-in-the-slot device used for the automatic merchandising of tobacco products, and each such machine shall be considered as a separate retail dealer;

(25) "Wholesale cost price" means the manufacturers' and/or processors' actual sales price of any tobacco product, delivered to Tennessee dealers, exclusive of any discounts, rebates, allowances, or the privilege tax imposed by this part; and

(26) "Wholesale dealer and jobber" means any person who maintains wholesale facilities in one (1) or more permanent locations, and engages in the business of receiving, storing, purchasing, selling at wholesale only, importing unstamped tobacco products, and otherwise handling tobacco products for resale at a wholesale price only to other licensed wholesale dealers and jobbers, or tobacco distributors or retail dealers as defined in this section, but does not sell tobacco products directly to the ultimate consumer.

67-4-1006. Sale of stamps — Agents. [Effective until October 1, 2013. See the version effective on October 1, 2013.]

(a)(1) The tax imposed by this part shall be paid by the purchase of stamps from the commissioner of such design or denomination as may be prescribed by the commissioner.

(2) In lieu of tax stamps, the commissioner may, at the commissioner's discretion, provide other means by which the tax applicable to products other than cigarettes may be paid.

(b)(1) The commissioner is empowered to appoint agents to sell unaffixed stamps, and manufacturing distributors, wholesale dealers and jobbers as agents to affix and sell tax stamps as required by this section.

(2) Agents appointed to sell revenue stamps may be required to execute a bond with a solvent surety company, qualified to do business in the state, as surety on the bond, payable to the state and conditioned to faithfully perform the duties imposed upon them, and to faithfully account for and promptly pay to the state any and all sums due the state by virtue of their appointment, and such other reasonable conditions as the commissioner may require.

(3) Agents appointed to affix stamps and those persons authorized to pay tax by some means other than through the purchase of stamps shall be required to execute a bond in such amount as may be determined by the commissioner.

(4) Any agent appointed by the commissioner to affix revenue stamps shall be permitted to purchase revenue stamps by executing a bond with a solvent surety company qualified to do business in this state, in an amount of one hundred ten percent (110%) of the agent's estimated tax liability for thirty (30) days, but not less than two thousand dollars ($2,000), and conditioned upon such agent paying all taxes due the state arising from this part. This form of payment is in lieu of cash or its equivalent. Payment for each month's liability shall be due on or before the twenty-fifth day of each month, including Sundays and holidays. Default in the bonding and payment provisions by any agent may result in the revocation of the agent's privilege to purchase revenue stamps, except for cash, for a period up to twelve (12) months, in the discretion of the commissioner.

(5) Agents for affixing revenue stamps are in no way authorized to sell stamps not affixed to tobacco products.

(6) A violation of this section may result in suspension or revocation of the agency appointment. The procedure for suspension or revocation shall be upon a show cause petition, the procedure to be as set out in § 67-4-1021.

67-4-1006. Sale of stamps — Agents. [Effective on October 1, 2013. See the version effective until October 1, 2013.]

(a)(1) The tax imposed by this part shall be paid by the purchase of stamps from the commissioner of such design or denomination as may be prescribed by the commissioner, except that reconciliation payments of taxes on cigarettes made by cigarette rolling machine operators shall be paid in the time and manner prescribed by § 67-4-1031.

(2) In lieu of tax stamps, the commissioner may, at the commissioner's discretion, provide other means by which the tax applicable to products other than cigarettes may be paid.

(b)(1) The commissioner is empowered to appoint agents to sell unaffixed stamps, and manufacturing distributors, wholesale dealers and jobbers as agents to affix and sell tax stamps as required by this section.

(2) Agents appointed to sell revenue stamps may be required to execute a bond with a solvent surety company, qualified to do business in the state, as surety on the bond, payable to the state and conditioned to faithfully perform the duties imposed upon them, and to faithfully account for and promptly pay to the state any and all sums due the state by virtue of their appointment, and such other reasonable conditions as the commissioner may require.

(3) Agents appointed to affix stamps and those persons authorized to pay tax by some means other than through the purchase of stamps shall be required to execute a bond in such amount as may be determined by the commissioner.

(4) Any agent appointed by the commissioner to affix revenue stamps shall be permitted to purchase revenue stamps by executing a bond with a solvent surety company qualified to do business in this state, in an amount of one hundred ten percent (110%) of the agent's estimated tax liability for thirty (30) days, but not less than two thousand dollars ($2,000), and conditioned upon such agent paying all taxes due the state arising from this part. This form of payment is in lieu of cash or its equivalent. Payment for each month's liability shall be due on or before the twenty-fifth day of each month, including Sundays and holidays. Default in the bonding and payment provisions by any agent may result in the revocation of the agent's privilege to purchase revenue stamps, except for cash, for a period up to twelve (12) months, in the discretion of the commissioner.

(5) Agents for affixing revenue stamps are in no way authorized to sell stamps not affixed to tobacco products.

(6) A violation of this section may result in suspension or revocation of the agency appointment. The procedure for suspension or revocation shall be upon a show cause petition, the procedure to be as set out in § 67-4-1021.

67-4-1011. Records and reports.

(a)(1) The commissioner is authorized and empowered to prescribe the methods to be used by dealers and distributors in recording purchases and sales of tobacco products and purchases and consumption of tobacco tax stamps.

(2) The commissioner is further authorized and empowered to require persons selling, distributing, or dealing in tobacco products to file such reports with the department in the manner and at such times as the commissioner may deem necessary in carrying out the provisions of this part.

(b) In any case where a person cannot produce evidence of sufficient stamps purchased or other payment of the tax imposed to cover all of any tobacco products received, it may be assumed that such products were disposed of without having either the proper stamps affixed or the tax paid on the tobacco products.

(c)(1) Every common carrier transporting cigars, cigarettes, manufactured tobacco or snuff in this state shall keep a complete record of all tobacco products handled in each transaction, separately, and shall show the transportation of such tobacco products, both interstate and intrastate.

(2) Every common carrier in this state shall give and permit the commissioner free access to such books and records, and furnish such information and reports as the commissioner may require.

(3) Any person violating this subsection (c) commits a Class A misdemeanor.

(d) A cigarette rolling machine operator must keep records both of tobacco sold for use in the operator's cigarette rolling machine and of any cigarettes made from such tobacco through use of the cigarette rolling machine.

67-4-1012. Distributors and dealers — Inspection of premises and records.

(a) Every distributor or dealer shall permit the commissioner or the commissioner's authorized agent or representative to inspect at any time all tobacco products, invoices, books, papers and memoranda, including the general books, both operating and proprietary ledgers, and other records, as may be deemed necessary by the commissioner in ascertaining whether or not the tax levied under the provisions of this part has been paid, or in determining the amount of such tax due. Every cigarette rolling machine operator shall permit the commissioner or the commissioner's authorized agent to inspect the operator's cigarette rolling machine at any time.

(b) No licensed distributor or dealer shall be permitted to claim any part of the premises whereon the distributor or dealer is engaged in business, to be exempt from inspection, as being the distributor's or dealer's dwelling or home, the distributor's or dealer's application for license under this part being declared an express waiver of such claim.

(c) All persons failing to permit the examination of tobacco products, invoices, books and other memoranda, including the general books, both operating and proprietary ledgers, and other records, or interfering with the orderly inspection or examination thereof, or failing to file such reports as may be required by the commissioner, commit a Class A misdemeanor.

67-4-1015. Licenses — Penalties for unlicensed operation.

(a) Before engaging in the business of selling, distributing or handling tobacco products in this state, every person required to be licensed by this part shall obtain a license authorizing the person to engage in that business prior to the commencement of business. All persons currently engaged in the business of selling, distributing, or handling tobacco products in this state, and required to be licensed by this part, shall apply for a renewal of the license on or before May 31 of each year.

(b) The application for license shall be made on blanks furnished by the commissioner. The application blanks shall show the following:

(1) Name of applicant;

(2) Street address and telephone number of applicant;

(3) City or town in which the applicant's place of business is to be located;

(4) Kind or nature of business to be conducted;

(5) Sufficient information to demonstrate that the applicant has complied with all pertinent registration and tax statutes, as provided by law, including, but not limited to, the sales and use, business, franchise and excise taxes. The form and content of the information required by this subdivision (b)(5) shall be specified by the commissioner;

(6) Such other and further information as the commissioner may require;

(7) Name, address and telephone number of the resident agent, as defined by § 67-4-1001; and

(8) Name, address and telephone number of a registered agent.

(c)(1) Application for licenses shall be accompanied by the following fees:

(A) Manufacturing distributor—Two hundred dollars ($200) for each plant or processing location;

(B) Tobacco manufacturer's warehouse—Two hundred dollars ($200) for each storage warehouse;

(C) Wholesale dealer and jobber—Two hundred dollars ($200) for each separate sale warehouse;

(D) Tobacco distributor—One hundred dollars ($100) for each secondary wholesale location where tobacco products are received or ordered for delivery to other than the ultimate consumer; and

(E) Cigarette rolling machine operator — Five hundred dollars ($500) for each cigarette rolling machine purchased or leased for use, or controlled, possessed or maintained by the cigarette machine operator.

(2) Upon receipt of the application referenced in subsection (b), together with the fee imposed by this subsection (c), the commissioner, upon the commissioner's approval of the application, shall issue within a reasonable time to the applicant the necessary licenses to engage in the business named in the application.

(A) The licenses shall expire on May 31 of each year.

(B) If the license is mutilated, lost, or destroyed, a duplicate will be issued upon application, accompanied by a fee of twenty-five dollars ($25.00).

(C) Applications for renewal of a license may be denied for failure of the licensee to pay the tax or taxes imposed by this part or for the violation of any provision of this part or any rule or regulation promulgated by the commissioner under the authority vested in the commissioner.

(d) Any person who engages in any business or activity for which a license is required under this part without obtaining a license to do so, or who fails to file an application for renewal of a license before expiration of the current license, is subject to a specific penalty in the amount of the license fee for each month or part of a month during which the activity or failure continues. In addition to this specific penalty, the commissioner may impose a penalty of no more than two hundred fifty dollars ($250) a day for each day during which the activity or failure occurs or continues. This discretionary penalty may also be imposed upon a person to whom a license has been issued, if the person continues to engage in the business or activity after receiving notice the license is revoked or suspended by the commissioner.

(e) Persons duly and properly licensed to sell tobacco products in this state may not knowingly sell, lend, or exchange such products to, with or from any person required to be licensed who is not so licensed, or who is improperly licensed.

(f)(1) Except as provided in subdivision (f)(2), the commissioner shall require all applicants for license, as required by subsections (a) and (b), including, but not limited to, persons licensed to engage in the business of a tobacco manufacturer's warehouse as defined by this part, to execute a bond with a surety company qualified to do business in this state as surety on the bond, payable to the state of Tennessee and conditioned upon the licensee

paying the tax and affixing tax stamps to all packages or parcels of tobacco products used, sold, distributed or handled by such licensee and/or accounting for the distribution of such foreign stamped or other unstamped products authorized to be possessed under this part.

(2) In lieu of a corporate surety on the bond required by this subsection (f), the commissioner may allow the wholesale dealer and jobber to secure such bond by depositing collateral in the form of a certificate of deposit as accepted and authorized by the banking laws of the state of Tennessee that has a face value equal to the amount of the bond. Such collateral may be deposited with any authorized state depository designated by the commissioner. Interest on any deposited certificate of deposit shall be payable to such wholesaler and jobber who has deposited it as collateral, or to such person as the wholesaler and jobber or the certificate may direct.

(g) No license so issued shall be transferable and a separate license shall be required for each separate place of business and shall be prominently displayed in the place of business operated by the person to whom such license is issued.

(h) Nonresidents selling and/or delivering tobacco products in Tennessee shall be privileged to obtain licenses, purchase and affix tobacco stamps, pay tax, obtain statutory discounts and perform all other acts relating to selling and/or delivering tobacco products in a like manner and under the same conditions as Tennessee resident licensees; provided, that similar privileges are afforded to residents of this state in the applicant's state of domicile.

(i) Every person making application for license pursuant to this section shall designate, in writing, on forms provided by the commissioner, a resident agent. The resident agent shall be the dealer's agent for any of the acts authorized pursuant to § 67-4-1006. The designated resident agent shall be required, whether or not the dealer maintains a warehouse or other place of business in this state.

(j) All information provided by licensees pursuant to subsection (b) shall remain current. Licensees shall notify the commissioner, in writing, within ten (10) days of any change in the information.

67-4-1031. Reconciliation of tax on cigarettes produced by cigarette rolling machines. [Effective on October 1, 2013.]

A tax shall be levied on the consumer of cigarettes produced through the use of a cigarette rolling machine at the rate imposed by § 67-4-1004, except that § 67-4-1004(b) shall not apply to such cigarettes. Such tax shall be reduced by the amount of state excise tax paid by the cigarette rolling machine operator pursuant to § 67-4-1005 for the purchase of tobacco products used to produce such cigarettes. A cigarette rolling machine operator shall calculate the amount of tax applicable to the cigarettes produced through the use of a cigarette rolling machine and shall remit such amount to the department with the requisite tax forms.

67-4-1032. Cigarette rolling machine operators.

(a) On and after October 1, 2013, no cigarette rolling machine operator shall:

(1) Use, offer for use, or allow to be used in its cigarette rolling machines any tobacco other than roll-your-own tobacco that is currently listed on the

directory maintained by the commissioner pursuant to § 67-4-2602;

(2) Possess any loose tobacco other than roll-your-own tobacco that is currently listed on the directory maintained by the commissioner pursuant to § 67-4-2602;

(3) Possess more than sixteen ounces (16 oz.) per cigarette rolling machine of loose tobacco of any brand within a directory-approved roll-your-own brand family at any given time; or

(4) Accept or allow the operator's cigarette rolling machine to be used to process cigarettes with tobacco that was not first purchased or obtained from the cigarette rolling machine operator.

(b)(1) Any cigarette rolling machine purchased or leased for use, or controlled, possessed or maintained by a cigarette rolling machine operator must contain a secure meter that:

(A) Counts the number of cigarettes made, manufactured, or fabricated by the machine; and

(B) Cannot be altered by the cigarette rolling machine operator.

(2) Upon request by the commissioner, a cigarette rolling machine operator shall provide the information contained on the secure meter. The cigarette rolling machine operator shall maintain the information contained on the secure meter for a period of seven (7) years from the date of each transaction.

(c) In addition to or in lieu of any other civil or criminal remedy provided by law:

(1) The commissioner may revoke or suspend a license issued to a cigarette rolling machine operator under this part if the cigarette rolling machine operator has violated this section, or any rule adopted pursuant to this section, as provided by § 67-4-1016 and in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; and

(2) For each violation of this section, or any rule adopted pursuant to this section, the commissioner may impose a civil penalty in an amount not to exceed the greater of five hundred percent (500%) of the retail value of the tobacco that is sold, offered for sale, or possessed for sale in violation of this section or five thousand dollars ($5,000). Such penalty shall be imposed in the manner provided by § 67-4-1015 and in accordance with the Uniform Administrative Procedures Act.

(d) Any tobacco that has been sold, offered for sale, or possessed for sale by the cigarette rolling machine operator in violation of this section shall be deemed contraband and is subject to seizure and forfeiture by the commissioner as provided in § 67-4-1020 and § 67-4-1021.

(e) In lieu of the reporting requirements contained in § 67-4-2604(a), the commissioner may require, upon request, a cigarette rolling machine operator to submit any additional information as is necessary to enable the commissioner to determine whether a cigarette rolling machine operator is in compliance with this part.

67-4-1033. Required notice to prospective purchaser, lessor or user of cigarette rolling machine.

(a) Prior to October 1, 2013, it is an offense for any person selling, leasing, or otherwise providing for use a cigarette rolling machine to fail to provide notice prior to the sale of the machine to the prospective purchaser, lessor, or

user of such machine on a separate, written disclosure form the current status of the federal excise tax rate on tobacco products, including, but not limited to, pipe tobacco, and that, on and after October 1, 2013, pursuant to chapter 1066 of the Public Acts of 2012:

(1) The products produced by the machine:

(A) Will be cigarettes for the purposes of this part; and

(B) Will be taxed as provided in chapter 1066 of the Public Acts of 2012; and

(2) Only tobacco included on the directory established pursuant to § 67-4-2602 will be permitted to be used in such machine.

(b) The department shall require an applicant for a cigarette rolling machine operator license under 67-4-1015(c)(1) to disclose whether the applicant received the notice required by subsection (a).

(c) A violation of subsection (a) is a Class A misdemeanor punishable by a fine only. Each failure to provide notice shall constitute a separate violation.

67-4-1425. Limitations on levy of tax.

(a) After May 12, 1988, any private act that authorizes a city or county to levy a tax on the privilege of occupancy of a hotel shall limit the application of such tax as follows:

(1) A city shall only levy such tax on occupancy of hotels located within its municipal boundaries;

(2) A city shall not be authorized to levy such tax on occupancy of hotels if the county in which such city is located has levied such tax prior to the adoption of the tax by the city; and

(3) A county shall only levy such tax on occupancy of hotels located within its boundaries but outside the boundaries of any municipality that has levied a tax on such occupancy prior to the adoption of such tax by the county.

(b) This section shall be applied prospectively only and all private acts levying taxes on the privilege of occupancy of hotels enacted prior to May 12, 1988, shall remain in full force and effect. For the purposes of this section, "enacted" means passed by both houses of the general assembly and signed by the governor and approved in accordance with the Constitution of Tennessee, article XI, § 9.

(c) This section does not apply in any county, excluding any county with a metropolitan form of government, that:

(1) Contains or borders a county that contains an airport designated as a regular commercial service airport in the international civil aviation organization (ICAO) regional air navigation plan; and

(2) Contains a government-owned convention center of at least fifty thousand square feet (50,000 sq. ft.) with an attached, adjoining, or adjacent hotel or motel facility; or

(3) Contains an airport with regularly scheduled commercial passenger service, and the creating municipality of the metropolitan airport authority for the airport is not located within such county. The tax levied on occupancy of hotels by cities located within such a county may only be used for tourism as defined by § 7-4-101;

provided, however, that a municipality located in any county to which this subsection (c) applies shall not be authorized to levy a privilege tax upon the privilege of occupancy in any hotel of each transient in an amount exceeding

five percent (5%) of the consideration charged by the operator; provided, further, that, if a municipality located in such county is incorporated under the general law, then such municipality is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. Such ordinance shall set forth the manner of collection and administration of such privilege tax.

(d) This section shall not apply in any county having a population of not less than eighty thousand (80,000) nor more than eighty-three thousand (83,000), in any county having a population of not less than thirty-five thousand fifty (35,050) nor more than thirty-five thousand seventy (35,070), nor in any county having a population of not less than one hundred eighteen thousand four hundred (118,400) nor more than one hundred eighteen thousand seven hundred (118,700), according to the 1990 federal census or any subsequent federal census.

(e) This section does not apply to any city that has constructed a qualifying project or projects under the Convention Center and Tourism Development Financing Act of 1998, compiled in title 7, chapter 88. Further, § 67-4-503 shall not be applicable to such cities as it relates to the authority to levy an occupancy tax.

(f) This section shall not apply in any county having a population of not less than twenty-five thousand five hundred seventy-five (25,575) nor more than twenty-five thousand eight hundred fifty (25,850), according to the 2000 federal census or any subsequent federal census.

(g) This section shall not apply in any municipality that is located within the boundaries of all of the following three (3) counties: a county having a population of not less than seventy-one thousand three hundred (71,300) nor more than seventy-one thousand four hundred (71,400), a county having a population of not less than nineteen thousand five hundred (19,500) nor more than nineteen thousand seven hundred seventy-five (19,775), and a county having a population of not less than fifty-one thousand nine hundred (51,900) nor more than fifty-two thousand (52,000), all according to the 2000 federal census or any subsequent federal census; provided, that the municipality is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the municipality of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(h) This section shall not apply in any municipality having a population of not less than five thousand two hundred (5,200) nor more than five thousand three hundred (5,300), according to the 2000 federal census or any subsequent federal census, that is located within a county having a population of not less than fifty-one thousand nine hundred (51,900) nor more than fifty-two thousand (52,000), according to the 2000 federal census or any subsequent federal census; provided, that the municipality is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the municipality of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(i) This section shall not apply in any municipality having a population of

not less than seven thousand three hundred fifty (7,350) nor more than seven thousand four hundred and ten (7,410), according to the 2000 federal census of population or any subsequent federal census located within a county having a population of not less than twenty-five thousand four hundred and fifty (24,450) nor more than twenty-five thousand five hundred and fifty (25,550), according to the 2000 federal census of population or any subsequent federal census. Any such municipality shall be authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the municipality of each transient in an amount of the consideration charged by the operator as set by ordinance of the governing body. All proceeds received by the municipality from such tax shall be dedicated solely for tourism development. The ordinance shall further set forth the manner of collection and administration of the privilege tax.

(j) This section shall not apply in any city having a population of not less than six thousand nine hundred (6,900) nor more than seven thousand (7,000), according to the 2010 federal census or any subsequent federal census, that is located within a county having a population of not less than thirty-five thousand six hundred (35,600) nor more than thirty-five thousand seven hundred (35,700), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. All proceeds received by the city from such tax shall be dedicated solely for tourism development. The ordinance shall set forth the manner of collection and administration of the privilege tax.

67-4-2004. Parts 20 and 21 definitions.

As used in parts 20 and 21 of this chapter, unless the context otherwise requires:

(1)(A) "Affiliate" means any entity:

(i) In which the taxpayer, directly or indirectly, has more than fifty percent (50%) ownership interest;

(ii) That, directly or indirectly, has more than fifty percent (50%) ownership interest in the taxpayer; or

(iii) In which an entity described in subdivision (1)(A)(ii), directly or indirectly, has more than fifty percent (50%) ownership interest;

(B) For purposes of this subdivision (1), a noncorporate entity is more than fifty percent (50%) owned, if, upon liquidation, more than fifty percent (50%) of the assets of the noncorporate entity, directly or indirectly, accrue to the entity having the ownership interest;

(C) For purposes of this subdivision (1), an entity described in subdivision (1)(A)(ii) can include a natural person, and for such purposes, indirect ownership by an individual includes ownership by any family member of the individual, which means, with respect to the individual:

(i) An ancestor of the individual;

(ii) The spouse or former spouse of the individual;

(iii) A lineal descendant of the individual, of the individual's spouse or former spouse, or of a parent of the individual;

(iv) The spouse or former spouse of any lineal descendant described in subdivision (1)(C)(iii); or

(v) The estate or trust of a deceased individual who, while living, was as described in any of the subdivisions (1)(C)(i)-(iv);

(2)(A) "Affiliated group" means:

(i) A taxpayer that, standing alone, is subject to the Tennessee franchise tax;

(ii) All other domestic persons in which the taxpayer, directly or indirectly, has more than fifty percent (50%) ownership interest;

(iii) All other domestic persons that, directly or indirectly, have more than fifty percent (50%) ownership interest in the taxpayer; and

(iv) All other domestic persons in which a person described in subdivision (2)(A)(iii), directly or indirectly, has more than fifty percent (50%) ownership interest, regardless of whether such persons do business in Tennessee;

(B) For purposes of this subdivision (2), a noncorporate taxable entity is more than fifty percent (50%) owned, if, upon liquidation more than fifty percent (50%) of the assets of the noncorporate taxable entity, directly or indirectly, accrue to a member or members of the affiliated group;

(3) "Average occupational wage" means the average wage for all industries as reported by the department of labor and workforce development in the most recent annual quarterly census of employment and wages super sector data for the state, aggregate of all ownerships;

(4) "Business earnings" mean earnings arising from transactions and activity in the regular course of the taxpayer's trade or business or earnings from tangible and intangible property, if the acquisition, use, management or disposition of the property constitutes an integral part of the taxpayer's regular trade or business operations. In essence, earnings that arise from the conduct of the trade or trades or business operations of a taxpayer are "business earnings," and the taxpayer must show by clear and cogent evidence that particular earnings are classifiable as nonbusiness earnings. A taxpayer may have more than one (1) regular trade or business in determining whether income is "business earnings." This subdivision (4) expresses the legislative intent to implement and clarify the distinctions between business and nonbusiness earnings, as found in the Uniform Division of Income for Tax Purposes Act, as generally interpreted by states adopting the act;

(5)(A) "Business of a financial institution" means:

(i) The business that a regulated financial corporation may be authorized to do under state or federal law or the business that its subsidiary is authorized to do by the proper regulatory authorities;

(ii) The business that any person organized under the authority of the United States or organized under the laws of any other taxing jurisdiction or country does or has authority to do that is substantially similar to the business that a corporation may be created to do under title 45, or any business that a corporation or its subsidiary is authorized to do by title 45;

(iii) Otherwise making, acquiring, selling or servicing loans or extensions of credit, including, but not limited to, the following:

(a) Secured or unsecured consumer loans;

(b) Installment loans;

(c) Mortgages or deeds of trust or other secured loans on real or tangible personal property;

(d) Credit card loans;

(e) Secured or unsecured commercial loans of any type;

(f) Letters of credit and acceptance of drafts;

(g) The holding of participation loans in which more than one (1) lender is a creditor to a common borrower;

(h) Loans arising in factoring; and

(i) Any other transactions of a comparable economic effect;

(iv) Leasing or acting as an agent, broker or adviser in connection with leasing real and personal property that is the economic equivalent of an extension of credit; or

(v) Operating a credit card business;

(B) Notwithstanding the provisions of subdivision (5)(A), if the business of a financial institution generates less than fifty percent (50%) of a person's gross income, the person shall not be considered to be a financial institution under subdivision (16). For purposes of this subdivision (5)(B), the computation of gross income of a person does not include income from nonrecurring, extraordinary transactions;

(6) "Campus affiliate" means any person within the footprint of a project site, as determined by the commissioner of revenue, that directly or indirectly owns a material interest in a person that qualifies for, or controls, is owned or controlled by, or under common control with a person that qualifies for the credits provided in § 67-4-2109(b)(2)(B)(i) in connection with a required capital investment in excess of one billion dollars ($1,000,000,000) and the credits provided in § 67-4-2109(m)(3). For such purpose "material interest" means the direct or indirect beneficial ownership, as defined in Rule 13d-3, 17 CFR 240.13d-3, under the Securities Exchange Act of 1934, compiled in 15 U.S.C. § 78a et seq., of voting securities or other voting interests representing at least ten percent (10%) of the outstanding voting power or equity securities or other equity interests representing at least ten percent (10%) of the outstanding equity securities, or equity interests; and "control," including "controlling", "controlled by", and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise, and shall be construed as "control" is used in the rules promulgated under the Securities Act of 1933, compiled in 15 U.S.C. § 77a et seq.;

(7) "Captive real estate investment trust" or "captive REIT" means an entity with an election in effect under § 856(c)(1) of the Internal Revenue Code, codified in 26 U.S.C. § 856(c)(1), in which any other entity or individual, directly or indirectly, has at least eighty percent (80%) ownership interest by value determined in accordance with generally accepted accounting principles and whose shares are not traded on a national stock exchange;

(8) "Captive REIT affiliated group" means a captive REIT and any entity in which the captive REIT, directly or indirectly, has more than fifty percent (50%) ownership interest; provided, however, that a "captive REIT affiliated group" does not include a group in which the captive REIT is owned, directly or indirectly, by a bank, a bank holding company, or a public REIT;

(9) "Certified green energy production facility" means a facility certified by the department of environment and conservation as producing electricity

for use and consumption off the premises using clean energy technology. For the purposes of this subdivision (9), clean energy technology means technology used to generate energy from geothermal, hydrogen, solar, and wind sources;

(10) "Commercial domicile" means the principal place from which the trade or business of a business entity is directed or managed;

(11) "Commissioner" means the commissioner of revenue;

(12) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services;

(13) "Department" means the department of revenue;

(14)(A) "Doing business in Tennessee" or "doing business within this state" means any activity purposefully engaged in within Tennessee, by a person with the object of gain, benefit, or advantage, consistent with the intent of the general assembly to subject such persons to the Tennessee franchise/excise tax to the extent permitted by the United States Constitution and the Constitution of Tennessee;

(B) A financial institution shall be presumed, subject to rebuttal, to be doing business in this state, if the sum of its assets and the absolute value of its deposits attributable to sources within this state is five million dollars ($5,000,000) or more. For purposes of this part, tangible assets shall be attributable to this state, if they are located in this state. Intangible assets shall be attributable to this state if the income earned on those assets is attributable to this state pursuant to this part. Deposits shall be attributed to this state, if they are deposits made by this state or any of its agencies, instrumentalities or subdivisions or by any resident of this state, regardless of whether the deposits are accepted or maintained at locations in this state. Additionally, a financial institution shall be deemed to be doing business in this state, if the institution:

(i) Maintains an office in this state;

(ii) Has an employee, representative or independent contractor conducting business in this state;

(iii) Regularly sells products or services of any kind or nature to customers in this state that receive the product or service in this state;

(iv) Regularly solicits business from potential customers in this state;

(v) Regularly performs services outside this state that are consumed in this state;

(vi) Regularly engages in transactions with customers in this state that involve intangible property, including loans, and result in receipts flowing to the taxpayer from within this state;

(vii) Owns or leases property located in this state; or

(viii) Regularly solicits and receives deposits from customers in this state;

(C) Notwithstanding any other provision of law to the contrary, a financial institution is not considered to be conducting the business of a financial institution in this state, if the only activity of the financial institution in this state is the ownership of an interest in one (1) or more of the following types of property, including those activities within this state that are reasonably required to evaluate and complete the acquisition or disposition of the property, the servicing of the property or the income from it, the collection of income from the property, or the acquisition or liquidation of collateral relating to the property:

(i) An interest in a real estate mortgage investment conduit, a real estate investment trust, or a regulated investment company as those terms are defined by the Internal Revenue Code of 1986;

(ii) An interest in a loan-backed security representing ownership or participation in a pool of promissory notes or certificates of interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates;

(iii) An interest in a loan, lease, note or other assets attributed to this state and in which the payment obligations were solicited and entered into by a person that is independent and not acting on behalf of the owner;

(iv) An interest in the right to service or collect income from a loan or other asset from which interest on the loan or other asset is attributed to this state and in which the payment obligations were solicited and entered into by a person that is independent and not acting on behalf of the owner;

(v) An interest in demand deposit clearing accounts, federal funds, certificates of deposit and other similar wholesale banking instruments issued by other financial institutions;

(vi) An interest in a security; or

(vii) An interest of a financial institution in any intangible, tangible, real or personal property acquired in satisfaction, whether in whole or in part, of any asset embodying a payment obligation that is in default, whether secured or unsecured, if the ownership of the interest would be exempt otherwise as provided in subdivisions (14)(C)(i)-(v);

(D) For the purposes of subdivisions (14)(C)(iii) and (iv), an "independent person who is not acting on behalf of the owner" means:

(i) At the time of the acquisition of the assets, the owner of the asset does not directly or indirectly own fifteen percent (15%) or more of the outstanding stock or, in the case of a partnership or limited liability company, fifteen percent (15%) or more of the capital or profits interest, of the entity from which the owner originally acquired the asset. In determining indirect ownership, an owner is deemed to own all of the stock, capital interest or profits interest owned by another person if the owner directly owns fifteen percent (15%) or more of the stock, capital interest or profits interest in that other person. Also, the owner is deemed to own all stock, capital interest and profits interest directly owned by any intermediary parties in the transaction, to the extent a fifteen percent (15%) or more chain of ownership of stock, capital interest or profits interest exists between the owner and any intermediary party;

(ii) The entity from which the owner acquired the asset regularly sells, assigns or transfers interest in such assets to three (3) or more persons during the full twelve-month period immediately preceding the month of acquisition; and

(iii) The entity from which the owner acquired the asset does not sell, assign or transfer ninety percent (90%) or more of its exempt assets to the owner during the full twelve-month period immediately preceding the month of acquisition;

(E) A person shall not be considered to be "doing business in Tennessee" or "doing business within this state" for purposes of this part or part 21 of

this chapter solely because of any one (1) of the following activities:

(i) The presence of employees and/or product samples and/or other promotional materials at one (1) or more trade shows, exhibits, conventions, or similar events in this state for a total of not more than twenty (20) days per calendar year; provided, that the activities of the entity's employees while in Tennessee are limited to maintaining or facilitating the trade show or convention; the purchasing of goods on behalf of their employer; the solicitation of sales; and the gathering of samples, promotional material or other information offered at the event;

(ii) Activities by publishers of magazines and books who contract with Tennessee printers for the printing of their magazines or books, when such activities in Tennessee are limited solely to activities having to do with the printing, storage, labeling and/or delivery to the United States mail or common carrier of such magazines or books; or the maintenance of raw materials with respect to such activities; or the maintenance of employees solely in connection with the production and quality control of such printing, storage, labeling and/or delivery; provided, that the publisher and printer are not affiliated with one another. Persons are affiliated with one another, if, either directly or indirectly, one controls the other, or if the persons are directly or indirectly controlled by a common parent;

(iii) Physical presence in this state of an out-of-state person's equipment, tooling, inventory, and employees on a temporary basis, when:

(a) The activity in which such items and employees are engaged is not the pursuit, creation or maintenance, by the out-of-state person or any person that is affiliated with it, of a market in this state;

(b) The equipment and tooling are not used, worked on or held in this state by a person that is affiliated with the out-of-state person;

(c) The out-of-state person's employees have no control over the use or work done in this state by the in-state person; and

(d) The extent and value of such items, the number of such employees, and the number of days the employees work in this state, in light of all the facts and circumstances, are qualitatively and quantitatively de minimis. Persons are affiliated with one another, if, either directly or indirectly, one controls the other, or if the persons are directly or indirectly controlled by a common parent; or

(iv) The temporary presence in this state of employees solely for the purpose of purchasing goods from vendors in this state for use in the employer's business out-of-state; provided, that the total number of days the employer has one (1) or more employees present in this state does not exceed thirty (30) per calendar year; and provided further, that the employer does not furnish, directly or indirectly, any office in this state for their use;

(15) "Domestic person" means any person with more than twenty percent (20%) of the average of its property, payroll and receipts factors, as each factor is calculated for a separate entity under § 67-4-2111, in the United States;

(16) "Financial institution" means a holding company, any regulated financial corporation, a subsidiary of a holding company or a regulated financial corporation, an investment entity that is indirectly more than fifty percent (50%) owned by a holding company or a regulated financial corpo-

ration, or any other person that is carrying on the business of a financial institution. However, "financial institution" does not include insurance companies subject to tax under §§ 56-4-201 — 56-4-208, 56-4-209 [repealed], 56-4-210 — 56-4-214;

(17) "Financial institution affiliated group" means any affiliated group in which more than fifty percent (50%) of the group's aggregate gross income, excluding dividends and receipts resulting from transactions between members, is derived from conducting the business of a financial institution as defined in subdivision (5)(A). For purposes of this subdivision (17), the computation of gross income of a member does not include income from nonrecurring, extraordinary transactions;

(18) "General partnership" means a partnership in which all partners, as defined by state law, are fully liable for the debts of, or the claims against, the partnership. For purposes of this subdivision (18), partners may be "fully liable" even though one (1) or more persons or individuals dealing with the partnership have by contract agreed to limit their claims against one (1) or more partners or against the partnership as a whole;

(19) "Gross receipts," "total gross receipts," "receipts," and "total receipts" mean, within the context of the statute in which used, all receipts from whatever sources derived before any deductions, but not including actual sales returns and allowances;

(20) "Holding company" means any corporation defined as a "bank holding company" under 12 U.S.C. § 1841(a) of the Bank Holding Company Act of 1956, compiled in 12 U.S.C. § 1841 et seq., or any corporation defined as a "savings and loan holding company," "multiple savings and loan holding company," or "diversified savings and loan holding company," under 12 U.S.C. § 1467a(a)(1);

(21) "Hospital" has the definition provided at § 68-11-201; provided, that, as used in this part, a "hospital" must be licensed as a hospital by the board of licensing health care facilities pursuant to title 68, chapter 11, part 2; and provided further, that "hospital" does not include a nursing home, ambulatory surgical treatment center or other health care facility enumerated and defined in title 68, chapter 11, unless operated as a part of and in connection with a "hospital";

(22) "Hospital company" means a corporation or other entity subject to the taxes imposed under this part and part 21 of this chapter and that qualified before January 1, 1999, with the department as a hospital company as defined under prior law;

(23)(A) "Intangible expense" means an expense related to, or in connection with, the acquisition, use, maintenance, management, ownership, sale, exchange, license, or any other disposition of intangible property, to the extent such amounts are allowed or allowable as deductions or costs in determining federal taxable income on a separate entity basis.

(B) "Intangible expense" also means interest expenses directly or indirectly allowed as deductions or costs in determining federal taxable income on a separate entity basis to the extent such interest expenses are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, license, or any other disposition of intangible property;

(24) "Intangible income" means income related to, or in connection with, the acquisition, use, maintenance or management, ownership, sale, exchange, license, or any other disposition of intangible property, to the extent such amounts are included or includable in determining federal taxable income;

(25) "Intangible property" means patents, patent applications, trade names, trademarks, service marks, franchise rights, copyrights, licenses, research, formulas, designs, patterns, processes, formats, and similar types of intangible assets;

(26) "Integrated customer" means a customer located within the footprint of a project site, as determined by the commissioner of economic and community development and the commissioner of revenue, that purchases materials from a manufacturer that is qualified for the credits provided in § 67-4-2109(b)(2)(B)(i) in connection with a required capital investment in excess of one billion dollars ($1,000,000,000) and the credits provided in § 67-4-2109(m)(3). The materials must be an integral part of the customer's manufacturing process and the customer must be approved for this designation by the commissioner of economic and community development and the commissioner of revenue;

(27) "Integrated supplier" means a supplier located within the footprint of a project site, as determined by the commissioner of economic and community development and the commissioner of revenue, that provides, from a facility located in the footprint of the project site, goods or services, or both, on the project site primarily for a manufacturer that is qualified for the credits provided in § 67-4-2109(b)(2)(B)(i) in connection with a required capital investment in excess of one billion dollars ($1,000,000,000);

(28) "Internal Revenue Code" means title 26 of the United States Code as effective during the year in which net earnings are determined under this part;

(29) "Investment entity" means any person that receives more than fifty percent (50%) of its gross income from investment securities and from the business of a financial institution;

(30) "Investment securities" means, for purposes of this section, any note, United States treasury securities, obligations of United States government agencies and corporations, obligations of state and political subdivisions, corporate debt securities, participations in securities backed by mortgages held by the United States or state government agencies, loan-backed securities, bonds, debentures, evidence of indebtedness, and other similar debt investments;

(31) "Key tenant" means any tenant, located within a qualified medical trade center, that leases and occupies a significant portion of the facility and is determined, in the sole discretion of the commissioner of economic and community development and the commissioner of revenue, to be essential to the initial establishment and viability of the trade center;

(32) "Nonbusiness earnings" means all earnings other than business earnings;

(33) "Not-for-profit" means any person described in §§ 401, 408, 408A, 409, 501, 526, 527, 528, 529 or 530 of the Internal Revenue Code, codified in 26 U.S.C. §§ 401, 408, 408A, 409, 501, 526, 527, 528, 529 or 530;

(34) "Obligated member" means a member or partner of an obligated member entity that is fully liable for the debts, obligations and liabilities of the entity, as provided in § 67-4-2008(b)-(d), and that has filed appropriate

documentation to that effect with the secretary of state;

(35) "Obligated member entity" means a limited liability company, limited partnership or limited liability partnership, all of whose members or partners are fully liable for the debts, obligations and liabilities of the entity, as provided in § 67-4-2008(b)-(d), and that have filed appropriate documentation to that effect with the secretary of state;

(36) "Pass-through entity" means an S corporation, an entity treated as a partnership for federal income tax purposes, an entity treated as a trust for federal income tax purposes or a business entity that has a single owner and that is disregarded as an entity separate from its owner for federal income tax purposes, but not for purposes of this part and part 21 of this chapter;

(37) "Person" or "taxpayer" means every corporation, subchapter S corporation, limited liability company, professional limited liability company, registered limited liability partnership, professional registered limited liability partnership, limited partnership, cooperative, joint-stock association, business trust, regulated investment company, REIT, state-chartered or national bank, or state-chartered or federally chartered savings and loan association;

(38) "Publicly traded real estate investment trust" or "public REIT" means an entity that has an election in effect under § 856(c)(1) of the Internal Revenue Code, codified in 26 U.S.C. § 856(c)(1), that files with the securities and exchange commission and whose shares are traded on a securities exchange that is either registered as a national securities exchange with the securities and exchange commission under § 6 of the Securities Exchange Act of 1934, codifed in 15 U.S.C. § 78f, or is a national securities exchange of a foreign country and regulated in a substantially similar manner by a foreign financial regulatory authority;

(39) "Qualified commercial financing entity" means a person that qualified for the credit in § 67-6-224 that primarily finances wholesale and retail transactions related to the purchase or lease of industrial equipment, machinery, vehicles, or goods manufactured by its affiliates and is certified for that designation by the commissioner of revenue and the commissioner of economic and community development. Notwithstanding § 47-14-103, a qualified commercial financing entity shall be allowed to charge a rate of interest not to exceed twenty-four percent (24%) per annum;

(40) "Qualified medical trade center" means any facility, located in a county with a metropolitan form of government, that is substantially composed of permanent and temporary show rooms for medical product suppliers as well as educational space and conference facilities for medical trade shows; provided, that such facility is constructed, expanded, or remodeled through an investment of more than two hundred fifty million dollars ($250,000,000) and contains more than one million square feet (1,000,000 sq. ft.) of space upon completion;

(41) "Qualified medical trade center relocation expenses" means those expenses that both the commissioner of revenue and the commissioner of economic and community development determine, in their sole discretion, are necessary to the creation of a permanent show room within a qualified medical trade center in conjunction with the initial establishment of such facility;

(42) "Qualified new or expanded warehouse or distribution facility" means a new or expanded facility for the storage or distribution of finished tangible

personal property; provided, that the facility also meets all the qualifications necessary to allow the taxpayer to make purchases of material handling and racking systems exempt from sales and use tax under the definition of "industrial machinery" in § 67-6-102;

(43) "Real estate investment trust (REIT)" means an entity that has an election in effect under § 856(c)(1) of the Internal Revenue Code, codified in 26 U.S.C. § 856(c)(1);

(44) "Regulated financial corporation" means an institution, the deposits, shares, or accounts of which are insured under the Federal Deposit Insurance Act, compiled in 12 U.S.C. § 1811 et seq., or any institution that is a member of a federal home loan bank, any other bank or thrift institution incorporated or organized under the laws of any taxing jurisdiction, or any foreign country that is engaged in the business of receiving deposits, any corporation organized under 12 U.S.C. §§ 611-631, Edge Act corporations, and any agency of a foreign depository as defined in 12 U.S.C. § 3101;

(45) "Sales" means all gross receipts of the taxpayer not allocated under this part;

(46) "Securities" means United States treasury securities, obligations of United States government agencies and corporations, obligations of state and political subdivisions, corporate stock and other securities, participations in securities backed by mortgages held by the United States or state government agencies, loan-backed securities and similar investments;

(47) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States and any foreign country or political subdivision thereof;

(48) "Taxing jurisdiction" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a territory or possession of the United States;

(49) "Tennessee historic property preservation or rehabilitation entity" means an entity that satisfies all of the following requirements:

(A) The Tennessee historic property preservation or rehabilitation entity must be a corporation or limited liability company organized under the laws of Tennessee, that is directly or indirectly controlled by a not-for-profit entity, as defined in this part. Such not-for-profit entity must directly or indirectly hold not less than fifty-one percent (51%) of the Tennessee historic property preservation or rehabilitation entity's ownership interest and voting control;

(B) The Tennessee historic property preservation or rehabilitation entity must be organized for the purpose of preserving or rehabilitating an historic property listed on the National Register of Historic Places;

(C) The not-for-profit entity must receive approval of its historic certification application—Part 3 by the United States department of the interior national park service; and

(D) The historic property must be used in the performance of the exempt activity or function of the controlling not-for-profit entity; and

(50) "Unitary business" or "unitary group" means business activities or operations of financial institutions that are of mutual benefit, dependent upon, or contributory to one another, individually or as a group, in transacting the business of a financial institution. "Unitary business" may be applied within a single legal entity or between multiple entities. "Unitary business" or "unitary group" includes those entities that are engaged in a

unitary business transacted wholly in, or in and out of the state of Tennessee, even if some of the entities would not be subject to tax in this state, if considered apart from their unitary group.

67-4-2006. "Net earnings" and "net loss" defined.

(a)(1) For a corporation or any other taxpayer treated as a corporation for federal tax purposes, including any limited liability company treated as a corporation for federal income tax purposes, or any other taxpayer required to file a federal income tax return on a federal form 1120 or any variation of that form, except for a corporation electing S corporation status under 26 U.S.C. §§ 1361-1363, and except for a unitary business as is defined in § 67-4-2004, "net earnings" or "net loss" is defined as federal taxable income or loss before the operating loss deduction and special deductions provided for in 26 U.S.C. §§ 241, 242 [repealed], 243-247, and as adjusted by subsections (b) and (c).

(2) For a corporation electing S corporation status under 26 U.S.C. §§ 1361-1363, "net earnings" means federal taxable income calculated as if the corporation had not elected S status, taken before the operating loss deduction and special deductions provided for in 26 U.S.C. §§ 241, 242 [repealed], 243-247 and 249-250, and subject to the adjustments in subsections (b) and (c).

(3) For financial institutions that form a unitary business, as defined in § 67-4-2004, "net earnings" or "net loss" is defined as the combined net earnings or net loss, as defined in subdivision (a)(1), for all members of the unitary group, with all dividends, receipts and expenses resulting from transactions between members of the unitary group excluded when computing combined net earnings, and subject to the adjustments in subsections (b) and (c) on a combined basis, even if some of the members would not be subject to taxation under this part, if considered apart from their unitary group.

(4) In the case of a person or taxpayer treated as a partnership for federal tax purposes, or any other person required to file a federal partnership return on a federal form 1065 or any variation of that form, including, but not limited to, limited liability companies, "net earnings" or "net loss" is defined as an amount equal to:

(A) The amount of ordinary income or loss determined under the applicable provisions of the Internal Revenue Code, including, but not limited to, guaranteed payments to partners and capital gains, which additional items are not already included in ordinary income or loss; less

(B) The amount subject to self-employment taxes, without regard to any cap, distributable or paid to each partner or member; provided, that this amount shall not create or increase any net loss; less

(C) The amount contributed to qualified pension or benefit plans, including all plans described in 26 U.S.C. § 401, of any partner or member; provided, however, that this amount shall not create or increase any net loss; and

(D) As adjusted by subsections (b) and (c).

(5)(A) In the case of a person or taxpayer treated as a partnership for federal tax purposes that is directly or indirectly owned by a public REIT, "net earnings" or "net loss" is defined as an amount equal to the amount

determined pursuant to subdivision (a)(4), less the amount distributed either directly or indirectly to a public REIT; provided, that a schedule indicating the name and federal identification number of the public REIT receiving the distribution is attached; and

(B) As adjusted by subsections (b) and (c).

(6) Any law to the contrary notwithstanding, a single member limited liability company whose single member is a general partnership and that is disregarded for federal income tax purposes shall be subject to the taxes imposed by this part and part 21 of this chapter. The single member limited liability company's "net earnings" or "net loss" for excise tax purposes shall be determined in the same manner as set forth in subdivision (a)(4).

(7) In the case of a single member limited liability company that is treated as an individual taxpayer for federal income tax purposes, "net earnings" or "net loss" means an amount equal to:

(A) The amount of net profit or loss from all businesses engaged in by the taxpayer, determined by applicable provisions of the Internal Revenue Code as is reported on federal form 1040 or any variation of that form, and appropriate schedules, including any amount subject to self employment tax, without regard to any cap, and including the amount of any gains or losses from the sale of assets held or used in the business; less

(B) The amount subject to self-employment taxes; provided, that this amount shall not create or increase any net loss;

(C) As adjusted by subsections (b) and (c).

(8) In the case of a business trust, or any other person doing business in Tennessee and not covered in subdivisions (a)(1)-(4), "net earnings" or "net loss" is defined as taxable income or loss determined under applicable provisions of the Internal Revenue Code, excluding any net operating loss deduction or special deductions similar to those provided for in 26 U.S.C. §§ 241, 243-247 and 249, as adjusted by subsections (b) and (c).

(9) In the case of a captive REIT affiliated group, "net earnings" or "net loss" is defined as the combined net earnings or net loss, as defined in subdivision (a)(1), for all members of the affiliated group, with all dividends, receipts, and expenses resulting from transactions between members of the affiliated group excluded when computing combined net earnings, and subject to the adjustments in subsections (b) and (c) on a combined basis, even if some of the members would not be subject to taxation under this part if considered apart from the affiliated group.

(b)(1) There shall be added to a taxpayer's net earnings or net losses:

(A) Excise tax imposed by this state to the extent deducted in determining net earnings;

(B) Interest income from obligations defined in 26 U.S.C. § 103(a), reduced by allowable amortization, including any interest expense disallowed for federal purposes pursuant to 26 U.S.C. §§ 265 and 291;

(C) Any deduction made pursuant to 26 U.S.C. §§ 611-614, 615 [repealed], 616 and 617, to the extent the deduction, when added with similar deductions in prior years, exceeds the cost of the property;

(D) The charitable contributions deduction claimed under 26 U.S.C. § 170;

(E) Any capital loss carrybacks or carryovers, arising in the course of a trade or business and deducted pursuant to 26 U.S.C. § 1212(a);

(F) Any gross premiums tax deducted in determining net earnings, but

taken as a credit against the excise tax under § 67-4-2009(1);

(G) Any expense or depreciation, permitted as a deduction in computing federal taxable income solely as a result of lease characterizations permitted under § 168 of the Economic Recovery Tax Act of 1981, codified in 26 U.S.C. § 168, that would not have been permitted in the absence of such act; it being the legislative intent that excise tax revenue not be reduced due to lease characterizations made for the purpose of transferring investment tax credits and depreciation allowances from one business entity to another;

(H) Any depreciation that the taxpayer deducted in computing its federal taxable income in excess of that which the taxpayer could have deducted in computing such income, if the taxpayer had computed its depreciation under § 168 of the Internal Revenue Code, codified in 26 U.S.C. § 168, as it existed and applied immediately prior to the passage of title 1, § 101, of the Job Creation and Worker Assistance Act of 2002;

(I) Any gain not already included in the taxpayer's net earnings or loss on the sale of an asset distributed by the taxpayer to an entity or individual not otherwise subject to the tax imposed by this part, when such asset is sold within twelve (12) months of the date of distribution. Thus, in such a case, the gain for excise tax purposes is recognized by the taxpayer making the asset distribution rather than the seller. However, if the taxpayer making the asset distribution ceases to exist prior to the sale, the gain shall be reported and tax paid by the seller in accordance with § 67-4-2007(f);

(J) Any net loss or any item of expense or loss that meets all of the following criteria:

(i) Is included in the determination of the taxpayer's net earnings or loss;

(ii) Is from a pass-through entity that is subject to and files a return for the tax imposed by this part; and

(iii) Is allocated to a partner, shareholder, beneficiary or other owner of such pass-through entity;

(K) Any otherwise deductible intangible expense paid, accrued or incurred in connection with a transaction with one or more affiliates;

(L) Any deduction made pursuant to 26 U.S.C. § 199;

(M) In the case of a corporation that has elected S corporation status under 26 U.S.C. §§ 1361-1363, any gain that is not included in net earnings or loss and that is attributable to an election under 26 U.S.C. § 338(h)(10);

(N) Any amount in excess of reasonable rent that is paid, accrued or incurred for the rental, leasing or comparable use of industrial and commercial property owned by an affiliate, whether or not the affiliate is subject to the tax imposed by this part. For purposes of this subdivision (b)(1)(N), "industrial and commercial property" has the same meaning as in § 67-5-501 and "reasonable rent" means rent that does not exceed two percent (2%) per month of the appraised value of the property under chapter 5 of this title. When any person fails to make the adjustment to net earnings or net losses required by this subdivision (b)(1)(N) and the failure is determined by the commissioner to be due to negligence, there shall be imposed a penalty equal to fifty percent (50%) of the amount of the adjustment required by this subdivision (b)(1)(N). The commissioner is

authorized to waive the penalty, in whole or in part, for good and reasonable cause under § 67-1-803. This subdivision (b)(1)(N) shall not apply to "commercial and industrial tangible personal property" as defined in § 67-5-501; and

(O) Any deduction by a captive REIT for dividends paid, as defined under 26 U.S.C. § 561, that is allowed and taken under 26 U.S.C. § 857(b)(2)(B); provided, however, that this subdivision (b)(1)(O) shall not apply to a captive REIT that is owned, directly or indirectly, by a bank, a bank holding company, or a public REIT.

(2) There shall be subtracted from the net earnings and losses:

(A) Dividends earned by a taxpayer who owns eighty percent (80%) or more of the outstanding capital stock of a corporation;

(B) Any amount included in federal taxable income but not taxable under the laws of this state;

(C) A portion of the gain or loss of the sale or other disposition of property having a higher basis for state excise tax purposes than federal income tax purposes measured by the difference in the state basis and the federal basis; provided, however, that there shall be no adjustment under this subdivision (b)(2)(C) as a result of the taxpayer not having been subject to the tax imposed by this part during any portion of the period during which the taxpayer took depreciation expense on the property for federal income tax purposes;

(D) The actual charitable contributions made during the tax year by a taxpayer;

(E) Any capital losses incurred during the fiscal year, arising in the course of a trade or business, and not deductible under 26 U.S.C. § 1211(a);

(F) Any expense, other than income taxes, not deducted in determining federal taxable income for which a credit against the federal income tax is allowable;

(G) Any amount included in federal taxable income solely as a result of lease characterizations permitted under § 168 of the Economic Recovery Tax Act of 1981, codified in 26 U.S.C. § 168, that would not have been permitted in the absence of such act;

(H) Any amount of depreciation or other expense that the taxpayer could have deducted in computing federal taxable income had it not made the election to enter into a lease transaction permitted under § 168 of the Economic Recovery Tax Act of 1981, codified in 26 U.S.C. § 168, that would not have been permitted in the absence of such act;

(I) Any depreciation in excess of that which the taxpayer deducted in computing its federal taxable income that could have been deducted in computing such income if the taxpayer had computed its depreciation under § 168 of the Internal Revenue Code, codified in 26 U.S.C. § 168, as it existed and applied immediately prior to the passage of title 1, § 101, of the Job Creation and Worker Assistance Act of 2002;

(J) An amount equal to the difference, if any, between the reserve for bad debts allowed under 26 U.S.C. §§ 585 and 593, as such sections existed on December 31, 1986, and such reserve as it may have been modified subsequently;

(K) Any loss on the sale of an asset not already included in the taxpayer's net earnings or loss distributed by a taxpayer treated as a

partnership for federal tax purposes, by an S corporation or by a business trust, to a member, partner, shareholder or certificate holder, when such asset is sold within twelve (12) months of the date of distribution. Thus, in such a case, the loss for excise tax purposes is recognized by the entity making the asset distribution rather than by the seller;

(L) Any net gain or any item of income that meets all of the following criteria:

(i) Is included in the determination of the taxpayer's net earnings or loss;

(ii) Is from a pass-through entity that is subject to and files a return for the tax imposed by this part; and

(iii) Is allocated to a partner, shareholder, beneficiary or other owner of such pass-through entity;

(M)(i) Seventy-five percent (75%) of the value of charitable donations, including those otherwise deductible under any other provision of this part, that are made to a qualified public school support organization and meet all of the following requirements:

(a) For purposes of this subdivision (b)(2)(M), "qualified public school support organization" means an entity, other than a natural person, that is registered with the department for sales and use tax purposes pursuant to chapter 6 of this title and whose sole purpose is to promote and enhance Tennessee public schools;

(b) The deduction provided by this subdivision (b)(2)(M) shall apply only in the tax year in which the qualified public school support organization certifies to the taxpayer making the donation that it has spent the donation to purchase goods or services subject to the tax imposed by chapter 6 of this title and upon which such tax has actually been paid. The taxpayer making the donation must maintain a copy of such certification to establish entitlement to the deduction;

(c) Donations pursuant to this subdivision (b)(2)(M) must be monetary donations and not donations of goods or services;

(d) The taxpayer making the donation shall not designate a specific child as the beneficiary of the donation;

(e) Qualified public school support organizations receiving such donations must maintain adequate records to prove that the requirements of this subdivision (b)(2)(M) have been met, including proof in the form of invoices or other documentation to establish that the donation was used to purchase goods or services subject to the tax imposed by chapter 6 of this title and that such tax was actually paid; and

(f) If the qualified public school support organization falsely certifies to the taxpayer making the donation that the donation has been spent and tax paid in the manner required by this subdivision (b)(2)(M), the qualified public school support organization shall be liable for the tax imposed by chapter 6 of this title, including applicable penalties and interest, as if the donation had been spent on items subject to that tax;

(ii) The department of revenue is authorized to share with the department of education information necessary to effectuate the purposes of subdivision (b)(2)(M)(i). The department of education shall be bound by restrictions on disclosure of such information otherwise

applicable to the department of revenue;

(iii) The commissioner of revenue and the commissioner of education are authorized to promulgate rules and regulations to effectuate the purposes of this subdivision (b)(2)(M). All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(N)(i) Any intangible expense, or portion thereof, that is paid, accrued or incurred in connection with a transaction with one (1) or more affiliates if the commissioner determines, upon application by the taxpayer, that such expense, or portion thereof, did not have as its principal purpose the avoidance of the tax levied by this part. The commissioner's review of the taxpayer's application shall include the considerations outlined in § 67-4-2014(c). The commissioner shall approve any application for the deduction of any intangible expense, or portion thereof, that is:

(a) Paid, accrued, or incurred to an affiliate in a foreign nation that is a signatory to a comprehensive income tax treaty with the United States;

(b) Paid, accrued, or incurred to an affiliate when the affiliate, during the same taxable year, has directly or indirectly paid, accrued or incurred such portion to an entity that is not an affiliate; or

(c) Paid, accrued, or incurred to an affiliate doing business in, or deriving income from, a state that imposes a tax on or measured by net income and, under that state's laws, the affiliate is subject to an income tax in that state. The portion of the intangible expense that will be approved for the deduction is that portion that, after applying the allocation and apportionment rules of the state, has been allocated or apportioned by the affiliate to that state. For purposes of this subdivision (b)(2)(N)(i)(*c*), "state" means a state of the United States, including the District of Columbia, and any United States possession or territory, but does not include those states under whose laws the taxpayer and the affiliate file or are included in a combined income tax report or return, a consolidated income tax report or return, or any other report or return of net income that includes the taxpayer and the affiliate and where such return or report results in the affiliate's intangible income being offset or matched by the taxpayer's deduction in that state's report or return;

(ii)*(a)* Except as provided in subdivisions (b)(2)(N)(ii)(*b*) or (b)(2)(N)(ii)(*c*), the taxpayer's application for the deduction in subdivision (b)(2)(N)(i) shall be made at such time and upon such forms and in such manner as prescribed by the commissioner and shall include such information as the commissioner may require;

(b) Any taxpayer whose deduction is based on the criteria set forth in subdivisions (b)(2)(N)(i)(*a*)-(*c*) shall be entitled to provide notice to the commissioner at the time of filing its return, rather than by making application sixty (60) days prior to the due date of the return as set forth in subdivision (b)(2)(N)(iii)(*c*);

(c) The commissioner may, through a conference with the taxpayer, review the facts and circumstances of the taxpayer's proposed intangible expense deduction and, by letter, agree that the taxpayer may be relieved of the requirement to file an application as otherwise pro-

vided herein;

(iii)*(a)* If the commissioner approves the intangible expense deduction, or a portion thereof, such determination shall remain in effect so long as the taxpayer submits annually to the commissioner a certification that the facts and circumstances surrounding the transaction remain substantially unchanged; provided, however, that the commissioner is authorized to require that the taxpayer reapply for the deduction beginning no sooner than five (5) years following the taxpayer's most recent application;

(b) If the commissioner denies the deduction, or a portion thereof, and the taxpayer nevertheless deducts the disallowed intangible expense, the commissioner shall assess the taxpayer any applicable tax, interest, and penalty resulting from the disallowance of such deduction, and the taxpayer shall be entitled to the remedies contained in chapter 1, part 18 of this title to contest such assessment;

(c) If the application is submitted to the commissioner at least sixty (60) days before the due date of the return and the commissioner has neither approved nor denied the application by the due date of the return, no penalty shall be assessed based on any disallowance of the deduction for intangible expenses, and no interest shall accrue on any such assessment from the due date of the return until the date upon which the commissioner issues a denial of the application;

(O) Any intangible income included in the computation of a taxpayer's net earnings that is accrued or earned in connection with a transaction with one (1) or more affiliates to the extent that the corresponding intangible expense is included in the affiliate's Tennessee net earnings or net losses and is not deducted by the affiliate under subdivision (b)(2)(N);

(P)(i) Seventy-five percent (75%) of the value of charitable donations, including those otherwise deductible under any other provision of this part, that are made to nonprofit corporations, associations and organizations that are exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 501(c)(3), to not-for-profit civic leagues or organizations that are exempt from federal income taxation under § 501(c)(4) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 501(c)(4), and to associations and organizations that are exempt from federal income taxation under § 501(c)(5) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 501(c)(5), and meet all of the requirements of this subdivision (b)(2)(P);

(ii) The deduction provided by this subdivision (b)(2)(P) shall apply only in the tax year in which the qualified nonprofit corporation, association or organization certifies to the taxpayer making the donation that it has spent the donation to purchase goods or services subject to the tax imposed by chapter 6 of this title and upon which such tax has actually been paid. The taxpayer making the donation must maintain a copy of such certification to establish entitlement to the deduction;

(iii) Donations pursuant to this subdivision (b)(2)(P) must be monetary donations and not donations of goods and services;

(iv) The taxpayer making the donation shall not designate a specific purpose for the donation;

(v) Qualified nonprofit corporations, associations and organizations receiving such donations must maintain adequate records to prove that

the requirements of this subdivision (b)(2)(P) have been met, including proof in the form of invoices or other documentation to establish that the donation was used to purchase goods or services subject to the tax imposed by chapter 6 of this title and that such tax was actually paid;

(vi) If the qualified nonprofit corporation, association or organization falsely certifies to the taxpayer making the donation that the donation has been spent and tax paid in the manner required by this subdivision (b)(2)(P), the qualified nonprofit corporation, association or organization shall be liable for the tax imposed by chapter 6 of this title, including applicable penalties and interest, as if the donation had been spent on items subject to the tax;

(Q) In the case of a corporation that has elected S corporation status under 26 U.S.C. §§ 1361-1363, any loss that is not included in net earnings or loss and that is attributable to an election under 26 U.S.C. § 338(h)(10); and

(R) Any amount in excess of reasonable rent that is received or accrued for the rental, leasing, or comparable use of industrial and commercial property rented, leased, or otherwise provided to an affiliate; provided, however, that this subdivision (b)(2)(R) shall only apply to the extent the corresponding expense has been added to the net earnings or net losses of the affiliate in accordance with subdivision (b)(1)(N). For purposes of this subdivision (b)(2)(R), "industrial and commercial property" and "reasonable rent" shall have the same meaning as in subdivision (b)(1)(N).

(c) A taxpayer's net earnings, or net loss, shall be determined under subsections (a) and (b) and shall be subject to further adjustments provided by this subsection (c). Taxpayers doing business both in and outside of Tennessee so as to be entitled to apportionment shall apportion such net earnings or net loss using the appropriate apportionment formula provided in this part. The taxpayer shall then deduct any loss carryovers, computed in accordance with subdivisions (c)(1)-(5), from its net earnings so determined.

(1) In the case of taxpayers that were subject to the excise tax under prior law, any net qualified operating loss incurred for fiscal years ending on or after January 15, 1984, may be deducted. In the case of all other taxpayers, any net operating loss incurred for fiscal years ending on or after July 1, 1999, may be deducted. For this purpose, "net operating loss" is defined as the excess of allowable deductions over total income allocable to this state for the year of the loss. Qualified net operating losses may be carried forward and deducted in the next succeeding tax year or years in which the taxpayer has net income until fully utilized, but in no case for more than fifteen (15) years after the taxable year in which the net operating loss occurs. For fiscal years ending on or after July 15, 1990, in the case of a unitary business, as defined in § 67-4-2004 the net operating loss incurred in the current year shall be determined on a combined basis as specified in subdivision (a)(3). For tax years ending prior to July 15, 1990, any net operating loss incurred by a member of the unitary group that has been apportioned to Tennessee in a year prior to filing a combined return shall be allowed to the unitary group in succeeding tax years until fully utilized, but in no case more than seven (7) years after the taxable year in which the net operating loss occurs.

(2) Except for unitary groups of financial institutions, each taxpayer is considered a separate entity; therefore, in the case of mergers, consolidations, and like transactions, no loss carryovers incurred by the predecessor

taxpayer shall be allowed as a deduction from net earnings on the excise tax return filed by the successor taxpayer. With the exception set forth in subdivision (c)(3), a loss carryforward may be taken only by the taxpayer that generated it.

(3) Notwithstanding the provisions contained in subdivision (c)(2), when a taxpayer merges out of existence and into a successor taxpayer that has no income, expenses, assets, liabilities, equity or net worth, any qualified Tennessee loss carryover of the predecessor that merged out of existence shall be available for carryover and deduction from the net earnings of the surviving successor in accordance with this subsection (c).

(4) A unitary group of financial institutions may take any qualified Tennessee loss carryforward that was generated by any group member that is in existence as a member of the group at the end of the group's tax year; provided, that such loss carryover has not previously been taken by the member itself before it joined the group or by another unitary group of financial institutions at the time the financial institution generating the loss was a member of that group; and provided, that the loss carryover shall be subject to the limitations set forth in this subsection (c).

(5) There shall be added to the net loss as determined for excise tax purposes, all nonbusiness earnings, interest and dividends, excluded from net earnings pursuant to this section, and any other income excluded from net earnings pursuant to this section.

(6)(A) Notwithstanding subdivision (c)(1) to the contrary, a taxpayer that qualifies for the job tax credit provided in § 67-4-2109(b)(2)(B)(i) in connection with a required capital investment in excess of one billion dollars ($1,000,000,000) shall be allowed to carry forward and deduct any qualified net operating loss until the loss is fully utilized, and shall not be limited to a carryforward period of fifteen (15) years; provided, that the commissioner of revenue and the commissioner of economic and community development determine that extending the period during which the loss may be utilized is in the best interests of the state. For purposes of this subdivision (c)(6), "best interests of the state" includes, but is not limited to, a determination that the taxpayer made the required capital investment as a result of such action.

(B) Subdivision (c)(6)(A) shall apply only to applications received and approved by the commissioner of revenue and the commissioner of economic and community development on or before January 1, 2011.

(7)(A) Notwithstanding subdivision (c)(1) to the contrary, a taxpayer that qualifies for the job tax credit provided in § 67-4-2109(b)(2)(B)(ii), (b)(2)(B)(iii) or (b)(2)(B)(iv) in connection with a required capital investment in excess of one hundred million dollars ($100,000,000) shall be allowed to carry net operating losses forward beyond the initial fifteen-year period authorized under subdivision (c)(1), if the commissioner of revenue and the commissioner of economic and community development determine that extending the period during which the loss may be carried forward is in the best interest of the state. For purposes of this subdivision (c)(7), "best interests of the state" includes, but is not limited to, a determination that the taxpayer made the required capital investment as a result of such action. The commissioner of revenue and the commissioner of economic and community development shall determine the period during which net operating loss carryforward shall be allowed beyond the

initial fifteen-year period.

(B) Subdivision (c)(7)(A) shall apply only to applications received and approved by the commissioner of revenue and the commissioner of economic and community development on or before January 1, 2011.

(d) Any taxpayer that pays, accrues or incurs intangible expenses as a result of a transaction with one (1) or more affiliates and fails to add such expenses to net earnings or net losses in accordance with subdivision (b)(1)(K) shall be subject to a negligence penalty as set forth in § 67-1-804(b)(2).

(e)(1) Any financial institution that receives dividends, directly or indirectly, from one (1) or more captive REITs must disclose the dividends on a form prescribed by the commissioner. If a financial institution fails to make the required disclosure, the deduction allowed under subdivision (b)(2)(A) with respect to any direct or indirect dividends from the captive REIT or REITs shall be disallowed, the taxpayer's net earnings under this section shall be adjusted accordingly, and the taxpayer shall be subject to a negligence penalty as set forth in § 67-1-804(b)(2). If the taxpayer wishes to contest the adjustment, the taxpayer shall have the remedies set forth in chapter 1, part 18 of this title.

(2) For purposes of this subsection (e), "captive REIT" means an entity with an election in effect under § 856(c)(1) of the Internal Revenue Code, codified in 26 U.S.C. § 856(c)(1), in which the financial institution, directly or indirectly, has at least eighty percent (80%) ownership interest by value determined in accordance with generally accepted accounting principles and whose shares are not traded on a national stock exchange.

(f) The amount computed under subsections (a)-(e) shall be the taxpayer's net earnings for purposes of the Tennessee excise tax base to which the tax rate is applied as provided in § 67-4-2007.

67-4-2009. Credits.

The tax imposed by this part shall be in addition to all other taxes and there shall be no credit allowed upon it except the following:

(1) In accordance with § 56-4-217, there shall be credited upon the tax imposed by this part the net amount of gross premiums tax paid that is measured by a period that corresponds to the excise tax period on which the return is based, plus any amount used to offset payment to the Tennessee guaranty association that has not otherwise been recovered, but not including the gross premiums receipts tax paid by fire insurance companies for the purpose of executing the fire marshal law;

(2) When an audit of an excise tax return for any year not barred by the statute of limitations discloses a change in the amount of tax due, there may be applied upon it as a credit any amount that the taxpayer is otherwise entitled to receive either as a credit under part 4 or 5 of this chapter for excise taxes paid, or as a refund thereof under § 67-1-1802. This tax credit allowance may be applied notwithstanding the statute of limitations or the requirement for approval of certain refunds by the commissioner and the attorney general and reporter if such was made under § 67-1-1802, and also any statutory or regulatory requirement under various items of part 4 or 5 of this chapter that the excise tax be paid prior to the allowance of any credit;

(3)(A) There shall be allowed against the sum total of the taxes imposed by the franchise tax law, compiled in part 21 of this chapter, and by the

excise tax law, compiled in this part, a credit equal to one percent (1%) of the purchase price of industrial machinery purchased during the tax period covered by the return and located in Tennessee. For purposes of this section, "industrial machinery" means:

(i) "Industrial machinery" as defined by § 67-6-102; or

(ii) "Computer," "computer network," "computer software," or "computer system" as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware, such as printers, plotters, external disc drives, modems, and telephone units, purchased by a taxpayer in the process of making the required capital investment in Tennessee described in § 67-4-2109(a), if as a result of making such purchase and meeting the other requirements set forth in § 67-4-2109(b), the taxpayer qualifies for the job tax credit provided therein;

(B) The industrial machinery credit taken on any franchise and excise tax return, however, shall not exceed fifty percent (50%) of the combined franchise and excise tax liability shown by the return before the credit is taken;

(C)(i) Any unused credit may be carried forward in any tax period until the credit is taken; however, the credit may not be carried forward for more than fifteen (15) years;

(ii) If the taxpayer qualifies for the credit provided in subdivision (3)(I)(i), the fifteen-year limitation otherwise applicable to the carry-forward of unused credit shall not apply; provided, that the commissioner of economic and community development and the commissioner of revenue have determined that the allowance of the additional carry-forward is in the best interest of the state;

(iii) Subdivision (3)(C)(ii) shall apply only to applications received and approved by the commissioner of revenue and the commissioner of economic and community development on or before January 1, 2011;

(D) If the industrial machinery, for the purchase of which a tax credit has been allowed, is sold or removed from this state during its useful life according to the depreciation guidelines in effect for excise tax purposes, the department shall be entitled to recapture a portion of the credit allowed by increasing the franchise and/or excise tax liability of any taxpayer, for the taxable period during which the machinery was sold or removed, in an amount equal to the percentage of useful life remaining on the industrial machinery at the time of sale or removal times the total credit taken on the purchase of the machinery;

(E) For purposes of the allowance of the credit against franchise and excise taxes under this section, any taxpayer who is a lessee of new industrial machinery and the original user of the industrial machinery, including a lessee from an industrial development corporation as defined by title 7, chapter 53, or other tax exempt entity, shall be treated as having purchased the machinery during the tax period in which it is placed in service by the lessee, at an amount equal to its purchase price;

(F) If industrial machinery is leased for a period that constitutes less than eighty percent (80%) of its useful life, then the lessee shall be deemed to have purchased only a portion of the machinery, at an amount determined by multiplying the actual purchase price of the machinery by a fraction, the numerator of which is the lease term, and the denominator of which is the useful life of the leased machinery;

(G) Notwithstanding any provision of law to the contrary, the industrial machinery franchise and excise tax credit provided in this subdivision (3) may be computed by a general partnership that operates a call center in Tennessee that is placed in service by the general partnership on or after June 30, 2003, and that would otherwise qualify for the credit provided in § 67-4-2109(b)(3)(H). The industrial machinery franchise and excise tax credit shall be computed as if the general partnership were subject to franchise and excise tax. With respect to the general partnership tax year during which a credit is so computed, a partner in the general partnership that is subject to franchise and excise tax and that directly holds a first tier ownership interest in the general partnership may take a percentage of the credit that equals the total amount of the credit for the general partnership multiplied by the partner's percentage interest in the general partnership on the last day of the general partnership tax year against the partner's franchise and excise tax liability for the partner's tax year that includes the last day. The industrial machinery franchise and excise tax credit passed through from the general partnership to the first tier partner under this section shall, in the hands of the first tier partner, be subject to applicable provisions and limitations otherwise provided by this section, including carry forward provisions; provided, that in no case shall the credit or a carryover of a credit be taken by a business entity, unless it was a partner in the general partnership and subject to franchise and excise tax at the time the credit was earned by the general partnership;

(H) Notwithstanding any provision to the contrary, a taxpayer that has established its international, national, or regional headquarters in this state and has met the requirements to qualify for the credit provided in § 67-6-224, or a taxpayer that has established an international, national, or regional warehousing or distribution hub in this state and has met the requirements to be a qualified new or expanded warehouse or distribution facility, shall be allowed to offset up to one hundred percent (100%) of its franchise and/or excise tax liability by the industrial machinery credit provided in this subdivision (3), or any carryforward of the industrial machinery credit, if the commissioner of revenue and the commissioner of economic and community development determine that increasing the percentage of offset above that allowed by subdivision (3)(B) is in the best interests of the state. For purposes of this subdivision (3)(H), "best interests of the state" means a determination that the taxpayer established its headquarters or a warehousing or distribution hub in this state, or converted a regional headquarters or regional warehousing or distribution hub in this state into its national or international headquarters or a national or international warehousing or distribution hub, as a result of such action. The commissioner of revenue and the commissioner of economic and community development shall determine the percentage of franchise and/or excise tax liability allowed to be offset, above that otherwise allowed by subdivision (3)(B), and the period during which the increased offset shall continue;

(I)(i) If the taxpayer makes a required capital investment in excess of one billion dollars ($1,000,000,000) during the investment period, the credit allowed in subdivision (3)(A) shall be equal to ten percent (10%) of the purchase price of industrial machinery located in this state and purchased in the process of making the required capital investment. The

credit shall be subject to subdivisions (3)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (3)(I) shall be entitled to the credit for the items listed in subdivision (3)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(b);

(ii) If the taxpayer makes a required capital investment in excess of five hundred million dollars ($500,000,000) during the investment period, the credit allowed in subdivision (3)(A) shall be equal to seven percent (7%) of the purchase price of industrial machinery located in this state and purchased in the process of making the required capital investment. The credit shall be subject to subdivisions (3)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (3)(I) shall be entitled to the credit for the items listed in subdivision (3)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(b);

(iii) If the taxpayer makes a required capital investment in excess of two hundred fifty million dollars ($250,000,000) during the investment period, the credit allowed in subdivision (3)(A) shall be equal to five percent (5%) of the purchase price of industrial machinery located in this state and purchased in the process of making the required capital investment. The credit shall be subject to subdivisions (3)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (3)(I) shall be entitled to the credit for the items listed in subdivision (3)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(b);

(iv) If the taxpayer makes a capital investment in excess of one hundred million dollars ($100,000,000) during the investment period, the credit allowed in subdivision (3)(A) shall be equal to three percent (3%) of the purchase price of industrial machinery located in this state and purchased in the process of making the required capital investment. The credit shall be subject to subdivisions (3)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (3)(I) shall be entitled to the credit for the items listed in subdivision (3)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(b);

(v) The taxpayer shall file a business plan with the commissioner of revenue in order to qualify for the credit provided in this subdivision (3)(I). The business plan shall be filed on or before the last day of the first fiscal year in which the investment is made and shall describe the investment. The commissioner of revenue has the authority to conduct audits or require the filing of additional information necessary to substantiate or adjust the findings contained within the business plan and to determine that the taxpayer has complied with all statutory requirements so as to be entitled to the credit in this subdivision (3)(I);

(vi) The credit in this subdivision (3)(I) shall begin to apply in the first year of the investment period; however, if the required capital investment is not met during the investment period, the taxpayer shall be subject to an assessment equal to the amount of any credit taken under this subdivision (3)(I) for which the taxpayer failed to qualify, plus

interest;

(vii) For purposes of this subdivision (3)(I), unless the context otherwise requires:

(a) "Good cause" means a determination by the commissioner of economic and community development that the capital investment is a result of the credit provided in this subdivision (3)(I);

(b) "Investment period" means a period not to exceed three (3) years from the filing of the business plan related to the required capital investment, during which the required capital investment must be made. The three-year period for making the required capital investment may, for good cause shown, be extended by the commissioner of economic and community development for a reasonable period not to exceed four (4) years for a taxpayer that meets the requirements of subdivision (3)(I)(i) and not to exceed two (2) years for any other taxpayer; and

(c) "Required capital investment" means an increase of a business investment in real property, tangible personal property or computer software owned or leased in this state valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction; and

(J)(i) In addition to the credit provided in subdivision (3)(A), the owner of a qualifying environmental project shall be entitled to a one-time credit in the amount of one and three-fourths percent (1.75%) of the investment in the qualifying environmental project, and such credit shall have the same carry-forward features, limitations and other attributes as are applicable to job tax credits under § 67-4-2109(b)(1). The owner of a qualifying environmental project shall also be provided six (6) annual credits in the amount of one and three-fourths percent (1.75%) of the investment in the qualifying project, and such credits shall have the same carry-forward features, limitations and other attributes as are applicable to enhanced job tax credits under § 67-4-2109(b)(2)(B)(iii), and the entire investment in the qualifying environmental project shall be treated as exempt required capital investment for purposes of § 67-4-2108(a)(6)(G);

(ii) For purposes of this subdivision (3)(J), a "qualifying environmental project" means a project in which the taxpayer makes an investment in excess of one hundred million dollars ($100,000,000) to eliminate mercury from the manufacturing process and operations of one (1) or more existing chlor-alkali manufacturing and ancillary facilities and equipment in the state;

(iii) The maximum investment in a qualifying environmental project that is eligible for the credits provided under this subdivision (3)(J) is one hundred million dollars ($100,000,000), inclusive of all capital investment and other direct and indirect costs of the project. To be eligible for the credits provided under this subdivision (3)(J), construction of the qualifying environmental project must have commenced on or after January 1, 2011, and construction of the qualifying environmental project must be substantially complete on or before January 1, 2014. The credits provided under this subdivision (3)(J) shall first be available in the later of the year in which the qualifying environmental project is

substantially complete or July 1, 2013;

(iv) As a condition to receiving credits under this subdivision (3)(J), the owner of a qualifying environmental project shall agree to maintain an annual average of at least three hundred fifty (350) jobs in the state that meet the requirements set forth in § 67-4-2109(a)(6)(A) for a period of six (6) years after substantial completion of the qualifying environmental project. In the event the owner does not maintain the required number of qualified jobs in a specific year, the annual credit provided under this subdivision (3)(J) for that year shall be reduced in proportion to the percentage of the shortfall;

(v) As a further condition to receiving credits under this subdivision (3)(J), the owner of a qualifying environmental project shall agree to forego any and all claims for credits that may be available to the owner pursuant to § 67-4-2109(b)(1) and (2) in connection with the qualifying environmental project;

(4) A hospital company filing a franchise/excise tax return on a combined basis as required in § 67-4-2014(e), together with all other members of its combined group filing with it, shall be allowed as a credit against the combined annual franchise/excise tax imposed an amount equal to the lesser of the franchise tax or excise tax so that the combined annual franchise/excise tax of the combined group shall be limited to the greater of the two (2) of them; provided, that this credit shall not apply to tax years beginning on or after January 1, 2007;

(5) A hospital company filing a franchise/excise tax return on a combined basis as described in § 67-4-2014(e), together with all members of its combined group filing with it, shall be allowed as a further credit against the combined annual franchise/excise tax imposed on the group remaining after application of the credit allowed under subdivision (4) an amount equal to four percent (4%) of the cost of medical supplies and medical equipment used by or placed in service by the members of the controlled group in this state during the tax year; provided, that the aggregate amount of the credit allowed to a taxpayer under subdivision (4), together with the credit allowed to a taxpayer under this subdivision (5), shall not exceed nine million dollars ($9,000,000) in any one (1) tax year; and provided further, that the credit allowed under this subdivision (5) shall not apply to tax years beginning on or after January 1, 2007. A corporation or other entity shall be deemed to have used or placed in service medical supplies and medical equipment used or placed in service by a partnership or limited liability company of which it is a partner or member that would be a hospital company, as defined in § 67-4-2004, if it were a corporation or other entity upon which tax is imposed under this part and part 21 of this chapter, and would be a member of its same controlled group, as defined in § 267(f)(1) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 267(f)(1), if it were a corporation and its partners or members were shareholders. The amount of the cost of such medical supplies and medical equipment that is attributed to and deemed to have been used or placed in service by such corporation or other entity shall be equal to the pro rata portion of the cost of medical supplies and medical equipment used or placed in service by the partnership or limited liability company in the tax year. Such pro rata portion shall be determined based upon the corporation's or other entity's percentage of the profits and losses of such partnership or limited liability company during such tax year. As

used in this subdivision (5), "medical equipment" has the same meaning as "major medical equipment" as set forth in § 68-11-102(10) [repealed], but without the limitation therein as to the cost thereof; and "medical supplies" means all apparatus, consumable products, appliances, and other tangible personal property, except drugs and medicines, used in provision of patient health care services, including all recordkeeping and documentation in connection with such services;

(6)(A) Except for unitary groups of financial institutions, each taxpayer is considered a separate entity; therefore, in the case of mergers, consolidations, and like transactions, no tax credit incurred by the predecessor taxpayer shall be allowed as a credit on the tax return filed by the successor taxpayer. With the exception set forth in subdivision (6)(B), a credit carryforward may be taken only by the taxpayer that generated it;

(B) Notwithstanding the provisions contained in subdivision (6)(A), when a taxpayer merges out of existence and into a successor taxpayer that has no income, expenses, assets, liabilities, equity or net worth, any qualified Tennessee credit carryover of the predecessor that merged out of existence shall be available for carryover on the return of the surviving successor; provided, that the time limitations for the carryover have not expired;

(C) A unitary group of financial institutions may take any qualified credit that was generated by any group member that is in existence as a member of the group at the end of the group's tax year; provided, that such credit has not previously been taken by the member itself before it joined the group or by another unitary group of financial institutions at the time the financial institution generating the credit was a member of that group; and provided further, that the credit carryover shall be subject to the limitations set forth in this subdivision (6);

(7) A credit shall be allowed against the tax imposed by this part in an amount equal to the tax imposed by chapter 2 of this title paid by the taxpayer; and

(8)(A) Except as otherwise provided in subdivision (8)(D), there shall be allowed against the sum total of the taxes imposed by the franchise tax law, compiled in part 21 of this chapter, and by the excise tax law, compiled in this part, a credit equal to fifty percent (50%) of the purchase price of brownfield property purchased in Tennessee during the tax period covered by the return for the purpose of a qualified development project;

(B) For the purposes of this subdivision (8), unless the context otherwise requires:

(i) "Brownfield property" means real property that is the subject of an investigation or remediation as a brownfield project under a voluntary agreement or consent order pursuant to § 68-212-224;

(ii) "Capital investment" means a business investment in real property, tangible personal property or computer software owned or leased in this state valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction;

(iii) "Investment period" means a period not to exceed five (5) years from the filing of the business plan related to the required capital investment, during which the required capital investment must be

made;

(iv) "Non-prime agricultural property" means real property included within the United States department of agriculture land capability classification Classes IV, V, VI, VII and VIII; and

(v) "Qualified development project" means a project consisting of a capital investment of at least twenty-five million dollars ($25,000,000), utilizing at least five (5) acres of brownfield property, or non-prime agricultural property as provided in subdivision (8)(G), and having a business plan approved by the commissioner of revenue in accordance with the applicable provisions of subdivision (8)(E) or (8)(G);

(C) The credit allowed pursuant to this subdivision (8) shall apply against the excise tax imposed by this part and the franchise tax imposed by part 21 of this chapter; provided, however, that such credit, together with any carry-forward thereof, taken on any franchise and excise tax return shall not exceed fifty percent (50%) of the combined franchise and excise tax liability shown by the return before any credit is taken. Any credit authorized under this subdivision (8)(C) that is unused may be carried forward in any tax period until the credit is taken; provided, that the credit may not be carried forward for more than fifteen (15) years;

(D) If the taxpayer makes an enhanced capital investment equal to or in excess of two hundred million dollars ($200,000,000) during the investment period for the qualified development project, the credit allowed in subdivision (8)(A) shall be equal to seventy-five percent (75%) of the purchase price of the brownfield property purchased in Tennessee for the purpose of the project;

(E)(i) The taxpayer shall file a business plan for the development project with the commissioner of revenue in order to qualify for the credit provided in subdivision (8)(A) or the enhanced credit provided in subdivision (8)(D);

(ii) For purposes of the enhanced credit, the business plan shall be filed on or before the last day of the first fiscal year in which the investment is made and shall describe the capital investment;

(iii) Qualifying plans shall be approved by the commissioner of revenue. At such time, an approval letter authorizing the credit, the value of the credit and the terms of the credit shall be issued. A copy of the approval letter shall be filed by the taxpayer with the department of revenue in any year in which the taxpayer utilizes the credit;

(iv) The commissioner of revenue has the authority to conduct audits or require the filing of additional information necessary to substantiate or adjust the findings contained within the business plan and to determine that the taxpayer has complied with all statutory requirements so as to be entitled to the credit in this subdivision (8);

(F) The credit provided in this subdivision (8) shall begin to apply in the first year of the investment period as provided in the business plan; however, if the capital investment is not met during the investment period, the taxpayer shall be subject to an assessment equal to the amount of any credit taken under this subdivision (8) for which the taxpayer failed to qualify, plus interest;

(G) The aggregate amount of the credits allowed to all taxpayers under this subdivision (8) shall not exceed ten million dollars ($10,000,000) in any one (1) tax year; provided, that in any tax year in which it is

determined that credits remain available, the commissioner of revenue and the commissioner of economic and community development, in consultation with the commissioner of agriculture, may open availability to qualified development projects utilizing non-prime agricultural property. Credits for projects utilizing non-prime agricultural property shall be issued in the same manner and under the same terms as credits allowed for projects utilizing brownfield property except that all business plans for such projects shall be approved by the commissioner of economic and community development, in addition to the commissioner of revenue, and in consultation with the commissioner of agriculture;

(H) Notwithstanding any provision of this subdivision (8) to the contrary, no credit shall be allowed unless the commissioner of revenue and the commissioner of economic and community development determine, in their sole discretion, that the credit is in the best interest of the state. For purposes of this subdivision (8)(H), "best interest of the state" means a determination by the commissioner of revenue and the commissioner of economic and community development that the project is a result of the credit provided in this subdivision (8).

67-4-2015. Filing of returns — Payment of tax — Penalty.

(a) The franchise and excise tax return shall be filed with the commissioner on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year. The return shall coincide with the accounting period covered by the federal return and the appropriate tax must be paid to the department at the time of filing the return. In the event the return covers a period of less than twelve (12) months, the excise tax shall not be prorated.

(b) Every taxpayer, who has a combined franchise and excise tax liability of five thousand dollars ($5,000) or more for the current tax year, shall make four (4) equal quarterly estimated franchise and excise tax payments for its current tax year. A taxpayer electing to compute its net worth on a consolidated basis shall compute its quarterly estimated franchise and excise tax payments taking into consideration that its net worth will be computed on a consolidated basis. The minimum amount of each quarterly payment shall be the lesser of:

(1) Twenty-five percent (25%) of the combined franchise and excise tax shown on the tax return for the preceding tax year, annualized if the preceding tax year was for less than twelve (12) months; or

(2) Twenty-five percent (25%) of one hundred percent (100%) of the combined franchise and excise tax liability for the current tax year.

(c) The first quarterly payment shall be due on the fifteenth day of the fourth month of the current tax year; the second payment on the fifteenth day of the sixth month; the third payment on the fifteenth day of the ninth month; and the final payment on the fifteenth day of the first month of the next succeeding tax year.

(d) If there is a deficiency or delinquency of any quarterly estimated tax payment required, a penalty in the amount of five percent (5%) for each month of underpayment or part thereof not to exceed a total of twenty-five percent (25%) and interest at the rate prescribed by § 67-1-801 shall be assessed. Notwithstanding any provision of law to the contrary, a taxpayer that has timely made four (4) quarterly estimated franchise and excise tax payments, each of which equals at least twenty-five percent (25%) of the current year's franchise and excise tax liability, shall not be assessed a deficiency penalty

with regard to any quarterly payment.

(e) The period of underpayment of any required quarterly estimated franchise and excise tax payment shall extend from the date the payment was required to be paid to the earlier of:

(1) The fifteenth day of the fourth month following the close of the taxable year; or

(2) With respect to all or any portion of the underpayment, the date on which all or any portion of the underpayment is paid.

(f) A quarterly payment of estimated franchise and excise tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment payable for that date.

(g)(1)(A) An extension of time of six (6) months in which to file the franchise and excise tax return shall be granted if, on or before the original due date of the return, the extension request is made as required in subdivision (g)(2) and the taxpayer has paid franchise and excise taxes equal to at least the lesser of:

(i) Ninety percent (90%) of the liability for the tax year for which the extension is being requested; or

(ii) One hundred percent (100%) of the tax shown due on the tax return for the preceding tax year, annualized if the preceding tax year was for less than twelve (12) months; provided, however, that, if there was no liability for the preceding tax year, the amount paid shall equal the minimum tax amount provided in § 67-4-2119.

(B) A taxpayer electing to compute its net worth on a consolidated basis shall make its franchise, excise tax extension request and compute the payment thereon taking into consideration that its net worth will be computed on a consolidated basis.

(C) Where the taxes paid on or before the original due date of the return do not equal the amount provided in subdivision (g)(1)(A), or if the return is not filed by the extended due date, penalty as provided by § 67-1-804 and interest as provided by § 67-1-801(a) shall attach as though no extension had been granted.

(2) An extension request shall be made as follows:

(A) If the taxpayer is not required to make a tax payment with its extension request, the taxpayer may use either a form prescribed by the commissioner or a copy of the taxpayer's request for an automatic extension of time to file its federal income tax return for the corresponding tax period. The form shall not be filed on the original due date of the return but, instead, shall be attached to the return filed on or before the extended due date;

(B) If the taxpayer is required to make a tax payment with its extension request and the taxpayer does not file its federal income tax return as a member of a consolidated group, the taxpayer may use either a form prescribed by the commissioner or a copy of the taxpayer's request for an automatic extension of time to file its federal income tax return for the corresponding tax period. The form shall be filed with the tax payment on or before the original due date of the return; and

(C) If the taxpayer is required to make a tax payment with its extension request and the taxpayer files its federal income tax return as a member of a consolidated group, the taxpayer must use a form prescribed by the

commissioner. The form shall be filed with the tax payment on or before the original due date of the return.

67-4-2103. Corporations subject to tax — Exemptions.

(a) The supervision and collection of the tax imposed by this part is under the direction of the department of revenue, and the department has the authority and power to prescribe forms upon which entities liable for the tax imposed shall make reports of such facts and information as will enable the commissioner to ascertain the correctness of the amount reported and paid by such entities.

(b) The commissioner may, within the commissioner's discretion, require any taxpayer to file with its Tennessee franchise tax return, a copy of the federal tax forms filed with the internal revenue service for the same tax year.

(c) All persons subject to the tax imposed by this part shall register with the department of revenue by completing and filing a registration information form prescribed by the department. Such form shall be filed with the department within sixty (60) days after July 1, 1999, or within fifteen (15) days after the date the person becomes subject to the tax, whichever date occurs last; provided, that persons registered under prior law, or who have filed a return under prior law, are not required to register for the tax imposed by this part.

(d) Notwithstanding any law to the contrary, except as otherwise provided in this subsection (d), for tax years beginning on or after January 1, 2004, a taxpayer that is a member of an affiliated group or a financial institution affiliated group may elect to compute its net worth on a consolidated basis; provided, that, upon such election, each member of the group shall be required to compute its net worth on a consolidated basis. However, such election shall not be allowed, unless each member of the group closes its taxable year on the same date, except that the election shall be allowed when a member exits the group during the taxable year due to a change in ownership, merger, or liquidation of the member, in which case the member exiting the group shall be excluded from the group and shall compute its net worth as otherwise provided in this part.

(e) If a taxpayer joins an affiliated group or financial institution affiliated group and the group has elected to compute its net worth on a consolidated basis, the taxpayer joining the group shall be bound by the group's election.

(f) If an affiliated group does not qualify as a financial institution affiliated group but contains a member that is classified as a financial institution based solely on the fact that the member generates more than fifty percent (50%) of its gross income from conducting the business of a financial institution, then any such member shall calculate its net worth base using the apportionment methodology applicable to the entire group.

(g) A taxpayer electing to compute its net worth on a consolidated basis shall make such election by filing a group registration form with the department and providing such information as may be reasonably required by the commissioner on or before the due date of the tax return for the period for which such election is to take effect. If a member of an affiliated group or a financial institution affiliated group enters or leaves the group at any time during the tax year, the department shall be advised by filing an amended group registration form and providing such information as the commissioner may reasonably require on or before the due date of the tax return for the period

during which such event occurs. The election of an affiliated group to compute its net worth on a consolidated basis shall not be terminated solely as a result of the taxpayer's failure to advise the department of members entering or leaving the group.

(h) Once a taxpayer elects to compute its net worth on a consolidated basis, such election shall remain in effect for a minimum of five (5) tax years and thereafter until revoked. The affiliated group may revoke such election after the minimum period by filing a group registration revocation form with the department and providing such information as the commissioner may reasonably require on or before the due date of the tax return for the period during which such election is to be revoked.

(i) The commissioner is authorized to accept a late election, a late revocation of an election, or to permit an early revocation of an election to compute net worth on a consolidated basis, if the commissioner determines that there is a good and reasonable cause for such action. For tax returns filed for periods beginning January 1, 2004, and ending on or before December 31, 2006, an affiliated group shall be allowed to compute its net worth on a consolidated basis by filing an amended return along with a group registration form and such information as may be reasonably required by the commissioner.

(j)(1) Upon written request by the taxpayer making the election under subsection (d), the commissioner is authorized, in the commissioner's discretion, to allow the exclusion of one (1) or more persons that would otherwise be members of the taxpayer's affiliated group, if the commissioner determines that:

(A)(i) Such persons are included in the taxpayer's affiliated group solely by virtue of a direct or indirect interest and are so operationally remote from the taxpayer that the taxpayer would be unable to obtain the information necessary to calculate the net worth of the group if such persons were included as members; or

(ii) Such person has a direct or indirect interest in both the taxpayer and one or more persons described in subdivision (j)(1)(A)(i) and is so operationally remote from the taxpayer that the taxpayer would be unable to obtain the information necessary to calculate the net worth of the group if such person was included as a member; and

(B) The exclusion of such persons from the affiliated group would result in a fair representation of the affiliated group's consolidated net worth.

(2) Such written request shall provide such information as may be reasonably required by the commissioner and shall be submitted on or before the due date of the tax return for the period for which such exclusion is to take effect. The commissioner is authorized to accept a late request if the commissioner determines that there is a good and reasonable cause for such action. If the commissioner allows the exclusion of persons from the taxpayer's affiliated group under subdivision (j)(1), all members of the taxpayer's affiliated group shall be bound by such exclusion.

67-4-2105. Persons doing business in Tennessee subject to tax.

(a) All persons doing business in Tennessee, including any limited liability company regardless of how it is treated for federal income tax purposes, or any person exercising the corporate franchise, except for those having not-for-profit status or otherwise exempt under § 67-4-2008 or under subsection (b), shall

pay to the commissioner of revenue annually a privilege tax in addition to all other taxes, the rate and measure of which are hereinafter set forth. The tax shall be paid for the privilege of doing business in Tennessee, and shall be in addition to all other taxes levied by any other statute. Notwithstanding any provision of law to the contrary, a not-for-profit entity shall be subject to the franchise tax on all of its Tennessee net worth or real or tangible personal property owned or used, as the case may be, that is attributable to activities subject to income taxes under § 512 or any other provision of subtitle A of the Internal Revenue Code. Notwithstanding any provision of law to the contrary, a taxpayer that is exempted from the franchise tax shall be subject to such tax on all of its Tennessee net worth or real or tangible personal property owned or used, as the case may be, that is attributable to any activities that are unrelated to and outside the scope of the activities that gave the entity its exempt status.

(b) Every taxpayer as described in subsection (a) shall, as a recompense for the protection of its local activities and as compensation for the benefits it receives from doing business in Tennessee, pay the tax imposed by this part.

(c) The tax imposed by this part shall apply to taxpayers whose business is being conducted by a receivership or trusteeship appointed by any court of competent jurisdiction, and shall continue to accrue until such time as the taxpayer has been actually and legally dissolved or withdrawn from this state. A person doing business in Tennessee without incorporating, domesticating, qualifying or otherwise registering in Tennessee or doing business in Tennessee while its charter, domestication, qualification or other registration is forfeited, revoked or suspended shall not be relieved from filing a return and paying the franchise tax levied by this part for each tax year that it does business in Tennessee.

(d)(1) A financial institution shall be presumed, subject to rebuttal, to be doing business in this state, if the sum of its assets and the absolute value of its deposits attributable to sources within this state is five million dollars ($5,000,000) or more.

(2) Additionally, a financial institution shall be deemed to be doing business in this state, if the institution:

(A) Maintains an office in this state;

(B) Has an employee, representative or independent contractor conducting business in this state;

(C) Regularly sells products or services of any kind or nature to customers in this state that receive the product in this state;

(D) Regularly solicits business from potential customers in this state;

(E) Regularly performs services outside this state that are consumed in this state;

(F) Regularly engages in transactions with customers in this state that involve intangible property, including loans, and result in receipts flowing to the taxpayer from within this state;

(G) Owns or leases property located in this state; or

(H) Regularly solicits and receives deposits from customers in this state.

(e) Notwithstanding any other provision to the contrary, a financial institution is not considered to be conducting the business of a financial institution in this state, if the only activity of the financial institution in this state is the ownership of an interest in one (1) or more of the following types of property,

including those activities within this state that are reasonably required to evaluate and complete the acquisition or disposition of the property, or the servicing of the property, or the income from it, the collection of income from the property, or the acquisition or liquidation of the collateral relating to the property:

(1) An interest in a real estate mortgage investment conduit, a real estate investment trust, or a regulated investment company as those terms are defined by the Internal Revenue Code of 1986;

(2) An interest in a loan-backed security representing ownership or participation in a pool of promissory notes or certificates of interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates;

(3) An interest in a loan, lease, note or other assets attributed to this state and in which the payment obligations were solicited and entered into by an independent person that is not acting on behalf of the owner;

(4) An interest in the right to service or collect income from a loan or other asset from which interest on the loan or other asset is attributed to this state and in which the payment obligations were solicited and entered into by an independent person that is not acting on behalf of the owner;

(5) An interest in demand deposit clearing accounts, federal funds, certificates of deposit and other similar wholesale banking instruments issued by other financial institutions;

(6) An interest in a security;

(7) An interest of a financial institution in any intangible, tangible, real or personal property acquired in satisfaction, whether in whole or in part, of any asset embodying a payment obligation that is in default, whether secured or unsecured, if the ownership of the interest would be exempt otherwise as provided in subdivisions (e)(1)-(4);

(8) For the purposes of subdivisions (e)(3) and (4), an "independent person who is not acting on behalf of the owner" is defined as follows:

(A) At the time of the acquisition of the assets, the owner of the assets shall not directly or indirectly own fifteen percent (15%) or more of the outstanding stock or, in the case of a partnership, fifteen percent (15%) or more of the capital or profits interest of the entity from which the owner originally acquired the assets. In determining indirect ownership, an owner is deemed to own all of the stock, capital interest or profits interest owned by another person, if the owner directly owns fifteen percent (15%) or more of the stock, capital interest or profits interest in that other person. Also, the owner is deemed to own all stock, capital interest and profits interest directly owned by any intermediary parties in the transaction, to the extent a fifteen percent (15%) or more chain of ownership of stock, capital interest or profits interest exists between the owner and any intermediary party;

(B) The entity from which the owner acquired the assets shall regularly sell, assign or transfer interest in such assets to three (3) or more persons during the full twelve-month period immediately preceding the month of acquisition; and

(C) The entity from which the owner acquired the assets shall not sell, assign or transfer ninety percent (90%) or more of its exempt assets to the owner during the full twelve-month period immediately preceding the month of acquisition.

67-4-2109. Credit for gross premiums tax and job tax.

(a) As used in subsection (b):

(1) "Best interests of the state" means a determination by the commissioner of revenue and the commissioner of economic and community development that the capital investment or jobs are a result of the credit provided in this section. In addition to its use in subsection (b), the definition in this subdivision (a)(1) shall apply to this section in its entirety unless otherwise specifically provided;

(2)(A) "Enhancement county" means a county that meets one (1) of the following criteria for any month during the twenty-four (24) months immediately prior to the creation of any qualified job for which a job tax credit is sought pursuant to subsection (b), based on monthly statistics from the department of labor and workforce development:

(i) The average number of dislocated workers in the county exceeds the average number of dislocated workers in this state; or

(ii) The per capita income of the county is less than Tennessee's average per capita income;

(B) Notwithstanding subdivision (a)(2)(A), based on an annual evaluation as of July 1 of each year, the commissioner of economic and community development may determine that a county qualifies as an enhancement county if the county experiences substantial characteristics of economic distress, including, but not limited to, major loss of employment, recent high unemployment rates, traditionally low levels of family incomes, high levels of poverty and high concentrations of employment in declining industries;

(C) Upon determining that a county qualifies as an enhancement county under subdivision (a)(2)(A) or (a)(2)(B), the department of economic and community development shall designate the county as a tier 1, tier 2, or tier 3 enhancement county based on unemployment, per capita income, and poverty levels of all Tennessee counties using statistical data prepared by any agency of the state or federal government no later than July 1 of each year. A list of all tier 1, tier 2, and tier 3 enhancement counties shall be published annually by the department of economic and community development;

(3) "Industrial wage job" means a qualified job with wages equal to or greater than the state's average occupational wage, as defined in § 67-4-2004, for the month of January of the year during which the job was created;

(4) "Investment period" means the period during which qualified jobs are created as a result of the required capital investment; provided, however, that the period shall not exceed three (3) years from the effective date of the business plan;

(5) "Qualified business enterprise" means an enterprise:

(A) In which the business has made the required capital investment necessary to permit the creation or expansion of manufacturing, warehousing and distribution, processing tangible personal property, research and development, computer services, call centers, headquarters facilities, as defined in § 67-6-224(b), convention or trade show facilities, or tourism related businesses, including, but not limited to, restaurants, lodging establishments, or other tourism related attractions;

(B) In which the business has made the required capital investment necessary to permit the creation or expansion of a repair service facility primarily engaged in providing repairs for aircraft owned by unrelated

commercial, governmental or foreign persons; or

(C) That promotes high-skill, high-wage jobs in high-technology areas, emerging occupations or skilled manufacturing jobs in which the business has made the required capital investment necessary to permit an increase in the number of qualified jobs in that county and that receives an approval from the commissioner of revenue and the commissioner of economic and community development in a manner prescribed by the department of revenue;

(6) "Qualified job" means a job that meets all of the following criteria:

(A) The job position is a permanent, rather than seasonal or part-time, employment position providing employment in a qualified business enterprise for at least twelve (12) consecutive months to a person for at least thirty-seven and one half (37 ½) hours per week with minimum health care, as described in title 56, chapter 7, part 22;

(B) The job position is newly created in this state and, for at least ninety (90) days prior to being filled by the taxpayer, did not exist in this state as a job position of the taxpayer or of another business entity;

(C) The job position is filled; provided, however, that a position will be deemed filled if it subsequently becomes vacant but is refilled within a period of not more than ninety (90) days; and

(D) The job position is filled prior to January 1, 2016; and

(7) "Required capital investment", except for convention or trade show enterprises, means an investment of five hundred thousand dollars ($500,000) in real property, tangible personal property or computer software owned or leased in this state valued in accordance with generally accepted accounting principles. For businesses engaged in convention or trade show enterprises, "required capital investment" means an investment of ten million dollars ($10,000,000) in such property in the same manner described for other enterprises. A capital investment shall be deemed to have been made as of the date of payment or the date the business enterprise enters into a legally binding commitment or contract for purchase or construction.

(b)(1) **Job Tax Credit; General Provisions.**

(A) Subject to the requirements set forth in this subsection (b), there shall be allowed to any qualified business enterprise that makes the required capital investment a credit equal to four thousand five hundred dollars ($4,500) for each qualified job created during the investment period.

(B) The qualified business enterprise shall file a business plan with the commissioner in order to qualify for the credit provided by this subsection (b). The business plan shall be filed in a manner prescribed by the commissioner and shall describe the investment to be made, the number of jobs the investment will create, the expected dates the jobs will be filled and the effective date of the plan.

(C) In order to qualify for the credit, the qualified business enterprise must, within the investment period, make the required capital investment and create at least twenty-five (25) qualified jobs. The credit provided in subdivision (b)(1)(A) shall first apply in the tax year in which the qualified business enterprise first satisfies the capital investment and job creation requirements and in subsequent tax years within the investment period in which further net increases occur above the level of employment established when the credit was last taken.

(D) The credit shall apply against the franchise tax imposed by this part and the excise tax imposed by part 20 of this chapter; provided, however, that the credit, together with any carry-forward thereof, taken on any franchise and excise tax return shall not exceed fifty percent (50%) of the combined franchise and excise tax liability shown on the return before any credit is taken. Any unused credit may be carried forward in any tax period until the credit is taken; provided, however, that the credit may not be carried forward for more than fifteen (15) years.

(E) The commissioner of revenue has the authority to conduct audits or require the filing of additional information necessary to substantiate or adjust the findings contained within the business plan and to determine that the business enterprise has complied with all statutory requirements so as to be entitled to the credit.

(F) Nothing in this subsection (b) shall require that the taxpayer establish its commercial domicile in this state in order to receive the credit provided in this subsection (b).

(2) **Job Tax Credit; Additional Annual Credit.** In addition to the credit allowed in subdivision (b)(1), the following tax credit shall be allowed in the circumstances described; provided, that the taxpayer otherwise meets all of the requirements of subdivision (b)(1):

(A) If the qualified business enterprise is located in a tier 2 or tier 3 enhancement county, an annual credit shall be allowed as follows:

(i) If the qualified business enterprise is located in a tier 2 enhancement county, the additional annual credit shall be allowed for a period of three (3) years beginning with the first tax year in which the qualified business enterprise applies the credit in accordance with subdivision (b)(2)(D);

(ii) If the qualified business enterprise is located in a tier 3 enhancement county, the additional annual credit shall be allowed for a period of five (5) years beginning with the first tax year in which the qualified business enterprise applies the credit in accordance with subdivision (b)(2)(D);

(iii) The additional annual credit shall equal four thousand five hundred dollars ($4,500) for each qualified job; provided, that the job remains filled by employees during the year in which the credit is being taken. This annual credit may be used to offset up to one hundred percent (100%) of the taxpayer's franchise and excise tax liability for that year. Any unused annual credit, however, shall not be carried forward beyond the year in which the credit originated;

(B) If the qualified business enterprise involves a higher level of investment and job creation, as specifically described in subdivisions (b)(2)(B)(i)-(v), an annual credit shall be allowed as follows:

(i) If the investment exceeds one billion dollars ($1,000,000,000) and at least five hundred (500) industrial wage jobs are created, the additional annual credit shall be allowed for a period of twenty (20) years beginning with the first tax year in which the qualified business enterprise applies the credit in accordance with subdivision (b)(2)(D);

(ii) If the investment exceeds five hundred million dollars ($500,000,000) and at least five hundred (500) industrial wage jobs are created, the additional annual credit shall be allowed for a period of twelve (12) years beginning with the first tax year in which the qualified business enterprise applies the credit in accordance with subdivision

(b)(2)(D);

(iii) If the investment exceeds two hundred fifty million dollars ($250,000,000) and at least two hundred fifty (250) industrial wage jobs are created, the additional annual credit shall be allowed for a period of six (6) years beginning with the first tax year in which the qualified business enterprise applies the credit in accordance with subdivision (b)(2)(D). An integrated supplier or integrated customer, as defined in § 67-4-2004, shall qualify for the credit provided in this subdivision (b)(2)(B)(iii), regardless of the level of its capital investment or the number of jobs created;

(iv) If the investment exceeds one hundred million dollars ($100,000,000) and at least one hundred (100) industrial wage jobs are created, the additional annual credit shall be allowed for a period of three (3) years beginning with the first tax year in which the qualified business enterprise applies the credit in accordance with subdivision (b)(2)(D);

(v) If the investment exceeds ten million dollars ($10,000,000) and at least one hundred (100) qualified jobs are created that also meet the definition of headquarters staff employees under § 67-6-224 and pay at least one hundred fifty percent (150%) of the state's average occupational wage for the month of January of the year in which the jobs are created, the additional annual credit shall be allowed for a period of three (3) years beginning with the first tax year in which the qualified business enterprise applies the credit in accordance with subdivision (b)(2)(D);

(vi) The additional annual credit shall equal five thousand dollars ($5,000) for each job specifically described in subdivisions (b)(2)(B)(i)-(v); provided, that the jobs remain filled during the year in which the credit is being taken. This annual credit may be used to offset up to one hundred percent (100%) of the taxpayer's franchise and excise tax liability for that year. Any unused annual credit, however, shall not be carried forward beyond the year in which the credit originated;

(vii) The taxpayer shall be allowed a period not to exceed three (3) years from the effective date of the business plan in order to make the required capital investment necessary to qualify for the additional annual credit allowed under this subdivision (b)(2)(B). If determined to be in the best interests of the state, the three-year period for making the required investment may be extended by the commissioner of economic and community development for a reasonable period not to exceed two (2) additional years, or four (4) additional years if the investment exceeds one billion dollars ($1,000,000,000).

(C) If the qualified business enterprise is located in an area designated as an adventure tourism zone pursuant to § 11-11-204(c), an annual credit shall be allowed as follows:

(i) The additional annual credit shall be allowed for a period of three (3) years beginning with the first tax year in which the qualified business enterprise applies the credit in accordance with subdivision (b)(2)(D);

(ii) The additional annual credit shall equal four thousand five hundred dollars ($4,500) for each qualified job; provided, that the job remains filled by employees during the year in which the credit is being

taken. This annual credit may be used to offset up to one hundred percent (100%) of the taxpayer's franchise and excise tax liability for that year. Any unused annual credit, however, shall not be carried forward beyond the year in which the credit originated.

(D) The qualified business enterprise may first apply the credit provided in this subdivision (b)(2) in any tax year after the qualified business enterprise has met all of the requirements of subdivisions (b)(1) and (b)(2); provided, however, that the qualified business enterprise must begin to apply the credit no later than the first tax year following the end of the investment period.

(E) Notwithstanding any provision to the contrary, the circumstances described in subdivisions (b)(2)(A)(i)-(ii) and (b)(2)(B)(i)-(v) shall be deemed to be mutually exclusive and a taxpayer shall not receive a credit under more than one (1) such subdivision for jobs created during a single investment period.

(3) **Job Tax Credit; Special provisions.** This subdivision (b)(3) shall serve as exceptions to subdivisions (b)(1) and (2). To the extent a conflict exists between this subdivision (b)(3) and subdivision (b)(1) or (b)(2), this subdivision (b)(3) shall control. Otherwise, subdivisions (b)(1) and (2) shall apply to any credits provided under this subsection (b):

(A) The job tax credit allowed in subdivision (b)(1) shall be increased from four thousand five hundred dollars ($4,500) to five thousand dollars ($5,000) if the qualified business enterprise qualifies for the additional annual credit allowed in subdivision (b)(2)(B);

(B) If determined to be in the best interests of the state, the commissioner is authorized to allow the credit to a qualified business enterprise that is located in an enhancement county upon the creation of less than twenty-five (25) qualified jobs. The commissioner of revenue and the commissioner of economic and community development shall determine the number of qualified jobs necessary for the taxpayer to receive the credit;

(C) If the qualified business enterprise is located in a tier 2 enhancement county, the taxpayer shall have three (3) years in order to create the minimum number of qualified jobs necessary to receive the credit. If the qualified business enterprise is located in a tier 3 enhancement county, the taxpayer shall have five (5) years to create the minimum number of qualified jobs necessary to receive the credit;

(D)(i) If the required capital investment exceeds one billion dollars ($1,000,000,000), the time limitations otherwise applicable to the carry-forward of unused job tax credits under subdivision (b)(1)(D) and subdivision (b)(2)(B)(vi) shall not apply, and any unused credit may be carried forward until fully utilized, if the commissioner of revenue and the commissioner of economic and community development have determined that the allowance of the additional carry-forward is in the best interests of the state;

(ii) Subdivision (b)(3)(D)(i) shall apply only to applications received and approved by the commissioner of revenue and the commissioner of economic and community development on or before January 1, 2011;

(E) The commissioner of revenue, with the approval of the commissioner of economic and community development, is authorized to approve job tax credit in cases where the newly created position existed in this

state as a job position of the taxpayer or of another business entity less than ninety (90) days prior to being filled by the taxpayer; provided, that all other requirements to obtain the credit have been satisfied by the taxpayer; and provided, further, that the commissioner of revenue and the commissioner of economic and community development have determined that allowance of the credit is in the best interests of the state;

(F) A taxpayer that has established its international, national or regional headquarters in this state and has met the requirements to qualify for the credit provided in § 67-6-224, or a taxpayer that has established an international, national or regional warehousing or distribution hub in this state and has met the requirements to be a qualified new or expanded warehouse or distribution facility, shall be allowed to offset up to one hundred percent (100%) of its franchise or excise, or both, tax liability by job tax credits, or any carry-forward of the job tax credits, if the commissioner of revenue and the commissioner of economic and community development determine that increasing the percentage of offset permitted to the taxpayer is in the best interests of the state. The commissioner of revenue and the commissioner of economic and community development shall determine the percentage of franchise or excise, or both, tax liability allowed to be offset by this subdivision (b)(3)(F) that otherwise allowed by subdivision (b)(1) and the period during which the increased offset shall continue;

(G) The credits otherwise provided in this subsection (b) shall be allowed for new high-skill, high-wage, qualified jobs in high-technology areas, emerging occupations or skilled manufacturing, regardless of whether net employment is increased; provided, however, that this subdivision (b)(3)(G) shall apply only to new jobs created by a taxpayer who failed to meet the net increase requirement due to worker layoffs or reductions, where such workers have been certified by the federal department of labor's division of trade adjustment assistance as having been adversely affected by foreign trade, so as to be eligible for assistance in accordance with the federal Trade Adjustment Assistance Reform Act of 2002, compiled in U.S.C. title 19. A taxpayer seeking qualification for jobs tax credits under this subsection (b) shall be required to satisfy all other requirements of this subsection (b), and shall be required to provide evidence to the commissioner of revenue of the department of labor's certification of eligibility for assistance for the taxpayer's adversely affected worker group;

(H) The credits provided by this subsection (b) may be computed by a general partnership that establishes and operates a call center in Tennessee that is placed in service by the general partnership on or after June 30, 2003, and that would otherwise qualify for the job tax credit provided in this subsection (b); provided, that the credit shall first apply in the tax year in which the qualified business enterprise increases net full-time employment by four hundred (400) or more jobs, and shall then apply in those subsequent fiscal years in which further net increases occur above the level of employment established when the credit was last taken. The credit provided in this subsection (b) may also be computed by a general partnership that has established an international, national or regional headquarters in this state that meets the definition of a qualified headquarters facility under § 67-6-224 and would otherwise qualify for the job

tax credits provided in this subsection (b). The amount of the credit shall be computed under the provisions of this subsection (b) as if the general partnership were subject to franchise and excise tax under parts 20 of this chapter and this part. With respect to the general partnership tax year during which a credit is so computed, a partner in the general partnership that is subject to Tennessee franchise and excise tax and that directly holds a first tier ownership interest in the general partnership may take a percentage of the credit that equals the total amount of the credit for the general partnership multiplied by the partner's percentage interest in the general partnership on the last day of the general partnership tax year against the partner's franchise and excise tax liability for the partner's tax year that includes the last day. The job tax credit passed through from the general partnership to the first tier partner under this subsection (b) shall, in the hands of the first tier partner, be subject to applicable provisions and limitations otherwise provided by this subsection (b), including carry-forward provisions; provided, that in no case shall the credit or a carryover thereof be taken by a business entity, unless it was a partner in the general partnership and subject to franchise and excise tax at the time the credit was earned by the general partnership;

(I) If determined to be in the best interests of the state, the commissioner of revenue and the commissioner of economic and community development are authorized to lower the number of jobs that must be created in order to qualify for the additional annual credit provided in subdivision (b)(2)(B); provided, however, that the amount of the credit shall also be reduced in direct proportion to the reduction in the job creation requirement. Under no circumstances, however, shall the job creation requirement be lowered by more than fifty percent (50%);

(J) Any airline company that has established its international, national or regional headquarters in this state and has met the requirements to qualify for the credit provided in § 67-6-224 may elect to convert any available and unused job tax credit created under subdivision (b)(1) and any available and unused additional annual credit created under subdivision (b)(2) into a refundable credit which shall be discounted to net present value using the interest rate in effect pursuant to the provisions of § 67-1-801 on the date of such election; provided, however, that the election shall be available only if the commissioner of revenue and the commissioner of economic and community development determine that allowance of the election is in the best interests of the state.

(c) In accordance with § 56-4-217, there shall be credited upon the tax imposed by this part the net amount of gross premiums tax paid that is measured by a period that corresponds to the franchise tax period on which the return is based, plus any amount used to offset payment to the Tennessee guaranty association that has not otherwise been recovered, but not including the gross premiums receipts tax paid by fire insurance companies for the purpose of executing the fire marshal law.

(d) When an audit of a tax return for any year not barred by the statute of limitations discloses a change in the amount of tax due, there may be applied upon it as a credit any amount that the taxpayer is otherwise entitled to receive either as a credit under parts 4-6 of this chapter for franchise taxes paid, or as a refund thereof under § 67-1-707. This tax credit allowance may be applied, notwithstanding the statute of limitations or the requirement for

approval of certain refunds by the commissioner and the attorney general and reporter, if such was made under § 67-1-707, and also any statutory or regulatory requirement under various sections of parts 4-6 of this chapter that the franchise tax be paid prior to the allowance of any credit.

(e)(1) Each taxpayer is considered a separate entity; therefore, in the case of mergers, consolidations, and like transactions, no tax credit incurred by the predecessor taxpayer shall be allowed as a deduction on the tax return filed by the successor taxpayer. With the exception set forth in subdivision (e)(2), a credit carryforward may be taken only by the taxpayer that generated it.

(2) Notwithstanding the provisions contained in subdivision (e)(1), when a taxpayer merges out of existence and into a successor taxpayer that has no income, expenses, assets, liabilities, equity or net worth, any qualified Tennessee credit carryover of the predecessor that merged out of existence shall be available for carryover on the return of the surviving successor; provided, that the time limitations for the carryover have not expired.

(3) A unitary group of financial institutions may take any qualified credit that was generated by any group member that is in existence as a member of the group at the end of the group's tax year; provided, that such credit has not previously been taken by the member itself before it joined the group or by another unitary group of financial institutions at the time the financial institution generating the credit was a member of that group; and provided further, that the credit carryover shall be subject to the limitations set forth in this subsection (e).

(f)(1) As used in this subsection (f), unless the context otherwise requires:

(A) "Full-time employee job" means a permanent, rather than seasonal or part-time, employment position, providing employment for at least twelve (12) consecutive months, to a person for at least thirty-seven and one half (37.5) hours per week, if that person is enrolled in minimal health care benefits, as described in title 56, chapter 7, part 22; and

(B) "Part-time employee job" means a part-time employment position, providing employment for at least twelve (12) consecutive months, to a person for at least ten (10) hours per week.

(2) A job tax credit of five thousand dollars ($5,000) for each net new full-time employee job, and two thousand dollars ($2,000) for each net new part-time employee job, for a person with disabilities who is receiving state services directly related to such disabilities, shall be allowed against a taxpayer's franchise and excise liability tax for that year; provided, that:

(A) The employment of such individual creates a net increase in the number of persons with disabilities employed by the taxpayer within the ninety-day period immediately preceding the employment;

(B) The taxpayer provides such employment for at least twelve (12) consecutive months and for no less than the minimal hours per week; and for employees enrolled in the minimal health care benefits described in subdivision (f)(1), for respective full-time employment jobs and part-time employment jobs;

(C) The credit allowed by this subdivision (f)(2) for the employment of persons with disabilities shall first apply in the tax year in which the taxpayer increases net new employment of such persons by one (1) or more, and in those subsequent fiscal years in which further net increases occur above the level of such employment established when the credit was last taken;

(D) The taxpayer is not required to make a capital investment in a qualified business enterprise in order to receive the credit allowed by this subdivision (f)(2) for the employment of persons with disabilities; and

(E) The credit provided by this subdivision (f)(2) may be granted only to taxpayers who participate in an existing employment incentive program, pursuant to which persons with disabilities are being served by the department of mental health and substance abuse services, the department of intellectual and developmental disabilities, the division of rehabilitation services of the department of human services, council on developmental disabilities, or any other similar state employment incentive program. Such employment incentive programs shall annually provide to the commissioner of revenue for approval, on or before July 1, a list of their existing employment incentive programs promoting the hiring of disabled individuals.

(3) The taxpayer shall file a plan with the commissioner of revenue, on a form prescribed by the commissioner, in order to qualify for the credit. The form shall be filed on or before the last day of the fiscal year in which the employment begins, and shall state the number of persons with disabilities newly employed. The commissioner of revenue shall certify a taxpayer's participation in one (1) of these programs and the number of persons employed by the taxpayer meeting the criteria established by this subsection (f).

(4) The commissioner of revenue has the authority to conduct audits or require the filing of additional information necessary to substantiate or adjust the amount of credit allowed by this subsection (f), and to determine that the taxpayer has complied with all statutory requirements so as to be entitled to the job tax credit.

(5) Subdivision (b)(1)(D), relating to the carryforward of any unused job tax credit, shall apply to the credit allowed by this subsection (f).

(g)(1) For purposes of this subsection (g), "headquarters facility," "headquarters staff employees," "investment period," "new full-time employee job," "qualified headquarters facility," and "qualified headquarters facility relocation expenses" shall have the same meanings as defined in § 67-6-224.

(2) In addition to the job tax credit provided in subsection (b), there is allowed a credit against a taxpayer's franchise and excise tax liability equal to any qualified headquarters facility relocation expenses incurred by the taxpayer during the investment period; provided, that the taxpayer meets one (1) of the following criteria:

(A) The taxpayer creates at least one hundred (100) but less than two hundred fifty (250) net new full-time employee jobs that pay at least one hundred fifty percent (150%) of this state's average occupational wage;

(B) The taxpayer creates at least two hundred fifty (250) but less than five hundred (500) net new full-time employee jobs that pay at least one hundred fifty percent (150%) of this state's average occupational wage;

(C) The taxpayer creates at least five hundred (500) but less than seven hundred fifty (750) net new full-time employee jobs that pay at least one hundred fifty percent (150%) of this state's average occupational wage;

(D) The taxpayer creates at least seven hundred fifty (750) net new full-time employee jobs that pay at least one hundred fifty percent (150%) of this state's average occupational wage; or

(E) The taxpayer creates at least five hundred (500) net new full-time employee jobs in connection with a capital investment in excess of one

billion dollars ($1,000,000,000).

(3) Notwithstanding any law to the contrary, the total credit allowed to a taxpayer under this subsection (g) shall not exceed the appropriate dollar amount listed in one (1) of the following subdivisions (g)(3)(A)-(E), multiplied by the number of headquarters staff employee positions relocated by the taxpayer to the qualified headquarters facility during the investment period:

(A) For a taxpayer meeting the requirements in subdivision (g)(2)(A), ten thousand dollars ($10,000);

(B) For a taxpayer meeting the requirements in subdivision (g)(2)(B), twenty thousand dollars ($20,000);

(C) For a taxpayer meeting the requirements in subdivision (g)(2)(C), thirty thousand dollars ($30,000);

(D) For a taxpayer meeting the requirements in subdivision (g)(2)(D), forty thousand dollars ($40,000); and

(E) For a taxpayer meeting the requirement in subdivision (g)(2)(E), one hundred thousand dollars ($100,000).

(4) To the extent any amount allowed as a credit under this subsection (g) exceeds the combined tax imposed by this part and by part 20 of this chapter, the amount of such excess shall be considered an overpayment and shall be refunded to the taxpayer. Such refund shall be subject to the procedures of § 67-1-1802; provided, however, notwithstanding any procedure of § 67-1-1802 to the contrary, that a claim for refund must be filed with the commissioner within three (3) years from December 31 of the year in which the qualified headquarters facility relocation expense was incurred.

(5) If the qualified headquarters facility is not utilized as a headquarters facility for a period of at least ten (10) years from the end of the investment period, the taxpayer shall be subject to an assessment of tax, plus applicable interest, calculated in accordance with this subdivision (g)(5). The amount of tax assessed under this subdivision (g)(5) shall equal the total credit or refund, or both, taken pursuant to this subsection (g) multiplied by a fraction, the numerator of which is the number of years the facility is not utilized as a headquarters facility and the denominator of which is ten (10). The amount of interest shall be calculated in accordance with § 67-1-801 from the date the facility is no longer utilized as a headquarters facility until the date paid.

(6)(A) If the headquarters staff employee position is not filled in Tennessee during the investment period, the taxpayer shall be subject to an assessment of the total amount of credit or refund taken relating to such employee position pursuant to this subsection (g) plus interest; and

(B) If the headquarters staff employee position does not remain filled in Tennessee for a period of at least five (5) years, beginning from the date such employee position was initially filled in Tennessee, the taxpayer shall be subject to an assessment of the total amount of credit or refund taken relating to such employee position pursuant to this subsection (g), plus interest.

(7) Nothing in this subsection (g) shall require that the taxpayer establish its commercial domicile in this state in order to receive the credit provided in this subsection (g).

(8) The credit provided for by this subsection (g) may be computed by a general partnership that has established an international, national or regional headquarters in this state that meets the definition of a qualified

headquarters facility under § 67-6-224 and has qualified for the job tax credit provided for in subsection (c). The amount of the credit shall be allowed under this section as if the general partnership were subject to franchise and excise tax under part 20 and this chapter and this part. With respect to the general partnership tax year during which a credit is so computed, a partner in the general partnership that is subject to this state's franchise and excise tax and that directly holds a first tier ownership interest in the general partnership may take a percentage of the credit that equals the total amount of the credit for the general partnership multiplied by the partner's percentage interest in the general partnership on the last day of the general partnership tax year against the partner's franchise and excise tax liability for the partner's tax year that includes the last day. The relocation expense credit passed through from the general partnership to the first tier partner under this section shall, in the hands of the first tier partner, be subject to applicable provisions and limitations otherwise provided by this section. In no case shall the credit be taken by a business entity unless it was a partner in the general partnership and subject to franchise and excise tax at the time the credit was earned by the general partnership.

(9)(i) If determined to be in the best interests of the state, the commissioner of revenue and the commissioner of economic and community development are authorized to lower the number of jobs that must be created in order to qualify for the credit provided in this subsection (g); provided, however, that the amount of the credit shall also be reduced in direct proportion to the reduction in the job creation requirement. Under no circumstances, however, shall the job creation requirement be lowered by more than fifty percent (50%).

(ii) If determined to be in the best interests of the state, the commissioner is further authorized to allow a relocation expense credit to any scrap metal processing facility relocating from a central business district or an area adjacent to the central business district and separated only by a waterway. Such credit shall be equal to the amount of relocation expenses incurred and paid by the facility but shall not exceed the amount of credit allowed under subdivision (g)(3)(E) for the relocation of staff employees of a headquarters facility.

(10) Any insurance company, as defined in § 56-1-102, that otherwise meets all of the criteria contained in this subsection (g) and would be subject to the tax imposed by this part and part 20 of this chapter if not for the exemption provided in § 67-4-2008(a)(14), shall be granted the credit provided in this subsection (g) and shall be entitled to a refund as provided in subdivision (g)(4).

(h)(1) There shall be allowed, for any financial institution, a credit against the sum total of the taxes imposed by the Franchise Tax Law, compiled in this part, and by the Excise Tax Law, compiled in part 20 of this chapter, an amount equal to either:

(A) Five percent (5%) of a qualified loan or qualified long-term investment made to an eligible housing entity for any eligible activity; or

(B) Three percent (3%) annually of the unpaid principal balance of a qualified loan made to an eligible housing entity for any eligible activity as of December 31 of each year for the life of the loan or fifteen (15) years, whichever is earlier.

(2) There shall be allowed, for any financial institution, a credit against the sum total of the taxes imposed by the Franchise Tax Law, compiled in this part, and by the Excise Tax Law, compiled in part 20 of this chapter, an amount equal to either:

(A) Ten percent (10%) of a grant, contribution, or qualified low-rate loan made to an eligible housing entity for any eligible activity; or

(B) Five percent (5%) annually of the unpaid principal balance of a qualified low-rate loan made to an eligible housing entity for any eligible activity as of December 31 of each year for the life of the loan or fifteen (15) years, whichever is earlier.

(3) For purposes of this subsection (h), the following definitions shall apply:

(A) "Eligible activity" means an activity that creates or preserves affordable housing for low-income Tennesseans, an activity to help low-income Tennesseans obtain safe and affordable housing, an activity that builds the capacity of an eligible nonprofit to provide housing opportunities to low-income Tennesseans, and any other activities approved by the executive director of the Tennessee housing development agency and the commissioner of revenue;

(B) "Eligible housing entity" means a Tennessee nonprofit corporation with an Internal Revenue Code § 501(c)(3) status, codified in 26 U.S.C. § 501(c)(3), the Tennessee housing development agency, a public housing authority, or a development district;

(C) "Financial institution" has the definition as provided in § 67-4-2004;

(D) "Low-income" means any individual or family at or below eighty percent (80%) of the applicable area median family income as determined by family size;

(E) "Qualified loan" means a loan that is at least two percent (2%) below the prime rate, as published by the Wall Street Journal at the time the loan is approved, that does not qualify as a qualified low-rate loan;

(F) "Qualified long-term investment" means an equity investment made for a period of more than five (5) years to an eligible housing entity; and

(G) "Qualified low-rate loan" means a loan that is at least four percent (4%) below the prime rate, as published by the Wall Street Journal at the time the loan is approved.

(4) In order to take the credit, the regulated financial institution must maintain a certification from the Tennessee housing development agency establishing entitlement to the credit.

(5) The eligible housing entity receiving the funds must maintain such records as required by the Tennessee housing development agency, to ensure that affordable housing opportunities are being provided.

(6) The department of revenue is authorized to share with the Tennessee housing development agency information necessary to effectuate the purposes of this subsection (h). The Tennessee housing development agency shall be bound by restrictions on disclosure of such information otherwise applicable to the department of revenue.

(7) The commissioner of revenue and the executive director of the Tennessee housing development agency are authorized to promulgate rules and regulations to effectuate the purposes of this subsection (h). All such rules and regulations shall be promulgated in accordance with the Uniform

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

(8) Any unused credit allowed under subdivision (h)(1)(A) or (h)(2)(A) may be carried forward for fifteen (15) years after the tax year in which the credit originated. Any unused credit allowed under subdivision (h)(1)(B) or (h)(2)(B) shall not be carried forward beyond the tax year in which the credit originated.

(i) A taxpayer that has established its international, national, or regional headquarters in this state and has met the requirements to qualify for the credit provided in § 67-6-224 shall be allowed a credit against the franchise tax imposed under this part equal to the rate of tax imposed under § 67-4-2007 multiplied by any net operating loss incurred by the taxpayer during the tax year covered by the return, or properly carried over from a previous tax year, in accordance with § 67-4-2006; provided, that the credit allowed in this subsection (i) shall only be available if the taxpayer is unable to use the loss or loss carryover to offset net income during the current tax year for excise tax purposes. If a net operating loss or loss carryover is used to calculate a credit under this subsection (i), it shall no longer be available as a deduction for excise tax purposes, and under no circumstances shall the same net operating loss be used for both franchise and excise tax purposes. The credit in this subsection (i) shall only be available upon a determination by the commissioner of revenue and the commissioner of economic and community development that the utilization of net operating losses or loss carryovers against the taxpayer's franchise tax liability is in the best interests of the state. For purposes of this subsection (i), "best interests of the state" means a determination that the taxpayer established its headquarters in this state or converted a regional headquarters in this state into its national or international headquarters as a result of such action. The commissioner of revenue and the commissioner of economic and community development shall determine the period during which the credit provided by this subsection (i) shall be allowed to the taxpayer.

(j)(1) For purposes of this subsection (j):

(A) "Qualified expenses" means those expenses incurred in this state that are necessary for the production of a movie or episodic television program in this state; provided, however, that the expenses shall not qualify under this subdivision (j)(1)(A) unless both the commissioner of revenue and the commissioner of economic and community development determine, in their sole discretion, that the production and the allowance of the credit are in the best interests of this state. For purposes of this subdivision (j)(1)(A), "best interests of this state" means a determination by the commissioner of revenue and the commissioner of economic and community development that the production is a result of the credit provided in this subsection (j) and that the production is not found to be obscene as defined in § 39-17-901;

(B) "Qualified investor" means any entity that has established a headquarters facility as defined in § 67-6-224 that has invested in a qualified production company; and

(C) "Qualified production company" means any entity that incurs at least one million dollars ($1,000,000) in qualified expenses.

(2) A credit in an amount equal to fifteen percent (15%) of any qualified expenses shall be allowed against the combined franchise and excise tax liability of any qualified production company that has established a head-

quarters facility as defined in § 67-6-224. If the qualified production company does not have a headquarters facility as defined in § 67-6-224, then any qualified investor shall be allowed a credit equal to the amount of credit to which the qualified production company would have been entitled had it established a headquarters facility as defined in § 67-6-224, multiplied by the qualified investor's percentage ownership interest in the qualified production company.

(3) In order for either a qualified production company or a qualified investor to become entitled to a credit under this subsection (j), the qualified production company shall submit documentation verifying that the qualified expenses have been incurred and paid.

(4) The commissioner shall review the documentation and notify the qualified production company of the approved credit.

(5) Once the qualified production company has been notified of the approved credit, either the qualified production company or the qualified investment company, as appropriate, may submit a claim for the credit. To the extent that any amount allowed as a credit under this subsection (j) exceeds the current and outstanding combined franchise and excise tax liability of the claimant, the amount of such excess shall be deemed an overpayment and shall be refunded to the claimant. For qualified expenses incurred and paid during any tax year, the commissioner is authorized to issue a refund as described in this subdivision (j)(5) prior to the expiration of such tax year if the amount of the approved credit exceeds the claimant's current and outstanding franchise and excise tax liability on the date of such refund. Any refund under this subsection (j) shall be subject to the procedures of § 67-1-1802; provided, however, notwithstanding any procedure of § 67-1-1802 to the contrary, that a claim for refund shall be filed with the commissioner within three (3) years from December 31 of the year in which the qualified expenses were incurred. In no case shall a refund for the same qualified expenses be allowed twice.

(6) The credit provided for in this subsection (j) shall not apply to tax years beginning on or after July 1, 2012; provided, that this subdivision (j)(6) shall have no effect on the right of any taxpayer to realize the benefits of any credit provided under this subsection (j) in the event that the commissioner of revenue and the commissioner of economic and community development determine that the taxpayer's production is in the "best interest of this state" pursuant to subdivision (j)(1)(A) and the taxpayer incurs expenses related to such production prior to July 1, 2012.

(k)(1) There shall be allowed, for any financial institution, a credit against the sum total of the taxes imposed by the Franchise Tax law, compiled in this part, and by the Excise Tax law, compiled in part 20 of this chapter, an amount equal to either:

(A) Five percent (5%) of a qualified loan or qualified long-term investment made to a community development financial institution that is certified by the United States department of the treasury's community development financial institutions fund; or

(B) Three percent (3%) annually of the unpaid principal balance of a qualified loan made to a community development financial institution that is certified by the United States department of the treasury's community development financial institutions fund as of December 31 of each year for the life of the loan or fifteen (15) years, whichever is earlier.

(2) There shall be allowed, for any financial institution, a credit against the sum total of the taxes imposed by the Franchise Tax law, compiled in this part, and by the Excise Tax law, compiled in part 20 of this chapter, an amount equal to either:

(A) Ten percent (10%) of a grant, contribution, or qualified low-rate loan made to a community development financial institution that is certified by the United States department of the treasury's community development financial institutions fund; or

(B) Five percent (5%) annually of the unpaid principal balance of a qualified low-rate loan made to a community development financial institution that is certified by the United States department of the treasury's community development financial institutions fund as of December 31 of each year for the life of the loan or fifteen (15) years, whichever is earlier.

(3) For purposes of this subsection (k):

(A) "Financial institution" has the same meaning as defined in § 67-4-2004;

(B) "Qualified loan" means a loan that is at least two percent (2%) below the prime rate, as published by the Wall Street Journal at the time the loan is approved, that does not qualify as a qualified low-rate loan;

(C) "Qualified long-term investment" means an equity investment made for a period of more than five (5) years; and

(D) "Qualified low-rate loan" means a loan that is at least four percent (4%) below the prime rate, as published by the Wall Street Journal at the time the loan is approved.

(4) Any unused credit allowed under subdivision (k)(1)(A) or (k)(2)(A) may be carried forward for fifteen (15) years after the tax year in which the credit originated. Any unused credit allowed under subdivision (k)(1)(B) or (k)(2)(B) shall not be carried forward beyond the tax year in which the credit originated.

(5) Notwithstanding § 47-14-103 or any other provision to the contrary, a community development financial institution, as described in this subdivision (k), shall be allowed to charge a rate of interest not to exceed twenty-four percent (24%) per annum.

(*l*)(1) There shall be allowed, for any financial institution, a credit against the sum total of the taxes imposed by the Franchise Tax Law, compiled in this part, and the Excise Tax Law, compiled in part 20 of this chapter, in an amount equal to ten percent (10%) of the financial institution's contribution to the Tennessee rural opportunity fund or the Tennessee small business opportunity fund. The credit provided in this subsection (*l*) shall be allowed each year for a period of ten (10) years, beginning with the tax year in which the contribution is made. Any unused credit allowed under this subsection (*l*) shall not be carried forward beyond the tax year in which the credit originated.

(2) For purposes of this subsection (*l*), the loaning of funds by the taxpayer to the Tennessee rural opportunity fund or the Tennessee small business opportunity fund shall constitute a contribution by the taxpayer to the Tennessee rural opportunity fund or the Tennessee small business opportunity fund. If, however, at the close of the tenth year of the period during which the credit is allowed, the taxpayer or its assignee has received repayment, or retains any right to repayment, of all or any portion of the

amount contributed to the Tennessee rural opportunity fund or the Tennessee small business opportunity fund or any interest accrued thereon, the department shall be entitled to recapture the credit allowed by increasing the franchise tax liability or the excise tax liability, or both, of the taxpayer by the credit recapture amount for the first tax year following the ten-year period during which the credit is allowed. The credit recapture amount shall be equal to the total amount of credit allowed, plus interest at the rate determined under § 67-1-801 from the date the credit was offset against the taxpayer's franchise tax liability or the excise tax liability, or both.

(m)(1) As used in this subsection (m):

(A) "Carbon charge" means a tax or fee imposed or levied by the federal or state government, the purpose of which is to reduce the emission of greenhouse gases. "Carbon charge" may include, but is not limited to, a tax, emission fee or charge, or required purchase of carbon or emission off-sets or credits, whether incurred by or imposed directly on the certified green energy supply chain manufacturer or campus affiliate or imposed on the Tennessee Valley authority or other applicable energy provider and billed to the certified green energy supply chain manufacturer or campus affiliate;

(B) "Certified green energy supply chain manufacturer" means any manufacturer that has made, during the investment period, a required capital investment in excess of two hundred fifty million dollars ($250,000,000) in constructing, expanding or remodeling a facility that is certified by the commissioner of revenue, the commissioner of economic and community development and the commissioner of environment and conservation, in their sole discretion, to be a facility engaged in manufacturing a product that is necessary for the production of green energy;

(C) "Charge for electricity sold" means the total delivered cost of electricity sold to the certified green energy supply chain manufacturer or campus affiliate at the point of delivery to the facility. The charge for electricity sold shall be the total amount due as shown on the customer's electricity bills over the applicable tax year. Any carbon charge shall be excluded from the charge for electricity sold to the extent the carbon charge is included in the credit allowed in subdivision (m)(4);

(D) "Investment period" means a period not to exceed three (3) years from the filing of the business plan related to qualification as a certified green energy supply chain manufacturer, during which the required capital investment must be made; and

(E) "Maximum certified rate" means a rate expressed as a price per kilowatt hour for calculating the green energy tax credit allowed in subdivision (m)(3) and shall be established through the issuance of a private letter ruling by the commissioner of revenue, which shall be subject to approval by the commissioner of economic and community development and the commissioner of finance and administration and any such maximum certified rate established for a green energy supply chain manufacturer shall apply to any campus affiliate.

(2) The credits provided in this subsection (m) and any other applicable credits, net operating losses or carry-forwards thereof provided and in part 20 of this chapter and this part shall be applied in the following order:

(A) Any credits, net operating losses or carry-forwards thereof available to the certified green energy supply chain manufacturer, campus affiliate,

integrated customer or integrated supplier pursuant to this part or part 20 of this chapter, except for those contained in this subsection (m), shall be applied to the taxpayer's tax liability first;

(B) Any green energy tax credit available pursuant to subdivision (m)(3) shall be applied to the taxpayer's liability second and shall be refundable as provided in subdivision (m)(3) if the credit exceeds the taxpayer's remaining liability; and

(C) Any carbon tax credit available pursuant to subdivision (m)(4) shall be applied to the taxpayer's liability third and shall be refundable as provided in subdivision (m)(4) if the credit exceeds the taxpayer's remaining liability.

(3) A certified green energy supply chain manufacturer and campus affiliate, integrated customer or integrated supplier of a green energy supply chain manufacturer shall be allowed a green energy tax credit against the sum total of the taxes imposed by the Franchise Tax Law compiled in this part and the Excise Tax Law compiled in part 20 of this chapter, equal to the amount by which the charge for electricity sold to the certified green energy supply chain manufacturer, campus affiliate, integrated customer or integrated supplier exceeds the charge that would have been made for such total delivered electricity if the maximum certified rate had been applied during the applicable tax year. The Tennessee Valley authority, or the applicable energy provider, shall supply such information as deemed necessary by the commissioner of revenue to verify the amount of the credit. Consistent with subdivision (m)(2), to the extent that any amount allowed as a credit under this subdivision (m)(3), for any tax year, exceeds the combined tax imposed by part 20 of this chapter and this part after the application of all available credits other than the credit provided in subdivision (m)(4), the amount of the excess shall be considered an overpayment and shall be refunded to the taxpayer; provided, however, that the overpayment and the refund shall not exceed, for any one (1) tax year, an amount equal to one million five hundred thousand dollars ($1,500,000) for each two hundred fifty million dollars ($250,000,000) in capital investments made by the certified green energy supply chain manufacturer. The refund shall be subject to the procedures of § 67-1-1802; provided, however, that, notwithstanding any procedure of § 67-1-1802 to the contrary, a claim for refund must be filed with the commissioner within three (3) years from December 31 of the year in which the credit provided by this subdivision (m)(3) was incurred. To the extent any amount allowed as a credit under this subdivision (m)(3) is not applied to the taxpayer's liability and is not received by the taxpayer as a refund, the credit may be carried forward in perpetuity until it is claimed as a refund or utilized as a credit by the certified green energy supply chain manufacturer pursuant to this subdivision (m)(3). Except for the purpose of receiving a refund or otherwise utilizing credits that have been carried forward, the credit provided for in this subdivision (m)(3) shall cease to be effective on January 1, 2029, and no new credit shall be allowed for tax years ending on or after January 1, 2029.

(4) A certified green energy supply chain manufacturer and any campus affiliates shall be allowed a carbon charge credit against the sum total of the taxes imposed by the Franchise Tax Law compiled in this part and the Excise Tax Law compiled in part 20 of this chapter, equal to any carbon charges incurred by or imposed directly on the certified green energy supply

chain manufacturer, campus affiliate or imposed on the Tennessee Valley authority or other applicable energy provider and billed to the certified green energy supply chain manufacturer or campus affiliate during the applicable tax year. The Tennessee Valley authority, or the applicable energy provider, shall supply such information as deemed necessary by the commissioner of revenue to verify the amount of the carbon charge credit. Consistent with subdivision (m)(2), to the extent any amount allowed as a carbon charge credit under this subdivision (m)(4) exceeds the combined tax imposed by this part and by part 20 of this chapter after the application of all other available credits, the amount of the excess shall be considered an overpayment and shall be refunded to the taxpayer. The refund shall be subject to the procedures of § 67-1-1802; provided, however, that, notwithstanding any procedure of § 67-1-1802 to the contrary, a claim for refund must be filed with the commissioner within three (3) years from December 31 of the year in which the credit provided by this subdivision (m)(4) was incurred.

(5) The investment period for making the required capital investment may be extended by the commissioner of economic and community development for a reasonable period, not to exceed two (2) years, for good cause shown. For purposes of this subdivision (m)(5), "good cause" means a determination by the commissioner of economic and community development that the capital investment is a result of the credit provided in this subsection (m).

(n) There shall be allowed a credit against a key tenant's franchise and excise tax liability equal to any qualified medical trade center relocation expenses incurred by the key tenant; provided, however, that such credit shall not exceed an amount equal to ten dollars ($10.00) for each square foot of space within the facility that is leased and occupied by the key tenant. To the extent that any amount allowed as a credit under this subsection (n), for any tax year, exceeds the combined franchise and excise tax after the application of all available credits, the amount of such excess shall be considered an overpayment and shall be refunded to the key tenant. The refund shall be subject to the procedures of § 67-1-1802; provided, however, notwithstanding any procedure of § 67-1-1802 to the contrary, that a claim for refund shall be filed with the commissioner within three (3) years from December 31 of the year in which the qualified medical trade center relocation expenses were incurred.

(o)(1) For purposes of this subsection (o), "qualified advertising expenses" means advertising expenses that are incurred for the purpose of co-promoting a qualified medical trade center and the State of Tennessee or the City of Nashville; provided, however, that the expenses shall not qualify under this subdivision (o)(1) unless both the commissioner of revenue and the commissioner of economic and community development determine, in their sole discretion, that the advertising and the allowance of the credit are in the best interests of this state. For purposes of this subdivision (o)(1), "best interests of the state" means a determination by the commissioner of revenue and the commissioner of economic and community development that the advertising is a result of the credit provided in this subsection (o).

(2) A credit in an amount equal to fifteen percent (15%) of any qualified advertising expenses shall be allowed against the combined franchise and excise tax liability of any taxpayer that incurs and pays such qualified expenses.

(3) In order for a taxpayer to become entitled to a credit under this subsection (o), the taxpayer shall submit documentation verifying that the

qualified advertising expenses have been incurred and paid.

(4) The commissioner shall review the documentation and notify the taxpayer of the approved credit.

(5) Once the taxpayer has been notified of the approved credit, the taxpayer may submit a claim for the credit. To the extent that any amount allowed as a credit under this subsection (o), for any tax year, exceeds the combined franchise and excise tax after the application of all available credits, the amount of such excess shall be considered an overpayment and shall be refunded to the taxpayer. The refund shall be subject to the procedures of § 67-1-1802; provided, however, notwithstanding any procedure of § 67-1-1802 to the contrary, that a claim for refund shall be filed with the commissioner within three (3) years from December 31 of the year in which the qualified advertising expenses were incurred.

(p) The commissioner of revenue, the commissioner of economic and community development, and the commissioner of finance and administration are authorized, with the approval of the comptroller of the treasury, to jointly establish a program pursuant to which buildings, facilities, or other infrastructure may be developed utilizing a state funding mechanism and pursuant to which the value of tax credits that have been earned by the taxpayer but remain unutilized may be applied, in lieu of payments, toward the purchase or lease of such property pursuant to a contractual agreement between the taxpayer and the program. Such tax credits may include those to which the taxpayer is entitled under this section or under any other provision of this part, part 20 of this chapter, or chapter 6 of this title.

67-4-2602. Certification by tobacco product manufacturer as to compliance — Directory listing certified manufacturers and brand families — Unlawful practices.

(a) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the commissioner a certification to the commissioner and attorney general and reporter, no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either is a participating manufacturer, or is in full compliance with § 47-31-103.

(1) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list thirty (30) calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general and reporter and commissioner.

(2)(A) A non-participating manufacturer shall include in its certification:

(i) A list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year;

(ii) A list of all of its brand families that have been sold in the state at any time during the current calendar year;

(iii) Indication, by an asterisk, of any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification; and

(iv) Identification by name and address of any other manufacturer of such brand families in the preceding or current calendar year.

(B) The non-participating manufacturer shall update such list thirty (30) calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general and reporter and commissioner.

(3) In the case of a non-participating manufacturer, such certification shall further certify:

(A) That such non-participating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice thereof as required by § 67-4-2603;

(B) That such non-participating manufacturer:

(i) Has established and continues to maintain a qualified escrow fund; and

(ii) Has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and reporter and that governs the qualified escrow fund;

(C) That such non-participating manufacturer is in full compliance with title 47, chapter 31 and this part, and any regulations promulgated pursuant thereto;

(D)(i) The name, address and telephone number of the financial institution where the non-participating manufacturer has established such qualified escrow fund required pursuant to § 47-31-103 and all regulations promulgated thereto;

(ii) The account number of such qualified escrow fund and any sub-account number for Tennessee;

(iii) The amount such non-participating manufacturer placed in such fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each such deposit, and such evidence or verification as may be deemed necessary by the attorney general and reporter to confirm the foregoing; and

(iv) The amount and date of any withdrawal or transfer of funds the non-participating manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to § 47-31-103 and all regulations promulgated thereto; and

(E) That the non-participating manufacturer has certified in writing on a form approved by the commissioner that it consents to be sued in the circuit or chancery courts in the state for purposes of enforcing this statute or for an action to enforce § 47-31-103.

(4) In the case of a non-participating manufacturer located outside of the United States, the certification shall further certify that the non-participating manufacturer has provided a declaration from each of its importers into the United States of any of its brand families to be sold in this state. The declaration shall be on a form prescribed by the attorney general and reporter and shall state the following:

(A) The importer accepts joint and several liability with the non-participating manufacturer for all obligations to place funds into a qualified escrow fund, for payment of all civil penalties and for payment of all reasonable costs and expenses of investigation and prosecution, including attorneys' fees, authorized in accordance with the Tennessee Tobacco

Manufacturers' Escrow Fund Act of 1999, compiled in title 47, chapter 31;

(B) The importer consents to personal jurisdiction in Tennessee for the purpose of claims by the state for any obligation to place funds into a qualified escrow fund, for payment of any civil penalties and for payment of any reasonable costs and expenses of investigation or prosecution, including attorneys' fees, authorized in accordance with the Tennessee Tobacco Manufacturers' Escrow Fund Act of 1999; and

(C) The importer has appointed a registered agent for service of process in this state according to the same requirements as established in this part for any nonresident or foreign non-participating manufacturer that has not registered to do business in this state as a foreign corporation or business entity.

(5) A tobacco product manufacturer may not include a brand family in its certification unless:

(A) In the case of a participating manufacturer, said participating manufacturer affirms that the brand family is deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement; and

(B) In the case of a non-participating manufacturer, said non-participating manufacturer affirms that the brand family is deemed to be its cigarettes for purposes of § 47-31-103. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of § 47-31-103.

(6) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five (5) years, unless otherwise required by law to maintain them for a greater period of time.

(b) Not later than May 31, 2003, the commissioner shall develop and make available for public inspection a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (a) and all brand families that are listed in such certifications (the "directory"), except that:

(1) The commissioner shall not include or retain in such directory the name or brand families of any non-participating manufacturer that has failed to provide the required certification or whose certification the commissioner determines is not in compliance with subdivisions (a)(2) and (3), unless the commissioner has determined that such violation has been cured to the satisfaction of the commissioner;

(2) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory, if the commissioner concludes, in the case of a non-participating manufacturer, that:

(A) Any escrow payment required pursuant to § 47-31-103 for any period for any brand family, whether or not listed by such non-participating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general and reporter;

(B) Any outstanding final judgment, including interest on the judgment, for a violation of § 47-31-103 has not been fully satisfied for such

brand family or such manufacturer; or

(C) Such non-participating manufacturer has underpaid escrow obligations in this state or any state unless such underpayment is cured within sixty (60) days of entry of a final order establishing the required escrow payment amount; however, such cure shall have no such effect if such underpayment is the result of fraud or deceit;

(3) A non-participating tobacco product manufacturer may be removed from the state's directory of approved tobacco product manufacturers, if the commissioner determines such action is in the best interest of the state and the operation of the directory, if the tobacco product manufacturer or any of its affiliates, officers, directors, or owners has:

(A) Been removed from any state's directory of approved tobacco product manufacturers based on any acts or omissions that would, if done in this state, be grounds for removal from the directory, except that if the basis for removal is a good faith dispute regarding the amount of escrow required for units sold in other states, the non-participating manufacturer shall have the opportunity to cure the underpayment of escrow within sixty (60) days of entry of a final order establishing the required escrow payment amount;

(B) Plead guilty or nolo contendere to or has been found guilty of a crime relating to the reporting, distribution, sale or taxation of cigarettes or tobacco products; or

(C) Failed to cooperate with any request for information from the commissioner made pursuant to § 67-4-2604(d) to the satisfaction of the commissioner;

(4) The commissioner shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this part; and

(5) Every licensed agent shall provide and update as necessary an electronic mail address to the commissioner for the purpose of receiving any notifications as may be required by this part.

(c) It shall be unlawful for any person to:

(1) Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory; or

(2) Sell, offer, or possess for sale, in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

(d)(1) A non-participating manufacturer that is not listed in the directory of approved tobacco manufacturers shall not be included in the directory until it has posted a bond in accordance with this subsection (d), in addition to any other requirements for inclusion in the directory contained in this chapter.

(2) The bond required by this subsection (d) shall be posted by corporate surety located within the United States in the amount of one hundred thousand dollars ($100,000). The bond shall be written in favor of the state of Tennessee and shall be conditioned on the performance by the non-participating manufacturer of all of its duties and obligations under this chapter and the Tennessee Tobacco Manufacturers' Escrow Fund Act of 1999, compiled in title 47, chapter 31. The bond shall remain in effect for twenty-four (24) months from the date posted.

(3) If the non-participating manufacturer fails to perform duties and obligations on which the bond is conditioned, the state shall be authorized to

execute on the bond, first to recover any amounts the non-participating manufacturer failed to place into escrow as required by the Tennessee Tobacco Manufacturers' Escrow Fund Act of 1999, compiled in title 47, chapter 31, then to recover penalties and attorneys' fees under the Tennessee Tobacco Manufacturers' Escrow Fund Act of 1999 and this chapter.

(e) For each non-participating manufacturer located outside of the United States, each importer into the United States of any such non-participating manufacturer's brand families that are sold in this state shall bear joint and several liability with such non-participating manufacturer for all obligations to place funds into a qualified escrow fund, for payment of all civil penalties and for payment of all reasonable costs and expenses of investigation and prosecution, including attorneys' fees, authorized in accordance with the Tennessee Tobacco Manufacturers' Escrow Fund Act of 1999.

(f) Service of process on the importer's appointed registered agent for service of process may be served in any manner authorized by law and shall constitute legal and valid service of process on the importer. The importer is subject to the same requirements in this part as non-participating manufacturers regarding notice of termination of the agency appointment. Any importer that has not appointed and engaged an agent as required in this section shall be deemed to have appointed the secretary of state as such agent and may be proceeded against in courts of this state by service of process on the secretary of state.

67-4-2802. Part definitions.

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

(1) "Commissioner" means the commissioner of revenue;

(2) "Controlled substance" means a controlled substance as defined in § 39-17-402, and not included in "low-street-value drugs";

(3) "Controlled substance analogue" means a controlled substance analogue as defined in § 39-17-454;

(4) "Illicit alcoholic beverage" means an alcoholic beverage, as defined in § 57-3-101, not authorized by the Tennessee alcoholic beverage commission. "Illicit alcoholic beverage" includes, but is not limited to, the products known as "bootleg liquor," "moonshine," "non-tax-paid liquor," and "white liquor;"

(5) "Local law enforcement agency" means a municipal police department, a metropolitan police department, or a sheriff's office;

(6) "Low-street-value drug" means any of the following controlled substances:

(A) An anabolic steroid as defined in § 39-17-410(f);

(B) A depressant described in § 39-17-412(c);

(C) A hallucinogenic substance described in § 39-17-406(d);

(D) A stimulant described in § 39-17-412(e); or

(E) A controlled substance described in § 39-17-414;

(7) "Marijuana" means all parts of the plant of the genus cannabis, whether growing or not; the seeds of this plant; the resin extracted from any part of this plant; and every compound, salt, derivative, mixture, or preparation of this plant, its seeds, or its resin;

(8) "Merchant" means a merchant or peddler within the scope of article II, § 28 of the Constitution of Tennessee and includes any person who is actually engaged in the act of selling, bartering, trading, or distributing to

another for consideration any unauthorized substances regardless of the quantity under § 67-4-2803(a), and such person shall be subject to the tax imposed under this part. Any person who actually or constructively possesses, at a particular time, any unauthorized substances in a quantity sufficient to create a principal tax liability of at least ten thousand dollars ($10,000) under § 67-4-2803(a) is presumed to be possessing the unauthorized substances for the purpose of sale, barter, trade, or distribution to another for consideration and is presumed to be a merchant within the meaning of this subdivision (8); such presumption may be rebutted only by clear and convincing evidence that the person did not sell, barter, trade, or distribute for consideration such substances or intend to do so; except, however, that if the person sells, barters, trades, or distributes to another for consideration any unauthorized substances in any quantity under § 67-4-2803(a), the presumption shall not apply and the person shall be considered a merchant and subject to the tax imposed by this part regardless of the quantity involved in the transaction;

(9) "Person" means person as defined in § 39-17-402;

(10) "State law enforcement agency" means any state agency, force, department, or unit responsible for enforcing criminal laws; and

(11) "Unauthorized substance" means a controlled substance, a controlled substance analogue, a low-street-value drug or an illicit alcoholic beverage.

67-4-2803. Excise tax rates — Methods of measuring quantities.

(a) A tax, as follows, is levied on and payable by any merchant of unauthorized substances:

(1) Forty cents (40¢) for each gram, or fraction thereof, of harvested marijuana stems and stalks that have been separated from and are not mixed with any other parts of the marijuana plant;

(2) Three dollars and fifty cents ($3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (a)(1) or plants with foliation taxed under subdivision (a)(3);

(3) Three hundred fifty dollars ($350) per plant, whether growing or detached from the soil, on each marijuana plant with foliation;

(4) Fifty dollars ($50.00) for each gram, or fraction thereof, of cocaine;

(5) Two hundred dollars ($200) for each gram, or fraction thereof, of any other controlled substance, controlled substance analogue or low-street-value drug that is sold by weight;

(6) Fifty dollars ($50.00) for each ten (10) dosage units, or fraction thereof, of any low-street-value drug that is not sold by weight;

(7) Two hundred dollars ($200) for each ten (10) dosage units, or fraction thereof, of any other controlled substance or controlled substance analogue that is not sold by weight;

(8) Thirty-one dollars and seventy cents ($31.70) for each gallon, or fraction thereof, of illicit alcoholic beverages sold by the drink; or

(9) Twelve dollars and eighty cents ($12.80) for each gallon, or fraction thereof, of illicit alcoholic beverages not sold by the drink.

(b) A quantity of marijuana or other unauthorized substance is measured by the weight of the substance whether pure, impure or dilute, or by the number of dosage units in the merchant's possession when the substance is not sold by weight. A quantity of an unauthorized substance is dilute if it consists of a

detectable quantity of pure controlled substance and any excipients or fillers.

(c) For purposes of this part, a person constructively possesses an unauthorized substance when the person has:

(1) Knowledge of the unauthorized substance; and

(2) The ability and intention to exercise control over the unauthorized substance.

67-5-704. Disabled veteran's residence.

(a)(1) There shall be paid from the general funds of the state to certain disabled veterans the amount necessary to pay or reimburse such taxpayers for all or part of the local property taxes paid for a given tax year on that property that the disabled veteran owned and used as the disabled veteran's residence as provided in this section.

(2) Such reimbursement shall be paid on the first one hundred seventy-five thousand dollars ($175,000) of the full market value of such property.

(3) In determining the amount of relief to a taxpayer, the effective assessed value on the first one hundred seventy-five thousand dollars ($175,000) of full market value shall be multiplied by a tax rate that has been adjusted to reflect the relationship between appraised value and market value in that jurisdiction, as determined by the state board of equalization.

(4) The effective assessed value shall be determined by multiplying the full market value of the property up to one hundred seventy-five thousand dollars ($175,000) by twenty-five percent (25%).

(5) The full market value of the property shall be determined by adjusting the appraised value of the property as shown on the records of the assessor of property by a factor that reflects the relationship between appraised value and market value in that jurisdiction, as determined by the state board of equalization.

(b) For the purposes of this section, a "disabled veteran" means a person who has served in the armed forces of the United States, and who has:

(1) Acquired in connection with such service a disability from paraplegia or permanent paralysis of both legs and lower part of the body resulting from traumatic injury or disease to the spinal cord or brain, or from legal blindness, or from loss or loss of use of two (2) or more limbs from any service-connected cause;

(2) Acquired one hundred percent (100%) permanent total disability, as determined by the United States veterans' administration, and such disability resulting from having served as a prisoner of war; or

(3) Acquired service-connected permanent and total disability or disabilities, as determined by the United States department of veterans' affairs.

(c) Under no conditions shall property tax relief extend to any person who was dishonorably discharged from any of the armed services.

(d) The determination of the United States veterans' administration concerning the disability status of a veteran shall be conclusive for purposes of this section.

(e) Property tax relief shall also be extended to the surviving spouse of a disabled veteran who, at the time of the disabled veteran's death, was eligible for disabled veterans' property tax relief. If a subsequent amendment to the law concerning eligibility as a disabled veteran would have made the deceased

veteran eligible for disabled veterans' property tax relief, then property tax relief shall also be extended to the surviving spouse. A surviving spouse shall continue to qualify for disabled veterans' property tax relief as long as the surviving spouse:

(1) Does not remarry;

(2) Solely or jointly owns the property for which tax relief is claimed; and

(3) Uses the property for which tax relief is claimed exclusively as a home.

(f) Property tax relief shall also be extended to the surviving spouse of a veteran whose death results from a service-connected, combat-related cause, as determined by the United States veterans' administration; provided, that:

(1) The surviving spouse does not remarry; and

(2) The property for which tax relief is claimed is owned by and used exclusively by the surviving spouse as a home.

(g) Property tax relief shall also be extended to the surviving spouse of a soldier whose death results from being deployed, away from any home base of training and in support of combat or peace operations; provided, that the surviving spouse:

(1) Does not remarry;

(2) Solely or jointly owns the property for which tax relief is claimed; and

(3) Uses the property for which tax relief is claimed exclusively as a home.

(h) The refund provided by this section shall be in lieu of any payment under § 67-5-702 or § 67-5-703.

67-5-903. Schedules — Property used for business, professions, manufacturing. [For applicability, see the Compiler's Notes.]

(a) All partnerships, corporations, other business associations not issuing stock and individuals operating for profit as a business or profession, including manufacturers, except those whose property is entirely assessable by the comptroller of the treasury, shall be furnished by the assessor not later than February 1 of each year, a schedule requiring the taxpayer to list in detail all tangible personal property owned by the taxpayer and used or held for use in such business or profession, including, but not limited to, furniture, fixtures, machinery and equipment, all raw materials, supplies, but excluding all finished goods in the hands of the manufacturer and the inventories of merchandise held for sale or exchange, such schedule to be approved by the director of property assessments. Failure of the assessor to send a schedule or failure of the taxpayer to receive a schedule shall not relieve or excuse any taxpayer from filing such schedule by March 1, nor shall it prevent the assessor from issuing a forced assessment against the taxpayer.

(b) It is the duty of the taxpayer to list fully such tangible personal property used, or held for use, in the taxpayer's business or profession on such schedule, including such other information relating thereto as may be required by the assessor, place its correct value thereon, sign the schedule, and return it to the assessor on or before March 1 of each year. In lieu of detailing acquisition cost on the reporting schedule, the taxpayer may certify that the depreciated value of tangible personal property otherwise reportable on the form is one thousand dollars ($1,000) or less. The assessor shall accept the certification, subject to audit, and fix the value of tangible personal property assessable to the taxpayer pursuant to the schedule, at one thousand dollars ($1,000). This

value shall be subject to equalization pursuant to § 67-5-1509. The certification stated on the schedule shall warn the taxpayer that it is made subject to penalties for perjury and subject to statutory penalty and costs if proven false.

(c) A taxpayer who fails, refuses or neglects to complete, sign and file the schedule with the assessor of property as provided in subsection (b) shall be deemed to have waived objections to the forced assessment determined by the assessor, subject only to the remedies provided in subsection (d). In determining a forced assessment, the assessor shall consider available evidence indicative of the fair market value of property assessable to the taxpayer under this section, and having determined the assessable value of the property, the assessor shall give the taxpayer notice of the assessment by United States mail, addressed to the last known address of the taxpayer or the taxpayer's agent at least five (5) calendar days before the local board of equalization commences its annual session.

(d) The remedies of a taxpayer against whom a forced assessment is made are as follows:

(1) The taxpayer may appeal to the county board of equalization pursuant to § 67-5-1407, but shall present a completed schedule as otherwise provided in this section;

(2) If the deadline to appeal to the county board of equalization has expired, then the taxpayer may request the assessor to mitigate the forced assessment by reducing the forced assessment to the standard depreciated value of the taxpayer's assessable property plus twenty-five percent (25%), so long as the failure to file the schedule or failure to timely appeal to the county board of equalization was not the result of gross negligence or willful disregard of the law. Mitigation of the forced assessment shall follow the procedure provided and be subject to the deadlines provided in § 67-5-509. Gross negligence shall be presumed if notice of the forced assessment, in a form approved by the state board of equalization, was sent certified mail, return receipt requested, to the taxpayer's last known address on file with the assessor.

(3) Whether or not an assessor's error affected the original assessment, the assessor may correct a forced assessment using the procedure provided and subject to the deadlines provided in § 67-5-509, upon determining that the taxpayer was not in business as of the assessment date for the year at issue, and upon determining that the taxpayer did not own or lease tangible personal property used or held for use in a business as of the assessment date for the year at issue.

(e) The taxpayer may amend a timely filed personal property schedule at any time on or before September 1 following the tax year. A personal property schedule may be amended for the following reasons only: adding or deleting of property to correctly reflect the status of the property as of the assessment date; correcting the reported cost or vintage year of property; correcting the name or address of the taxpayer; deleting property that has been reported more than once resulting in a duplicate assessment; reporting property in the appropriate group; and correcting other reporting clerical errors. However, under no circumstances shall a taxpayer be permitted to amend a personal property schedule to submit an original claim for nonstandard value for property that was not the subject of a properly documented claim of nonstandard value in the timely filed personal property schedule. If the assessor agrees with the amended schedule, the assessor shall thereupon revise the assess-

ment and certify the revised assessment to the trustee. If the assessor believes the assessment should be otherwise than claimed in the amended schedule, the assessor shall adjust the assessment and give written notice to the taxpayer of the adjusted assessment. The taxpayer may appeal the assessor's adjustment of or refusal to accept an amended assessment schedule to the local and state boards of equalization in the manner otherwise provided by law. Additional taxes due as the result of an amended schedule shall not be deemed delinquent on or before sixty (60) days after the date notice of the amended assessment was sent to the taxpayer. Amendment of a personal property schedule shall not be permitted once suit has been filed to collect delinquent taxes related to the original assessment. The assessor shall, within sixty (60) days from receipt of the taxpayer's amended schedule, review and accept or reject the schedule. In any event, the taxpayer shall be notified in writing of the results of the review. If the assessor has not notified the taxpayer that the amended schedule has been accepted or rejected within sixty (60) days, the taxpayer's amended schedule shall be deemed not accepted by the assessor.

(f) The schedule approved by the director of property assessments and supplied to taxpayers shall contain schedules reflecting the following rates of allowable depreciated cost for the listed categories of property, as well as spaces for general data on the particular taxpayer:

GROUP 1A — Vehicles (five-year life)

Year	Cost on File	Revised Cost	Depr.
1			.80
2			.60
3			.40
4			.20
Prior			.20
TOTAL			

GROUP 1B (eight-year life)

GROUP 1 — Furniture, Fixtures, General Equipment, and All Other Property Not Listed in Another Group

Year	Cost on File	Revised Cost	Depr.
1			.88
2			.75
3			.63
4			.50
5			.38
6			.25
7			.20
Prior			

GROUP 2 — Computers, Copiers, Peripherals, and Tools (three-year life)

Year	Cost on File	Revised Cost	Depr.
1			.67

GROUP 2 — Computers, Copiers, Peripherals, and Tools (three-year life)

Year	Cost on File	Revised Cost	Depr.
2			.33
Prior			.20
TOTAL			

GROUP 3 — Molds, Dies, and Jigs (four-year life)

Year	Cost on File	Revised Cost	Depr.
1			.75
2			.50
3			.25
Prior			.20
TOTAL			

GROUP 4 — Aircraft, Boats and Towers (not classified as real property) (thirteen-year life)

Year	Cost on File	Revised Cost	Depr.
1			.92
2			.85
3			.77
4			.69
5			.62
6			.54
7			.46
8			.38
9			.31
10			.23
11			.20
Prior			.20
TOTAL			

GROUP 5 — Manufacturing Machinery (eight-year life)

Year	Cost on File	Revised Cost	Depr.
1			.88
2			.75
3			.63
4			.50
5			.38
6			.25
7			.20
Prior			.20
TOTAL			

GROUP 6 — Billboards, Tanks, and Pipelines (unless classified as real property) (sixteen-year life)

Year	Cost on File	Revised Cost	Depr.
1			.94
2			.88
3			.81
4			.75
5			.69
6			.63
7			.56
8			.50
9			.44
10			.38
11			.31
12			.25
13			.20
Prior			.20
TOTAL			

GROUP 7 — Scrap Property

Year	Cost on File	Revised Cost	Depr.
All			.02

GROUP 8 — Raw Materials and Supplies

Cost on File	Revised Cost
Original cost	

(g)(1) Tangible personal property that the taxpayer treats as construction-in-process (CIP) for federal income tax purposes as of the assessment date may be reported in the taxpayer's schedule filed with the assessor at fifteen percent (15%) of its cost as reported for federal income tax purposes. Qualified pollution control property shall be valued as provided in § 67-5-604, notwithstanding its state of completion.

(2) No back assessments of CIP, as the term is used in subdivision (g)(1), shall occur prior to January 1, 1994. If back assessments have occurred involving CIP, those assessments shall be voided and all taxes paid shall be refunded to those taxpayers who have an action or claim pending before an assessing authority or court on the CIP issue.

(h) Property classified as computers under Group 2 shall include all operational computer software. For purposes of this section, "operational computer software" means embedded software so integral to the operation of a computer that the computer could not perform any valuable or useful function without the software. All other computer software, whether prepackaged or custom, is deemed intangible personal property for purposes of this part and is not subject to tax under this part. If computer software other than operational computer software is included in the sale or lease price of a computer without being separately stated, the cost of the software that is not operational

computer software shall be included in the reported cost of the computer, unless an appropriate deduction is established by a claim of nonstandard value or by other means provided under rules of the state board of equalization. This subsection (h) shall not be construed to affect the value or taxable status of any other property subject to tax under this chapter. Nothing in this subsection (h) shall affect a taxpayer's right under § 67-5-902, to seek a value different from a standard depreciated cost, where the value more closely approximates fair market value.

67-5-1206. Assessment schedule — Reporting schedule — Forced assessment — Remedies.

(a) The president or chief financial officer of each company subject to this part shall fill out and furnish under oath to the assessor of the county in which the principal office of such company is maintained an assessment schedule in writing, which schedule shall contain the following information:

(1) The number of shares of each class of capital stock issued and outstanding and the par value per share;

(2) The amount of surplus, including special surplus funds, paid-in and contributed surplus and unassigned surplus;

(3) An itemized statement of the value of all property which is exempt from ad valorem taxation by any law of this state or of the United States, showing the appropriate code section granting the exemption for each item;

(4) An itemized statement of the assessed value of all real property and tangible personal property having a situs outside Tennessee, showing the location of each item;

(5) An itemized statement of the assessed value of all real property and tangible personal property having a situs in Tennessee, showing the location of each item;

(6) A statement of the assessed value of all real property in Tennessee occupied by such company as its principal office under a lease, together with a copy of such lease;

(7) A statement of the date such company was first authorized and qualified to do insurance business, or, if such company is the continuing corporation resulting from a merger or consolidation, a statement of the earliest date its predecessor corporations were authorized and qualified to do insurance business; and

(8) Such other facts pertaining to the value of its corporate property and capital stock as may be deemed necessary or material by the assessor.

(b) The assessment schedule filed pursuant to this section shall be derived from, and consistent with, the annual statement of such company as of the last day of the preceding calendar year as filed with the commissioner of commerce and insurance.

(c) The assessor shall furnish by February 1 a reporting schedule in a form approved by the state board of equalization to each company subject to assessment under this part, and the schedule shall be completed and returned by the company by March 1 of the year for which the assessment is to be made. A taxpayer who fails, refuses or neglects to complete, sign, and file the schedule with the assessor of property, as provided in subsection (a), shall be deemed to have waived objections to the forced assessment determined by the assessor, subject only to the remedies provided in subsection (d). In determining a forced

assessment, the assessor shall consider available evidence indicative of the assessable value of property assessable to the taxpayer under this section, and having determined the assessable value of property assessable to the taxpayer under this section, the assessor shall give the taxpayer notice of the assessment by United States mail, addressed to the last known address of the taxpayer, or the taxpayer's agent, at least ten (10) calendar days before the local board of equalization commences its annual session. Failure of the assessor to send a schedule or failure of the taxpayer to receive a schedule shall not relieve or excuse any taxpayer from filing such schedule by March 1, nor shall it prevent the assessor from issuing a forced assessment against the taxpayer.

(d) If a forced assessment is shown to exceed the assessable value of the taxpayer's property, then the taxpayer shall have the following remedies:

(1) The taxpayer may appeal to the county board of equalization pursuant to § 67-5-1407, but must present a completed schedule as otherwise provided in this section;

(2) If the deadline to appeal to the county board of equalization has expired, then the taxpayer may request the assessor to mitigate the forced assessment by reducing the forced assessment to the assessable value of the taxpayer's assessable property plus twenty-five percent (25%), so long as the failure to file the schedule or failure to timely appeal to the county board of equalization was not the result of gross negligence or willful disregard of the law. Mitigation of the forced assessment shall follow the procedure provided and be subject to the deadlines provided in § 67-5-509. Gross negligence shall be presumed if notice of the forced assessment, in a form approved by the state board of equalization, was sent certified mail, return receipt requested, to the taxpayer's last known address on file with the assessor.

(e) Whether or not an assessor's error affected the original assessment, the assessor may correct a forced assessment using the procedure provided and subject to the deadlines provided in § 67-5-509, upon determining that the taxpayer was not in business as of the assessment date for the year at issue, and upon determining that the taxpayer did not own property assessable pursuant to this part as of the assessment date for the year at issue.

(f) The taxpayer may amend a schedule timely filed with the assessor in the same manner provided for tangible personal property returns.

67-5-1514. Assistance of agents — Qualifications, registration, disciplinary action, etc.

(a) At, or in connection with, any conference or hearing held pursuant to this part, or pursuant to part 14 of this chapter, taxpayers and assessors of property shall be entitled to the assistance of a qualified agent and of such other persons as they may wish.

(b) At any conference or hearing held pursuant to this part, or with respect to the filing of appeals pursuant to § 67-5-1412, taxpayers and assessors of property may appear in person, by qualified agent, or, in the case of taxpayers, by a member of the taxpayer's immediate family.

(c)(1) The following persons are permitted to act, appear and participate as an agent for the taxpayer:

(A) Attorneys;

(B) With respect to a corporation or other artificial entity, its regular

officers, directors or employees;

(C) Where the only issue of an appeal is the valuation of tangible personal property, a certified public accountant; and

(D) Where the primary issue of any complaint, protest or appeal pertains to those grounds as provided in § 67-5-1407, any person who holds a valid registration issued by the board of equalization.

(2) The board of equalization shall, upon receipt of a registration fee of two hundred dollars ($200), register as an agent any person who presents satisfactory evidence that the person has:

(A) Not less than four (4) years of experience in real property appraisal and/or assessment valuation; and

(B)(i) Successfully completed not less than one hundred twenty (120) classroom hours of academic instruction in subjects of which the primary substance relates to property appraisal or assessment of property from a college or university, or from a nationally recognized appraisal or assessment organization approved by the board;

(ii) Passed the examination for Tennessee certified assessor as administered by the board; and

(iii) No person shall be required to meet the additional registration qualifications required by this section if such person has registered or applied for registration prior to June 30, 2002.

(3) The board may, in lieu of the evidence required in subdivision (c)(2), recognize and accept certain professional designations which are awarded by appraisal and/or assessment organizations on the basis of qualifications at least equal to those set forth therein.

(4) The board may charge a reasonable fee, not to exceed fifty dollars ($50.00), for administration of the examination for Tennessee certified assessor to an applicant for registration under this section.

(5) A corporation engaged in the business of evaluation of property may be registered if its principal officer is registered, but only employees of the corporation who are registered shall be permitted to act as agents for taxpayers. The fee for registration and renewal of registration shall be the same as provided for agents in this subsection (c).

(d) Where the primary issue of any complaint, protest or appeal pertains to those grounds as provided in § 67-5-1407, then all conferences or hearings shall be conducted in an informal manner.

(e)(1) An assessor of property may delegate duties to be performed under this chapter to any of the assessor's deputies.

(2) The following persons are permitted to represent the assessor of property in any contested case before the state board of equalization:

(A) Attorneys, including attorneys with the division of property assessments;

(B) With respect to the assessor's office, any person designated as deputy assessor;

(C) Where the only issue of an appeal is the valuation of tangible personal property, a certified public accountant, any person that has contracted with that particular county or assessor of property, or both, to review financial information relative to the subject taxpayer's personal property and the tax on the personal property or any person with a personal property designation from any nationally accredited appraisal organization or assessment organization, or both;

(D) Employees of the division of property assessments where the employees have attained any type of designation by the International Association of Assessing Officers or the Tennessee Certified Assessor's Program; and

(E) Where the primary issue of any complaint, protest or appeal pertains to those grounds as provided in § 67-5-1407, any person who holds a valid registration issued by the board of equalization pursuant to subdivision (c)(2).

(f)(1) The board may reprimand, revoke, or suspend from practice or place on probation or otherwise discipline any agent for any of the acts set forth below:

(A) Procuring or attempting to procure registration pursuant to this part by knowingly making a false statement, submitting false information, or through any form of fraud;

(B) Failing to meet the minimum qualifications established by this section;

(C) Paying money or other valuable consideration, other than as provided for by this section, to any member or employee of the board to procure registration under this section; or

(D) Any act or omission involving dishonesty or fraud that could substantially benefit the registrant or another person or with the intent to substantially injure another person.

(2) The board may adopt additional standards of conduct, if any, regarding all agents when appearing at any conference or hearing pursuant to this section.

(3) There is hereby created within the board a regulatory panel, to consist of six (6) members, each of whom shall serve a two-year term, the members to be selected by the board from among a list of individual agents who are registered with the board and who have been nominated to serve on the panel by individual agents who are registered with the board. The panel may adopt standards of conduct for all agents, which standards then shall be subject to approval by the board. The majority of the panel constitutes a quorum and the affirmative vote of two-thirds (⅔) majority of the panel, or two-thirds (⅔) majority vote of the board upon appeal, is necessary for disciplinary action against any agent.

(4) Upon receipt of a written complaint made against any agent, the executive secretary, if the executive secretary determines that the complaint warrants an investigation, shall notify the agent, and the agent shall file an answer to the complaint with the executive secretary within forty-five (45) days from receipt of notice. Following receipt of the agent's answer to the complaint, the executive secretary shall appoint an administrative judge from the staff of the board who shall investigate the complaint. The administrative judge may dismiss the complaint or determine that a hearing is required. Any such hearing shall be conducted by the panel, and the panel may discipline any agent in any manner provided in this section. Within forty-five (45) days from the date of the panel's disciplinary decision, the disciplined agent may appeal the panel's decision to the board. In the event of such appeal, the members of the board shall conduct a hearing and may confirm or dismiss the panel's disciplinary decision.

(5)(A) All agents' registrations issued by the board under this section shall expire on June 30 of each even-numbered year, and shall be invalid

after that date unless renewed. Subject to the provisions of subsection (h), such registrations may be renewed on or before the expiration date by remitting to the board the biennial registration fee of two hundred dollars ($200).

(B) Subject to the provisions of subsection (h), an agent's registration may be renewed:

(i) On or before the expiration date, by remitting to the board the biennial registration fee of two hundred dollars ($200);

(ii) Within a period of one (1) year after the expiration date, by remitting to the board the biennial registration fee of two hundred dollars ($200) plus a late renewal fee of fifty dollars ($50.00).

(C) Any person whose registration has lapsed for a period of more than one (1) year must reapply for registration.

(g) Any written solicitation of business, by letter, advertisement, or otherwise, by any person other than an attorney, who qualifies as an agent under this section shall contain, in type large enough to be easily readable, a disclaimer substantially as follows: "Taxpayer agents who are not lawyers may only appear on your behalf before the state board of equalization on matters of classification, assessment, and/or valuation, and may not represent you in a court of law."

(h) The agent regulatory panel may adopt and revise standards for continuing education to be imposed as a condition for renewal of an agent's registration under this section, which standards and revisions shall be subject to approval by the board. The board and panel may approve a continuing education program conducted by its staff, and the board may charge agents attending for credit a fee in an amount sufficient to defray the cost of the program.

(i) All other provisions of this section notwithstanding, this section shall not apply in any manner to the representation of a taxpayer by an attorney.

(j) No provision in this section is intended to require that any person must be an attorney, certified public accountant, agent registered with the board, or otherwise in order to act as an agent for a taxpayer before a county board of equalization.

(k) To be eligible for registration under this section, an individual must establish a place of business in this state or designate an agent for service of legal process who is a resident of this state. The board may waive any registration requirement for an applicant who holds a valid registration certificate or license issued by another state that has requirements for licensing or registration of property taxpayer agents that are at least equal to the requirements of this state. An applicant for reciprocity shall apply in the same manner as any other applicant and shall furnish the board with documents and other evidence substantiating the applicant's qualifications as required by the board.

67-5-1704. Special school districts.

(a)(1) Notwithstanding the provisions of the general law or a private act to the contrary which creates a special school district, upon a general reappraisal of property as determined by the state board of equalization, the tax rate as established in any such general law or private act shall be adjusted to provide the same ad valorem revenue for such special school district as

was levied during the previous year prior to such general reappraisal.

(2) The county assessor of property shall certify to the appropriate county trustee the total assessed value of taxable property within the jurisdiction of the special school district.

(3) The assessor shall also furnish such county trustee an estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll and the assessed value of deletions from the previous assessment roll.

(4) Exclusive of such new construction, improvements and deletions, the county trustee, in the event of a general reappraisal as determined by the state board of equalization, shall determine and certify the adjusted tax rate pursuant to this section.

(5) For the purpose of calculating the adjusted rate, the county trustee shall use the taxable value appearing on the roll exclusive of taxable value of properties appearing for the first time on the assessment roll.

(6) The procedure or formula for calculating the certified adjusted tax rate shall be in accordance with policies as established by the state board of equalization pursuant to § 67-5-1701(b).

(b) The county trustee shall certify such adjusted tax rate to the school board of the special school district within a reasonable time following the general reappraisal, and in addition, shall post such adjusted tax rate at each school within the special school district, at the appropriate courthouse, and at one (1) other public building within the appropriate county.

(c) If additional revenue is required in a special school district following such general reappraisal and the adjustment to the tax rate under the provisions of this section, the general assembly shall by general law or private act set the tax rate for such special school district at a level to generate the ad valorem revenue necessary for such special school district. Before the board of education of the special school district requests legislation to exceed the certified rate as determined in this section, it shall first publish notice of its intent to exceed the certified rate in the manner required of cities and counties pursuant to § 67-5-1702.

(d) [Deleted by 2011 amendment, effective January 1, 2012.]

67-5-2415. Notice to taxpayer of suit.

(a) The defendant, when served in any manner according to the Rules of Civil Procedure, either by mail or in person, does not have to be served with a copy of the complaint and exhibit and instead, the clerk may issue a notice to accompany the summons.

(b) The notice shall identify the suit mentioned in the summons sufficiently to enable the taxpayer to know what delinquent taxes the taxpayer is being sued for and what property is subject to the lien.

(c) The summons and notice may be for more than one (1) suit where suits have been consolidated.

(d) Constructive service of process shall be made as now provided by law.

(e) In all counties, personal service of process on the defendant may be dispensed with and the summons and notice may be sent by certified or registered mail, return receipt requested, or any alternative delivery service as authorized by § 7502 of the Internal Revenue Code, codified in 26 U.S.C. § 7502.

(1) The return of the receipt signed by the defendant, spouse, or other person deemed appropriate to receive summons or notice as provided for in the Rules of Civil Procedure, or its return marked "refused," evidenced by appropriate notation of such fact by the postal authorities, and filed as a part of the record by the clerk, with notation on the docket of the true facts, shall be evidence of personal notice.

(2) In the event the return receipt does not establish that it was signed by the defendant or the defendant's authorized agent or that the notice was refused, then the court may find through independent proof that the defendant had actual notice in compliance with notice requirements.

(3) If the court does not find that the defendant had actual notice, it may order such other and further action to be taken to give the defendant notice.

67-6-102. Chapter definitions — Definitions applicable for taxation of charges for mobile telecommunications services. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

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

(1) "Advertising agency" means a business, more than eighty percent (80%) of whose gross receipts in the previous taxable year were, or in the first taxable year are reasonably projected to be, from charges for advertising services. For purposes of this definition, "gross receipts" does not include charges for printing, imprinting, reproduction, publishing of tangible personal property or photography to the extent that:

(A) The activity was not performed by the business itself but was contracted out to another business; and

(B) The charges for the activity were passed through the business to its client;

(2) "Advertising materials" means tangible personal property or its digital equivalent produced to advertise a product, service, idea, concept, issue, place or thing, including, but not limited to, brochures, catalogs and point-of-purchase materials, but not including preliminary artwork, and not including original sound recordings or video recordings produced by recording studios, television studios, video production studios or by or for advertising agencies, or masters produced from the original recordings, regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

(3)(A) "Advertising services" means services rendered by an advertising agency to promote a product, service, idea, concept, issue, place or thing, including services rendered to design and produce advertising materials prior to the acceptance of the advertising materials for reproduction or publication, including, but not limited to:

(i) Advice and counseling regarding marketing and advertising;

(ii) Strategic planning for marketing and advertising;

(iii) Consumer research;

(iv) Account planning;

(v) Public relations;

(vi) Design;

(vii) Layout;

(viii) Preparation of preliminary art;

(ix) Creative consultation, coordination, media placement, direction and supervision;

(x) Script and copywriting;

(xi) Editing;

(xii) Supervision of the production of advertising materials, including quality control;

(xiii) Direct mail; and

(xiv) Account management services;

(B) "Advertising services" does not include the production of final artwork or advertising materials;

(4) "Agricultural purposes" means operating tractors or other farm equipment used exclusively, whether for hire or not, in plowing, planting, harvesting, raising or processing of farm products at a farm, nursery or greenhouse, operating farm irrigation systems, or operating motor vehicles or other logging equipment used exclusively, whether for hire or not, in cutting and harvesting trees, when the vehicles or equipment are not operated upon the public highways of this state;

(5) "Aircraft" has the same meaning used in § 42-1-101;

(6) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one half of one percent (0.5%) or more of alcohol by volume;

(7) "Ancillary services" means services that are associated with, or incidental to, the provision of telecommunications services, including, but not limited to, detailed telecommunications billing service, directory assistance service, vertical service, and voice mail service. As used in this subdivision (7):

(A) "Conference bridging service" means an ancillary service that links two (2) or more participants of an audio or video conference call, and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge;

(B) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;

(C) "Directory assistance" means an ancillary service of providing telephone number information, and address information;

(D) "Vertical service" means an ancillary service that is offered in connection with one (1) or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services; and

(E) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service;

(8)(A) "Business" means any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect;

(B) "Business" does not include occasional and isolated sales or transactions by a person not regularly engaged in business, or the occasional and isolated sale at retail or use of services sold by or purchased from a

person not regularly engaged in business as a vendor of taxable services, or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction. "Business" does not include those occasional or isolated sales or transactions by such a person involving mobile homes or house trailers, as defined by § 55-4-111, when the consummation of such exclusively involves the assumption by the purchaser of a previously existing finance contract and no other consideration is received by the seller. "Business" does not include any sales or use tax of tangible personal property of any type sold directly to consumers by any person, including, but not limited to, the Girl Scouts or county fairs; provided, however, that the tangible personal property is not regularly sold by the person or is regularly sold by the person only during a temporary sales period that occurs on a semiannual, or less frequent, basis, or, if sold by a volunteer fire department, only during a temporary sales period that occurs no more than four (4) times per calendar year. For charitable entities whose primary purpose is fundraising in support of a city, county or metropolitan library system, "business" does not include sales that the charitable entity elects to make in lieu of two semiannual temporary sales periods; provided, that the sales do not exceed one hundred thousand dollars ($100,000) per calendar year; and provided further, that the election by the charitable entity shall remain in effect for no less than four (4) years;

(C) "Business" includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between corporations and their members or stockholders and also includes such transactions caused by the merger, consolidation, or reorganization of corporations. "Business" also includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between partnerships and the partners thereof and transfers between separate partnerships. Transfers caused by the dissolution of a partnership due solely to a partner, in a partnership composed of three (3) or more persons, voluntarily ceasing to be associated in the carrying on of business of the partnership, as provided in § 61-1-128 [repealed], is not included in "business." "Business" shall be construed to include occasional and isolated sales or transactions by such a person involving aircraft, vessels or motor vehicles, which terms include trailers and special motor equipment sold in conjunction therewith, as defined by and required to be registered under the laws of Tennessee with an agency of this state or under the laws of the United States with an agency of the federal government, unless such sales or transactions are otherwise exempt under this chapter or are sales between persons who are married, lineal relatives or spouses of lineal relatives, or siblings. Such sales or transactions involving aircraft based in this state shall be presumed to be made and taxable in this state; and any registration reflecting such aircraft that are so based shall constitute evidence thereof;

(9) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration;

(10) "Certified automated system" means software certified under the Streamlined Sales and Use Tax Agreement (SSUTA) to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax

to remit to the appropriate state, and maintain a record of the transaction;

(11) "Certified service provider" means an agent certified under the Streamlined Sales and Use Tax Agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(12) "Clothing" means all human wearing apparel suitable for general use;

(13) "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with clothing;

(14) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;

(15) "Commissioner" means and includes the commissioner of revenue or the commissioner's duly authorized assistants;

(16) "Common carrier" means every person holding a certificate of public convenience and necessity as a common carrier from the interstate commerce commission or the United States department of transportation or its predecessor agency of the federal government;

(17) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

(18) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task;

(19) "Computer software maintenance contract" means a contract that obligates a person to provide a customer with future updates or upgrades to computer software, support services with respect to computer software, or both. However, "computer software maintenance contract" does not include telephone or other support services that are optional and are sold separately and invoiced separately and do not include any transfer, repair or maintenance of computer software on the part of the seller;

(20) "Construction machinery" means machinery designed for and used exclusively in the preparation for, assembly, fabrication, and finishing of permanent improvements to real estate;

(21) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever;

(22) "Data center" means a building or buildings, either newly constructed, expanded, or remodeled, housing high-tech computer systems and related equipment;

(23) "Dealer" means every person, as used in this chapter, including Model 1, Model 2, and Model 3 sellers, where the context requires, who:

(A) Manufactures or produces tangible personal property for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(B) Imports, or causes to be imported, tangible personal property from any state or foreign country, for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(C) Sells at retail, or who offers for sale at retail, or who has in such person's possession for sale at retail, or for use, consumption, distribution, or storage to be used or consumed in this state, tangible personal property

as defined in this section;

(D) Has sold at retail, used, consumed, distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of the tangible personal property;

(E) Leases or rents tangible personal property, as defined in this chapter, for a consideration, permitting the use or possession of the property without transferring title to such property;

(F) Is the lessee or renter of tangible personal property, as defined in this chapter, and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title to such property;

(G) Maintains or has within this state, directly or by a subsidiary, an office, distributing house, sales room or house, warehouse, or other place of business;

(H) Furnishes any of the things or services taxable under this chapter;

(I) Has any representative, agent, salesperson, canvasser or solicitor operating in this state, or any person who serves in such capacity, for the purpose of making sales or the taking of orders for sales, regardless of whether such representative, agent, salesperson, canvasser or solicitor is located here permanently or temporarily, and regardless of whether an established place of business is maintained in this state;

(J) Engages in the regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system;

(K) Uses tangible personal property, whether the title to such property is in such person or some other entity, and whether or not such other entity is required to pay a sales or use tax, in the performance of such person's contract or to fulfill such person's contract obligations, unless such property has previously been subjected to a sales or use tax, and the tax due thereon has been paid;

(L) Sells at retail or charges admission, dues or fees as defined in this chapter; or

(M) Rents or provides space to a dealer without a permanent location in this state or to dealers who are registered for sales tax at other locations in this state, but who are making sales at this location on a less than permanent basis; provided, that "dealer" does not include flea market operators;

(24) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

(25)(A) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Delivery charges shall not include delivery for direct mail when the charges are separately stated on an invoice or similar billing document given to the purchaser. If the shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

(i) A percentage based on the total sales price of the taxable property compared to the sales prices of all property in the shipment; or

(ii) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment;

(B) The seller shall tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property;

(26) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in subdivisions (26)(A)(i)-(v);

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the supplement facts box found on the label and as required pursuant to 21 CFR 101.36;

(27) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, that are transferred electronically, including prerecorded or livesongs, music, readings of books or other written materials, speeches, ringtones, or other sound recording. For purposes of this subdivision (27), "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication. "Digital audio works" does not include audio greeting cards sent by electronic mail;

(28) "Digital audio-visual works" means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, that are transferred electronically. "Digital audio-visual works" includes motion pictures, musical videos, news and entertainment programs, and live events. "Digital audio-visual works" does not include video greeting cards sent by electronic mail or video or electronic games;

(29) "Digital books" means works that are generally recognized in the ordinary and usual sense as "books" that are transferred electronically, including works of fiction and nonfiction and short stories. "Digital books" does not include newspapers, magazines, periodicals, chat room discussions or weblogs;

(30) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include

multiple items of printed material delivered to a single address;

(31) "Direct pay permit" means special written permission granted to a taxpayer by the commissioner to make all purchases free of the sales or use tax and report all sales or use tax due directly to the department;

(32) "Direct pay permit holder" means a taxpayer who holds a direct pay permit;

(33) "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body;

(34)(A) "Durable medical equipment" means equipment that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury; and

(iv) Is not worn in or on the body;

(B) "Durable medical equipment" includes repair and replacement parts for the equipment; provided, however, that the repair and replacement parts shall not include parts, components, or attachments that are for single patient use. "Durable medical equipment" does not include mobility enhancing equipment;

(35) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(36) "Energy resource recovery facility" means a facility for the production of energy in the form of steam or chilled water from the controlled burning of combustible materials, including, but not limited to, coal, fuel oil, or natural gas, where such energy is to be used in a system for heating and cooling five (5) or more separate buildings;

(37) "Fabricating or processing tangible personal property for resale" means only tangible personal property that is fabricated or processed for resale and ultimate use or consumption off the premises of the one engaging in such fabricating or processing, or hot mix asphalt and crushed stone fabricated by a contractor for use by the contractor in highway or road construction projects funded by tax revenues. "Fabricating or processing tangible personal property for resale" shall be deemed to include providing fabrication and repair services to aircraft owned by nonaffiliated business entities whether commercial, governmental or foreign; provided, that the dealer performing such services qualifies for the credit allowed in § 67-4-2109(b). "Fabricating or processing tangible personal property for resale" shall not include any other type of repair services. "Fabricating or processing tangible personal property for resale" includes the processing of photographic film into negatives and/or photographic prints for resale;

(38) "Final artwork" means tangible personal property or its digital equivalent that is suitable for use in producing advertising materials and includes, but is not limited to, photographs, illustrations, drawings, paintings, calligraphy, models and similar works that are used to produce

advertising materials, but does not include preliminary artwork or original sound recordings or video recordings produced by recording studios, television studios, video production studios, or by or for advertising agencies, or masters produced from the original recordings regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

(39) "Flea market" means a place of business that provides space more than two (2) times a year to two (2) or more persons for the purpose of making sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. "Flea market" does not include hotels, convention centers, municipal auditoriums, municipal coliseums, or gun shows, if such gun shows are sponsored by a not-for-profit corporation;

(40) "Flea market operator" means any person who receives compensation for providing space more than two (2) times a year to two (2) or more persons for the purpose of making sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. "Flea market operator" does not include a hotel, convention center, municipal auditorium, municipal coliseum, or gun show operator, if such gun shows are sponsored by a not-for-profit corporation;

(41) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, tobacco, candy, dietary supplements, or prepared food;

(42) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the definition of over-the-counter drugs;

(43) "Gross sales" means the sum total of all retail sales of tangible personal property and all proceeds of services taxable under this chapter as defined in this section, without any deduction whatsoever of any kind or character, except as provided in this chapter;

(44) "Industrial machinery" means:

(A)(i) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabrication or processing of tangible personal property for resale and consumption off the premises, or pollution control facilities primarily used for air pollution control or water pollution control, where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one's principal business or who engages in the fabrication or processing of materials into trusses, window units or door units for resale as part of the principal business of the sale of building supplies either within or without this state, or such use by a county or municipality or a contractor pursuant to a contract with such county or municipality for use in water pollution control or sewage systems, also mining machinery, apparatus equipment and materials, with all associated parts and accessories, including repair parts and any necessary repair or instal-

lation labor, that is necessary to and primarily for:

(a) The removal, extraction or detachment of coal from land by surface, underground or other lawful methods of mining and the construction or maintenance of necessary ingress and egress from the mine;

(b) The removal, handling and replacement of overburden and spoils materials; or

(c) The reclamation of mined areas reclaimed under state or federal laws, rules or regulations;

(ii) As used in this chapter, "pollution control facilities" means any system, method, improvement, structure, device or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing or reducing air or water pollution, or for the primary purpose of treating, pretreating, recycling or disposing of any hazardous or toxic waste, solid or liquid, when such pollutants are created as a result of fabricating or processing by one who engages in fabricating or processing as such person's principal business activity, which, if released without such treatment, pretreatment, modification or disposal, might be harmful, detrimental or offensive to the public and the public interest;

(B) Machinery that is necessary to and primarily for remanufacturing industrial machinery as defined in subdivision (44)(A) when such utilization is by one whose principal business is that of remanufacturing industrial machinery. For the purposes of this subdivision (44)(B), "remanufacturing" means making new or different products with new or different functions from the scrap materials used to make them;

(C) Machinery utilized in the pre-press and press operations in the business of printing, including plates and cylinders, and including the component parts and fluids or chemicals necessary for the specific mechanical or chemical actions or operations of such machinery, plates and cylinders, regardless of whether or not the operations occur at the point of retail sales;

(D) Such industrial machinery necessary to and primarily for the fabrication and processing of tangible personal property for resale or used primarily for the control of air pollution or water pollution includes, but is not limited to:

(i) Machines used for generating, producing, and distributing utility services, electricity, steam, and treated or untreated water; and

(ii) Equipment used in transporting raw materials from storage to the manufacturing process, and transporting finished goods from the end of the manufacturing process to storage;

(E)(i) Machinery used to package manufactured items, where the use of such machinery is by a person whose principal business is fabricating or processing tangible personal property for resale. Notwithstanding the principal business of the user, this exemption shall also apply where the use of such machinery at a location is to package automotive aftermarket products manufactured at other locations by the same person or by a corporation affiliated with the manufacturing corporation such that:

(a) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(b) One hundred percent (100%) of the capital stock of both corpo-

rations is directly owned or controlled by a common parent;

(ii) To "package," as used in subdivision (44)(E)(i), refers only to the fabrication and/or installation of that packaging that will accompany the product when sold at retail;

(F) Such industrial machinery necessary to and primarily for the fabrication or processing of tangible personal property for resale and consumption off the premises or used primarily for the control of air pollution or water pollution does not include machinery, apparatus and equipment used prior to or after equipment exempted by subdivision (44)(D)(ii), and does not include equipment used for maintenance or the convenience or comfort of workers;

(G) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabricating or processing of prescription eyewear, where a majority of such eyewear is ultimately dispensed to patients in states other than Tennessee;

(H)(i) Material handling equipment and racking systems, used by the taxpayer directly and primarily for the storage or handling and movement of tangible personal property in a qualified, new or expanded warehouse or distribution facility, that are purchased beginning one (1) year prior to the start of the construction or expansion and ending one (1) year after the substantial completion of the construction or expansion of the facility, but in no event shall the period exceed three (3) years. "Qualified, new or expanded warehouse or distribution facility" means a new or expanded facility, that meets the requirements set out in this subdivision (46)(H), for the storage or distribution of finished tangible personal property. Such facilities shall not include a building where tangible personal property is fabricated, processed, assembled or sold over-the-counter to consumers, except for taxpayers that qualify under the provisions of Acts 1995, ch. 185, or are configuring, testing or packaging computer products. "Configuring" computer products means integrating a computer with peripheral computer products, such as a hard disk drive, additional memory or software. A qualifying facility must also be:

(a) A warehouse or distribution facility constructed in this state through an investment in excess of ten million dollars ($10,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, in a newly constructed and previously unoccupied building and/or equipment for the facility;

(b) An expansion to an existing warehouse or distribution facility, previously qualified under subdivision (44)(H)(i), through an additional investment in excess of ten million dollars ($10,000,000) by the taxpayer, and/or a lessor to the taxpayer over an additional period not exceeding three (3) years, for additions to the building and the purchase of new equipment for use in the expanded facility;

(c) A warehouse or distribution facility in this state that is purchased and either renovated or expanded through an investment in excess of ten million dollars ($10,000,000) in such purchase and renovation or expansion by the taxpayer, and/or a lessor to the taxpayer, including the purchase of new equipment for such a build-

ing, over a period not exceeding three (3) years; or

(d) An expansion to an existing warehouse or distribution facility in this state through an aggregate investment in excess of twenty million dollars ($20,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, consisting of an investment in excess of ten million dollars ($10,000,000) in the renovation or expansion of an existing building and/or the purchase of new equipment for such a building, together with an investment in excess of ten million dollars ($10,000,000) in the construction of a new, previously unoccupied building and/or equipment for such a building;

(ii) A taxpayer shall qualify for the exemption afforded to material handling and racking systems under subdivision (44)(H)(i) by submitting an application to the commissioner for the exemption, together with a plan describing the investment to be made. The application and plan shall be submitted on forms prescribed by the commissioner. The plan shall demonstrate that the requirements of the law will be met. Upon approval of the exemption request and plan for investment, purchases of the equipment may be made without payment of the sales or use tax. However, if the requisite investment is not made in the time period required, or the terms of the statute are not met, the taxpayer shall be subject to assessment for any tax, penalty or interest that would otherwise have been due;

(I) Material handling equipment and racking systems used in a warehouse and distribution facility, subject to all the requirements and conditions of subdivision (44)(H), except:

(i) The required investment in excess of ten million dollars ($10,000,000) may also be made in a previously occupied facility:

(a) Through the purchase of a building, and/or the purchase of new equipment for use in the building no later than one (1) year after the purchase of the building; or

(b) Through the purchase of new equipment for use in a leased building, not qualifying under subdivision (44)(I)(i)(*a*), made no later than one (1) year after the date of the lease agreement; and

(ii) Any purchases exempted from tax for use in the facility described in this subdivision (44)(I) must be made no later than one (1) year after the purchase of the building under subdivision (44)(I)(i)(*a*), or no later than one (1) year after the date of the lease agreement under subdivision (44)(I)(i)(*b*);

(J) "Industrial machinery" does not include machinery, apparatus and equipment, with all associated parts, appurtenances, accessories, repair parts, and necessary repair or taxable installation labor therefor, that is used in the preparation of food for immediate retail sale;

(K) "Industrial machinery" also includes any "computer", "computer network", "computer software", or "computer system", as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware such as printers, plotters, external disc drives, modems, and telephone units, when such items are used in the operation of a qualified data center. For purposes of this subdivision (44)(K), "industrial machinery" includes repair parts, repair or installation services, and warranty or service contracts, purchased for such items used in the operation of a qualified data center; and

(L) "Industrial machinery" includes machinery, apparatus and equipment with all associated parts, appurtenances, accessories, repair parts and necessary repair or taxable installation labor therefor, that is necessary to and used primarily for the conversion of tangible personal property into taxable specified digital products for resale and consumption off the premises. "Industrial machinery" does not include machinery, apparatus or equipment, with all associated parts, appurtenances, accessories, repair parts and necessary repair or taxable installation labor therefor, that is used primarily for the storage or distribution of such specified digital products following such conversion;

(45) "International," as used in connection with telecommunications services, means a telecommunications service that originates or terminates in the United States, and terminates or originates outside the United States, respectively. United States includes the District of Columbia and a United States territory or possession;

(46) "Interstate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession;

(47) "Intrastate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in the same United States state or United States territory or possession;

(48) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser;

(49) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A "lease or rental" may include future options to purchase or extend;

(A) "Lease or rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision (49), an operator must do more than maintain, inspect, or set-up the tangible personal property;

(B) "Lease or rental" includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1);

(C) This subdivision (49) shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under

generally accepted accounting principles, the Internal Revenue Code, compiled in 26 U.S.C., or title 47, chapter 2A, or other federal, state or local law;

(D) This subdivision (49) shall be applied only prospectively from the date of adoption and shall have no retroactive impact on existing leases or rentals;

(50) "Livestock and poultry feed" means and includes all grains, minerals, salts, proteins, fats, fibers and all vitamins, acids and drugs used and mixed with such ingredients as a growth stimulant, disease preventive, to stimulate feed conversion and make a complete feed;

(51) "Local tax jurisdiction" means a geographic area where the same local option tax, either county tax or a combination of county and municipal tax, applies;

(52) "Mobile telecommunications service" means the same as that term is defined in the Mobile Telecommunications Sourcing Act, Public Law 106-252, codified in 4 U.S.C. § 124(7);

(53) "Mobility enhancing equipment" means equipment, including repair and replacement parts to the equipment, but does not include durable medical equipment that:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

(54) "Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(55) "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax;

(56) "Model 3 seller" means a seller that has sales in at least five states that are members of the Streamlined Sales and Use Tax Agreement, has total annual sales revenue of at least five hundred million dollars ($500,000,000), has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subdivision (56), a seller includes an affiliated group of sellers using the same proprietary system;

(57) "OEM headquarters company" means an original equipment manufacturer that is engaged in the business of manufacturing motor vehicles and qualifies to receive the credit provided in § 67-6-224, or any affiliate thereof. For purposes of this subdivision (57), "affiliate" has the same meaning as provided in § 67-4-2004;

(58) "OEM headquarters company vehicle" means any motor vehicle subject to registration in accordance with title 55 that is owned by an OEM headquarters company, whether used for sales or service training, advertising, quality control, testing, evaluation or such other uses as approved by the commissioner, and, further, including motor vehicles provided by the OEM headquarters company for use by eligible employees and their eligible family members in accordance with policies established by the OEM headquarters

company and approved by the commissioner;

(59)(A) "Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug as required by 21 CFR 201.66. The "over-the-counter-drug" label includes:

(i) A drug facts panel; or

(ii) A statement of the active ingredients, with a list of those ingredients contained in the compound, substance or preparation;

(B) "Over-the-counter-drug" does not include grooming and hygiene products;

(60) "Permanent location" does not include any booths or space located at a flea market, antique mall, craft show, antique show, gun show, auto show or any similar type business;

(61) "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, any governmental agency whose services are essentially a private commercial concern, or other group or combination acting as a unit, in the plural as well as the singular number. "Person" further includes any political subdivision or governmental agency, including electric membership corporations or cooperatives, and utility districts, to the extent that such agency sells at retail, rents or furnishes any of the things or services taxable under this chapter;

(62) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications service, "place of primary use" shall be within the licensed service area of the home service provider;

(63) "Preliminary artwork" means tangible personal property and digital equivalents that are produced by an advertising agency in the course of providing advertising services solely for the purpose of conveying concepts or ideas or demonstrating an idea or message to a client and includes, but is not limited to concept sketches, illustrations, drawings, paintings, models, photographs, storyboards or similar materials;

(64) "Prepaid calling service" means the right to access exclusively telecommunications services that must be paid for in advance and that enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(65) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service, as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services that must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount;

(66)(A) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food;

(B) "Prepared food" in subdivision (66)(A)(ii) does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration (FDA) in chapter 3, § 401.11 of the FDA's food code so as to prevent food borne illnesses;

(67) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state;

(68) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two (2) or more prewritten computer software programs or prewritten portions of computer software does not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of that person's modifications or enhancements. "Prewritten computer software" or a prewritten portion of the computer software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software;

(69) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels;

(70)(A) "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the replacement, corrective, or supportive device worn on or in the body to:

(i) Artificially replace a missing portion of the body;

(ii) Prevent or correct physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body;

(B) "Prosthetic device" does not include:

(i) Corrective eyeglasses; or

(ii) Contact lenses;

(71) "Protective equipment" means items for human wear, designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property, but not suitable for general use;

(72) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price;

(73) "Qualified data center" means a data center that has made a required capital investment in excess of two hundred fifty million dollars

($250,000,000) during an investment period not to exceed three (3) years and that creates at least twenty-five (25) net new full-time employee jobs during the investment period paying at least one hundred fifty percent (150%) of the states' average occupational wage as defined in § 67-4-2004. For purposes of this subdivision (73), "required capital investment" means an increase of a business investment in real property, tangible personal property or computer software owned or leased in the state, valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction. For purposes of this subdivision (73), "full-time employee job" means a permanent, rather than seasonal or part-time employment position for at least twelve (12) consecutive months to a person for at least thirty-seven and one half (37 ½) hours per week with minimum health care, as described in title 56, chapter 7, part 22. The three-year period for making the required capital investment provided for in this subdivision (73) may be extended by the commissioner of economic and community development for a reasonable period, not to exceed four (4) years, for good cause shown. For purposes of this subdivision (73), "good cause" means a determination by the commissioner of economic and community development that the capital investment is a result of the exemption for industrial machinery used by a qualified data center;

(74) "Rain check" means the seller allows a customer to purchase an item at a certain price at a later time, because the particular item was out of stock;

(75)(A) "Resale" means a subsequent, bona fide sale of the property, services, or taxable item by the purchaser. "Sale for resale" means the sale of the property, services, or taxable item intended for subsequent resale by the purchaser. Any sales for resale shall, however, be in strict compliance with rules and regulations promulgated by the commissioner;

(B)(i) "Sale for resale" does not include a sale of tangible personal property or software to a dealer for use in the business of selling services. Property used in the business of selling services includes, but is not limited to, property that is regularly furnished to purchasers of the service without separate charge. A dealer that sells services shall be considered the end user and consumer of property used in selling, performing, or furnishing such services. However, "sale for resale" does include the following items in the circumstances described:

(a) Repair parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the dealer's performance of repair services, regardless of whether the dealer makes a separately stated charge for such property;

(b) Installation parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the installation of property that remains tangible personal property following such installation, regardless of whether the dealer makes a separately stated charge for such property;

(c) Mobile telephones and similar devices sold to a dealer if such property is subsequently transferred to the customer in conjunction with the sale of commercial mobile radio services (CMRS), regardless of whether the dealer makes a separately stated charge for such

property; and

(d) Food or beverages sold to a hotel, motel, inn or other dealer that provides lodging accommodations if such food or beverages are subsequently transferred to the customer in conjunction with the dealer's sale of lodging accommodations to the customer, regardless of whether the dealer makes a separately stated charge for such property;

(ii) "Sale for resale" does not include a sale of services to a dealer for use in the business of selling, leasing, or renting tangible personal property or computer software. Services used in the business of selling, leasing, or renting tangible personal property include, but are not limited to, services such as cleaning, maintaining, or repairing property that is held as inventory for sale, lease, or rental. A dealer that sells, leases, or rents tangible personal property or computer software shall be considered the end user and consumer of services used in conducting such business;

(iii) Nothing in this subdivision (75) shall be construed as amending or otherwise effecting the exemption provided in § 67-6-392;

(76) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;

(77) "Retailer" means and includes every person engaged in the business of making sales at retail, or for distribution, use, consumption, storage to be used or consumed in this state or furnishing any of the things or services taxable under this chapter;

(78)(A) "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, repairing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property;

(B) A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale; provided, that where title to property is taken by an industrial development corporation, within the meaning of title 7, chapter 53, but the property is leased to a taxpayer, the transaction shall be regarded, for purposes of this chapter, as a sale to and purchase by the industrial development corporation followed by a lease, regardless of whether the lessee has an option to purchase any or all of the property from the industrial development corporation;

(C) "Sale" includes the furnishing of any of the things or services taxable under this chapter;

(D) "Sale" includes the sale, gifts in connection with valuable contributions, exchange or other disposition of admission, dues or fees to membership sports and recreation clubs, places of amusement or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities. Such establishments or facilities include, but are not limited to, the amusement and recreational facilities and motion picture theaters described in the standard industrial classification index prepared by the bureau of the budget of the federal government;

(E) "Sale" includes the renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis;

(F) "Sale" includes the processing of photographic film into negatives and/or photographic prints for resale;

(G) "Sale" includes charges for admission, dues or fees that constitute a sale under this subdivision (78), except tickets for admission sold to a Tennessee dealer for resale upon presentation of a resale certificate. Dealers registered with the state for sales tax purposes may purchase tickets for resale without payment of tax upon presentation to the vendor of a valid certificate of resale;

(H) "Sale" includes all transactions that the commissioner, upon investigation, finds to be in lieu of sales;

(I) "Sale" includes a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(J) "Sale" includes a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments; and

(K) "Sale" includes any transfer of title or possession, or both, lease or licensing, in any manner or by any means whatsoever of computer software for consideration, and includes the creation of computer software on the premises of the consumer and any programming, transferring or loading of computer software into a computer;

(79)(A) "Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges;

(v) Installation charges; and

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;

(B) "Sales price" does not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(iv) Credit for any trade-in, as determined by § 67-6-510, that is separately stated on an invoice or similar billing document given to the purchaser;

(C) "Sales price" includes consideration received by the seller from third parties, if:

(i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(a) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount, where the coupon, certificate or documentation is authorized, distributed or granted by a third party, with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(b) The purchaser identifies itself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or

(c) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser, or on a coupon, certificate or other documentation presented by the purchaser;

(80) "School art supplies" means an item commonly used by a student in a course of study for artwork. For purposes of this chapter, the following is an all-inclusive list of "school art supplies":

(A) Clay and glazes;

(B) Paintbrushes for artwork;

(C) Paints, acrylic, tempera, and oil;

(D) Sketch and drawing pads; and

(E) Watercolors;

(81) "School computer supplies" means an item commonly used by a student in a course of study in which a computer is used. For purposes of this chapter, the following is an all-inclusive list of "school computer supplies":

(A) Computer printers;

(B) Computer storage media, diskettes, compact disks;

(C) Handheld electronic schedulers, except devices that are cellular phones;

(D) Personal digital assistants, except devices that are cellular phones; and

(E) Printer supplies for computers, printer paper, printer ink;

(82) "School instructional materials" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. For purposes of this chapter, the following is an all-inclusive

list of "school instructional materials":

(A) Reference books;

(B) Reference maps and globes;

(C) Textbooks; and

(D) Workbooks;

(83) "School supplies" means an item used by a student in a course of study. For purposes of this chapter, the following is an all-inclusive list of "school supplies":

(A) Binders;

(B) Blackboard chalk;

(C) Book bags;

(D) Calculators;

(E) Cellophane tape;

(F) Compasses;

(G) Composition books;

(H) Crayons;

(I) Erasers;

(J) Folders, expandable, pocket, plastic and manila;

(K) Glue, paste, and paste sticks;

(L) Highlighters;

(M) Index cards;

(N) Index card boxes;

(O) Legal pads;

(P) Lunch boxes;

(Q) Markers;

(R) Notebooks;

(S) Paper, loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;

(T) Pencil boxes and other school supply boxes;

(U) Pencil sharpeners;

(V) Pencils;

(W) Pens;

(X) Protractors;

(Y) Rulers;

(Z) Scissors; and

(AA) Writing tablets;

(84) "Service address" means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. In the event this may not be known, service address means the origination point of the signal of the telecommunication service first identified by either the seller's telecommunication system or in information received by the seller from its service provider, where the system used to transport the signal is not that of the seller. In the event that neither the location of the telecommunications equipment nor the origination point of the signal are known, service address means the location of the customer's place of primary use;

(85) "Software" means computer software;

(86) "Specified digital products" means electronically transferred digital audio-visual works, digital audio works and digital books. For purposes of this subdivision (86), "electronically transferred" means obtained by the

purchaser by means other than tangible storage media;

(87) "Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use;

(88) "Storage" means and includes any keeping or retention in this state of tangible personal property for use or consumption in this state, or for any purpose other than sale at retail in the regular course of business; provided, that temporary storage pending shipping or mailing of tangible personal property to nonresidents of Tennessee shall not constitute a taxable use in Tennessee;

(89)(A) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;

(B) "Tangible personal property" does not include signals broadcast over the airwaves;

(90)(A) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing, without regard to whether such service is referred to as voice over Internet protocol services or is classified by the federal communications commission as enhanced or value added;

(B) "Telecommunications service" does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by electronic transmission to a purchaser, where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising including, but not limited to, directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service, as defined in 47 U.S.C. § 522(6), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

(viii) Ancillary services; or

(ix) Digital products delivered electronically, including, but not limited to, computer software, music, video, reading materials or ringtones;

(91) "Textbook" means a printed book that contains systematically organized educational information that covers the primary objectives of a course of study. A textbook may contain stories and excerpts of popular fiction and nonfiction writings, but does not include a book primarily published and distributed for sale to the general public. The term "textbook" does not

include a computer or computer software;

(92) "Time-share estate" means an ownership or leasehold estate in property devoted to a time-share fee, tenants in common, time span ownership, interval ownership, and a time-share lease;

(93) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco;

(94)(A) "Use" means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business;

(B) "Use" means the coming to rest in Tennessee of catalogues, advertising fliers, or other advertising publications distributed to residents of Tennessee in interstate commerce; provided, that the labeling, temporary storage, and other handling in connection with mailing or shipping of the catalogues, advertising fliers and other advertising publications in interstate commerce to nonresidents of Tennessee shall not constitute a taxable use in Tennessee; and

(C) "Use" also means and includes the consumption of any of the services and amusements taxable under this chapter;

(95) "Use tax" includes the "use," "consumption," "distribution" and "storage" as defined in this section;

(96)(A) "Video programming services" means programming provided by or generally considered comparable to programming provided by a television broadcast station and shall include cable television services sold by a provider authorized pursuant to title 7, chapter 59, wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) and video services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology;

(B) "Video programming services" does not include any of the following:

(i) Digital products transferred electronically, including, but not limited to, software, ringtones, and reading materials such as books, magazines, and newspapers;

(ii) Audio and video programming services provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d);

(iii) Audio and video programming services provided as part of, or incidental to, Internet access service, such as, but not limited to, video capable email; provided, that the services are not generally considered comparable to programming provided by a television broadcast station; and

(iv) Direct-to-home satellite television programming services; and

(97) "Workbook" means a printed booklet that contains problems and exercises in which a student may directly write answers or responses to the problems and exercises. The term "workbook" does not include a computer or computer software.

67-6-102. Chapter definitions — Definitions applicable for taxation of charges for mobile telecommunications services. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

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

(1) "Advertising agency" means a business, more than eighty percent (80%) of whose gross receipts in the previous taxable year were, or in the first taxable year are reasonably projected to be, from charges for advertising services. For purposes of this definition, "gross receipts" does not include charges for printing, imprinting, reproduction, publishing of tangible personal property or photography to the extent that:

(A) The activity was not performed by the business itself but was contracted out to another business; and

(B) The charges for the activity were passed through the business to its client;

(2) "Advertising materials" means tangible personal property or its digital equivalent produced to advertise a product, service, idea, concept, issue, place or thing, including, but not limited to, brochures, catalogs and point-of-purchase materials, but not including preliminary artwork, and not including original sound recordings or video recordings produced by recording studios, television studios, video production studios or by or for advertising agencies, or masters produced from the original recordings, regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

(3)(A) "Advertising services" means services rendered by an advertising agency to promote a product, service, idea, concept, issue, place or thing, including services rendered to design and produce advertising materials prior to the acceptance of the advertising materials for reproduction or publication, including, but not limited to:

(i) Advice and counseling regarding marketing and advertising;

(ii) Strategic planning for marketing and advertising;

(iii) Consumer research;

(iv) Account planning;

(v) Public relations;

(vi) Design;

(vii) Layout;

(viii) Preparation of preliminary art;

(ix) Creative consultation, coordination, media placement, direction and supervision;

(x) Script and copywriting;

(xi) Editing;

(xii) Supervision of the production of advertising materials, including quality control;

(xiii) Direct mail; and

(xiv) Account management services;

(B) "Advertising services" does not include the production of final artwork or advertising materials;

(4) "Agricultural purposes" means operating tractors or other farm equipment used exclusively, whether for hire or not, in plowing, planting, harvesting, raising or processing of farm products at a farm, nursery or greenhouse, operating farm irrigation systems, or operating motor vehicles or other logging equipment used exclusively, whether for hire or not, in cutting and harvesting trees, when the vehicles or equipment are not operated upon the public highways of this state;

(5) "Aircraft" has the same meaning used in § 42-1-101;

(6) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one half of one percent (0.5%) or more of alcohol by

volume;

(7) "Ancillary services" means services that are associated with, or incidental to, the provision of telecommunications services, including, but not limited to, detailed telecommunications billing service, directory assistance service, vertical service, and voice mail service. As used in this subdivision (7):

(A) "Conference bridging service" means an ancillary service that links two (2) or more participants of an audio or video conference call, and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge;

(B) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;

(C) "Directory assistance" means an ancillary service of providing telephone number information, and address information;

(D) "Vertical service" means an ancillary service that is offered in connection with one (1) or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services; and

(E) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service;

(8)(A) "Bundled transaction" means the retail sale of two (2) or more products, except real property and services to real property where:

(i) The products are otherwise distinct and identifiable; and

(ii) The products are sold for one (1) non-itemized price;

(B) A "bundled transaction" does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction;

(C) "Distinct and identifiable products" does not include:

(i) Packaging, such as containers, boxes, sacks, bags, and bottles, or other materials, such as wrapping, labels, tags, and instruction guides, that accompany the retail sale of the products and are incidental or immaterial to the retail sale of the products. Examples of packaging that is incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes;

(ii) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge;

(iii) Items included in the definition of sales price, pursuant to subdivision (81);

(D) "One non-itemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form, including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list;

(E) A transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is:

(i) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;

(ii) The retail sale of services where one (1) service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;

(iii) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis;

***(a)** "De minimis" means the seller's purchase price or sales price of the taxable products is ten percent (10%) or less of the total purchase price or sales price of the bundled products;*

***(b)** Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis; and*

***(c)** Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or*

*(iv)**(a)** The retail sale of exempt tangible personal property and taxable tangible personal property, where:*

***(1)** The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices or medical supplies; and*

***(2)** The seller's purchase price or sales price of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or sales price of the bundled tangible personal property;*

***(b)** Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent (50%) determination for a transaction;*

(9)(A) "Business" means any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect;

(B) "Business" does not include occasional and isolated sales or transactions by a person not regularly engaged in business, or the occasional and isolated sale at retail or use of services sold by or purchased from a person not regularly engaged in business as a vendor of taxable services, or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction. "Business" does not include those occasional or isolated sales or transactions by such a person involving mobile homes or house trailers, as defined by § 55-4-111, when the consummation of such exclusively involves the assumption by the purchaser of a previously existing finance contract and no other consideration is received by the seller. "Business" does not include any sales or use tax of tangible personal property of any type sold directly to consumers by any person, including, but not limited to, the Girl Scouts or county fairs; provided, however, that the tangible personal property is

not regularly sold by the person or is regularly sold by the person only during a temporary sales period that occurs on a semiannual, or less frequent, basis, or, if sold by a volunteer fire department, only during a temporary sales period that occurs no more than four (4) times per calendar year. For charitable entities whose primary purpose is fundraising in support of a city, county or metropolitan library system, "business" does not include sales that the charitable entity elects to make in lieu of two semiannual temporary sales periods; provided, that the sales do not exceed one hundred thousand dollars ($100,000) per calendar year; and provided further, that the election by the charitable entity shall remain in effect for no less than four (4) years;

(C) "Business" includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between corporations and their members or stockholders and also includes such transactions caused by the merger, consolidation, or reorganization of corporations. "Business" also includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between partnerships and the partners thereof and transfers between separate partnerships. Transfers caused by the dissolution of a partnership due solely to a partner, in a partnership composed of three (3) or more persons, voluntarily ceasing to be associated in the carrying on of business of the partnership, as provided in § 61-1-128 [repealed], is not included in "business." "Business" shall be construed to include occasional and isolated sales or transactions by such a person involving aircraft, vessels or motor vehicles, which terms include trailers and special motor equipment sold in conjunction therewith, as defined by and required to be registered under the laws of Tennessee with an agency of this state or under the laws of the United States with an agency of the federal government, unless such sales or transactions are otherwise exempt under this chapter or are sales between persons who are married, lineal relatives or spouses of lineal relatives, or siblings. Such sales or transactions involving aircraft based in this state shall be presumed to be made and taxable in this state; and any registration reflecting such aircraft that are so based shall constitute evidence thereof;

(10) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration;

(11) "Certified automated system" means software certified under the Streamlined Sales and Use Tax Agreement (SSUTA) to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;

(12) "Certified service provider" means an agent certified under the Streamlined Sales and Use Tax Agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(13) "Clothing" means all human wearing apparel suitable for general use;

(14) "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with clothing;

(15) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;

(16) "Commercial air carrier" means an entity authorized and certificated by the United States department of transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce;

(17) "Commissioner" means and includes the commissioner of revenue or the commissioner's duly authorized assistants;

(18) "Common carrier" means every person holding a certificate of public convenience and necessity as a common carrier from the interstate commerce commission or the United States department of transportation or its predecessor agency of the federal government;

(19) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

(20) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task;

(21) "Computer software maintenance contract" means a contract that obligates a person to provide a customer with future updates or upgrades to computer software, support services with respect to computer software, or both. However, "computer software maintenance contract" does not include telephone or other support services that are optional and are sold separately and invoiced separately and do not include any transfer, repair or maintenance of computer software on the part of the seller;

(22) "Construction machinery" means machinery designed for and used exclusively in the preparation for, assembly, fabrication, and finishing of permanent improvements to real estate;

(23) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever;

(24) "Data center" means a building or buildings, either newly constructed, expanded, or remodeled, housing high-tech computer systems and related equipment;

(25) "Dealer" means every person, as used in this chapter, including Model 1, Model 2, and Model 3 sellers, where the context requires, who:

(A) Manufactures or produces tangible personal property for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(B) Imports, or causes to be imported, tangible personal property from any state or foreign country, for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(C) Sells at retail, or who offers for sale at retail, or who has in such person's possession for sale at retail, or for use, consumption, distribution, or storage to be used or consumed in this state, tangible personal property as defined in this section;

(D) Has sold at retail, used, consumed, distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of the tangible personal property;

(E) Leases or rents tangible personal property, as defined in this chapter, for a consideration, permitting the use or possession of the property without

transferring title to such property;

(F) Is the lessee or renter of tangible personal property, as defined in this chapter, and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title to such property;

(G) Maintains or has within this state, directly or by a subsidiary, an office, distributing house, sales room or house, warehouse, or other place of business;

(H) Furnishes any of the things or services taxable under this chapter;

(I) Has any representative, agent, salesperson, canvasser or solicitor operating in this state, or any person who serves in such capacity, for the purpose of making sales or the taking of orders for sales, regardless of whether such representative, agent, salesperson, canvasser or solicitor is located here permanently or temporarily, and regardless of whether an established place of business is maintained in this state;

(J) Engages in the regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system;

(K) Uses tangible personal property, whether the title to such property is in such person or some other entity, and whether or not such other entity is required to pay a sales or use tax, in the performance of such person's contract or to fulfill such person's contract obligations, unless such property has previously been subjected to a sales or use tax, and the tax due thereon has been paid;

(L) Sells at retail or charges admission, dues or fees as defined in this chapter; or

(M) Rents or provides space to a dealer without a permanent location in this state or to dealers who are registered for sales tax at other locations in this state, but who are making sales at this location on a less than permanent basis; provided, that "dealer" does not include flea market operators;

(26) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

(27)(A) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Delivery charges shall not include delivery for direct mail when the charges are separately stated on an invoice or similar billing document given to the purchaser. If the shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

(i) A percentage based on the total sales price of the taxable property compared to the sales prices of all property in the shipment; or

(ii) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment;

(B) The seller shall tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property;

(28) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in subdivisions (28)(A)(i)-(v);

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the supplement facts box found on the label and as required pursuant to 21 CFR 101.36;

(29) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, that are transferred electronically, including prerecorded or livesongs, music, readings of books or other written materials, speeches, ringtones, or other sound recording. For purposes of this subdivision (29), "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication. "Digital audio works" does not include audio greeting cards sent by electronic mail;

(30) "Digital audio-visual works" means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, that are transferred electronically. "Digital audio-visual works" includes motion pictures, musical videos, news and entertainment programs, and live events. "Digital audio-visual works" does not include video greeting cards sent by electronic mail or video or electronic games;

(31) "Digital books" means works that are generally recognized in the ordinary and usual sense as "books" that are transferred electronically, including works of fiction and nonfiction and short stories. "Digital books" does not include newspapers, magazines, periodicals, chat room discussions or weblogs;

(32) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(33) "Direct pay permit" means special written permission granted to a taxpayer by the commissioner to make all purchases free of the sales or use tax and report all sales or use tax due directly to the department;

(34) "Direct pay permit holder" means a taxpayer who holds a direct pay permit;

(35) "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food

ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body;

(36)(A) "Durable medical equipment" means equipment that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury; and

(iv) Is not worn in or on the body;

(B) "Durable medical equipment" includes repair and replacement parts for the equipment; provided, however, that the repair and replacement parts shall not include parts, components, or attachments that are for single patient use. "Durable medical equipment" does not include mobility enhancing equipment;

(37) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(38) "Energy resource recovery facility" means a facility for the production of energy in the form of steam or chilled water from the controlled burning of combustible materials, including, but not limited to, coal, fuel oil, or natural gas, where such energy is to be used in a system for heating and cooling five (5) or more separate buildings;

(39) "Fabricating or processing tangible personal property for resale" means only tangible personal property that is fabricated or processed for resale and ultimate use or consumption off the premises of the one engaging in such fabricating or processing, or hot mix asphalt and crushed stone fabricated by a contractor for use by the contractor in highway or road construction projects funded by tax revenues. "Fabricating or processing tangible personal property for resale" shall be deemed to include providing fabrication and repair services to aircraft owned by nonaffiliated business entities whether commercial, governmental or foreign; provided, that the dealer performing such services qualifies for the credit allowed in § 67-4-2109(b). "Fabricating or processing tangible personal property for resale" shall not include any other type of repair services. "Fabricating or processing tangible personal property for resale" includes the processing of photographic film into negatives and/or photographic prints for resale;

(40) "Final artwork" means tangible personal property or its digital equivalent that is suitable for use in producing advertising materials and includes, but is not limited to, photographs, illustrations, drawings, paintings, calligraphy, models and similar works that are used to produce advertising materials, but does not include preliminary artwork or original sound recordings or video recordings produced by recording studios, television studios, video production studios, or by or for advertising agencies, or masters produced from the original recordings regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

(41) "Flea market" means a place of business that provides space more than two (2) times a year to two (2) or more persons for the purpose of making

sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. "Flea market" does not include hotels, convention centers, municipal auditoriums, municipal coliseums, or gun shows, if such gun shows are sponsored by a not-for-profit corporation;

(42) "Flea market operator" means any person who receives compensation for providing space more than two (2) times a year to two (2) or more persons for the purpose of making sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. "Flea market operator" does not include a hotel, convention center, municipal auditorium, municipal coliseum, or gun show operator, if such gun shows are sponsored by a not-for-profit corporation;

(43) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, tobacco, candy, dietary supplements, or prepared food;

(44) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the definition of over-the-counter drugs;

(45) "Gross sales" means the sum total of all retail sales of tangible personal property and all proceeds of services taxable under this chapter as defined in this section, without any deduction whatsoever of any kind or character, except as provided in this chapter;

(46) "Industrial machinery" means:

(A)(i) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabrication or processing of tangible personal property for resale and consumption off the premises, or pollution control facilities primarily used for air pollution control or water pollution control, where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one's principal business or who engages in the fabrication or processing of materials into trusses, window units or door units for resale as part of the principal business of the sale of building supplies either within or without this state, or such use by a county or municipality or a contractor pursuant to a contract with such county or municipality for use in water pollution control or sewage systems, also mining machinery, apparatus equipment and materials, with all associated parts and accessories, including repair parts and any necessary repair or installation labor, that is necessary to and primarily for:

***(a)** The removal, extraction or detachment of coal from land by surface, underground or other lawful methods of mining and the construction or maintenance of necessary ingress and egress from the mine;*

***(b)** The removal, handling and replacement of overburden and spoils materials; or*

(c) *The reclamation of mined areas reclaimed under state or federal laws, rules or regulations;*

(ii) As used in this chapter, "pollution control facilities" means any system, method, improvement, structure, device or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing or reducing air or water pollution, or for the primary purpose of treating, pretreating, recycling or disposing of any hazardous or toxic waste, solid or liquid, when such pollutants are created as a result of fabricating or processing by one who engages in fabricating or processing as such person's principal business activity, which, if released without such treatment, pretreatment, modification or disposal, might be harmful, detrimental or offensive to the public and the public interest;

(B) Machinery that is necessary to and primarily for remanufacturing industrial machinery as defined in subdivision (46)(A) when such utilization is by one whose principal business is that of remanufacturing industrial machinery. For the purposes of this subdivision (46)(B), "remanufacturing" means making new or different products with new or different functions from the scrap materials used to make them;

(C) Machinery utilized in the pre-press and press operations in the business of printing, including plates and cylinders, and including the component parts and fluids or chemicals necessary for the specific mechanical or chemical actions or operations of such machinery, plates and cylinders, regardless of whether or not the operations occur at the point of retail sales;

(D) Such industrial machinery necessary to and primarily for the fabrication and processing of tangible personal property for resale or used primarily for the control of air pollution or water pollution includes, but is not limited to:

(i) Machines used for generating, producing, and distributing utility services, electricity, steam, and treated or untreated water; and

(ii) Equipment used in transporting raw materials from storage to the manufacturing process, and transporting finished goods from the end of the manufacturing process to storage;

(E)(i) Machinery used to package manufactured items, where the use of such machinery is by a person whose principal business is fabricating or processing tangible personal property for resale. Notwithstanding the principal business of the user, this exemption shall also apply where the use of such machinery at a location is to package automotive aftermarket products manufactured at other locations by the same person or by a corporation affiliated with the manufacturing corporation such that:

(a) *Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or*

(b) *One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent;*

(ii) To "package," as used in subdivision (46)(E)(i), refers only to the fabrication and/or installation of that packaging that will accompany the product when sold at retail;

(F) Such industrial machinery necessary to and primarily for the fabrication or processing of tangible personal property for resale and consumption off the premises or used primarily for the control of air pollution or water pollution does not include machinery, apparatus and

equipment used prior to or after equipment exempted by subdivision (46)(D)(ii), and does not include equipment used for maintenance or the convenience or comfort of workers;

(G) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabricating or processing of prescription eyewear, where a majority of such eyewear is ultimately dispensed to patients in states other than Tennessee;

(H)(i) Material handling equipment and racking systems, used by the taxpayer, directly and primarily for the storage or handling and movement of tangible personal property in a qualified, new or expanded warehouse or distribution facility, that are purchased beginning one (1) year prior to the start of the construction or expansion and ending one (1) year after the substantial completion of the construction or expansion of the facility, but in no event shall the period exceed three (3) years. "Qualified, new or expanded warehouse or distribution facility" means a new or expanded facility, that meets the requirements set out in this subdivision (46)(H), for the storage or distribution of finished tangible personal property. Such facilities shall not include a building where tangible personal property is fabricated, processed, assembled or sold over-the-counter to consumers, except for taxpayers that qualify under the provisions of Acts 1995, ch. 185, or are configuring, testing or packaging computer products. "Configuring" computer products means integrating a computer with peripheral computer products, such as a hard disk drive, additional memory or software. A qualifying facility must also be:

***(a)** A warehouse or distribution facility constructed in this state through an investment in excess of ten million dollars ($10,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, in a newly constructed and previously unoccupied building and/or equipment for the facility;*

***(b)** An expansion to an existing warehouse or distribution facility, previously qualified under subdivision (46)(H)(i), through an additional investment in excess of ten million dollars ($10,000,000) by the taxpayer, and/or a lessor to the taxpayer over an additional period not exceeding three (3) years, for additions to the building and the purchase of new equipment for use in the expanded facility;*

***(c)** A warehouse or distribution facility in this state that is purchased and either renovated or expanded through an investment in excess of ten million dollars ($10,000,000) in such purchase and renovation or expansion by the taxpayer, and/or a lessor to the taxpayer, including the purchase of new equipment for such a building, over a period not exceeding three (3) years; or*

***(d)** An expansion to an existing warehouse or distribution facility in this state through an aggregate investment in excess of twenty million dollars ($20,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, consisting of an investment in excess of ten million dollars ($10,000,000) in the renovation or expansion of an existing building and/or the purchase of new equip-*

ment for such a building, together with an investment in excess of ten million dollars ($10,000,000) in the construction of a new, previously unoccupied building and/or equipment for such a building;

(ii) A taxpayer shall qualify for the exemption afforded to material handling and racking systems under subdivision (46)(H)(i) by submitting an application to the commissioner for the exemption, together with a plan describing the investment to be made. The application and plan shall be submitted on forms prescribed by the commissioner. The plan shall demonstrate that the requirements of the law will be met. Upon approval of the exemption request and plan for investment, purchases of the equipment may be made without payment of the sales or use tax. However, if the requisite investment is not made in the time period required, or the terms of the statute are not met, the taxpayer shall be subject to assessment for any tax, penalty or interest that would otherwise have been due;

(I) Material handling equipment and racking systems used in a warehouse and distribution facility, subject to all the requirements and conditions of subdivision (46)(H), except:

(i) The required investment in excess of ten million dollars ($10,000,000) may also be made in a previously occupied facility:

***(a)** Through the purchase of a building, and/or the purchase of new equipment for use in the building no later than one (1) year after the purchase of the building; or*

***(b)** Through the purchase of new equipment for use in a leased building, not qualifying under subdivision (46)(I)(i)(a), made no later than one (1) year after the date of the lease agreement; and*

(ii) Any purchases exempted from tax for use in the facility described in this subdivision (46)(I) must be made no later than one (1) year after the purchase of the building under subdivision (46)(I)(i)(a), or no later than one (1) year after the date of the lease agreement under subdivision (46)(I)(i)(b);

(J) "Industrial machinery" does not include machinery, apparatus and equipment, with all associated parts, appurtenances, accessories, repair parts, and necessary repair or taxable installation labor therefor, that is used in the preparation of food for immediate retail sale;

(K) "Industrial machinery" also includes any "computer", "computer network", "computer software", or "computer system", as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware such as printers, plotters, external disc drives, modems, and telephone units, when such items are used in the operation of a qualified data center. For purposes of this subdivision (46)(K), "industrial machinery" includes repair parts, repair or installation services, and warranty or service contracts, purchased for such items used in the operation of a qualified data center; and

(L) "Industrial machinery" includes machinery, apparatus and equipment with all associated parts, appurtenances, accessories, repair parts and necessary repair or taxable installation labor therefor, that is necessary to and used primarily for the conversion of tangible personal property into taxable specified digital products for resale and consumption off the premises. "Industrial machinery" does not include machinery, apparatus or equipment, with all associated parts, appurtenances, accessories, repair

parts and necessary repair or taxable installation labor therefor, that is used primarily for the storage or distribution of such specified digital products following such conversion;

(47) "International," as used in connection with telecommunications services, means a telecommunications service that originates or terminates in the United States, and terminates or originates outside the United States, respectively. United States includes the District of Columbia and a United States territory or possession;

(48) "Interstate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession;

(49) "Intrastate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in the same United States state or United States territory or possession;

(50) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser;

(51) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A "lease or rental" may include future options to purchase or extend;

(A) "Lease or rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision (51), an operator must do more than maintain, inspect, or set-up the tangible personal property;

(B) "Lease or rental" includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1);

(C) This subdivision (51) shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, compiled in 26 U.S.C., or title 47, chapter 2A, or other federal, state or local law;

(D) This subdivision (51) shall be applied only prospectively from the date of adoption and shall have no retroactive impact on existing leases or rentals;

(52) "Livestock and poultry feed" means and includes all grains, minerals, salts, proteins, fats, fibers and all vitamins, acids and drugs used and mixed with such ingredients as a growth stimulant, disease preventive, to stimulate feed conversion and make a complete feed;

(53) "Local tax jurisdiction" means a geographic area where the same local option tax, either county tax or a combination of county and municipal tax, applies;

(54) "Mobile telecommunications service" means the same as that term is defined in the Mobile Telecommunications Sourcing Act, Public Law 106-252, codified in 4 U.S.C. § 124(7);

(55) "Mobility enhancing equipment" means equipment, including repair and replacement parts to the equipment, but does not include durable medical equipment that:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

(56) "Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(57) "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax;

(58) "Model 3 seller" means a seller that has sales in at least five states that are members of the Streamlined Sales and Use Tax Agreement, has total annual sales revenue of at least five hundred million dollars ($500,000,000), has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subdivision (58), a seller includes an affiliated group of sellers using the same proprietary system;

(59) "OEM headquarters company" means an original equipment manufacturer that is engaged in the business of manufacturing motor vehicles and qualifies to receive the credit provided in § 67-6-224, or any affiliate thereof. For purposes of this subdivision (59), "affiliate" has the same meaning as provided in § 67-4-2004;

(60) "OEM headquarters company vehicle" means any motor vehicle subject to registration in accordance with title 55 that is owned by an OEM headquarters company, whether used for sales or service training, advertising, quality control, testing, evaluation or such other uses as approved by the commissioner, and, further, including motor vehicles provided by the OEM headquarters company for use by eligible employees and their eligible family members in accordance with policies established by the OEM headquarters company and approved by the commissioner;

(61)(A) "Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug as required by 21 CFR 201.66. The "over-the-counter-drug" label includes:

(i) A drug facts panel; or

(ii) A statement of the active ingredients, with a list of those ingredi-

ents contained in the compound, substance or preparation;

(B) "Over-the-counter-drug" does not include grooming and hygiene products;

(62) "Permanent location" does not include any booths or space located at a flea market, antique mall, craft show, antique show, gun show, auto show or any similar type business;

(63) "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, any governmental agency whose services are essentially a private commercial concern, or other group or combination acting as a unit, in the plural as well as the singular number. "Person" further includes any political subdivision or governmental agency, including electric membership corporations or cooperatives, and utility districts, to the extent that such agency sells at retail, rents or furnishes any of the things or services taxable under this chapter;

(64) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications service, "place of primary use" shall be within the licensed service area of the home service provider;

(65) "Preliminary artwork" means tangible personal property and digital equivalents that are produced by an advertising agency in the course of providing advertising services solely for the purpose of conveying concepts or ideas or demonstrating an idea or message to a client and includes, but is not limited to concept sketches, illustrations, drawings, paintings, models, photographs, storyboards or similar materials;

(66) "Prepaid calling service" means the right to access exclusively telecommunications services that must be paid for in advance and that enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(67) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service, as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services that must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount;

(68)(A) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food;

(B) "Prepared food" in subdivision (68)(A)(ii) does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration (FDA) in chapter 3, § 401.11 of the FDA's food code so as to prevent food borne illnesses;

(69) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed

practitioner authorized by the laws of this state;

(70) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two (2) or more prewritten computer software programs or prewritten portions of computer software does not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of that person's modifications or enhancements. "Prewritten computer software" or a prewritten portion of the computer software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software;

(71) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels;

(72)(A) "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the replacement, corrective, or supportive device worn on or in the body to:

(i) Artificially replace a missing portion of the body;

(ii) Prevent or correct physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body;

(B) "Prosthetic device" does not include:

(i) Corrective eyeglasses; or

(ii) Contact lenses;

(73) "Protective equipment" means items for human wear, designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property, but not suitable for general use;

(74) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price;

(75) "Qualified data center" means a data center that has made a required capital investment in excess of two hundred fifty million dollars ($250,000,000) during an investment period not to exceed three (3) years and that creates at least twenty-five (25) net new full-time employee jobs during the investment period paying at least one hundred fifty percent (150%) of the states' average occupational wage as defined in § 67-4-2004. For purposes of this subdivision (75), "required capital investment" means an increase of a business investment in real property, tangible personal property or computer software owned or leased in the state, valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have

been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction. For purposes of this subdivision (75), "full-time employee job" means a permanent, rather than seasonal or part-time employment position for at least twelve (12) consecutive months to a person for at least thirty-seven and one half (37 ½) hours per week with minimum health care, as described in title 56, chapter 7, part 22. The three-year period for making the required capital investment provided for in this subdivision (75) may be extended by the commissioner of economic and community development for a reasonable period, not to exceed four (4) years, for good cause shown. For purposes of this subdivision (75), "good cause" means a determination by the commissioner of economic and community development that the capital investment is a result of the exemption for industrial machinery used by a qualified data center;

(76) "Rain check" means the seller allows a customer to purchase an item at a certain price at a later time, because the particular item was out of stock;

(77)(A) "Resale" means a subsequent, bona fide sale of the property, services, or taxable item by the purchaser. "Sale for resale" means the sale of the property, services, or taxable item intended for subsequent resale by the purchaser. Any sales for resale shall, however, be in strict compliance with rules and regulations promulgated by the commissioner. Sales of tangible personal property or taxable services made by a dealer to an out-of-state vendor who directs that a dealer act as a the out-of-state vendor's agent to deliver or ship tangible personal property or taxable services to the out-of-state vendor's customer, who is a user or consumer, are sales for resale;

(B)(i) "Sale for resale" does not include a sale of tangible personal property or software to a dealer for use in the business of selling services. Property used in the business of selling services includes, but is not limited to, property that is regularly furnished to purchasers of the service without separate charge. A dealer that sells services shall be considered the end user and consumer of property used in selling, performing, or furnishing such services. However, "sale for resale" does include the following items in the circumstances described:

***(a)** Repair parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the dealer's performance of repair services, regardless of whether the dealer makes a separately stated charge for such property;*

***(b)** Installation parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the installation of property that remains tangible personal property following such installation, regardless of whether the dealer makes a separately stated charge for such property;*

***(c)** Mobile telephones and similar devices sold to a dealer if such property is subsequently transferred to the customer in conjunction with the sale of commercial mobile radio services (CMRS), regardless of whether the dealer makes a separately stated charge for such property; and*

***(d)** Food or beverages sold to a hotel, motel, inn or other dealer that provides lodging accommodations if such food or beverages are subsequently transferred to the customer in conjunction with the dealer's sale of lodging accommodations to the customer, regardless of whether*

the dealer makes a separately stated charge for such property;

(ii) "Sale for resale" does not include a sale of services to a dealer for use in the business of selling, leasing, or renting tangible personal property or computer software. Services used in the business of selling, leasing, or renting tangible personal property include, but are not limited to, services such as cleaning, maintaining, or repairing property that is held as inventory for sale, lease, or rental. A dealer that sells, leases, or rents tangible personal property or computer software shall be considered the end user and consumer of services used in conducting such business;

(iii) Nothing in this subdivision (77) shall be construed as amending or otherwise effecting the exemption provided in § 67-6-392;

(78) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;

(79) "Retailer" means and includes every person engaged in the business of making sales at retail, or for distribution, use, consumption, storage to be used or consumed in this state or furnishing any of the things or services taxable under this chapter;

(80)(A) "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, repairing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property;

(B) A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale; provided, that where title to property is taken by an industrial development corporation, within the meaning of title 7, chapter 53, but the property is leased to a taxpayer, the transaction shall be regarded, for purposes of this chapter, as a sale to and purchase by the industrial development corporation followed by a lease, regardless of whether the lessee has an option to purchase any or all of the property from the industrial development corporation;

(C) "Sale" includes the furnishing of any of the things or services taxable under this chapter;

(D) "Sale" includes the sale, gifts in connection with valuable contributions, exchange or other disposition of admission, dues or fees to membership sports and recreation clubs, places of amusement or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities. Such establishments or facilities include, but are not limited to, the amusement and recreational facilities and motion picture theaters described in the standard industrial classification index prepared by the bureau of the budget of the federal government;

(E) "Sale" includes the renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis;

(F) "Sale" includes the processing of photographic film into negatives

and/or photographic prints for resale;

(G) "Sale" includes charges for admission, dues or fees that constitute a sale under this subdivision (80), except tickets for admission sold to a Tennessee dealer for resale upon presentation of a resale certificate. Dealers registered with the state for sales tax purposes may purchase tickets for resale without payment of tax upon presentation to the vendor of a valid certificate of resale;

(H) "Sale" includes all transactions that the commissioner, upon investigation, finds to be in lieu of sales;

(I) "Sale" includes a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(J) "Sale" includes a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments; and

(K) "Sale" includes any transfer of title or possession, or both, lease or licensing, in any manner or by any means whatsoever of computer software for consideration, and includes the creation of computer software on the premises of the consumer and any programming, transferring or loading of computer software into a computer;

(81)(A) "Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges;

(v) Installation charges; and

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;

(B) "Sales price" does not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(iv) Credit for any trade-in, as determined by § 67-6-510, that is separately stated on an invoice or similar billing document given to the

purchaser;

(C) "Sales price" includes consideration received by the seller from third parties, if:

(i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

***(a)** The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount, where the coupon, certificate or documentation is authorized, distributed or granted by a third party, with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;*

***(b)** The purchaser identifies itself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or*

***(c)** The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser, or on a coupon, certificate or other documentation presented by the purchaser;*

(82) "School art supplies" means an item commonly used by a student in a course of study for artwork. For purposes of this chapter, the following is an all-inclusive list of "school art supplies":

(A) Clay and glazes;

(B) Paintbrushes for artwork;

(C) Paints, acrylic, tempera, and oil;

(D) Sketch and drawing pads; and

(E) Watercolors;

(83) "School computer supplies" means an item commonly used by a student in a course of study in which a computer is used. For purposes of this chapter, the following is an all-inclusive list of "school computer supplies":

(A) Computer printers;

(B) Computer storage media, diskettes, compact disks;

(C) Handheld electronic schedulers, except devices that are cellular phones;

(D) Personal digital assistants, except devices that are cellular phones; and

(E) Printer supplies for computers, printer paper, printer ink;

(84) "School instructional materials" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. For purposes of this chapter, the following is an all-inclusive list of "school instructional materials":

(A) Reference books;

(B) Reference maps and globes;

(C) Textbooks; and

(D) Workbooks;

(85) "School supplies" means an item used by a student in a course of study. For purposes of this chapter, the following is an all-inclusive list of "school supplies":

(A) Binders;

(B) Blackboard chalk;

(C) Book bags;

(D) Calculators;

(E) Cellophane tape;

(F) Compasses;

(G) Composition books;

(H) Crayons;

(I) Erasers;

(J) Folders, expandable, pocket, plastic and manila;

(K) Glue, paste, and paste sticks;

(L) Highlighters;

(M) Index cards;

(N) Index card boxes;

(O) Legal pads;

(P) Lunch boxes;

(Q) Markers;

(R) Notebooks;

(S) Paper, loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;

(T) Pencil boxes and other school supply boxes;

(U) Pencil sharpeners;

(V) Pencils;

(W) Pens;

(X) Protractors;

(Y) Rulers;

(Z) Scissors; and

(AA) Writing tablets;

(86) "Service address" means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. In the event this may not be known, service address means the origination point of the signal of the telecommunication service first identified by either the seller's telecommunication system or in information received by the seller from its service provider, where the system used to transport the signal is not that of the seller. In the event that neither the location of the telecommunications equipment nor the origination point of the signal are known, service address means the location of the customer's place of primary use;

(87) "Software" means computer software;

(88) "Specified digital products" means electronically transferred digital audio-visual works, digital audio works and digital books. For purposes of this subdivision (88), "electronically transferred" means obtained by the purchaser by means other than tangible storage media;

(89) "Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use;

(90) "Storage" means and includes any keeping or retention in this state of tangible personal property for use or consumption in this state, or for any purpose other than sale at retail in the regular course of business; provided, that temporary storage pending shipping or mailing of tangible personal property to nonresidents of Tennessee shall not constitute a taxable use in Tennessee;

(91)(A) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;

(B) "Tangible personal property" does not include signals broadcast over the airwaves;

(92)(A) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing, without regard to whether such service is referred to as voice over Internet protocol services or is classified by the federal communications commission as enhanced or value added;

(B) "Telecommunications service" does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by electronic transmission to a purchaser, where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising including, but not limited to, directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service, as defined in 47 U.S.C. § 522(6), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

(viii) Ancillary services; or

(ix) Digital products delivered electronically, including, but not limited to, computer software, music, video, reading materials or ringtones;

(93) "Textbook" means a printed book that contains systematically organized educational information that covers the primary objectives of a course of study. A textbook may contain stories and excerpts of popular fiction and nonfiction writings, but does not include a book primarily published and distributed for sale to the general public. The term "textbook" does not include a computer or computer software;

(94) "Time-share estate" means an ownership or leasehold estate in property devoted to a time-share fee, tenants in common, time span ownership,

interval ownership, and a time-share lease;

(95) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco;

(96)(A) "Use" means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business;

(B) "Use" means the coming to rest in Tennessee of catalogues, advertising fliers, or other advertising publications distributed to residents of Tennessee in interstate commerce; provided, that the labeling, temporary storage, and other handling in connection with mailing or shipping of the catalogues, advertising fliers and other advertising publications in interstate commerce to nonresidents of Tennessee shall not constitute a taxable use in Tennessee; and

(C) "Use" also means and includes the consumption of any of the services and amusements taxable under this chapter;

(97) "Use tax" includes the "use," "consumption," "distribution" and "storage" as defined in this section;

(98)(A) "Video programming services" means programming provided by or generally considered comparable to programming provided by a television broadcast station and shall include cable television services sold by a provider authorized pursuant to title 7, chapter 59, wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) and video services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology;

(B) "Video programming services" does not include any of the following:

(i) Digital products transferred electronically, including, but not limited to, software, ringtones, and reading materials such as books, magazines, and newspapers;

(ii) Audio and video programming services provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d);

(iii) Audio and video programming services provided as part of, or incidental to, Internet access service, such as, but not limited to, video capable email; provided, that the services are not generally considered comparable to programming provided by a television broadcast station; and

(iv) Direct-to-home satellite television programming services; and

(99) "Workbook" means a printed booklet that contains problems and exercises in which a student may directly write answers or responses to the problems and exercises. The term "workbook" does not include a computer or computer software.

67-6-103. Deposit and allocation of receipts — Transportation equity trust fund — Major league football franchise. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) The commissioner shall deposit promptly to the credit of the state treasurer in state depositories all moneys received by the commissioner under the provisions of this chapter, and all such moneys shall be earmarked and allocated as follows:

(1) Twenty-nine and one hundred forty-one ten-thousandths percent (29.0141%) of such moneys shall be earmarked and allocated specifically and exclusively to the general fund;

(2) Sixty-five and nine hundred seventy ten-thousandths (65.0970%) of such moneys shall be earmarked and allocated specifically and exclusively to educational purposes; and

(3)(A) Four and six thousand thirty ten-thousandths percent (4.6030%) shall be appropriated to the several incorporated municipalities within the state of Tennessee to be allocated and distributed to them monthly by the commissioner of finance and administration, in the proportion as the population of each municipality bears to the aggregate population of all municipalities within the state, according to the latest federal census and other censuses authorized by law. Municipalities incorporated subsequent to the last decennial federal census shall, until the next decennial federal census, be eligible for an allotment, commencing on July 1, following incorporation, election and installation of officials, on the population basis determined under regulations of the department of economic and community development and certified by that office to the commissioner; provided, that an accurate census of population has been certified to the department of economic and community development by the municipality. Municipalities now participating in allocation shall continue to do so on the basis of their population determined according to law;

(B)(i) A municipality having a population of one thousand one hundred (1,100) or more persons, according to the 1970 federal census or any subsequent federal census, in which at least forty percent (40%) of the assessed valuation, as shown by the tax assessment rolls or books of the municipality, of the real estate in the municipality consists of hotels, motels, tourist courts accommodation, tourist shops and restaurants, is defined as a "premiere type tourist resort" for purposes of this chapter. As an alternative to and in lieu of the allocation prescribed in subdivision (a)(3)(A), a premiere type tourist resort may elect to receive four and six thousand thirty ten-thousandths percent (4.6030%) of the tax actually collected and remitted by dealers within the boundaries of such resort. Any distribution made to a premiere type tourist resort pursuant to such election shall be earmarked and paid from the general fund. If, however, any such payment is made to a premiere type tourist resort pursuant to the election, the amount that would have been received by such resort had the resort not exercised the election shall be earmarked and allocated to the general fund;

(ii) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(i) and also owning a golf course and ski slope shall also receive an amount equal to the amount distributed pursuant to subdivision (a)(3)(B)(i). Any distribution made to such a municipality shall be earmarked and paid from the general fund for the purpose of assisting in the retirement of the convention center obligations in connection with the acquisition, construction and operation of the convention center;

(iii) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(i) and also containing within its boundaries a theme park of not less than eighty (80) acres shall also receive an amount equal to the distribution pursuant to subdivision (a)(3)(B)(i);

(iv)*(a)* A municipality meeting the criteria set forth in subdivision (a)(3)(B)(ii) shall also receive in addition to amounts authorized in

this subsection (a) in the 1988-1989 fiscal year, an amount equal to fifty-six percent (56%) of the amount distributed in the 1986-1987 fiscal year pursuant to subdivision (a)(3)(B)(ii), and an amount equal to ninety percent (90%) of the amount distributed in the 1986-1987 fiscal year in subsequent years;

(b) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(iii) shall also receive, in addition to amounts authorized in this subsection (a) in the 1988-1989 fiscal year, an amount equal to sixty percent (60%) of the amount distributed in the 1986-1987 fiscal year pursuant to subdivision (a)(3)(B)(iii), and an amount equal to ninety-six percent (96%) of the amount distributed in the 1986-1987 fiscal year in subsequent years;

(v) The collective amounts paid under subdivisions (a)(3)(B)(i)-(iv) shall be limited to the collective amounts paid under such subdivisions for the 1999-2000 fiscal year;

(C) Any municipality shall have the right to take not more than four (4) special censuses at its own expense at any time during the interim between the regular decennial federal census. Such right shall include the current decennium. Any such census shall be taken by the federal bureau of the census, or in a manner directed by and satisfactory to the department of economic and community development. The population of the municipality shall be revised in accordance with the special census for purposes of distribution of such funds, effective on the next July 1 following the certification of the census results by the federal bureau of the census or the department of economic and community development to the commissioner of finance and administration; the aggregate population shall likewise be adjusted in accordance with any such special census, effective the same date as provided in this subdivision (a)(3)(C);

(D) Any other such special census of the entire municipality taken in the same manner provided in this section, under any other law, shall be used for the distribution of such funds, and in that case, no additional special census shall be taken under the provisions of this section;

(E) Before distributing moneys to incorporated municipalities from the sales tax, as provided for herein, the commissioner of finance and administration shall make a deduction therefrom monthly of a sum equal to one percent (1%) of the monthly allocation of the four and six thousand thirty ten-thousandths percent (4.6030%) of sales tax collections allocated to incorporated municipalities. This sum, together with an appropriation per annum from the general fund of the state, shall be apportioned and transmitted to the University of Tennessee for use by the university in establishing and operating a municipal technical advisory service in its institute for public service, and shall be used for studies and research in municipal government, publications, educational conferences and attendance at such conferences and in furnishing technical, consultative and field services to municipalities in problems relating to fiscal administration, accounting, tax assessment and collection, law enforcement, improvements and public works, and in any and all matters relating to municipal government. This program shall be carried on in cooperation with and with the advice of cities and towns in the state acting through the Tennessee municipal league and its executive committee, which is recognized as their official agency or instrumentality;

(F)(i) A county ranking in the first quartile of county economic distress in the United States for fiscal year 2006, as determined pursuant to subdivision (a)(3)(F)(v) and bordering on, or crossed by, the Tennessee River, may elect to be a "Tennessee River resort district" for purposes of this chapter. A municipality within such county and located within three (3) miles of the nearest bank of the Tennessee River, may also elect to be a "Tennessee River resort district" for purposes of this chapter. Notwithstanding any other provision of law to the contrary, as an alternative to and in lieu of the allocation prescribed in subdivision (a)(3)(A), a Tennessee River resort district shall receive four and six thousand thirty ten-thousandths percent (4.6030%) of the tax actually collected and remitted by dealers within the boundaries of such district. Any distribution made to a Tennessee River resort district pursuant to such election shall be earmarked and paid from the general fund. If, however, any such payment is made to a Tennessee River resort district pursuant to the election, the amount that would have been received by such district had the district not exercised the election shall be earmarked and allocated to the general fund. This subdivision (a)(3)(F)(i) shall also apply in any county that has a population of less than ten thousand (10,000), according to the 2000 federal census or any subsequent federal census, and borders the Tennessee River and a county included within the Tennessee River resort district. This subdivision (a)(3)(F)(i) shall also apply in any county having a population of not less than twelve thousand three hundred sixty-nine (12,369) nor more than twelve thousand four hundred fifty (12,450) and in any county having a population of not less than seventeen thousand nine hundred (17,900) nor more than eighteen thousand (18,000), all according to the 2000 federal census or any subsequent federal census, and that border the Tennessee River;

(ii)*(a)* Subject to subdivision (a)(3)(F)(iv), a county, or municipality within a county, described in subdivision (a)(3)(F)(i) may elect Tennessee River resort district status by adopting a resolution or ordinance approved by a two-thirds (⅔) vote of the legislative body of the jurisdiction. A county, or municipality within a county, described in subdivision (a)(3)(F)(i) that has elected Tennessee River resort district status may repeal such election by adopting a resolution or ordinance approved by a two-thirds (⅔) vote of the legislative body of the jurisdiction;

(b)(1) A county originally eligible to elect Tennessee River resort district status under Acts 2005, ch. 212, and initially electing Tennessee River resort district status after August 1, 2007, may elect Tennessee River resort district status for purposes of this subdivision (a)(3)(F) only and not for the purposes of title 57, chapter 4, part 1, by including the following language in the electing resolution:

> Notwithstanding the provisions of Tennessee Code Annotated, §§ 57-4-101(a)(19) and 57-4-102(35), to the contrary, _____ County shall not be considered a Tennessee River Resort District for purposes of Tennessee Code Annotated, Title 57, Chapter 4, Part 1.

(2) In order for the election to be effective, all eligible cities within the county must elect Tennessee River resort district status

before the county makes the election. Municipalities having a population of not less than two thousand six hundred (2,600) nor more than two thousand seven hundred fifty (2,750), according to the 2000 federal census or any subsequent federal census, making the election as provided in this subdivision (a)(3)(F)(ii) shall not receive less in state shared taxes under this subdivision (a)(3) than the municipality would otherwise receive had it not made the election;

(c) The approval or nonapproval of a resolution or ordinance adopted pursuant to this subdivision (a)(3)(F)(ii) shall be proclaimed by the presiding officer of the jurisdiction. Within thirty (30) days of adopting the resolution or ordinance, the presiding officer of the jurisdiction shall send a certified copy of the ordinance or resolution to the secretary of state and the commissioner of revenue;

(iii) Notwithstanding any other provision of law to the contrary, of the revenue retained pursuant to an election under subdivision (a)(3)(F)(i), less the amount that would have been received by such district had the district not exercised the election, fifty percent (50%) shall be used exclusively for either the promotion and support of tourism in the jurisdiction or the promotion and support of tourism in conjunction with other jurisdictions so electing Tennessee River resort district status;

(iv) Tennessee River resort district status may be elected by both a county and a municipality within such county, subject to the following provisions:

(a) If the election occurs between January 1, 2006, and June 30, 2006, a municipality electing Tennessee River resort district status shall be entitled to the authorized percentage of tax actually collected and remitted by dealers within the boundaries of the municipality only. A county electing such status shall be entitled to the authorized percentage of tax actually collected and remitted by dealers within the boundaries of the county; provided, however, that the county shall only be entitled to receive such revenue outside the jurisdiction of any municipality electing Tennessee River resort district status located in the county; or

(b) If election occurs on and after July 1, 2006, a county electing Tennessee River resort district status prior to a non-electing municipality shall be entitled to the authorized percentage of tax actually collected and remitted by dealers within the boundaries of the county and within the boundaries of non-electing municipalities. No non-electing municipality shall later elect Tennessee River resort district status; provided, that a non-electing municipality may elect such status prior to election of such status by the county and, in that event, tax collections would be distributed in accordance with subdivision (a)(3)(F)(iv)(*a*);

(v) Prior to July 1, 2005, the commissioner of economic and community development shall publish a map of those Tennessee counties that rank in the first quartile of county economic distress in the United States for fiscal year 2006 based on comparing the following indicators: three-year average unemployment, per-capita market income and poverty rate;

(vi) Notwithstanding any provision of this subdivision (a)(3)(F) to the contrary, the election provided in this subdivision (a)(3)(F) shall only be available to eligible counties and municipalities that make the election prior to July 1, 2008;

(4) Three thousand six hundred seventy-four ten-thousandths percent (0.3674%), or so much thereof as may be required, is appropriated to the department of revenue in addition to its regular appropriation to be expended by it in the administration and enforcement of this chapter; and

(5) Nine thousand one hundred eighty-five ten-thousandths percent (0.9185%) is appropriated to the sinking fund account to be used by the state funding board for the payment of principal and interest becoming due on state bonds issued by the state of Tennessee.

(b)(1) Notwithstanding the allocations provided for in subsection (a), all moneys received under the provisions of this chapter from the sale, use, consumption, distribution, or storage for use or consumption of fuels used for aviation, railways, or water carriers on or after July 1, 1988, shall be deposited by the commissioner in a separate account to be known as the "transportation equity trust fund." The funds in this account shall be used by the department of transportation for railways, aeronautics, and waterways related programs and activities. This subsection (b) does not supersede or affect the provisions of former § 67-3-501 [repealed].

(2) It is declared to be the legislative intent that railways, aeronautics and waterways programs and operations are vital to the economic and social development of the state of Tennessee and as such should be considered an equal priority of the department in the administration of its programs.

(c)(1) Notwithstanding any law to the contrary, all revenue generated from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) and from the tax levied at the rate of two and three quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars ($1,600) but less than or equal to three thousand two hundred dollars ($3,200) on the sale or use of any single article of personal property pursuant to Acts 2002, ch. 856, § 4, shall be paid into the state general fund and allocated exclusively for general state purposes.

(2) Notwithstanding any law to the contrary, all revenue generated from the one-half percent (0.5%) increase in the sales and use tax rate that became effective April 1, 1992, shall be deposited in the state general fund and earmarked for education purposes in kindergarten through grade twelve (K-12). Revenue generated from one-half percent (0.5%) of the tax rate provided in § 67-6-228 shall continue to be deposited in the state general fund and earmarked for education purposes in kindergarten through grade twelve (K-12) regardless of whether the tax rate provided in § 67-6-228 is reduced below six percent (6%).

(d)(1)(A)(i) Notwithstanding the allocations provided for in subsection (a), if there exists in a municipality a sports authority organized pursuant to title 7, chapter 67, and if that sports authority has secured a major league professional baseball (American or National League), football (National Football League or Canadian Football League, or its successors or assigns), basketball (National Basketball Association), or major or minor league professional hockey (National Hockey League, or Central Hockey League or East Coast Hockey League) franchise for that municipality, and only if the municipality or any board or instrumen-

tality of the municipality reimburses the state for any costs to reallocate apportionments of the tax revenue under this section, then an amount shall be apportioned and distributed to the municipality equal to the amount of state tax revenue derived from the sale of admissions to events of the major or minor league professional sports franchise and also the sale of food and drink sold on the premises of the sports facility in conjunction with those games, parking charges, and related services, as well as the sale by the major or minor league professional sports franchise within the county in which the games take place of authorized franchise goods and products associated with the franchise's operations as a professional sports franchise. The amount distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with title 7, chapter 67.

(ii) If an indoor sports facility owned by a sports authority organized pursuant to title 7, chapter 67, in which a professional sports franchise is a tenant, exists in a county with a metropolitan form of government, then an amount shall be apportioned and distributed to the municipality equal to the amount of state tax revenue derived from the sale of admissions to all other events occurring at the indoor sports facility and from all other sales of food and drink and other authorized goods or products sold on the premises of the sports facility, parking charges, and related services. The amounts distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with title 7, chapter 67. Such amounts shall be used exclusively for the payment of, or the reimbursement of expenses associated with securing current, expanded, or new events for indoor sports facilities owned by a municipal agency formally designated by the municipality, in accordance with title 7, chapter 67.

(iii) Notwithstanding the allocations provided for in subsection (a), if a franchise for a minor league affiliate of a major league baseball team (American or National League) playing at the Class AA level or higher locates in a municipality in this state and if the municipality constructs a new stadium for the franchise, then at such time as the franchise begins operating in the new stadium, and for a period of thirty (30) years thereafter, an amount shall be apportioned and distributed to the entity that is responsible for retirement of the debt on and maintenance of the stadium in the municipality equal to the amount of state and local tax revenue derived from the sale of admissions to games of the professional sports franchise, and also the sale of food and drink sold on the premises of the stadium used in conjunction with those games, parking charges, and related services, as well as the sale by the professional sports franchise, within the county in which the games take place, of authorized franchise goods and products associated with its operations as a professional sports franchise less local taxes collected in the year preceding the new stadium occupancy. The amount distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with title 7, chapter 67.

(iv) For the purpose of this subsection (d), "municipality" means any metropolitan government, incorporated city or county located in this

state.

(v) Notwithstanding any provision of this subdivision (d)(1)(A) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be distributed to the municipality. The revenue shall continue to be allocated as provided in Acts 1992, ch. 529 and Acts 2002, ch. 856, respectively.

(B) In lieu of distribution to any municipality, amounts derived from a National Football League franchise shall be earmarked and allocated specifically and exclusively to the general fund. In all cases, any distribution to a municipality as provided for by this subsection (d) shall be limited to a period of thirty (30) years, which shall be concurrent with the time limitation established by subdivision (d)(2). Following the expiration of this thirty-year period, all amounts that would have otherwise been distributed to the municipality or retained in lieu of distribution shall be allocated as provided elsewhere without regard to this subsection (d).

(C) Notwithstanding the allocations provided in subsection (a), if there exists in a municipality in this state a sports authority organized pursuant to the provisions of title 7, chapter 67, and if a new motor sports facility locates in that municipality, and if the sports authority issues bonds or notes and uses the proceeds to assist with the development of such motor sports facility, including, but not limited to, the construction of roads, streets, highways, curbs, bridges, flood control facilities, and utility services, such as water, sanitary sewer, electricity, gas and natural gas, and telecommunications for such facility, then at such time as the new motor sports facility begins operating, and for a period of thirty (30) years thereafter, an amount shall be apportioned and distributed to the sports authority of that municipality, or other entity that is responsible for the retirement of the debt evidenced by such bonds or notes, equal to the amount of state and local tax revenue derived from the sale of admissions to events at such facility, and also the sale of food and drinks sold on the premises of such facility used in conjunction with those events, parking charges, and related services, as well as the sale at such facility of souvenirs, memorabilia, and other goods and products associated with the operation of the facility. Such amount distributed shall be for the exclusive use of the sports authority, or comparable municipal agency, formally designated by the municipality in accordance with the provisions of title 7, chapter 67. Notwithstanding the provisions of this section, a sports authority and the municipality in which it is located may enter into an agreement under which all or any portion of the local tax revenue may be paid to the municipality for its exclusive use. For the purposes of this subdivision (d)(1)(C), "municipality" means any incorporated city or county located in the state of Tennessee. This subdivision (d)(1)(C) shall only be applicable if the cost of the acquisition of real property for such new motor sports facility, together with the costs of constructing and equipping the facility, exceeds forty million dollars ($40,000,000), incurred after January 1, 1999. The state portion of the tax revenue shall be distributed to the sports authority only if, at the date of such distribution, the sports authority has outstanding indebtedness due on such bonds or

notes described in this subdivision (d)(1)(C).

(D) Notwithstanding the allocations provided for in subsection (a), if a baseball and softball complex, comprised of at least seventeen (17) baseball and softball fields and designed to host both local league play, as well as regional and national youth baseball and softball tournaments, is constructed adjacent to a stadium used by a franchise for a minor league affiliate of a major league baseball team, American or National League, playing at the Class AA level or higher, with respect to which an apportionment and distribution is made pursuant to subdivision (d)(1)(A), then an amount shall be apportioned and distributed to the entity that is responsible for the retirement of the debt on such baseball and softball complex, equal to the amount of state and local tax revenue derived from the sale of admissions to events at the baseball and softball complex and from the sale of food and drink and other authorized goods or products sold on the premises of the baseball and softball complex in conjunction with those events. This apportionment and distribution shall continue until the debt on the baseball and softball complex is retired. Such apportionment and distribution shall continue in the event the adjacent stadium ceases to house a minor league affiliate of a major league baseball team playing at the Class AA level or higher. Notwithstanding any provision of this subdivision (d)(1)(D) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subdivision (d)(1)(D). All such revenue shall continue to be allocated as provided in Acts 1992, ch. 529, and Acts 2002, ch. 856, respectively.

(E)(i) Notwithstanding the allocations provided for in subsection (a), if a new convention center that qualifies as a public use facility under the provisions of title 7, chapter 88 is constructed in a county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, then an amount shall be apportioned and distributed to the entity that is responsible for the retirement of the debt on the convention center and ancillary facilities equal to the amount of state and local tax revenue derived under this chapter from the sale of admission, parking, food, drink and any other things or services subject to tax under this chapter, if such sales occur on the premises of the convention center or any related ancillary facilities, including, but not limited to, any tourism, theatre, retail business or commercial office space facilities or parking facilities. The apportionment and distribution shall begin at the time that the convention center begins operations and shall continue for thirty (30) years, or until the debt on the convention center is retired, whichever is sooner.

(ii) In addition to the distribution provided in subdivision (d)(1)(E)(i), if either one (1) or two (2) new hotels are constructed in connection with the construction of the convention center, then an amount shall also be apportioned and distributed to the entity that is responsible for the retirement of the debt on the convention center and ancillary facilities equal to the amount of state and local tax revenue derived under this

chapter from the sale of lodging, parking, food, drink and any other things or services subject to tax under this chapter, if the sales occur on the premises of the hotels. The apportionment and distribution shall begin at the time that the convention center begins operations and shall continue for thirty (30) years, or until the debt on the convention center is retired, whichever is sooner. To be entitled to receive the distribution of state and local tax revenue under this subdivision (d)(1)(E)(ii), the entity responsible for the retirement of the debt on the convention center must first file with the department of finance and administration an application seeking certification that the construction of the hotels is directly related to the construction of the convention center. The department of finance and administration shall review the application to confirm whether the hotels meet the requirements of this subdivision (d)(1)(E)(ii). The department of finance and administration shall report its determination to the department of revenue, which shall administer this subdivision (d)(1)(E)(ii) accordingly.

(iii) In addition to the distribution provided in subdivisions (d)(1)(E)(i) and (ii), if a hotel within the footprint of the convention center, as determined by the commissioner of revenue and the commissioner of economic and community development, undertakes a significant capital improvement program in connection with the construction of the convention center, then an amount shall also be apportioned and distributed to the entity that is responsible for the retirement of the debt on the convention center and ancillary facilities equal to the amount of state and local tax revenue derived under this chapter from the sale of lodging, parking, food, drink, and any other things or services subject to tax under this chapter, if the sales occur on the premises of the hotel. The apportionment and distribution shall begin at the time that the significant capital improvement program is substantially completed and shall continue for thirty (30) years, or until the debt on the convention center is retired, whichever is sooner. To be entitled to receive the distribution of state and local tax revenue under this subdivision (d)(1)(E)(iii), the entity responsible for the retirement of the debt on the convention center must first receive certification from the commissioner of revenue and the commissioner of economic and community development, with the approval of the commissioner of finance and administration, that the capital improvement program is directly related to the construction of the convention center.

(iv) Notwithstanding any provision of this subdivision (d)(1)(E) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to the Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subdivision (d)(1)(E). All such revenue shall continue to be allocated as provided in Acts 1992, ch. 529, and Acts 2002, ch. 856, respectively.

(2) Any bonds issued relative to the construction of a sports facility shall not be issued for a term longer than thirty (30) years from the date the first game is played by the professional sports franchise in a municipality, as defined in subdivision (d)(1).

(e) Notwithstanding the provisions of this section to the contrary, revenue

derived from taxes imposed by this chapter, except revenue allocated pursuant to subdivision (c)(2), shall be earmarked and allocated in accordance with title 7, chapter 88.

(f) Notwithstanding the provisions of subsections (a)-(e), the state tax on fees or charges for subscription to, access to, or use of television programming or television services provided by a video programming service provider offered for public consumption on charges or fees in excess of fifteen dollars ($15.00) but less than twenty-seven dollars and fifty cents ($27.50) per month, shall be for state purposes only and shall be earmarked and allocated specifically and exclusively to the general fund. Any amounts derived from the sales tax on fees or charges for subscription to, access to, or use of television programming or television services provided by a video programming service provider offered for public consumption, in excess of twenty-seven dollars and fifty cents ($27.50) shall be taxed at the state rate of the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202 in accordance with the provisions of part 2 of this chapter, as well as pursuant to the local option revenue act in part 7 of this chapter, and be distributed in accordance with the provisions of this section. Counties and incorporated municipalities shall use funds in the same manner and for the same purposes as funds distributed pursuant to § 67-6-712.

(g) **[Contingent on funding. See the Compiler's Notes.]**

(1) Notwithstanding the allocations provided for in subsection (a), there shall be apportioned and distributed to any county in which there is a state park containing approximately six thousand five hundred (6,500) acres, of which approximately four thousand (4,000) acres are an impounded reservoir, a portion of which is owned by the Tennessee Valley authority, over which an easement has been given to the state and the state has leased or otherwise conveyed its rights to the property to such county for development, an amount equal to the amount of state and local sales taxes derived from sales occurring within such property. Such amount distributed to the county shall be exclusively for retirement of the indebtedness incurred by such county for development of such property, to the same extent that such county may pledge any revenues of the county.

(2)(A) Notwithstanding any provision of this subsection (g) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes, pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%), pursuant to Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection (g). All such revenue shall continue to be allocated as provided in Acts 1992, ch. 529, § 9 and Acts 2002, ch. 856, § 4.

(B) Notwithstanding any provision of this subsection (g) to the contrary, prior to any annual distribution pursuant to subdivision (g)(1), an amount equal to the state sales and use taxes collected within such area in fiscal year 2004-2005 shall be deposited in the treasury and allocated as otherwise provided by law.

(3) Prior to the issuance of any bonds for development of property subject to the provisions of this subsection (g), the county legislative body shall submit its plan for development to the executive committee of the state building commission for such committee's review and recommendation to the state building commission.

(h)(1) **[Effective until July 1, 2015. See the Compilers' Notes.]** Notwithstanding the provisions of this section to the contrary, revenue derived from state taxes imposed by this chapter shall be earmarked and allocated in accordance with the Courthouse Square Revitalization Pilot Project Act of 2005, compiled in title 6, chapter 59.

(2) Notwithstanding a repeal of title 6, chapter 59, any municipality receiving an allocation of state sales tax revenue on June 1, 2015, pursuant to title 6, chapter 59, shall continue to receive the allocation of the revenue until June 30, 2023. The allocation shall equal the amount of revenue derived from the state tax imposed by this chapter on the sale or use of goods, products and services within the courthouse square revitalization zone. For purposes of this subdivision (h)(2), "courthouse square revitalization zone" has the same meaning provided in § 6-59-102 and shall consist of the area that is included within the revitalization zone on June 1, 2015.

(3) No portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes, pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%), pursuant to Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection (h). All such revenue shall continue to be allocated as provided in Acts 1992, ch. 529, and Acts 2002, ch. 856.

(i)(1) Notwithstanding the allocations provided for in subsection (a), if a new museum dedicated to coal mining is constructed in a county containing a spallation neutron source facility, then an amount shall be apportioned and distributed to the entity that is responsible for the retirement of the debt on the museum equal to the amount of state and local tax revenue derived under this chapter from the sale of admission, parking, food, drink and any other things or services subject to tax under this chapter, if the sales occur on the premises of the museum. The apportionment and distribution shall begin at the time that the museum begins operations and shall continue for thirty (30) years, or until the debt on the museum is retired, whichever is sooner.

(2)(A) In addition to the distribution provided in subdivision (i)(1), if a new hotel is constructed in connection with the construction of the museum and the hotel is located within one (1) mile of the museum's entrance, then an amount shall also be apportioned and distributed to the entity that is responsible for the retirement of the debt on the museum equal to the amount of state and local tax revenue derived under this chapter from the sale of lodging, parking, food, drink and any other things or services subject to tax under this chapter, if the sales occur on the premises of the hotel. The apportionment and distribution shall begin at the time the museum begins operations and shall continue for thirty (30) years, or until the debt on the museum is retired, whichever is sooner.

(B) To be entitled to receive the distribution of state and local tax revenue under subdivision (i)(2)(A), the entity responsible for the retirement of the debt on the museum must first file with the department of finance and administration an application seeking certification that the construction of the hotel is directly related to the construction of the museum. The department of finance and administration shall review the application to confirm whether the hotel meets the requirements of this subdivision (i)(2). The department of finance and administration shall report its determination to the department of revenue, which shall

administer this subdivision (i)(2) accordingly.

(3) Notwithstanding any provision of this subsection (i) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to the Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection (i). The revenue shall continue to be allocated as provided in Acts 1992, ch. 529, and Acts 2002, ch. 856, respectively.

(j) Notwithstanding this section and any other law to the contrary, there is established a separate account in the local government fund to be known as the county revenue partnership fund. The apportionment of revenues to the fund and distributions from the fund shall be subject to the following provisions:

(1) Any apportionment of revenues to the county revenue partnership fund shall be allocated only from the revenues apportioned to the state general fund pursuant to subdivision (a)(1);

(2) Apportionment of revenues to the county revenue partnership fund may be made in any year pursuant to an allocation made in a specific dollar amount in the general appropriations act, and no apportionment shall otherwise be made to the fund; provided, however, that in fiscal years 2007-2008 and 2008-2009, no revenue shall be apportioned to the fund;

(3) The apportionment to and distributions from the county revenue partnership fund in any fiscal year shall not exceed the amount distributed to municipalities from the state sales tax pursuant to subdivision (a)(3)(A) in the previous fiscal year;

(4) In any fiscal year in which revenues are apportioned to the county revenue partnership fund, the revenue shall be allocated and distributed to all counties and metropolitan governments in this state monthly by the commissioner of finance and administration, in proportion as the population of each county or metropolitan government bears to the aggregate population of the state, according to the latest federal census or other censuses authorized by law;

(5) The county legislative body shall, on an annual basis, direct the trustee with regard to allocating and depositing the revenue from this fund among the various funds of the county budget; and

(6) In the state budget document, the county revenue partnership fund shall be listed in the report of revenue sources and basis of apportionment, and the amount apportioned to the fund shall be stated in the distribution of revenues by fund for each year in the comparison statement of state revenues, regardless of whether any revenue is apportioned to the fund for a given fiscal year.

(k)(1) Notwithstanding the allocations provided for in subsection (a), if there exists a performing arts center that consists of four (4) or more auditoriums, has a total seating capacity of five thousand four hundred (5,400) or more, and is operated by an organization that has received a determination of exemption from the internal revenue service under Internal Revenue Code § 501(c)(3), codified in 26 U.S.C. § 501(c)(3), and if the performing arts center is located in facilities owned by the state or a political subdivision of the state, then an amount shall be apportioned and distributed to the entity that is responsible for operation and management of the performing arts center. A performing arts center may consist of two (2) or more performance

venues with auditoriums located in two (2) or more buildings that are contiguous or in close proximity and are owned by the state or a political subdivision of the state. The amount apportioned and distributed pursuant to this subsection (k) shall be equal to the amount of state tax revenue derived under this chapter from the sale of tickets for admission to events held at the performing arts center; provided, however, that the apportionment and distribution shall be used exclusively for maintenance and improvement of the facilities in which the performing arts center is located, which shall include, but not be limited to, capital improvements, additions and renovations to the facilities and debt service on funds borrowed to pay for the improvements, additions and renovations. Debt service shall include principal and interest payments on existing and future debt obligations, including repayment to the exempt organization operating the facilities of funds advanced or loaned by the organization that were used or are used to pay the costs, in whole or in part, of the improvements, additions and renovations to the facilities.

(2) Notwithstanding subdivision (k)(1) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection (k). The revenue shall continue to be allocated as provided in Acts 1992, ch. 529 and Acts 2002, ch. 856, respectively.

(*l*)(1) Notwithstanding the allocations in subsection (a), except as provided in subdivision (*l*)(2), state tax revenue collected from commercial breeders licensed under the Commercial Breeder Act, compiled in title 44, chapter 17, part 7, shall be allocated to the Commercial Breeder Act enforcement and recovery account.

(2) Notwithstanding subdivision (*l*)(1), no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, ch. 529, § 9 and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be allocated to the Commercial Breeder Act enforcement and recovery account. The revenue shall continue to be allocated as provided in Acts 1992, ch. 529 and Acts 2002, ch. 856, respectively.

(m)(1) Notwithstanding the allocations provided for in subsection (a), if a hotel or inn that is more than one hundred fifty (150) years old is owned by a municipality and operated by an organization that has received a determination of exemption from the internal revenue service under Internal Revenue Code § 501(c)(3), codified in 26 U.S.C. § 501(c)(3), then an amount shall be apportioned and distributed to the entity that is responsible for the retirement of the debt incurred in renovating the hotel or inn. The amount apportioned and distributed pursuant to this subsection (m) shall be equal to the amount of state tax revenue derived under this chapter from the sale of goods and services on the premises of the hotel or inn; provided, however, that the apportionment and distribution shall be used exclusively for the retirement of debt incurred prior to April 1, 2009, including any interest thereon, in renovating the hotel or inn and shall continue only until the debt is retired.

(2) Notwithstanding subdivision (m)(1) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection (m). All such revenue shall continue to be allocated as provided in Acts 1992, ch. 529 and Acts 2002, ch. 856, respectively.

(n)(1) As used in this subsection (n), unless the context otherwise requires:

(A) "Best interests of the state" means a determination by the commissioner of revenue, with approval by the commissioner of economic and community development, that:

(i) The public improvements made within or adjacent to a mixed-use development are a result of the special allocation and distribution of state sales tax provided for in this subsection (n); and

(ii) The mixed-use development is a result of such public improvements;

(B) "Commercial development zone" means an area in which a mixed-use development is planned or located. To comprise a commercial development zone, the area:

(i) Must be located entirely within an eligible county;

(ii) Shall not exceed one thousand two hundred (1,200) acres; and

(iii) Must be located adjacent to a federally designated interstate highway;

(C) "Eligible county" means any county in which:

(i) At least twenty-five percent (25%) of the county consists of federally-owned land;

(ii) At least thirty and three-fifths percent (30.6%) of the county's population, eighteen (18) years of age and younger, lives in poverty as determined by the United States census bureau, small area income and poverty estimates (SAIPE) program, or any comparable successor program, within the three-year period immediately preceding establishment of the commercial development zone; and

(iii) The federal highway administration has approved an interstate exit in close proximity to the area proposed for a commercial development zone, and such approval was based on the need to stimulate local economic development opportunities;

(D) "Mixed-use development" means an area, located entirely within an eligible county, containing not less than five hundred (500) acres nor more than one thousand two hundred (1,200) acres and includes, but is not limited to, property with commercial uses; and

(E) "Public improvements" means roads, streets, sidewalks, utility services, such as electricity, gas, water and sanitary sewer, and related services, parking facilities, parks, and all other necessary or desirable improvements to be used by the public in connection with a commercial development zone.

(2) Notwithstanding the allocations provided for in subsection (a), if an eligible county has good reason to anticipate that a private entity is willing to plan and develop a mixed-use development; and if the commissioner of revenue, with approval by the commissioner of economic and community development, determines that the special allocation of state sales tax, as

authorized by this subsection (n), is in the best interests of the state, then the county legislative body may adopt a resolution designating a commercial development zone for such mixed-use development; provided, however, no county shall contain more than one (1) commercial development zone; and provided further, however, the county legislative body must adopt such resolution on or before June 30, 2011. If the county legislative body duly adopts such resolution, and if the county or an industrial development board, pursuant to subdivision (n)(3), issues bonds payable in whole or part from the tax revenues described herein and uses the proceeds to finance any development or public improvements constructed within or adjacent to the commercial development zone, then an amount shall be apportioned and distributed to such county for the retirement of debt evidenced by such bonds. The amount apportioned and distributed to the county pursuant to this subsection (n) shall equal the amount of state tax revenue derived under this chapter from sales of items and services subject to tax pursuant to this chapter, if the sales occur within the commercial development zone. The apportionment and distribution of such revenue shall begin upon the receipt of a certificate of occupancy for the first retail business operating within the commercial development zone and shall continue for a period of thirty (30) years, or until the debt, including any refunding debt, relating to the commercial development zone is retired, whichever is sooner.

(3) An eligible county in which a commercial development zone is duly located is authorized to delegate to any industrial development corporation incorporated by the county or a municipality within the county the authority to issue revenue bonds to finance development or public improvements within or adjacent to a commercial development zone; provided, that the county shall enter into an agreement with the industrial development corporation in which the county shall agree to promptly pay to the industrial development corporation the tax revenues described in this subsection (n). Upon receipt, such tax revenues shall be held in trust by the county for the benefit of the industrial development corporation.

(4) Notwithstanding any provision of subdivision (n)(2) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection (n). The revenue shall continue to be allocated as provided in Acts 1992, ch. 529 and Acts 2002, ch. 856, respectively.

(o)(1) Notwithstanding the allocations provided for in subsection (a), if there exists a zoo or aquarium that is accredited by the Association of Zoos and Aquariums and has received and currently holds a determination of exemption from the Internal Revenue Service under Internal Revenue Code § 501(c)(3), codified in 26 U.S.C. § 501(c)(3), then an amount shall be apportioned and distributed to the zoo or aquarium equal to the amount of state tax revenue derived under this chapter from the sale of tangible personal property or amusements on the premises of the zoo or aquarium; provided, however, that such apportionment and distribution shall be used exclusively for the operation of the zoo or aquarium, including, but not limited to, capital projects.

(2) Notwithstanding subdivision (o)(1) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated

to educational purposes pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection (o). The revenue shall continue to be allocated as provided in Acts 1992, ch. 529 and Acts 2002, ch. 856, respectively.

(p) Notwithstanding § 7-40-106 to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, chapter 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, chapter 856, § 4, shall be distributed to the municipality. The revenue shall continue to be allocated as provided in Acts 1992, chapter 529 and Acts 2002, chapter 856, respectively.

67-6-103. Deposit and allocation of receipts — Transportation equity trust fund — Major league football franchise. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) The commissioner shall deposit promptly to the credit of the state treasurer in state depositories all moneys received by the commissioner under the provisions of this chapter, and all such moneys shall be earmarked and allocated as follows:

(1) Twenty-nine and one hundred forty-one ten-thousandths percent (29.0141%) of such moneys shall be earmarked and allocated specifically and exclusively to the general fund;

(2) Sixty-five and nine hundred seventy ten-thousandths (65.0970%) of such moneys shall be earmarked and allocated specifically and exclusively to educational purposes; and

(3)(A) Four and six thousand thirty ten-thousandths percent (4.6030%) shall be appropriated to the several incorporated municipalities within the state of Tennessee to be allocated and distributed to them monthly by the commissioner of finance and administration, in the proportion as the population of each municipality bears to the aggregate population of all municipalities within the state, according to the latest federal census and other censuses authorized by law. Municipalities incorporated subsequent to the last decennial federal census shall, until the next decennial federal census, be eligible for an allotment, commencing on July 1, following incorporation, election and installation of officials, on the population basis determined under regulations of the department of economic and community development and certified by that office to the commissioner; provided, that an accurate census of population has been certified to the department of economic and community development by the municipality. Municipalities now participating in allocation shall continue to do so on the basis of their population determined according to law;

(B)(i) A municipality having a population of one thousand one hundred (1,100) or more persons, according to the 1970 federal census or any subsequent federal census, in which at least forty percent (40%) of the assessed valuation, as shown by the tax assessment rolls or books of the municipality, of the real estate in the municipality consists of hotels, motels, tourist courts accommodation, tourist shops and restaurants, is

defined as a "premiere type tourist resort" for purposes of this chapter. As an alternative to and in lieu of the allocation prescribed in subdivision (a)(3)(A), a premiere type tourist resort may elect to receive Four and six thousand thirty ten-thousandths percent (4.6030%) of the tax actually collected and remitted by dealers within the boundaries of such resort. Any distribution made to a premiere type tourist resort pursuant to such election shall be earmarked and paid from the general fund. If, however, any such payment is made to a premiere type tourist resort pursuant to the election, the amount that would have been received by such resort had the resort not exercised the election shall be earmarked and allocated to the general fund;

(ii) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(i) and also owning a golf course and ski slope shall also receive an amount equal to the amount distributed pursuant to subdivision (a)(3)(B)(i). Any distribution made to such a municipality shall be earmarked and paid from the general fund for the purpose of assisting in the retirement of the convention center obligations in connection with the acquisition, construction and operation of the convention center;

(iii) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(i) and also containing within its boundaries a theme park of not less than eighty (80) acres shall also receive an amount equal to the distribution pursuant to subdivision (a)(3)(B)(i);

*(iv)**(a)** A municipality meeting the criteria set forth in subdivision (a)(3)(B)(ii) shall also receive in addition to amounts authorized in this subsection (a) in the 1988-1989 fiscal year, an amount equal to fifty-six percent (56%) of the amount distributed in the 1986-1987 fiscal year pursuant to subdivision (a)(3)(B)(ii), and an amount equal to ninety percent (90%) of the amount distributed in the 1986-1987 fiscal year in subsequent years;*

***(b)** A municipality meeting the criteria set forth in subdivision (a)(3)(B)(iii) shall also receive, in addition to amounts authorized in this subsection (a) in the 1988-1989 fiscal year, an amount equal to sixty percent (60%) of the amount distributed in the 1986-1987 fiscal year pursuant to subdivision (a)(3)(B)(iii), and an amount equal to ninety-six percent (96%) of the amount distributed in the 1986-1987 fiscal year in subsequent years;*

(v) The collective amounts paid under subdivisions (a)(3)(B)(i)-(iv) shall be limited to the collective amounts paid under such subdivisions for the 1999-2000 fiscal year;

(C) Any municipality shall have the right to take not more than four (4) special censuses at its own expense at any time during the interim between the regular decennial federal census. Such right shall include the current decennium. Any such census shall be taken by the federal bureau of the census, or in a manner directed by and satisfactory to the department of economic and community development. The population of the municipality shall be revised in accordance with the special census for purposes of distribution of such funds, effective on the next July 1 following the certification of the census results by the federal bureau of the census or the department of economic and community development to the commissioner of finance and administration; the aggregate population shall likewise be adjusted in accordance with any such special census, effective the same

date as provided in this subdivision (a)(3)(C);

(D) Any other such special census of the entire municipality taken in the same manner provided in this section, under any other law, shall be used for the distribution of such funds, and in that case, no additional special census shall be taken under the provisions of this section;

(E) Before distributing moneys to incorporated municipalities from the sales tax, as provided for herein, the commissioner of finance and administration shall make a deduction therefrom monthly of a sum equal to one percent (1%) of the monthly allocation of the four and six thousand thirty ten-thousandths percent (4.6030%) of sales tax collections allocated to incorporated municipalities. This sum, together with an appropriation per annum from the general fund of the state, shall be apportioned and transmitted to the University of Tennessee for use by the university in establishing and operating a municipal technical advisory service in its institute for public service, and shall be used for studies and research in municipal government, publications, educational conferences and attendance at such conferences and in furnishing technical, consultative and field services to municipalities in problems relating to fiscal administration, accounting, tax assessment and collection, law enforcement, improvements and public works, and in any and all matters relating to municipal government. This program shall be carried on in cooperation with and with the advice of cities and towns in the state acting through the Tennessee municipal league and its executive committee, which is recognized as their official agency or instrumentality;

(F)(i) A county ranking in the first quartile of county economic distress in the United States for fiscal year 2006, as determined pursuant to subdivision (a)(3)(F)(v) and bordering on, or crossed by, the Tennessee River, may elect to be a "Tennessee River resort district" for purposes of this chapter. A municipality within such county and located within three (3) miles of the nearest bank of the Tennessee River, may also elect to be a "Tennessee River resort district" for purposes of this chapter. Notwithstanding any other provision of law to the contrary, as an alternative to and in lieu of the allocation prescribed in subdivision (a)(3)(A), a Tennessee River resort district shall receive four and six thousand thirty ten-thousandths percent (4.6030%) of the tax actually collected and remitted by dealers within the boundaries of such district. Any distribution made to a Tennessee River resort district pursuant to such election shall be earmarked and paid from the general fund. If, however, any such payment is made to a Tennessee River resort district pursuant to the election, the amount that would have been received by such district had the district not exercised the election shall be earmarked and allocated to the general fund. This subdivision (a)(3)(F)(i) shall also apply in any county that has a population of less than ten thousand (10,000), according to the 2000 federal census or any subsequent federal census, and borders the Tennessee River and a county included within the Tennessee River resort district. This subdivision (a)(3)(F)(i) shall also apply in any county having a population of not less than twelve thousand three hundred sixty-nine (12,369) nor more than twelve thousand four hundred fifty (12,450) and in any county having a population of not less than seventeen thousand nine hundred (17,900) nor more than eighteen thousand (18,000), all according to the 2000 federal census or any

subsequent federal census, and that border the Tennessee River;

*(ii)**(a)** Subject to subdivision (a)(3)(F)(iv), a county, or municipality within a county, described in subdivision (a)(3)(F)(i) may elect Tennessee River resort district status by adopting a resolution or ordinance approved by a two-thirds (2/3) vote of the legislative body of the jurisdiction. A county, or municipality within a county, described in subdivision (a)(3)(F)(i) that has elected Tennessee River resort district status may repeal such election by adopting a resolution or ordinance approved by a two-thirds (2/3) vote of the legislative body of the jurisdiction;*

***(b)(1)** A county originally eligible to elect Tennessee River resort district status under Acts 2005, ch. 212, and initially electing Tennessee River resort district status after August 1, 2007, may elect Tennessee River resort district status for purposes of this subdivision (a)(3)(F) only and not for the purposes of title 57, chapter 4, part 1, by including the following language in the electing resolution:*

Notwithstanding the provisions of Tennessee Code Annotated, §§ 57-4-101(a)(19) and 57-4-102(35), to the contrary, _____ County shall not be considered a Tennessee River Resort District for purposes of Tennessee Code Annotated, Title 57, Chapter 4, Part 1.

***(2)** In order for the election to be effective, all eligible cities within the county must elect Tennessee River resort district status before the county makes the election. Municipalities having a population of not less than two thousand six hundred (2,600) nor more than two thousand seven hundred fifty (2,750), according to the 2000 federal census or any subsequent federal census, making the election as provided in this subdivision (a)(3)(F)(ii) shall not receive less in state shared taxes under this subdivision (a)(3) than the municipality would otherwise receive had it not made the election;*

***(c)** The approval or nonapproval of a resolution or ordinance adopted pursuant to this subdivision (a)(3)(F)(ii) shall be proclaimed by the presiding officer of the jurisdiction. Within thirty (30) days of adopting the resolution or ordinance, the presiding officer of the jurisdiction shall send a certified copy of the ordinance or resolution to the secretary of state and the commissioner of revenue;*

(iii) Notwithstanding any other provision of law to the contrary, of the revenue retained pursuant to an election under subdivision (a)(3)(F)(i), less the amount that would have been received by such district had the district not exercised the election, fifty percent (50%) shall be used exclusively for either the promotion and support of tourism in the jurisdiction or the promotion and support of tourism in conjunction with other jurisdictions so electing Tennessee River resort district status;

(iv) Tennessee River resort district status may be elected by both a county and a municipality within such county, subject to the following provisions:

***(a)** If the election occurs between January 1, 2006, and June 30, 2006, a municipality electing Tennessee River resort district status shall be entitled to the authorized percentage of tax actually collected and remitted by dealers within the boundaries of the municipality only. A county electing such status shall be entitled to the authorized*

percentage of tax actually collected and remitted by dealers within the boundaries of the county; provided, however, that the county shall only be entitled to receive such revenue outside the jurisdiction of any municipality electing Tennessee River resort district status located in the county; or

(b) *If election occurs on and after July 1, 2006, a county electing Tennessee River resort district status prior to a non-electing municipality shall be entitled to the authorized percentage of tax actually collected and remitted by dealers within the boundaries of the county and within the boundaries of non-electing municipalities. No non-electing municipality shall later elect Tennessee River resort district status; provided, that a non-electing municipality may elect such status prior to election of such status by the county and, in that event, tax collections would be distributed in accordance with subdivision (a)(3)(F)(iv)(**a**);*

(v) Prior to July 1, 2005, the commissioner of economic and community development shall publish a map of those Tennessee counties that rank in the first quartile of county economic distress in the United States for fiscal year 2006 based on comparing the following indicators: three-year average unemployment, per-capita market income and poverty rate;

(vi) Notwithstanding any provision of this subdivision (a)(3)(F) to the contrary, the election provided in this subdivision (a)(3)(F) shall only be available to eligible counties and municipalities that make the election prior to July 1, 2008;

(4) Three thousand six hundred seventy-four ten-thousandths percent (0.3674%), or so much thereof as may be required, is appropriated to the department of revenue in addition to its regular appropriation to be expended by it in the administration and enforcement of this chapter; and

(5) Nine thousand one hundred eighty-five ten-thousandths percent (0.9185%) is appropriated to the sinking fund account to be used by the state funding board for the payment of principal and interest becoming due on state bonds issued by the state of Tennessee.

(b)(1) Notwithstanding the allocations provided for in subsection (a), all moneys received under the provisions of this chapter from the sale, use, consumption, distribution, or storage for use or consumption of fuels used for aviation, railways, or water carriers on or after July 1, 1988, shall be deposited by the commissioner in a separate account to be known as the "transportation equity trust fund." The funds in this account shall be used by the department of transportation for railways, aeronautics, and waterways related programs and activities. This subsection (b) does not supersede or affect the provisions of former § 67-3-501 [repealed].

(2) It is declared to be the legislative intent that railways, aeronautics and waterways programs and operations are vital to the economic and social development of the state of Tennessee and as such should be considered an equal priority of the department in the administration of its programs.

(c)(1) Notwithstanding any law to the contrary, all revenue generated from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) and from the tax levied at the rate of two and three quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars ($1,600) but less than or equal to three thousand two hundred dollars

($3,200) on the sale or use of any single article of personal property pursuant to Acts 2002, ch. 856, § 4, shall be paid into the state general fund and allocated exclusively for general state purposes.

(2) Notwithstanding any law to the contrary, all revenue generated from the one-half percent (0.5%) increase in the sales and use tax rate that became effective April 1, 1992, shall be deposited in the state general fund and earmarked for education purposes in kindergarten through grade twelve (K-12). Revenue generated from one-half percent (0.5%) of the tax rate provided in § 67-6-228 shall continue to be deposited in the state general fund and earmarked for education purposes in kindergarten through grade twelve (K-12) regardless of whether the tax rate provided in § 67-6-228 is reduced below six percent (6%).

(d)(1)(A)(i) Notwithstanding the allocations provided for in subsection (a), if there exists in a municipality a sports authority organized pursuant to title 7, chapter 67, and if that sports authority has secured a major league professional baseball (American or National League), football (National Football League or Canadian Football League, or its successors or assigns), basketball (National Basketball Association), or major or minor league professional hockey (National Hockey League, or Central Hockey League or East Coast Hockey League) franchise for that municipality, and only if the municipality or any board or instrumentality of the municipality reimburses the state for any costs to reallocate apportionments of the tax revenue under this section, then an amount shall be apportioned and distributed to the municipality equal to the amount of state tax revenue derived from the sale of admissions to events of the major or minor league professional sports franchise and also the sale of food and drink sold on the premises of the sports facility in conjunction with those games, parking charges, and related services, as well as the sale by the major or minor league professional sports franchise within the county in which the games take place of authorized franchise goods and products associated with the franchise's operations as a professional sports franchise. The amount distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with title 7, chapter 67.

(ii) If an indoor sports facility owned by a sports authority organized pursuant to title 7, chapter 67, in which a professional sports franchise is a tenant, exists in a county with a metropolitan form of government, then an amount shall be apportioned and distributed to the municipality equal to the amount of state tax revenue derived from the sale of admissions to all other events occurring at the indoor sports facility and from all other sales of food and drink and other authorized goods or products sold on the premises of the sports facility, parking charges, and related services. The amounts distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with title 7, chapter 67. Such amounts shall be used exclusively for the payment of, or the reimbursement of expenses associated with securing current, expanded, or new events for indoor sports facilities owned by a municipal agency formally designated by the municipality, in accordance with title 7, chapter 67.

(iii) Notwithstanding the allocations provided for in subsection (a), if a franchise for a minor league affiliate of a major league baseball team (American or National League) playing at the Class AA level or higher locates in a municipality in this state and if the municipality constructs a new stadium for the franchise, then at such time as the franchise begins operating in the new stadium, and for a period of thirty (30) years thereafter, an amount shall be apportioned and distributed to the entity that is responsible for retirement of the debt on and maintenance of the stadium in the municipality equal to the amount of state and local tax revenue derived from the sale of admissions to games of the professional sports franchise, and also the sale of food and drink sold on the premises of the stadium used in conjunction with those games, parking charges, and related services, as well as the sale by the professional sports franchise, within the county in which the games take place, of authorized franchise goods and products associated with its operations as a professional sports franchise less local taxes collected in the year preceding the new stadium occupancy. The amount distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with title 7, chapter 67.

(iv) For the purpose of this subsection (d), "municipality" means any metropolitan government, incorporated city or county located in this state.

(v) Notwithstanding any provision of this subdivision (d)(1)(A) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be distributed to the municipality. The revenue shall continue to be allocated as provided in Acts 1992, ch. 529 and Acts 2002, ch. 856, respectively.

(B) In lieu of distribution to any municipality, amounts derived from a National Football League franchise shall be earmarked and allocated specifically and exclusively to the general fund. In all cases, any distribution to a municipality as provided for by this subsection (d) shall be limited to a period of thirty (30) years, which shall be concurrent with the time limitation established by subdivision (d)(2). Following the expiration of this thirty-year period, all amounts that would have otherwise been distributed to the municipality or retained in lieu of distribution shall be allocated as provided elsewhere without regard to this subsection (d).

(C) Notwithstanding the allocations provided in subsection (a), if there exists in a municipality in this state a sports authority organized pursuant to the provisions of title 7, chapter 67, and if a new motor sports facility locates in that municipality, and if the sports authority issues bonds or notes and uses the proceeds to assist with the development of such motor sports facility, including, but not limited to, the construction of roads, streets, highways, curbs, bridges, flood control facilities, and utility services, such as water, sanitary sewer, electricity, gas and natural gas, and telecommunications for such facility, then at such time as the new motor sports facility begins operating, and for a period of thirty (30) years thereafter, an amount shall be apportioned and distributed to the sports

authority of that municipality, or other entity that is responsible for the retirement of the debt evidenced by such bonds or notes, equal to the amount of state and local tax revenue derived from the sale of admissions to events at such facility, and also the sale of food and drinks sold on the premises of such facility used in conjunction with those events, parking charges, and related services, as well as the sale at such facility of souvenirs, memorabilia, and other goods and products associated with the operation of the facility. Such amount distributed shall be for the exclusive use of the sports authority, or comparable municipal agency, formally designated by the municipality in accordance with the provisions of title 7, chapter 67. Notwithstanding the provisions of this section, a sports authority and the municipality in which it is located may enter into an agreement under which all or any portion of the local tax revenue may be paid to the municipality for its exclusive use. For the purposes of this subdivision (d)(1)(C), "municipality" means any incorporated city or county located in the state of Tennessee. This subdivision (d)(1)(C) shall only be applicable if the cost of the acquisition of real property for such new motor sports facility, together with the costs of constructing and equipping the facility, exceeds forty million dollars ($40,000,000), incurred after January 1, 1999. The state portion of the tax revenue shall be distributed to the sports authority only if, at the date of such distribution, the sports authority has outstanding indebtedness due on such bonds or notes described in this subdivision (d)(1)(C).

(D) Notwithstanding the allocations provided for in subsection (a), if a baseball and softball complex, comprised of at least seventeen (17) baseball and softball fields and designed to host both local league play, as well as regional and national youth baseball and softball tournaments, is constructed adjacent to a stadium used by a franchise for a minor league affiliate of a major league baseball team, American or National League, playing at the Class AA level or higher, with respect to which an apportionment and distribution is made pursuant to subdivision (d)(1)(A), then an amount shall be apportioned and distributed to the entity that is responsible for the retirement of the debt on such baseball and softball complex, equal to the amount of state and local tax revenue derived from the sale of admissions to events at the baseball and softball complex and from the sale of food and drink and other authorized goods or products sold on the premises of the baseball and softball complex in conjunction with those events. This apportionment and distribution shall continue until the debt on the baseball and softball complex is retired. Such apportionment and distribution shall continue in the event the adjacent stadium ceases to house a minor league affiliate of a major league baseball team playing at the Class AA level or higher. Notwithstanding any provision of this subdivision (d)(1)(D) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subdivision (d)(1)(D). All such revenue shall continue to be allocated as provided in Acts 1992, ch. 529, and Acts 2002, ch. 856, respectively.

(E)(i) Notwithstanding the allocations provided for in subsection (a), if a new convention center that qualifies as a public use facility under the

provisions of title 7, chapter 88 is constructed in a county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, then an amount shall be apportioned and distributed to the entity that is responsible for the retirement of the debt on the convention center and ancillary facilities equal to the amount of state and local tax revenue derived under this chapter from the sale of admission, parking, food, drink and any other things or services subject to tax under this chapter, if such sales occur on the premises of the convention center or any related ancillary facilities, including, but not limited to, any tourism, theatre, retail business or commercial office space facilities or parking facilities. The apportionment and distribution shall begin at the time that the convention center begins operations and shall continue for thirty (30) years, or until the debt on the convention center is retired, whichever is sooner.

(ii) In addition to the distribution provided in subdivision (d)(1)(E)(i), if either one (1) or two (2) new hotels are constructed in connection with the construction of the convention center, then an amount shall also be apportioned and distributed to the entity that is responsible for the retirement of the debt on the convention center and ancillary facilities equal to the amount of state and local tax revenue derived under this chapter from the sale of lodging, parking, food, drink and any other things or services subject to tax under this chapter, if the sales occur on the premises of the hotels. The apportionment and distribution shall begin at the time that the convention center begins operations and shall continue for thirty (30) years, or until the debt on the convention center is retired, whichever is sooner. To be entitled to receive the distribution of state and local tax revenue under this subdivision (d)(1)(E)(ii), the entity responsible for the retirement of the debt on the convention center must first file with the department of finance and administration an application seeking certification that the construction of the hotels is directly related to the construction of the convention center. The department of finance and administration shall review the application to confirm whether the hotels meet the requirements of this subdivision (d)(1)(E)(ii). The department of finance and administration shall report its determination to the department of revenue, which shall administer this subdivision (d)(1)(E)(ii) accordingly.

(iii) In addition to the distribution provided in subdivisions (d)(1)(E)(i) and (ii), if a hotel within the footprint of the convention center, as determined by the commissioner of revenue and the commissioner of economic and community development, undertakes a significant capital improvement program in connection with the construction of the convention center, then an amount shall also be apportioned and distributed to the entity that is responsible for the retirement of the debt on the convention center and ancillary facilities equal to the amount of state and local tax revenue derived under this chapter from the sale of lodging, parking, food, drink, and any other things or services subject to tax under this chapter, if the sales occur on the premises of the hotel. The apportionment and distribution shall begin at the time that the significant capital improvement program is substantially completed and shall continue for thirty (30) years, or until the debt on the convention center is

retired, whichever is sooner. To be entitled to receive the distribution of state and local tax revenue under this subdivision (d)(1)(E)(iii), the entity responsible for the retirement of the debt on the convention center must first receive certification from the commissioner of revenue and the commissioner of economic and community development, with the approval of the commissioner of finance and administration, that the capital improvement program is directly related to the construction of the convention center.

(iv) Notwithstanding any provision of this subdivision (d)(1)(E) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to the Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subdivision (d)(1)(E). All such revenue shall continue to be allocated as provided in Acts 1992, ch. 529, and Acts 2002, ch. 856, respectively.

(2) Any bonds issued relative to the construction of a sports facility shall not be issued for a term longer than thirty (30) years from the date the first game is played by the professional sports franchise in a municipality, as defined in subdivision (d)(1).

(e) Notwithstanding the provisions of this section to the contrary, revenue derived from taxes imposed by this chapter, except revenue allocated pursuant to subdivision (c)(2), shall be earmarked and allocated in accordance with title 7, chapter 88.

(f) [Deleted by 2007 amendment, effective July 1, 2013.]

(g) The state sales tax received under this chapter from interstate telecommunications sold to businesses shall be distributed as follows:

(1) The revenue from a rate equal to four percent (4%) of tax shall be deposited in the telecommunications ad valorem tax reduction fund created by § 67-6-222 and shall be determined based on data or information the commissioner deems relevant; and

(2) Other revenue shall be deposited in the state general fund and allocated pursuant to subsections (a) and (c).

(h) ***[Contingent on funding. See the Compiler's Notes.]***

(1) Notwithstanding the allocations provided for in subsection (a), there shall be apportioned and distributed to any county in which there is a state park containing approximately six thousand five hundred (6,500) acres, of which approximately four thousand (4,000) acres are an impounded reservoir, a portion of which is owned by the Tennessee Valley authority, over which an easement has been given to the state and the state has leased or otherwise conveyed its rights to the property to such county for development, an amount equal to the amount of state and local sales taxes derived from sales occurring within such property. Such amount distributed to the county shall be exclusively for retirement of the indebtedness incurred by such county for development of such property, to the same extent that such county may pledge any revenues of the county.

(2)(A) Notwithstanding any provision of this subsection (h) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes, pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of

sales and use tax from six percent (6%) to seven percent (7%), pursuant to Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection (h). All such revenue shall continue to be allocated as provided in Acts 1992, ch. 529, § 9 and Acts 2002, ch. 856, § 4.

(B) Notwithstanding any provision of this subsection (h) to the contrary, prior to any annual distribution pursuant to subdivision (h)(1), an amount equal to the state sales and use taxes collected within such area in fiscal year 2004-2005 shall be deposited in the treasury and allocated as otherwise provided by law.

(3) Prior to the issuance of any bonds for development of property subject to the provisions of this subsection (h), the county legislative body shall submit its plan for development to the executive committee of the state building commission for such committee's review and recommendation to the state building commission.

(i)(1) ***[Effective until July 1, 2015. See the Compiler's Notes.]*** *Notwithstanding the provisions of this section to the contrary, revenue derived from state taxes imposed by this chapter shall be earmarked and allocated in accordance with the Courthouse Square Revitalization Pilot Project Act of 2005, compiled in title 6, chapter 59.*

(2) Notwithstanding a repeal of title 6, chapter 59, any municipality receiving an allocation of state sales tax revenue on June 1, 2015, pursuant to title 6, chapter 59, shall continue to receive the allocation of the revenue until June 30, 2023. The allocation shall equal the amount of revenue derived from the state tax imposed by this chapter on the sale or use of goods, products and services within the courthouse square revitalization zone. For purposes of this subdivision (i)(2), "courthouse square revitalization zone" has the same meaning provided in § 6-59-102 and shall consist of the area that is included within the revitalization zone on June 1, 2015.

(3) No portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes, pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%), pursuant to Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection (i). All such revenue shall continue to be allocated as provided in Acts 1992, ch. 529, and Acts 2002, ch. 856.

(j)(1) Notwithstanding the allocations provided for in subsection (a), if a new museum dedicated to coal mining is constructed in a county containing a spallation neutron source facility, then an amount shall be apportioned and distributed to the entity that is responsible for the retirement of the debt on the museum equal to the amount of state and local tax revenue derived under this chapter from the sale of admission, parking, food, drink and any other things or services subject to tax under this chapter, if the sales occur on the premises of the museum. The apportionment and distribution shall begin at the time that the museum begins operations and shall continue for thirty (30) years, or until the debt on the museum is retired, whichever is sooner.

(2)(A) In addition to the distribution provided in subdivision (j)(1), if a new hotel is constructed in connection with the construction of the museum and the hotel is located within one (1) mile of the museum's entrance, then an amount shall also be apportioned and distributed to the entity that is responsible for the retirement of the debt on the museum equal to the amount of state and local tax revenue derived under this chapter from the

sale of lodging, parking, food, drink and any other things or services subject to tax under this chapter, if the sales occur on the premises of the hotel. The apportionment and distribution shall begin at the time the museum begins operations and shall continue for thirty (30) years, or until the debt on the museum is retired, whichever is sooner.

(B) To be entitled to receive the distribution of state and local tax revenue under subdivision (j)(2)(A), the entity responsible for the retirement of the debt on the museum must first file with the department of finance and administration an application seeking certification that the construction of the hotel is directly related to the construction of the museum. The department of finance and administration shall review the application to confirm whether the hotel meets the requirements of this subdivision (j)(2). The department of finance and administration shall report its determination to the department of revenue, which shall administer this subdivision (j)(2) accordingly.

(3) Notwithstanding any provision of this subsection (j) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to the Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection (j). The revenue shall continue to be allocated as provided in Acts 1992, ch. 529, and Acts 2002, ch. 856, respectively.

(k) Notwithstanding this section and any other law to the contrary, there is established a separate account in the local government fund to be known as the county revenue partnership fund. The apportionment of revenues to the fund and distributions from the fund shall be subject to the following provisions:

(1) Any apportionment of revenues to the county revenue partnership fund shall be allocated only from the revenues apportioned to the state general fund pursuant to subdivision (a)(1);

(2) Apportionment of revenues to the county revenue partnership fund may be made in any year pursuant to an allocation made in a specific dollar amount in the general appropriations act, and no apportionment shall otherwise be made to the fund; provided, however, that in fiscal years 2007-2008 and 2008-2009, no revenue shall be apportioned to the fund;

(3) The apportionment to and distributions from the county revenue partnership fund in any fiscal year shall not exceed the amount distributed to municipalities from the state sales tax pursuant to subdivision (a)(3)(A) in the previous fiscal year;

(4) In any fiscal year in which revenues are apportioned to the county revenue partnership fund, the revenue shall be allocated and distributed to all counties and metropolitan governments in this state monthly by the commissioner of finance and administration, in proportion as the population of each county or metropolitan government bears to the aggregate population of the state, according to the latest federal census or other censuses authorized by law;

(5) The county legislative body shall, on an annual basis, direct the trustee with regard to allocating and depositing the revenue from this fund among the various funds of the county budget; and

(6) In the state budget document, the county revenue partnership fund shall be listed in the report of revenue sources and basis of apportionment,

and the amount apportioned to the fund shall be stated in the distribution of revenues by fund for each year in the comparison statement of state revenues, regardless of whether any revenue is apportioned to the fund for a given fiscal year.

*(**l**)(1) Notwithstanding the allocations provided for in subsection (a), if there exists a performing arts center that consists of four (4) or more auditoriums, has a total seating capacity of five thousand four hundred (5,400) or more, and is operated by an organization that has received a determination of exemption from the internal revenue service under Internal Revenue Code § 501(c)(3), codified in 26 U.S.C. § 501(c)(3), and if the performing arts center is located in facilities owned by the state or a political subdivision of the state, then an amount shall be apportioned and distributed to the entity that is responsible for operation and management of the performing arts center. A performing arts center may consist of two (2) or more performance venues with auditoriums located in two (2) or more buildings that are contiguous or in close proximity and are owned by the state or a political subdivision of the state. The amount apportioned and distributed pursuant to this subsection (**l**) shall be equal to the amount of state tax revenue derived under this chapter from the sale of tickets for admission to events held at the performing arts center; provided, however, that the apportionment and distribution shall be used exclusively for maintenance and improvement of the facilities in which the performing arts center is located, which shall include, but not be limited to, capital improvements, additions and renovations to the facilities and debt service on funds borrowed to pay for the improvements, additions and renovations. Debt service shall include principal and interest payments on existing and future debt obligations, including repayment to the exempt organization operating the facilities of funds advanced or loaned by the organization that were used or are used to pay the costs, in whole or in part, of the improvements, additions and renovations to the facilities.*

*(2) Notwithstanding subdivision (**l**)(1) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection (**l**). The revenue shall continue to be allocated as provided in Acts 1992, ch. 529 and Acts 2002, ch. 856, respectively.*

(m)(1) Notwithstanding the allocations in subsection (a), except as provided in subdivision (m)(2), state tax revenue collected from commercial breeders licensed under the Commercial Breeder Act, compiled in title 44, chapter 17, part 7, shall be allocated to the Commercial Breeder Act enforcement and recovery account.

(2) Notwithstanding subdivision (m)(1), no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, ch. 529, § 9 and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be allocated to the Commercial Breeder Act enforcement and recovery account. The revenue shall continue to be allocated as provided in Acts 1992, ch. 529 and Acts 2002, ch. 856, respectively.

(n)(1) Notwithstanding the allocations provided for in subsection (a), if a hotel or inn that is more than one hundred fifty (150) years old is owned by a municipality and operated by an organization that has received a determination of exemption from the internal revenue service under Internal Revenue Code § 501(c)(3), codified in 26 U.S.C. § 501(c)(3), then an amount shall be apportioned and distributed to the entity that is responsible for the retirement of the debt incurred in renovating the hotel or inn. The amount apportioned and distributed pursuant to this subsection (n) shall be equal to the amount of state tax revenue derived under this chapter from the sale of goods and services on the premises of the hotel or inn; provided, however, that the apportionment and distribution shall be used exclusively for the retirement of debt incurred prior to April 1, 2009, including any interest thereon, in renovating the hotel or inn and shall continue only until the debt is retired.

(2) Notwithstanding subdivision (n)(1) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection (n). All such revenue shall continue to be allocated as provided in Acts 1992, ch. 529 and Acts 2002, ch. 856, respectively.

(o)(1) As used in this subsection (o), unless the context otherwise requires:

(A) "Best interests of the state" means a determination by the commissioner of revenue, with approval by the commissioner of economic and community development, that:

(i) The public improvements made within or adjacent to a mixed-use development are a result of the special allocation and distribution of state sales tax provided for in this subsection (o); and

(ii) The mixed-use development is a result of such public improvements;

(B) "Commercial development zone" means an area in which a mixed-use development is planned or located. To comprise a commercial development zone, the area:

(i) Must be located entirely within an eligible county;

(ii) Shall not exceed one thousand two hundred (1,200) acres; and

(iii) Must be located adjacent to a federally designated interstate highway;

(C) "Eligible county" means any county in which:

(i) At least twenty-five percent (25%) of the county consists of federally-owned land;

(ii) At least thirty and three-fifths percent (30.6%) of the county's population, eighteen (18) years of age and younger, lives in poverty as determined by the United States census bureau, small area income and poverty estimates (SAIPE) program, or any comparable successor program, within the three-year period immediately preceding establishment of the commercial development zone; and

(iii) The federal highway administration has approved an interstate exit in close proximity to the area proposed for a commercial development zone, and such approval was based on the need to stimulate local economic development opportunities;

(D) "Mixed-use development" means an area, located entirely within an eligible county, containing not less than five hundred (500) acres nor more than one thousand two hundred (1,200) acres and includes, but is not limited to, property with commercial uses; and

(E) "Public improvements" means roads, streets, sidewalks, utility services, such as electricity, gas, water and sanitary sewer, and related services, parking facilities, parks, and all other necessary or desirable improvements to be used by the public in connection with a commercial development zone.

(2) Notwithstanding the allocations provided for in subsection (a), if an eligible county has good reason to anticipate that a private entity is willing to plan and develop a mixed-use development; and if the commissioner of revenue, with approval by the commissioner of economic and community development, determines that the special allocation of state sales tax, as authorized by this subsection (o), is in the best interests of the state, then the county legislative body may adopt a resolution designating a commercial development zone for such mixed-use development; provided, however, no county shall contain more than one (1) commercial development zone; and provided further, however, the county legislative body must adopt such resolution on or before June 30, 2011. If the county legislative body duly adopts such resolution, and if the county or an industrial development board, pursuant to subdivision (o)(3), issues bonds payable in whole or part from the tax revenues described herein and uses the proceeds to finance any development or public improvements constructed within or adjacent to the commercial development zone, then an amount shall be apportioned and distributed to such county for the retirement of debt evidenced by such bonds. The amount apportioned and distributed to the county pursuant to this subsection (o) shall equal the amount of state tax revenue derived under this chapter from sales of items and services subject to tax pursuant to this chapter, if the sales occur within the commercial development zone. The apportionment and distribution of such revenue shall begin upon the receipt of a certificate of occupancy for the first retail business operating within the commercial development zone and shall continue for a period of thirty (30) years, or until the debt, including any refunding debt, relating to the commercial development zone is retired, whichever is sooner.

(3) An eligible county in which a commercial development zone is duly located is authorized to delegate to any industrial development corporation incorporated by the county or a municipality within the county the authority to issue revenue bonds to finance development or public improvements within or adjacent to a commercial development zone; provided, that the county shall enter into an agreement with the industrial development corporation in which the county shall agree to promptly pay to the industrial development corporation the tax revenues described in this subsection (o). Upon receipt, such tax revenues shall be held in trust by the county for the benefit of the industrial development corporation.

(4) Notwithstanding any provision of subdivision (o)(2) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection (o). The revenue shall continue to be allocated as provided in Acts 1992, ch. 529

and Acts 2002, ch. 856, respectively.

(p)(1) Notwithstanding the allocations provided for in subsection (a), if there exists a zoo or aquarium that is accredited by the Association of Zoos and Aquariums and has received and currently holds a determination of exemption from the Internal Revenue Service under Internal Revenue Code § 501(c)(3), codified in 26 U.S.C. § 501(c)(3), then an amount shall be apportioned and distributed to the zoo or aquarium equal to the amount of state tax revenue derived under this chapter from the sale of tangible personal property or amusements on the premises of the zoo or aquarium; provided, however, that such apportionment and distribution shall be used exclusively for the operation of the zoo or aquarium, including, but not limited to, capital projects.

(2) Notwithstanding subdivision (p)(1) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4, shall be apportioned and distributed pursuant to this subsection (p). The revenue shall continue to be allocated as provided in Acts 1992, ch. 529 and Acts 2002, ch. 856, respectively.

(q) Notwithstanding § 7-40-106 to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, chapter 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, chapter 856, § 4, shall be distributed to the municipality. The revenue shall continue to be allocated as provided in Acts 1992, chapter 529 and Acts 2002, chapter 856, respectively.

67-6-201. Taxable privilege declared. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

It is declared to be the legislative intent that every person is exercising a taxable privilege who:

(1) Engages in the business of selling tangible personal property at retail in this state;

(2) Uses or consumes in this state any item or article of tangible personal property as defined in this chapter, regardless of the ownership thereof or any tax immunity that may be enjoyed by the owner thereof;

(3) Is the recipient of any of the things or services taxable under this chapter;

(4) Rents or furnishes any of the things or services taxable under this chapter;

(5) Stores for use or consumption in this state any item or article of tangible personal property as defined in this chapter;

(6) Leases or rents such property, either as lessor or lessee, within the state of Tennessee;

(7) Charges admission, dues or fees taxable under this chapter;

(8) Sells space under this chapter;

(9) Charges a fee for subscription to, access to or use of television services provided by a video programming service provider; or

(10) Charges a fee for subscription to, access to or use of television services delivered by a provider of direct-to-home satellite service.

67-6-201. Taxable privilege declared. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

It is declared to be the legislative intent that every person is exercising a taxable privilege who:

(1) Engages in the business of selling tangible personal property at retail in this state;

(2) Uses or consumes in this state any item or article of tangible personal property as defined in this chapter, regardless of the ownership thereof or any tax immunity that may be enjoyed by the owner thereof;

(3) Is the recipient of any of the things or services taxable under this chapter;

(4) Rents or furnishes any of the things or services taxable under this chapter;

(5) Stores for use or consumption in this state any item or article of tangible personal property as defined in this chapter;

(6) Leases or rents such property, either as lessor or lessee, within the state of Tennessee;

(7) Charges admission, dues or fees taxable under this chapter;

(8) Sells space under this chapter;

(9) [Deleted by 2007 amendment, effective July 1, 2013.]

(10) [Deleted by 2007 amendment, effective July 1, 2013.]

(11) Charges a fee for subscription to, access to or use of television services provided by any electronic means, except for video programming services or direct-to-home satellite television services sold by persons subject to the tax in chapter 4, part 24 of this title; or

(12) Whether or not the person has a place of business in this state, delivers tangible personal property in this state, if the delivery is made to a consumer in this state or to another person, for redelivery to a consumer in this state pursuant to a retail sale made by the person to the consumer; provided, that this shall not be construed to impose a tax that is invalid either under the commerce clause or the due process clause of the United States constitution.

67-6-202. Property sold at retail. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) For the exercise of the privilege of engaging in the business of selling tangible personal property at retail in this state, a tax is levied on the sales price of each item or article of tangible personal property when sold at retail in this state; the tax is to be computed on gross sales for the purpose of remitting the amount of tax due the state and is to include each and every retail sale. The tax shall be levied at the rate of seven percent (7%). There is levied an additional tax at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars ($1,600), but less than or equal to three thousand two hundred dollars ($3,200), on the sale or use of any single article of personal property as defined in § 67-6-702(d). The tax levied at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars ($1,600), but less than or equal to three thousand two hundred dollars ($3,200), on the sale or use of any single

article of personal property shall be in addition to all other taxes and shall be a state tax for state purposes only. No county or municipality or taxing district shall have the power to levy any tax on the amount in excess of one thousand six hundred dollars ($1,600), but less than or equal to three thousand two hundred dollars ($3,200), on the sale or use of any single article of personal property.

(b) Notwithstanding any other provision of law to the contrary, the one-half percent (0.5%) increase in the rate of the sales tax from five and one-half percent (5.5%) to six percent (6%) imposed by Acts 1992, ch. 529 in this section and §§ 67-6-203, 67-6-204, 67-6-205, and 67-6-221 shall remain in effect until changed by the general assembly. All revenue generated from such increases shall be deposited in the state general fund and earmarked for education purposes as provided in § 67-6-103(c)(2).

(c) This section levies a tax on the sales price of tangible personal property obtained from any vending machine or device.

67-6-202. Property sold at retail. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) For the exercise of the privilege of engaging in the business of selling tangible personal property at retail in this state, a tax is levied on the sales price of each item or article of tangible personal property when sold at retail in this state; the tax is to be computed on gross sales for the purpose of remitting the amount of tax due the state and is to include each and every retail sale. The tax shall be levied at the rate of seven percent (7%). There is levied an additional tax at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars ($1,600), but less than or equal to three thousand two hundred dollars ($3,200), on the sale or use of any single article of personal property as defined in § 67-6-702. The tax levied at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars ($1,600), but less than or equal to three thousand two hundred dollars ($3,200), on the sale or use of any single article of personal property shall be in addition to all other taxes and shall be a state tax for state purposes only. No county or municipality or taxing district shall have the power to levy any tax on the amount in excess of one thousand six hundred dollars ($1,600), but less than or equal to three thousand two hundred dollars ($3,200), on the sale or use of any single article of personal property.

(b) Notwithstanding any other provision of law to the contrary, the one-half percent (0.5%) increase in the rate of the sales tax from five and one-half percent (5.5%) to six percent (6%) imposed by Acts 1992, ch. 529 in this section and §§ 67-6-203, 67-6-204, 67-6-205, and 67-6-221 shall remain in effect until changed by the general assembly. All revenue generated from such increases shall be deposited in the state general fund and earmarked for education purposes as provided in § 67-6-103(c)(2).

(c) This section levies a tax on the sales price of tangible personal property obtained from any vending machine or device.

67-6-203. Property used, consumed, distributed or stored. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) A tax is levied at the rate of the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202 of the purchase price of each

item or article of tangible personal property when the tangible personal property is not sold, but is used, consumed, distributed, or stored for use or consumption in this state; provided, that there shall be no duplication of the tax.

(b) A tax, which shall be paid by the distributor, is also levied at the rate set out in subsection (a) on the value of catalogues, advertising fliers, or other advertising publications distributed to residents of Tennessee; provided, that this tax shall not be duplicative of a sales or use tax otherwise collected on such publications. "Distributor" does not include the commercial printer or mailer of any such catalogues, advertising fliers, or other advertising publications; nor shall nexus to a taxpayer be established through a relationship with a commercial printer or mailer having a presence in Tennessee; nor shall the commercial printer or mailer have the obligation of collecting any such tax.

(c) Notwithstanding any other provision of law to the contrary, the one-half percent (0.5%) increase in the rate of the sales tax from five and one-half percent (5.5%) to six percent (6%) imposed by Acts 1992, ch. 529 in this section and §§ 67-6-202, 67-6-204, 67-6-205, and 67-6-221 shall remain in effect until changed by the general assembly. All revenue generated from such increases shall be deposited in the state general fund and earmarked for education purposes as provided in § 67-6-103(c)(2).

67-6-203. Property used, consumed, distributed or stored. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) A tax is levied at the rate of the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202 of the purchase price of each item or article of tangible personal property when the tangible personal property is not sold, but is used, consumed, distributed, or stored for use or consumption in this state; provided, that there shall be no duplication of the tax.

(b) [Deleted by 2007 amendment, effective July 1, 2013.]

(c) Notwithstanding any other provision of law to the contrary, the one-half percent (0.5%) increase in the rate of the sales tax from five and one-half percent (5.5%) to six percent (6%) imposed by Acts 1992, ch. 529 in this section and §§ 67-6-202, 67-6-204, 67-6-205, and 67-6-221 shall remain in effect until changed by the general assembly. All revenue generated from such increases shall be deposited in the state general fund and earmarked for education purposes as provided in § 67-6-103(c)(2).

67-6-205. Services. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) There is levied a tax at the rate of the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202 on the sales price of all services taxable under this chapter.

(b) Notwithstanding any other provision of law to the contrary, the one-half percent (0.5%) increase in the rate of the sales tax from five and one-half percent (5.5%) to six percent (6%) imposed by Acts 1992, ch. 529 in §§ 67-6-202, 67-6-203, 67-6-204, 67-6-221, and this section shall remain in effect until changed by the general assembly. All revenue generated from such increases shall be deposited in the state general fund and earmarked for education purposes as provided in § 67-6-103(c)(2).

(c) The retail sale of the following services are taxable under this chapter:

(1) The sale, rental or charges for any rooms, lodgings, or accommodations furnished to persons by any hotel, inn, tourist court, tourist camp, tourist cabin, motel, or any place in which rooms, lodgings or accommodations are furnished to persons for a consideration. The tax does not apply, however, to rooms, lodgings, or accommodations supplied to the same person for a period of ninety (90) continuous days or more; charges for or the value of the use of any time-share estate or perpetual interest in a trust, partnership, nonprofit corporation or limited liability company that has as its substantial purpose the ownership and control of real property; or charges for or amounts paid as a standard fee for the service of facilitating the exchange of one (1) time-share interval for another or the service of making a reservation for a time-share interval via a reservation system;

(2) Charges for services rendered by persons operating or conducting a garage, parking lot or other place of business for the purpose of parking or storing motor vehicles. The tax does not apply, however, to charges for such services made by the state and its political subdivisions when providing on-street parking space for which charges are collected, or when operating or conducting a garage or parking lot that is unattended and the charges are collected by parking meters;

(3) The furnishing, for a consideration, of intrastate, interstate or international telecommunication services;

(4) The performing, for a consideration, of any repair services with respect to any kind of tangible personal property or computer software;

(5) The laundering or dry cleaning of any kind of tangible personal property, excluding coin-operated laundry, dry cleaning or car wash facilities, where a charge is made for the laundering or dry cleaning; provided, that this subdivision (c)(5) shall not apply to the bathing of animals provided by a licensed veterinarian when rendered for a medical purpose in conjunction with the practice of veterinary medicine, as defined in § 63-12-103;

(6) The installing of tangible personal property that remains tangible personal property after installation and the installing of computer software, where a charge is made for the installation, whether or not the installation is made as an incident to the sale of tangible personal property or computer software, and whether or not any tangible personal property or computer software is transferred in conjunction with the installation service;

(7) The enriching of uranium materials, compounds, or products that is performed on a cost-plus basis or on a toll enrichment fee basis;

(8) The renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis. This subdivision (c)(8) does not apply to the renting or providing of space to a craft fair, antique mall, or book fair or gun show, if the book fair or gun show is sponsored by a not-for-profit corporation. This subdivision (c)(8) also does not apply to the renting or providing of space at a flea market or the renting or providing of space at conventions, trade shows, or expositions, if the conventions, trade shows, or expositions do not allow the general public to enter the exhibit area for the purpose of making sales or taking orders for sales; and

(9) The furnishing, for a consideration, of ancillary services.

67-6-205. Services. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) There is levied a tax at the rate of the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202 on the sales price of all services taxable under this chapter.

(b) Notwithstanding any other provision of law to the contrary, the one-half percent (0.5%) increase in the rate of the sales tax from five and one-half percent (5.5%) to six percent (6%) imposed by Acts 1992, ch. 529 in §§ 67-6-202, 67-6-203, 67-6-204, 67-6-221, and this section shall remain in effect until changed by the general assembly. All revenue generated from such increases shall be deposited in the state general fund and earmarked for education purposes as provided in § 67-6-103(c)(2).

(c) The retail sale of the following services are taxable under this chapter:

(1) The sale, rental or charges for any rooms, lodgings, or accommodations furnished to persons by any hotel, inn, tourist court, tourist camp, tourist cabin, motel, or any place in which rooms, lodgings or accommodations are furnished to persons for a consideration. The tax does not apply, however, to rooms, lodgings, or accommodations supplied to the same person for a period of ninety (90) continuous days or more; charges for or the value of the use of any time-share estate or perpetual interest in a trust, partnership, nonprofit corporation or limited liability company that has as its substantial purpose the ownership and control of real property; or charges for or amounts paid as a standard fee for the service of facilitating the exchange of one (1) time-share interval for another or the service of making a reservation for a time-share interval via a reservation system;

(2) Charges for services rendered by persons operating or conducting a garage, parking lot or other place of business for the purpose of parking or storing motor vehicles. The tax does not apply, however, to charges for such services made by the state and its political subdivisions when providing on-street parking space for which charges are collected, or when operating or conducting a garage or parking lot that is unattended and the charges are collected by parking meters;

(3) The furnishing, for a consideration, of intrastate, interstate or international telecommunication services;

(4) The performing, for a consideration, of any repair services with respect to any kind of tangible personal property or computer software;

(5) The laundering or dry cleaning of any kind of tangible personal property, excluding coin-operated laundry, dry cleaning or car wash facilities, where a charge is made for the laundering or dry cleaning; provided, that this subdivision (c)(5) shall not apply to the bathing of animals provided by a licensed veterinarian when rendered for a medical purpose in conjunction with the practice of veterinary medicine, as defined in § 63-12-103;

(6) The installing of tangible personal property that remains tangible personal property after installation and the installing of computer software, where a charge is made for the installation, whether or not the installation is made as an incident to the sale of tangible personal property or computer software, and whether or not any tangible personal property or computer software is transferred in conjunction with the installation service;

(7) The enriching of uranium materials, compounds, or products that is performed on a cost-plus basis or on a toll enrichment fee basis;

(8) The renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis. This subdivision (c)(8) does not apply to the renting or providing of space to a craft fair, antique mall, or book fair or gun show, if the book fair or gun show is sponsored by a not-for-profit corporation. This subdivision (c)(8) also does not apply to the renting or providing of space at a flea market or the renting or providing of space at conventions, trade shows, or expositions, if the conventions, trade shows, or expositions do not allow the general public to enter the exhibit area for the purpose of making sales or taking orders for sales;

(9) The furnishing, for a consideration, of ancillary services; and

(10) Charging a fee for subscription to, access to, or use of television services provided by any electronic means, except for video programming services or direct-to-home satellite television services sold by persons subject to the tax in chapter 4, part 24, of this title.

67-6-206. Industrial machinery and raw materials — Exemptions. [Effective until July 1, 2013. See the version effective on July 1, 2013.

(a) After June 30, 1983, no tax is due with respect to industrial machinery.

(b)(1) Tax at the rate of one percent (1%) is imposed with respect to water when sold to or used by manufacturers. Tax at the rate of one and one-half percent (1.5%) shall be imposed with respect to gas, electricity, fuel oil, coal and other energy fuels when sold to or used by manufacturers.

(2) For the purpose of this subsection (b), "manufacturer" means one whose principal business is fabricating or processing tangible personal property for resale.

(3) The substances shall be exempt entirely from the taxes imposed by this chapter whenever it may be established to the satisfaction of the commissioner, by separate metering or otherwise, that they are exclusively used directly in the manufacturing process, coming into direct contact with the article being fabricated or processed by the manufacturer, and being expended in the course of the contact. Whenever the commissioner determines that the use of the substances by a manufacturer meets the test, the commissioner shall issue a certificate evidencing the entitlement of the manufacturer to the exemption. A copy of the certificate issued by the commissioner or a fully completed Streamlined Sales Tax certificate of exemption, which must include the manufacturer's exemption authorization number included on the certificate issued by the commissioner, shall be furnished by the manufacturer to the manufacturer's supplier of the exempt substances. The certificate may be revoked by the commissioner at any time upon a finding that the conditions precedent to the exemption no longer exist.

(4) Any water or energy fuel used by a manufacturer in fabricating or processing tangible personal property for resale shall be exempt entirely from the taxes imposed by this chapter when the water or energy fuel are produced or extracted directly by the manufacturer from facilities owned by the manufacturer or in the public domain.

(5) Notwithstanding the requirement of direct contact, there shall be exempt entirely from the tax imposed by this chapter electricity used to

generate radiant heat for production of heat-treated glass when sold to or used by manufacturers; provided, that the manufacturer has applied for and received a certificate of exemption as required by this section. The person shall furnish to that person's supplier of the substance a copy of the certificate or a fully completed Streamlined Sales Tax certificate of exemption, which must include the manufacturer's exemption authorization number included on the certificate issued by the commissioner, to evidence qualification for the exemption.

(6)(A) Notwithstanding the provisions of subdivisions (b)(1)-(5), the reduced rates provided by subdivision (b)(1) shall apply to the use of such substances by a person engaged at a location in packaging automotive aftermarket products manufactured at other locations by the same person or by a corporation affiliated with the manufacturing corporation, such that:

(i) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(ii) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent.

(B) "Packaging", as used in this subdivision (b)(6), refers only to the fabrication and/or installation of that packaging that will accompany the automotive aftermarket product when sold at retail. The reduced rates shall apply only to such substances used in the packaging process. Such use must be established to the satisfaction of the commissioner by separate metering or otherwise. To qualify for the reduced rate under this subdivision (b)(6), a person shall apply for and receive a certificate of qualification for the reduced rate from the commissioner. The person shall furnish to that person's supplier of the substances a copy of the certificate or a fully completed Streamlined Sales Tax certificate of exemption, which must include the exemption authorization number included on the certificate issued by the commissioner, to evidence qualification for the reduced rate.

(7) Notwithstanding the requirement of direct contact, natural gas used to generate heat for the production of primary aluminum, aluminum sheet and foil, and aluminum can sheet products when sold to or used by manufacturers shall be exempt entirely from the tax imposed by this chapter; provided, that the manufacturer applies for and receives a certificate of exemption as required by this section. Nothing shall be inferred from this subdivision (b)(7) as to the law in effect prior to this change.

(8) Notwithstanding subdivision (b)(2), the term "manufacturer" does not include any person whose principal business is the preparation of food for immediate retail sale.

(c) Tax at the rate of one and one half percent (1.5%) shall be imposed with respect to electricity when sold to or used by a qualified data center.

67-6-206. Industrial machinery and raw materials — Exemptions. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) After June 30, 1983, no tax is due with respect to industrial machinery.

(b)(1) No tax is imposed with respect to water when sold to or used by manufacturers. No tax is imposed with respect to gas, electricity, fuel oil, coal

and other energy fuels when sold to or used by manufacturers.

(2)(A) For the purpose of this subsection (b), "manufacturer" means one whose principal business is fabricating or processing tangible personal property for resale and also includes a person engaged at a location in packaging automotive aftermarket products manufactured at other locations by the same person or by a corporation affiliated with the manufacturing corporation such that:

(i) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(ii) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent.

(B) "Packaging", as used in this subdivision (b)(2), refers only to the fabrication or installation, or both, of that packaging that will accompany the automotive aftermarket product when sold at retail. The exemption shall apply only to the substances used in the packaging process. That use must be established to the satisfaction of the commissioner by separate metering or otherwise.

(3) To qualify for the exemption under this section, a person shall apply for and receive a certificate of qualification for the exemption from the commissioner for each location that the person qualifies as a manufacturer or qualified data center. The person shall furnish to vendors and suppliers of the purchases either a copy of the certificate issued by the commissioner or a Streamlined Sales Tax certificate of exemption, which shall include the manufacturer's exemption authorization number included on the certificate issued by the commissioner, to evidence qualification for the exemption.

(4) Notwithstanding subdivision (b)(2), "manufacturer" shall not include any person whose principal business is the preparation of food for immediate retail sale.

(5) [Deleted by 2007 amendment, effective July 1, 2013.]

(6) [Deleted by 2007 amendment, effective July 1, 2013.]

(7) [Deleted by 2007 amendment, effective July 1, 2013.]

(8) [Deleted by 2007 amendment, effective July 1, 2013.]

(c) Tax at the rate of one and one half percent (1.5%) shall be imposed with respect to electricity when sold to or used by a qualified data center.

67-6-209. Use of property produced or severed from earth — Exemptions. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) Where a manufacturer, producer, compounder or contractor erects or applies tangible personal property, that the manufacturer, producer, compounder or contractor has manufactured, produced, compounded or severed from the earth, other than:

(1) Any material severed from the earth and moved from one (1) place to another on the same construction or job site; and

(2) Dirt, soil, earth or any other kind of material when used for fill, whether from the same construction or job site or elsewhere;

such person so using the tangible personal property shall pay the tax levied in this section on the fair market value of such tangible personal property when used, without any deductions whatsoever; provided, that the provisions of this subsection (a) shall not be construed to apply to contractors or subcontractors

who fabricate, erect or apply tangible personal property that becomes a component part of a building, and that is not sold by them as a manufactured item.

(b) Where a contractor or subcontractor defined in this chapter as a dealer uses tangible personal property in the performance of the contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the title holder of such property would be subject to pay the sales or use tax, except where the title holder is a church, private nonprofit college or university and the tangible personal property is for church, private nonprofit college or university construction, such contractor or subcontractor shall pay a tax at the rate prescribed by § 67-6-203 measured by the purchase price of such property, unless such property has been previously subjected to a sales or use tax, and the tax due thereon has been paid. The exemption provided for in this subsection (b) for private nonprofit colleges or universities shall apply only to the state portion of the sales tax. The sales or use tax levied by this chapter shall not apply to carpet installed for a church when the church is exempt from sales or use taxes under § 67-6-322.

(c) The tax imposed by this section shall have no application where the contractor or subcontractor, and the purpose for which such tangible personal property is used, would be exempt from the sales or use tax under any other provision of this chapter. However, the transfer of tangible personal property by a contractor who contracts for the installation of such tangible personal property as an improvement to realty does not constitute a sale, except as provided in § 67-6-102(37), and the contractor shall not be permitted on this basis to obtain the benefit of any exemptions or reduced tax rates available to manufacturers under § 67-6-102(44)(E) or § 67-6-206. Each location of a taxpayer will be considered separately in determining whether the taxpayer qualifies or is disqualified as a manufacturer at that location.

(d) The tax imposed by this section or by any other provision of this chapter shall have no application with respect to the use by, or the sale to, a contractor or subcontractor of atomic weapon parts, source materials, special nuclear materials and by-product materials, all as defined by the Atomic Energy Act of 1954, compiled in 42 U.S.C. § 2011 et seq., or with respect to such other materials as would be excluded from taxation as industrial materials under § 67-6-102(44)(E), when the items referred to in this subsection (d) are sold or leased to a contractor or subcontractor for use in, or experimental work in connection with, the manufacturing processes for or on behalf of the atomic energy commission or when any of such items are used by a contractor or subcontractor in such experimental work or manufacturing processes.

(e) There is exempt from the provisions of this chapter the sale or use of materials and equipment purchased or used for construction or installation, by a contractor, subcontractor or otherwise, of, in or as a part of any electric generating plant or distribution system, any resource recovery facility where steam or electric energy is produced, or any coal gasification plant or distribution system owned or operated by the United States or any agency thereof created by an act of congress, or by the state of Tennessee or any agency or political subdivision thereof, or any authority organized pursuant to the Rural Electric and Community Services Cooperative Act, compiled in title 65, chapter 25, part 2. There is also exempt the sale or use of materials and equipment purchased or used for construction or installation by a contractor, subcontrac-

tor or otherwise, of, in or as a part of any electric generating plant, including the transmission substation, owned or operated by any person, so long as such person does not now or intend in the future to generate electricity from a plant located in Tennessee or to distribute electricity to consumers in Tennessee.

(f) There is exempt from the tax imposed by this section or any other provision of this chapter pipes, fittings and materials used to repair or maintain a water utility system owned by a utility district created pursuant to title 7, chapter 82. This exemption applies only to pipes, fittings and materials which become an integral part of the water utility system. This exemption does not apply to any installation of pipes, fittings or materials for any reason other than repair or maintenance of an existing system.

(g) There is exempt from the tax imposed by this section tangible personal property that:

(1) Is installed by a dealer in manufactured homes, or furnished to a contractor by the dealer for use in the installation of a manufactured home; and

(2) Has previously been subjected to the tax imposed by § 67-6-216.

(h) There is exempt from the tax imposed by this chapter any tangible personal property owned by the United States, or any agency thereof, that is provided to a contractor or subcontractor on a temporary basis for testing pursuant to a contract awarded by the United States, or any agency thereof, to such contractor or subcontractor under the Small Business Innovation Research Program, as that term is defined in 15 U.S.C. § 638(e)(4). The exemption provided by this subsection (h) shall apply only to property that is the subject of the test being performed and property into which the subject of the test must be incorporated before the testing can occur. The exemption provided by this subsection (h) shall not apply to any equipment, machinery or other property used to conduct the test.

(i) There is exempt from the tax imposed by this chapter any tangible personal property that is provided to a contractor or subcontractor on a temporary basis for testing; provided, that the exemption shall apply only in those instances where the facility at which the testing is undertaken is owned by the United States or any agency of the United States. The exemption provided by this subsection (i) shall apply only to the property that is the subject of the test being performed and property into which the subject of the test must be incorporated before the testing can occur. Under no circumstances shall the exemption apply to property used to conduct the test or to property consumed or destroyed during the test. For this purpose, the term "testing" shall be limited to diagnostic, analytical and scientific testing in a controlled environment, dedicated to testing for the purpose of providing information and findings supportive of the aerodynamic, hypersonic, aeropropulsion, space, missile, aircraft and aerospace technologies and industries.

67-6-209. Use of property produced or severed from earth — Exemptions. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) Where a manufacturer, producer, compounder or contractor erects or applies tangible personal property, that the manufacturer, producer, compounder or contractor has manufactured, produced, compounded or severed from the earth, other than:

(1) Any material severed from the earth and moved from one (1) place to another on the same construction or job site; and

(2) Dirt, soil, earth or any other kind of material when used for fill, whether from the same construction or job site or elsewhere;

such person so using the tangible personal property shall pay the tax levied in this section on the fair market value of such tangible personal property when used, without any deductions whatsoever; provided, that the provisions of this subsection (a) shall not be construed to apply to contractors or subcontractors who fabricate, erect or apply tangible personal property that becomes a component part of a building, and that is not sold by them as a manufactured item.

(b) Where a contractor or subcontractor defined in this chapter as a dealer uses tangible personal property in the performance of the contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the title holder of such property would be subject to pay the sales or use tax, except where the title holder is a church, private nonprofit college or university and the tangible personal property is for church, private nonprofit college or university construction, such contractor or subcontractor shall pay a tax at the rate prescribed by § 67-6-203 measured by the purchase price of such property, unless such property has been previously subjected to a sales or use tax, and the tax due thereon has been paid. The sales or use tax levied by this chapter shall not apply to carpet installed for a church when the church is exempt from sales or use taxes under § 67-6-322.

(c) The tax imposed by this section shall have no application where the contractor or subcontractor, and the purpose for which such tangible personal property is used, would be exempt from the sales or use tax under any other provision of this chapter. However, the transfer of tangible personal property by a contractor who contracts for the installation of such tangible personal property as an improvement to realty does not constitute a sale, except as provided in § 67-6-102(39), and the contractor shall not be permitted on this basis to obtain the benefit of any exemptions or reduced tax rates available to manufacturers under § 67-6-102(46)(E) or § 67-6-206. Each location of a taxpayer will be considered separately in determining whether the taxpayer qualifies or is disqualified as a manufacturer at that location.

(d) The tax imposed by this section or by any other provision of this chapter shall have no application with respect to the use by, or the sale to, a contractor or subcontractor of atomic weapon parts, source materials, special nuclear materials and by-product materials, all as defined by the Atomic Energy Act of 1954, compiled in 42 U.S.C. § 2011 et seq., or with respect to such other materials as would be excluded from taxation as industrial materials under § 67-6-102(46)(E), when the items referred to in this subsection (d) are sold or leased to a contractor or subcontractor for use in, or experimental work in connection with, the manufacturing processes for or on behalf of the atomic energy commission or when any of such items are used by a contractor or subcontractor in such experimental work or manufacturing processes.

(e) There is exempt from the provisions of this chapter the sale or use of materials and equipment purchased or used for construction or installation, by a contractor, subcontractor or otherwise, of, in or as a part of any electric generating plant or distribution system, any resource recovery facility where steam or electric energy is produced, or any coal gasification plant or distribu-

tion system owned or operated by the United States or any agency thereof created by an act of congress, or by the state of Tennessee or any agency or political subdivision thereof, or any authority organized pursuant to the Rural Electric and Community Services Cooperative Act, compiled in title 65, chapter 25, part 2. There is also exempt the sale or use of materials and equipment purchased or used for construction or installation by a contractor, subcontractor or otherwise, of, in or as a part of any electric generating plant, including the transmission substation, owned or operated by any person, so long as such person does not now or intend in the future to generate electricity from a plant located in Tennessee or to distribute electricity to consumers in Tennessee.

(f) There is exempt from the tax imposed by this section or any other provision of this chapter pipes, fittings and materials used to repair or maintain a water utility system owned by a utility district created pursuant to title 7, chapter 82. This exemption applies only to pipes, fittings and materials which become an integral part of the water utility system. This exemption does not apply to any installation of pipes, fittings or materials for any reason other than repair or maintenance of an existing system.

(g) There is exempt from the tax imposed by this section tangible personal property that:

(1) Is installed by a dealer in manufactured homes, or furnished to a contractor by the dealer for use in the installation of a manufactured home; and

(2) Has previously been subjected to the tax imposed by § 67-6-216.

(h) There is exempt from the tax imposed by this chapter any tangible personal property owned by the United States, or any agency thereof, that is provided to a contractor or subcontractor on a temporary basis for testing pursuant to a contract awarded by the United States, or any agency thereof, to such contractor or subcontractor under the Small Business Innovation Research Program, as that term is defined in 15 U.S.C. § 638(e)(4). The exemption provided by this subsection (h) shall apply only to property that is the subject of the test being performed and property into which the subject of the test must be incorporated before the testing can occur. The exemption provided by this subsection (h) shall not apply to any equipment, machinery or other property used to conduct the test.

(i) There is exempt from the tax imposed by this chapter any tangible personal property that is provided to a contractor or subcontractor on a temporary basis for testing; provided, that the exemption shall apply only in those instances where the facility at which the testing is undertaken is owned by the United States or any agency of the United States. The exemption provided by this subsection (i) shall apply only to the property that is the subject of the test being performed and property into which the subject of the test must be incorporated before the testing can occur. Under no circumstances shall the exemption apply to property used to conduct the test or to property consumed or destroyed during the test. For this purpose, the term "testing" shall be limited to diagnostic, analytical and scientific testing in a controlled environment, dedicated to testing for the purpose of providing information and findings supportive of the aerodynamic, hypersonic, aeropropulsion, space, missile, aircraft and aerospace technologies and industries.

67-6-228. Food retail sales tax.

(a) Notwithstanding any provision of this part to the contrary, except as otherwise provided in subsection (b), the retail sale of food and food ingredients for human consumption shall be taxed at the rate of five and one quarter percent (5.25%) of the sales price.

(b) The retail sale of food and food ingredients sold as prepared food, alcoholic beverages, candy, dietary supplements and tobacco shall be taxed at the rate levied on the sale of tangible personal property at retail by the provisions of § 67-6-202.

67-6-313. Interstate commerce — Repair services — Tax credit. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) It is not the intention of this chapter to levy a tax upon articles of tangible personal property imported into this state or produced or manufactured in this state.

(b) There is exempt from the sales and use tax repair services, including parts and labor, with respect to qualified tangible personal property, where such services are initiated or completed, or both, by a repair person within the state of Tennessee, and where such property, after having repair services performed on it, is delivered or shipped outside the state of Tennessee. "Qualified tangible personal property" includes machinery, apparatus and equipment, with all associated parts, appurtenances and accessories, that is necessary for:

(1) Extracting or removing any natural resources, including, but not limited to, that which is necessary for mining or logging endeavors;

(2) Building or improving roads or highways;

(3) Land clearing or excavation, or commercial or residential construction; or

(4) Loading and unloading of containers or truck trailers on and off rail cars, ships, barges or aircraft.

(c)(1) There is exempt from the sales and use tax all repair service labor performed with respect to aircraft engine equipment and aircraft mainframes, where the repair services on such aircraft engine equipment or aircraft mainframes are initiated, performed or completed in repair facilities within the state of Tennessee.

(2) For the purposes of this subsection (c):

(A) "Aircraft engine equipment" means any aircraft engine, including all associated parts, appurtenances and accessories, for the propulsion of aircraft used by a commercial interstate or international air carrier;

(B) "Aircraft mainframes" means any aircraft body, wing, tail assembly, aileron, rudder, landing gear, engine housing, and any other assembly or component integral to the aerodynamic structure of aircraft used by a commercial interstate or international air carrier; and

(C) "Repair service labor" includes all labor performed in connection with the repair, maintenance, overhauling, rebuilding, or modifying of aircraft engine equipment or of aircraft mainframes together with any test or inspection necessary or appropriate thereto.

(d) There is exempt from the sales and use tax repair services, including parts and labor, to equipment used primarily in interstate commerce, where such repairs are performed outside of Tennessee and the original purchase of

such equipment was exempt from sales and use tax.

(e) There is exempt from the sales and use tax all repair parts and labor performed on fire protection machinery, apparatus, and equipment, with all associated parts, appurtenances, and accessories owned by fire departments in states other than Tennessee.

(f) In order to prevent actual multistate taxation of the acts and privileges subject to tax under this chapter, any taxpayer, upon proof acceptable to the commissioner being submitted that the taxpayer has properly paid sales and use tax in another state on such acts and privileges, shall be allowed a credit against the tax imposed by this chapter to the extent of the amount of such tax properly due and paid in another state.

(g)(1) There is exempt from the sales and use tax all repair service labor performed with respect to railroad rolling stock, where the repair services on such railroad rolling stock are initiated, performed or completed in repair facilities located within the state of Tennessee.

(2) As used in this subsection (g):

(A) "Railroad rolling stock" means all railroad equipment, operating on flanged wheels, that is currently being used, or is reasonably intended to be used, principally in interstate commerce; and

(B) "Repair service labor" means labor performed with respect to the repair, maintenance, overhauling, rebuilding, modifying or adapting of railroad rolling stock, together with any test or inspection necessary or appropriate thereto. Such exemption does not apply to repair service labor performed by non-Class 1 railroad companies on Class 1 railroad rolling stock.

(h)(1) There shall be exempt from the sales and use tax the following:

(A) Sales of helicopters or airplanes and related equipment within Tennessee to purchasers who are not residents of the state, where such helicopters or airplanes and related equipment are intended to have a situs out of Tennessee, are in fact removed from Tennessee, within fifteen (15) days from the date of their purchase;

(B) Repair and refurbishment services within Tennessee with respect to helicopters and helicopter components and parts that have their situs outside of Tennessee and are removed from Tennessee within fifteen (15) days from the completion of such repair and refurbishment services. "Repair and refurbishment services" as used in this subdivision (h)(1)(B) and in subdivisions (h)(1)(C) and (D) includes, but is not limited to, modifications, conversions, and installations;

(C) In addition to the exemptions in subdivisions (h)(1)(A) and (B), sales of helicopters and related equipment within Tennessee to purchasers who are not residents of the state, where such helicopters and related equipment are intended to have a situs out of Tennessee, and where such helicopters and related equipment remain within Tennessee following such sale solely for purposes of repair and refurbishment services, and are in fact removed from Tennessee within fifteen (15) days from the completion of such repair and refurbishment services; and

(D) Repair and refurbishment services within Tennessee with respect to airplanes and airplane components and parts which have their situs outside of Tennessee and are removed from Tennessee within fifteen (15) days from the completion of such repair and refurbishment services when such repair or refurbishment services with respect to such airplanes or

airplane components or parts are:

(i) Performed pursuant to and by the registered owner of one (1) or more "supplemental type certificates" issued by the federal aviation administration; or

(ii) Performed pursuant to and by an authorized service facility designated by an original equipment manufacturer for such service with respect to aircraft qualifying as "transport category aircraft" under 14 CFR, parts 25, 29, 91 and 121.

(2) As used in this subsection (h), "helicopter" means an aircraft that derives its lift from blades that rotate about an approximately vertical central axis and that can hover in a stationary position while in flight and move laterally or longitudinally from the hover position.

(i) There is exempt from the sales and use tax the sale of all repair parts, accessories, materials and supplies to a common carrier for use on the purchasing carrier's freight motor vehicles with a maximum gross weight rating classification of Class One or above under § 55-4-113, or trailers, semi-trailers and pole trailers, as defined in §§ 55-1-105 and 55-4-113, and that are shipped via the purchasing carrier under a bill of lading and transported to a destination outside of this state for use outside this state, where the seller and the purchasing carrier are affiliated with one another such that:

(1) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(2) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent.

(j) There is exempt from sales and use tax, computer media exchange services, where the resulting media is shipped out of Tennessee or to a government agency or nontaxable entity located within Tennessee. "Media exchange services" means the process of transferring stored data from one (1) type of storage medium to another type of storage medium, including, but not limited to, magnetic tapes, magnetic cartridges, CD-ROM, magnetic disks/diskettes, laser disks/diskettes, optical disks/diskettes, or any similar media that is used to store or transfer data from one (1) computer to another.

67-6-313. Interstate commerce — Repair services — Tax credit. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) It is not the intention of this chapter to levy a tax upon articles of tangible personal property imported into this state or produced or manufactured in this state for export. If the sale of tangible personal property imported into this state is sourced to this state, this exemption shall apply; provided, that the purchaser's use of the tangible personal property imported into this state is limited to storage, inspection, or repackaging for shipment of the property for export outside this state.

(b) There is exempt from the sales and use tax repair services, including parts and labor, with respect to qualified tangible personal property, where such services are initiated or completed, or both, by a repair person within the state of Tennessee, and where such property, after having repair services performed on it, is delivered or shipped outside the state of Tennessee. "Qualified tangible personal property" includes machinery, apparatus and equipment, with all

associated parts, appurtenances and accessories, that is necessary for:

(1) Extracting or removing any natural resources, including, but not limited to, that which is necessary for mining or logging endeavors;

(2) Building or improving roads or highways;

(3) Land clearing or excavation, or commercial or residential construction; or

(4) Loading and unloading of containers or truck trailers on and off rail cars, ships, barges or aircraft.

(c)(1) There is exempt from the sales and use tax all repair service labor performed with respect to aircraft engine equipment and aircraft mainframes, where the repair services on such aircraft engine equipment or aircraft mainframes are initiated, performed or completed in repair facilities within the state of Tennessee.

(2) For the purposes of this subsection (c):

(A) "Aircraft engine equipment" means any aircraft engine, including all associated parts, appurtenances and accessories, for the propulsion of aircraft used by a commercial interstate or international air carrier;

(B) "Aircraft mainframes" means any aircraft body, wing, tail assembly, aileron, rudder, landing gear, engine housing, and any other assembly or component integral to the aerodynamic structure of aircraft used by a commercial interstate or international air carrier; and

(C) "Repair service labor" includes all labor performed in connection with the repair, maintenance, overhauling, rebuilding, or modifying of aircraft engine equipment or of aircraft mainframes together with any test or inspection necessary or appropriate thereto.

(d) There is exempt from the sales and use tax repair services, including parts and labor, to equipment used primarily in interstate commerce, where such repairs are performed outside of Tennessee and the original purchase of such equipment was exempt from sales and use tax.

(e) There is exempt from the sales and use tax all repair parts and labor performed on fire protection machinery, apparatus, and equipment, with all associated parts, appurtenances, and accessories owned by fire departments in states other than Tennessee.

(f) In order to prevent actual multistate taxation of the acts and privileges subject to tax under this chapter, any taxpayer, upon proof acceptable to the commissioner being submitted that the taxpayer has properly paid sales and use tax in another state on such acts and privileges, shall be allowed a credit against the tax imposed by this chapter to the extent of the amount of such tax properly due and paid in another state.

(g)(1) There is exempt from the sales and use tax all repair service labor performed with respect to railroad rolling stock, where the repair services on such railroad rolling stock are initiated, performed or completed in repair facilities located within the state of Tennessee.

(2) As used in this subsection (g):

(A) "Railroad rolling stock" means all railroad equipment, operating on flanged wheels, that is currently being used, or is reasonably intended to be used, principally in interstate commerce; and

(B) "Repair service labor" means labor performed with respect to the repair, maintenance, overhauling, rebuilding, modifying or adapting of railroad rolling stock, together with any test or inspection necessary or appropriate thereto. Such exemption does not apply to repair service labor performed by non-Class 1 railroad companies on Class 1 railroad rolling

stock.

(h)(1) There shall be exempt from the sales and use tax the following:

(A) Sales of helicopters or airplanes and related equipment within Tennessee to purchasers who are not residents of the state, where such helicopters or airplanes and related equipment are intended to have a situs out of Tennessee, are in fact removed from Tennessee, within fifteen (15) days from the date of their purchase;

(B) Repair and refurbishment services within Tennessee with respect to helicopters and helicopter components and parts that have their situs outside of Tennessee and are removed from Tennessee within fifteen (15) days from the completion of such repair and refurbishment services. "Repair and refurbishment services" as used in this subdivision (h)(1)(B) and in subdivisions (h)(1)(C) and (D) includes, but is not limited to, modifications, conversions, and installations;

(C) In addition to the exemptions in subdivisions (h)(1)(A) and (B), sales of helicopters and related equipment within Tennessee to purchasers who are not residents of the state, where such helicopters and related equipment are intended to have a situs out of Tennessee, and where such helicopters and related equipment remain within Tennessee following such sale solely for purposes of repair and refurbishment services, and are in fact removed from Tennessee within fifteen (15) days from the completion of such repair and refurbishment services; and

(D) Repair and refurbishment services within Tennessee with respect to airplanes and airplane components and parts which have their situs outside of Tennessee and are removed from Tennessee within fifteen (15) days from the completion of such repair and refurbishment services when such repair or refurbishment services with respect to such airplanes or airplane components or parts are:

(i) Performed pursuant to and by the registered owner of one (1) or more "supplemental type certificates" issued by the federal aviation administration; or

(ii) Performed pursuant to and by an authorized service facility designated by an original equipment manufacturer for such service with respect to aircraft qualifying as "transport category aircraft" under 14 CFR, parts 25, 29, 91 and 121.

(2) As used in this subsection (h), "helicopter" means an aircraft that derives its lift from blades that rotate about an approximately vertical central axis and that can hover in a stationary position while in flight and move laterally or longitudinally from the hover position.

(i) There is exempt from the sales and use tax the sale of all repair parts, accessories, materials and supplies to a common carrier for use on the purchasing carrier's freight motor vehicles with a maximum gross weight rating classification of Class One or above under § 55-4-113, or trailers, semi-trailers and pole trailers, as defined in §§ 55-1-105 and 55-4-113, and that are shipped via the purchasing carrier under a bill of lading and transported to a destination outside of this state for use outside this state, where the seller and the purchasing carrier are affiliated with one another such that:

(1) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(2) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent.

(j) There is exempt from sales and use tax, computer media exchange services,

where the resulting media is shipped out of Tennessee or to a government agency or nontaxable entity located within Tennessee. "Media exchange services" means the process of transferring stored data from one (1) type of storage medium to another type of storage medium, including, but not limited to, magnetic tapes, magnetic cartridges, CD-ROM, magnetic disks / diskettes, laser disks / diskettes, optical disks / diskettes, or any similar media that is used to store or transfer data from one (1) computer to another.

67-6-322. Religious, educational, and charitable institutions — Energy resource recovery facilities. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) There is exempt from the provisions of this chapter any sales or use tax upon tangible personal property, computer software, or taxable services sold, given, or donated to any:

(1) Church, temple, synagogue or mosque;

(2) University, including the Agricultural Foundation for Tennessee Tech, Inc.;

(3) College;

(4) School;

(5) Orphanage;

(6) Institution organized for the principal purpose of placing homeless children in foster homes;

(7) Home for the aged;

(8) Hospital;

(9) Girls' club;

(10) Boys' club;

(11) Community health council;

(12) Volunteer fire department;

(13) Organ bank for transplantable tissue;

(14) Organization whose primary objective is to promote the spiritual and recreational environment of members of the armed services of the United States, such as the United Service Organization as it is presently conducted;

(15) Historical property owned by the state and operated by the historical commission or under the jurisdiction of the commission as authorized by § 4-11-108;

(16) Nonprofit community blood bank;

(17) Senior citizen service centers that meet the standards set by the Tennessee commission on aging for eligibility to receive state funds; or

(18) Nonprofit corporation whose primary function involves the annual organization, promotion, and sponsorship of a statewide talent and beauty pageant in which contestants compete for scholarships, awarded by such nonprofit corporation, as well as for the opportunity of being Tennessee's representative and contestant in an annual nationwide talent and beauty pageant with which such nonprofit corporation is affiliated.

(b) In addition to the exempt institutions, organizations and historical properties described in subsection (a), there are also exempt such other institutions and organizations that have received a determination of exemption from the internal revenue service under the Internal Revenue Code § 501(c)(3), (c)(5) labor organizations, (c)(13) not-for-profit cemetery companies, and (c)(19), codified in 26 U.S.C. § 501(c)(3), (5), (13) and (19), respec-

tively, and that are currently operating under it, and any war-time era veterans' organization that has received a determination of exemption from the internal revenue service under the Internal Revenue Code § 501(c)(4), codified in 26 U.S.C. § 501(c)(4), and that is chartered by the United States congress. The exemption provided for herein does not apply to purchases of bingo cards or equipment by such organizations.

(c) Any exemption granted under subsection (a) or (b) shall be limited to such institutions, organizations or historical properties that are not organized or operated for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) Any exemption granted under subsections (a)-(c) shall only apply to sales, gifts, or donations made directly to the exempt institution, organization or historical property. There shall be no exemption upon sales, gifts, or donations made to an independent contractor with any such exempt institution, organization or historical property.

(e) No dealer shall sell, give or donate, and no user shall use, any tangible personal property under the claim that the tangible personal property is exempt from the sales or use tax levied by this chapter, where the exemption from taxation is claimed because the vendee or user is an educational, religious or charitable institution or organization or historical property and is entitled to an exemption as such institution or organization or historical property under subsections (a)-(d), unless the vendee or user shall have issued to it by the commissioner an exemption certificate declaring that such institution or organization or historical property is entitled to the exemption provided for by subsections (a)-(d); provided, that, in the case of a sale to a person who is not a resident or domiciliary of Tennessee, an exemption certificate issued by the commissioner is not required, if the dealer shall instead receive from such person a copy of a current and valid exemption from federal taxation under 26 U.S.C. § 501(c)(3). Persons who have obtained an exemption certificate issued by the commissioner shall provide their vendors with a copy of the certificate or a fully completed streamlined sales tax certificate of exemption, which must include the exemption account number included on the certificate issued by the commissioner. The dealer shall maintain a copy of such exemption in the dealer's records to document that the purchaser was entitled to the exemption. In the case of a sale to a person who is not a resident or domiciliary of Tennessee, an exemption certificate issued by the commissioner is not required, if the dealer shall instead receive from such person a copy of a current and valid exemption from federal taxation under 26 U.S.C. § 501(c)(3). The dealer shall maintain a copy of such exemption in the dealer's records to document that the purchaser was entitled to the exemption.

(f) The commissioner is authorized to make final determination after hearing, if demanded, as to whether any institution or organization or historical property is entitled to the benefit of the exemption established by subsections (a)-(d). The commissioner is authorized to issue exemption certificates to institutions and organizations and historical properties that, in the commissioner's judgment, are entitled thereto.

(g) No county having a metropolitan form of government is authorized under this chapter to levy any tax on the sale, purchase, use, consumption or distribution of steam and chilled water produced and distributed by an energy resource recovery facility operated in a county with a metropolitan form of government.

(h) No tax exemption as permitted by this section applies to the purchase of

bingo materials or supplies or equipment or cards.

(i) There is also exempt from the provisions of this chapter any sales or use tax upon tangible personal property or taxable services sold, given, or donated to any Tennessee historic property preservation or rehabilitation entity as defined in § 67-4-2004. This exemption is subject to subsections (d), (e), and (f).

67-6-322. Religious, educational, and charitable institutions — Energy resource recovery facilities. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) There is exempt from the provisions of this chapter any sales or use tax upon tangible personal property, computer software, or taxable services sold, given, or donated to any:

(1) Church, temple, synagogue or mosque;

(2) University, including the Agricultural Foundation for Tennessee Tech, Inc.;

(3) College;

(4) School;

(5) Orphanage;

(6) Institution organized for the principal purpose of placing homeless children in foster homes;

(7) Home for the aged;

(8) Hospital;

(9) Girls' club;

(10) Boys' club;

(11) Community health council;

(12) Volunteer fire department;

(13) Organ bank for transplantable tissue;

(14) Organization whose primary objective is to promote the spiritual and recreational environment of members of the armed services of the United States, such as the United Service Organization as it is presently conducted;

(15) Historical property owned by the state and operated by the historical commission or under the jurisdiction of the commission as authorized by § 4-11-108;

(16) Nonprofit community blood bank;

(17) Senior citizen service centers that meet the standards set by the Tennessee commission on aging for eligibility to receive state funds; or

(18) Nonprofit corporation whose primary function involves the annual organization, promotion, and sponsorship of a statewide talent and beauty pageant in which contestants compete for scholarships, awarded by such nonprofit corporation, as well as for the opportunity of being Tennessee's representative and contestant in an annual nationwide talent and beauty pageant with which such nonprofit corporation is affiliated.

(b) In addition to the exempt institutions, organizations and historical properties described in subsection (a), there are also exempt such other institutions and organizations that have received a determination of exemption from the internal revenue service under the Internal Revenue Code § 501(c)(3), (c)(5) labor organizations, (c)(13) not-for-profit cemetery companies, and (c)(19), codified in 26 U.S.C. § 501(c)(3), (5), (13) and (19), respectively, and that are currently operating under it, and any war-time era veterans' organization that has received a determination of exemption from the internal revenue service

under the Internal Revenue Code § 501(c)(4), codified in 26 U.S.C. § 501(c)(4), and that is chartered by the United States congress. The exemption provided for herein does not apply to purchases of bingo cards or equipment by such organizations.

(c) Any exemption granted under subsection (a) or (b) shall be limited to such institutions, organizations or historical properties that are not organized or operated for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) Any exemption granted under subsections (a)-(c) shall only apply to sales, gifts, or donations made directly to the exempt institution, organization or historical property. There shall be no exemption upon sales, gifts, or donations made to an independent contractor with any such exempt institution, organization or historical property.

(e) No dealer shall sell, give or donate, and no user shall use, any tangible personal property under the claim that the tangible personal property is exempt from the sales or use tax levied by this chapter, where the exemption from taxation is claimed because the vendee or user is an educational, religious or charitable institution or organization or historical property and is entitled to an exemption as such institution or organization or historical property under subsections (a)-(d), unless the vendee or user shall have issued to it by the commissioner an exemption certificate declaring that such institution or organization or historical property is entitled to the exemption provided for by subsections (a)-(d); provided, that, in the case of a sale to a person who is not a resident or domiciliary of Tennessee, an exemption certificate issued by the commissioner is not required, if the dealer shall instead receive from such person a copy of a current and valid exemption from federal taxation under 26 U.S.C. § 501(c)(3). Persons who have obtained an exemption certificate issued by the commissioner shall provide their vendors with a copy of the certificate or a fully completed streamlined sales tax certificate of exemption, which must include the exemption account number included on the certificate issued by the commissioner. The dealer shall maintain a copy of such exemption in the dealer's records to document that the purchaser was entitled to the exemption. In the case of a sale to a person who is not a resident or domiciliary of Tennessee, an exemption certificate issued by the commissioner is not required, if the dealer shall instead receive from such person a copy of a current and valid exemption from federal taxation under 26 U.S.C. § 501(c)(3). The dealer shall maintain a copy of such exemption in the dealer's records to document that the purchaser was entitled to the exemption.

(f) The commissioner is authorized to make final determination after hearing, if demanded, as to whether any institution or organization or historical property is entitled to the benefit of the exemption established by subsections (a)-(d). The commissioner is authorized to issue exemption certificates to institutions and organizations and historical properties that, in the commissioner's judgment, are entitled thereto.

(g) The sale, purchase, use, consumption or distribution of energy in the form of steam or chilled water produced and distributed by an energy resource recovery facility operated in a county with a metropolitan form of government is exempt from sales or use tax.

(h) No tax exemption as permitted by this section applies to the purchase of bingo materials or supplies or equipment or cards.

(i) There is also exempt from the provisions of this chapter any sales or use

tax upon tangible personal property or taxable services sold, given, or donated to any Tennessee historic property preservation or rehabilitation entity as defined in § 67-4-2004. This exemption is subject to subsections (d), (e), and (f).

67-6-329. Miscellaneous exemptions. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) The sale at retail, the use, the consumption, the distribution and the storage for use or consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this chapter:

(1) "Gasoline" upon which a privilege tax per gallon is paid, and not refunded; except that pre-mixed engine fuel containing gasoline and oil, produced for use in two-cycle engines and not for use in the propulsion of an aircraft, vessel or any other vehicle, that is sold in containers of one gallon (1 gal.) or less, is not exempt from the tax imposed by this chapter;

(2) Motor vehicle fuel now taxed per gallon by chapter 3, part 2 of this title;

(3) Textbooks and workbooks;

(4) All sales made to the state or any county or municipality within the state;

(5) Liquefied gas now taxed by chapter 3, part 11 of this title;

(6) Magazines and books that are distributed and sold to consumers by United States mail or common carrier, where the only activities of the seller or distributor in this state are those activities having to do with the printing, storage, labeling and/or delivery to the United States mail or common carrier of the magazines or books, or the maintenance of raw materials with respect to those activities, notwithstanding that the seller or distributor maintains employees in the state solely in connection with the production and quality control of the printing, storage, labeling and/or delivery, or in connection with news gathering and reporting;

(7) Parking privileges sold by colleges, universities, technical institutes or state technology centers to students at those institutions;

(8) Materials used for the lining or protective coating of railroad tank cars and any charges made for the installation or repair of the linings or protective coatings;

(9) Chemicals and supplies used in air or water pollution control facilities for pollution control purposes;

(10) Periodicals printed entirely on newsprint or bond paper and regularly distributed twice monthly, or on a biweekly or more frequent basis, and advertising supplements or other printed matter distributed with the periodicals;

(11) The sale of United States and Tennessee flags sold by a nonprofit organization;

(12) Industrial materials and explosives for future processing, manufacture or conversion into articles of tangible personal property for resale where the industrial materials and explosives become a component part of the finished product or are used directly in fabricating, dislodging, or sizing;

(13) Materials, containers, labels, sacks, bags or bottles used for packaging tangible personal property when the property is either sold in the containers, sacks, bags or bottles directly to the consumer or when such use is incidental to the sale of the property for resale;

(14) Film, including negatives, used in the business of printing, or provided to a business of printing to obtain the services of the business; or typesetting used in the business of printing and materials necessary for the typesetting, or typesetting, or materials necessary for typesetting provided to a business of printing to obtain the services of the business;

(15) Home communication terminals, remote control devices, and other similar equipment purchased on or after January 1, 2000, by a video programming service provider and held for sale or lease to its subscribers;

(16) Utility poles, anchors, guys, and conduits;

(17) Aircraft used for and owned by a person providing flight training;

(18) Prepared food, as defined in § 67-6-102, when sold pursuant to programs authorized by a federal, state or local government entity or by the school governing body, that provide meals for public or private school students in grades kindergarten through twelve (K-12). This subdivision (a)(18) shall not be interpreted to exempt a public or private school or school support group from paying sales or use taxes on the purchase price of prepared food or food and food ingredients, as defined by § 67-6-102, purchased for resale by the school or a school support group at fund raisers, sports events and the like pursuant to § 67-6-229, or to exempt sales from any vending machine, including vending machines located on the premises of public or private schools, from the sales tax;

(19) Copies of hospital records, as defined in § 68-11-302, sold or otherwise provided to an attorney, agent or other authorized representative acting in a lawsuit on behalf of any hospital that has received a determination of exemption as provided in § 67-6-322(e); and

(20) OEM headquarters company vehicles.

(b) Charges for the following services are exempt from the tax imposed by this chapter:

(1) Coin-operated telephone service;

(2) Automatic teller machine (ATM) service. The seller of the ATM service shall be deemed the user and consumer of telecommunication services necessary to deliver the ATM service; and

(3) Wire transfer or other services provided by any corporation defined as a financial institution under § 67-4-2004(16). The seller of the wire transfer or other services shall be deemed the user and consumer of telecommunication services necessary to deliver the wire transfer service.

(c) No provision of this section shall be construed to amend or repeal § 67-6-301.

(d) The sale at retail, use, consumption, distribution and storage for use or consumption in this state of the following specified digital goods is specifically exempted from the tax imposed by this chapter:

(1) Any specified digital good, if the sale, lease, licensing and use of the equivalent in a tangible form is exempt from taxation under this chapter; and

(2) Specified digital goods provided without charge for less than permanent use.

67-6-329. Miscellaneous exemptions. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) The sale at retail, the use, the consumption, the distribution and the storage for use or consumption in this state of the following tangible personal

property is specifically exempted from the tax imposed by this chapter:

(1) "Gasoline" upon which a privilege tax per gallon is paid, and not refunded; except that pre-mixed engine fuel containing gasoline and oil, produced for use in two-cycle engines and not for use in the propulsion of an aircraft, vessel or any other vehicle, that is sold in containers of one gallon (1 gal.) or less, is not exempt from the tax imposed by this chapter;

(2) Motor vehicle fuel now taxed per gallon by chapter 3, part 2 of this title;

(3) Textbooks and workbooks;

(4) All sales made to the state or any county or municipality within the state;

(5) Liquefied gas now taxed by chapter 3, part 11 of this title;

(6) Magazines and books that are distributed and sold to consumers by United States mail or common carrier, where the only activities of the seller or distributor in this state are those activities having to do with the printing, storage, labeling and/or delivery to the United States mail or common carrier of the magazines or books, or the maintenance of raw materials with respect to those activities, notwithstanding that the seller or distributor maintains employees in the state solely in connection with the production and quality control of the printing, storage, labeling and/or delivery, or in connection with news gathering and reporting;

(7) Parking privileges sold by colleges, universities, technical institutes or state technology centers to students at those institutions;

(8) Materials used for the lining or protective coating of railroad tank cars and any charges made for the installation or repair of the linings or protective coatings;

(9) Chemicals and supplies used in air or water pollution control facilities for pollution control purposes;

(10) Periodicals printed entirely on newsprint or bond paper and regularly distributed twice monthly, or on a biweekly or more frequent basis, and advertising supplements or other printed matter distributed with the periodicals;

(11) The sale of United States and Tennessee flags sold by a nonprofit organization;

(12) Industrial materials and explosives for future processing, manufacture or conversion into articles of tangible personal property for resale where the industrial materials and explosives become a component part of the finished product or are used directly in fabricating, dislodging, or sizing;

(13) Materials, containers, labels, sacks, bags or bottles used for packaging tangible personal property when the property is either sold in the containers, sacks, bags or bottles directly to the consumer or when such use is incidental to the sale of the property for resale;

(14) Film, including negatives, used in the business of printing, or provided to a business of printing to obtain the services of the business; or typesetting used in the business of printing and materials necessary for the typesetting, or typesetting, or materials necessary for typesetting provided to a business of printing to obtain the services of the business;

(15) Home communication terminals, remote control devices, and other similar equipment purchased on or after January 1, 2000, by a video programming service provider and held for sale or lease to its subscribers;

(16) Utility poles, anchors, guys, and conduits;

(17) Aircraft used for and owned by a person providing flight training;

(18) Prepared food, as defined in § 67-6-102, when sold pursuant to programs authorized by a federal, state or local government entity or by the school governing body, that provide meals for public or private school students in grades kindergarten through twelve (K-12). This subdivision (a)(18) shall not be interpreted to exempt a public or private school or school support group from paying sales or use taxes on the purchase price of prepared food or food and food ingredients, as defined by § 67-6-102, purchased for resale by the school or a school support group at fund raisers, sports events and the like pursuant to § 67-6-229, or to exempt sales from any vending machine, including vending machines located on the premises of public or private schools, from the sales tax;

(19) Dyed diesel fuel purchased for off-road use as provided in chapter 3 of this title;

(20) Charges for subscription to, access to, or use of video programming services or direct-to-home satellite television services subject to the tax levied under chapter 4, part 24, of this title;

(21) Copies of hospital records, as defined in § 68-11-302, sold or otherwise provided to an attorney, agent or other authorized representative acting in a lawsuit on behalf of any hospital that has received a determination of exemption as provided in § 67-6-322(e); and

(22) OEM headquarters company vehicles.

(b) Charges for the following services are exempt from the tax imposed by this chapter:

(1) Coin-operated telephone service;

(2) Automatic teller machine (ATM) service. The seller of the ATM service shall be deemed the user and consumer of telecommunication services necessary to deliver the ATM service; and

(3) Wire transfer or other services provided by any corporation defined as a financial institution under § 67-4-2004(16). The seller of the wire transfer or other services shall be deemed the user and consumer of telecommunication services necessary to deliver the wire transfer service.

(c) No provision of this section shall be construed to amend or repeal § 67-6-301.

(d) The sale at retail, use, consumption, distribution and storage for use or consumption in this state of the following specified digital goods is specifically exempted from the tax imposed by this chapter:

(1) Any specified digital good, if the sale, lease, licensing and use of the equivalent in a tangible form is exempt from taxation under this chapter; and

(2) Specified digital goods provided without charge for less than permanent use.

67-6-396. Exemptions from sales and use tax for natural disaster claimants.

(a) For purposes of this section:

(1) "Claimant" means any natural person receiving disaster assistance through the federal emergency management agency (FEMA) for repair, replacement, or construction of the person's primary residence that was damaged or destroyed as a result of a natural disaster occurring in Tennessee;

(2) "Major appliance" means any water heater, dishwasher, washer, dryer, refrigerator, freezer, stove, range, oven, cooktop, microwave, vacuum, or fan

that is used in the claimant's primary residence to replace an appliance that was damaged or destroyed in a natural disaster occurring in Tennessee; provided, that the sales price per item is three thousand two hundred dollars ($3,200) or less;

(3) "Residential building supplies" means any of the following items if used in the claimant's primary residence and reasonably determined by the department to be for purposes of restoration, repair, replacement, or rebuilding due to a natural disaster occurring in Tennessee; provided, that the sales price per item is five hundred dollars ($500) or less:

(A) Cleaning and disinfecting materials, as determined by the department;

(B) Trash bags, boxes, construction tools, and hardware, as determined by the department;

(C) Roofing shingles, roofing paper, gutters, downspouts, vents, doors, windows, sheetrock, drywall, insulation, paint and paint materials, flooring, and other necessary building materials, as determined by the department; and

(4) "Residential furniture" means furniture commonly used in a residential dwelling, as determined by the department, that is used in the claimant's primary residence to replace furniture that was damaged or destroyed in a natural disaster occurring in Tennessee; provided, that the sales price per item is three thousand two hundred dollars ($3,200) or less.

(b) A claimant shall be entitled to a refund equal to the total amount of Tennessee state and local sales and use tax paid by the claimant to one (1) or more retailers as a result of the claimant's purchases of major appliances, residential furniture, or residential building supplies from such retailers; provided, that the total amount refunded under this section in connection with any one (1) residence shall not exceed two thousand five hundred dollars ($2,500).

(c)(1) To receive a refund under this section, a claimant may file only one (1) natural disaster claim for refund with the department, and shall file such claim for refund within one (1) year from the date shown on the FEMA decision letter received by the claimant.

(2) The claimant must also certify on the natural disaster claim for refund form that purchases for which the refund is claimed were to replace, repair or restore property damaged in a federally declared natural disaster occurring in Tennessee.

(3) Notwithstanding any provision of § 67-1-1802, such refund shall be made by the department directly to the claimant and shall not be made by the retailer to the claimant. All natural disaster claims for refund shall include satisfactory proof of receipt of federal disaster assistance.

(4) Each claimant shall keep and preserve suitable records of the purchases for which a refund is claimed pursuant to this section, including, but not limited to, store receipts and copies of payment documents such as checks, credit card receipts, or a sworn statement under penalty of perjury to support any purchases made using cash. Such records must be kept and preserved for a period of three (3) years from December 31 of the year in which the natural disaster claim for refund was filed. Such records shall be open to the inspection of the commissioner, or the duly authorized delegates of the commissioner, at all reasonable hours.

(5) The commissioner of revenue has the authority to conduct audits or require the filing of additional information necessary to substantiate the

amount of any refund due to the claimant.

(d) The department may assess a civil penalty not to exceed twenty-five thousand dollars ($25,000) against any person that knowingly files a false or fraudulent application for refund under this section. Any claimant that is assessed a penalty under this subsection (d) shall be entitled to the remedies provided in § 67-1-1801.

(e) All refunds under this section shall be paid from the state's general fund and nothing in this section shall be construed to reduce the amount of sales and use tax payable to local governments.

67-6-398. [Repealed.]

67-6-406. Registration of motor vehicles and boats dependent on payment of tax.

The commissioner is authorized to require the assistance of any official of the state or of any political subdivision thereof in the administration of this chapter, and it is unlawful for any official of this state or of any political subdivision thereof to accept an application for a certificate of title to a motor vehicle as provided for in title 55, chapters 1-6, or for a certificate of registration for a vessel as provided for in title 69, chapter 9, unless the applicant presents evidence that a sales or use tax, as provided for in this chapter, has been paid on the sales price of the vehicle or vessel by such applicant, or such applicant has authority from the commissioner to file an application for such certificate of title or registration without the payment of the sales or use tax. It is also unlawful for any official referred to herein to accept an application for a certificate of title to a motor vehicle when the sale of such vehicle constitutes an occasional and isolated sale which is taxable under § 67-6-102(78)(A), unless the applicant presents a bill of sale which evidences the sale price and also presents evidence that the sales or use tax has been paid on that amount, or in the absence of such a bill of sale, unless the official requires evidence of payment of the sales or use tax on the fair market value of the vehicle as the fair market value is determined by the official by reference to the most recent issue of an authoritative automotive pricing manual, such as the NADA Official Used Car Guide, Southeastern Edition.

67-6-407. Dealers of aviation fuel — Reports. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) The commissioner shall require each dealer of aviation fuel to file an additional report stating the total amount in gallons of aviation fuel sold and the dollar amount collected from such sales. The report required by this section shall be filed on a monthly or quarterly basis, as determined by the commissioner in the commissioner's discretion. Such report shall be filed no later than thirty (30) days after the last day of the sales period covered by the report. The report shall be supplemental to any other report required by the department and shall be on a form prescribed by the department.

(b) In addition to any other penalty provided by law, the commissioner is authorized to assess any taxpayer required to file the report described in subsection (a) a civil penalty of five hundred dollars ($500) for failure to file such report. Such penalty shall be subject to waiver under § 67-1-803.

67-6-407. Dealers of aviation fuel — Reports. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) The commissioner has the authority to require any person who pays the tax imposed by this chapter or by chapter 4, part 23 or 24 of this title, if the tax is to be allocated to the transportation equity fund pursuant to § 67-6-103, to file a quarterly report not later than thirty (30) days after the last day of the preceding calendar quarter. The report shall be executed under penalty of perjury, stating the total amount in gallons of fuel subject to the tax, the dollar amount of tax paid on the sales or uses, and any other information as may be required by the commissioner on forms prescribed by the department. The report required in this subsection (a) shall be supplemental to any other required by the commissioner or the department. A failure to file the report shall result in a civil penalty to be determined by the commissioner pursuant to the authority contained in § 67-6-402.

(b) The commissioner may furnish the reports authorized by this section, or the tax information contained in the reports, to the department of transportation solely for the purpose of administering the transportation equity fund. Any information released to the department of transportation pursuant to this subsection (b) shall be subject to chapter 1, part 17 of this title, including the criminal penalties contained in chapter 1, part 17 of this title.

67-6-408. Transportation equity fund — Commissioners' annual report. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

On or before December 31 each year, the commissioners of revenue and transportation shall jointly publish and provide to the governor and to each member of the general assembly a report that summarizes the amount and source of all moneys received and deposited during the preceding fiscal year in the transportation equity fund, created pursuant to § 67-6-103(b). The report shall also include the following information:

(1) The total amount of moneys received under the provisions of this chapter from the sale, use, consumption, distribution, or storage for use or consumption of fuels used for aviation;

(2) The total amount of moneys received under the provisions of this chapter from the sale, use, consumption, distribution, or storage for use or consumption of fuels used for railways;

(3) The total amount of moneys received under the provisions of this chapter from the sale, use, consumption, distribution, or storage for use or consumption of fuels used for water carriers;

(4) The portion of the transportation equity fund used by the department of transportation for railway-related programs and activities, including a brief description of each such program and activity receiving such funding;

(5) The portion of the transportation equity fund used by the department of transportation for aeronautics-related programs and activities, including a brief description of each such program and activity receiving such funding; and

(6) The portion of the transportation equity fund used by the department of transportation for waterways-related programs and activities, including a brief description of each such program and activity receiving such funding.

67-6-408. Transportation equity fund — Commissioners' annual report. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

On or before December 31 each year, the commissioners of revenue and transportation shall jointly publish and provide to the governor and to each member of the general assembly a report that summarizes the amount and source of all moneys received and deposited during the preceding fiscal year in the transportation equity fund, created pursuant to § 67-6-103(b). The report shall also include the following information:

(1) The total amount of moneys received under the provisions of this chapter and § 67-4-2701 from the sale, use, consumption, distribution, or storage for use or consumption of fuels used for aviation;

(2) The total amount of moneys received under the provisions of this chapter and § 67-4-2306 from the sale, use, consumption, distribution, or storage for use or consumption of fuels used for railways;

(3) The total amount of moneys received under the provisions of this chapter from the sale, use, consumption, distribution, or storage for use or consumption of fuels used for water carriers;

(4) The portion of the transportation equity fund used by the department of transportation for railway-related programs and activities, including a brief description of each such program and activity receiving such funding;

(5) The portion of the transportation equity fund used by the department of transportation for aeronautics-related programs and activities, including a brief description of each such program and activity receiving such funding; and

(6) The portion of the transportation equity fund used by the department of transportation for waterways-related programs and activities, including a brief description of each such program and activity receiving such funding.

67-6-410. Information report of sales of beer and tobacco products.

(a) The commissioner of revenue is authorized to require persons selling beer, as defined in § 57-5-101, and persons selling tobacco products, as defined in § 67-4-1001, to retailers of such beverages or products to file an information report of such sales with the department.

(b) The information report shall contain such information as deemed reasonably necessary by the commissioner of revenue to ascertain the correctness of any tax return or to determine the liability of any person taxable under this part, and may include, but is not limited to, the following information:

(1) The seller's name and license number;

(2) The retailer's name, beer permit number if applicable, and sales and use tax account number;

(3) The retailer's situs code and address, including street address, county, municipality, state, and zip code;

(4) The general type of product sold;

(5) The dates each type of product was sold;

(6) The quantity of each type of product sold; and

(7) The monthly sales total, in dollars, of each type of product sold.

(c) The information report shall be filed electronically in a format specified by the commissioner. In extenuating circumstances, upon written request, the commissioner is authorized to waive such electronic filing requirement.

(d) Notwithstanding subsection (b) or (c) to the contrary, no seller shall be

required to change its record-keeping system for purposes of this section. If the seller's records do not include all of the information requested by the commissioner, or include the information in a different format than requested by the commissioner, the requirements of this section shall be satisfied if the seller includes in the report all of the requested information that the seller does have, in the format in which the seller ordinarily maintains such information.

(e) The information report shall be filed on a monthly or less frequent basis as determined by the commissioner, but in no event shall the report be due sooner than the twentieth (20th) day of the month following the reporting period. Any seller who fails to provide the information report by the due date is subject to a penalty, not to exceed one thousand dollars ($1,000), for every month the report is not provided, or part thereof, up to a maximum amount of ten thousand dollars ($10,000). The commissioner is authorized to waive the penalty, in whole or in part, for good and reasonable cause under § 67-1-803.

(f) Any person selling beer, as defined in § 57-5-101, who files the report required by this section, which report contains at least the information required by § 57-6-105(b), shall not be required to file with the department the report otherwise required by § 57-6-105(b); provided, however, that nothing in this subsection (f) shall relieve the seller from filing any report, or copy thereof, with any county or municipality.

67-6-504. Returns and payment. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) The taxes levied under this chapter shall be due and payable monthly, on the first day of each month, and for the purpose of ascertaining the amount of tax payable under this chapter, it shall be the duty of all dealers on or before the twentieth day of each month to transmit to the commissioner, upon forms prescribed, prepared and furnished by the commissioner, returns, showing the gross sales, or purchases, as the case may be, arising from all sales or purchases taxable under this chapter during the preceding calendar month.

(b) At the time of transmitting the return required in this chapter to the commissioner, the dealer shall remit to the commissioner therewith the amount of tax due under the applicable provisions of this chapter, and failure to so remit such tax shall cause the tax to become delinquent.

(c) Gross proceeds from rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect thereto in accordance with such rules and regulations as the commissioner may prescribe.

(d) Gross proceeds from the furnishing of things or services taxable under this chapter shall be reported and the tax shall be paid with respect thereto in the same manner as gross proceeds from the sale, rental or lease of tangible personal property and in accordance with such rules and regulations as the commissioner may prescribe.

(e) Any dealer who is liable for the tax imposed by this chapter may round off all figures used on the sales and use tax return to the nearest dollar amount.

(f) Notwithstanding any law to the contrary, when a taxpayer is required to remit payments electronically as set forth in § 67-1-703(b), then all returns required by this chapter that are associated with such payments shall be filed electronically using a method approved by the commissioner. When any taxpayer is required to file returns and remit payments electronically for any

one (1) outlet, location or other place of business, the commissioner may require the taxpayer to file returns and remit payments electronically for each place of business of the taxpayer. The requirement to file electronically shall continue thereafter until such time as the commissioner advises the taxpayer to file by another method. In extenuating circumstances, the commissioner is authorized to waive the electronic payment and filing requirements under this subsection (f) and under § 67-1-703(b) and permit the taxpayer to file the return in paper form. The commissioner is authorized to require that any such paper filing be accompanied by a manual handling fee, not to exceed twenty-five dollars ($25.00), that is reasonably calculated by the department to account for the additional cost of preparing, printing, receiving, reviewing and processing any paper filing so permitted.

(g) In addition to any other penalty provided by law, the commissioner is authorized to assess any taxpayer required to file returns by electronic means under subsection (f) a penalty, not to exceed five hundred dollars ($500), for each instance of filing a return by any other means. Such penalty shall be subject to waiver under the provisions of § 67-1-803.

(h) In computing the tax due or to be collected as the result of any transaction, the tax rate shall be the sum of the applicable state and local rate, if any, and the tax computation shall be carried to the third decimal place. Whenever the third decimal place is greater than four, the tax shall be rounded to the next whole cent.

(i) A seller may elect to compute the tax due on a transaction on either an item or an invoice basis, and may apply the rounding rule provided for in subsection (h) to the aggregated state and local taxes. A seller shall not be required to collect the tax on a bracket system.

(j)(1) Any dealer making sales subject to the tax imposed by this chapter may choose to collect and remit taxes as a Model 1 or Model 2 seller, subject to the provisions of this subsection (j). For purposes of this subsection (j), tax includes any associated interest and penalty.

(2)(A) A dealer choosing Model 1 shall contract with a certified service provider and shall permit the certified service provider to determine the tax due, collect the tax, file returns, and remit the tax to the appropriate state on all of its sales, leases, or rentals of tangible personal property or services that are subject to the tax levied by this chapter. A Model 1 seller's liability to this state for the tax levied by this chapter is limited to the tax due on its own purchases, the tax due on any of its sales, leases, or rentals made outside the system provided by the certified service provider, and the tax due in the event of fraud by the Model 1 seller. The certified service provider shall not have any additional liability for state or local option taxes imposed by this chapter, if:

(i) The Model 1 seller charged and collected an incorrect amount of sales or use tax in reliance on erroneous data made available for review but not discovered during the certification of the certified service provider's automated system; provided, that the error is corrected within ten (10) days of the date of notification by the commissioner to correct the automated system. The commissioner may allot additional time upon a showing by the certified service provider of the need for additional time to correct the automated system; or

(ii) An item or transaction is incorrectly classified as to its taxability within the certified service provider's automated system that was

certified by this state; provided, that the taxability error is corrected within ten (10) days of the date of the notification by the commissioner to correct the automated system.

(B) Beginning on the first day after the allotted period of time to correct the certified service provider's automated system, the certified service provider shall be liable for the tax, penalty and interest resulting from the failure to correct the certified service provider's automated system. This subdivision (j)(2) does not apply to errors in charging and collecting or remitting sales or use tax that are the result of classifying the item or transaction within a defined term or other classification within the certified service provider's automated system.

(3) A dealer choosing Model 2 shall use a certified automated system to determine the tax due on all of its sales, leases, or rentals of tangible personal property or services that are subject to the tax levied by this chapter. Model 2 sellers shall not have any additional liability for state or local option taxes imposed by this chapter, if the Model 2 seller charged and collected or remitted an incorrect amount of sales or use tax in reliance on the certification of the certified automated system; provided, that the error is corrected within ten (10) days of the date of notification by the commissioner to correct or notification by the provider of the certified automated system of the availability of updates to correct the certified automated system. Beginning on the eleventh day, the Model 2 seller shall be liable for the tax, penalty, and interest resulting from the failure to correct or update the certified automated system for errors resulting from reliance on the certification.

(k) A certified service provider has, and is subject to, all of the rights, liabilities, duties and responsibilities imposed by this chapter as if it were the Model 1 seller for whom the certified service provider has agreed to perform all sales and use tax functions, except the Model 1 seller's obligation to remit tax on its own purchases.

(*l*) The commissioner may enter into contracts with certified service providers for the collection and reporting of the tax imposed under this chapter. The commissioner may enter into the contracts in conjunction with other states.

67-6-504. Returns and payment. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) The taxes levied under this chapter shall be due and payable monthly, on the first day of each month, and for the purpose of ascertaining the amount of tax payable under this chapter, it shall be the duty of all dealers on or before the twentieth day of each month to transmit to the commissioner, upon forms prescribed, prepared and furnished by the commissioner, returns, showing the gross sales, or purchases, as the case may be, arising from all sales or purchases taxable under this chapter during the preceding calendar month; provided, that each dealer shall be required to file only one (1) return per month for all of its locations within the state.

(b) At the time of transmitting the return required in this chapter to the commissioner, the dealer shall remit to the commissioner therewith the amount of tax due under the applicable provisions of this chapter, and failure to so remit such tax shall cause the tax to become delinquent.

(c) Gross proceeds from rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect thereto in accordance with

such rules and regulations as the commissioner may prescribe.

(d) Gross proceeds from the furnishing of things or services taxable under this chapter shall be reported and the tax shall be paid with respect thereto in the same manner as gross proceeds from the sale, rental or lease of tangible personal property and in accordance with such rules and regulations as the commissioner may prescribe.

(e) [Deleted by 2007 amendment, effective July 1, 2013.]

(f) Notwithstanding any law to the contrary, when a taxpayer is required to remit payments electronically as set forth in § 67-1-703(b), then all returns required by this chapter that are associated with such payments shall be filed electronically using a method approved by the commissioner. When any taxpayer is required to file returns and remit payments electronically for any one (1) outlet, location or other place of business, the commissioner may require the taxpayer to file returns and remit payments electronically for each place of business of the taxpayer. The requirement to file electronically shall continue thereafter until such time as the commissioner advises the taxpayer to file by another method. In extenuating circumstances, the commissioner is authorized to waive the electronic payment and filing requirements under this subsection (f) and under § 67-1-703(b) and permit the taxpayer to file the return in paper form. The commissioner is authorized to require that any such paper filing be accompanied by a manual handling fee, not to exceed twenty-five dollars ($25.00), that is reasonably calculated by the department to account for the additional cost of preparing, printing, receiving, reviewing and processing any paper filing so permitted.

(g) In addition to any other penalty provided by law, the commissioner is authorized to assess any taxpayer required to file returns by electronic means under subsection (f) a penalty, not to exceed five hundred dollars ($500), for each instance of filing a return by any other means. Such penalty shall be subject to waiver under the provisions of § 67-1-803.

(h) In computing the tax due or to be collected as the result of any transaction, the tax rate shall be the sum of the applicable state and local rate, if any, and the tax computation shall be carried to the third decimal place. Whenever the third decimal place is greater than four, the tax shall be rounded to the next whole cent.

(i) A seller may elect to compute the tax due on a transaction on either an item or an invoice basis, and may apply the rounding rule provided for in subsection (h) to the aggregated state and local taxes. A seller shall not be required to collect the tax on a bracket system.

(j)(1) Any dealer making sales subject to the tax imposed by this chapter may choose to collect and remit taxes as a Model 1 or Model 2 seller, subject to the provisions of this subsection (j). For purposes of this subsection (j), tax includes any associated interest and penalty.

(2)(A) A dealer choosing Model 1 shall contract with a certified service provider and shall permit the certified service provider to determine the tax due, collect the tax, file returns, and remit the tax to the appropriate state on all of its sales, leases, or rentals of tangible personal property or services that are subject to the tax levied by this chapter. A Model 1 seller's liability to this state for the tax levied by this chapter is limited to the tax due on its own purchases, the tax due on any of its sales, leases, or rentals made outside the system provided by the certified service provider, and the tax due in the event of fraud by the Model 1 seller. The certified service provider shall not have any additional liability for state or local option taxes

imposed by this chapter, if:

(i) The Model 1 seller charged and collected an incorrect amount of sales or use tax in reliance on erroneous data made available for review but not discovered during the certification of the certified service provider's automated system; provided, that the error is corrected within ten (10) days of the date of notification by the commissioner to correct the automated system. The commissioner may allot additional time upon a showing by the certified service provider of the need for additional time to correct the automated system; or

(ii) An item or transaction is incorrectly classified as to its taxability within the certified service provider's automated system that was certified by this state; provided, that the taxability error is corrected within ten (10) days of the date of the notification by the commissioner to correct the automated system.

(B) Beginning on the first day after the allotted period of time to correct the certified service provider's automated system, the certified service provider shall be liable for the tax, penalty and interest resulting from the failure to correct the certified service provider's automated system. This subdivision (j)(2) does not apply to errors in charging and collecting or remitting sales or use tax that are the result of classifying the item or transaction within a defined term or other classification within the certified service provider's automated system.

(3) A dealer choosing Model 2 shall use a certified automated system to determine the tax due on all of its sales, leases, or rentals of tangible personal property or services that are subject to the tax levied by this chapter. Model 2 sellers shall not have any additional liability for state or local option taxes imposed by this chapter, if the Model 2 seller charged and collected or remitted an incorrect amount of sales or use tax in reliance on the certification of the certified automated system; provided, that the error is corrected within ten (10) days of the date of notification by the commissioner to correct or notification by the provider of the certified automated system of the availability of updates to correct the certified automated system. Beginning on the eleventh day, the Model 2 seller shall be liable for the tax, penalty, and interest resulting from the failure to correct or update the certified automated system for errors resulting from reliance on the certification.

(k) A certified service provider has, and is subject to, all of the rights, liabilities, duties and responsibilities imposed by this chapter as if it were the Model 1 seller for whom the certified service provider has agreed to perform all sales and use tax functions, except the Model 1 seller's obligation to remit tax on its own purchases.

***(l)** The commissioner may enter into contracts with certified service providers for the collection and reporting of the tax imposed under this chapter. The commissioner may enter into the contracts in conjunction with other states.*

67-6-515. Requirements for determining whether certain affiliates have physical presence in this state sufficient to establish nexus for sales and use tax purposes. [See subsection (c) for repeal of section under various conditions.]

(a)(1) Notwithstanding any other law to the contrary except as otherwise provided in this section, the activities of a person's affiliates in Tennessee,

including, but not limited to, the sale of tangible personal property for resale to a person for delivery to the person's customers in Tennessee and outside the state, fulfillment services and any other non-retail activities, shall not be considered in determining whether the person has a physical presence in Tennessee sufficient to establish nexus with Tennessee for sales and use tax purposes.

(2) Subdivision (a)(1) shall not apply to an affiliate that performs, within Tennessee, the following retail activities on behalf of a person:

(A) The operation of a retail store or kiosk at which customers make purchases, return or exchange items or place orders of tangible personal property; or

(B) The use, whether by direct employment or on a contract basis, of personnel to solicit sales of tangible personal property.

(b) This section shall only apply to a person that has an affiliate that:

(1) Places one (1) or more distribution facilities in service, directly or through a third party, after January 1, 2011, and before January 1, 2014;

(2) Makes, or causes to be made, through a third party, a capital investment of at least three hundred fifty million dollars ($350,000,000) after January 1, 2011, and before January 1, 2014;

(3) Creates at least three thousand five hundred (3,500) qualified jobs after January 1, 2011, and before January 1, 2014. For purposes of this subdivision (b)(3), "qualified job" has the same meaning as provided in § 67-4-2109(a); and

(4) After meeting the requirements of subdivision (b)(3), maintains at least three thousand five hundred (3,500) qualified jobs until January 1, 2016.

(c) This section shall no longer apply and is repealed on the earlier of:

(1) January 1, 2014;

(2) When the person's affiliate or the third party fails to meet the requirements provided in subsection (b) of this section; or

(3) The effective date of a law enacted by the United States Congress that authorizes this state to require that its sales tax be collected and remitted even if the taxpayer does not have substantial nexus with that state.

(d) This section shall only apply if the person enters a written agreement pursuant to which the person and its retail affiliates will collect Tennessee sales and use tax beginning immediately after the earliest of the events described in subsection (c).

(e) For purposes of this section:

(1) "Affiliate" means a person that directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with another person. A person controls another person if that person holds more than a fifty percent (50%) direct or indirect ownership interest in the other person;

(2) "Distribution facility" means an establishment where shipments of tangible personal property are stored and processed for delivery to customers and no retail sales of the property are made; and

(3) "Fulfillment services" means all activities related to the storage and preparation of tangible personal property for shipment to customers, including, but not limited to, gift wrapping, packaging, processing, repair and assembly.

(f)(1)(A) A person that does not establish nexus with Tennessee for sales and use tax purposes pursuant to subsection (a)(1) and that makes sales

through the person's Internet website to Tennessee purchasers shall notify such purchasers in a confirmation email that the purchaser may owe Tennessee use tax on the total sales price of the transaction and include in the email an Internet link, directly or through the person's website, to the department of revenue's website that allows the purchaser to pay the use tax. The notice must include language that is substantially similar to the following:

"PLEASE BE AWARE THAT THIS ORDER IS SUBJECT TO USE TAX UNLESS AN EXEMPTION EXISTS UNDER STATE LAW. A SALE IS NOT EXEMPT UNDER STATE LAW BECAUSE IT IS MADE THROUGH THE INTERNET."

(B) Any person that becomes subject to the requirements set forth in this subsection (f) shall have sixty (60) days to comply with these requirements.

(2) The department of revenue shall cooperate with any person to whom subdivision (f)(1) applies and provide the person with the information and assistance necessary to comply with this subsection (f) and the means to link to the applicable portion of the department of revenue's web site.

(3)(A)(i) A person, to whom subdivision (f)(1) applies, also shall provide to each purchaser to whom tangible goods were delivered in this state a statement of the total sales made to the purchaser during the preceding calendar year. The person shall provide the notice for calendar year 2011 within sixty (60) days after March 23, 2012, and by February 1 of each subsequent year.

(ii) "Total sales" means the total purchase price of all sales of tangible personal property delivered in this state including any shipping or delivery charges.

(B) The statement must contain language substantially similar to the following:

"YOU MAY OWE USE TAX ON PURCHASES MADE FROM US DURING THE PREVIOUS TAX YEAR. THE AMOUNT OF TAX YOU OWE IS BASED ON THE TOTAL SALES PRICE OF [INSERT TOTAL SALES PRICE] UNLESS AN EXEMPTION EXISTS UNDER STATE LAW OR YOU HAVE ALREADY PAID THE TAX. A SALE IS NOT EXEMPT UNDER STATE LAW BECAUSE IT IS MADE THROUGH THE INTERNET."

(C) The statement must not contain any other information that would indicate, imply, or identify the class, type, description, or name of the products purchased. Any information that would indicate, imply, or identify the class, type, description, or name of the products purchased is considered strictly confidential. The statement may be provided by first class mail or by email.

(g) A sale for resale of tangible personal property by a person and its affiliates to whom this section applies, when such property is delivered to a person or the person's customer in the state, shall not be subject to any tax that otherwise would be imposed on either transaction under this chapter and shall not be subject to Tenn. Comp. R. & Regs. 1320-5-1-.96.

67-6-528. Common carriers seeking reduced rate — Applications — Certificates. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) Common carriers seeking to make purchases subject to the reduced rate provided in part 2 of this chapter shall apply to the commissioner for a certificate. This application shall be made upon forms provided by the commissioner and shall require information deemed necessary by the commissioner to establish that the applicant is a common carrier making purchases of tangible personal property for use outside this state. The certificate may be revoked by the commissioner at any time, if the commissioner finds that the holder no longer meets the conditions precedent for the reduced rate.

(b) Common carriers making purchases subject to the reduced rate provided in part 2 of this chapter shall keep records of all such purchases, establishing to the satisfaction of the commissioner that items purchased were not used in Tennessee, but were removed from this state for use and consumption outside this state.

67-6-528. Common carriers seeking reduced rate — Applications — Certificates. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) Common carriers and commercial air carriers seeking to make purchases exempt from tax pursuant to § 67-6-385 or § 67-6-386 shall apply to the commissioner for a certificate. This application shall be made upon forms provided by the commissioner and shall require information deemed necessary by the commissioner to establish that the applicant is a common carrier making purchases of tangible personal property for use outside this state, is a commercial air carrier that actually uses aviation fuel in the operation of airplanes or aircraft motors or is a common carrier that actually uses diesel fuel in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce. The certificate may be revoked by the commissioner at any time if the commissioner finds that the holder no longer meets the conditions precedent for the exemption.

(b) Common carriers making purchases exempt from tax pursuant to § 67-6-385 shall keep records of all the purchases establishing to the satisfaction of the commissioner that items purchased were not used in Tennessee but were removed from this state for use and consumption outside this state.

(c) Commercial air carriers making purchases exempt from tax pursuant to § 67-6-386 shall keep records of the purchases establishing to the satisfaction of the commissioner that the fuel was actually used in the operation of airplanes or aircraft motors.

(d) Common carriers making purchases of diesel fuel exempt from tax pursuant to § 67-6-386 shall keep records of the purchases establishing to the satisfaction of the commissioner that the fuel was actually used in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce.

67-6-536. Returns submitted by Model 1 and 2 sellers — Informational return — Electronic payments — Due dates. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) Model 1 or 2 sellers with business locations in this state shall submit their returns in a format required by the commissioner. Model 1 or 2 sellers that do not have business locations in this state may submit their returns in a format adopted by the member states to the Streamlined Sales and Use Tax Agreement; provided, however, that all of the returns shall be filed electronically.

(b) Notwithstanding any law to the contrary, the commissioner is authorized to require Model 1 or 2 sellers that submit returns in a format adopted by the member states to the Streamlined Sales and Use Tax Agreement to submit once a year an informational return as permitted by the member states to the Streamlined Sales and Use Tax Agreement.

(c) Notwithstanding the provisions of § 67-1-703 to the contrary, all remittances from Model 1 or 2 sellers shall be made electronically, using ACH Credit or ACH Debit processes. The commissioner is authorized to provide for an alternative method of making the payment in the event the electronic funds transfer process fails.

(d) Notwithstanding any law to the contrary, a seller that is registered using the central registration system provided by states that are members of the Streamlined Sales and Use Tax Agreement, does not have a legal requirement to register in this state, is not a Model 1 or 2 seller, and has not accumulated more than one thousand dollars ($1,000) in state and local sales and use taxes shall be permitted to file a sales and use tax return at any time within one (1) year of the month of initial registration and shall be permitted to file future returns on an annual basis in succeeding years. The returns shall be due the twentieth day of the month following the tax period covered by the return. A seller that has accumulated state and local sales and use tax funds in the amount of one thousand dollars ($1,000) shall file a return by the twentieth day of the month following the month in which the accumulated taxes reach or exceed one thousand dollars ($1,000). Nothing in this subsection (d) shall relieve a seller who collects state sales or use tax from its customers from liability for failure to pay over those funds to the commissioner on behalf of the state.

67-6-536. Returns submitted by Model 1 and 2 sellers — Informational return — Electronic payments — Due dates. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) Model 1 or 2 sellers may submit their returns in such format as required by the member states to the Streamlined Sales and Use Tax Agreement; provided, however, that all such returns shall be filed electronically.

(b) Notwithstanding any law to the contrary, the commissioner is authorized to require Model 1 or 2 sellers that submit returns in a format adopted by the member states to the Streamlined Sales and Use Tax Agreement to submit once a year an informational return as permitted by the member states to the Streamlined Sales and Use Tax Agreement.

(c) Notwithstanding the provisions of § 67-1-703 to the contrary, all remittances from Model 1 or 2 sellers shall be made electronically, using ACH Credit or ACH Debit processes. The commissioner is authorized to provide for an alternative method of making the payment in the event the electronic funds

transfer process fails.

(d) Notwithstanding any law to the contrary, a seller that is registered using the central registration system provided by states that are members of the Streamlined Sales and Use Tax Agreement, does not have a legal requirement to register in this state, is not a Model 1 or 2 seller, and has not accumulated more than one thousand dollars ($1,000) in state and local sales and use taxes shall be permitted to file a sales and use tax return at any time within one (1) year of the month of initial registration and shall be permitted to file future returns on an annual basis in succeeding years. The returns shall be due the twentieth day of the month following the tax period covered by the return. A seller that has accumulated state and local sales and use tax funds in the amount of one thousand dollars ($1,000) shall file a return by the twentieth day of the month following the month in which the accumulated taxes reach or exceed one thousand dollars ($1,000). Nothing in this subsection (d) shall relieve a seller who collects state sales or use tax from its customers from liability for failure to pay over those funds to the commissioner on behalf of the state.

67-6-539. Bundled transactions — Telecommunications services. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a)(1) For purposes of this section, a bundled transaction means the retail sale of two (2) or more services, where:

(A) The services are otherwise distinct and identifiable; and

(B) The services are sold for one (1) nonitemized price.

(2) A bundled transaction does not include the sale of any services in which the sales price varies, or is negotiable, based on the selection by the purchaser of the services included in the transaction.

(b) Notwithstanding any other law to the contrary, in the case of a bundled transaction of telecommunication services, ancillary services, Internet access services, or audio or video programming services, or direct-to-home satellite television programming services:

(1) If the price is attributable to services that are taxable and services that are nontaxable, the portion of the price attributable to the nontaxable services shall be subject to tax, unless the provider can identify, by reasonable and verifiable standards, such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes;

(2) If the price is attributable to services that are subject to tax at different tax rates, the total price shall be treated as attributable to the services subject to tax at the highest tax rate, unless the provider can identify, by reasonable and verifiable standards, the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes;

(3) If the taxes that would have otherwise been collected on the distinct and identifiable services would have been designated to different funds or purposes, such designation shall be based on the same allocation utilized in subdivision (b)(1) or (b)(2). However, if the total of the bundled transaction was subjected to tax or subjected to tax at the higher combined state and local rate, a reasonable allocation method approved by the commissioner

shall be made for designation of the taxes to the different funds or purposes.

(4) This section shall apply unless otherwise provided by federal law.

67-6-539. Bundled transactions — Telecommunications services. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) For purposes of the tax imposed by this chapter, a bundled transaction is subject to tax at the rate levied on the sale of tangible personal property at retail by § 67-6-202.

(b) Notwithstanding subsection (a) to the contrary, if the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products shall be subject to tax unless the provider can identify by reasonable and verifiable standards that portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes, in the case of a bundled transaction that includes any of the following:

(1) Telecommunication services;

(2) Ancillary services;

(3) Internet access services;

(4) Audio or video programming services; or

(5) Direct-to-home satellite television programming services.

(c) This section shall apply unless otherwise provided by federal law.

67-6-601. Certificate of registration — Required — Application. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) Every person desiring to engage in or conduct business as a dealer in this state shall file with the commissioner an application for a "certificate of registration" for each place of business.

(b) Any person who engages in the business of furnishing any of the things or services taxable under this chapter shall likewise apply for and obtain a certificate of registration as provided by this part.

(c) The commissioner may impose additional or different registration and/or reporting requirements as determined to be necessary by the commissioner in order to administer the allocation provisions of §§ 67-6-103 and 67-6-712, regarding sports authorities and public building authorities and industrial development corporations created pursuant to title 7, chapter 53.

67-6-601. Certificate of registration — Required — Application. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) Every person desiring to engage in or conduct business as a dealer in this state shall file with the commissioner an application for a "certificate of registration" for each place of business.

(b) Any person who engages in the business of furnishing any of the things or services taxable under this chapter shall likewise apply for and obtain a certificate of registration as provided by this part.

(c) The commissioner may impose additional or different registration and/or reporting requirements as determined to be necessary by the commissioner in

order to administer the allocation provisions of §§ 67-6-103 and 67-6-712, regarding sports authorities and public building authorities and industrial development corporations created pursuant to title 7, chapter 53.

(d) A person does not have a nexus with this state for sales and use tax purposes by reason of the relationship between the person and a commercial printer or mailer having a presence in this state.

67-6-702. Tax authorized — Rates — Termination of services tax. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a)(1) Any county, by resolution of its county legislative body, or any incorporated city or town, by ordinance of its governing body, is authorized to levy a tax on the same privileges subject to this chapter as the chapter may be amended, that are exercised within such county, city or town, to be levied and collected in the same manner and on all such privileges, but not to exceed two and three fourths percent (2.75%); provided, that the tax levied shall apply only to the first one thousand six hundred dollars ($1,600) on the sale or use of any single article of personal property.

(2) Any five-dollar or seven-dollar and fifty-cent tax limit on the sale or use of any single article of personal property in effect at present may be removed, and, by resolution in the case of counties and by ordinance in the case of municipalities, the tax at the existing rate may, instead, be made to apply to the bases provided in subdivision (a)(1). The resolution or ordinance shall be passed at least twice at two (2) or more consecutive public meetings, not more than one (1) of which may be held on any single day. Notice of the meetings and of the fact that this matter is on the agenda of the meetings shall be published at least once in a newspaper of general circulation throughout the jurisdiction involved not less than seven (7) days before the first of the meetings. If the county or counties in which it is located does not increase the base of the county-wide local sales and use tax pursuant to this subdivision (a)(2), any municipality may by ordinance apply any county tax rate in effect in the municipality to the bases authorized in subdivision (a)(1) for purposes of the sale or use of any single article of personal property within the municipality's corporate limits. The ordinance increasing the base of the county-wide tax within the municipality shall be adopted as required in this subdivision (a)(2).

(3) Once any local sales tax limit has been removed and the tax rate applied to the base provided in subdivision (a)(1), future increases in the base beginning on the dates specified in subdivision (a)(1) shall be automatic and shall not require further action of the local governing body. For any municipality or county which implements a local sales tax for the first time after May 17, 1983, or during the phase-in period provided in subdivision (a)(1), future increases in the base beginning on the dates specified in subdivision (a)(1) shall be automatic and shall not require further action of the local governing body.

(4) For the purpose of this part, persons engaged in the business of selling water shall be considered to be exercising a taxable privilege at the place where the tangible personal property is delivered to the purchaser.

(b) Notwithstanding other provisions of this chapter, with respect to water sold to or used by manufacturers at the state tax rate of one percent (1%) as

authorized in § 67-6-206, the local tax thereon shall be imposed at the rate of one third of one percent (⅓%) whenever the rate of the local tax does not exceed one percent (1%) and at the rate of one half of one percent (0.5%) whenever the rate of the local tax exceeds one percent (1%). The maximum local tax on the sale or use of any single article of industrial or farm machinery shall be as provided in subsection (a).

(c) A use tax paid by the lessee of tangible personal property from a lessor which is a tax exempt entity pursuant to an election made under § 67-6-204(b) shall be in lieu of any tax that might otherwise be imposed under this part, and no additional sales or use tax may be imposed under this part on rental payments with respect to which a use tax based on the purchase price of the tangible personal property has been paid by election.

(d) "Single article" means that which is regarded by common understanding as a separate unit exclusive of any accessories, extra parts, etc., and that which is capable of being sold as an independent unit or as a common unit of measure, a regular billing or other obligation. Such independent units sold in sets, lots, suites, etc., at a single price shall not be considered a single article. Parts or accessories for motor vehicles that are installed at the factory and delivered with the unit as original equipment and/or parts or accessories for motor vehicles that are installed by the dealer and/or distributor prior to sale, at the time of the sale, or that are included as part of the sales price of the vehicle shall be treated as a part of the unit. In addition, all necessary parts and equipment installed by a motor vehicle dealer that are essential to the functioning of the motor vehicle or are required to be installed on the motor vehicle prior to sale to the ultimate consumer pursuant to state or federal statutes relating to the lawful use of the motor vehicle shall be treated as a part of the unit. Boat motors, other parts or accessories for boats, freight, and labor, excluding trailers, shall be treated as part of the boat unit in the same manner as parts or accessories for motor vehicles are treated as part of the motor vehicle unit. Parts and accessories and any other additional or incidental items or services that are part of the sale of a manufactured home shall be treated as part of the manufactured home unit in the same manner as parts and accessories for motor vehicles are treated as part of the motor vehicle unit.

(e) Notwithstanding any other provision of this chapter, with respect to sales of tangible personal property to common carriers for use outside this state subject to the reduced rate provided in part 2 of this chapter, the local tax thereon shall be at the rate of one and one half percent (1.5%). The maximum local tax on the sale or use of any single article of personal property shall be as provided in subsection (a).

(f) Notwithstanding any other provisions of this part, dealers with no location in this state may choose to pay, in lieu of the tax otherwise authorized by this part, local tax at the rate of two and twenty-five hundredths percent (2.25%) of the sales price on all sales made in this state.

(g)(1) Notwithstanding any other provisions of this chapter, local tax with respect to interstate or international telecommunications services, that are subject to state tax shall be imposed at the rate of one and one half percent (1.5%); provided, that interstate and international telecommunications services to businesses are exempt from local tax.

(2) Notwithstanding any other provisions of this chapter, local tax with respect to intrastate telecommunications services and ancillary services that are subject to state tax, shall be imposed at the rate of two and one half

percent (2.5%).

(3) Local tax with respect to "prepaid calling services" and "prepaid wireless calling services" that are subject to tax shall be imposed at the rate of tax levied on the sale of tangible personal property at retail by subsection (a) and at the time of the retail sale of prepaid calling service and prepaid wireless calling service.

(4) Notwithstanding any other provisions of this chapter, local tax with respect to specified digital products that are subject to state tax shall be imposed at the rate of two and one half percent (2.5%).

(h) Notwithstanding any other law to the contrary, sales of tangible personal property upon which a state sales and use tax is levied shall be subject to a local sales and use tax at the rate of two and one quarter percent (2.25%) when obtained from any vending machine or device.

67-6-702. Tax authorized — Rates — Termination of services tax. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a)(1) Any county by resolution of its county legislative body or any incorporated city or town by ordinance of its governing body is authorized to levy a tax on the same privileges subject to this chapter that are exercised within the county, city or town, to be levied and collected in the same manner and on all such privileges but not to exceed two and three fourths percent (2 ¾%); provided, that the tax levied shall apply only to the first one thousand six hundred dollars ($1,600) on the sale or use of any single article of personal property; provided further, that the tax levied on the sale, purchase, use, consumption of electricity, piped natural or artificial gases, or other heating fuels delivered by the seller shall be one half of one percent (0.5%).

(2) Any five-dollar ($5.00) or seven-dollar-and-fifty-cent ($7.50) tax limit on the sale or use of any single article of personal property in effect at present may be removed, and, by resolution in the case of counties and by ordinance in the case of municipalities, the tax at the existing rate may, instead, be made to apply to the bases provided in subdivision (a)(1). The resolution or ordinance shall be passed at least twice at two (2) or more consecutive public meetings, not more than one (1) of which may be held on any single day. Notice of the meetings and of the fact that this matter is on the agenda of the meetings shall be published at least once in a newspaper of general circulation throughout the jurisdiction involved not less than seven (7) days before the first of the meetings. If the county or counties in which it is located does not increase the base of the county-wide local sales and use tax pursuant to this subdivision (a)(2), any municipality may by ordinance apply any county tax rate in effect in the municipality to the bases authorized in subdivision (a)(1) for purposes of the sale or use of any single article of personal property within the municipality's corporate limits. The ordinance increasing the base of the county-wide tax within the municipality shall be adopted as required in this subdivision (a)(2).

(3) Once any local sales tax limit has been removed and the tax rate applied to the base provided in subdivision (a)(1), future increases in the base beginning on the dates specified in subdivision (a)(1) shall be automatic and shall not require further action of the local governing body. For any municipality or county that implements a local sales tax for the first time

after May 17, 1983, or during the phase-in period provided in subdivision (a)(1), future increases in the base beginning on the dates specified in subdivision (a)(1) shall be automatic and shall not require further action of the local governing body.

(4) For the purpose of this part, persons engaged in the business of selling water shall be considered to be exercising a taxable privilege at the place where the tangible personal property is delivered to the purchaser.

(b) A use tax paid by the lessee of tangible personal property from a lessor that is a tax exempt entity pursuant to an election made under § 67-6-204(c) shall be in lieu of any tax that might otherwise be imposed under this part, and no additional sales or use tax may be imposed under this part on rental payments with respect to which a use tax based on the purchase price of the tangible personal property has been paid by election.

(c) "Single article" means that which is regarded by common understanding as a separate unit exclusive of any accessories, extra parts, etc., and that which is capable of being sold as an independent unit or as a common unit of measure, a regular billing or other obligation; provided, however, and notwithstanding any other law to the contrary, that single article applies only to motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes and only those items shall be regarded as single articles. Parts or accessories for motor vehicles that are installed at the factory and delivered with the unit as original equipment and/or parts or accessories for motor vehicles that are installed by the dealer or distributor, or both, prior to sale, at the time of the sale, or that are included as a part of the sales price of the vehicle shall be treated as a part of the unit. In addition, all necessary parts and equipment installed by a motor vehicle dealer that are essential to the functioning of the motor vehicle or are required to be installed on the motor vehicle prior to sale to the ultimate consumer pursuant to state or federal statutes relating to the lawful use of the motor vehicle shall be treated as a part of the unit. Boat motors, other parts or accessories for boats, freight, and labor, excluding trailers, shall be treated as part of the boat unit in the same manner as parts or accessories for motor vehicles are treated as part of the motor vehicle unit. Parts and accessories and any other additional or incidental items or services that are part of the sale of a manufactured home shall be treated as part of the manufactured home unit in the same manner as parts and accessories for motor vehicles are treated as part of the motor vehicle unit. Such independent units sold in sets, lots, suites, etc., at a single price shall not be considered a single article.

(d) Notwithstanding any other law to the contrary, sales of tangible personal property upon which a state sales and use tax is levied shall be subject to a local sales and use tax at the rate of two and one quarter percent (2.25%) when obtained from any vending machine or device.

67-6-706. Referendum. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a)(1) Any ordinance or resolution of a county or of a city or town levying the tax under authority of this part shall not become operative until approved in an election herein provided in the county or the city or town, as the case may be.

(2) The county election commission shall hold an election on the question pursuant to § 2-3-204, providing options to vote "FOR" or "AGAINST" the

ordinance or resolution, after the receipt of a certified copy of such ordinance or resolution, and a majority vote of those voting in the election shall determine whether the ordinance or resolution is to be operative.

(3) If the majority vote is for the ordinance or resolution, it shall be deemed to be operative on the date that the county election commission makes its official canvass of the election returns; provided, however, that no tax shall be collected under any such ordinance or resolution until the first day of a month occurring at least thirty (30) days after the operative date.

(b)(1) If a county legislative body adopts a resolution to levy the tax at the same rate that is operative in a city or town in the county, the election under this section to determine whether the county tax is to be operative shall be open only to the voters residing outside of such city or town. If the county tax is at a higher rate than the rate of the city or town tax, the election shall also be open to the voters of the city or town.

(2)(A) Except as provided in subdivision (b)(2)(B), should any county or city or town hold an election under this section, and the ordinance or resolution is rejected, no other election thereon shall be held by such county, city or town for a period of six (6) months from the date of the holding of such prior election.

(B) In counties having a population of not more than seven hundred fifty thousand (750,000) nor less than seven hundred thousand (700,000) and not more than two hundred seventy-eight thousand (278,000) and not less than two hundred fifty thousand (250,000), according to the federal census of 1970 or any subsequent federal census, in case of rejection, the limitation period on subsequent elections shall be one (1) year from the date of the holding of such prior election.

67-6-706. Referendum. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a)(1) Any ordinance or resolution of a county or of a city or town levying the tax under authority of this part shall not become operative until approved in an election herein provided in the county or the city or town, as the case may be.

(2) The county election commission shall hold an election on the question pursuant to § 2-3-204, providing options to vote "FOR" or "AGAINST" the ordinance or resolution, after the receipt of a certified copy of such ordinance or resolution, and a majority vote of those voting in the election shall determine whether the ordinance or resolution is to be operative.

(3) If the majority vote is for the ordinance or resolution, it shall be deemed to be operative on the date that the county election commission makes its official canvass of the election returns; provided, that no tax shall be collected under the ordinance or resolution until the earliest effective date allowed under this part.

(b)(1) If a county legislative body adopts a resolution to levy the tax at the same rate that is operative in a city or town in the county, the election under this section to determine whether the county tax is to be operative shall be open only to the voters residing outside of such city or town. If the county tax is at a higher rate than the rate of the city or town tax, the election shall also be open to the voters of the city or town.

(2)(A) Except as provided in subdivision (b)(2)(B), should any county or city or town hold an election under this section, and the ordinance or

resolution is rejected, no other election thereon shall be held by such county, city or town for a period of six (6) months from the date of the holding of such prior election.

(B) In counties having a population of not more than seven hundred fifty thousand (750,000) nor less than seven hundred thousand (700,000) and not more than two hundred seventy-eight thousand (278,000) and not less than two hundred fifty thousand (250,000), according to the federal census of 1970 or any subsequent federal census, in case of rejection, the limitation period on subsequent elections shall be one (1) year from the date of the holding of such prior election.

67-6-710. Collection and administration. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a)(1) In collecting and administering the tax levied under the authority of this part, the commissioner of revenue shall have the same powers as the commissioner has in collecting and administering the state sales tax.

(2) Rules and regulations promulgated by the commissioner under §§ 67-1-102 and 67-6-402 shall be applicable to the tax levied under the authority of this part, and shall be binding on cities, counties, and towns, and interest and penalty for delinquencies shall be imposed equal to the rates provided in § 67-6-516.

(b)(1) The department of revenue shall collect such tax concurrently with the collection of the state tax in the same manner as the state tax is collected; provided, that the department has determined that such collection of the tax is feasible, and has promulgated rules and regulations governing such collection.

(2) The department shall remit the proceeds of the tax to the county, city or town levying the tax, less a reasonable amount of percentage as determined by the department to cover the expenses of administration and collection. This percentage shall be one and one hundred twenty-five thousandths percent (1.125%). The percentage shall not be less than necessary to defray the state's expenses in administering, collecting, and remitting the local sales tax, as determined annually by the department and certified by the comptroller of the treasury.

(c) The county, city or town shall furnish a certified copy of the adopting resolution or ordinance to the department of revenue in accordance with regulations prescribed by the department.

(d)(1) Upon any claim of illegal assessment or collection, the taxpayer shall have the remedy provided in chapter 1, part 18 of this title, it being the intention of the general assembly that the provisions of law which apply to the recovery of state taxes illegally assessed or collected be conformed to apply to the recovery of taxes illegally assessed or collected under the authority of this part.

(2) The resolution or ordinance levying the tax shall designate the county or municipal officer against whom suit may be brought for recovery.

(e)(1) Proceeds of the tax provided for in § 67-6-702(f), shall be distributed to the counties based on the ratio of local tax collections in the county under this section over total tax collections in all counties under this section.

(2) The amount received by the county under subdivision (e)(1) shall be distributed first as provided for in § 67-6-712(a)(1). The remainder shall be distributed to the cities or towns in the county based on the ratio of total

collections in the municipality to total collections in the county.

(3) A county and a municipality may, by contract, provide for an alternative distribution for the amount not distributed under § 67-6-712(a)(1).

(f) Proceeds of the taxes provided for in § 67-6-702(g) shall be distributed as follows:

(1) Fifty percent (50%) shall be distributed as provided in subsection (e); and

(2) Fifty percent (50%) shall be distributed to incorporated municipalities in the proportion that the population of each bears to the aggregate population of the state and to counties in the proportion the population of unincorporated areas of the county bears to the aggregate population of the state, according to the most recent federal census and other censuses authorized by law. Counties and incorporated municipalities shall use such funds in the same manner and for the same purposes as funds distributed pursuant to § 67-6-712.

(g)(1) Proceeds of the tax on sales of tangible personal property obtained from any vending machine or device as provided for in § 67-6-702 shall be distributed to the counties based on the ratio of local tax collections in the county under this section over total tax collections in all counties under this section.

(2) The amount received by the county under subdivision (g)(1) shall be distributed first as provided for in § 67-6-712(a)(1). The remainder shall be distributed to the cities or towns in the county based on the ratio of total collections in the municipality to total collections in the county.

(h)(1) Notwithstanding any provision of law to the contrary, the commissioner, based upon reporting of exempt sales under § 67-6-393 and any other data or information the commissioner deems relevant, shall substantially reimburse counties and municipalities for the loss of local tax under this part resulting from the exemption provided by § 67-6-393. The amount of the reimbursement shall be approximately equal to the aggregate amount of local tax that would have been collected under this part on the sale or use of goods otherwise taxable but for the provisions of § 67-6-393.

(2) If the loss of local tax subject to reimbursement under this subsection (h) cannot be identified to a particular situs, the amount of the reimbursement shall be distributed to the counties based on the ratio of total local tax collections in the county under this part over the total local tax collections in all counties under this part. The amount received by the county under this subdivision (h)(2) shall be distributed first as provided for in § 67-6-712(a)(1). The remainder shall be distributed to each municipality in the county based on the ratio of total collections in that municipality over the total collections in the county and shall be distributed to the county based on the ratio of total collections in the unincorporated portions of the county over the total collections in the county.

(3) Notwithstanding any provision of § 67-6-103 to the contrary, the distribution required by this subsection (h) shall be made from state sales tax collections prior to distribution under § 67-6-103; provided, however, that no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4 shall be distributed pursuant to this subsection (h). All such revenue shall continue to be allocated as provided in Acts 2006, ch. 856.

67-6-710. Collection and administration. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a)(1) In collecting and administering the tax levied under the authority of this part, the commissioner of revenue shall have the same powers as the commissioner has in collecting and administering the state sales tax.

(2) Rules and regulations promulgated by the commissioner under §§ 67-1-102 and 67-6-402 shall be applicable to the tax levied under the authority of this part, and shall be binding on cities, counties, and towns, and interest and penalty for delinquencies shall be imposed equal to the rates provided in § 67-6-516.

(b)(1) The department of revenue shall collect such tax concurrently with the collection of the state tax in the same manner as the state tax is collected; provided, that the department has determined that such collection of the tax is feasible, and has promulgated rules and regulations governing such collection.

(2) The department shall remit the proceeds of the tax to the county, city or town levying the tax, less a reasonable amount of percentage as determined by the department to cover the expenses of administration and collection. This percentage shall be one and one hundred twenty-five thousandths percent (1.125%). The percentage shall not be less than necessary to defray the state's expenses in administering, collecting, and remitting the local sales tax, as determined annually by the department and certified by the comptroller of the treasury.

(c) The county, city or town shall furnish a certified copy of the adopting resolution or ordinance to the department of revenue in accordance with regulations prescribed by the department.

(d)(1) Upon any claim of illegal assessment or collection, the taxpayer shall have the remedy provided in chapter 1, part 18 of this title, it being the intention of the general assembly that the provisions of law which apply to the recovery of state taxes illegally assessed or collected be conformed to apply to the recovery of taxes illegally assessed or collected under the authority of this part.

(2) The resolution or ordinance levying the tax shall designate the county or municipal officer against whom suit may be brought for recovery.

(e) [Deleted by 2007 amendment, effective July 1, 2013.]

(f) [Deleted by 2007 amendment, effective July 1, 2013.]

(g)(1) Proceeds of the tax on sales of tangible personal property obtained from any vending machine or device as provided for in § 67-6-702 shall be distributed to the counties based on the ratio of local tax collections in the county under this section over total tax collections in all counties under this section.

(2) The amount received by the county under subdivision (g)(1) shall be distributed first as provided for in § 67-6-712(a)(1). The remainder shall be distributed to the cities or towns in the county based on the ratio of total collections in the municipality to total collections in the county.

(h)(1) Notwithstanding any provision of law to the contrary, the commissioner, based upon reporting of exempt sales under § 67-6-393 and any other data or information the commissioner deems relevant, shall substantially reimburse counties and municipalities for the loss of local tax under this part resulting from the exemption provided by § 67-6-393. The amount of the

reimbursement shall be approximately equal to the aggregate amount of local tax that would have been collected under this part on the sale or use of goods otherwise taxable but for the provisions of § 67-6-393.

(2) If the loss of local tax subject to reimbursement under this subsection (h) cannot be identified to a particular situs, the amount of the reimbursement shall be distributed to the counties based on the ratio of total local tax collections in the county under this part over the total local tax collections in all counties under this part. The amount received by the county under this subdivision (h)(2) shall be distributed first as provided for in § 67-6-712(a)(1). The remainder shall be distributed to each municipality in the county based on the ratio of total collections in that municipality over the total collections in the county and shall be distributed to the county based on the ratio of total collections in the unincorporated portions of the county over the total collections in the county.

(3) Notwithstanding any provision of § 67-6-103 to the contrary, the distribution required by this subsection (h) shall be made from state sales tax collections prior to distribution under § 67-6-103; provided, however, that no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, ch. 856, § 4 shall be distributed pursuant to this subsection (h). All such revenue shall continue to be allocated as provided in Acts 2006, ch. 856.

67-6-712. Distribution of revenue. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) The tax levied by a county under this part shall be distributed as follows:

(1) One-half (½) of the proceeds shall be expended and distributed in the same manner as the county property tax for school purposes is expended and distributed; and

(2) The other one-half (½) as follows:

(A) Collections for privileges exercised in unincorporated areas, to such fund or funds of the county as the governing body of the county shall direct;

(B) Collections for privileges exercised in incorporated cities and towns, to the city or town in which the privilege is exercised;

(C) However, a county and city or town may by contract provide for other distribution of the one-half (½) not allocated to school purposes.

(3) Any county, city, town, incorporated area or special school district entitled to receive the proceeds described in subdivisions (a)(1) and (2) has the power and authority, by resolution of the governing body thereof, to pledge such proceeds to the punctual payment of principal of and interest on bonds, notes or other evidence of indebtedness issued for the purpose for which such proceeds are permitted to be spent pursuant to such subdivisions (a)(1) and (2); provided, that the pledge by a county of proceeds to which it is entitled under subdivision (a)(1) shall not be effective, unless approved by resolution of the county board of education.

(b)(1) County trustees in counties having populations of seven hundred thousand (700,000) or more, according to the 1980 federal census or any subsequent federal census, shall not be entitled to receive compensation for receiving and distributing the taxes under subsection (a), notwithstanding the provisions of § 8-11-110 or any other law to the contrary.

(2) This subsection (b) shall have no effect, unless it is approved by a two-thirds (⅔) vote of the legislative body of any county to which it may apply. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and certified by such presiding officer to the secretary of state.

(c)(1)(A) Notwithstanding the allocations provided for in subsection (a), if there exists in a municipality a sports authority organized pursuant to title 7, chapter 67, and if that sports authority has secured a major league professional baseball (American or National League), football (National Football League or Canadian Football League, or its successors or assigns), basketball (National Basketball Association) or major or minor league professional hockey (National Hockey League or Central Hockey League or East Coast Hockey League) franchise for that municipality, and only if the municipality or any board or instrumentality of the municipality reimburses the state for any costs to reallocate apportionments of the tax revenue under this section, then an amount shall be apportioned and distributed to the municipality equal to the amount of local tax revenue derived from the sale of admissions to the events of the major or minor league professional sports franchise and also the sale of food and drink sold on the premises of the sports facility in conjunction with those games, parking charges, and related services, as well as the sale by the major or minor league professional sports franchise within the county in which the games take place of authorized franchise goods and products associated with the franchise's operations as a professional sports franchise. The amount distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with title 7, chapter 67.

(B) In addition, if an indoor sports facility owned by a sports authority organized pursuant to title 7, chapter 67, in which a professional sports franchise is a tenant, exists in a county with a metropolitan form of government, then an amount shall be apportioned and distributed to the municipality equal to two-thirds (⅔) of the amount of the allocation of local tax revenue under subdivision (a)(2) derived from the sale of admissions to all other events occurring at such indoor sports facility and from all other sales of food and drink and other authorized goods or products sold on the premises of the indoor sports facility, parking charges, and related services. Such amounts distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with title 7, chapter 67. Such amounts shall be used exclusively for the payment of, or the reimbursement of expenses associated with securing current, expanded, or new events for indoor sports facilities owned by a municipal agency formally designated by the municipality, in accordance with title 7, chapter 67.

(C) For the purpose of this subsection (c), "municipality" means any incorporated city or county located in this state.

(2) Any bonds issued relative to the construction of a sports facility shall not be issued for a term longer than thirty (30) years from the date the first game is played by the professional sports franchise in a municipality, as defined in subdivision (c)(1).

(d) Notwithstanding the provisions of this section to the contrary, revenue

derived from taxes imposed by this part shall be earmarked and allocated in accordance with the provisions of title 7, chapter 88.

67-6-712. Distribution of revenue. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) The tax levied by a county under this part shall be distributed as follows:

(1) One-half (½) of the proceeds shall be expended and distributed in the same manner as the county property tax for school purposes is expended and distributed; and

(2) The other one-half (½) as follows:

(A) Collections for privileges exercised in unincorporated areas, to such fund or funds of the county as the governing body of the county shall direct;

(B) Collections for privileges exercised in incorporated cities and towns, to the city or town in which the privilege is exercised;

(C) However, a county and city or town may by contract provide for other distribution of the one-half (½) not allocated to school purposes.

(3) Any county, city, town, incorporated area or special school district entitled to receive the proceeds described in subdivisions (a)(1) and (2) has the power and authority, by resolution of the governing body thereof, to pledge such proceeds to the punctual payment of principal of and interest on bonds, notes or other evidence of indebtedness issued for the purpose for which such proceeds are permitted to be spent pursuant to such subdivisions (a)(1) and (2); provided, that the pledge by a county of proceeds to which it is entitled under subdivision (a)(1) shall not be effective, unless approved by resolution of the county board of education.

(b)(1) Any county, city, town, incorporated area or special school district entitled to receive the proceeds described in subdivisions (a)(1) and (2) has the power and authority, by resolution of the governing body thereof, to pledge such proceeds to the punctual payment of principal of and interest on bonds, notes or other evidence of indebtedness issued for the purpose for which such proceeds are permitted to be spent pursuant to such subdivisions (a)(1) and (2); provided, that the pledge by a county of proceeds to which it is entitled under subdivision (a)(1) shall not be effective, unless approved by resolution of the county board of education.

(2) This subsection (b) shall have no effect, unless it is approved by a two-thirds (⅔) vote of the legislative body of any county to which it may apply. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and certified by such presiding officer to the secretary of state.

(c)(1)(A) Notwithstanding the allocations provided for in subsection (a), if there exists in a municipality a sports authority organized pursuant to title 7, chapter 67, and if that sports authority has secured a major league professional baseball (American or National League), football (National Football League or Canadian Football League, or its successors or assigns), basketball (National Basketball Association) or major or minor league professional hockey (National Hockey League or Central Hockey League or East Coast Hockey League) franchise for that municipality, and only if the municipality or any board or instrumentality of the municipality reimburses the state for any costs to reallocate apportionments of the tax revenue under this section, then an amount shall be apportioned and distributed to the municipality equal to the amount of local tax revenue derived from the

sale of admissions to the events of the major or minor league professional sports franchise and also the sale of food and drink sold on the premises of the sports facility in conjunction with those games, parking charges, and related services, as well as the sale by the major or minor league professional sports franchise within the county in which the games take place of authorized franchise goods and products associated with the franchise's operations as a professional sports franchise. The amount distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with title 7, chapter 67.

(B) In addition, if an indoor sports facility owned by a sports authority organized pursuant to title 7, chapter 67, in which a professional sports franchise is a tenant, exists in a county with a metropolitan form of government, then an amount shall be apportioned and distributed to the municipality equal to two-thirds (⅔) of the amount of the allocation of local tax revenue under subdivision (a)(2) derived from the sale of admissions to all other events occurring at such indoor sports facility and from all other sales of food and drink and other authorized goods or products sold on the premises of the indoor sports facility, parking charges, and related services. Such amounts distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with title 7, chapter 67. Such amounts shall be used exclusively for the payment of, or the reimbursement of expenses associated with securing current, expanded, or new events for indoor sports facilities owned by a municipal agency formally designated by the municipality, in accordance with title 7, chapter 67.

(C) For the purpose of this subsection (c), "municipality" means any incorporated city or county located in this state.

(2) Any bonds issued relative to the construction of a sports facility shall not be issued for a term longer than thirty (30) years from the date the first game is played by the professional sports franchise in a municipality, as defined in subdivision (c)(1).

(d) Notwithstanding the provisions of this section to the contrary, revenue derived from taxes imposed by this part shall be earmarked and allocated in accordance with the provisions of title 7, chapter 88.

(e)(1) When local sales tax revenues received by the department cannot be identified to a particular situs, the following distribution shall be made:

(A) Fifty percent (50%) shall be distributed to incorporated municipalities in the proportion that the population of each bears to the aggregate population of the state and to counties in the proportion the population of unincorporated areas of the county bears to the aggregate population of the state, according to the most recent federal census and other census authorized by law. Counties and incorporated municipalities shall use the funds in the same manner and for the same purposes as funds distributed pursuant to this section; and

(B) Fifty percent (50%) shall be distributed to the counties based on the ratio of local tax collections in the county under this section over total tax collections in all counties under this section.

(2) The amount received by the county under subdivision (e)(1)(B) shall be distributed first as provided for in subdivision (a)(1). The remainder shall be distributed to the cities or towns in the county based on the ratio of total collections in the municipality to total collections in the county.

67-6-905. Source of sales of telecommunication services — Definitions. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

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

(1) "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

(2) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls;

(3) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;

(4) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this provision only applies for the purpose of sourcing sales of telecommunications services under this section. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

(5) "Customer channel termination point" means the location where the customer either inputs or receives the communications;

(6) "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity;

(7) "Home service provider" means the same as that term is defined in 4 U.S.C. § 124(5);

(8) "Mobile telecommunications service" means the same as that term is defined in 4 U.S.C. § 124(7);

(9) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider;

(10) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunication service;

(11) "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or

channels; and

(12) "Service address" means:

(A) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(B) If the location in subdivision (a)(12)(A) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller; and

(C) If the locations in subdivisions (a)(12)(A) and (a)(12)(B) are not known, the service address means the location of the customer's place of primary use.

(b) Except for the defined telecommunication services in subsection (d), the sale of telecommunication service sold on a call-by-call basis shall be sourced to each level of taxing jurisdiction where the call:

(1) Originates and terminates in that jurisdiction; or

(2) Either originates or terminates and in which the service address is also located.

(c) Except for the defined telecommunication services in subsection (d), a sale of telecommunications services sold on a basis other than a call-by-call basis and ancillary services are sourced to the customer's place of primary use.

(d) The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunications services other than air-to-ground radiotelephone service is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act, codified at 4 U.S.C. §§ 116-126;

(2) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

(A) The seller's telecommunications system; or

(B) Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller;

(3) A sale of a private communication service is sourced as follows:

(A) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located;

(B) Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located;

(C) Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located; and

(D) Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

67-6-905. Source of sales of telecommunication services — Definitions. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) Except for the defined telecommunication services in subsection (c), the sale of telecommunication service sold on a call-by-call basis shall be sourced to each level of taxing jurisdiction where the call:

(1) Originates and terminates in that jurisdiction; or

(2) Either originates or terminates and in which the service address is also located.

(b) Except for the defined telecommunication services in subsection (c), a sale of ancillary services or telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(c) The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act, compiled in 4 U.S.C. §§ 116-126;

(2) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

(A) The seller's telecommunications system; or

(B) Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller;

(3) A sale of a prepaid calling service, or a sale of a prepaid wireless calling service, is sourced in accordance with § 67-6-902; provided, however, that, in the case of a sale of prepaid wireless calling service, the rule provided in § 67-6-902(a)(5) shall include as an option the location associated with the mobile telephone number; and

(4) A sale of a private communication service is sourced as follows:

(A) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located;

(B) Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in the jurisdiction where the customer channel termination points are located;

(C) Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located; and

(D) Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

(d) For the purpose of this section, unless the context otherwise requires:

(1) "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

(2) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls;

(3) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;

(4) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this subdivision (d)(4) only applies for the purpose of sourcing sales of telecommunications services under this section. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

(5) "Customer channel termination point" means the location where the customer either inputs or receives the communications;

(6) "End user" means the person who utilizes the telecommunication service. In the case of an entity, 'end user' means the individual who utilizes the service on behalf of the entity;

(7) "Home service provider" means the same as that term is defined in the Mobile Telecommunication Sourcing Act, P.L. 106-252, codified in 4 U.S.C. § 124(5);

(8) 'Mobile telecommunications service' means the same as that term is defined in 4 U.S.C. § 124(7);

(9) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, 'place of primary use' must be within the licensed service area of the home service provider;

(10) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis, either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by a charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service;

(11) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(12) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service, as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance, that is sold in predetermined units or dollars, of which the number declines with use in a known amount;

(13) "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications

channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels; and

(14) "Service address" means:

(A) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(B) If the location in subdivision (d)(14)(A) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller; and

(C) If the locations in subdivisions (d)(14)(A) and (B) are not known, the service address means the location of the customer's place of primary use.

67-8-101. Taxable transfers.

(a)(1) Except as otherwise provided by subdivision (a)(2), a tax is imposed upon the transfer by gift during any calendar year by any person of the following property, or any interest therein:

(A) When the transfer is from a resident of this state:

(i) Real property situated within this state;

(ii) Tangible personal property, except such as has an actual situs without this state;

(iii) All intangible personal property; and

(B) When the transfer is from a nonresident of this state:

(i) Real property situated within this state; and

(ii) Tangible personal property that has an actual situs within this state.

(2) No tax shall be imposed upon the transfer by gift made by any person on or after January 1, 2012; provided, however, this subdivision (a)(2) shall not be construed to absolve any taxpayer of liability for any tax duly imposed by this section, during any tax year that began prior to January 1, 2012.

(b) Property in which a person holds a qualifying income interest for life, which is included for taxation pursuant to subsection (e), shall be treated as a taxable transfer of such property by such person.

(c) The tax shall apply whether a gift is in trust or otherwise, and whether the gift is direct or indirect. The relinquishment or termination, other than by the donor's death, of any power to revest in the donor the property theretofore transferred by the donor shall be considered to be a transfer by the donor by gift of the property, subject to such power and shall be taxable under this part, and any payment of the income from the property to a beneficiary other than the donor shall be considered to be a transfer by the donor of such income by gift and shall be taxable under this part.

(d) Where a donor transfers an unqualified and unrestricted gift to a person in trust, such a transfer is a gift of a present interest where the trust instrument provides that the beneficiary has the power to demand immediate possession and enjoyment of such gift in the calendar year in which such gift is given, and contains provisions to notify such beneficiary of the right to make

such demand. Where the beneficiaries of such trust are minors, or otherwise lack the capacity to make legally binding agreements, the parent or parents, other than the settlor of such trust, may exercise the right to demand possession and enjoyment in the calendar year in which the gift is given as natural guardian for and on behalf of such minor or other such beneficiary, even though such parent or parents may be a party to the trust instrument.

(e)(1) Any disposition of all or part of a "qualifying income interest for life," as defined in § 2056(b)(7)(B)(ii) of the Internal Revenue Code, codified in 26 U.S.C. § 2056(b)(7)(B)(ii), in any property to which this subsection (e) applies shall be treated as a transfer of such property.

(2) This subsection (e) applies to any property, if a deduction was allowed with respect to the transfer of such property to the donor:

(A) Under § 67-8-315(a)(6) by reason of its incorporation of § 2056(b)(7) of the Internal Revenue Code, codified in 26 U.S.C. § 2056(b)(7); or

(B) Under § 67-8-105(a) by reason of its incorporation of § 2523(f) of the Internal Revenue Code, codified in 26 U.S.C. § 2523(f).

(3) For purposes of taxation under this subsection (e), the classification of beneficiaries provided for by § 67-8-102 shall be determined by reference to the relationship of the beneficiaries of the remainder interest named in the instrument to the decedent or person creating such remainder interest.

(f) Transfers for educational expenses or medical expenses that are not treated as a transfer of property by gift pursuant to § 2503(e) of the Internal Revenue Code, codified in 26 U.S.C. § 2503(e), shall not be treated as a transfer of property by gift for purposes of this part.

(g) Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

(h) If a person who would otherwise be the recipient of property by gift, inheritance or other gratuitous transfer disclaims all or part of the property in accordance with § 31-1-103, such disclaimer shall not cause the disclaimant to be treated as having made a taxable transfer under this section.

67-8-118. Applicability.

This part does not apply to any transfer by gift made on or after January 1, 2012.

67-8-314. Tax rates.

(a) The tax imposed upon the value of the net taxable estate of a decedent, distributable in accordance with the classification, deductions, allowances and exemptions set out in this part shall be, respectively, at the following rates:

(1) **Class A**

If net taxable estate is:	The tax is:
Not over $40,000	5.5% of the net taxable estate.
Over $40,000 but not over $240,000	$2,200, plus 6.5% of the excess over $40,000.

If net taxable estate is:	The tax is:
Over $240,000 but not over $440,000	$15,200, plus 7.5% of the excess over $240,000.
Over $440,000	$30,200, plus 9.5% of the excess over $440,000.

(2) **Class B**

If the net taxable estate is:	The tax is:
Not over $40,000	5.5% of the net taxable estate.
Over $40,000 but not over $240,000	$2,200 plus 6.5% of the excess over $40,000.
Over $240,000 but not over $440,000	$15,200 plus 7.5% of the excess over $240,000.
Over $440,000	$30,200 plus 9.5% of the excess over $440,000.

(b) In the case of a decedent dying in 2016, or in any subsequent year, no tax shall be imposed pursuant to this part; provided, however, that this subsection (b) shall not be construed to absolve liability for any tax duly levied by this section, during any year prior to January 1, 2016.

67-8-316. Exemptions.

(a)(1) For the sole purpose of determining the net taxable estate under this part and part 4 of this chapter, there shall be allowed against the net estate a maximum single exemption against that portion of the estate distributable to one (1) or more beneficiaries of Class A of an amount determined according to the following schedule:

In the case of a decedent dying:	Amount
On or after October 1, 1983, but before January 1, 1984	$275,000
In 1984	325,000
In 1985	400,000
In 1986	500,000
After 1986	600,000

and there shall be allowed against the net estate a maximum single exemption against that portion of the estate distributable to one (1) or more beneficiaries of Class B of an amount determined according to the following schedule:

In the case of a decedent dying:	Amount
On or after July 1, 1984, but before January 1, 1985	$25,000

In the case of a decedent dying:	Amount
In 1985	50,000
In 1986	100,000
In 1987	150,000
In 1988	250,000
In 1989	350,000
After 1989	600,000

(2) After 1989, no distinction shall be made in classes of beneficiaries and all beneficiaries listed in subsection (b) in Class B shall be included in Class A.

(b) For the sole purpose of determining the net taxable estate under this part and part 4 of this chapter, there shall be allowed against the net estate a maximum single exemption against that portion of the estate distributable to one (1) or more beneficiaries of an amount to be determined by the following schedule:

In the case of a decedent dying:	Amount:
On or after July 1, 1998, but before January 1, 1999	$ 625,000
In 1999	650,000
In 2000 and 2001	675,000
In 2002 and 2003	700,000
In 2004	850,000
In 2005	950,000
In 2006 through 2012	1,000,000
In 2013	1,250,000
In 2014	2,000,000
In 2015	5,000,000

(c) In the case of estates of nonresidents, the exemptions in this section shall be apportioned in the ratio that the value of the property included in the gross estate; to wit, property, the transfer of which is subject to the tax imposed bears to the value of all of the property that would have been included in the gross estate, if the decedent had been a resident of this state; provided, that, in any event, such proportionate part of the exemption shall not be less than is permitted by the Constitution of the United States.

67-8-318. Applicability of part to decedents who die in 2016 or later.

This part does not apply in the case of any decedent who died in 2016 or in any subsequent year.

67-8-409. Return and inventory of estate.

(a) Upon receipt of the statement from the clerk of the probate court pursuant to § 67-8-406(a), the commissioner shall furnish the personal representative of the estate all necessary forms for the proper inventorying and return of the property of the estate.

(b) The personal representative, or person or persons in possession of property of the decedent, shall within nine (9) months from the death of the decedent, prepare and file with the commissioner an exact copy of the will, if any, and a return of the estate for all estates in which the gross estate exceeds

the maximum single exemption allowed in § 67-8-316. The return of the decedent shall be executed under penalties of perjury upon the form prescribed by the commissioner.

(c) If, however, the gross estate of a resident decedent is less than the maximum single exemption allowed by § 67-8-316, the personal representative or person in possession of property may file a copy of decedent's will, if any, and a return of the estate, executed under penalty of perjury, upon a short form prescribed by the commissioner.

(d) An extension of twelve (12) months in which to file the return required by this section, and to pay the tax shown to be due, shall be granted; provided, that a request for extension is made in writing by the personal representative or person in possession on a form prescribed by the commissioner, or by providing a copy of the personal representative's request for an automatic extension of time to file the federal estate tax return. The request shall not be filed on the original due date of the return, but, instead, shall be attached to the return filed on or before the extended due date. Interest, as provided by § 67-1-801(a), shall attach to the unpaid amount due, from the original due date of the return until the date paid. If the taxpayer fails to file the request for extension required by this subsection (d), or if the return is not filed with payment of the tax shown to be due by the extended due date, penalty as provided by § 67-1-804 shall attach as though no extension had been granted. If the personal representative or person in possession is unable to file a complete return, the personal representative or person in possession shall include in the return such part as is within the control and/or knowledge of the personal representative or person in possession, and shall include the names of every other person holding a legal or beneficial interest in the return. Upon notice from the commissioner, such person shall in like manner file a return as to that part of the gross estate that is within such person's control and/or knowledge.

(e)(1) In the event the return and inventory required by this section are not filed until nine (9) months from the date of the death of the decedent, the tax shall be paid at the time the return is filed, unless an extension of time for the payment thereof is granted by the commissioner.

(2) The representative of the estate, in the representative's discretion, may file the return earlier and permit the commissioner to proceed with the appraisal of the estate prior to the payment of tax.

(f) Upon receipt of the return, the commissioner shall proceed with the appraisal and investigation of the estate as provided in subsections (a)-(e), and upon the completion thereof, shall make an assessment of any additional amounts found to be due, giving notice to the representative or individual preparing the return.

(g) Any other provisions of this section notwithstanding, the following shall apply, if the gross estate of a decedent does not exceed one hundred thousand dollars ($100,000):

(1) If the decedent made no gifts during the decedent's lifetime and prior to January 1, 2012, in excess of the maximum single exemption allowable free of tax under § 67-8-104, the court may waive the filing of an inheritance tax return upon a statement to such effect by the personal representative or person in possession executed under penalty of perjury. It shall not be necessary for the clerk to forward a copy of the statement to the commissioner, unless requested; and

(2) If the decedent made one (1) or more gifts in excess of the maximum exemption allowable free of tax under § 67-8-104 prior to January 1, 2012, the personal representative or person in possession may provide relevant information concerning such gifts upon a short form provided by the commissioner without the necessity of reporting otherwise, unless requested by the commissioner.

67-8-425. Applicability of part to decedents who die in 2016 or later.

This part does not apply in the case of any decedent who died in 2016 or in any subsequent year.

67-8-507. Applicability of part to decedents who die in 2016 or later.

This part does not apply in the case of any decedent who died in 2016 or in any subsequent year.

67-8-605. Administrative and enforcement procedures.

To the extent not inconsistent with §§ 67-8-603 and 67-8-604, the administrative and enforcement provisions of the inheritance tax law, as stated in parts 3-5 of this chapter, shall be applicable to this part in the event the original transferor is not alive at the time of the transfer. Notwithstanding § 67-8-118, if the original transferor is alive at the time of the transfer, the administrative and enforcement provisions of the gift tax law, as stated in part 1 of this chapter, shall be applicable to this part. Any other administrative or enforcement provision relating to the duty and power of the commissioner of revenue to collect state taxes shall be applicable to this part to the extent not inconsistent with it.

68-1-108. Reports of claims data by licensed hospitals — Penalties — Waiver — Licensure — Civil liability — Annual report.

(a) Each licensed hospital, or the hospital's designated entity shall report all claims data found on the UB-92 form or a successor form on every inpatient and outpatient discharge to the commissioner of health. A hospital shall report the claims data to the commissioner at least quarterly. After receiving the claims data, the commissioner shall promptly make the data available for review and copying by the Tennessee Hospital Association (THA) who shall use the data strictly for its own internal purposes and for internal purposes of its members. No information shall be made available to the public by either the commissioner or the THA that reasonably could be expected to reveal the identity of any patient. The claims data reported to the commissioner under this section are confidential and not available to the public until the commissioner processes and verifies the data. The commissioner shall prescribe conditions under which the processed and verified data are available to the public.

(b) A licensed hospital shall pay to the commissioner a civil penalty of five cents (5¢) for each day the claims data discharge report is delinquent. A claims data report is delinquent if the commissioner does not receive it before sixty (60) days after the end of the quarter. If the commissioner receives the report in incomplete form, the commissioner shall notify the hospital and provide fifteen (15) additional days to correct the error. The notice shall provide the

hospital an additional fifteen (15) days to complete the form and return it to the commissioner prior to the imposition of any civil penalty. The maximum civil penalty for a delinquent report is ten dollars ($10.00) for each discharge record. The commissioner shall issue an assessment of the civil penalty to the hospital. The hospital has a right to an informal conference with the commissioner, if the hospital requests such conference within thirty (30) days of receipt of the assessment. After the informal conference or, if no conference is requested, after the time for requesting the informal conference has expired, the commissioner may proceed to collect the penalty by setting the penalty off against funds owed to the hospital or by instituting litigation.

(c) In its request for an informal conference, the hospital may request the commissioner to waive the penalty. The commissioner may waive the penalty in cases of an act of God or other acts beyond the control of the hospital. Waiver of the penalty is in the sole discretion of the commissioner. None of these proceedings is subject to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) A hospital licensed pursuant to chapter 11, part 2 of this title shall, as a condition of licensure, continue to complete and submit annually the report of hospital statistics required by § 68-11-310 and regulations promulgated pursuant to that section.

(e) No person or entity, including the THA, may be held liable in any civil action with respect to any report or disclosure of information made under this section, unless the person or entity has knowledge of any falsity of the information reported or disclosed.

(f) On or before March 1 of each year, the department of health shall submit to the governor, the speaker of the senate, the speaker of the house of representatives, the health and welfare committee of the senate, and the health and human resources committee of the house of representatives a report with de-identified aggregate claims data on every inpatient and outpatient discharge that includes coded drug poisonings as reported for the calendar year two (2) years prior to the current year by licensed hospitals to the commissioner of health pursuant to this chapter. The department shall also publish the data submitted under this subsection (f) on the department's Internet web site.

68-1-125. Funds for in-home visitation programs — Emphasis on evidence-based programs — Report on findings.

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

(1) "Evidence-based" means a program or practice that meets the following requirements:

(A) The program or practice is governed by a program manual or protocol that specifies the nature, quality, and amount of service that constitutes the program; and

(B) Scientific research using methods that meet high scientific standards, evaluated using either randomized controlled research designs, or quasi-experimental research designs with equivalent comparison groups. The effects of such programs must have demonstrated using two (2) or more separate client samples that the program improves client outcomes central to the purpose of the program;

(2) "In-home visitation" means a service delivery strategy that is carried out in the homes of families of children from conception to school age that

provides culturally sensitive face-to-face visits by nurses, other professionals, or trained and supervised lay workers to promote positive parenting practices, enhance the socioemotional and cognitive development of children, improve the health of the family, and empower families to be self-sufficient. "In-home visitation" does not include any medicaid funded disease management or case management services or programs which may include home visits;

(3) "Pilot program" means a temporary research-based or theory-based program or project that is eligible for funding from any source to determine whether or not evidence supports its continuation beyond the fixed evaluation period. A pilot program must provide for and include:

(A) Development of a program manual or protocol that specifies the nature, quality, and amount of service that constitutes the program; and

(B) Scientific research using methods that meet high scientific standards for evaluating the effects of such programs must demonstrate on at least an annual basis whether or not the program improves client outcomes central to the purpose of the program;

(4) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based; and

(5) "Theory-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, may have anecdotal or case-study support, and has potential for becoming a research-based program or practice.

(b)(1) With the long-term emphasis on procuring services whose methods have been measured, tested, and demonstrated to improve client outcomes, the department of health, and any other state agency that administers funds related to in-home visitation programs shall ensure that fifty percent (50%) of state-appropriated funds expended for in-home visitation services are used for evidence-based models during fiscal year 2012-2013 and that seventy-five percent (75%) of such funds are used for evidence-based programs during fiscal year 2013-2014 and each subsequent fiscal year thereafter.

(2) With the goal of identifying and expanding the number and type of available evidence-based programs, the department shall continue the ongoing research and evaluation of sound, theory-based and research-based programs and to that end the department may engage in and fund pilot programs as defined in this section.

(c) The department shall include in any contract with a provider of services related to in-home visitation programs a provision requiring that the provider shall set forth a means to measure the outcome of the services. The measures must include, but not be limited to, the number of people served, the type of services provided, and the estimated rate of success of the population served.

(d) The department of health, in conjunction with a representative of the Tennessee commission on children and youth, and with ongoing consultation of appropriate experts and representatives of relevant providers who are appointed by the commissioner of health to provide such consultation, shall determine which of its current programs are evidence-based, research-based and theory-based, and shall provide a report of those findings, including an explanation of the support of those findings, to the governor, the general welfare, health and human resources committee of the senate, the children and

family affairs committee of the house of representatives, and the judiciary committee of the senate by no later than January 1 of each year. The department of health shall also provide in its report the measurements of the individual programs, as set forth in subsection (c).

68-1-1202. Duties of executive director.

It is the duty and responsibility of the executive director of the program to:

(1) Assist local education agencies (LEAs) in the development, implementation and coordination of student health policies with regard to first aid emergencies, medications, acute illnesses and infection control;

(2) Provide LEAs with information, advice and technical assistance pertaining to student and parental instruction on topics related to health and wellness, including, but not necessarily limited to:

(A) Family life education;

(B) Sexually transmitted diseases;

(C) Substance abuse;

(D) Nutrition;

(E) Infection control; and

(F) Depression;

(3) Assist LEAs in the provision of student health services, including, but not necessarily limited to:

(A) Medical screenings;

(B) Acute care;

(C) Health opinions for teacher referrals;

(D) Child abuse assessments;

(E) Counseling for students with chronic diseases; and

(F) Counseling for students who are engaging in, or who may be at risk of engaging in, behavioral patterns that jeopardize physical or mental health and well-being;

(4) Assist and encourage LEAs in developing and implementing efficient and effective policies and procedures to ensure parental notification, knowledge and endorsement of school health services and programs, including, but not limited to, efficient and effective policies and procedures to require and obtain prior parental consent for student participation in the health services and programs offered by each LEA; to fully encourage and maximize parental interest and involvement in all matters pertaining to the physical and mental health and well-being of students; and to ensure full parental access to the school health records of their children;

(5) Promote the exchange of information and referrals between LEAs and physicians, health care professionals and sources of health care financial assistance;

(6) Assist the department of education in planning, developing and implementing the program of family life education technical support and assistance, as required by § 49-1-205;

(7) Assist the department of mental health and substance abuse services in providing suitable programs of alcohol and drug education and prevention for LEAs, as required by § 33-10-103;

(8) Report, on or before December 31 each year, to the governor, to each member of the general assembly, and to each member of the state board of education concerning implementation of this section, and also concerning issues and recommendations relating to the physical and mental health and

well-being of the state's public school students;

(9) Promote and encourage awareness and involvement of parents, civic groups, community organizations, private businesses and religious institutions on matters pertaining to the physical and mental health and well-being of the state's public school students;

(10) Engage in such other activities to improve and safeguard physical and mental health and well-being as may be necessary in order to attain the highest level of school attendance, to promote excellence of academic performance and achievement, and to significantly reduce school dropout rates;

(11)(A)(i) Encourage and support public and nonprofit agencies in the development of model rural and urban comprehensive school health programs through a system of competitive, state administered grants.

(ii) The availability of grants during any fiscal year shall be subject to the ability of the executive director to raise sufficient funds from other than state sources, including, but not limited to, federal sources and private foundations. To qualify for receipt of any such competitive, state administered grant, each model comprehensive school health program must provide preventive and primary health care services designed to attain the goals set forth in § 68-1-1201(c), and must also conform to the policies set forth in § 68-1-1205. The staff of each model program must also include, at a minimum, a certified pediatric or family nurse practitioner with adequate physician backup, and, when possible, should also include a certified health education specialist and a master social worker with adequate psychiatric backup. Each model program must also form a local advisory committee that includes, but is not necessarily limited to, representatives of the LEA and the local offices of the departments of health and children's services. Each advisory committee shall strongly encourage active participation of parents and community-based providers of children and adolescent services. Each advisory committee shall undertake appropriate activities to encourage coordination of services and continued support for the model program. Each model program shall adopt and implement policies and procedures to assure parental consent, confidentiality, quality assurance and program evaluation;

(B)(i) Organize and convene, acting jointly with the commission on children and youth, an interdepartmental committee to:

(a) Develop policies, procedures, and criteria to govern selection of model comprehensive school health programs;

(b) Undertake appropriate activities to solicit grant applications from qualified public and nonprofit agencies;

(c) Develop policies, procedures and criteria for ensuring that grant recipients fully utilize all available sources of federal, state and local financial assistance and assistance from private foundations; and

(d) Design and implement policies to assure collection and analysis of data needed to evaluate the efficiency and effectiveness of individual model programs as well as the efficiency and effectiveness of the grant program;

(ii) The interdepartmental committee shall include representation by the departments of mental health and substance abuse services, intellectual and developmental disabilities, education, children's services,

labor and workforce development, the governor's council on physical fitness and health, the governor's drug-free task force, and the division of health access within the department of health, and shall also include one (1) citizen member who shall be a parent of a school-aged child, the citizen member to be appointed by the executive director of the public school nurse program, who, prior to making the appointment, shall receive recommendations pertaining to the appointment from interested persons and groups; and

(12) Make available to the department of education educational materials appropriate for distribution so that information about meningococcal disease and the effectiveness of vaccination against meningococcal disease can be provided to parents and guardians. This information shall include the causes, symptoms, and the means by which meningococcal disease is spread and the places where parents and guardians may obtain additional information and vaccinations for their children. The department of education may provide this information, at its discretion, electronically or on its web site. Nothing in this subdivision (12) shall be construed to require the department of education to provide or purchase vaccine against meningococcal disease.

68-3-502. Death registration.

(a)(1) A death certificate for each death that occurs in this state shall be filed with the office of vital records or as otherwise directed by the state registrar within five (5) days after death and prior to final disposition, or as prescribed by regulations of the department. It shall be registered, if it has been completed and filed in accordance with this section.

(2) If the place of death is unknown but the body is found in this state, the death certificate shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by the date the body was found.

(3) When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where it is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or airspace or in a foreign country and the body is first removed from the conveyance in this state, the death shall be registered in this state; but the certificate shall show the actual place of death insofar as can be determined.

(b) The funeral director, or person acting as funeral director, who first assumes custody of the dead body shall file the death certificate. The funeral director shall obtain the personal data from the next of kin or the best qualified person or source available, and shall obtain the medical certification from the person responsible for medical certification, as set forth in subsection (c).

(c)(1) The medical certification shall be completed, signed and returned to the funeral director by the physician in charge of the patient's care for the illness or condition that resulted in death within forty-eight (48) hours after death, except when inquiry is required by the county medical examiner. In the absence of the physician, the certificate may be completed and signed by another physician designated by the physician or by the chief medical officer

of the institution in which the death occurred. In cases of deaths that occur outside of a medical institution and are either unattended by a physician or not under hospice care, the county medical examiner shall investigate and certify the death certificate when one (1) of the following conditions exists:

(A) There is no physician who had attended the deceased during the four (4) months preceding death, except that any physician who had attended the patient more than four (4) months preceding death may elect to certify the death certificate if the physician can make a good faith determination as to cause of death and if the county medical examiner has not assumed jurisdiction; or

(B) The physician who had attended the deceased during the four (4) months preceding death communicates, orally or in writing, to the county medical examiner that, in the physician's best medical judgment, the patient's death did not result from the illness or condition for which the physician was attending the patient.

(2) Sudden infant death syndrome shall not be listed as the cause of death of a child, unless the death meets the definition set forth in chapter 1, part 11 of this title.

(3)(A) In addition to this section, prior to signing medical certification of the cause of death, the physician, chief medical officer or medical examiner shall require screening x-rays of the skull, long bones and chest of any child who was not subject to an autopsy and who died of unknown causes or whose death is suspected to be from sudden infant death syndrome.

(B) The physician, chief medical officer or medical examiner who orders the x-ray examinations pursuant to this section shall be entitled to a reasonable fee as set by the commissioner of health for the costs of the x-ray examinations, to be paid from the funds allotted to the postmortem examiners program in the department of health.

(d) When inquiry is required, the medical examiner shall determine the cause of death and shall complete and sign the medical certification within forty-eight (48) hours after taking charge of the case. On or before January 1, 2013, the commissioner of health shall establish by rule a protocol for use by medical examiners in cases involving death resulting from opiate, illegal or illicit drug overdose, that requires an appropriate report under § 38-7-108. The commissioner is authorized to promulgate such rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(e) If the cause of death cannot be determined within forty-eight (48) hours after death, the medical certification shall be completed as provided by regulation. The attending physician or medical examiner shall give the funeral director, or person acting as funeral director, notice of the reason for the delay; and final disposition of the body shall not be made until authorized by the attending physician or medical examiner.

(f) If the death occurs in a military or veteran's hospital or in a state veteran's home in the state of Tennessee, the death certificate may be signed by the attending physician who holds a license in another state.

(g) In the event a person is dead on arrival at a military or veteran's hospital or at a state veteran's home in the state of Tennessee, the death certificate may be signed by a physician who is employed by one (1) of these institutions and who holds a license in another state.

(h) The form for a certificate of death shall contain a place for the recording of the deceased's social security number and the social security number shall

be recorded on the certificate and on any forms necessary to prepare the certificate.

68-5-402. Cooperation of departments.

All state departments, including the department of human services, the department of mental health and substance abuse services, the department of intellectual and developmental disabilities, and county and municipal health departments and education departments, shall cooperate with the department in carrying out this part.

68-5-507. Screening program for critical cyanotic congenital heart disease for newborns.

On or before January 1, 2013, the genetic advisory committee is directed to develop a screening program for critical cyanotic congenital heart disease for the panel of screens authorized for newborns under § 68-5-504 that makes use of pulse oximetry.

68-11-201. Part definitions.

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

(1) "Adult care home" means a single family residence licensed pursuant to this part in which twenty-four-hour residential care, including assistance with activities of daily living, is provided in a homelike environment to no more than five (5) adults who are elderly or have a disability. Adult care homes shall be licensed as Level 2 homes, and meet standards prescribed in this part and in regulations promulgated by the board pursuant to this part. "Adult care home" does not include any facility otherwise licensed by the department of mental health and substance abuse services;

(2) "Adult care home provider" means a person twenty-one (21) years of age or older who owns and operates an adult care home and meets all education, training and experience requirements prescribed in this part and in regulations promulgated by the board pursuant to § 68-11-209. An adult care home provider may serve up to five (5) adults who are elderly or have a disability and who are unrelated to the adult care home provider by blood or marriage. An adult care home provider may choose to serve one (1) or more adult members of their own family if those adult members are elderly or have a disability, in which case, the adult care home provider shall be required to serve at least two (2) additional adults who are elderly or have a disability if those additional adults are unrelated to the adult care home provider by blood or marriage, for a total of no more than five (5) residents in the adult care home who are elderly or have a disability. An adult care home provider shall live in the adult care home or employ a resident manager to live in the residence;

(3) "Ambulatory surgical treatment center" means any institution, place or building devoted primarily to the maintenance and operation of a facility for the performance of surgical procedures or any facility in which a medical or surgical procedure is utilized to terminate a pregnancy. Such facilities shall not provide beds or other accommodations for the stay of a patient to exceed twelve (12) hours duration; provided, that the length of stay may be extended for an additional twelve (12) hours in the event such stay is deemed

necessary by the attending physician, the facility medical director, or the anesthesiologist for observation or recovery, but in no event shall the length of stay exceed twenty-four (24) hours. No patient for whom a medical or surgical procedure is utilized to terminate a pregnancy shall stay at such a facility for a period exceeding twelve (12) hours. Individual patients shall be discharged in an ambulatory condition without danger to the continued well-being of the patients or shall be transferred to a hospital. Excluded from this definition are the private physicians' and dentists' office practices, except those private physicians' and dentists' offices in which a substantial number of medical or surgical pregnancy terminations are performed;

(4) The purpose of assisted-care living facility services is to promote the availability of residential alternatives to institutional care for persons who are elderly or who have disabilities in the least restrictive and most homelike environment appropriate. Assisted-care living facility services shall be driven by a philosophy that emphasizes personal dignity, respect, autonomy, independence and privacy and should, to the maximum extent appropriate, enhance the person's ability to age in place, while also ensuring that the person's medical and other needs are safely and effectively met;

(A) "Assisted-care living facility" means a facility, building, establishment, complex or distinct part thereof that accepts primarily aged persons for domiciliary care and services as described in this section;

(B) An assisted-care living facility shall provide on site to its residents room and board and non-medical living assistance services appropriate to each resident's needs, such as assistance with bathing, dressing, grooming, preparation of meals and other activities of daily living;

(C) Subject to limitations specified in this subdivision (4), an assisted-care living facility may also provide on site to its residents administration of medications that are typically self-administered, excluding intravenous injections, except as permitted pursuant to subdivisions (5)(D) and (E), and all other medical services as prescribed by each resident's treating physician that could be provided to a private citizen in the person's own home by an appropriately licensed or qualified health care professional or entity, such as part-time or intermittent nursing care, various therapies including physical, occupational and speech therapy, podiatry care, medical social services, medical supplies other than drugs and biologicals, durable medical equipment and hospice services;

(i) Such medical services that may be provided in the assisted-care living facility must be provided by appropriately licensed or qualified staff or contractors of the assisted-care living facility, a licensed home care organization, another appropriately licensed entity or by the appropriately licensed staff of a nursing home, acting within the scope of their respective licenses;

(ii) Nothing in this subdivision (4) shall authorize assisted-care living facilities to provide medical services to assisted-care living facility residents if the services are reimbursable under the federal medicare program;

(iii) Oversight of medical services provided by licensed health care professionals and entities in an assisted-care living facility shall be provided in a manner that is consistent with the oversight of services provided by the licensed health care professionals or entities in private residential settings as defined through rules and regulation promul-

gated by the applicable licensing board and as may be further defined through rules and regulations promulgated by the board for licensing health care facilities pursuant to this section to ensure the quality of care received;

(iv) The assisted-care living facility shall be responsible for the development of a plan of care that ensures the safety and well-being of the resident's living environment and for the provision of the resident's health care needs. Furthermore, any licensed health care professional or entity that is delivering services to the resident in the assisted-care living facility shall be available to assist in the plan of care development and to assess, plan, monitor, direct and evaluate the resident's care in conjunction with the resident's physician and in cooperation with the assisted-care living facility;

(v) Assisted-care living facilities shall be subject to licensure and must meet such requirements and minimum standards as the board prescribes in regulations pursuant to § 68-11-209. In the regulations, the board shall specifically address the needs of residents who may receive medical services provided pursuant to this part, including documentation of physician orders and nursing and treatment records of all medical services provided in the assisted-care living facility in an appropriate medical record maintained by the facility, regardless of whether the services are rendered by appropriately licensed or qualified staff of the assisted-care living facility or by arrangement with an outside entity;

(vi) The board shall also, in consultation with the state fire marshal, include in such regulations fire safety standards that afford reasonable protection to assisted-care living facility residents without unduly disturbing the residential atmosphere to which they are accustomed;

(5) "Assisted-care living facility resident" means primarily an aged person who requires domiciliary care and who, upon admission to the facility, if not ambulatory, is capable of self-transfer from the bed to a wheelchair or similar device and is capable of propelling the wheelchair or similar device independently. Such resident may require one (1) or more of the services described in subdivision (4);

(A) An assisted-care living facility resident shall be transferred to a licensed hospital, licensed nursing home or other appropriate setting if the resident, the appropriate person with legal authority to make such decisions on behalf of the resident, the assisted-care living facility administrator or the resident's treating physician determine that the services available to the resident in the assisted-care living facility, including medical services provided pursuant to subdivision (4)(C), will not safely and effectively meet the resident's needs. This subdivision (5)(A) shall not be interpreted as limiting the authority of the board or the department to require the transfer or discharge of individuals to different levels of care as required by statute when the resident's needs cannot be safely and effectively met by care provided in the assisted-care living facility, including medical services provided pursuant to subdivision (4)(C);

(B) Subject to limitations specified in subdivisions (5)(C) and (D), an assisted-care living facility may admit and permit the continued stay of a person who meets medical eligibility, i.e., level of care requirements for nursing facility services as defined by the bureau of TennCare, so long as

the person's treating physician certifies that the person's needs can be safely and effectively met by care provided in the assisted-care living facility, including medical services provided pursuant to subdivision (6)(C), and the assisted-care living facility can provide assurance of timely evacuation in a fire or emergency;

(C) Assisted-care living facilities shall not admit nor permit the continued stay of:

(i) A person requiring treatment for a stage III or IV decubitus ulcer or with exfoliative dermatitis;

(ii) A person who requires continuous nursing care. For purposes of this subdivision (5)(C)(ii), "continuous nursing care" means round-the-clock observation, assessment, monitoring, supervision or provision of nursing services that can only be performed by a licensed nurse;

(iii) A person who has an active, infectious and reportable disease in a communicable state that requires contact isolation;

(iv) A person whose verbal or physical aggressive behavior poses an imminent physical threat to the person or others, based not on the person's diagnosis, but on the behavior of the person;

(v) A person requiring physical or chemical restraints, not including psychotropic medications prescribed for a manageable mental disorder or condition; or

(vi) A person whose needs cannot be safely and effectively met in the assisted-care living facility;

(D) Assisted-care living facilities shall not admit, but may permit the continued stay in the facility of, existing residents who require the treatments specified in subdivisions (5)(D)(i)-(iv) only on an intermittent basis or who are receiving hospice care from an appropriately licensed provider, as permitted pursuant to subdivision (5)(E). If the treatments are intermittent and extend beyond twenty-one (21) days, no more than two (2) additional twenty-one-day extensions may be granted by the assisted-care living facility; provided, that the resident's treating physician certifies that the person's intermittent need for the treatment can be safely and effectively met by care provided in the assisted-care living facility, including medical services provided pursuant to subdivision (4)(C). Assisted-care living facilities shall not permit the continued stay in the facility of existing residents who require the treatments on an ongoing, rather than intermittent basis, unless a resident who requires the treatments on an ongoing basis does not qualify for nursing facility level of care, in which case a waiver may be granted by the board for licensing health care facilities allowing the person to remain in the assisted-care living facility. A person who requires any of the treatments specified in subdivisions (5)(D)(i)-(iv) and who is able to self-care for the person's condition without the assistance of facility personnel or other appropriately licensed entity shall not be subject to these limitations and may be admitted or permitted to continue as a resident in an assisted-care living facility:

(i) Nasopharyngeal or tracheotomy aspiration;

(ii) Nasogastric feedings;

(iii) Gastrostomy feedings; or

(iv) Intravenous therapy or intravenous feedings;

(E) Notwithstanding any other provision of this subdivision (5), any assisted-care living facility resident, including residents and new admis-

sions who have qualified for hospice care prior to admission to the assisted-care living facility, shall be able to receive hospice care services and continue as a resident of the assisted-care living facility as long as the resident's treating physician certifies that hospice care can be appropriately provided at the facility. In addition, the hospice provider and the assisted-care living facility are jointly responsible for the development of a plan of care that ensures the safety and well-being of the resident's living environment and for the provision of the resident's health care needs. Furthermore, the hospice provider shall be available to assess, plan, monitor, direct and evaluate the resident's palliative care in conjunction with the resident's physician and in cooperation with the assisted-care living facility;

(F) The board for licensing health care facilities shall not promulgate any regulation, make any determination, issue any waiver, take any action or refuse to take action that has the effect of permitting an assisted-care living facility to provide care to persons or to admit or permit the continued stay of such persons except in accordance with this subdivision (5);

(6) "Assistive technology practitioner (ATP)" means service providers primarily involved in evaluating the consumer's needs and training in the use of a prescribed wheeled mobility device;

(7) "Assistive technology supplier (ATS)" means service providers involved in the sale and service of commercially available wheeled mobility devices;

(8) "Birthing center" means any institution, facility, place or building devoted exclusively or primarily to the provision of routine delivery services and postpartum care for mothers and their newborn infants;

(9) "Board," unless otherwise indicated, means the board for licensing health care facilities;

(10) "Commissioner" means the commissioner of health, the commissioner's authorized representative, or in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner of health;

(11) "Council" means, unless otherwise indicated, the state public health council;

(12) "Dentist" means a doctor of dental science who is duly licensed to practice dentistry in this state;

(13) "Department" means the department of health;

(14) "Evaluation" means the determination and documentation of the physiological and functional factors that impact the selection of an appropriate seating and wheeled mobility device;

(15) "Facility" means any institution, place or building providing health care services that is required to be licensed under this chapter;

(16) "HIV resident" means any individual who is in need of domiciliary care and who has been diagnosed and certified in writing by a licensed physician as being human immunodeficiency virus (HIV) positive;

(17)(A) "Home care organization" provides home health services, home medical equipment services, professional support services or hospice services to patients on an outpatient basis in either their regular or temporary place of residence. An entity is a home care organization if it does any of the following:

(i) Holds itself out to the public as providing home health services, home medical equipment services or hospice services;

(ii) Contracts or agrees to deliver home health services, home medical equipment services or hospice services;

(iii) Accepts, in the organization's name, physician orders for home health services, home medical equipment services or hospice services;

(iv) Accepts responsibility for the delivery of home health services, home medical equipment services or hospice services; or

(v) Contracts to provide professional support services with the state agency financially responsible for services to individuals with mental intellectual or developmental disabilities;

(B) The absence of one (1) or more of the factors in (17)(A)(i)-(v) does not necessarily exclude the entity from the meaning of this definition;

(C) If the entity is not included within the terms of this definition, the entity shall not be considered to be a home care organization solely because it offers to refer individuals who are available for employment by consumers through personal contract or individual agreement to deliver home health services, home medical equipment services, professional support services or hospice services that are either within the scope of the individual's professional license or is a homemaker service, and which service must be delivered independently of the agency or organization that made the referral;

(D) The board shall establish, by rules, standards of authorization for a home care organization to be qualified to provide home health services, home medical equipment services or hospice services. No person shall provide a designated category of services unless appropriately authorized by the board. Licensure surveys of a home care organization shall be specific to the type of service categories for which the home care organization has been authorized. The standards for hospice shall include requirements for a medically directed team of professionals and volunteers to create a program of care to meet the medical, nursing, social, psychological, emotional, spiritual and other special needs that are experienced in the final stages of illness, during dying and bereavement for families following the death of the patient. The standards for licensure of professional support services shall be the same as those applicable to personal support services agencies licensed under title 33; provided, that the department adopts by rule additional standards specifically for professional support services after consultation with the commissioner of mental health and substance abuse services. In regulating home care organizations authorized to provide professional support services, the department shall rely on the review of the organizations conducted by the department of mental health and substance abuse services, and the survey by the department of the organization shall not duplicate the reviews conducted by the department of mental health and substance abuse services;

(18)(A) "Home for the aged" means a home represented and held out to the general public as a home which accepts primarily aged persons for relatively permanent, domiciliary care. A home for the aged provides room, board and personal services to four (4) or more nonrelated persons;

(B) The residential home for the aged shall be subject to licensure and meet such requirements and minimum standards as the board shall

prescribe in regulations pursuant to § 68-11-209. The board shall, after consultation with the state fire marshal, include in the regulations fire safety standards that afford reasonable protection to homes for the aged residents without unduly disturbing the residential atmosphere to which they are accustomed. No license to operate a residential home for the aged shall be issued if the home is not approved by the local zoning, building and fire safety authorities to provide residential custodial care. The board shall employ one (1) or more fire safety experts who shall be annually certified to be qualified in fire safety by the state fire marshal. Notwithstanding approval of a home by the local authorities, the board shall consider any recommendation of its staff member or members thus certified to be qualified in deciding whether an application for a license to operate a residential home for the aged ought to be granted. In the absence of local authority and when deemed necessary by the board, approval of the home by the board's certified fire safety expert is required. The board has sole authority to issue and revoke licenses for homes for the aged. The board has the authority to establish fees. The board has the authority to determine whether or not any institution or agency comes within the scope of this part, and its decisions in that regard shall be subject only to such rights of review as the courts exercise with respect to administrative actions;

(19) "Home for the aged resident" means a person who is ambulatory and who requires permanent, domiciliary care but will be transferred to a licensed hospital, a licensed assisted living facility, or a licensed nursing home when health care services are needed that must be provided in those other facilities;

(20) "Home health service" means a service provided an outpatient by an appropriately licensed health care professional or an appropriately qualified staff member of a licensed home care organization in accordance with orders recorded by a physician, that includes one (1) or more of the following:

(A) Skilled nursing care, including part-time or intermittent supervision;

(B) Physical, occupational or speech therapy;

(C) Medical social services;

(D) Home health aide services;

(E) Medical supplies and medical appliances, other than drugs and pharmaceuticals, when provided or administered as part of, or through the provision of, the services described in subdivisions (17)(A)-(D);

(F) Any of the items and services listed in subdivisions (20)(A)-(E) that are provided on an outpatient basis under arrangements made by the home care organization at a hospital, nursing home facility or rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in the individual's home, or that are furnished at such facility while the individual is there to receive any such item or service, but not including transportation of the individual in connection with any such item or service;

(G)(i) For the purpose of defining "home health service" only, "physician" also includes a person who is licensed to practice medicine or osteopathy in a state contiguous to Tennessee, to the extent the physician has referred a patient residing in this state to a home care

organization licensed under this part; provided, that nothing in this subdivision (20)(G) shall be construed as authorizing a non-resident physician or osteopath to practice in violation of § 63-6-201 or § 63-9-104, respectively. A physician who is not licensed to practice medicine or osteopathy in this state shall not refer a patient who is a resident of this state to a home care organization licensed under this part, unless the physician has previously provided treatment to the patient and has had an ongoing physician-patient relationship with the person for whom the referral is made;

(ii) For the purposes of defining "home health service" only, "physician" includes a podiatrist licensed under title 63, chapter 3; provided, however, that any home health service ordered is a follow-up to treatment provided to the patient by the podiatrist;

(H) Notwithstanding the provisions of any other law to the contrary, a licensed practical nurse employed by a home care organization, acting pursuant to the written order of a licensed physician, may provide respiratory care to a home care organization patient, except for the maintenance and management of life support equipment;

(I) Home- and community-based services provided to individuals through the department of education or a local education agency (LEA) and home- and community-based services provided to individuals by a county health department are not home health services for purposes of this chapter; and

(J) "Home health service" does not include services provided in the home by a sole practice therapist, when such services are within the scope of the therapist's license and incidental to services provided by the sole practice therapist in the office. For purposes of this subdivision (20)(J), a sole practice therapist means a therapist licensed under title 63, chapter 13 or 17, who is in sole practice and not in a business arrangement with any other therapist or other healthcare provider. Nothing in this subdivision (20)(J) shall exclude a sole therapist from the requirement of this section relative to professional support services;

(21)(A) "Home medical equipment" means medical equipment intended for use by the consumer, including, but not limited to, the following:

(i) A device, instrument, apparatus, machine, or other similar article whose label bears the statement: "Caution: Federal law requires dispensing by or on the order of a physician.";

(ii) Ambulating assistance equipment;

(iii) Mobility equipment;

(iv) Rehabilitation seating;

(v) Oxygen care equipment and oxygen delivery systems;

(vi) Respiratory care equipment and respiratory disease management devices;

(vii) Rehabilitation environmental control equipment;

(viii) Ventilators;

(ix) Apnea monitors;

(x) Diagnostic equipment;

(xi) Feeding pumps;

(xii) A bed prescribed by a physician to treat or alleviate a medical condition;

(xiii) Transcutaneous electrical nerve stimulator;

(xiv) Sequential compression devices; and

(xv) Neonatal home phototherapy devices;

(B) "Home medical equipment" does not include:

(i) Medical equipment used or dispensed in the normal course of treating patients by hospitals and nursing facilities as defined in this part, other than medical equipment delivered or dispensed by a separate unit or subsidiary corporation of a hospital or nursing facility or agency that is in the business of delivering home medical equipment to an individual's residence;

(ii) Upper and lower extremity prosthetics and related orthotics;

(iii) Canes, crutches, walkers, and bathtub grab bars;

(iv) Medical equipment provided through a physician's office incident to a physician's service;

(v) Equipment provided by a pharmacist which is used to administer drugs or medicine that can be dispensed only by a pharmacist; or

(vi) Enteral and parenteral equipment provided by a pharmacist;

(22) "Home medical equipment provider" means any person who provides home medical equipment services;

(23) "Home medical equipment services" means a service provided by any person who sells or rents home medical equipment for delivery to the consumer's place of residence in this state, regardless of the location of the home medical equipment provider. For purposes of this subdivision (23), "delivery to the consumer's place of residence" includes shipment by the home medical equipment provider to the consumer's residence or shipment to a predetermined location with the understanding that the home medical equipment shall be picked up by the consumer or the consumer's representative;

(24) "Hospice patient" means only a person who has:

(A) Been diagnosed as terminally ill;

(B) Been certified by a physician, in writing, to have an anticipated life expectancy of six (6) months or less; and

(C) Voluntarily requested admission to, and been accepted by a licensed hospice;

(25) "Hospice services" means a coordinated program of care, under the direction of an identifiable hospice administrator, providing palliative and supportive medical and other services to hospice patients and their families in the patient's regular or temporary place of residence. Hospice services shall be available twenty-four (24) hours a day, seven (7) days a week pursuant to the patient's hospice plan of care. Notwithstanding any other law, a licensed hospice may provide services to a person who is not a hospice patient; provided, that services to a non-hospice patient shall be limited to palliative care only. Hospice services may be provided in an area designated by a hospital for exclusive use by a home care organization certified as a hospice provider to provide care at the hospice inpatient or respite level of care in accordance with the hospice's medicare certification. Admission to the hospital is not required in order for a patient to receive hospice services, regardless of the patient's length of stay. The designation by a hospital of a portion of its facility for exclusive use by a home care organization to provide hospice services to its patients shall not:

(A) Alter the license to bed complement of such hospital; or

(B) Result in the establishment of a residential hospice;

(26)(A) "Hospital" means any institution, place, building or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the use, in connection with the services of a physician or dentist, of one (1) or more nonrelated persons who may be suffering from deformity, injury or disease or from any other condition for which nursing, medical or surgical services would be appropriate for care, diagnosis or treatment;

(B) "Hospital" does not include any hospital or institution, operated by the department of mental health and substance abuse services or the department of intellectual and developmental disabilities, specially intended for use in the diagnosis, care and treatment of those suffering from mental illness, intellectual disabilities, convulsive disorders, or other abnormal mental conditions;

(C) All hospitals, including such hospitals as are strictly maternity hospitals, shall come within this part;

(D) The board has the authority to determine whether or not any institution or agency comes within the scope of this part, and its decisions in that regard shall be subject only to such rights of review as the courts exercise with respect to administrative actions;

(E) It is unlawful for any institution, place, building or agency to be called a hospital if it is not a hospital as defined in this section;

(27) "Hospitalization" in a hospital means the reception and care of any person for a continuous period longer than twenty-four (24) hours, for the purpose of giving advice, diagnosis, nursing service or treatment bearing on the physical health of such persons, and maternity care involving labor and delivery for any period of time;

(28)(A) "Nursing home" means any institution, place, building or agency represented and held out to the general public for the express or implied purpose of providing care for one (1) or more nonrelated persons who are not acutely ill, but who do require skilled nursing care and related medical services;

(B) "Nursing home" shall be restricted to facilities providing skilled nursing care and related medical services to individuals, beyond the basic provision of food, shelter and laundry, admitted because of illness, disease or physical infirmity for a period of not less than twenty-four (24) hours per day;

(29) "Oral surgeon" means a dentist who has been certified by the Tennessee board of dentistry to perform oral surgery;

(30)(A) "Outpatient diagnostic center," except as otherwise limited in this subdivision (30), means any facility providing outpatient diagnostic services, unless the outpatient diagnostic services are provided as the services of another licensed healthcare institution that reports such outpatient diagnostic services on its joint annual report, or the facility is otherwise excluded from this subdivision (30). As used in this subdivision (30), "outpatient diagnostic services" means the following services provided to any person who is not an inpatient of a hospital: computerized tomography, magnetic resonance imaging, positron emission tomography, or other imaging technology developed after June 9, 2005, that provides substantially the same functionality as computerized tomography, magnetic resonance imaging, or positron emission tomography and for which a certificate of need is required by this chapter. With respect to an

outpatient diagnostic center, data shall be reported to the commissioner of health pursuant to § 68-1-119, but the commissioner shall not make such data available to any third parties, except approved vendors that process the data, until the data is made publicly available;

(B) "Outpatient diagnostic center" does not mean a physician or dental practice that is conducted at a location occupied and controlled by one (1) or more physicians or dentists licensed under title 63, if the outpatient diagnostic services are ancillary to the specialties of the physicians' practice or are provided primarily for persons who are patients of the physicians or dentists in the practice for purposes other than outpatient diagnostic services. Outpatient diagnostic services provided in settings other than outpatient diagnostic centers or ambulatory surgery treatment centers shall be reported to the department of health, in the same manner as if such services were provided in an outpatient diagnostic center;

(31) "Patient" includes, but is not limited to, any person who is suffering from an acute or chronic illness or injury or who is crippled, convalescent or infirm, or who is in need of obstetrical, surgical, medical, nursing or supervisory care;

(32) "Person" means any individual, partnership, association, corporation, other business entity, state or local governmental agencies and entities, and federal agencies and entities to the extent permitted by federal law;

(33) "Physician" means a doctor of medicine or doctor of osteopathy who is duly licensed to practice the profession in the state of Tennessee;

(34) "Prescribed child care center" means a nonresidential child care, health care/child care center providing physician prescribed services and appropriate developmental services for six (6) or more children who are medically or technology dependent and require continuous nursing intervention. "Child care" for purposes of this section means the provision of supervision, protection, and meeting the basic needs of children, who are not related to the primary care givers, for three (3) or more hours a day, but less than twenty-four (24) hours a day;

(35) "Professional support services" means nursing and occupational, physical or speech therapy services provided to individuals with intellectual or developmental disabilities pursuant to a contract with the state agency financially responsible for such services;

(36) "Qualified rehabilitation professional" means:

(A) A health care professional within the professional's scope of practice licensed under title 63; or

(B) An individual who has appropriately obtained the designation of ATP or ATS, meeting all requirements of the designation of ATP or ATS, as established by the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA);

(37)(A) "Recuperation center" means an establishment with permanent facilities that include inpatient beds, with an organized medical staff, and with medical services, including physician services and continuous nursing services, to provide treatment for patients who are not in an acute phase of illness, but who currently require primarily convalescent or restorative services, usually post-acute hospital care of relatively short duration;

(B) An establishment furnishing primarily domiciliary care is not within this definition;

(C) Matters pertaining to recuperation centers shall come within the purview of the board;

(38) "Renal dialysis clinic" means any institution, facility, place or building devoted to the provision of renal dialysis on an outpatient basis to persons diagnosed with end stage renal disease;

(39) "Resident manager" means a person twenty-one (21) years of age or older who lives in an adult care home and oversees the day-to-day operation of the adult care home on behalf of the adult care home provider and meets all education, training and experience requirements prescribed in this part and in regulations promulgated by the board pursuant to § 68-11-209;

(40) "Residential HIV supportive living facility" means any institution, facility, place or building devoted exclusively to the provision of residential supportive living services to residents diagnosed with human immunodeficiency virus (HIV);

(41) "Residential hospice" means a licensed homelike residential facility designed, staffed and organized to provide hospice or HIV care services, or both, except the services shall be provided at the residential facility rather than the patient's regular or temporary place of residence. A residential hospice shall not provide hospice or HIV care services to any person other than a hospice patient defined in subdivision (24), or HIV resident defined in subdivision (16). The board shall establish, by rules and regulations, residential hospice standards, which shall include provisions for building construction and fire and safety features, in addition to standards otherwise applicable to hospice or HIV care services provided by home care organizations;

(42) "Substitute caregiver" means any person twenty-one (21) years of age or older who temporarily oversees care and services in an adult care home during the short-term absence of the adult care home provider or resident manager and meets all education, training and experience requirements prescribed in this part and in regulations promulgated by the board pursuant to § 68-11-209;

(43) "Traumatic brain injury residential home" means a single family residence owned and operated by a community-based traumatic brain injury (TBI) adult care home provider in which residential care, including assistance with activities of daily living, is provided in a homelike environment to no more than eight (8) disabled adults suffering from the effects of a traumatic brain injury as defined in § 68-55-101;

(44) "Traumatic brain injury residential home provider" means a person twenty-one (21) years of age or older who owns and operates a traumatic brain injury residential home. A traumatic brain injury residential home provider shall hold national certification by the Academy of Certified Brain Injury Specialists as a Certified Brain Injury Specialist (CBIS) or hold a current professional license as a physician, nurse practitioner, registered nurse, licensed rehabilitation professional, or licensed mental health professional who is trained and experienced in the care and rehabilitation of disabled adults suffering from the effects of a traumatic brain injury; and

(45) "Wheeled mobility device" means a wheelchair or wheelchair and seated positioning system prescribed by a physician and required for use by the patient for a period of six (6) months or more. The following medicare wheelchair base codes are exempt: K0001, K0002, K0003, K0004, K0006, and K0007, as long as the consumer weighs less than three hundred pounds (300 lbs.).

68-11-202. Licensing and regulation by department — Creation and powers of board — Fire and life safety regulations — Municipal regulatory conflicts — Submission of construction plans to department — Standards for accessibility by handicapped — Use of endoscopy technicians.

(a)(1) The department is empowered to license and regulate hospitals, recuperation centers, nursing homes, homes for the aged, residential HIV supportive living facilities, assisted-care living facilities, home care organizations, residential hospices, birthing centers, prescribed child care centers, renal dialysis clinics, ambulatory surgical treatment centers, outpatient diagnostic centers, adult care homes and traumatic brain injury residential homes.

(2) Licensing and regulation shall be accomplished through a board to be created in the manner provided in this part, and such other employees as are provided for in this part.

(b)(1)(A) The department has the authority to conduct reviews of all facilities licensed under this part, in order to determine compliance with fire and life safety code regulations as promulgated by the board.

(B) The provisions of chapter 102 of this title do not apply to facilities subject to review and licensure under this part.

(C) The board has the power to adopt fire and life safety code regulations to be applied to such facilities.

(D) In adopting the regulations, the board may in its discretion adopt, in whole or in part, by reference, recognized national or regional building and fire safety codes.

(E) Adult care homes and traumatic brain injury residential homes shall meet all state and local building, sanitation, utility and fire code requirements applicable to single family dwellings. The board for licensing health care facilities may adopt in rules more stringent standards as it deems necessary in order to ensure the health and safety, including adequate evacuation of residents consistent with this part. As used in this section "adequate evacuation" means the ability of the adult care home provider, traumatic brain injury residential home provider, resident manager, or substitute caregiver, including such additional minimum staff as may be required by the board in regulation in accordance with this part, to evacuate all residents from the dwelling within five (5) minutes. Adult care home providers and traumatic brain injury residential home providers must install smoke detectors in all resident bedrooms, hallways or access areas that adjoin bedrooms, and common areas where residents congregate, including living or family rooms and kitchens. In addition, in multi-level homes, smoke alarms must be installed at the top of stairways. At least one (1) fire extinguisher with a minimum classification as specified by the board for licensing health care facilities must be in a visible and readily accessible location in each room, including basements, and be checked at least once a year by a qualified entity. Adult care home providers and traumatic brain injury residential home providers shall not place residents who are unable to walk without assistance or who are incapable of independent evacuation in a basement, split-level, second story or other area that does not have an exit at ground level. There must be a second safe means of exit from all sleeping rooms. Providers whose

sleeping rooms are above the first floor shall be required to demonstrate an evacuation drill from that room, using the secondary exit, at the time of licensure, renewal, or inspection.

(2) The board, in its evaluation of prospective rules and regulations, shall consider recommendations and professional assessments from the Tennessee society of architects and the Tennessee society of professional engineers.

(3) Should regulations adopted by the board not be consistent with federal regulations for facilities participating in Titles XVIII, compiled in 42 U.S.C. § 1395 et seq., and XIX, compiled in 42 U.S.C. § 1396 et seq., of the Social Security Act, the department shall request appropriate waivers from the federal government for facilities previously deemed in compliance.

(4) Until the board adopts building and fire safety regulations pursuant to this section, the codes and regulations in effect on July 1, 1981, shall be applicable to those facilities licensed under this part. Any facility that complies with the required applicable building and fire safety regulations at the time the board adopts new codes or regulations shall, so long as such compliance is maintained, either with or without waivers of specific provisions, be considered to be in compliance with the requirements of the new codes or regulations.

(5)(A) The commissioner of commerce and insurance or commissioner of health shall review subsequently adopted codes and may recommend to the board for adoption provisions of such codes that the commissioner deems material to the life and fire safety of residents and patients.

(B) Such provisions shall apply to all appropriate facilities in the respective provider categories, such as nursing homes, hospitals, homes for the aged, residential HIV supportive living facilities, adult care homes, traumatic brain injury residential homes, etc.

(6) This section shall not affect the authority of the state fire marshal regarding the prevention and investigation of fires pursuant to chapter 102 of this title.

(7) The building and life safety regulations adopted by the board shall be the exclusive regulations applicable for those purposes. To the extent that regulations adopted by local governments conflict with the regulations adopted by the board, the board's regulations shall control.

(c)(1) When construction is planned by any facility required to be licensed by the department, except home care organizations as defined in § 68-11-201, for any building, additions to an existing building or substantial alterations to an existing building, two (2) sets of plans and specifications shall be submitted to the department to be approved. However, only one (1) set of schematics shall be submitted to the department for approval of plans and specifications converting an existing single family dwelling into:

(A) A licensed residential health care facility with six (6) or fewer beds;

(B) A licensed adult care home with five (5) or fewer residents; and

(C) Traumatic brain injury residential homes with eight (8) or fewer residents.

(2) Before construction is started, approval of the plans and specifications must be obtained from the department with respect to compliance with the minimum standards or regulations, or both, of the board.

(3) The board may determine by regulation specific types of site activity that may be initiated prior to approval.

(4) The plans shall be accurate and shall be detailed plans, containing the information and drafted and submitted in a manner that the board may

require by regulation.

(5) The department shall expeditiously process its review of plans that have been submitted in the full and final form required by regulation.

(6) At the request of the owner of the proposed project or the design professional, the department shall make plan review staff available for advice and consultation regarding programmatic concepts and preliminary plans early in the planning process.

(7) The department shall assign adequate numbers of qualified staff to the plan review section, to ensure that a thirty-day review cycle is provided on any submittal.

(8) If, upon final inspection or reinspection of the completed project, the department's representative finds that only minor items remain to be completed or corrected that do not significantly affect the health or safety of the occupants, the department's representative shall permit occupancy pending completion or correction of such items.

(d) Any standards adopted by the board regarding accessibility by the handicapped shall be no less strict than those in chapter 120 of this title.

(e) This subsection (e) shall establish the criteria for the creation of branch offices by a home care organization operating pursuant to its certificate of need authority or pursuant to its license as of May 11, 1998. Nothing in this subsection (e) shall permit a home care organization to expand its authority beyond the limitations of its certificate of need or its license as of May 11, 1998. Notwithstanding this section to the contrary, the offices of a home care organization providing home health care services shall be classified as either a parent office of the home care organization or as a branch office of the home care organization. In determining whether the office of a home care organization providing home health care services is either a parent home care organization or a branch office, the board shall apply the following criteria:

(1) A parent office shall develop and maintain administrative controls of the branch office and house the administrative functions of the home care organization. The parent office shall be ultimately responsible for human resource activities and all financial and contractual agreements for the home care organization, including both parent and branch offices;

(2) The administrator and director of nursing for the home care organization shall be primarily located in the parent office. The home care organization administrator and director of nursing shall make on-site supervisory visits to each branch office at least quarterly;

(3) A branch office is an office that provides services within the geographical area for which the home care organization is licensed. A branch office must be sufficiently close to share administrative services with the parent office. A branch office shall be deemed to be sufficiently close if it is within one hundred (100) miles of the parent office; provided, that the remaining criteria set forth in this subsection (e) are also applicable. A branch office that is greater than one hundred (100) miles from a parent office may be considered a branch office by the board, if it otherwise meets the criteria set forth in this subsection (e);

(4) The parent office of a home care organization shall have a clearly defined process to ensure that effective interchange occurs between the parent and branch regarding various functions, including branch staffing requirements, branch office patient census, total visits provided by the branch, complaints, incident reports and referrals;

(5) The branch office of a home care organization shall maintain the same name and standards of practice as the parent office of the home care organization, including forms, policies, procedures and service delivery standards. The parent office of a home care organization shall maintain documentation of integration between the parent office and its branch offices;

(6) The parent office of a home care organization shall maintain regular administrative contact with its branch offices at least weekly. Documentation of this contact shall be maintained by the parent office. The parent office shall receive weekly written staffing reports from its branch offices, including, but not limited to, information regarding staffing needs, staffing patterns and staff productivity; and

(7) A branch office of a home care organization existing as of May 11, 1998, that is more than one hundred (100) miles from the parent office of such home care organization and that has been previously approved as a branch office by the board, may continue to be classified as a branch office, if it otherwise meets the criteria set forth in this subsection (e).

(f)(1) In a gastrointestinal endoscopy clinic that is regulated as an ambulatory surgical treatment center which performs endoscopic procedures, the use of an endoscopy technician, without other technicians, to assist a physician performing an endoscopic procedure in the clinic shall be deemed to be sufficient staffing for the procedure.

(2) For the purposes of this subsection (f), an endoscopy technician is a person who is trained to function in an assistive role in a gastroenterology setting. An endoscopy technician's scope of practice includes:

(A) Assisting in data collection to identify the patient's needs, problems, concerns or human responses;

(B) Assisting, under the direction of the gastroenterology registered nurse and physician, in the implementation of the established plan of care;

(C) Assisting the gastroenterology registered nurse and physician before, during, and after diagnostic and therapeutic procedures;

(D) Providing and maintaining a safe environment for the patient and staff by complying with regulatory agency requirements and standards set forth by professional organizations and employers;

(E) Taking responsibility for personal continuing education;

(F) Having knowledge of practice issues related to the field of gastroenterology;

(G) Compliance with ethical, professional and legal standards inherent in patient care and professional conduct;

(H) Participating in quality management activities as directed; and

(I) Collaborating within the gastroenterology team and with other healthcare professionals to ensure quality and continuity of care.

68-11-204. Requirement for license — Governmental institutions exempted.

(a)(1) No person, partnership, association, corporation or any state, county or local government unit, or any division, department, board or agency of the governmental unit, shall establish, conduct, operate or maintain in this state any hospital, recuperation center, nursing home, home for the aged, residential HIV supportive living facility, assisted-care living facilities, home

care organization, residential hospice, birthing center, prescribed child care center, renal dialysis clinic, outpatient diagnostic center, ambulatory surgical treatment center, adult care homes or traumatic brain injury residential homes as defined in this part, without having a license.

(2) State or local government home care organizations may be excluded by the board.

(b) Any health care facility or local health department operated by the federal government shall be exempt from this part.

(c) The board, in its discretion, shall be authorized to issue licenses to several licensees in such form as it may deem necessary to distinguish between and identify any of the facilities required to be licensed by the department.

(d) Nothing in this part requires a person or entity providing hospice residential services as of July 1, 1992, to obtain a certificate of need as a residential hospice, if such person or entity, prior to July 1, 1992, had qualified for reimbursement as a hospice under the federal medicare program.

68-11-205. Practice in healing arts or medicine by partnership, person, association or corporation unauthorized.

(a) Nothing in this part shall authorize any person, partnership, association, corporation, or any state, county, or local governmental unit, or any division, department, board or agency of the governmental unit, to engage, in any manner, in the practice of the healing arts, or the practice of medicine, as defined by law; provided, that nothing in this section shall prohibit a person, corporation, organization, or other entity from employing a physician to treat only its own employees, the entity's retirees, or dependents of the entity's employees or retirees, in accordance with § 63-6-204.

(b)(1) Notwithstanding this section, nothing shall prohibit a hospital licensed under this chapter or an affiliate of a hospital from employing physicians, other than radiologists, anesthesiologists, pathologists, or emergency physicians, licensed under title 63, chapter 6 or 9, subject to the following conditions:

(A) Employing entities shall not restrict or interfere with medically appropriate diagnostic or treatment decisions;

(B) Employing entities shall not restrict or interfere with physician referral decisions, unless:

(i) The physician so employed has agreed in writing to the specific restrictions at the time that the contract is executed;

(ii) The restriction does not, in the reasonable medical judgment of the physician, adversely affect the health or welfare of the patient; and

(iii) The employing entity discloses any such restrictions to the patient; and

(C) In the event that there is any dispute relating to subdivision (b)(1)(A) or (B), the employing entity shall have the burden of proof.

(2) Employing entities shall not restrict the employed physician's right to practice medicine upon the termination or conclusion of the employment relationship, except as allowed by § 63-6-204(f)(2).

(3) Notwithstanding subdivision (b)(2), in the event that the employment contract with a physician employed independently of a bona fide practice purchase is terminated by the employing entity for reasons other than breach by the employee, any such restrictions shall be void.

(4) In any event, nothing in this section shall prohibit a licensed physician, group of licensed physicians, including, but not limited to, a physicians' professional corporation registered under title 48, chapter 101, from employing physicians.

(5) A hospital affiliate that employs physicians shall not engage in any business other than the employment of physicians, the management of physicians and health care facilities or the ownership of property and facilities used in the provision of health care services. An affiliate of a hospital that employs physicians pursuant to this part shall be subject to the authority of the applicable licensing board under this chapter or title 33, chapter 2, in connection with employment of physicians. Any violation of this subdivision (b)(5) by an affiliate shall subject any hospital, at which the physician has staff privileges, and that controls or is under common control with the affiliate, to the penalties and sanctions applied to hospitals that employ physicians.

(6) No radiologist, anesthesiologist, pathologist, or emergency physician may be employed by a hospital or an affiliate of a hospital and no hospital or an affiliate of a hospital may employ any physician to provide medical services provided by radiologists, anesthesiologists, pathologists, or emergency physicians; provided, that a physician may be employed to provide emergency medical services if the physician is employed to provide other medical services.

(7) Employing entities shall not require, by contract or policy, that as a condition or consequence of employment, written or otherwise, employed physicians relinquish medical staff privileges, or the rights related to medical staff privileges, upon the commencement of, upon any event during the pendency of, or at the termination or conclusion of, the employment relationship. In any event, nothing in this section shall be construed as affecting or negating the ability of an employing hospital to revoke or suspend a physician's staff privileges in accordance with the procedures set forth in the medical staff bylaws. Hospitals shall not substitute physician employment contracts for medical staff privileges. Nonemployed and employed physicians holding staff privileges at a hospital that is an employing entity, or hospitals on which employed physicians hold staff privileges that are affiliates of employing entities, shall enjoy the same privileges, rights and protections with respect to medical staff membership. Employment of a physician shall not affect any other physician's medical staff privileges. Physicians who hold membership on medical staffs at a hospital which is an employing entity, or a hospital on which employed physicians hold staff privileges that are affiliates of employing entities, shall be provided with the rights and protections, including rights of self-governance, afforded by the applicable state licensing board, and, when accredited, the accrediting entity or agency.

(8) If a physician, in connection with a claim for breach of contract or other dispute related to § 63-6-204, establishes in a court of competent jurisdiction, or other forum, including in a peer review action or arbitration proceeding, that the conditions of § 63-6-204 have been violated by the employing entity, the physician shall be entitled to recover the physician's cost of litigation, arbitration, or peer review defense, and a reasonable attorney's fee.

(9)(A) No radiologist, anesthesiologist, pathologist, or emergency physician may be employed by a hospital or an affiliate of a hospital, and no

hospital or an affiliate of a hospital may employ any physician to provide services provided by radiologists, anesthesiologists, pathologists, or emergency physicians; provided, that a physician may be employed to provide emergency medical services, if the physician is employed to provide other medical services.

(B) Notwithstanding subdivisions (b)(6) and (9)(A), a radiologist, anesthesiologist or pathologist may be employed by a research hospital, as defined in subdivision (e)(9). The radiologist, anesthesiologist or pathologist shall be employed by the research hospital under the same terms and conditions as other physicians.

(10) Notwithstanding this subsection (b) to the contrary, the general assembly finds that it is unreasonable per se to require a racial minority physician who practices in a county with a racial minority population in excess of twenty percent (20%) to move more than two (2) miles from the physician's primary practice site. Because such a requirement is also harmful to and will adversely affect the public interest and health, nothing in this subsection (b) shall operate to require the physician to move more than two (2) miles from the primary practice site.

(11) Employing entities shall not restrict or interfere with patient referral decisions in a manner that unnecessarily increases the cost to the patient of the medical services provided.

(c)(1) Notwithstanding this section, nothing shall prohibit a renal dialysis clinic licensed under this chapter or an affiliate of a renal dialysis clinic from employing physicians, other than radiologists, anesthesiologists, pathologists or emergency physicians licensed under title 63, chapter 6 or 9, subject to the following conditions:

(A) Employing entities shall not restrict or interfere with medically appropriate diagnostic or treatment decisions;

(B) Employing entities shall not restrict or interfere with physician referral decisions, unless:

(i) The physician so employed has agreed in writing to the specific restrictions at the time that the contract is executed;

(ii) The restriction does not, in the reasonable medical judgment of the physician, adversely affect the health or welfare of the patient; and

(iii) The employing entity discloses the restrictions to the patient; and

(C) In the event that there is any dispute relating to subdivision (c)(1)(A) or (c)(1)(B), the employing entity shall have the burden of proof.

(2) Employing entities shall not restrict the employed physician's right to practice medicine upon the termination or conclusion of the employment relationship, except as allowed by § 63-1-148 or any successor section.

(3) Notwithstanding § 63-1-148 or any successor section, in the event that the employment contract with a physician employed independently of a bona fide practice purchase is terminated by the employing entity for reasons other than breach by employee, the restrictions shall be void.

(4) In any event, nothing in this section shall prohibit a licensed physician, group of licensed physicians, including, but not limited to, a physicians' professional corporation registered under title 48, chapter 101 from employing physicians.

(5) An affiliate of a renal dialysis clinic that employs physicians shall not engage in any business other than the employment of physicians, the management of physicians and health care facilities, the ownership of

property and facilities used in the provision of health care services or a tissue bank or organ procurement agency. An affiliate of a renal dialysis clinic that employs physicians pursuant to this part shall be subject to the authority of the applicable licensing board under this chapter in connection with employment of physicians. Any violation of this subdivision (c)(5) by an affiliate shall subject any renal dialysis clinic at which the physician has staff privileges and that controls or is under common control with the affiliate to the penalties and sanctions applied to renal dialysis clinics that employ physicians.

(6) No radiologist, anesthesiologist, pathologist or emergency physician may be employed by a renal dialysis clinic or an affiliate of a renal dialysis clinic and no renal dialysis clinic or an affiliate of a renal dialysis clinic may employ any physician to provide medical services provided by radiologists, anesthesiologists, pathologists or emergency physicians; provided, that a physician may be employed to provide emergency medical services if the physician is employed to provide other medical services.

(7) Employing entities shall not require, by contract or policy, that as a condition or consequence of employment, written or otherwise, employed physicians relinquish staff privileges or the rights related to staff privileges upon the commencement of, upon any event during the pendency of or at the termination or conclusion of the employment relationship. In any event, nothing in this section shall be construed as affecting or negating the ability of an employing renal dialysis clinic to revoke or suspend a physician's staff privileges in accordance with the procedures set forth in the staff bylaws. Renal dialysis clinics shall not substitute physician employment contracts for staff privileges. Nonemployed and employed physicians holding staff privileges at a renal dialysis clinic that is an employing entity or renal dialysis clinics at which employed physicians hold staff privileges that are affiliates of employing entities shall enjoy the same privileges, rights and protections with respect to staff membership. Employment of a physician shall not affect any other physician's staff privileges. Physicians who hold membership on staff at a renal dialysis clinic that is an employing entity or a renal dialysis clinic at which employed physicians hold staff privileges that are affiliates of employing entities shall be provided with the rights and protections, including rights of self-governance, afforded by the applicable state licensing board and, when accredited, the accrediting entity or agency.

(8) If a physician, in connection with a claim for breach of contract or other dispute related to § 63-6-204, establishes in a court of competent jurisdiction or other forum, including in a peer review action or arbitration proceeding, that the conditions of § 63-6-204 have been violated by the employing entity, the physician shall be entitled to recover the physician's cost of litigation, arbitration or peer review defense and a reasonable attorney's fee.

(9) Employing entities shall not restrict or interfere with patient referral decisions in a manner that unnecessarily increases the cost to the patient of the medical services provided.

(d) No teaching institution shall be held vicariously liable for any act or omission of an intern, resident or fellow in the course of a training program of a medical school owned or operated by the state of Tennessee, under a legal theory of implied or apparent agency, ostensible agency, or any other theory of vicarious liability except actual agency. In determining whether the intern,

resident or fellow was an actual agent of the teaching institution, the fact that the intern, resident or fellow was in the teaching institution and providing treatment or services or otherwise caring for patients and was following the institution's bylaws, rules and regulations, policies, procedures, and protocols is insufficient, standing alone, to prove that the intern, resident or fellow was acting as the institution's actual agent.

(e) For purposes of this section, unless the context otherwise requires:

(1)(A) "Affiliate" of a hospital means an entity that directly or indirectly is controlled by, or is under common control with, a hospital licensed under this chapter or title 33, chapter 2. "Affiliate" does not mean, however, a health maintenance organization licensed under title 56, chapter 32;

(B) "Affiliate" of a renal dialysis clinic means an entity that directly or indirectly is controlled by or is under common control with a renal dialysis clinic licensed under this chapter. "Affiliate" does not mean, however, a health maintenance organization licensed under title 56, chapter 32;

(2) "Anesthesiologist" is defined as a physician who has completed a residency in anesthesiology and whose practice is primarily limited to anesthesiology, including, but not limited to, nerve block, pain management, cardiac and respiratory resuscitation, respiratory therapy, management of fluids, electrolyte and metabolic disturbances;

(3) "Emergency physician" is defined as a physician who has completed a residency in emergency medicine, or practiced emergency medicine full time for a three-year period, and whose practice is limited to emergency medicine. "Emergency physician" does not include, however, a physician who has been previously employed to provide non-emergent medical services who, over a period of twelve (12) months or more, becomes a full-time emergency physician and who remains employed by mutual agreement;

(4)(A) "Employing entity" means a hospital licensed under this chapter or title 33, chapter 2, or an affiliate of such an entity that employs one (1) or more physicians. "Employing entity" does not mean, however, a health maintenance organization licensed under title 56, chapter 32;

(B) "Employing entity" for purposes of subsection (c) means a renal dialysis clinic licensed under this chapter or an affiliate of such an entity that employs one (1) or more physicians. "Employing entity" does not mean, however, a health maintenance organization licensed under title 56, chapter 32;

(5) "Intern", "resident" or "fellow" means any person receiving instruction through, and acting within the scope of, a training program of a medical school owned or operated by the state of Tennessee and who, in such capacity, receives compensation payable by the state of Tennessee and is entitled to individual immunity as an employee of the state of Tennessee pursuant to § 9-8-307(h).

(6) "Pathologist" is defined as a physician who has completed a residency in pathology and whose practice is primarily limited to pathology, including, but not limited to, anatomic and clinical pathology;

(7) "Physician" means a person licensed pursuant to title 63, chapter 6 or 9;

(8) "Radiologist" is defined as a physician who has completed a residency in radiology and whose practice is primarily limited to radiology, including, but not limited to, diagnostic radiology, radiation therapy, and radiation oncology;

(9) "Research hospital" means a hospital at which fifty percent (50%) or more of the inpatients treated during the previous calendar year were treated pursuant to research protocols; and

(10) "Teaching institution" means a hospital or mental health hospital, operating within the scope of an affiliation agreement with any medical school owned or operated by the state of Tennessee, and shall further include, but not be limited to, any sole proprietorship, partnership, corporation, limited liability company, or other public or private entity that owns, controls, or is affiliated with any such institution.

(f)(1) Notwithstanding this section or any other law, nothing shall prohibit an employing entity from employing a physician; provided, however, that the employment relationship between the physician and the employing entity is evidenced by a written contract, job description or documentation, containing language which does not restrict the physician from exercising independent medical judgment in diagnosing, referring or treating patients. The employment of physicians authorized by this subsection (f) is subject to the following conditions:

(A) The employed physician must have completed residency training in internal medicine, family medicine, primary care, geriatric medicine or gerontology, or a related medical specialty area, or have become board certified in one (1) of those medical specialties;

(B) An employing entity shall not restrict or interfere with medically appropriate diagnostic, referral or treatment decisions. In the event that there is any dispute relating to this subdivision (f)(1)(B), the employing entity shall have the burden of proof;

(C) An affiliate of a nursing home that employs physicians shall not engage in any business other than the employment of physicians, the management of physicians and healthcare facilities, the ownership of property and facilities used in the provision of healthcare services;

(D) If a physician, in connection with a claim for breach of contract or other dispute related to § 63-6-204, establishes in a court of competent jurisdiction or other forum, including in a peer review action or arbitration proceeding, that the conditions of § 63-6-204 have been violated by the employing entity, the physician shall be entitled to recover the physician's cost of litigation, arbitration or peer review defense and a reasonable attorney's fee;

(E) An employing entity shall not restrict or interfere with patient referral decisions in a manner that unnecessarily increases the cost to the patient of the medical services provided; and

(F) The written contract between an employing entity and the physician, in addition to the other items required by this subsection (f), shall include the name and location of each site where the physician may see patients.

(2) Employing entities shall not restrict the employed physician's right to practice medicine upon the termination or conclusion of the employment relationship, except an employing entity may only restrict the employed physician from entering into another employment relationship with another employing entity, provided such restriction complies with § 63-1-148.

(3) For purposes of this subsection (f):

(A) "Affiliate" of a nursing home means an entity that, through ownership or management relationship, is directly or indirectly controlled by, or

is under common control with, a nursing home;

(B) "Employing entity" means a nursing home, or an affiliate of such a nursing home, that employs one (1) or more physicians. "Employing entity" does not mean, however, a health maintenance organization licensed under title 56, chapter 32;

(C) "Nursing home" means a nursing home licensed as such under this chapter; and

(D) "Referral" or "referring" means a decision by the employed physician to send a patient to another practitioner or specialty program for consultation, service or procedures that the employed physician cannot provide. Referral shall not include sending a patient for consultation, service or procedures that are available within the facility, unless, in the medical judgment of the employed physician, the patient would be better served by a practitioner or specialty program not employed by or contracted to the employing entity.

68-11-206. Application for license — Form of contents — Procedure — Term of license — Renewal — Inactive status.

(a) Any person, partnership, association, corporation, any state, county or local governmental unit, or any division, department, board or agency of the governmental unit, in order to lawfully establish, conduct, operate or maintain a hospital, recuperation center, nursing home, home for the aged, residential HIV supportive living facility, assisted-care living facility, home care organization, residential hospice, birthing center, prescribed child care center, renal dialysis clinic, outpatient diagnostic center, ambulatory surgical treatment center, adult care home or traumatic brain injury residential homes in this state, shall obtain a license from the department, upon the approval and recommendation of the board in the following manner:

(1) The applicant shall submit an application on a form to be prepared by the department with the approval of the board, showing that the applicant is of reputable and responsible character and able to comply with the minimum standards for a facility and with rules and regulations lawfully promulgated under this part. The application shall contain the following additional information:

(A) The name or names of the applicant or applicants;

(B) The type of institution to be operated;

(C) The location of the institution;

(D) The name of the person or persons to be in charge of the institution or, for adult care home applicants, the name of the resident manager, if applicable;

(E) A certification that the applicant has implemented a policy of informing its employees of their obligations under § 71-6-103 to report incidents of abuse or neglect;

(F) If an application for a nursing home license, a list of all nursing homes that the applicant, or any person or entity holding a majority legal or equitable interest in the applicant, owns or operates and, if the applicant has not operated a nursing home in this state for a continuous period of twenty-four (24) months preceding the application, the information specified in § 68-11-804(c)(1) for each such nursing home located outside this state; and

(G) Such other information as the department, with the approval of the board, may require;

(2)(A) In addition to the requirements in subdivision (a)(1), an application for an adult care home or traumatic brain injury residential home license shall include the following additional information:

(i) The maximum number of residents;

(ii) Type of license;

(iii) If any residents are family members of the applicant;

(iv) Names and locations of all other facilities in and outside this state for which the applicant has any license and the compliance history of each facility, including penalties, suspensions or other disciplinary actions;

(v) The extent to which a resident manager, substitute caregivers and other staff will be used in the facility;

(vi) A list of any unsatisfied judgments;

(vii) Past or pending litigation against the applicant;

(viii) Unpaid local, state and federal taxes;

(ix) Notification regarding any bankruptcy filings made by the applicant;

(x) Demonstration of the applicant's financial ability to maintain sufficient financial resources to support the operating costs of the adult care home or traumatic brain injury residential home; and

(xi) A comprehensive business plan for the first two (2) years of operation;

(B) The board shall promulgate regulations specifying additional financial requirements, such as bonds or liability insurance;

(C) An adult care home provider shall obtain a separate license for each adult care home. An adult care home provider may, upon operation of a licensed adult care home for a minimum period of one (1) year and completion of an annual licensure survey without any findings of noncompliance resulting in penalties, suspensions or other disciplinary actions, submit application to separately license a second adult care home. Only upon operation of two (2) licensed adult care homes for a consecutive period of at least one (1) year, licensure survey in each facility without any findings of noncompliance resulting in penalties, suspensions or other disciplinary actions, may an adult care home provider submit application to separately license additional adult care homes. The board may grant an exception to the one-at-a-time license requirement for Level 2 adult care homes for nursing facilities, assisted-care living facilities and other providers when such nursing facility, assisted-care living facility or provider has demonstrated expertise in delivering the specialized services necessary to the specified population that would be served by the licensed adult care homes. The board may establish in regulations a limit on the total number of adult care homes that can be operated by a single adult care home provider;

(D) A Level 2 license allows an adult care home provider to serve adults requiring specialized services. As used in this section, "specialized services" means services provided to ventilator dependent residents and residents with a traumatic brain injury as defined in § 68-55-101. The applicant shall specify the type of license sought as a part of its application. The board shall promulgate regulations specifying additional re-

quirements for a Level 2 license;

(E) A license authorized by this part allows a traumatic brain injury residential home provider to serve disabled adults suffering from the effects of a traumatic brain injury as defined in § 68-55-101. A traumatic brain injury residential home provider shall not be required to obtain a Level 2 or any other licensure, other than a license to operate its day services through a separate facility licensed by this state. The board shall promulgate regulations specifying additional requirements for traumatic brain injury residential home licensure consistent with this part;

(3) At a minimum, Level 2 adult care home providers serving ventilator-dependent residents shall meet all of the following requirements:

(A) Have an audible, redundant alarm system located outside of resident's room to alert the adult care home provider or resident manager of a resident disconnection or ventilator failure;

(B) Have a functioning emergency back-up generator adequate to maintain electrical service for residents' needs until regular service is restored;

(C) All ventilators shall be equipped with internal battery backup systems;

(D) A backup ventilator shall be available at all times;

(4) The board shall promulgate in regulation additional licensure requirements that define appropriate health and safety standards necessary to protect the health and welfare of residents. Specific elements to be addressed include, but are not limited to:

(A) Facility and building standards;

(B) Minimum size and number of bedrooms and bathrooms;

(C) Number of residents to a bedroom and a bathroom;

(D) Sanitation;

(E) Hazardous waste disposal;

(F) Disaster preparedness;

(G) Medication administration and storage; and

(H) Resident record requirements;

(5)(A) The board shall maintain current information on all licensed adult care home providers. The information shall include:

(i) Name, location and mailing address of the facility;

(ii) Description of the facility;

(iii) Date of last inspection;

(iv) Penalties;

(v) Suspensions; and

(vi) Other disciplinary actions;

(B) The information shall be made available upon request to a prospective resident, resident, or family member;

(6) If the board determines that a license for any facility will not be granted, it shall so notify the applicant. The decision of the board shall be final;

(7) If the board finds that the applicant complies with this part and the rules and regulations promulgated under this part, then the board shall recommend and approve the issuance of a license, and thereupon a license shall be issued by the department licensing the applicant to operate the facility for the remainder of the fiscal year; and

(8) Each license to operate a facility shall expire annually on the anniversary date of its original issuance and shall become invalid on that date

unless renewed. A licensee may renew its license within sixty (60) days following the license expiration date upon payment of the renewal fee in addition to a late penalty established by the board for each month or fraction of a month that payment for renewal is late; provided, that the late penalty shall not exceed twice the renewal fee. If a licensee fails to renew its license within sixty (60) days following the license expiration date, then the licensee shall reapply for licensure in accordance with the rules established by the board. However, during the transition period, renewed licenses may be issued at prorated monthly renewal fee rates for terms of no less than five (5) months nor more than eighteen (18) months. A license shall not be assignable or transferable, shall be issued only for the premises named in the application, shall be posted in a conspicuous place in the facility, and may be renewed from year to year.

(b)(1) Upon request by a licensee, the board shall have authority to place a license in an inactive status for a period determined by the board upon a finding that:

(A) The licensee has a need to temporarily suspend operations; and

(B) The licensee intends to continue operations after a period of suspension.

(2) Placing a license in an inactive status shall not relieve the licensee from the annual license fees imposed by § 68-11-216.

(c) Any condition placed on the issuance of a certificate of need pursuant to § 68-11-1605 shall be deemed a condition on any subsequently issued license under this section.

68-11-207. Suspension or revocation of license — Grounds — Procedure — Probation.

(a) The board may suspend or revoke the license issued under this part on any of the following grounds:

(1) A violation of this part or of the rules and regulations or minimum standards issued pursuant to this part, or, in the event of a nursing home that has entered into an agreement with the department to furnish services under Title XVIII or XIX of the Social Security Act, compiled in 42 U.S.C. § 1395 et seq. and 42 U.S.C. § 1396 et seq., respectively, any of the requirements for participation in the medical assistance program set out in title 42 of the Code of Federal Regulations, to such an extent that the board considers the licensee a chronic violator;

(2) Permitting, aiding or abetting the commission of any illegal act in such institutions; or

(3) Conduct or practice found by the board to be detrimental to the welfare of the patients in such institutions.

(b)(1) In those cases where the conditions of any nursing home, home for the aged, traumatic brain injury residential home or adult care home are, or are likely to be, detrimental to the health, safety or welfare of the patient or resident, the commissioner has the authority to suspend the admission of any new patients or residents to the facility pending a prompt hearing before the board, or an administrative judge if the board cannot be convened promptly.

(2) The commissioner is authorized, at any time prior to a hearing, based on information presented to the commissioner showing that such conditions have been and will continue to remain corrected, to revoke the suspension of

admissions.

(3) Whenever the commissioner suspends the admission of any new patients, the commissioner shall detail, in a notice to the facility, the specific violations causing the suspension.

(4) Notice shall detail what conditions are considered detrimental to the health, safety or welfare of the patients and an explanation of the specific time frame when and conditions under which the facility can reasonably expect the suspension to be lifted.

(5) Within ten (10) days of receiving this notice or lesser time frame when deemed necessary by the board to ensure the health, safety and welfare of adult care home or traumatic brain injury residential home residents, an adult care home provider or a traumatic brain injury residential home provider shall submit a corrective action plan to the board delineating the measures to be taken to address violations and associated time frames. If it is deemed by the board to be necessary to ensure the health, safety and welfare of adult care home or traumatic brain injury residential home residents, the commissioner may require the adult care home provider or traumatic brain injury residential home provider to take all necessary actions to correct violations immediately.

(6) If the facility complies with these conditions, the commissioner shall lift the suspension within the time frame, unless other conditions exist that warrant an additional suspension or continuation of the suspension. The board has the authority to:

(A) Continue, revoke or modify the suspension of admissions;

(B) Revoke, suspend or condition the license of the facility; and

(C) Enter such other orders as it deems necessary.

(7) Unless the immediate protection of the health, safety or welfare of residents of a nursing home requires otherwise, the commissioner, after ordering a suspension of admissions to a nursing home pursuant to this section, shall provide notice of the suspension as soon as practicable to the members of the senate and house of representatives of the general assembly in whose district the nursing home is located.

(c) In imposing the sanctions authorized in this section, the board may consider all factors that it deems relevant, including, but not limited to, the following:

(1) The degree of sanctions necessary to ensure immediate and continued compliance;

(2) The character and degree of impact of the violation on the health, safety and welfare of the patients in the facility;

(3) The conduct of the facility against whom the notice of violation is issued in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and

(4) Any prior violations by the facility of statutes, regulations or orders of the board.

(d) The board may, in its discretion, after the hearing, hold the case under advisement and make a recommendation as to requirements to be met by the facility in order to avoid either suspension or revocation of license or suspension of admissions.

(e) The board shall promulgate regulations defining the sanction structure and associated penalties.

(f)(1) In addition to the authority granted in subsections (a)-(e), the board shall have the authority to place a facility on probation. In the case of a

nursing facility, to be considered for probation, a nursing facility must have had at least two (2) separate substantiated complaint investigation surveys within six (6) months, where each survey had at least one (1) deficiency cited at the level of substandard quality of care or immediate jeopardy, as those terms are defined at 42 CFR 488.301. None of the surveys may have been initiated by an unusual event or incident self-reported by the nursing facility.

(2) If a facility meets the criteria for a violation pursuant to regulations established by the board or, in the case of a nursing facility, meets the criteria pursuant to subdivision (f)(1), the board may hold a hearing at its next regularly scheduled meeting to determine if the facility should be placed on probation. Prior to initiating the hearing, the board shall provide notice to the facility detailing what specific noncompliance the board has identified that the facility must respond to at the probation hearing.

(3) Prior to imposing probation, the board may consider and address in its findings all factors that it deems relevant, including, but not limited to, the following:

(A) What degree of sanctions is necessary to ensure immediate and continued compliance;

(B) Whether the noncompliance was an unintentional error or omission, or was not fully within the control of the facility;

(C) Whether the facility recognized the noncompliance and took steps to correct the identified issues, including whether the facility notified the department of the noncompliance, either voluntarily or as required by state law or regulations;

(D) The character and degree of impact of the noncompliance on the health, safety and welfare of the patient or patients in the facility;

(E) The conduct of the facility in taking all feasible steps or procedures necessary or appropriate to comply or correct the noncompliance; and

(F) The facility's prior history of compliance or noncompliance.

(4) If the board places a facility on probation, the facility shall detail in a plan of correction those specific actions that, when followed, will correct the noncompliance identified by the board.

(5) During the period of probation, the facility shall make reports on a schedule determined by the board. These reports shall demonstrate and explain to the board how the facility is implementing the actions identified in its plan of correction. In making such reports, the board shall not require the facility to disclose any information protected as privileged or confidential under any state or federal law or regulation.

(6) The board is authorized at any time during the probation to remove the probational status of the facility's license, based on information presented to it showing that the conditions identified by the board have been corrected and are reasonably likely to remain corrected.

(7) The board shall rescind the probational status of the facility, if it determines that the facility has complied with its plan of correction as submitted and approved by the board, unless the facility has additional noncompliance that warrants an additional term of probation.

(8) A single period of probation for a facility shall not extend beyond twelve (12) months. If the board determines during or at the end of the probation that the facility is not taking steps to correct noncompliance or otherwise not responding in good faith pursuant to the plan of correction, the

board may take any additional action as authorized by law.

(g) The hearing to place a facility on probation and judicial review of the board's decision shall be in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(h) The provisions in this section in no way relieve any party from the responsibility to report suspected adult abuse, neglect or exploitation to, or to share information with, the adult protective services program in accordance with the Tennessee Adult Protection Act, compiled in title 71, chapter 6, part 1.

(i) After determinations of violations have been made that are subsequent to any complaint investigation survey that could lead to a suspension or revocation of the license of a nursing home or the loss of federal funds relating to any agreement to furnish services by a nursing home under Title XVIII, compiled in 42 U.S.C. § 1395 et seq. or Title XIX, compiled in 42 U.S.C. § 1396 et seq., of the Social Security Act, and unless the immediate protection of the health and safety of the residents of a nursing home requires otherwise, the department shall seek to provide, if practicable, a period of up to thirty (30) days for further fact finding relative to violations and their correction before any findings that would require the suspension or revocation of license or the loss of federal funds.

(j)(1) The adult care home provider or traumatic brain injury residential home provider shall inform residents verbally and in writing of their right to file a complaint with the state at any time, the process for filing a complaint and contact information for filing a complaint. The facility shall also advise residents of the availability of a long-term care ombudsman, and how to contact the ombudsman for assistance. Verbal and written communication to the resident shall indicate, at a minimum, that complaints regarding suspected adult abuse, neglect or exploitation shall be reported to the adult protective services program. Complaints regarding licensure shall be reported to the board. All other complaints shall be reported to the appropriate state designated oversight entity. Complaints received by the adult care home provider or traumatic brain injury residential home provider shall be forwarded to the appropriate state oversight entity.

(2) The adult care home provider or traumatic brain injury residential home provider shall not prohibit or discourage the filing of complaints or use intimidation against any person filing a complaint.

(3) The adult care home provider or traumatic brain injury residential home provider may not retaliate against the resident or the person acting on behalf of the resident in any way. Such nonpermissible actions include, but are not limited to:

(A) Increasing charges;

(B) Decreasing services, rights or privileges;

(C) Taking or threatening to take any action to coerce or compel the resident to leave the facility; or

(D) Abusing or threatening to harass or abuse a resident in any manner.

(4) Persons acting in good faith in filing a complaint are immune from any liability, civil or criminal.

(5) An adult care home provider or traumatic brain injury residential home provider shall place a resident manager, substitute caregiver or employee against whom an allegation of abuse, neglect or exploitation has been made on administrative leave of absence until the investigation is

complete.

(6) Investigations shall be completed by the appropriate state oversight entity within time frames established in applicable statutes or regulations, or as expeditiously as necessary to ensure the health, safety and welfare of adult care home or traumatic brain injury residential home residents.

(7) Investigation findings shall be reported to the board in an anonymous probable cause presentation for the purpose of determining the appropriate discipline. Once this determination is made by the board, the adult care home provider or traumatic brain injury residential home provider shall be informed by written correspondence. The complainant shall also be advised of the complaint's resolution.

(8) The board shall maintain a file of reported complaints. The file shall include the name of the adult care home provider or traumatic brain injury residential home provider against whom the complaint is filed, the date the complaint is filed, the action taken by the board on the complaint and date of action taken.

68-11-209. Rules and regulations governing operation — Adoption by board — Waiver — Certification of administrator — Rules governing training and testing of nursing assistants — Outpatient services off main campus — Compliance with board rules.

(a)(1) The board has the duty and power to adopt such rules and regulations pertaining to the operation and management of any facilities required to be licensed under this part, and to rescind, amend or modify such rules and regulations from time to time, as are necessary in the public interest and particularly for the establishment and maintenance of standards of hospitalization required for the efficient care of patients or home for the aged, residential HIV supportive living facility, assisted-care living facility, adult care home residents, or traumatic brain injury residential home residents.

(2) For renal dialysis clinics, any rules promulgated after July 1, 2001, but before January 1, 2004, shall not be implemented until January 1, 2004. In addition to any filing or hearing required by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, regarding such initial rules for renal dialysis clinics, the department shall file a notice of proposed rulemaking concerning such rules promulgated pursuant to this section with the health and human resources committee of the house of representatives and the general welfare, health and human resources committee of the senate, at least thirty (30) days prior to the filing of such rules with the secretary of state pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The department shall present the substance of such rules in hearings before the previously named committees before the hearing of the rules by the government operations committee. No rule may be filed with the secretary of state, unless the department has complied with this section.

(b) The board has the power to waive any of the rules and regulations pertaining to any health care facility covered within the scope of this part, where such waiver would not have a detrimental effect on the health, safety and welfare of the public.

(c)(1) The board shall prescribe, by rules and regulations adopted by the board, the minimum standards as to equipment and provision for the care of

patients or home for the aged, residential HIV supportive living facility, assisted-care living facility, adult care home residents, or traumatic brain injury residential home residents to which an institution must conform in order to operate lawfully as any facilities required to be licensed under this part.

(2) The board shall assess, in writing, the fiscal impact on licensed nursing homes relating to the adoption, repeal or amendment of any rule or minimum standard as to equipment or operating procedure. The cost necessary to bring a facility into compliance with such a directive by the board shall be made available to the comptroller of the treasury as a component of allowable cost in accordance with medicare reimbursement principles. Such costs, however, shall be subject to all reimbursement limits and procedures specified in statute and state regulations for the reimbursement of nursing home services.

(d)(1) Any person who wishes to serve as the chief administrator of a licensed residential or institutional home for the aged, residential HIV supportive living facility, or assisted-care living facility shall first be certified by the board as a residential/institutional home administrator. This subsection (d) shall not apply to any individual licensed as a nursing home administrator pursuant to title 63, chapter 16. To be certified as a residential/institutional home administrator, a person must be a high school graduate or the holder of a general equivalence diploma; provided, that this requirement shall not apply to a person who served as the chief administrator of a licensed residential home for the aged, residential HIV supportive living facility, or assisted-care living facility during any continuous period of at least nine (9) months' duration preceding January 1, 1990, or who served as the chief administrator of a licensed institutional home for the aged, residential HIV supportive living facility, or assisted-care living facility during any continuous period of at least nine (9) months' duration preceding January 1, 1992. Certification shall not be issued, maintained, or renewed for any person convicted of a criminal offense involving the abuse or intentional neglect of an elderly or vulnerable individual. As a requisite for biennial renewal of certification, a person shall submit written proof of attendance during at least twenty-four (24) classroom hours of continuing education courses approved by the board and designed to enhance or reinforce the skills, knowledge and competence required of residential and institutional home administrators.

(2) The twenty-four (24) hours of continuing education courses required by subdivision (d)(1) shall include:

(A) State rules and regulations for homes for the aged;

(B) Health care management;

(C) Nutrition and food service;

(D) Financial management; and

(E) Health lifestyles.

(3) Persons conducting continuing education courses pursuant to this subsection (d) shall be subject to the following:

(A) A program offered for credit must be related to the operations of the homes for the aged, the activities of daily living of the residents, or other pertinent information deemed appropriate to the quality of life for residents; and

(B) All curricula pertaining to the educational courses and the names of the instructors must be submitted to the board for approval prior to

offering any course to administrators.

(4) In accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the board shall promulgate such rules as shall be necessary to implement this subsection (d) in an orderly and efficient manner; provided, that such rules shall not, as a requisite for certification or recertification, impose any substantive requirements in addition to those set forth in this subsection (d). The rules shall establish fees for initial certification and for biennial renewal of certification. The fees shall be set in an amount sufficient to pay all expenses incurred by the board in implementing this subsection (d).

(e)(1) Pursuant to the authority granted in subsection (a), the board, in consultation with the Tennessee Health Care Association, shall promulgate rules for the training and testing of nursing assistants in nursing homes that:

(A) Require annual publishing of testing schedules and sites;

(B) Require that test sites be located so that no individual seeking to take the test has to drive any farther than thirty (30) miles to reach a test site;

(C) Require tests to be held as scheduled regardless of the number of individuals scheduled for the test, unless no individuals are scheduled at a particular test site;

(D) Require publishing of the number of individuals passing and failing each test;

(E) Establish a minimum passing grade for the examination; and

(F) Establish a seventy-five-hour training program.

(2) Nothing in this subsection (e) is to be construed to alter or impede nursing assistant training and testing programs already in place pending the implementation of the rules described in subdivision (e)(1).

(3) Any existing committee charged with developing the nursing assistant test shall include at least three (3) representatives of the nursing home industry with an education or nursing background and nominated by the Tennessee Health Care Association.

(4) Nursing assistant testing may, at the nursing assistant's option, be conducted at the facility in which the nursing assistant is or will be employed, unless the facility has had its nursing assistant training program withdrawn pursuant to state or federal regulations. The testing of nurse assistants may be proctored by facility personnel, as long as such testing is secure from tampering, is standardized and is scored by a testing, educational or other organization approved by the board. Such testing shall require no scoring by facility personnel. The board shall revoke a facility's right to proctor such testing in any situation in which the board finds evidence of tampering by facility staff. For purposes of this subdivision (e)(4), "proctor" means supervision of an examination or test.

(f) Notwithstanding any rules and regulations of the board, a hospital may provide outpatient diagnostic and therapeutic services at locations other than the hospital's main campus without obtaining a waiver from the board; provided, that such other locations are under the sole control of the hospital.

(g) Notwithstanding any rule adopted by the board or any other provisions of this chapter, a hospital that satisfies the standards established by the joint commission on accreditation of health care organizations relative to the timely completion of medical records shall be deemed to comply with the rules of the

board relative to the timely completion of medical records.

(h)(1) The board shall promulgate in regulations requirements for education, experience and training, continuous education, background check and abuse registry checks for Level 2 adult care home providers and traumatic brain injury residential home providers, resident managers, substitute caregivers and staff. These requirements shall be commensurate with the expected responsibilities and care of residents in each applicable setting, and shall be dependent upon the level of licensure. The education, experience and requirements for Level 2 adult care home providers and traumatic brain injury residential home providers shall be sufficient to demonstrate competency in caring for residents and the ability to adequately maintain the health, safety and welfare of residents. The board shall develop additional standards for Level 2 adult care home providers and traumatic brain injury residential home providers that require education, training and experience necessary to adequately address the needs of persons with traumatic brain injury or ventilator dependent persons.

(2) The rules required under subdivision (h)(1) shall include, but not be limited to, the following:

(A) A resident manager for a Level 2 adult care home provider must meet the education, experience and training requirements of a Level 2 adult care home provider;

(B) A Level 2 adult care home provider serving ventilator dependent residents must hold a current professional license or employ a resident manager who holds a current professional license as a physician, nurse practitioner, registered nurse or respiratory therapist who is trained and experienced in the care of ventilator dependent residents;

(C) A Level 2 adult care home provider serving residents with traumatic brain injury must hold a national certification by the Academy of Certified Brain Injury Specialists as a Certified Brain Injury Specialist (CBIS), or hold a current professional license or employ a resident manager who holds a current professional license as a physician, nurse practitioner, registered nurse, licensed rehabilitation professional, CBIS or licensed mental health professional who is trained and experienced in the care and rehabilitation of residents with traumatic brain injury;

(D) A substitute caregiver for a Level 2 adult care home for persons with traumatic brain injury must hold a national certification by the Academy of Certified Brain Injury Specialists as a CBIS, or hold a current professional license as a physician, nurse practitioner, registered nurse, licensed rehabilitation professional or licensed mental health professional who is trained and experienced in the care and rehabilitation of residents with traumatic brain injury and must demonstrate competency in caring for persons with traumatic brain injury;

(E) A Level 2 resident manager serving residents with traumatic brain injury must hold a national certification by the Academy of Certified Brain Injury Specialists as a CBIS, or hold a current professional license as a physician, nurse practitioner, registered nurse, licensed rehabilitation professional or licensed mental health professional who is trained and experienced in the care and rehabilitation of residents with traumatic brain injury and must demonstrate competency in caring for persons with traumatic brain injury;

(F) A substitute caregiver for a Level 2 adult care home serving ventilator dependent residents must hold a current professional license as

a physician, nurse practitioner, registered nurse or respiratory therapist who is trained and experienced in the care of ventilator dependent residents and must demonstrate competency in caring for ventilator dependent residents;

(G) A traumatic brain injury residential home provider shall hold national certification by the Academy of Certified Brain Injury Specialists as a Certified Brain Injury Specialist (CBIS) or hold a current professional license as a physician, nurse practitioner, registered nurse, licensed rehabilitation professional, or licensed mental health professional who is trained and experienced in the care and rehabilitation of disabled adults suffering from the effects of a traumatic brain injury; and

(H) Traumatic brain injury residential home providers shall not be required to live in or employ a resident manager or substitute caregiver to live in a traumatic brain injury residential home. However, a traumatic brain injury residential home provider shall employ staff members to supervise the residents at all times, within the residence, including overnights and during weekends. The staff members providing overnight care and/or supervision must hold a national certification by the Academy of Certified Brain Injury Specialists as a Certified Brain Injury Specialist (CBIS), or hold a current professional license as a physician, nurse practitioner, registered nurse, licensed rehabilitation professional, or licensed mental health professional who is trained and experienced in the care and rehabilitation of residents with traumatic brain injury.

(3) All adult care home providers, resident managers and substitute caregivers shall complete annually twelve (12) hours of continuing education related to care of the elderly and persons with disabilities and business operations of adult care homes.

(4) The adult care home provider shall train all staff to meet the routine and emergency needs of residents. The adult care home provider is also responsible for training resident managers, substitute caregivers and staff on the health care tasks that can be administered through self-direction.

(5) The adult care home provider shall be responsible for supervision, training and overall conduct of resident managers, substitute caregivers and staff as it relates to their job performance and responsibilities.

(i) For developing a plan of care in Level 2 adult care homes, a licensed healthcare professional may include, when appropriate, persons holding a national certification by the Academy of Certified Brain Injury Specialists as a Certified Brain Injury Specialist (CBIS).

68-11-210. Inspections — Reports — Federal accreditation exemption.

(a)(1) Every facility for which a license has been issued shall be inspected within fifteen (15) months following the date of the last inspection by a duly appointed representative of the department under the rules and regulations to be promulgated under this part.

(2) Inspection reports shall be prepared on forms prescribed by the department.

(3) No institutions or agencies licensed pursuant to this part shall be required to be inspected or licensed under the laws of this state relative to hotels, restaurants, lodging houses, boardinghouses and places of refreshment.

(4) Adult care homes are subject to the following inspection standards:

(A) The board shall inspect an adult care home prior to issuing an initial license.

(B) The board shall conduct an unannounced inspection of an adult care home in accordance with subdivision (a)(1).

(C) The board shall be permitted access to enter and inspect any adult care home upon the receipt of an oral or written complaint, any time the board has cause to believe that an adult care home is operating without a license, or any time there exists a perceived threat to the health, safety or welfare of any resident.

(5) Traumatic brain injury residential homes are subject to the following inspection standards:

(A) The board shall inspect a traumatic brain injury residential home prior to issuing an initial license;

(B) The board shall conduct an unannounced inspection of a traumatic brain injury residential home in accordance with subdivision (a)(1); and

(C) The board shall be permitted access to enter and inspect any traumatic brain injury residential home upon the receipt of an oral or written complaint, any time the board has cause to believe that a traumatic brain injury residential home is operating without a license, or any time there exists a perceived threat to the health, safety or welfare of any resident.

(b)(1) The purpose of this subsection (b) is to require that state agencies, including the department of human services or the department of children's services, the department of health, and those agencies with which each contracts, who perform surveys, inspections and investigations of health care facilities, do not duplicate their procedures or subject such health care facilities to duplicate rules and regulations.

(2) For the purposes of this subsection (b), unless the context otherwise requires:

(A) "Health care facility" includes hospital, recuperation center, nursing home, birthing center, prescribed child care center, home for the aged, residential HIV supportive living facility, assisted-care living facility, adult care home and traumatic brain injury residential home, as defined in this part; and

(B) "Inspection" means all surveys, inspections, investigations and other procedures necessary for a state agency, or a division or unit of a state agency, to perform in order to carry out various obligations imposed on such agency by applicable state and federal law and regulations.

(3)(A) State agencies shall make, or cause to be made, only such inspections necessary to carry out the various obligations imposed on such agencies by applicable state and federal law and regulations.

(B) Any on-site inspection by a state agency, division licensing board, or unit thereof, that substantially complies with the inspection requirements of any other state agency, other division licensing boards, or unit of the inspecting agency charged with making similar inspections shall be accepted as an equivalent inspection, instead of an on-site inspection by such agency, division licensing board, or unit of the inspecting agency.

(C) The governor shall be authorized to coordinate the inspections of health care facilities by state agencies required to conduct such inspections.

(D) Notwithstanding this section or any other law to the contrary, the department shall conduct such on-site inspections and investigations as may be necessary to safeguard and ensure, at all times, the public's health, safety and welfare.

(E) The department shall conduct such inspections and investigations as may be necessary to appropriately respond to complaints received from the public and to immediately act upon any determination by the board that the public's health, safety or welfare is, or appears to be, threatened.

(4) The department, under part 1 of this chapter, the board, under this part, the Tennessee state board of examiners for nursing home administrators, under title 63, chapter 16, and any hospital authority, under title 7, chapter 57, shall conduct one (1) joint inspection for each licensing period or shall accept the investigation of one (1) of such entities, under subdivision (b)(3), unless otherwise required by federal law or regulation.

(5)(A) All health care facilities licensed by the department that have obtained accreditation from a federally recognized accrediting health care organization shall be deemed to meet all applicable licensing requirements. Such facilities may be subject to an inspection by the department and shall continue to be subject to subdivisions (b)(3)(D), and (E), but may be exempt from subdivision (a)(1) so long as the facility remains accredited.

(B) In order to be issued a license by the department, such hospitals shall be required to annually remit the statutory licensing fees and a copy of a letter of current accreditation and accompanying report from the joint commission on accreditation of hospitals.

(C) The report shall be maintained as a confidential record pursuant to § 10-7-504.

(6) No licensure fee shall be reduced by this subsection (b).

(c) If a violation, citation, deficiency, or civil monetary penalty is found during the nursing home survey process, in which the violation is based upon an action or actions that are directly pursuant to a physician's order, the board of medical examiners' consultant, or the consultant's physician designee, shall be contacted for a consultation on the determination as to the medical necessity of the physician's order in question. The determination of medical necessity shall be based upon the recognized medical standards of practice and shall include, but not be limited to, a review of the physician's order, the date the order was given, the status of the patient at the time the actions occurred and the outcomes of the actions, the applicable state and federal regulations, and shall include contact between the consultant or designee and the treating physician or the facility's medical director. Any consultation between the consultant or designee and the treating physician or medical director must be completed within the time frames of the survey process. If it is determined that the violation is based upon or relates to a physician's order determined to be medically necessary, no violation, citation, deficiency, or civil monetary penalty shall be assessed against the facility and any deficiency cited in violation of this subsection (c) will be removed. The department shall report back to the board of medical examiners and the appropriate standing committees at the end of six (6) months regarding the effectiveness and the resources necessary to meet the requirements of this subsection (c).

(d) Any nursing home that files for federal bankruptcy protection shall immediately inform the commissioner of health regarding its financial condi-

tion and the status of the legal proceedings. In overseeing a facility that has filed for federal bankruptcy protection, the department of health shall follow any existing policies or regulations pertaining to any special inspection or oversight of such a facility. The fund established by § 68-11-827 may be used for the purpose of protecting the residents of such a nursing home, if the facility's noncompliance with the conditions of continued licensure, applicable state and federal statutes, rules, regulations and contractual standards threatens the residents' continuous care, the residents' property, the nursing home's continued operation, or the nursing home's continued participation in the medical assistance program of title 71, chapter 5. The commissioner shall inform the attorney general and reporter regarding the status of the legal proceedings.

68-11-213. Injunctions and penalties — Promulgation of regulations.

(a)(1) The department is authorized to initiate proceedings seeking injunctive and any other form of relief available in law or equity against any person who owns, operates, manages or participates in the operation of or management of any facilities required to be licensed under this part, or any resident or residents in any facility required to be licensed under this part, without having the license required by this part.

(2) The department may also seek such relief against any person who owns, operates, manages or participates in the operation or management of any facility required to be licensed under this part, if such person or facility violates this part, rules, regulations or orders issued under this part, or terms and conditions of the license.

(3) Proceedings under this section may be initiated in the chancery court of Davidson County or the chancery court of the county in which all or part of the activities complained of occur.

(b) Based upon a complaint that a home for the aged, assisted-care living facility, adult care home or traumatic brain injury residential home, subject to licensure under this part may be operating without a license, the department, with consent of an owner, operator, manager, or person who participates in the operation, or patient or resident, or the guardian of the patient or resident, may enter the facility in order to investigate or inspect the complaint for the necessity of or compliance with licensure under this part.

(c) If consent is not obtained and the area sought to be inspected is a closed or non-public area, right of entry and inspection shall not be made by the department, unless a civil warrant, upon probable cause, is first obtained authorizing such entry or inspection.

(d) Inspections conducted pursuant to this section shall be conducted in a manner so as to minimize disruption.

(e) If a determination is made by the department that a home for the aged, assisted-care living facility or alcohol and drug treatment center is subject to the requirements of licensure under this part, a notice shall be issued by the department stating the determination and requiring that application for licensure shall be made to the department within thirty (30) days of the receipt of that notice. The thirty-day application period does not serve to waive any and all civil penalties that may be assessed for unlicensed operation of a facility under this part.

(f) Failure of the home for the aged, assisted-care living facility or alcohol

and drug treatment center to make application to the department for licensure within thirty (30) days from the date of the receipt of the notice may result in the initiation of injunctive relief and any other relief available in law or equity against any person who owns, operates, manages or participates in the management of the facility.

(g) In addition to requiring that the home for the aged, assisted-care living facility, adult care home or traumatic brain injury residential home make application for licensure, the department may immediately initiate a petition for injunctive relief or any other relief available in law or equity. The department may recommend and direct the home for the aged, assisted-care living facility, adult care home or traumatic brain injury residential home to immediately cease and desist operations when the health, safety or welfare of the patients or residents requires emergency action.

(h)(1) It is unlawful for any person to receive or accept any patient or patients or any resident or residents in any facility required to be licensed under this part without having applied for and obtained a license as required by this part.

(2) A violation of this requirement is a Class B misdemeanor.

(3) Each day of operation without a license constitutes a separate offense.

(i)(1) The department may assess a civil penalty not to exceed five thousand dollars ($5,000) against any person or entity operating an assisted-care living facility, adult care home or traumatic brain injury residential home without having the license required by this chapter. Each day of operation is a separate violation.

(2) The board for licensing health care facilities is authorized to establish as part of its comprehensive system of quality assurance and enforcement a system for assessing civil monetary penalties, including appropriate due process, for assisted-care living facilities adult care homes and traumatic brain injury residential homes that are in serious violation of state laws and regulations, resulting in endangerment to the health, safety and welfare of residents.

(3) All penalties for adult care homes or traumatic brain injury residential homes shall be deposited by the department with the state treasurer to a general fund account specifically designated for the purpose of providing adult care home educational training programs and continuing education requirements for adult care home providers and traumatic brain injury residential home providers, resident managers, substitute caregivers and staff. The commissioner of finance and administration shall determine the appropriate use for these funds.

(4) Beginning one hundred eighty (180) days after the promulgation of regulations under this part by the department, the department may assess a civil penalty not to exceed three thousand dollars ($3,000) against any licensed assisted-care living facility for admitting or retaining residents not meeting the definition of assisted-care facility resident set forth in this chapter. Each such resident shall constitute a separate violation.

(j)(1) The department may assess a civil penalty not to exceed one thousand dollars ($1,000) against any person or entity operating a prescribed child care facility without the license required by this chapter or in violation of any other statute or regulation promulgated under this chapter. Each day of operation is a separate offense.

(2) The board is specifically authorized to promulgate regulations for the assessment and procedures to be used in the assessment of civil penalties

against a prescribed child care center, including, but not limited to, a schedule of the minimum and maximum penalties, factors to be considered in making the assessment, procedures to be used in the assessment, appeals, and finality of assessments.

(3) The board is authorized to conduct contested cases regarding appeals of the penalties assessed pursuant to this subsection (j).

68-11-216. Annual license fees — Liens — Revocation of licenses — Penalties — Annual nursing home tax.

(a)(1) The board is authorized to promulgate, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, such rules and regulations as are necessary to set fees for licensure, renewal of licensure, late renewal fees and such other fees as are necessary to comply with the intent of subsection (b), for the entities and facilities listed in § 68-11-202(a)(1).

(2) The entities and facilities referenced in subdivision (a)(1), except those operated by the United States government or the state of Tennessee, shall make application for licensure and renewal under this part and shall pay the fees applicable to them to the department for regulatory purposes.

(3) The licensure and annual renewal fees for the following types of home care organizations shall not exceed twenty-five percent (25%) of the total licensure and annual renewal fees set by the board for all other home care organizations:

(A) Home care organizations that also pay a fee to be licensed by the department of mental health and substance abuse services;

(B) Home care organizations owned and operated by therapists who pay a fee to be licensed under title 63, chapter 13 or chapter 17; or

(C) Home care organizations that are owned and controlled by another home care organization that pays an annual license or renewal fee.

(4) Excluded from payment of the fees as an ambulatory surgical treatment center and an outpatient diagnostic center are hospital based ambulatory surgical treatment centers and outpatient diagnostic centers that are included in the licensing and renewal fee of the hospital in which they are located.

(5) Prior to the promulgation of a rule increasing fees for licensed health care facilities, the department of health shall present to the board a detailed report justifying the proposed fee amount. The report shall include at least the following elements:

(A) The fees currently charged, the proposed new fees, and the percentage increase expected from the proposed fees;

(B) The total number of full-time equivalent positions funded, and how those positions are funded, if not entirely from fee revenue;

(C) Justification for any increase in fees, including an itemization of actual or expected increases in costs to the board, and inspection or licensure activities on which any proposed increases in funding will be spent; and

(D) A specific breakdown that differentiates the costs incurred for licensure activities under state law from any other activity required by a contractual or legal requirement with the federal government.

(6) Not later than sixty (60) calendar days prior to the presentation of the report and the information outlined in subdivision (a)(5) to the board, the

report and the information outlined in subdivision (a)(5) shall be provided to the board and any provider association representing such a facility affected by a proposed change in licensure fees. The report and information shall be provided in both paper and electronic format, and shall be made available to any affected licensed facility upon request.

(7) Any increase or decrease in fees proposed or approved by the board must increase or decrease the fees for all licensed facilities by a similar percentage amount, which shall not vary more than five percent (5%) between facility types.

(b)(1) The fees established by the board shall be submitted with the appropriate applications. All fees so collected shall be deposited by the department with the state treasurer to the credit of the general fund, and shall be expended by the department and included in the appropriation made for the board in the general appropriations act.

(2) It is the intent of the general assembly that the board establish and collect fees in an amount sufficient to pay the costs of operating the board, including, but not limited to, licensure and inspection costs. On or before December 31 of each year, the commissioner shall certify and report to the government operations committee of each house, if the board did not, during the fiscal year, collect fees in an amount sufficient to pay the costs of operating the board. If the board fails to collect sufficient fees to pay the costs of operating the board for a period of two (2) consecutive fiscal years, the board shall be reviewed by the joint evaluation committees and shall be subject to a revised termination date of June 30 of the fiscal year immediately following the second consecutive fiscal year during which the board operated at a deficit.

(c)(1) It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of providing nursing home care. The tax imposed by this subsection (c) shall be in addition to all other privilege taxes.

(2) Effective for two (2) years beginning July 1, 2011, in addition to the fees set forth in subsection (a), each nursing home shall pay an annual nursing home tax as set forth in this subsection (c). Such tax shall be paid in equal monthly installments of one-twelfth ($^1/_{12}$) of the annual amount established by this subsection (c). The installments are due on the fifteenth of each following month beginning August 15, 2011, for the July 2011 installment and ending with a final payment on July 15, 2013.

(3) The annual nursing home tax shall be based on the number of nursing home beds licensed by the state on July 1, 2011, and on July 1, 2012, for the fiscal year following such date, excluding beds in nursing homes specifically certified as intermediate care beds for the mentally retarded. The tax shall be uniformly applied to all licensed beds at the rate of two thousand two hundred twenty-five dollars ($2,225) per licensed bed per year. Licensed facilities that are owned or operated by an agency of the state are not excluded from paying the tax. There shall be no exclusions, deductions or adjustments applied to the tax of any licensed facility different from any other such facility. Beds licensed after July 1, 2011, and July 1, 2012, shall pay a prorated amount of the annual tax for the fiscal year following such date; provided, that no such tax shall be due to the extent that the beds licensed after July 1, 2011, were the result of the transfer of such beds from one licensed facility to another licensed facility, where the transferor facility

had already paid the full amount of the tax on such beds, or where the transferor facility agrees to continue to pay the monthly installments due with respect to such beds.

(4) The commissioner shall adopt rules and regulations governing the collection of such taxes. Notwithstanding any other provision of law, the commissioner is authorized to promulgate such rules as emergency rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(5) Any challenge to the tax imposed by this subsection (c) shall be brought pursuant to title 67, chapter 1, part 9 and § 9-8-307(a)(1)(O).

(6)(A) All revenue collected pursuant to this subsection (c) shall be deposited in the general fund.

(B) All nursing home privilege tax payments made by nursing homes under this section and received by the state; all investment earnings credited to the nursing home privilege tax payments; any interest and penalties paid under this section by any nursing home; and all funds generated by federal matching payments made relative to the nursing home privilege tax shall be available to and used by the bureau of TennCare for the sole purpose of providing payment to nursing homes.

(C) No part of the nursing home privilege tax payments made by nursing homes under this section and received by the state; the investment earnings credited to the nursing home privilege tax payments; the interest and penalties paid under this section by any nursing home; or the funds generated by federal matching payments made relative to the nursing home privilege tax shall be used for any purpose other than providing payment to nursing facilities.

(7)(A) If any part of any tax imposed under this subsection (c) is not paid on or before the due date, a penalty of five percent (5%) of the amount due shall at once accrue and be added to such tax. Thereafter, on the first day of each month during which any part of any tax or any prior accrued penalty remains unpaid, an additional penalty of five percent (5%) of the then unpaid balance shall accrue and be added to such tax or prior accrued penalty. In addition, taxes under this subsection (c) not paid on the due date shall bear interest at the maximum lawful rate from the due date to the date paid. Payment shall be deemed to have been made upon date of deposit in the United States mail. The commissioner may for good cause approve an alternative payment plan, as long as full payment of the tax plus penalty and interest is made.

(B) If a nursing home is more than sixty (60) days delinquent in paying an installment of its annual nursing home tax, the commissioner shall be authorized to initiate proceedings before the board in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, so that the board may suspend admissions to the facility or otherwise direct the facility to pay the tax and any accrued penalties and interest in full within a prescribed period of time. If the facility does not pay the tax and any accrued penalties and interest in full within the prescribed period of time as directed by the board, the board shall suspend admissions to the facility. Any suspension of admissions imposed according to this section shall immediately be lifted following the full payment of the tax and any accrued penalties and interest by the facility. If full payment of the tax and any accrued penalties and interest is not paid within sixty (60) days from

the first day of the suspension of admissions, the commissioner shall be authorized to initiate proceedings before the board in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, so that the board may consider the revocation of the facility's license.

(8) The tax imposed by this subsection (c) may not be billed by the nursing home as a separately stated charge, but this shall not prevent the nursing home from adjusting its rates to defray the cost associated with the tax.

(9) The fiscal review committee shall review and have oversight of the implementation of this subsection (c).

(10) Enactment of this subsection (c) and any amendments to this subsection (c) shall not operate to excuse the monthly installment payment of the nursing home privilege tax due on July 15, 2011.

(11) Any tax obligation imposed by this subsection (c) shall be suspended to the extent that, and for the period that receipt of the tax by the state results in, a corresponding reduction in federal financial participation under Title XIX of the federal Social Security Act, compiled in 42 U.S.C. § 1396 et seq.

(12) The annual nursing home tax established by this subsection (c) shall terminate on June 30, 2013.

68-11-223. Ambulatory surgical treatment centers performing abortions.

(a) The general assembly finds and declares as fact, with regard to ambulatory surgical treatment centers that terminate pregnancies, that:

(1) Over twenty-one thousand (21,000) abortions are performed annually in Tennessee;

(2) The majority of these abortions are performed in ambulatory surgical treatment centers;

(3) Gross negligence, unethical conduct and unprofessional administration of some centers have been documented by the department, including conditions such as:

(A) The existence of unsterile and unsanitary conditions;

(B) Fire and safety violations, electrical code violations and inadequate ventilation;

(C) Improper disposal of infectious waste;

(D) Allowing patients to leave too soon after the abortion procedure;

(E) Lack of records on patients and complications;

(F) Doctors practicing without a license or without local hospital privileges; and

(G) Surgical procedures performed without a nurse in attendance;

(4) Such centers are the only medical facilities in the state that regularly perform surgery on minors without the knowledge or consent of the parents, guardian or custodian; and yet the parents, guardian or custodian are not relieved of their financial liability and familial responsibilities;

(5) Such centers should be held to similarly applicable standards as other health care related facilities;

(6) The state has a legitimate interest in protecting its citizens from exploitation, the spread of infectious diseases, and ensuring that its citizens utilizing such centers are provided with quality health care as is required in all health care facilities licensed and regulated by the state; and

(7) Many such centers do not carry or maintain adequate health care liability insurance, if any, and the state has an interest in ensuring that those persons utilizing such centers have an adequate recourse to recover financially if a health care liability action arises from the use of such facilities.

(b)(1) In addition to complying with the rules and regulations promulgated by the board for ambulatory surgical treatment centers, no ambulatory surgical treatment center that terminates pregnancies shall be granted a license, renewal of a license or be authorized to continue operation under this chapter, unless it complies in full with all of the following requirements:

(A) Maintenance of at least two million dollars ($2,000,000) of health care liability insurance in force, annually submitting to the department proof of such insurance coverage;

(B) Satisfaction of all applicable regulations and requirements of the board for compliance with state and local building codes, including electrical, plumbing, fire and other building and safety codes, except where the board determines that a waiver is appropriate;

(C) Is not in violation of department regulations that directly impact the health care of multiple patients with such scope and magnitude as to clearly show consistent and willful neglect of the regulations, fundamental flaws in the facility's operation, or knowing failure to comply with departmental regulations;

(D)(i) The administrator of such facility shall be:

(a) A licensed physician, licensed practical nurse, registered nurse, or have a college degree from a four-year accredited institution and experience in a health-related field; and

(b) Of good moral character.

(ii) For purposes of subdivision (b)(1)(D)(i), "administrator" means the person who is responsible for the operation of the medical facility where pregnancies are terminated;

(E) No employee providing direct patient care, officer, director, or owner of the facility, or if a corporation, a stockholder who owns fifty-one percent (51%) or more of the stock in the corporation, shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude within five (5) years immediately preceding the date of application; and

(F) No employee providing direct patient care, officer, director, or owner of the facility, or if a corporation, a stockholder who owns fifty-one percent (51%) or more of the stock in the corporation, shall have been convicted of or pleaded nolo contendere to any violation of this chapter.

(2) The board shall suspend or revoke a license of such center if a violation of this subsection (b) occurs following the issuance or renewal of a license.

(3) In addition to any other lawful disciplinary action under this part, the board may assess a civil penalty not exceeding two thousand dollars ($2,000) for each violation of this subsection (b).

68-11-224. Withholding of resuscitative services — Regulations.

(a) A universal do not resuscitate order may be issued by a physician for a patient with whom the physician has a bona fide physician/patient relationship, but only:

(1) With the consent of the patient;

(2) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, compiled in part 18 of this chapter; or

(3) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, compiled in part 18 of this chapter, is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician determines cardiopulmonary resuscitation is not medically appropriate.

(c)(1) Universal do not resuscitate orders issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this section and applicable regulations, qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board or by the department of mental health and substance abuse services or the department of intellectual and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders that are available to them in a form approved by the board.

(2) The department of intellectual and developmental disabilities shall allow unlicensed individuals who provide direct support and care to persons supported and who are employed by agencies that are licensed under title 33 and under contract to provide residential or adult day programs and personal assistance or who provide direct support and care to persons supported within the ICF/ID homes and department facilities, to be authorized to follow universal do not resuscitate orders that are made available to them in a form approved by the board.

(d) Nothing in this section shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.

(e) For the purposes of this section:

(1) "Emergency responder" means a paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of such person's proper function under law or rendering emergency care at the scene of an emergency;

(2) "Health care provider" shall have the same meaning as ascribed to that term in § 68-11-1802, and shall include, but shall not be limited to, qualified emergency medical services personnel;

(3) "Person authorized to consent on the patient's behalf" means any person authorized by law to consent on behalf of the patient incapable of

making an informed decision or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian or as otherwise provided by law;

(4) "Qualified emergency medical service personnel" shall include, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders;

(5) "Unlicensed individuals who provide direct care and support to persons supported" means the unlicensed individuals, including their unlicensed direct care and support supervisors, who are employed to provide direct care and support to persons supported within the department of intellectual and developmental disabilities ICF/ID homes and facilities or by agencies that are licensed under title 33 and under contract with this department; and

(6) "Universal do not resuscitate order" means a written order that applies regardless of the treatment setting and that is signed by the patient's physician that states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

(f) If a person with a universal do not resuscitate order is transferred from one (1) health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the patient's record.

(g) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This section shall have no application to any do not resuscitate order that is not a universal do not resuscitate order as defined in this section.

(h) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided in this section.

(i)(1) The board shall promulgate rules and create forms regarding procedures for the withholding of resuscitative services from patients in accordance with this part and this section.

(2) The rules shall address:

(A) The mechanism or mechanisms for reaching decisions about the withholding of resuscitative services from individual patients;

(B) The mechanism or mechanisms for resolving conflicts in decision making, should they arise; and

(C) The roles of physicians and, when applicable, of nursing personnel, other appropriate staff, and family members in the decision to withhold resuscitative services.

(3) The rules shall include provisions designed to assure that patients' rights are respected when decisions are made to withhold resuscitative services and shall include the requirement that appropriate orders be written by the physician primarily responsible for the patient, and that documentation be made in the patient's current clinical record if resuscita-

tive services are to be withheld.

(4) This section shall not be construed or implemented in any manner that restricts or impairs the decision-making authority of the agent, surrogate, or other person designated in the Tennessee Health Care Decisions Act, compiled in part 18 of this chapter. This section does not authorize a surrogate to give consent for or take any action on behalf of a patient on any matter governed by title 33.

(j) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability for:

(1) Complying with a universal do not resuscitate order;

(2) Declining to comply with a universal do not resuscitate order based on a reasonable belief that the order then lacked validity; or

(3) Complying with a universal do not resuscitate order and assuming that the order was valid when made and has not been revoked or terminated.

68-11-270. Assessment of prospective resident by adult care home provider or traumatic brain injury (TBI) residential home provider prior to admission — Development of residential plan of care — Person centered approach — Ability to meet needs of resident — Meals and activities — Staffing — Resident's rights — Transfers or discharges — Transitional plans.

(a) An adult care home provider or traumatic brain injury residential home provider shall conduct an assessment of a prospective resident before admitting the resident. The assessment shall include, but it is not limited to, diagnoses, medications, personal care needs, nursing care needs, night care needs, nutritional needs, activities and lifestyle preferences. A copy of the assessment shall be given to the prospective resident and the resident's family member or representative.

(b) As a result of the assessment, the adult care home provider or traumatic brain injury residential home provider shall develop a residential plan of care for the day-to-day delivery of residential services, including personal and healthcare needs and night care needs. The adult care home provider or traumatic brain injury residential home provider shall use a person-centered approach that focuses on the needs and preferences of the resident and takes into consideration the supports necessary to sustain the person in the community and to maintain and whenever possible, to improve functional abilities. At a minimum, the resident and the resident's family members or representatives shall be actively involved in the development of the plan of care. If adult care home services are or will be reimbursed through the TennCare CHOICES program, or any successor thereto, the residential plan of care should be developed in collaboration with the member's care coordinator to ensure consistency regarding the member's comprehensive plan of care for the CHOICES program; provided, however, that no such care coordinator requirement shall apply to a traumatic brain injury residential home services. Residential plans of care shall be reviewed at least quarterly and updated at a minimum on an annual basis and more frequently as resident's health status changes and circumstances warrant. The residential plan of care shall include, at a minimum, the following elements:

(1) Health and functional status, including cognitive/behavioral health status and any ADL deficiencies;

(2) Resident needs and preferences, including personal and healthcare needs, and night care needs;

(3) Significant health conditions and required course of treatment for management of chronic conditions;

(4) Medication regimen;

(5) Any healthcare tasks that have been ordered by a healthcare professional that will be performed by the adult care home provider or traumatic brain injury residential home provider under the self-direction of the resident or of the resident's family member;

(6) Identification of risks to health and safety;

(7) Strategies to mitigate identified risks; and

(8) For traumatic brain injury residential homes, activities in the community for which the resident, the resident's family, or legal representative has an interest, including, but not limited to, church attendance, visits to local parks, and other recreational activities.

(c) An adult care home provider or traumatic brain injury residential home provider shall be able to meet the needs, including personal and healthcare needs and night care needs, of a resident before admitting the resident.

(d) An adult care home provider or traumatic brain injury residential home provider shall provide three (3) nutritionally balanced meals per day or shall make arrangements for meals on an as needed basis. Meal planning and preparation shall take into consideration any special dietary needs of the resident, as prescribed by his or her physician. For traumatic brain injury residential homes, there shall be no requirement that all three (3) meals be provided at the same residence, since the residents will consume some of these meals while at the separately licensed day care facility.

(e) An adult care home provider or traumatic brain injury residential home provider shall also provide to residents a daily regimen of activities commensurate with the resident's needs, as identified through the assessment developed pursuant to subsection (a) and specified in the residential plan of care.

(f) An adult care home provider or traumatic brain injury residential home provider shall develop a written agreement for each resident specifying, at a minimum, resident rights, house rules and the rate schedule, including any patient liability for which the resident will be responsible. The written agreement shall specify the consequences for non-payment of patient liability, as applicable, which may include involuntary discharge from the adult care home or traumatic brain injury residential home provider. The agreement shall be signed and dated by the adult care home provider or traumatic brain injury residential home provider and resident or the resident's family member or legal representative and presented to the resident and the resident's family member or legal representative both verbally and in writing. The agreement shall be reviewed and updated as necessary as a part of the residential plan of care review process. The adult care home provider or traumatic brain injury residential home provider may not include any illegal or unenforceable provision in an agreement with a resident. The adult care home provider or traumatic brain injury residential home provider must give thirty (30) days' written notice to the resident prior to making any change in the rates.

(g) An adult care home provider or traumatic brain injury residential home provider shall provide twenty-four (24) hour staffing coverage that is adequate

to meet the needs of residents. For traumatic brain injury residential home providers, this will include both the residences and the day services facility under separate license. Staffing and clinical expertise should correspond to the license category of the adult care home or traumatic brain injury residential home in accordance with this part. In addition, adult care home providers or traumatic brain injury residential home providers shall coordinate with primary care physicians, specialists and other healthcare professionals, as appropriate.

(h) Residents of adult care homes or traumatic brain injury residential homes shall be granted specific rights that shall be specified by the board in rules. Adult care home providers or traumatic brain injury residential home providers shall guarantee these rights and help residents exercise them. The adult care home provider or traumatic brain injury residential home provider shall post a copy of the resident rights in the entry or other equally prominent place in the adult care home or traumatic brain injury residential home. The adult care home provider or traumatic brain injury residential home provider cannot require a resident to waive any of the resident's rights.

(i) An adult care home provider or traumatic brain injury residential home provider may not transfer or discharge a resident from an adult care home or traumatic brain injury residential home unless the transfer or discharge is necessary for medical reasons, for the welfare of the resident or for the welfare of other residents, due to nonpayment of patient liability, or closing or selling the facility.

(j) For discharges or transfers related to medical reasons, for the welfare of the resident or for the welfare of other residents or due to nonpayment of patient liability, the adult care home provider or traumatic brain injury residential home provider shall give the resident written notice at least thirty (30) days prior to the proposed transfer or discharge, except in a medical emergency that requires immediate action. In such cases, the adult care home provider or traumatic brain injury residential home provider shall give the resident written notice as soon as possible under the circumstances.

(k) In the event the transfer or discharge is due to medical reasons, the welfare of the resident, or for the welfare of other residents, the adult care home provider or traumatic brain injury residential home provider shall develop a transition plan in order to maintain continuity of care for the resident and to minimize the impact of the transition. The adult care home provider or traumatic brain injury residential home provider shall work with the board, or, for adult care home services reimbursed through the TennCare CHOICES program, the member's care coordinator to develop the transition plan; provided, however, that no care coordinator requirement shall apply to a traumatic brain injury residential home. The adult care home provider or traumatic brain injury residential home provider shall assist the resident in locating an alternative appropriate setting, which shall be specified in the transition plan. The transition plan shall also include the most recent version of the resident's plan of care.

(*l*) In the event the transfer or discharge is due to selling the facility to another adult care home provider or traumatic brain injury residential home provider, the current adult care home provider or traumatic brain injury residential home provider shall develop a transition plan for all residents to facilitate the transition to the new adult care home provider or traumatic brain injury residential home provider and shall maintain its license and operation of the facility until the point in time the new adult care home provider's or

traumatic brain injury residential home provider's license is approved.

(m) In the event the transfer or discharge is due to closing of a facility, the adult care home provider or traumatic brain injury residential home provider shall provide ninety (90) days' advance notice to residents, and shall develop a transition plan to maintain continuity of care for the residents and to minimize the impact of transition. The plan shall be developed in conjunction with the board, or, for adult care home services reimbursed through the TennCare CHOICES program, the MCO as appropriate; provided, however, that no requirement for working with an MCO shall apply to traumatic brain injury residential home services. The adult care home provider or traumatic brain injury residential home provider shall assist each resident in locating an alternative placement, which shall be specified in the transition plan. The transition plan shall also include the most recent version of the resident's plan of care.

(n) The board may promulgate regulations specifying additional components of the transition plan in accordance with this part.

68-11-273. Licensing of traumatic brain injury residential homes.

(a) Traumatic brain injury residential homes shall be licensed by the board and meet the standards prescribed in this part and in regulations promulgated by the board pursuant to this part, unless the board waives the same.

(b) As a condition for licensure, a traumatic brain injury residential home provider shall provide community-based care for its residents in addition to residential care. During weekdays, the disabled adults residing in a traumatic brain injury residential home shall be provided day services through a separate facility licensed by the state. On weekends, the disabled adults shall participate in community activities, including, but not limited to, church attendance, visits to local parks, and other recreational activities of their choice or the choice of their family or legal representatives.

(c) Traumatic brain injury residential home providers shall not be required to live in or employ a resident manager or substitute caregiver to live in a traumatic brain injury residential home. However, a traumatic brain injury residential home provider shall employ staff members to supervise the residents at all times within the residence, including overnights and during weekends. The staff members providing overnight care and/or supervision shall hold a national certification by the Academy of Certified Brain Injury Specialists as a Certified Brain Injury Specialist (CBIS), or hold a current professional license as a physician, nurse practitioner, registered nurse, licensed rehabilitation professional, or licensed mental health professional who is trained and experienced in the care and rehabilitation of residents with traumatic brain injury.

68-11-274. Provision of day services for residents as part of comprehensive services.

As an alternative to the licensing condition of off-site day services established by §§ 68-11-206(a)(2)(E) and 68-11-273, a traumatic brain injury residential home serving only private pay or private insurance clients may provide day services for its residents on site as part of its comprehensive services.

68-11-275. Funding from the TennCare CHOICES program — Applicability of the Critical Adult Care Act of 2009.

(a) Nothing in this part, including the traumatic brain injury residential homes authorized by this part, shall entitle any traumatic brain injury residential home provider to funds from the TennCare CHOICES program or any successor to the TennCare program, other than those funds for which the provider or its residents are eligible separate and apart from this part.

(b) The Critical Adult Care Home Act of 2009, as enacted by chapter 579 of the Public Acts of 2009, shall have no applicability to this part unless it is specifically authorized in this part.

68-11-310. Report of hospital statistics.

(a)(1) All hospitals licensed by the department of health or by the department of mental health and substance abuse services shall, within one hundred fifty (150) days after the end of each individual hospital's fiscal year, submit to the department of health a joint annual report of the statistical particulars relative to their patients for the fiscal year.

(2) If a hospital closes or changes ownership during the fiscal year, the owner of the hospital at the beginning of the fiscal year shall file a joint annual report with the department of health for the period of time that the hospital was owned or operated. The joint annual report shall be submitted within one hundred five (105) days after the close or change of ownership.

(3) If the department of health determines that there are errors in the joint annual report, the hospital shall be notified of the errors and shall be required to provide corrections to the department of health within fifteen (15) business days of notification.

(4) All hospitals that submit a joint annual report to the department of health as designated in this section shall also submit to the department, at the same time they send the signed paper copy of the report, a notarized statement from their chief financial officer stating that the financial data reported on the joint annual report is consistent with the audited financials for the hospitals for that reporting year. The notarized statement shall also be attested to by the chief executive officer of the hospital.

(b) The commissioner shall determine, through the promulgation of rules and regulations, the contents of the report, but may request early completion of the report, portions of the report or special reports when requested to do so by the office of the comptroller or at other times, but only after consultation with the Tennessee Hospital Association. In no event shall the department of health authorize the reporting of a hospital's statistics for less than a full twelve-month period, unless the hospital was not open during the entire twelve-month period. Any hospital that is open for less than the full twelve-month period shall report for the entire period of its operation.

(c)(1) Hospitals that fail to file their joint annual report in a timely manner, as referenced in § 68-1-109, or that file a joint annual report that does not include all of the required data elements or includes data that does not pass the department's editing, shall receive a deficiency from the department. Within fifteen (15) business days from receipt of the deficiency, the hospital shall be required to return a plan of correction indicating:

(A) How the deficiency will be corrected;

(B) The date upon which each deficiency will be corrected;

(C) What measures or systemic changes will be put in place to ensure that the deficient practice does not recur; and

(D) How the corrective action will be monitored to ensure that the deficient practice does not recur.

(2) Either failure to submit a plan of correction in a timely manner or a finding by the department that the plan of correction is unacceptable shall subject the hospital's license to possible disciplinary action.

(d) The department of health shall compile, finalize and make available to the public an electronic compilation of the statistics reported by the hospitals for the fiscal years ending during a calendar year by November 30 of the following year.

68-11-830. Intermediate care facilities for the mentally retarded (ICFMR) — Exercise of enforcement powers — Taxation.

(a) Notwithstanding any other law to the contrary, any and all enforcement powers and authority conferred by § 68-11-207(b) or by §§ 68-11-811 — 68-11-820 and 68-11-826 — 68-11-829 on the commissioner of health shall be exercised by the commissioner of mental health and substance abuse services in the case of any facility that is both licensed by the department of mental health and substance abuse services, pursuant to title 33, chapter 2, part 4, and is also certified to participate in the medicare or medicaid medical assistance programs as an intermediate care facility for the mentally retarded, (ICFMR) as defined by 42 CFR 442.1 et seq.

(b) All powers and duties conferred by § 68-11-207(b) on the board for licensing health care facilities shall, for the limited purposes of this section, be exercised by the commissioner of mental health and substance abuse services.

(c) Before exercising the powers of §§ 68-11-811 — 68-11-820 and 68-11-826 — 68-11-829, the commissioner of mental health and substance abuse services shall first promulgate regulations identifying those standards pertinent to ICFMRs whose violation may justify the assessment of a civil monetary penalty, classifying those standards by type, and detailing the circumstances under which civil penalties may be imposed.

(d)(1) Each ICFMR shall pay a tax as set forth in this subsection (d). Licensed facilities that are owned or operated by an agency of the state are not excluded from paying the tax.

(2) The tax shall be at the rate of five and one half percent (5.5%) of the monthly gross receipts of an ICFMR operating in this state. The tax due from facilities that are not one hundred percent (100%) ICFMR certified shall be based at the rate of five and one half percent (5.5%) of the monthly gross receipts generated from beds certified as intermediate care beds for the mentally retarded in the facility. The tax shall be paid monthly based on the amount of the tax established in this subdivision (d)(2). The monthly payments are due on the fifteenth of each following month, beginning August 15, 1994, for the July 1994 payment, and ending with a final payment on July 15, 2013. It is the clear and unequivocal intent of the general assembly that this subdivision (d)(2) has retroactive application to January 1, 2008.

(3) The commissioner of health shall adopt rules and regulations governing the collection of such taxes. Notwithstanding any other provision of law, the commissioner is authorized to promulgate such rules as emergency rules pursuant to the rulemaking provisions of the Uniform Administrative

Procedures Act, compiled in title 4, chapter 5.

(4) Any challenge to the tax imposed by this subsection (d) shall be brought pursuant to title 67, chapter 1, part 18 and § 9-8-307(a)(1)(O).

(5) All revenue collected pursuant to this subsection (d) shall be deposited in the general fund.

(6)(A) If any part of any tax imposed under this subsection (d) is not paid on or before the due date, a penalty of five percent (5%) of the amount due shall at once accrue and be added to such tax. Thereafter, on the first day of each month during which any part of any tax or any prior accrued penalty remains unpaid, an additional penalty of five percent (5%) of the then unpaid balance shall accrue and be added to such tax or prior accrued penalty. In addition, taxes under this subsection (d) not paid on the due date shall bear interest at the maximum lawful rate from the due date to the date paid. Payment shall be deemed to have been made upon date of deposit in the United States mail. The commissioner may, for good cause, approve an alternative payment plan as long as full payment of the tax is made.

(B) If an ICFMR is more than sixty (60) days delinquent in paying its monthly amount, the commissioner of mental health and substance abuse services may initiate proceedings to revoke the license of the facility in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(C) If a facility is more than thirty (30) days delinquent in paying the amount of its tax or any installment of an alternative payment plan approved by the board or commissioner, the commissioner of health has the additional authority to deduct the amount owing from the facility's forthcoming medicaid payments and to notify the facility that it will be locked into a process by which the monthly installment will automatically be deducted from each month's medicaid payment for an appropriate period of time, as determined by the state. The facility will also be notified of an opportunity to request a hearing before the commissioner or the commissioner's designee to consider the sole issues of whether the amount of the tax was proper and whether the payment of the tax was more than thirty (30) days delinquent. If requested by the facility, this hearing shall be promptly held, but in no case shall the pendency of a hearing result in delay of the deductions envisioned in this subdivision (d)(6)(C).

(7) The tax imposed by this subsection (d) may not be billed by the ICFMR as a separately stated charge, but this shall not prevent the ICFMR from adjusting its rates to defray the cost associated with the tax.

(8) The fiscal review committee shall review and have oversight of the implementation of this subsection (d).

(9) Any tax obligation imposed by this subsection (d) shall be suspended to the extent that and for the period that receipt of the tax by the state results in a corresponding reduction in federal financial participation under Title XIX of the federal Social Security Act, compiled in 42 U.S.C. § 1396 et seq.

(10) The tax established by this subsection (d) shall terminate on July 15, 2013.

68-11-1002 Part definitions.

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

(1) "Criminal disposition" means the disposition of criminal charges constituting an offense against a vulnerable person, as that term is defined by this section, either by conviction, or by pre-trial diversion authorized by any court pursuant to title 40, chapter 15, or by an order deferring further proceedings and placing an individual on probation by post-trial diversion issued pursuant to title 40, chapter 35;

(2) "Exploitation" means, in cases that are investigated by the department of human services, the improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult;

(3) "Misappropriation" means any taking, possession or use of the property of a vulnerable person the elements of which constitute any criminal offense involving such property, or that constitute a violation of a fiduciary duty of a caretaker of a vulnerable person;

(4) "Offense against a vulnerable person" means any act that constitutes abuse, neglect, misappropriation or exploitation of the property of a vulnerable person even if the act does not constitute a criminal act, or any crime the elements of which constitute abuse, neglect, or misappropriation or exploitation of the property of a vulnerable person;

(5) "Property" means all interests of any type in real property, and any interests of any type in personal property whether in monies or financial instruments of any type, goods, furnishings, and similar property; provided, however, that for purposes of reporting to the registry established by this part, property shall only consist of funds paid by a governmental agency to an "adult" as defined in § 71-6-102, if the report of abuse, neglect, misappropriation or exploitation is investigated by the department of human services pursuant to title 71, chapter 6, part 1; and

(6) "Vulnerable person" means anyone who:

(A) Is under eighteen (18) years of age; or

(B) Is eighteen (18) years of age or older and, by reason of advanced age or other physical or mental condition, is vulnerable to or has been determined to have suffered from abuse, neglect or misappropriation or exploitation of property and is or has been:

(i) The subject of any report of harm, abuse, neglect, or exploitation of property made to any state agency or investigative authority with responsibility to investigate those reports pursuant to title 37, chapter 1, parts 1 or 6, title 71, chapter 6, part 1, or pursuant to any other provision of law or regulation;

(ii) Receiving protective services from a state agency pursuant to law;

(iii) The victim of any criminal offense that constitutes abuse, neglect, or misappropriation or exploitation of property;

(iv) In the care of either a state agency, an entity that is licensed or regulated by a state agency, or in the care of an entity providing services under the provisions of a contract between that entity and a state agency; or

(v) Receiving services in the person's home from any agency licensed or regulated by or contracted to a state agency, including, but not limited to home and community-based services, home health care, or other health care-related services provided through state or federal funds to assist persons to remain in their homes.

68-11-1607. Certificate of need — Applications — Exemptions — Registration of equipment — Critical access hospital designation.

(a) No person may perform the following actions in the state except after applying for and receiving a certificate of need for the same:

(1) The construction, development, or other establishment of any type of health care institution;

(2) Modification of a health care institution, other than a hospital, including renovations and additions to facilities, where such modification requires a capital expenditure greater than two million dollars ($2,000,000), or in the case of a hospital where such modification requires a capital expenditure greater than five million dollars ($5,000,000). Acquisition of real property as an investment, not for immediate use by the health care institution, shall not be deemed a modification; however, the cost of such property, or its value at the time of application, regardless of whether acquired by lease, loan, or gift, shall be included as required by agency rules as part of the total project cost of any later proposed project for the improvement, development, or use of the property in a manner that does modify the institution's facilities or services in a manner that requires a certificate of need. This provision does not apply to expenditures not directly related to patient care;

(3) In the case of a health care institution, any change in the bed complement, regardless of cost, that:

(A) Increases by one (1) or more the total number of licensed beds;

(B) Redistributes beds from acute to long-term care categories;

(C) Redistributes beds from any category to acute, rehabilitation, child and adolescent psychiatric, or adult psychiatric; or

(D) Relocates beds to another facility or site;

(4) Initiation of any of the following health care services: burn unit, neonatal intensive care unit, open heart surgery, extracorporeal lithotripsy, magnetic resonance imaging, cardiac catheterization, linear accelerator, positron emission tomography, swing beds, home health, hospice, psychiatric, rehabilitation or hospital-based alcohol and drug treatment for adolescents provided under a systematic program of care longer than twenty-eight (28) days, or opiate addiction treatment provided through a nonresidential substitution-based treatment center for opiate addiction;

(5) A change in the location of or the replacement of existing or certified facilities providing health care services and health care institutions, or a change in the location of or the replacement of medical equipment that requires a certificate of need. An additional certificate of need is not required to move mobile medical equipment that requires a certificate of need to a facility site for which a certificate of need already has been issued. A change in the location of or the replacement of a home health agency may be exempted from the certificate of need requirements by agency rule. The relocation of the principal office of a home health agency or hospice within the same county shall not require a certificate of need;

(6) The acquisition by any person of major medical equipment for service to patients, the cost of which, exclusive of renovations or modifications, exceeds two million dollars ($2,000,000); provided, that the requirements of this subdivision (a)(6) shall not apply to the replacement of the same or

similar equipment or an upgrade of equipment which improves the quality or cost effectiveness of the service. In order to receive such exemption for replacement or upgrade of equipment, the person acquiring such replacement or upgrade shall file a written notice of such replacement or upgrade with the health services and development agency. The notice filed shall contain a description of the original equipment and the replacement or upgraded equipment, together with the cost of such equipment. The health services and development agency shall consider the information contained in the notice to determine if the replacement or upgraded equipment meets the requirements of this subdivision (a)(6);

(7) The discontinuation of any obstetrical or maternity service;

(8) Nothing in this part shall require a certificate of need in order for an existing hospital licensed by the department of mental health and substance abuse services to become licensed by the department of health as a satellite of an affiliated general acute care hospital as provided by § 33-2-403(b)(8)(B); and

(9) The closing of any hospital that has been designated as a critical access hospital under the medicare rural flexibility program or the elimination in the hospital of any services for which a certificate of need is required.

(b) No agency of the state, or of any county or municipal government, shall approve any grant of funds for, or issue any license to a health care institution for any portion or activity of the health care institution that is established, modified, relocated, changed, or resumed, or that constitutes a covered health care service, in a manner in violation of this part. If any agency of the state, or any county or municipal government approves any grant of funds for, or issues any license to any person or institution for which a certificate of need was required but was not granted, the license shall become void and the funds shall be refunded to the state within ninety (90) days. The agency has the authority to impose civil penalties and petition any circuit or chancery court having jurisdiction to enjoin any person who is in violation as further defined in this part.

(c)(1) Each application shall be commenced by the filing of a letter of intent. The letter of intent shall be filed between the first day of the month and the tenth day of the month, inclusive, prior to the commencement of the review cycle in which the application is to be considered. At the time of filing, the applicant shall cause the letter of intent to be published in a newspaper of general circulation in the proposed service area of the project. The published letter of intent must contain a statement:

(A) That any health care institution wishing to oppose the application must file written notice with the agency no later than fifteen (15) days before the agency meeting at which the application is originally scheduled; and

(B) That any other person wishing to oppose the application must file a written objection with the agency at or prior to the consideration of the application by the agency.

(2) Persons desiring to file a certificate of need application seeking a simultaneous review regarding a similar project for which a letter of intent has been filed, shall file with the agency a letter of intent within ten (10) days after publication of the first filed letter of intent. A copy of any letter of intent filed after the first letter of intent shall be mailed or delivered to the first filed applicant, and shall be published in a newspaper of general circulation

in the proposed service area of the first filed applicant within ten (10) days after publication by the first filed applicant. The applications shall be considered and decided by the health services and development agency simultaneously. The agency may refuse to consider the applications simultaneously, if it finds that the applications do not meet the requirements of "simultaneous review" under the rules of the agency.

(3) Applications for a certificate of need, including simultaneous review applications, shall be filed within five (5) days from the date of publication of the letter of intent. Within ten (10) days of the filing of an application for a nonresidential substitution-based treatment center for opiate addiction with the agency, the applicant shall send a notice to the county mayor of the county in which the facility is proposed to be located, the member of the house of representatives and the senator of the general assembly representing the district in which the facility is proposed to be located, and to the mayor of the municipality, if the facility is proposed to be located within the corporate boundaries of a municipality, by certified mail, return receipt requested, informing such officials that an application for a nonresidential methadone treatment facility has been filed with the agency by the applicant. All applications, original and simultaneous review, shall not enter the next review cycle, unless filed with the agency within such time as to assure that such application is deemed complete in accordance with the rules of the agency.

(4) If there are two (2) or more applications to be reviewed simultaneously in accordance with this part and the rules of the agency, and one (1) or more of those applications is not deemed complete to enter the review cycle, the other applications that are deemed complete shall enter the review cycle. The application or applications that are not deemed complete to enter the review cycle will not be considered with the applications deemed complete and entering the review cycle.

(5) Review cycles shall begin on the first day of each of the following months: January, March, May, July, September, and November; provided, however, that the agency may expand the beginning of the review cycle to other months by rule. Written notice of the beginning of the review cycle shall be made to all applicants deemed complete by the agency for that review cycle. The review cycle shall also be distributed to the members of the agency. If an application is not deemed complete within sixty (60) days after written notification is given to the applicant by the agency staff that the application is deemed incomplete, the application shall be deemed void. If the applicant decides to resubmit the application, the applicant shall comply with all procedures as set out by this part and a new filing fee shall accompany the application.

(6) Each application filed with the agency shall be accompanied by a nonrefundable examination fee which will be fixed by the rules of the agency.

(7) All information provided in the application or any information submitted to the agency in support of an application shall be true and correct. No substantive amendments to the application, as defined by rule of the agency, shall be allowed.

(8) Each applicant shall designate a representative as the contact person for the applicant and shall notify the agency, in writing, of the contact person's name, address, and telephone number. The applicant shall immediately notify the agency in writing of any change in the identity of the

contact person or the contact person's address. In addition to any other method of service permitted by law, the agency may serve by registered or certified mail any notice or other legal document upon the contact person at such person's last address of record in the files of the agency. Notwithstanding any provisions of law to the contrary, service in the manner specified in this subdivision (c)(8) shall be deemed to constitute actual service upon the applicant.

(d)(1) No communications are permitted with the members of the agency once the letter of intent initiating the application process is filed with the agency. Communications between agency members and agency staff shall not be prohibited. Any communication received by an agency member from a person unrelated to the applicant or party opposing the application shall be reported to the executive director and a written summary of such communication shall be made part of the certificate of need file.

(2) All communications between the contact person or legal counsel for the applicant and the executive director or agency staff after an application is deemed complete and placed in the review cycle are prohibited, unless submitted in writing or confirmed in writing and made part of the certificate of need application file. Communications for the purposes of clarification of facts and issues that may arise after an application has been deemed complete and initiated by the executive director or agency staff are not prohibited.

(e) For purposes of this part, agency action shall be the same as administrative action defined in § 3-6-102.

(f)(1) Notwithstanding this section to the contrary, Tennessee state veterans' homes pursuant to title 58, chapter 7 shall not be required to obtain a certificate of need pursuant to this section.

(2) Notwithstanding this section to the contrary, the beds located in any Tennessee state veterans' home pursuant to title 58, chapter 7 shall not be considered by the health services and development agency when granting a certificate of need to a health care institution due to a change in the number of licensed beds, redistributing beds, or relocating beds pursuant to this section.

(g) A hospital with fewer than one hundred (100) licensed beds may increase its total number of licensed beds by ten (10) beds over any period of one (1) year without obtaining a certificate of need. The hospital shall provide written notice of the proposed increase in beds to the agency on forms provided by the agency, prior to the hospital's request for review to the board of licensing health care facilities.

(h) After a person holding a certificate of need has completed the actions for which a certificate of need was granted, such certificate of need shall expire.

(i) The owners of the following types of equipment shall register such equipment with the health services and development agency: computerized axial tomographers, lithotripters, magnetic resonance imagers, linear accelerators and position emission tomography. The registration shall be in a manner and on forms prescribed by the agency and shall include ownership, location, and the expected useful life of such equipment. The first registration of all such equipment shall be on or before September 30, 2002. Thereafter, registration shall occur within ninety (90) days of acquisition of the equipment. All such equipment shall be filed on an annual inventory survey developed by the agency. The survey shall include, but not be limited to, the identification of

the equipment and utilization data according to source of payment. The survey shall be filed no later than thirty (30) days following the end of each state fiscal year. The agency is authorized to impose a penalty not to exceed fifty dollars ($50.00) for each day the survey is late.

(j) Notwithstanding this section to the contrary, an entity, or its successor, that was formerly licensed as a hospital, and that has received from the commissioner of health a written determination that it will be eligible for designation as a critical access hospital under the medicare rural hospital flexibility program, is not required to obtain a certificate of need to establish a hospital qualifying for such designation, if it meets the requirements of this subsection (j). In order to qualify for the exemption set forth in this subsection (j), the entity proposing to establish a critical access hospital shall publish notice of its intent to do so in a newspaper of general circulation in the county where the hospital will be located and in contiguous counties. Such notice shall be published at least twice within a 15-day period. The written determination from the department of health and proof of publication required by this subsection (j) shall be filed with the agency within ten (10) days after the last date of publication. If no health care institution within the same county or contiguous counties files a written objection to the proposal with the agency within thirty (30) days of the last publication date, then the exemption set forth in this subsection (j) shall be applicable; provided, that this exemption shall apply only to the establishment of a hospital that qualifies as a critical access hospital under the medicare rural flexibility program and not to any other activity or service. If a written objection by a health care institution within the same county or contiguous counties is filed with the agency within thirty (30) days from the last date of publication, then the exemption set forth in this subsection (j) shall not be applicable.

(k)(1) A nursing home may increase its total number of licensed beds by the lesser of ten (10) beds or ten percent (10%) of its licensed capacity over any period of one (1) year without obtaining a certificate of need. The nursing home shall provide written notice of the increase in beds to the agency on forms provided by the agency prior to the request for licensing by the board for licensing health care facilities.

(2) For new nursing homes, the ten (10) bed or ten percent (10%) increase cannot be requested until one (1) year after the date all of the new beds were initially licensed.

(3) When determining projected county nursing home bed need for certificate of need applications, all notices filed with the agency pursuant to subdivision (k)(1), with written confirmation from the board of licensing health care facilities that a request and application for license has been received and a review has been scheduled, shall be considered with the total of licensed nursing home beds, plus the number of beds from approved certificates of need, but yet unlicensed.

(4) During such time as § 68-11-1622 shall apply, this subsection (k) shall be suspended.

(*l*) Nothing in this part shall require a certificate of need for a home care organization that is authorized to provide only professional support services as defined in § 68-11-201.

(m) Notwithstanding any other provision of law to the contrary, after May 14, 2004, a home care organization may only initiate hospice services after applying for and receiving a certificate of need for providing hospice services.

68-11-1608. Review of applications — Report.

(a) The departments of health, mental health and substance abuse services, and intellectual and developmental disabilities shall review each application whose subject matter or funding is within their respective jurisdictions, according to the process described in the rules of the health services and development agency. At a minimum, the reports shall provide:

(1) Verification of applicant-submitted information;

(2) Documentation or source for data;

(3) A review of the applicant's participation or nonparticipation in TennCare or its successor;

(4) Analyses of the impact of a proposed project on the utilization of existing providers and the financial consequences to existing providers from any loss of utilization that would result from the proposed project;

(5) Specific determinations as to whether a proposed project is consistent with the state health plan; and

(6) Further studies and inquiries necessary to evaluate the application pursuant to the rules of the agency.

(b) Upon request by interested parties or at the direction of the executive director, the staff of the agency shall conduct a fact-finding public hearing on the application in the area in which the project is to be located.

(c) Reviewing agencies shall have no more than sixty (60) days from the agency notice required by this part to file its written report with the agency. A copy of the evaluation made by the department shall be forwarded to the applicant, and to the agency, and shall be made available to others upon their request.

(d) The executive director may establish a date of less than sixty (60) days for reports on applications that are to be considered for a consent or emergency calendar established in accordance with agency rule. Any such rule shall provide that, in order to qualify for the consent calendar, an application must not be opposed by any person with legal standing to oppose and the application must appear to meet the established criteria for the issuance of a certificate of need. If opposition is stated in writing prior to the application being formally considered by the agency, it shall be taken off the consent calendar and placed on the next regular agenda, unless waived by the parties.

68-11-1609. Decision on application.

(a) The agency shall, upon consideration of an application and review of the evaluation and other relevant information:

(1) Approve part or all of the application and grant a certificate of need, upon any lawful conditions that the agency deems appropriate and enforceable on the grounds that those parts of the proposal appear to meet applicable criteria;

(A) Any condition or conditions that are placed on a certificate of need, and that appear on the face of the certificate of need when issued, shall also be made a condition or conditions of any corresponding license issued by the department of health or department of mental health and substance abuse services. Notwithstanding any provision of law to the contrary, any such conditions survive the expiration of the certificate of need, and remain effective until removed or modified by the agency. Such conditions shall become a requirement of licensure and shall be enforced

by the respective licensing entity;

(B) The holder of a license or certificate of need that has a condition placed on it by the agency may subsequently request that the condition be removed or modified, for good cause shown. The agency shall consider the request and determine whether or not to remove or modify the condition. The procedure for requesting such a determination shall be as provided by agency rules. If the holder of the license or certificate of need is aggrieved by the agency's decision, it may request a contested case hearing as permitted by this part;

(2) Disapprove part or all of the application and deny a certificate of need on the grounds that the applicant has not affirmatively demonstrated that those parts of the proposal meet the applicable criteria; or

(3) Defer decisions for no more than ninety (90) days to obtain a clarification of information concerning applications properly before the agency, if there are no simultaneous review applications being concurrently considered by the agency with the deferred application.

(b) No certificate of need shall be granted unless the action proposed in the application is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, and will contribute to the orderly development of adequate and effective health care facilities or services. In making such determinations, the agency shall use as guidelines the goals, objectives, criteria and standards in the state health plan. Until the state health plan is approved and adopted, the agency shall use as guidelines the current criteria and standards adopted by the state health planning and advisory board, and any changes implemented by the planning division pursuant to § 68-11-1625. Additional criteria for review of applications shall also be prescribed by the rules of the agency. Notwithstanding any other provision of this subsection (b), when considering applications for new nursing home beds from the one hundred twenty-five (125) bed medicare skilled nursing facility (SNF) bed pool authorized in § 68-11-1622, the agency shall apply the criteria in this subsection (b). All other applications for new nursing home beds shall be governed solely by § 68-11-1621. During the fiscal years of July 1, 2011, to June 30, 2012, and July 1, 2012, to June 30, 2013, the agency shall issue no certificates of need for new nursing home beds other than the one hundred twenty-five (125) medicare SNF beds authorized in § 68-11-1622.

(c) A certificate of need is valid for a period not to exceed three (3) years for hospital projects, and two (2) years for all other projects, from the date of its issuance and after such time shall expire; provided, however, that the agency may, in granting the certificate of need, allow longer periods of validity for certificates of need for good cause shown. Subsequent to granting the certificate of need, the agency may extend a certificate of need for a period upon application and good cause shown, accompanied by a nonrefundable reasonable filing fee, as prescribed by rule. An extension cannot be issued to any applicant, unless substantial progress has been demonstrated. A certificate of need that has been extended shall expire at the end of the extended time period. The decision whether to grant such an extension is within the sole discretion of the agency, and is not subject to review, reconsideration, or appeal.

(d) A certificate of need that has expired is null and void, and of no effect. No revocation proceeding is required. No license or occupancy approval may be issued by the department of health or the department of mental health and substance abuse services for any activity for which a certificate of need has

become null and void.

(e) The agency's decision to approve or deny an application shall be final and shall not be reconsidered after the adjournment of the meeting in which the matter was considered. This provision does not limit the right to file a petition for a contested case hearing pursuant to § 68-11-1610, nor does it limit the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, pertaining to contested case hearings.

(f) Written notice of the decision of the agency approving, disapproving, or deferring an application, or parts of an application, shall be transmitted to the applicant, simultaneous review applicants, the department of health, the department of mental health and substance abuse services, the department of intellectual and developmental disabilities, and others upon request.

(g)(1) Subject to subdivision (g)(2), any health care institution wishing to oppose a certificate of need application must file a written objection with the agency and serve a copy on the contact person for the applicant, not later than fifteen (15) days before the agency meeting at which the application is originally scheduled. An application for which the agency has received opposition shall be designated on the agency's agenda as an opposed application.

(2) A health care institution or other person may appear before the agency and express opposition to an application without complying with the requirements of subdivision (g)(1); provided, that if a health care institution does not provide notice of its opposition as required by subdivision (g)(1), and if such health care institution initiates a contested case pursuant to § 68-11-1610, then such health care institution shall be solely responsible for the agency's costs of the contested case proceeding and shall reimburse to the applicant the filing fee paid by the applicant, notwithstanding any other provision of law. Noncompliance with subdivision (g)(1) shall not preclude a health care institution from intervening in a contested case proceeding initiated by the applicant.

68-11-1614. Independent review and verification of information submitted to agency.

(a) The commissioners of health, mental health and substance abuse services, and intellectual and developmental disabilities shall establish policies and procedures to ensure independent review and verification of information submitted to the agency in applications, presentations, or otherwise.

(b) The purpose of such independent review and verification shall be to ensure that such information is accurate, complete, comprehensive, timely, and relevant to the decision to be made by the agency.

(c) The policies and procedures shall include, but not necessarily be limited to:

(1) Independent review and verification of such applicant-provided information as to the number of available beds within a region, occupancy rates, the number of individuals on waiting lists, the demographics of a region, the number of procedures, as well as any other critical information submitted or requested concerning an application; and

(2) Staff examinations of data sources, data input, data processing, and data output, as well as verification of critical information through review procedures, to include one (1) or more of the following:

(A) Analytical review;

(B) Tests for information on a sample basis by tracing facts to sources;

(C) Tests of all information provided, if necessary;

(D) Critical assessment of data sources, including the appropriateness of the sources; and

(E) Examination of the basis for projections of need, costs and available health services.

68-11-1615. Independent review and verification of information for joint annual report.

The commissioners of health, mental health and substance abuse services, and intellectual and developmental disabilities shall establish policies and procedures to ensure independent review and verification of information submitted by health care providers for inclusion in the joint annual report.

68-11-1619. Revocation of certificate of need — Grounds.

In addition to any other grounds for revocation provided by other statutes, rule of law, or equity, the agency has the power to revoke a certificate of need whenever any of the following has occurred:

(1) The holder of a certificate of need has not made substantial and timely progress toward the completion of the project or acquisition of the equipment;

(2) The acquisition or project as described in the person's application has been changed or altered in such a manner as to significantly deviate from the acquisition or project approved by the agency when the certificate of need was granted;

(3) The decision to issue a certificate of need was based, in whole or in part, on information or data in the application which was false, incorrect, or misleading, whether intentional or not;

(4) The holder of the certificate of need has committed fraud in obtaining the certificate of need or has committed fraud upon the agency after the certificate of need was issued. For purposes of this section, "fraud" means any form of deceit, trickery, misrepresentation, or subterfuge, including, but not limited to, any of the following actions:

(A) Making a knowingly false statement, orally or in writing, in connection with a certificate of need application or project subject to the jurisdiction of the agency;

(B) Intentionally withholding or suppressing information that the person knows, or reasonably should know, is relevant to a certificate of need application or project subject to the jurisdiction of the agency; or

(C) Altering, forging, or otherwise modifying, with fraudulent intent, any document submitted to the agency in connection with any certificate of need application or project subject to the jurisdiction of the agency; or

(5) The violation of any condition placed upon a certificate of need by the agency, prior to licensure by the department of health or department of mental health and substance abuse services.

68-11-1625. State health planning division of the department of finance and administration.

(a) There is created the state health planning division of the department of finance and administration. It is the purpose of the planning division to create a state health plan that is evaluated and updated at least annually. The plan shall guide the state in the development of health care programs and policies and in the allocation of health care resources in the state.

(b) It is the policy of the state of Tennessee that:

(1) Every citizen should have reasonable access to emergency and primary care;

(2) The state's health care resources should be developed to address the needs of Tennesseans while encouraging competitive markets, economic efficiencies and the continued development of the state's health care industry;

(3) Every citizen should have confidence that the quality of health care is continually monitored and standards are adhered to by health care providers; and

(4) The state should support the recruitment and retention of a sufficient and quality health care workforce.

(c) The planning division shall be staffed administratively by the department of finance and administration in a manner that the department deems necessary for the performance of the planning division's duties and responsibilities, which may include contracting for the services provided by the division through a private person or entity.

(d) The duties and responsibilities of the planning division include:

(1) To develop and adopt a state health plan, which must include, at a minimum, guidance regarding allocation of the state's health care resources;

(2) To submit the state health plan to the health services and development agency for comment;

(3) To submit the state health plan to the governor for approval and adoption;

(4) To hold public hearings as needed;

(5) To review and evaluate the plan at least annually;

(6) To respond to requests for comment and recommendations for health care policies and programs;

(7) To conduct an ongoing evaluation of Tennessee's resources for accessibility, including, but not limited to, financial, geographic, cultural, and quality of care;

(8) To review the health status of Tennesseans as presented annually to the planning division by the department of health, the department of mental health and substance abuse services, and the department of intellectual and developmental disabilities;

(9) To review and comment on federal laws and regulations that influence the health care industry and the health care needs of Tennesseans;

(10) To involve and coordinate functions with such state entities as necessary to ensure the coordination of state health policies and programs in the state;

(11) To prepare an annual report for the general assembly and recommend legislation for their consideration and study; and

(12) To establish a process for timely modification of the state health plan in response to changes in technology, reimbursement and other develop-

ments that affect the delivery of health care.

(e) The planning division shall succeed the state health planning and advisory board, which shall terminate effective June 30, 2004. The planning division shall become the owner of all information, files, materials, research, and other documents in the possession of the state health planning and advisory board and any of its subcommittees on July 1, 2004, and all such information and materials shall be physically or electronically transferred to a person or entity designated by the commissioner of finance and administration on or before July 1, 2004. The state health plan developed by the state health planning and advisory board and in existence as of July 1, 2004, shall be adopted by the planning division as the current state health plan until a new state health plan is developed by the planning division. The planning division is authorized to review and implement any changes to the state health plan recommended by the state health planning and advisory board or any of its subcommittees, in its discretion.

(f) A separate account is authorized to provide support for the state health planning division of the department of finance and administration. The following schedule of fees from health care providers shall be collected annually and administered by the department of finance and administration. The account shall be used for other services required to fulfill the duties of the state health planning division of the department of finance and administration. All planning staff shall be hired by and under the direction of the commissioner of finance and administration. The following schedule shall apply:

(1) Residential hospice ..... $100 per license;
(2) Nursing homes ..... $100 per license;
(3) Hospitals 1-100 beds ..... $100 per license;
(4) Hospitals 101-200 beds ..... $200 per license;
(5) Hospitals 201+ beds ..... $300 per license;
(6) Ambulatory surgical treatment centers ..... $100 per license;
(7) Outpatient diagnostic centers ..... $100 per license;
(8) Home care organizations authorized to provide home health services or hospice services ..... $100 per license;
(9) Birthing centers ..... $50 per license;
(10) Nonresidential substitution-based treatment centers for opiate addiction ..... $75 per license;
(11) Mental health hospitals 1-100 beds ..... $100 per license;
(12) Mental health hospitals 101+ beds ..... $200 per license;
(13) Mental health residential treatment facilities ..... $100 per license;
(14) Intellectual disability institutional habilitation facilities ..... $100 per license.

68-11-1631. Qualified partial relocation of certain nursing home facilities.

(a) Notwithstanding any other law, the agency shall consider a certificate of need application for a qualified partial relocation of a nursing home facility.

(b) A certificate of need application for a qualified partial relocation of a nursing home facility refers only to the following circumstances:

(1) The holder of an unimplemented certificate of need issued under § 68-11-1628, prior to January 1, 2012, seeks to relocate within the same county a portion of the nursing home beds that are the subject of the

unimplemented certificate of need; or

(2) An existing nursing home facility seeks to relocate to a new site within the same county up to fifty percent (50%) of its existing licensed nursing home beds; provided, that the nursing home facility meets all of the following criteria:

(A) The nursing home facility has at least one hundred eighty (180) licensed beds;

(B) The nursing home facility has operated for at least twenty-five (25) years at a location within five hundred feet (500′) of a general acute care hospital that has more than two hundred (200) licensed beds; and

(C) The general acute care hospital relocated to a new site within the same county and more than two (2) miles from its previous location.

(c) An application for a qualified partial relocation of a nursing home facility that does not seek to increase the number of licensed beds from the number of beds to be relocated shall be reviewed by the department and considered by the agency pursuant to § 68-11-1609(b), and shall not be considered new nursing home beds. The criteria of §§ 68-11-1621 and 68-11-1622 shall not apply to an application for a qualified partial relocation of a nursing home facility.

(d) If an application for a qualified partial relocation of a nursing home facility seeks to increase the number of licensed beds from the number of beds to be relocated, that portion of the application that increases the number of beds shall comply with § 68-11-1622, and shall be considered new nursing home beds. The remaining part of the application relative to the qualified partial relocation shall be reviewed by the department and considered under the criteria set out in subsection (c).

68-14-303. Authority of commissioner.

The commissioner is authorized to:

(1) Carry out or cause to be carried out all provisions of this part;

(2) Collect all fees provided for in this part and apply the fees in accordance with the procedures of the department of finance and administration to the necessary and incidental costs of administration of this part. Nothing in this subdivision (2) shall be construed to prohibit the department from receiving by way of general appropriation such sums as may be required to fund adequately the implementation of this part, as recommended in the annual budget by the governor to the general assembly;

(3) Prescribe rules and regulations governing the alteration, construction, sanitation, safety and operation of hotels, food service establishments and public swimming pools, as may be necessary to protect the health and safety of the public, and require every hotel, food service establishment and public swimming pool to comply with these rules and regulations and grant variances and waivers for public swimming pools from the requirements of this part or applicable rules and regulations; provided, that such variance or waiver shall not constitute a health or safety hazard as determined by the commissioner. A non-elected body of any municipality, county, or metropolitan government shall not enact any ordinance or issue any rule or regulation pertaining to the provision of food nutritional information or otherwise regulate menus at food service establishments. If, subsequent to February 8, 2010, the federal government takes action regarding the provision of food nutritional information at food service establishments, and the federal

action specifically authorizes state departments to enforce such action, then the department of health shall be the department that is primarily responsible for the implementation and supervision of any new requirements and shall have the authority to promulgate rules and regulations, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as are necessary to effectuate the purposes of such requirements. The rules or regulations prohibiting live animals in the presence of dining facilities shall be waived if an adequately engineered forced air exhaust system is installed for the permitted facility. The rules or regulations requiring that food be obtained from sources that comply with all laws relating to food and food labeling shall be waived for churches, temples, synagogues or other religious institutions, civic, fraternal or veteran's organizations, if the food is served only to the homeless and the food is prepared in a church, temple, synagogue or other religious institution, civic, fraternal, or veteran's organization or in a private home or homes by persons who have successfully completed a training course of at least two (2) hours, conducted by the department, and the consumer is informed by a clearly visible placard, readily understandable to the average person, stating that the food may have been prepared in a facility that is not subject to regulation or inspection by the department. The commissioner shall not prescribe any such rules and regulations in conflict with the minimum statewide building construction standards established by the state fire marshal pursuant to § 68-120-101;

(4) Inspect or cause to be inspected at least once every six (6) months, and as often as the commissioner may deem necessary, every hotel and food service establishment in the state, with the exception of those food service establishments licensed by the department of mental health and substance abuse services, and inspect or cause to be inspected at least once per month, and as often as the commissioner deems necessary, every public swimming pool in the state to determine compliance with this part and rules and regulations;

(5) Issue or cause to be issued, suspend and revoke permits to operate hotels, food service establishments and public swimming pools as provided in this part;

(6) Notify the owner, proprietor, or agent in charge of any hotel, food service establishment or public swimming pool of such changes or alterations as may be necessary to effect complete compliance with this part and rules and regulations governing the construction, alteration and operation of the facilities, and close the facilities for failure to comply within specified times as provided in this part and rules and regulations;

(7) Enter into an agreement or contract with county health departments whereby the departments would implement this part or its equivalent in their respective areas of jurisdiction, if the commissioner deems it to be appropriate; provided, that the following conditions shall apply:

(A) State reporting requirements must be met by the county health department or departments;

(B) The county health department program standards must be at least as stringent as those of the state law and regulations;

(C) The commissioner shall retain the right to exercise oversight and evaluation of performance of the county health department or departments and terminate the agreement or contract for cause immediately, or otherwise upon reasonable notice;

(D) The commissioner may set such other fiscal, administrative, or program requirements as the commissioner deems necessary to maintain consistency and integrity of the statewide program;

(E) Staffing and resources must be adequate to implement and enforce the program in the local jurisdiction;

(F) All permit fees, fines, and penalties shall be deposited directly into the state treasury;

(G) Beginning with fiscal year 2004-2005, all fees under this chapter shall be reviewed biennially to determine the appropriateness and amount relative to the overall cost of the program; and

(H)(i) Ninety-five percent (95%) of permit fees collected within a contract county pursuant to §§ 68-14-312 — 68-14-314 shall be conveyed by contract to the respective county health department to assist such county health department in implementing the program in the local jurisdiction. This amount shall be calculated based upon fees collected in the contract county during the state's fiscal year multiplied by ninety-five percent (95%);

(ii) No contract county shall charge a local permit fee. By July 30 of each year, each contract county shall provide a report to the commissioner for the preceding fiscal year documenting the total cost relative to carrying out the provisions of the contract and the amount of state and local permit fees collected. The report shall be on a form provided by the commissioner;

(8) Enter into an agreement or contract with the Tennessee department of agriculture whereby it would enforce this part and regulations promulgated under this part regarding delicatessens in grocery stores; and

(9) Levy and collect fees for inspections of food service establishments; provided, that no fee shall be charged for reinspections of such establishments; and provided further, that in no event shall an inspection or reinspection fee be levied or collected from a child care center, a group child care home, or a family child care home, as defined by § 71-3-501.

68-14-601. Part definitions.

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

(1) "Alcoholic beverages" has the meaning given in § 57-3-101;

(2) "Controlled substance" has the meaning given in the Tennessee Drug Control Act of 1989, compiled in title 39, chapter 17, part 4;

(3) "Controlled substance analogue" has the meaning given in § 39-17-454;

(4) "Innkeeper" means the owner, operator, manager or keeper of a lodging establishment;

(5) "Lodging establishment" means any structure or space, or any portion of a structure or space, that is occupied or intended or designed for occupancy by guests of the lodging establishment for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, tourist court, tourist cabin, motel, bed and breakfast establishment or any place in which rooms, lodgings or accommodations are furnished to guests for a consideration; and

(6) "Minor" means an unemancipated person under eighteen (18) years of age; provided, however, that, as used in this part relative to provisions

concerning alcoholic beverages, "minor" has the meaning given in § 1-3-113(b).

68-14-602. Right to refuse use of lodging establishment — Grounds.

(a) An innkeeper has the right to refuse or deny any accommodations, facilities or privileges of a lodging establishment to:

(1) Any person who is unwilling or unable to pay for accommodations and services of the lodging establishment. The innkeeper has the right to require the prospective guest to demonstrate the person's ability to pay by cash, valid credit card or a validated check. The innkeeper may require a parent of a minor to:

(A) Accept, in writing, liability of the guest room costs, taxes, all charges by the minor and any damages to the guest room or its furnishings caused by the minor while a guest at the lodging establishment; and

(B) Provide the innkeeper with a valid credit card number to cover the guest room costs, taxes, charges by the minor and any damages to the guest room or its furnishings caused by the minor; or

(C) If the credit card is not an option, give the innkeeper:

(i) An advance cash payment to cover the guest room costs and taxes for all room nights reserved for the minor; plus

(ii) A fifty-dollar cash deposit towards the payment of any charges by the minor or any damages to the guest room or its furnishings, which cash deposit will be refunded to the extent not used to cover any such charges or any damages as determined by the innkeeper following room inspection at check-out;

(2) Any person who is visibly intoxicated and who is disorderly so as to create a public nuisance;

(3) Any person whom the innkeeper reasonably believes is seeking accommodations for any unlawful purpose, including the unlawful possession or use of controlled substances or controlled substance analogues by such person in violation of the Tennessee Drug Control Act of 1989, compiled in title 39, chapter 17, part 4, or the use of the premises for the consumption of alcoholic beverages by any person under twenty-one (21) years of age in violation of § 1-3-113(b);

(4) Any person whom the innkeeper reasonably believes is bringing into the lodging establishment items or substances that may be dangerous to other persons, such as firearms or explosives; or

(5) Any person when the lodging establishment is acting to restrict the number of persons who shall occupy any particular guest room in the lodging establishment.

(b) The innkeeper refusing or denying accommodations, facilities or privileges of a lodging establishment for any of the reasons specified in subsection (a) shall not be liable in any civil or criminal action or for any fine or penalty based upon such refusal or denial, except that such accommodation, facilities or privilege of a lodging establishment shall not be refused or denied based upon the person's race, creed, color, national origin, religion, sex, disability, marital status or age, other than as provided in this part.

68-14-603. Prohibited acts — Penalties.

(a) Any person who does one (1) or more of the following acts on the premises or property of a lodging establishment, or any person who rents or leases a room in a lodging establishment for the purpose of allowing the room to be used by another person to do one (1) or more of the following acts, commits an offense:

(1) Use or possession of a controlled substance or controlled substance analogue in violation of title 39, chapter 17, part 4;

(2) Consumption or possession of alcoholic beverages in violation of § 1-3-113(b); or

(3) Intentionally damages a lodging establishment room or its furnishings.

(b) In a case under this section involving damage to a lodging establishment room or its furnishings, a court may order the person renting or leasing the lodging establishment room and/or the person causing such damage to:

(1) Pay restitution for any damages suffered by the owner or operator of the lodging establishment, which damages may include, but shall not necessarily be limited to, the lodging establishment's loss of revenue resulting from the hotel's inability to rent or lease the room during the period of time the lodging establishment room is being repaired; and

(2) Pay damages or restitution to any other person who is injured in person or property. In the case of a minor, the parents of the minor shall be liable for acts of the minor in violation of this section who causes damages to the lodging establishment room or furnishings or causes injury to persons or property.

(c) An offense under this section is a Class C misdemeanor punishable by a fine only, and in addition to, or in lieu of the fine, may be required to perform community service; provided, that in the case of a minor under eighteen (18) years of age, a violation of this section shall be a delinquent act under title 37, chapter 1.

(d) An offense set out in this section shall be considered separate from any other offense such conduct may constitute. Nothing in this part shall be construed as prohibiting the prosecution and conviction of a person for any other offense committed by the person in addition to the offenses under this part. Nothing in this part shall be construed to affect criminal penalties for use or possession of a controlled substance or controlled substance analogue in violation of title 39, chapter 17, part 4, the consumption or possession of alcoholic beverages in violation of § 1-3-113(b), or any other offense prescribed by law.

68-14-605. Ejectment from premises.

An innkeeper may eject a person from the lodging establishment premises for any of the following reasons:

(1) Nonpayment of the lodging establishment's charges for accommodations or services;

(2) The person is visibly intoxicated, or the person is disorderly so as to create a public nuisance;

(3) The innkeeper reasonably believes that the person is using the premises for unlawful purposes, including the unlawful use or possession of controlled substances or controlled substance analogues by the person in

violation of the Tennessee Drug Control Act of 1989, compiled in title 39, chapter 17, part 4, or the use of the premises for the consumption of alcohol by any person under twenty-one (21) years of age in violation of § 1-3-113(b);

(4) The innkeeper reasonably believes that the person has brought property into the lodging establishment premises that may be dangerous to other persons, such as firearms or explosives;

(5) A violation of any federal, state or local laws or regulations relating to the lodging establishment; or

(6) A violation of any rule of the lodging establishment that is posted in a conspicuous place and manner in the lodging establishment in accordance with § 68-14-606; provided, that no such rule may authorize the innkeeper to eject or to refuse or deny service or accommodations to a person because of race, creed, color, national origin, religion, sex, disability, marital status or age other than as provided in this part.

68-15-201. Part definitions.

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

(1) "Bedding" means any mattress, mattress pad, mattress protector pad, box spring, upholstered spring, upholstered sofa bed, quilted pad, comforter, bolster, cushion, pillow, featherbed, sleeping bag, or any other bag, case, or covering that is:

(A) Made of leather, textile, or other material;

(B) Stuffed or filled with any soft material or substance; and

(C) Designed or made for sleeping or reclining purposes, or designed or made to be an integral part of a bed or couch or other device used for sleeping or reclining purposes;

(2) "Comfort exchange policy" means a policy offered by a mattress manufacturer, wholesaler or retailer to a mattress buyer authorizing the buyer to exchange the mattress for a different firmness or for other reasons, within a certain period;

(3) "Filling material" means:

(A) Hair;

(B) Down;

(C) Feathers;

(D) Wool;

(E) Cotton;

(F) Kapok;

(G) Plant fibers; or

(H) Any other soft material used in the manufacture of and the filling or stuffing of articles of bedding;

(4) "Mattress" means any quilted pad, mattress, mattress pad, bunk quilt or cushion, stuffed and filled with wool, hair or other soft material, to be used on a couch or other bed for sleeping or reclining purposes;

(5) "New" means an article of bedding or filling material that has not been previously used for any purpose; however, manufacturing processes shall not be deemed a prior use;

(6) "Secondhand" means any article of bedding or material, or part of bedding or material, of which prior use of any kind has been made, including, but not limited to, a mattress that has been returned by a buyer to a manufacturer, wholesaler, or retailer pursuant to a comfort exchange policy; and an article of bedding shall be deemed to be secondhand if the article

contains any previously used material in whole or in part; and

(7) "Sold" or "sale" includes any of the following activities, or any combination of them:

(A) Sell;
(B) Offer;
(C) Expose for sale;
(D) Barter;
(E) Trade;
(F) Lend;
(G) Deliver;
(H) Give away;
(I) Rent;
(J) Consign;
(K) Lease;
(L) Possess with the intent to sell; or
(M) Dispose of in any other commercial manner.

68-15-208. [Repealed.]

68-24-301. Drug overdose by student.

(a) Every physician or other medical professional who makes a diagnosis of or treats a person who is believed to be enrolled in school in a kindergarten through grade twelve (K-12) for a drug overdose, and every chief administrative officer of a hospital, clinic, or dispensary in which there is a case of drug overdose of such a person, shall report such cases to public school officials under rules of the department of health adopted to ensure that such reports are not in violation of federal or state laws requiring confidentiality in treatment of drug abusers. The reports shall contain nothing more than the type of the drug, the school in which the student was enrolled, and the name and address of the reporter. School officials shall share such reports with law enforcement agencies when the school officials deem it necessary as a means of controlling drug problems in the schools involved.

(b) "Drug," as used in this section, means any of the substances treated as controlled substances or controlled substance analogues under the Tennessee Drug Control Act of 1989, compiled in title 39, chapter 17, part 4.

(c) Any person who fails to perform the duties imposed by this section is guilty of professional misconduct and for that failure is subject to professional discipline by the licensing agency or employment disciplinary action by the employer.

68-24-701. Evaluation of need.

Acting in consultation with the Tennessee commission of Indian affairs, the commissioner of mental health and substance abuse services shall appoint an individual who shall serve as head of a volunteer community network to evaluate the needs of Native Americans and their families for effective alcohol and drug treatment in two (2) communities designated by the commissioner. In selecting those communities, the commissioner shall give priority to those locations that would provide accessibility to the greatest number of Native American families residing in Tennessee. In implementing this study program, to the maximum extent reasonably feasible, the commissioner shall strive to

assure that Native Americans actually participate in the evaluation of needs and in the recommendations that are made for providing the designated services to Native Americans. As part of the evaluation, study shall be made of funding sources, both governmental and private, that may be available for the provision of alcohol and drug services to Native Americans.

68-29-109. Medical laboratory board.

(a) There is created the Tennessee medical laboratory board, which shall consist of thirteen (13) members.

(b) The governor shall appoint qualified board members on the dates indicated so that the membership of the board shall be as follows:

(1) A pathologist who is licensed as a physician and certified in clinical and anatomical pathology by the American Board of Pathology and who is associated with a medical laboratory personnel education program (January 1, 1990);

(2) A pathologist who is licensed as a physician and certified in clinical and anatomical pathology by the American Board of Pathology (January 1, 1993);

(3) A hospital administrator (January 1, 1990);

(4) An independent laboratory management/administration representative (January 1, 1993);

(5) A hospital laboratory manager/administrative director who is licensed as a nonphysician medical laboratory supervisor (January 1, 1990);

(6) A licensed medical technologist generalist (January 1, 1993);

(7) A pathologist who is licensed as a physician and certified in clinical and anatomical pathology by the American Board of Pathology (January 1, 1991);

(8) A licensed physician who is not a pathologist (January 1, 1991);

(9) An educator in a medical technology or medical laboratory technician program who is licensed as a medical laboratory technologist or as a nonphysician laboratory supervisor (January 1, 1991);

(10) A licensed nonphysician medical laboratory supervisor (January 1, 1992);

(11) A licensed medical technologist generalist (January 1, 1992);

(12) A licensed cytotechnologist (July 1, 1996); and

(13) A private citizen consumer to represent the public interest (July 1, 1996).

(c) To be eligible for appointment to the board, a person shall:

(1) Have been a resident of the state of Tennessee for at least two (2) years immediately preceding the appointment;

(2) If required to be licensed under subsection (b), be licensed in good standing in the state of Tennessee;

(3) Be actively engaged in the practice of such person's profession; and

(4) Have had no fewer than five (5) years of experience in the person's profession, at least three (3) of which immediately precede the appointment.

(d) The members of the board may be selected from lists of qualified persons submitted to the governor from interested medical groups, including, but not limited to, the professional organizations as provided in this subsection (d).

(1) The following organizations and other interested medical groups, excluding those listed in subdivisions (d)(3)(A)-(E), may submit names for

each appointment in the categories listed:

(A) Tennessee Medical Association, in consultation with the Tennessee Society of Pathologists, giving due regard to geographic distribution — pathologist members;

(B) Tennessee Medical Association — non-pathologist physician member; and

(C) Tennessee Hospital Association — hospital administrator member and hospital laboratory manager/administrative director member.

(2) All interested medical groups including, but not limited to, the organizations listed in this subsection (d) may submit names for the independent laboratory representative.

(3) The following organizations and other interested medical groups, excluding those associations listed in subdivisions (d)(1)(A)-(C) may submit names for each appointment of members listed in subsection (b), with the exception of the pathologists, non-pathologist physician, and hospital administrator:

(A) Tennessee Society for Medical Technology;

(B) Tennessee State Society of American Medical Technologists;

(C) Tennessee chapter — Clinical Laboratory Management Association;

(D) Tennessee Association of Blood Banks; and

(E) Tennessee chapter — Southern Association for Clinical Microbiology.

(4) Lists of qualified persons shall be submitted at least forty-five (45) days prior to the expiration of the term of office of any member.

(5) The governor shall consult with interested medical groups including, but not limited to, the organizations as provided in this subsection (d), to determine qualified persons to fill the positions.

(e)(1)(A) Appointments to the board by the governor shall be for a term of four (4) years.

(B) Appointments made to fill vacancies shall be for the duration of the unexpired term and from the same category represented by the outgoing member.

(2) A member shall hold over after the expiration of such member's term until a successor is appointed and qualified. No member may serve more than two (2) consecutive four-year terms.

(f) The board shall hold at least one (1) regular meeting each year and such other meetings as the board may determine. Seven (7) members of the board shall constitute a quorum.

(g) The members of the board shall annually elect one (1) member to serve as chair and one (1) member to serve as vice chair. The board may also create such other offices as may be necessary for its efficient operation.

(h) Each member of the board when actually engaged in the discharge of such member's official duties shall be reimbursed for all travel and other necessary expenses. All expenses shall be claimed and paid in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(i) The governor may remove any member of the board for inefficiency, neglect of duty, or violation of any provision of this chapter.

(j) In making appointments to the board, the governor shall strive to ensure that at least one (1) person appointed to serve on the board is sixty (60) years of age or older and that at least one (1) person appointed to serve on the board

is a member of a racial minority.

(k) A permanent personnel and education licensure committee shall be formed, which shall consist of the medical technologist members, the one (1) cytotechnologist member, and the one (1) pathologist educator member of the board. The committee shall annually elect one (1) member to serve as chair. The committee shall have the full jurisdiction to oversee all matters pertaining to the licensure of medical laboratory personnel and of medical laboratory education programs. There shall be an education advisory committee, appointed by the chair of the personnel and education licensure committee. The advisory committee shall be appointed on a yearly basis with members representing major areas of laboratory scientific disciplines and educational levels. The advisory committee shall serve without compensation.

(*l*) All regulations promulgated by the board shall require a two-thirds (⅔) vote of the board members present.

68-55-102. Advisory council established — Composition.

(a)(1) There is created the traumatic brain injury advisory council established for the purpose of providing recommendations to the department on program and policy issues and concerns regarding health and human services for survivors of TBI.

(2) The advisory council shall be composed of nine (9) members to be appointed by the governor as follows:

(A) Five (5) members shall be family members, survivors or primary care givers and no more than two (2) members from this category shall reside in each of the three (3) grand divisions. Appointments shall be made from nominees submitted by the Tennessee Head Injury Association, the state university and community college system, the University of Tennessee and other interested parties;

(B) One (1) member who is knowledgeable on TBI shall represent the departments of mental health and substance abuse services and intellectual and developmental disabilities, to be selected from up to two (2) nominees of the department of mental health and substance abuse services and two (2) nominees of the department of intellectual and developmental disabilities;

(C) One (1) member who has experience in providing special education services or actual therapy to persons with TBI shall represent the department of education/special education, to be selected from up to three (3) nominees of the department of education;

(D) One (1) member who is knowledgeable on TBI shall represent the department of human services, vocational rehabilitation, to be selected from up to three (3) nominees of the department of human services; and

(E) One (1) member shall be a health care professional whose practice includes at least fifty percent (50%) of providing direct care to head-injured individuals or a health care provider who provides care to traumatic brain-injured individuals, to be selected from three (3) nominees of the Tennessee Hospital Association.

(b) The members shall be appointed to serve two-year terms. The initial appointments shall be staggered so that the terms of one half (½) of the members appointed are for one (1) year and one half (½) of the members are for two (2) years. Thereafter, members are appointed for two-year terms.

(c) The governor shall appoint the first chair for a two-year term from

among those persons appointed to the advisory council. Thereafter, the advisory council shall nominate and elect a chair by a majority vote for a two-year term.

(d) The advisory council shall by a majority vote appoint persons to fill a vacancy for the remainder of the unexpired term.

(e) The governor may remove any member from the advisory council for cause.

(f) Members of the council shall receive no compensation for service on the advisory council but shall be reimbursed for travel expenses in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(g) The advisory council shall meet at least quarterly.

(h) The advisory council shall adopt written bylaws.

68-103-101. [Transferred.]

68-103-102. [Transferred.]

68-103-103. [Transferred.]

68-103-104. [Repealed and Transferred.]

68-103-105. [Transferred.]

68-103-106. [Transferred.]

68-103-107. [Transferred.]

68-103-108. [Transferred.]

68-104-112. Unlawful acts in the sale and handling of fireworks.

(a)(1) To purchase any Class C common fireworks, a person must be at least sixteen (16) years of age. Any person sixteen (16) or seventeen (17) years of age who wishes to purchase Class C common fireworks must provide proof of age to the retailer or seasonal retailer by presenting a state-issued photo identification or be accompanied by an adult. It is unlawful to offer for retail sale or to sell any Class C common fireworks to any person under sixteen (16) years of age or to any intoxicated or irresponsible person.

(2) It is unlawful to explode or ignite fireworks within six hundred feet (600′) of any church, hospital, asylum, public school or within two hundred feet (200′) of where fireworks are stored, sold or offered for sale.

(3) No person shall ignite or discharge any permissible articles of fireworks within or throw any permissible articles of fireworks from a motor vehicle while within, nor shall any person place or throw any ignited article of fireworks into or at a motor vehicle, or at or near any person or group of people.

(4)(A) It is unlawful for any individual, firm, partnership or corporation to sell at retail any Class C common fireworks within any county of this state having a population greater than three hundred thirty-five thousand (335,000), according to the 2010 federal census or any subsequent federal census, except in municipalities within such counties with a population of

not less than six hundred (600) nor more than six hundred twenty (620), according to the 1980 federal census or any subsequent census, that permitted the sale of such fireworks before 1984; provided, that it is not unlawful for Class C common fireworks to continue to be sold by a person on a parcel of land that contains a fireworks stand, if:

(i) The parcel of property upon which such fireworks are sold is either partially located in a county having a population in excess of three hundred thirty-five thousand (335,000), according to the 2010 federal census or any subsequent federal census, or there is disagreement concerning whether such property is wholly contained within a county having a population in excess of three hundred thirty-five thousand (335,000), according to the 2010 federal census or any subsequent federal census; and

(ii) Fireworks have been sold annually at such stand for a period of at least forty-five (45) years.

(B) [Deleted by 2012 amendment.]

(b)(1) All items of fireworks that exceed the limits of D.O.T. Class C common fireworks as to explosive composition, such items being commonly referred to as "illegal ground salutes" designed to produce an audible effect, are expressly prohibited from shipment into, manufacture, possession, sale or use within this state for any purpose. This subdivision (b)(1) shall not affect display fireworks authorized by this chapter.

(2) A violation of subdivision (b)(1) for a second or subsequent offense is a Class E felony.

(c) Notwithstanding any other provision of law to the contrary, it shall be lawful for any individual, firm, partnership or corporation to sell at retail any D.O.T. Class C common fireworks, as defined in § 68-104-101, within the city of East Ridge. This part shall apply to the sale of fireworks in such city.

68-115-102. Chapter definitions.

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

(1) "Amateur" means a person who has never competed in an unarmed combat sport competition or contest for any purse or item of value, other than for a prize or item of value that does not exceed fifty dollars ($50.00), except those involved in Olympic organizations recognized by the Tennessee Athletic Commission as a sanctioning organization. Section 68-115-208 shall apply to any Olympic organizations that are recognized as a sanctioning organization by the Tennessee Athletic Commission;

(2) "Application fee" means the fee due at the time an application for a license is submitted to the commission;

(3) "Association of Boxing Commissions" means the association recognized by state athletic commissions that affiliate with the association regarding rules and regulations of unarmed combat sports. The association may also mean and be referred to as the "ABC Association for Professional Unarmed Combat Contests";

(4) "Banned substances" mean substances defined by the World Anti-Doping Agency as banned substances, in addition to any illegal substance;

(5) "Boxing" means unarmed combat to compete with the fists;

(6) "Combatant" means any person eighteen (18) years of age or older who engages in a professional unarmed combat contest;

(7) "Commission" means the Tennessee athletic commission;

(8) "Commissioner" means any member of the Tennessee athletic commission;

(9) "Contest" means an unarmed combat sport competition or exhibition in which at least one (1) of the combatants is a professional or has previously competed as a professional in this state or any other state or in which licensed combatants compete for a purse or item of value greater than that amount authorized pursuant to subdivision (1) for an amateur event;

(10) "Department" means the department of commerce and insurance;

(11) "Event" means an amateur event in which amateurs, as defined in this section, compete in an unarmed combat sport competition in accordance with this chapter;

(12) "Immediate family member" means a spouse, parent, sibling or child;

(13) "Kickboxing" means unarmed combat involving the use of striking techniques delivered with the upper and lower body, and in which the combatants remain standing while striking;

(14)(A) "Manager" means a person who:

(i) Undertakes to represent the interests of another person by contract, agreement or other arrangement, in procuring, arranging or conducting a professional contest in which the person will participate as a combatant;

(ii) Directs or controls the activities of an unarmed combatant relating to the participation of the unarmed combatant in a professional contest;

(iii) Receives or is entitled to receive at least ten percent (10%) of the gross purse of any professional unarmed combatant for services relating to the participation of the unarmed combatant in a professional contest; or

(iv) Receives compensation for services as an agent or representative of an unarmed combatant;

(B) "Manager" does not include an attorney who is licensed to practice law in this state if the attorney's participation in any of the activities described in subdivision (14)(A)(i) is limited solely to the attorney's legal representation of a client who is an unarmed combatant;

(15) "Matchmaker" means a person who brings together professional boxers, kickboxers or mixed martial art combatants or arranges professional contests of unarmed combat;

(16) "Mixed martial arts" means unarmed combat using a combination of techniques from different disciplines of the martial arts, including kicking, wrestling and striking, subject to applicable limitations set forth in this chapter and rules promulgated by the commission;

(17) "Permit" means a certification of approval for a contest or event, issued upon receipt of an application and fee that shall be established and collected pursuant to the rulemaking authority of the commission for professional and amateur events;

(18) "Person" means and includes individuals, corporations, limited liability companies, partnerships or associations, domestic and foreign;

(19) "Physician" means a person licensed to practice medicine in this state;

(20) "Pro-am competition" means a competition that features a combination of professional contests and amateur events;

(21) "Professional" means a person who competes or has competed in an unarmed combat sport contest for the purpose of a purse or item of value greater than that amount authorized for an amateur event, or any person who has been previously licensed in any other jurisdiction as a professional;

(22) "Promoter" means any person who produces, stages or sponsors any professional contest of unarmed combat;

(23) "Purse" means the financial guarantee or any other remuneration for which combatants are participating in a professional contest and includes the combatant's share of any payment received for radio broadcasting, television or motion picture rights;

(24) "Ring official" means any person who performs any one (1) or more of the following official functions during the progress of a professional contest of unarmed combat:

(A) "Announcer" means a person authorized to act as an announcer at professional contests of unarmed combat;

(B) "Judge" means a person who is responsible for scoring the performances of the combatants in a professional contest of unarmed combat;

(C) "Referee" means a person who is present in the ring during the professional contest and exercises general supervision;

(D) "Ringside physician" means a person licensed to practice medicine in this state and licensed by the commission as a ring official; and

(E) "Timekeeper" means a person who is the official timer of the length of the rounds and the intervals of the rounds in a professional contest of unarmed combat;

(25) "Sanctioning organization" means an organization recognized by the Tennessee athletic commission that sanctions amateur events of unarmed combat, and is required to comply with all provisions of this chapter. "Sanctioning organization" may also mean an organization recognized by the Tennessee athletic commission that adopts rules and regulations pursuant to § 68-115-213;

(26) "Second" means a person, including a manager, who is present at any professional unarmed combat contest to provide assistance or advice to combatants during a professional contest of unarmed combat;

(27) "Show settlement" means the period of time immediately following the professional contest in which a commission member or the administrator shall meet with venue personnel and the contest promoter to review ticket sales and collect fees due if paid immediately following the professional contest; and

(28) "Unarmed combat" means and includes boxing, mixed martial arts and kickboxing as defined and regulated under this chapter.

68-115-103. Creation of athletic commission — Appointments — Quorum — Conflict of interest — Vacancies — Attendance at events, competitions, and contests.

(a) There is created as an independent entity of state government the Tennessee athletic commission. For administrative purposes, the Tennessee athletic commission shall be attached to the department of commerce and insurance for all administrative matters relating to receipts, disbursements, budget, audit and other similarly related administrative items. The autonomy of the commission and its authority are not affected by this subsection (a), and the department shall have no administrative or supervisory control over the

commission.

(b)(1)(A) Prior to August 1, 2012, the commission shall consist of nine (9) members. Except for initial appointments, the term of office shall be four (4) years.

(B) One (1) member shall be a public member, to be appointed by the governor. The initial appointment shall be a four-year term.

(C) Two (2) members shall be licensed physicians with knowledge and experience in mixed martial arts, boxing or sports medicine, both to be appointed by the governor. One (1) member shall initially be appointed for a two-year term and one (1) member shall initially be appointed for a one-year term.

(D) Three (3) of the members shall have knowledge of and experience in boxing, with one (1) of the members to be appointed by the speaker of the house of representatives, one (1) to be appointed by the speaker of the senate and one (1) to be appointed by the governor. The member to be appointed by the speaker of the senate shall initially be appointed to serve a three-year term, the member to be appointed by the speaker of the house of representatives shall initially be appointed to serve a two-year term and the member to be appointed by the governor shall initially be appointed to serve a four-year term.

(E) Three (3) of the members shall have knowledge of and experience in mixed martial arts, with one (1) of the members to be appointed by the speaker of the house of representatives, one (1) to be appointed by the speaker of the senate and one (1) to be appointed by the governor. The member to be appointed by the speaker of the house of representatives shall initially be appointed to serve a four-year term, the member to be appointed by the speaker of the senate shall initially be appointed to serve a two-year term and the member to be appointed by the governor shall initially be appointed to serve a four-year term.

(2)(A) On and after August 1, 2012, the commission shall consist of five (5) members. Except as provided in subdivision (b)(2)(C), a member's term of office shall be four (4) years.

(B) One (1) member shall be a public member, to be appointed by the governor;

(C) Two (2) of the members shall have knowledge of and experience in boxing, with one (1) of the members to be appointed by the speaker of the house of representatives and one (1) of the members to be appointed by the governor. The member first appointed to fill a vacancy arising from the expiration of a member's term after August 1, 2012, shall be appointed to a term of three (3) years.

(D) Two (2) of the members shall have knowledge of and experience in mixed martial arts, with one (1) of the members to be appointed by the speaker of the senate and one (1) of the members to be appointed by the governor.

(c) All commission members shall be resident citizens of this state and at least one (1) member of the commission shall reside in each grand division.

(d) In making appointments to the commission, the governor and the speakers of the senate and the house of representatives shall each endeavor to appoint at least one (1) member who is either a racial minority or a female.

(e) In making appointments to the commission, the appointing authorities shall be provided written proof of experience by all candidates for membership

on the commission.

(f) A member of the commission who is appointed to an initial term of three (3) years or less may be reappointed for up to one (1) additional four-year term. Members whose initial appointments are for four (4) years and members who have been reappointed to a four-year term shall not be reappointed for one (1) year from the date the member's term expires.

(g)(1) Prior to August 1, 2012, five (5) members of the commission shall constitute a quorum for the exercise of the authority conferred upon the commission, and a concurrence of at least three (3) of the members shall be necessary if only five (5) members are present to render a choice or a decision by the commission. If more than five (5) members are present, a concurrence of a majority of the members present shall be necessary to render a choice or a decision by the commission.

(2) On and after August 1, 2012, three (3) members of the commission shall constitute a quorum for the exercise of the authority conferred upon the commission.

(h) No member of the commission or any member of a commissioner's immediate family shall, at any time during the commissioner's service as a member of the commission or for one (1) year after the commissioner's term expires or the commissioner resigns as a member, be employed by a promoter of or promote any professional contest of unarmed combat, or have any financial interest in the promotion or sponsorship of those unarmed professional contests of unarmed combat. This subsection (h) shall not apply to immediate family members who compete as combatants in a professional contest of unarmed combat or who may compete as combatants in an amateur event of unarmed combat if regulated by the commission pursuant to § 68-115-213.

(i) No member of the commission shall receive any complimentary tickets, nor shall any member of a commissioner's immediate family receive any complimentary tickets for such professional contests.

(j) As a member of the commission, the commission members are officials in the executive branch as defined in § 3-6-301.

(k) Vacancies arising from the expiration of members' terms on July 31, 2012, shall not be filled. Notwithstanding subsection (b), the commissioners serving unexpired terms on August 1, 2012, may remain as members of the commission until the expiration of their terms. Any vacancy arising from the expiration of a member's term shall be filled so that the composition of the commission meets the requirements of subsection (b).

(*l*) Each commissioner shall attend at least three (3) events, competitions, or contests annually.

68-115-104. Filling vacancies — Appointments.

(a)(1) Prior to August 1, 2012, a vacancy through expiration of the term of the public member and the members who are licensed physicians shall be filled by appointment by the governor for a term of four (4) years. In the event a vacancy should occur other than by expiration of the term of a public member, the governor shall fill the vacancy for the unexpired portion of the original term.

(2) On and after August 1, 2012, except as provided in § 68-115-103(b)(2)(B), vacancies through expiration of the terms of the members of the

commission appointed by the governor shall be filled by appointment by the governor for a term of four (4) years. If a vacancy occurs other than by expiration of the term, then the governor shall fill the vacancy for the unexpired portion of the original term.

(b) Vacancies through expiration of the terms of the members of the commission appointed by the speakers of the senate and the house of representatives shall be filled by appointment by the appropriate speaker for a term of four (4) years. If a vacancy occurs other than by expiration of the term, the appropriate speaker shall fill the vacancy for the unexpired portion of the original term.

68-115-108. Meetings — Attendance by electronic means — Expenses.

(a)(1) The commission shall meet at least quarterly but may meet as often as the duties of the commission require.

(2) If a commissioner is permitted to attend a meeting from a remote location by telephone, television, teleconferencing or other electronic means pursuant to the rules of the commission and title 8, chapter 44, a commissioner shall utilize such method no more than twice annually unless an emergency situation arises.

(b) The commission members shall receive reimbursement for expenses incurred in attending meetings of the commission and for travel incident to attending meetings of the commission, in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

68-115-201. Rules and regulations — Hearing.

(a) The commission is authorized to promulgate rules and regulations, including, but not limited to, emergency rules, to effectuate the purposes of this chapter and to protect and ensure the health, safety and welfare of combatants in professional contests, amateurs in events, and combatants and amateurs in pro-am competitions. The commission shall make every effort to promulgate emergency rules no later than sixty (60) days after a quorum of the commission is appointed. The rules and regulations shall be promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Any hearing conducted pursuant to this chapter shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The rules and regulations adopted by the commission shall include, but not be limited to:

(1) The number and qualifications of ring officials required at any contest;

(2) The powers and duties of ring officials;

(3) The qualifications of licensees or permitees;

(4) The procedures for supplying a social security number, fingerprint sample and submitting to a criminal history records check; and

(5) The procedures for performing medical duties relative to contests.

68-115-203. Power and duties of commission.

(a) Except as provided in § 68-115-302 concerning wrestling contests, the commission shall have sole and full discretion, authority, management, regu-

lation and control of all professional contests and pro-am competitions held, conducted or given within this state, the powers and duties specified in this chapter and all other powers necessary and proper to enable the commission to execute fully and effectively all of the purposes, duties and policies of this chapter. Any provision of this chapter or rule of the commission applicable to professional contests and to combatants, promoters, managers, matchmakers, seconds, ringside physicians and any other ring official participating in professional contests shall apply to professional contests conducted as part of a pro-am competition and participants in such contests.

(b) The commission or the administrator shall have the authority to employ, as necessary, designated individuals, as part-time state employees for purposes of title 8, chapter 42, part 1, who are qualified to assist ring officials and commission members in the regulation of professional contests. Such state employees shall be classified as executive service employees.

(c) The commission may review, with a promoter, all ring officials employed for a professional contest; and the promoter may submit a list of recommended ring officials for consideration by the commission.

68-115-208. Gross receipt tax — Preliminary and final report on ticket sales — Complimentary tickets — Violations and penalties — Book and records.

(a)(1) Every promoter shall pay professional contest fees and taxes due for professional contests of:

(A) Four percent (4%) of the total gross receipts from admission fees to the live professional contest of unarmed combat or five hundred dollars ($500), whichever is greater, exclusive of any federal tax or tax imposed by any political subdivision of this state; and

(B) Three percent (3%) of the first one million dollars ($1,000,000), and one percent (1%) of the next two million dollars ($2,000,000), of the total gross receipts from the sale, lease or other exploitation of broadcasting, television and motion picture rights for that contest without any deductions for commissions, brokerage fees, distribution fees, advertising, combatants' purses or any other expenses or charges.

(2) In addition, if a pro-am competition or an amateur event is broadcasted or televised, such event shall be subject to, and the promoter shall pay, the same percentage of gross receipts as are required pursuant to subdivision (a)(1)(A) for professional contests and the percentage of total gross receipts required pursuant to subdivision (a)(1)(B) for professional contests related to broadcasting, television and motion picture rights.

(b)(1) At show settlement, the promoter and venue personnel shall sign off on and submit to a commission member or the administrator, on a form prescribed by the commission, a preliminary report on ticket sales.

(2) The promoter shall pay to the commission the four percent (4%) reportable gross receipts tax described in subsection (a) based upon the preliminary report at show settlement, during which time moneys are paid to the promoter from the contracted venue, or no later than ten (10) days from the date of the contest. If any additional tax is required to be paid pursuant to this section, the tax shall be paid within thirty (30) days from the date of the contest.

(c) The promoter shall pay to the commission the fees for the rights described in subdivision (a)(2) no later than thirty (30) days from the date of

the contest.

(d) A promoter shall not issue complimentary tickets for more than two percent (2%) of the seats in the house, equally distributed between or among the price categories for which complimentary tickets are issued without the commission's written authorization. The commission shall not consider complimentary tickets that it authorizes pursuant to this section to constitute part of the total gross receipts from admission fees.

(e) Every promoter shall, within thirty (30) days after the completion of any professional contest for which an admission fee is charged and received, furnish to the commission a final verified written report showing:

(1) The number of tickets sold or issued for the professional contest;

(2) The amount of:

(A) Gross receipts from admission fees without any deductions for commissions, brokerage fees, distribution fees, advertising, combatants' purses or any other expenses or charges; and

(B) Broadcasting fees derived from the sale, lease or other exploitation of broadcasting, motion picture and television rights of the professional contest, without any deductions for commissions, brokerage fees, distribution fees, advertising, combatants' purses or any other expenses or charges; and

(3) Any other reports requested by the commission.

(f) When any person fails to make any report and pay the full amount of the reportable tax or fee required by this chapter, there shall be imposed a specific penalty to be added to the tax or fee in the amount of five percent (5%) of the tax or fee if the failure is for not more than thirty (30) days, with an additional five percent (5%) for each additional thirty (30) days or fraction of thirty (30) days, during which the failure continues, not to exceed twenty-five percent (25%) in the aggregate. In the case of a false or fraudulent report, or in the case where no report has been filed and there exists a willful intent to defraud the state of the tax or fee due under this chapter, a specific penalty of one hundred percent (100%) of the tax or fee may be due.

(g) Every person required to pay a tax or fee pursuant to this chapter shall keep and preserve records showing the amount of the person's reportable gross receipts taxable and broadcast fees pursuant to this chapter and such other books of account as may be necessary to determine the amount of tax or fee pursuant to this chapter, and all such books and records shall be open to inspection at all reasonable hours to the commission. All such books and records shall be maintained by the taxpayer for a period of three (3) years.

68-115-213. Amateur events of unarmed combat — Permit and registration — Rules and regulations — Pro-am competitions.

(a) Except for amateur events exempted from this chapter pursuant to part 3, the commission is authorized to require promoters of amateur events of unarmed combat to obtain a permit prior to conducting the events. If the permit is required, the commission shall adopt rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, that prescribe, without limitation, the requirements and fees for obtaining the permit.

(b) Except for combatants participating in amateur events exempted from this chapter pursuant to part 3 of this chapter, an amateur combatant may not

take part in an amateur event of unarmed combat unless the event is sanctioned by and the amateur is registered with an amateur sanctioning organization recognized and approved by the commission.

(c) The commission may require an approved sanctioning organization that participates in amateur events of unarmed combat in this state to register with the commission before it participates, directly or indirectly, in any amateur event of unarmed combat. If the registration is required, the commission shall adopt rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, that prescribe, without limitation, the requirements and fees for obtaining the registration.

(d) Notwithstanding subsections (a)-(c), the commission shall be the sole regulatory authority for pro-am competitions. Any amateur who participates in an event that is conducted as part of a pro-am competition shall be subject to the jurisdiction of the commission and is required to obtain an amateur license issued by the commission. In accordance with § 68-115-201(a), the commission shall promulgate rules relative to amateur events conducted as part of a pro-am competition and amateur participants in such events, including but not limited to physical examinations.

68-115-216. Disciplinary actions — Cost of proceedings.

(a) If disciplinary action is taken against a person by the commission pursuant to this chapter based on the conduct of the person that either directly or indirectly relates to a professional contest of unarmed combat or pro-am competition, the commission may, in lieu of or in addition to revoking or suspending a license or permit issued to the person, impose a penalty not to exceed two hundred fifty thousand dollars ($250,000).

(b) If disciplinary action is taken against a person pursuant to this chapter, the commission may require the person against whom the action is taken to pay the costs of the proceeding, including investigative costs and attorney's fees.

(c) If a complaint is made against a person pursuant to this chapter, the complaint shall be made on a commission-prescribed form. The form shall be submitted to the administrator, who shall then present the complaint to the commission to:

(1) Determine if the complaint warrants further review; or

(2) Take action against the person based on the complaint.

68-120-101. Statewide building construction safety standards — Promulgation — Applicability.

(a) The state fire marshal shall, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, promulgate rules establishing minimum statewide building construction safety standards. Such standards shall be designed to afford a reasonable degree of safety to life and property from fire and hazards incident to the design, construction, alteration and repair of buildings or structures. The standards:

(1) Shall include, but not be limited to, provisions relative to structural strength and stability; energy efficiency; means of egress; fire resistant ratings and requirements; and fire protection equipment and materials;

(2) May be selected wholly or partially from publications or amended versions of publications of nationally recognized agencies or organizations, such as the International Code Council, Inc., the National Fire Protection

Association, Inc., and Underwriters Laboratories, Inc.;

(3) Shall classify buildings according to types of occupancy and construction;

(4) Shall contain appropriate requirements and specifications for both new and existing buildings;

(5) Shall not discriminate against or in favor of particular construction materials or techniques;

(6) Shall, to the extent practicable, be stated in terms of performance objectives without prescribing the use of certain methods, designs, techniques or materials;

(7) Shall be reasonably compatible with building construction safety standards adopted by local governments in this state;

(8)(A) Shall not include mandatory sprinkler requirements for one-family and two-family dwellings; however, notwithstanding this subdivision (a)(8), local governments may adopt more stringent requirements for one-family and two-family dwellings; and

(B)(i) If a local government seeks to adopt mandatory sprinkler requirements for one-family and two-family dwellings pursuant to this subdivision (a)(8), then the local government may only adopt such requirements, by either ordinance or resolution, as appropriate, upon an affirmative two-thirds (⅔) vote on final reading; provided, that if passage of such ordinance or resolution requires two (2) readings, then such requirements may only be adopted after reading such ordinance or resolution in open session of the legislative body at meetings specially called on two (2) different days that are no less than two (2) weeks apart; and if passage requires three (3) readings, then the last two (2) readings shall occur on two (2) different days that are no less than two (2) weeks apart. Mandatory sprinkler requirements shall be voted on in an ordinance or resolution separate from any other ordinance or resolution addressing building construction safety standards;

(ii) If a local government seeks to repeal the mandatory sprinkler requirements adopted pursuant to this subdivision (a)(8), then the local government shall repeal such requirements in the same manner as required to adopt such requirements under this subdivision (a)(8); provided, that if a local government adopted mandatory sprinkler requirements prior to April 27, 2012, then the local government may repeal such requirements in the same manner the local government adopted the requirements; and

(9) The department shall analyze the cost and effectiveness of sprinkler equipment in one-family and two-family dwellings in areas where residential sprinklers are in use, including this state and other states deemed appropriate by the department, and report the results of the analysis to the general assembly on or before May 1, 2010. In conducting the analysis, the department shall seek input from nonprofit and business groups or organizations, including, but not limited to, the Tennessee Fire Chiefs Association and the Home Builders Association of Tennessee.

(b)(1)(A) The standards established pursuant to subsection (a) apply to municipal, county, state and private buildings, including one-family and two-family dwellings, unless otherwise provided by statute.

(B)(i) Notwithstanding subdivision (b)(1)(A), the standards established pursuant to subsection (a) relative to one-family and two-family dwell-

ings do not apply in any county or municipality in which the legislative body of the county or municipality, by a two-thirds (⅔) vote, adopts a resolution to exempt the county or municipality, as appropriate, from the application of statewide standards for one-family and two-family dwellings within the jurisdictional boundaries of the county or municipality, as appropriate; provided, however, that any action by the county legislative body concerning the implementation of this subdivision (b)(1)(B)(i) shall be limited to the jurisdictional boundaries outside any municipality located within the county. Upon approving the resolution, the presiding officer of the legislative body shall notify the state fire marshal of the actions taken under this subdivision (b)(1)(B)(i).

(ii)*(a)* An initial resolution following July 1, 2009, may be adopted by a county or municipal legislative body to take effect on July 1, 2010, or at a later date stated in the resolution.

(b) A resolution adopted pursuant to subdivision (b)(1)(B)(ii)(*a*) or the adoption of any other resolution, shall expire one hundred eighty (180) days following the date of the election for the local legislative body next occurring following the adoption of the resolution, but an earlier expiration date may be stated in the resolution.

(C) The governing body of any such county or of a municipality located in any such county that has taken the action pursuant to subdivision (b)(1)(B) is authorized to reverse such action by adopting a resolution to apply subsection (a) with respect to one-family and two-family dwellings within the jurisdictional boundaries of the municipality or county, as appropriate; provided, that, any action by the county legislative body concerning its actions shall be limited to the jurisdictional boundaries outside any municipality located within the county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(2) Such standards do not apply to any building, other than state buildings, educational occupancies or any other occupancy requiring an inspection by the state fire marshal for initial licensure, located within the jurisdiction of a local government that certifies in writing to the state fire marshal that:

(A) The local jurisdiction has chosen to adopt and enforce building construction and fire safety codes for construction of all buildings, for construction of all buildings other than one-family and two-family dwellings, or for construction of one-family and two-family dwellings only; and

(i) For one-family and two-family construction, it has adopted the International Residential Code, published by the International Code Council, Inc.; or

(ii) For construction other than one-family and two-family dwellings, it has adopted a building construction safety code consisting of the International Building Code, published by the International Code Council, Inc., and either:

(a) The international fire code, published by the International Code Council, Inc.; or

(b) The uniform fire code, published by the National Fire Protection Association, Inc., if adopted on or after July 1, 2006; and

(B) It is adequately enforcing its code and performing any reviews of construction plans and specifications and inspections required by the state

fire marshal under this section.

(C) Amended versions of the publications referred to in subdivisions (a)(2) and (b)(2)(A) shall be designed to afford a reasonable degree of safety to life and property from fire and hazards incident to the design, construction, alteration, and repair of buildings or structures within the jurisdiction.

(3) If a local jurisdiction chooses to adopt and enforce codes for only one-family and two-family dwellings or for all buildings other than one-family and two-family dwellings that would be subject to the codes adopted by the state fire marshal pursuant to subdivision (a)(1), the state fire marshal shall enforce the statewide codes with regard to those buildings for which the local jurisdiction has not adopted and is not enforcing codes.

(4)(A) An audit of the records and transactions of each local government which chooses to enforce its own code pursuant to subdivision (b)(2) shall be made by the state fire marshal at least once every three (3) years to ensure that the local government is adequately performing its enforcement functions.

(B) The state fire marshal shall, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, promulgate rules to implement this subdivision (b)(4).

(5) Notwithstanding subdivision (b)(2), the standards established pursuant to subsection (a) apply, if:

(A) The local government's building construction safety code publications are not current within seven (7) years of the date of the latest editions of the publications, unless otherwise approved by the state fire marshal in writing; provided, however, that nothing in this subdivision (b)(5)(A) shall require a local government to adopt a standard more stringent than the standards enforced by the state fire marshal, pursuant to this section, or to adopt a mandatory sprinkler requirement for one-family and two-family dwellings; or

(B) After affording appropriate written notice of grounds and opportunity for hearing, the state fire marshal determines that the local government is not adequately performing its enforcement functions.

(6) Notwithstanding the applicability of the standards set forth in subsection (a) to educational occupancies, any entity undertaking to construct an educational occupancy within the jurisdictional boundaries of a local government that chooses to enforce its own code pursuant to this subsection (b) may begin construction upon approval of its building plans by such local government while, if the codes enforced by the local government are the same or more stringent than the codes enforced by the state fire marshal, awaiting final approval of its plans by the state fire marshal. If a conflict arises between the state fire marshal and the local government relative to the application or interpretation of the same or substantially identical building construction safety standards or fire safety standards, then the determination of the state fire marshal shall supersede the conflicting application or interpretation by the local government.

(c) The standards established pursuant to subsection (a) do not apply to:

(1) Renovations of existing one-family and two-family dwellings;

(2) Nonresidential farm buildings;

(3) Temporary buildings used exclusively for construction purposes;

(4) Structures or units regulated under chapter 126 of this title; or

(5) Buildings or facilities reviewed and licensed by the board for licensing health care facilities.

(d)(1) The state fire marshal may, by rules promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, require review and approval of plans and specifications prior to construction or alteration of certain types of buildings or structures. Such rules may include a schedule of fees sufficient to cover the costs of reviewing construction plans and specifications. However, no such fee shall exceed two hundred fifty dollars ($250) plus two dollars and fifty cents ($2.50) per each one thousand dollars ($1,000) or fraction thereof by which the total valuation of the proposed construction exceeds one hundred thousand dollars ($100,000).

(2) The state fire marshal is authorized to promulgate by rule a convenience fee to cover the costs of receiving construction plans, specifications and related fees electronically submitted pursuant to this part. Any fee set by rule pursuant to this subdivision (d)(2) shall be assessed in addition to the fee or fees assessed for the costs of reviewing construction plans and specifications pursuant to subdivision (d)(1). In no event shall the fee assessed pursuant to this subdivision (d)(2) exceed the actual costs incurred in the submission of the plans, specifications or fees electronically.

(e) The state fire marshal shall file with the secretary of state any publications incorporated by reference in rules promulgated under this section. Such publications shall be available for public inspection, and the secretary of state shall certify to any part of the publication at the request of any interested person, upon receipt of the statutory fee.

(f)(1)(A) The state fire marshal may, in addition to the other provisions of this part, authorize and appoint any person, employed by any municipality or county or acting through a professional corporation pursuant to § 48-101-601, who meets the qualifications enumerated in subdivision (f)(2) as a commissioned deputy building inspector in this division, who shall have all the power of other deputies and assistants to enter any one-family and two-family dwellings to make inspections of the buildings and their contents and to report the inspections in writing to the commissioner. The commissioner is directed to contract with each deputy building inspector through the municipality or county employing the inspector or the inspector's professional corporation to provide one-family and two-family building inspection services. The contracts shall be entered into between the commissioner, with the approval of the commissioner of finance and administration, and the professional corporation employing the building inspector and the building inspectors shall not be deemed employees of the state for payroll purposes or otherwise.

(B)(i) A deputy building inspector shall be certified by this state as:

(a) A building inspector pursuant to § 68-120-113;

(b) A plumbing inspector pursuant to § 68-120-118; or

(c) A mechanical inspector pursuant to § 68-120-118.

(ii) A deputy building inspector shall be limited in performing inspections to the discipline in which they are certified.

(C) The commissioner shall provide a program to ensure that one-family and two-family building construction inspection services are available throughout the state on a timely basis. An inspection shall be considered timely if it is performed within three (3) working days of when the request is made to the inspector, except that an inspection of a footer shall be considered timely if it is performed within one (1) working day of

when the request is made to the inspector.

(2)(A) Deputy building inspectors appointed by the commissioner are authorized to inspect one-family and two-family building construction upon receipt of a request from the owner of the property, a licensed contractor, from municipal governing bodies or from the county legislative body of the county in which the buildings are located. Each inspector, either through their municipality, county or professional corporation, shall be authorized to charge for and receive a fee for each inspection.

(B) The state fire marshal shall establish a schedule of fees to pay the cost incurred by the department for the administration and enforcement of this part.

(C) The state fire marshal may require the inspection of one-family and two-family dwellings with or without a request, in the same manner that inspections are made in accordance with § 68-102-116, and the remedies for dangerous conditions shall be the same as provided in § 68-102-117; provided, that no fees shall be charged for making inspections directed by the state fire marshal as authorized by §§ 68-102-116 and 68-102-117.

(D) No inspection fees may be charged except where an actual inspection is made.

(3) The state fire marshal may promulgate such rules and regulations as necessary to carry out this part, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(g) If a local government adopts mandatory sprinkler requirements for one-family and two-family dwellings pursuant to subdivision (a)(8), then such requirements shall not apply to manufactured homes constructed or installed under parts 2 and 4 of chapter 126 of this title unless such requirements are consistent with the regulations established by the United States department of housing and urban development (HUD) relating to the installation of sprinkler equipment in manufactured homes.

68-120-204. Buildings and public entertainment facilities to be accessible to disabled — Minimum specifications.

(a)(1) Any public building that is constructed, enlarged, or substantially altered or repaired after July 1, 2012, shall be designed and constructed pursuant to specifications, approved by the responsible authority, making such building accessible to, and usable by, persons who have a physical disability. The minimum specifications, except as provided in subdivision (a)(2) and § 68-120-205, shall be the 2010 ADA Standards for Accessible Design, and any further amendments, supplements or subsequent editions, or any other code as the state fire marshal determines by rule. The minimum specifications for a project shall be those in effect at the time the project is submitted to the responsible authority for final approval of the construction, enlargement, alteration, or repair.

(2) For public buildings for which a local building inspector is the responsible authority, a local government may select disability accessibility specifications from the codes or publications listed in subdivision (a)(1) or from the codes or publications of other nationally recognized agencies or organizations.

(3) All public buildings constructed or remodeled in accordance with the standards, and requirements of this part, or containing facilities that are in

compliance therewith, shall display a symbol, which is white on a blue background. The specifications for this symbol shall be furnished by the department of transportation indicating the location of such facilities designed for persons with physical disabilities. When a building contains an entrance other than the main entrance which is ramped or level for use by persons with physical disabilities, a sign showing its location shall be posted at or near the main entrance which shall be visible from the adjacent public sidewalk or way.

(b) All auditoriums, theaters, gymnasiums, stadiums, and other public entertainment facilities must provide accommodations in level or nearly level locations from which persons confined in wheelchairs may see and hear the offered entertainment as well as persons regularly seated in the facility.

(c) All accommodations required by subsection (b) shall comply with subsection (a), and with state and local fire safety requirements for emergency egress.

68-126-303. Part definitions.

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

(1) "Approved inspection agency" means a person, organization or local government approved by the commissioner to be especially qualified by reason of facilities, personnel, experience, and demonstrated reliability, to investigate, test, evaluate and inspect modular building units, systems, or the component parts of modular building units together with the plans, specifications, and quality control procedures to ensure that such units, systems, or component parts are in full compliance with the standards adopted by the commissioner pursuant to this part and to label such units complying with those standards. Any person, or any organization whose membership is composed of persons, employed by a manufacturer of modular units or owning any interest in any such manufacturing business, shall be ineligible for approval by the commissioner to serve as an inspection agency;

(2) "Commissioner" means the commissioner of commerce and insurance;

(3) "Component" means any assembly, sub-assembly, or combination of elements for use as a part of a modular building unit, which may include the structural, electrical, mechanical, plumbing, fire protection, or other structurally integrated system or systems thereof affecting life safety;

(4) "Department" means the department of commerce and insurance;

(5) "Guard shelter" means a structure used exclusively for the purpose of providing shelter for no more than two (2) persons who are watching over or protecting a person or place or supervising prisoners;

(6) "Installation" means the assembly of modular building units on-site and/or the process of affixing modular building-related components to land, a foundation, footings, utilities, or an existing building;

(7) "Local government" means any political subdivision of this state with authority to establish standards and requirements applicable to the construction, installation, alteration and repairs of buildings;

(8) "Modular building unit" means a structural unit, or preassembled component unit, including the necessary electrical, plumbing, heating, ventilating and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, as a finished building. "Modular building unit" does

not apply to temporary structures used exclusively for construction purposes, nonresidential farm buildings, or ready-removables that are not modular structures;

(9) "Ready-removable" means a structure without any foundation, footings, or other support mechanisms that allow a structure to be easily relocated but which may include electrical wiring. Ready-removable structures include, but are not limited to, stadium press boxes, guard shelters, or structures that contain only electrical, electronic, or mechanical equipment that are solely occupied for service or maintenance of such equipment; and

(10) "Structure" means any building or improvement and its components, systems, fixtures, and appurtenances at the time of completion or construction.

68-126-311. Requirements for ready-removables with electrical wiring.

(a) Ready-removables with electrical wiring must still meet applicable state and local electrical permitting requirements, local building permitting requirements, and have hardwired smoke alarms installed in accordance with the manufacturer's instructions.

(b) No ready-removable shall be modified for use as residential, recreational, or emergency housing in this state.

68-126-312 — 68-126-319. [Reserved.]

68-140-302. Part definitions.

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

(1) "Ambulance" means any privately or publicly owned land or air vehicle that is especially designed, constructed or modified and equipped and is intended to be used for and is maintained or operated for transportation upon the streets, highways or airways in this state for persons who are sick, injured, wounded, otherwise incapacitated, helpless, or in need of medical care;

(2) "Ambulance service" means the principal use of any privately or publicly owned ambulance for the transportation of injured or infirm persons;

(3) "Authorization" means any and all forms of official permission required by this part, including licenses, permits and certificates;

(4) "Board" means the Tennessee emergency medical services board;

(5) "Certificate" means official acknowledgment that an individual has successfully complied with all requirements to practice and has completed a training program accredited or recognized by the board;

(6) "Commissioner" means the commissioner of health, the commissioner's duly authorized representative, or in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner;

(7) "Department" means the department of health;

(8) "Director" means the director of the division of emergency medical services of the department;

(9) "Emergency medical dispatcher" (EMD) means an individual certified by the department as having successfully completed a department-approved EMD course;

(10) "Emergency medical response vehicle" means any privately or publicly owned vehicle which is maintained or operated for the transportation of emergency medical care personnel, equipment, and supplies to the scene of a medical emergency for the provision of emergency medical services;

(11) "Emergency medical service director" means an individual who directs the planning, development, implementation, coordination, administration, monitoring and evaluation of services provided by a licensed ambulance service;

(12) "Emergency medical service medical director" means an individual who has an active, unencumbered license to engage in the practice of medicine pursuant to title 63, chapter 6, or chapter 9, and who provides medical advice, direction, oversight and authorization to emergency medical services personnel at a licensed ambulance service, and/or emergency medical services educational institution, including, but not limited to, quality assurance;

(13) "Emergency medical services" (EMS) means the services utilized in responding to the perceived need for immediate medical care in order to prevent loss of life or aggravation of illness or injury;

(14) "Emergency medical services personnel" means individuals certified or licensed by the emergency medical services board in accordance with various categories and classifications of licenses or certificates that the board establishes;

(15) "Invalid vehicle" means any privately or publicly owned vehicle that is maintained, operated and intended to be used to transport persons who are convalescent, or otherwise nonambulatory, and do not require medical treatment while in transit;

(16) "License" means an authorization to a person to provide ambulance services; or an authorization to an individual to practice emergency medical care as emergency medical services personnel;

(17) "Medical direction" means the supervision by a physician licensed to practice in the state of Tennessee of all medical aspects of patient care within EMS;

(18) "Member" means a member of the Tennessee emergency medical service board;

(19) "Mobile prehospital emergency medical care" means those emergency medical services rendered outside the hospital facility, precedent to and during transportation of such patients to emergency treatment facilities;

(20) "Patient" means an individual who, as a result of physical or mental condition, needs medical attention;

(21) "Permit" means an authorization issued for an ambulance vehicle as meeting the standards adopted pursuant to this part;

(22) "Person" means any individual, association, organization or any other business entity, either profit or nonprofit, any state or local governmental entity, and federal agencies to the extent permitted by federal law;

(23) "Practice" means the exercise of principles and skills for effective emergency medical care under medical direction recognized as acts and responsibilities within the discipline of emergency medical services;

(24) "Run records" means ambulance run reports relative to a response by an ambulance service or invalid vehicle operator during which a patient is evaluated, treated or transported;

(25) "Service" means the provision of organized response by ambulances or emergency response vehicles, or the provision of emergency care on an

organized basis;

(26) "State" means the state of Tennessee;

(27) "State emergency medical services medical director" means an individual who has an unencumbered license to engage in the practice of medicine pursuant to title 63, chapter 6 or chapter 9 and who provides medical advice, direction, and oversight for statewide medical direction, including, but not limited to, quality assurance, protocols and standing orders; and

(28) "Volunteer personnel" means persons who provide emergency care without expectation of remuneration who do not receive payment for services rendered, and who do not depend on the provision of emergency care for their livelihood or a substantial portion of their livelihood.

68-140-303. Emergency medical services board.

(a) There is created and established the Tennessee emergency medical services board by transfer and expansion of the duties and responsibilities of the EMS advisory council. The board shall consist of thirteen (13) members.

(b) The members of the board shall be appointed by the governor, who may appoint such members in the following manner:

(1) Two (2) licensed physicians, who may be selected from lists of qualified persons submitted by interested medical groups, including, but not limited to, the Tennessee Medical Association;

(2) One (1) registered nurse, who may be selected from lists of qualified persons submitted by interested nursing groups, including, but not limited to, the Tennessee Nurses Association;

(3) One (1) hospital administrator, who may be selected from lists of qualified persons submitted by interested hospital groups, including, but not limited to, the Tennessee Hospital Association;

(4) One (1) member who maintains certification or licensure as emergency medical services personnel, registered nurse, or physician and who is also affiliated with a volunteer nonprofit ambulance service;

(5) Two (2) operators of ambulance services, each of whom maintains licensure as emergency medical services personnel, who may be selected from lists of qualified persons submitted by interested ambulance services groups, including, but not limited to, the Tennessee Ambulance Services Association;

(6) One (1) rescue squad member who maintains licensure as emergency medical services personnel. The rescue squad member may be selected from lists of qualified persons submitted by interested rescue squad groups, including, but not limited to, the Tennessee Association of Rescue Squads;

(7) One (1) professional firefighter member who maintains licensure as emergency medical services personnel or registered nurse. The professional firefighter member may be selected from lists of qualified persons submitted by interested firefighter groups, including, but not limited to, the Tennessee Professional Firefighters Association;

(8) One (1) member who maintains licensure as emergency medical services personnel. Such member may be selected from lists of qualified persons submitted by interested civil defense groups including, but not limited to, the Tennessee Civil Defense Association;

(9) Two (2) officials of county, municipal or metropolitan governments

which operate ambulance services; and

(10) One (1) paramedic instructor from an accredited paramedic program licensed in this state.

(c) The governor shall consult with interested emergency medical services groups including, but not limited to, the professional organizations listed in subsection (b) to determine qualified persons to fill the positions on the board.

(d)(1) Members, except those appointed to complete the term of a former member, shall be appointed for a term of four (4) years, or until their successors are appointed. Vacancies shall be filled through appointment by the governor, giving consideration to the recommendations of the board or interested emergency medical services groups listed in subsection (b). Any member who is absent from three (3) consecutive meetings may be removed from the board by the governor or by action of the majority of the board. In making appointments to the board, the governor shall strive to ensure that at least one (1) member serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(2)(A) As a vacancy occurs or as a term expires, the governor shall make appointments so that the board is structured as follows:

(i) Four (4) members shall be residents of the eastern grand division;

(ii) Four (4) members shall be residents of the middle grand division;

(iii) Four (4) members shall be residents of the western grand division; and

(iv) One (1) member shall be an at-large member.

(B) The interested emergency medical services groups shall submit names that satisfy the residency criteria of subdivision (d)(2)(A).

(e) The chair shall be a member elected by the board. The chair shall be authorized to certify the actions of the board.

(f) The board shall meet at the call of the chair. The chair shall convene at least two (2) meetings per year, such other meetings as are necessary to transact the business of the board, or upon receipt of a written request signed by three (3) or more members of the board. Seven (7) members of the board shall constitute a quorum for the transaction of meetings.

(g) The members of the board shall be paid a per diem of fifty dollars ($50.00) for attending board meetings and shall be reimbursed for their travel expenses incurred in attending board meetings, ad hoc committee activities or other travel incurred in the performance of the official duties, in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(h) Administrative services for the board shall be provided by the department.

(i) The board shall keep accurate minutes of the proceedings of all its meetings, a copy of which shall be kept on file in the office of the director and open to public inspection. Any rules adopted by the board shall be promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

68-140-304. Powers and duties of board.

In addition to any other power, duty or responsibility given to the board by this part, the board has the power, responsibility and duty to:

(1) Approve schools, establish and prescribe courses, and establish and prescribe the curricula and minimum standards for training, as required to prepare persons for certification under this part;

(2) Promulgate regulations governing the issuance of such licenses, permits and certificates for services, vehicles or personnel as required by this part, and condition such issuance as necessary. These regulations may establish various categories and classifications of licenses, permits and certificates;

(3) Establish minimum standards governing the activities and operations of various categories of services, vehicles or personnel, licensed, permitted or certified by the board;

(4) Provide hearings in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to persons seeking review of actions of the department, the board, or the commissioner, and hear and decide those enforcement and disciplinary matters presented by the department;

(5) Issue such orders as may be necessary or helpful to effectuate this part;

(6) Establish standards for the amounts and types of insurance coverage required for authorized providers of emergency medical services in this state; provided, however, that:

(A) Coverage shall extend to an EMS vehicle whether operated by the owner or the owner's agent; and

(B) In the case of a local government, the board may consider compliance with the Governmental Tort Liability Act, compiled in title 29, chapter 20, as satisfaction of this requirement;

(7) Regulate the development and operation of emergency medical services telecommunication systems;

(8) Promulgate rules establishing fees as provided in this part;

(9) Establish standards pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for emergency medical dispatch;

(10) Certify paramedic training centers operated by a fire department that operates its own fire training academy to provide training for career paramedics employed by the fire department; and

(11) Enter into agreements or contracts with any person to assist impaired professionals who are licensed, permitted or certified by the board.

68-140-306. Licenses, permits, and certification.

(a) No person, either as owner, agent or otherwise, shall furnish, operate, conduct, maintain, advertise or otherwise engage in or profess to engage in the business or service of transporting patients upon the streets, highways or airways within this state, or the provision of emergency medical services in the state, unless such person complies with this part and regulations pursuant to this part.

(b) When an employee/member of a not-for-profit service licensed in another state, which at the request of a county or municipal government regularly operates in Tennessee, is certified as a class of emergency medical provider that has no equivalent in Tennessee, that person shall be allowed to practice at such person's level of certification in such other state when acting in Tennessee as an employee/member of that service.

(c) Any person desiring to be licensed, permitted or certified shall apply to

the department on forms approved by the board, accompanied by the appropriate fee. The application shall contain such information as the board deems necessary for evaluation.

(d) Prior to issuance of any license under this part, the department shall cause to be inspected each ambulance service or emergency medical service, specifically vehicles, equipment, personnel, records, premises and operational procedures, annually, or whenever such inspection is deemed necessary. The periodic inspection shall be in addition to any other state or local safety or motor vehicle inspection required for ambulances or other motor vehicles under general law or ordinances.

(e) Renewal of any authorization issued under this part may be accomplished by paying an appropriate fee, submitting a renewal application, and otherwise complying with the applicable rules of the board.

(f) A separate license shall be required for each service, county specific for each base of operations, and a separate permit required for each vehicle authorized for operation pursuant to this part. Licenses and permits shall expire on June 30 of the year after issuance. Those ambulance services that are licensed by operating in multiple county jurisdictions on July 1, 2007, shall be eligible to obtain the licenses for those identified counties of operation by remitting the appropriate service application renewal fee.

(g) An ambulance service may renew the service license within sixty (60) days following the license expiration date upon payment of the renewal fee in addition to a late penalty established by the board for each month or fraction of a month that payment for renewal is late; provided, that the late penalty shall not exceed twice the renewal fee. If the ambulance service license is not renewed within sixty (60) days following the license expiration date, then the licensee shall reapply for licensure in accordance with the rules established by the board.

(h) The issuance of any authorization under this part shall not be construed so as to authorize any person to provide ambulance services or to operate any ambulance not in conformity with any ordinance or regulation enacted by any county, municipality or special purpose district or authority. No county or municipality shall adopt standards less stringent than state standards and regulations.

(i) Any service licensed in good standing in another state and based in that jurisdiction outside this state, that, at the request of a county or municipality, renders emergency medical services in this state, shall be exempt from licensure and authorized to operate, if the service agrees to subject itself to the jurisdiction of the emergency medical services board and the courts of this state in any matter arising from the conduct of ambulance service in this state, and submits a sworn affidavit providing the name, address, location of service, operating officers, and the nature of service to be provided; however, employees of such services shall be licensed in this state as provided by this part. Employees of a service rendering emergency medical services at a major scheduled public event in this state at the request of a county or municipality, as provided in this part, shall be deemed licensed in this state to the extent of their valid foreign license for the duration of the major scheduled public event and shall perform their services under the supervision of a physician licensed in this state.

68-140-308. Certificates for EMS personnel.

(a) Licenses, certificates, and authorizations issued for emergency medical services personnel, shall be valid for a period of up to two (2) years. The department shall establish a system of license renewals, which will allow for the distribution of the license workload. Such system shall provide for expiration of the applicant's professional license on the last day of the applicant's birth month within the license period. The fee imposed for any license issued under the interval method shall be proportional to biennial fees adopted pursuant to this part. The fee imposed under the interval method for a period of other than twenty-four (24) months shall be proportional and shall be rounded to the nearest dollar.

(b) Licenses shall be issued or renewed upon application to the department; provided, that the applicant meets the requirements set forth in rules and regulations promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Such licenses may be conditioned as may be necessary by the department or board. Requirements for written or practical examinations and required grades for examination shall be established by rule and regulation of the board.

(c) A licensee, permit or certificate holder may renew the license within sixty (60) days following the license expiration date upon payment of the renewal fee in addition to a late penalty established by the board for each month or fraction of a month that payment for renewal is late; provided, that the late penalty shall not exceed twice the renewal fee. If a licensee fails to renew the license within sixty (60) days following the license expiration date, then the licensee shall reapply for licensure in accordance with the rules established by the board.

(d) An applicant currently certified or licensed in another state who meets the requirements for licensure and renewal as approved by the board shall be eligible for licensure without examination. Upon submission of an application and appropriate fees to the department, licenses shall be issued if the applicant is:

(1) A Tennessee resident;

(2) Employed by a service operating in Tennessee; or

(3) A nonresident applicant licensed in another state and in good standing in the applicant's state of residence, if the applicant's state of residence grants the same or similar reciprocity privileges to Tennessee residents who are licensed by and in good standing in Tennessee.

68-140-309. Duties and authority of EMS personnel and physician on the scene.

(a) EMS personnel shall exercise the skills and abilities needed to render appropriate emergency medical care and provide emergency medical services in accordance with authorized procedures in the respective level of training, and shall administer care to patients based upon knowledge and application of principles derived from accepted practice and medical approval, and shall fully comply with the board's regulations governing activities and performance for the category of license or certification. Licensed emergency medical services personnel, a physician or a nurse shall accompany and attend every patient transported by ambulance in this state. Nothing in this part shall be construed to authorize or require any medical treatment or transportation to any hospital or emergency care facility of a patient who objects to the treatment or

transport on religious grounds.

(b) If the licensed emergency medical services personnel and the physician on the scene disagree on the proper course of treatment, the physician should confer with the base hospital physician before ordering treatment. When no base hospital physician is available, the physician on the scene controls.

(c) Licensed emergency medical services personnel may function within hospital emergency services under nursing supervision in accordance with policies and procedures adopted by the hospital.

68-140-310. Training for epinephrine injections.

Subject to the availability of a volunteer physician, nurse or licensed paramedic, the department shall approve and coordinate training in a course in epinephrine injections for administration to those persons suffering from serious adverse reactions (anaphylaxis) to insect stings, and this training may authorize lay individuals eighteen (18) years of age or over to administer epinephrine in emergency situations. Further, such individuals must demonstrate a need for such training, which can be based upon occupational or family circumstances. Possession of the drug shall be limited to those persons suffering from the allergic condition and the dosage of epinephrine shall be pre-measured.

68-140-311. Prohibited acts — Disciplinary action.

(a) Any person subject to regulation pursuant to this part may be subject to discipline or may be denied authorization for the following prohibited acts:

(1) Violation or attempted violation or assisting in or abetting the violation of or conspiring to violate any of the following:

(A) Any provision of this part;

(B) Any rule or regulation of the board;

(C) Any order issued pursuant to this part;

(D) Any terms or conditions of an authorization; or

(E) Any criminal statute of any state or Canadian province, or of the United States or Canada which involves moral turpitude or reflects upon the person's ability to fulfill such person's responsibilities under this part;

(2) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, controlled substance analogues or other drugs or stimulants in such manner as to adversely affect the delivery, performance or activities in the care of the patients requiring medical care;

(3) Making false statements or representations, being guilty of fraud or deceit in obtaining authorization;

(4) Making false or materially incorrect or inconsistent entries in any patient records or in the records of any ambulance service, health care facility, school, institution or other work place location;

(5) Failure to report patient care which accurately reflects the evaluation and treatment of each patient;

(6) Abandoning or neglecting a patient requiring emergency care, following assumption of duty;

(7) Unauthorized use or removal of narcotics, drugs, supplies or equipment from any ambulance, health care facility, school, institution or other work place location;

(8) Performing or attempting emergency care techniques or procedures without proper permission, license, certification, training, medical direction, or otherwise engaging in unethical practices or conduct;

(9) Assigning persons to perform functions contrary to this part or rules and regulations of the board;

(10) Failing to submit an application, required documentation, or fee by the established expiration date;

(11) Permitting or allowing another person to use the licensed person's license or certificate for the purpose of practicing or impersonating an EMT or other certified or licensed health care provider;

(12) Discriminating in rendering emergency care because of race, sex, creed, religion, national origin or ability to pay;

(13) Gross health care liability or negligence, or a pattern of continued or repeated health care liability, ignorance, negligence or incompetence in the provision of emergency care;

(14) Failure of the owner or provider of any ambulance or emergency medical service to ensure compliance by such service and its personnel with this part and all regulations promulgated hereunder; or

(15) Refusing to follow the medical orders of a licensed medical doctor or doctor of osteopathy on the scene if such physician:

(A) Takes responsibility for the care of the patient;

(B)(i) Either travels with the patient to the hospital; or

(ii) Reaches an agreement with the base hospital physician that the patient has been stabilized and can be transported safely without the continued attendance of the physician; and

(C) Signs the trip records of the ambulance service relative to the orders and treatment given on the scene and in transit, if applicable.

(b) Disciplinary action against a person licensed to practice by another state of the United States for any acts or omissions which would constitute grounds for discipline of a person licensed in this state. A certified copy of the initial or final order or other equivalent document memorializing the disciplinary action from the disciplining state shall constitute prima facie evidence of a violation of this section, and shall be sufficient grounds upon which to deny, restrict, or condition licensure or renewal and/or otherwise discipline a licensee licensed in this state.

(c) In disciplinary actions against individuals holding a license, certificate, permit, or authorization in this state at the time of a disciplinary action in another reporting state, in the absence of justifying evidence to the contrary, there shall be a rebuttable presumption that the sanction proposed in any such proceeding will be comparable to that in the reporting state. However, no such presumption shall exist for those who are applying for licensure, certification, permit, or authorization in this state during or after the time the disciplinary action in the other state is pending or has become final. If the board denies, restricts, or conditions a licensure, certification, permit, or authorization based on a disciplinary action in another state, the applicant shall, upon written request, filed within thirty (30) days of the date of the action on the application, be entitled to a contested case hearing.

68-140-312. Liability.

(a) Neither a physician nor a nurse who, in good faith, gives orders or instructions to emergency medical services personnel, operating within their

technical abilities for emergency care authorized by this part, nor any personnel following such orders, shall be liable civilly or criminally by reason of having issued or followed the orders except insofar as the rules of law of negligence are applicable.

(b) Emergency medical services personnel shall not be liable for trespass when rendering services in good faith in compliance with this part. Any person who in good faith reports any alleged violations of this part shall not be civilly liable for damages.

68-140-317. Fees.

(a)(1) The EMS board shall establish fees for licenses, permits, and for the licenses, certification and authorization of EMS personnel. The board may assess fees for the application, testing, inspection, or other services needed to carry out this part. Licensed emergency medical services personnel who are volunteer personnel associated with nonprofit corporations or associations providing emergency medical services, and otherwise non-salaried for their provision of emergency care, shall be exempt from license fees, but shall be liable for testing and training materials or other costs incurred by the board, and shall promptly notify and amend their fee status upon any change in the nature of their remuneration for activities involving emergency medical care.

(2) The EMS board shall have the authority to waive any fees applicable to 501(c)(3) organizations that provide air ambulance service by way of fixed wing aircraft for indigent patients; provided, that such 501(c)(3) organizations shall not receive fee for service payments for such air ambulance services for indigent patients from insurance, private pay or third party reimbursement.

(b) Except as otherwise expressly provided by law, failure to remit any fees duly authorized by the board shall be grounds for denial of license or renewal, suspension of licenses or permits, or may otherwise constitute an offense within the provisions of this part.

(c) Applications and fees submitted and received prior to or by expiration dates shall extend licenses, permits, and certificates for a period not to exceed sixty (60) days to allow administrative processing. An applicant with expired certification can apply for reinstatement upon good cause being shown to the board, and payment of all fees, including any reinstatement fees, and fulfilling any condition that may be established by the board.

68-140-320. Designation of government employee as officer for exposure control to perform infection control procedures.

(a) A local government or any licensed ambulance service may utilize one (1) or more of its employees licensed as a paramedic or critical care paramedic as its designated officer or officers for exposure control to perform infection control procedures necessary for prevention, exposure control and post-exposure evaluation on persons employed by that local government or licensed ambulance service as emergency response employees.

(b) For the purposes of this part, "emergency response employees" (EREs) include licensed emergency medical services personnel, certified emergency medical responders, and firefighters.

(c) All procedures authorized by this part shall be approved and performed

under the medical direction of a Tennessee licensed physician.

(d) For the purposes of this part, infection control procedures shall include the following:

(1) Administering tuberculosis skin tests, influenza immunizations, hepatitis B immunizations, and other immunizations to EREs as ordered by the medical director;

(2) Conducting prevention, informational and education programs for EREs pertaining to airborne and bloodborne diseases; and

(3) Post-exposure evaluation of an ERE who may have been exposed to potentially life-threatening airborne or bloodborne diseases, including, but not limited to, tuberculosis, HIV or hepatitis B. The post-exposure evaluation shall consist of ascertaining information relative to the events regarding the perceived exposure, as well as assessing the degree or significance of the exposure for the purpose of informing the medical director. The medical director shall determine the potential public health risk and recommend the immediate course of action pertaining to the medical care of the ERE and any potential public health risk relative thereto. Further evaluation, treatment and follow-up of the ERE's condition shall be performed at a licensed hospital or physician's office.

(e) Nothing in this part shall relieve nor limit any entity employing EREs from the statutory obligations imposed under chapter 10 of this title, the Occupational Safety and Health Act of 1972, compiled in title 50, chapter 3, or from occupational safety and health standards promulgated pursuant to 29 CFR 1910.

68-140-324. Choice of licenses for emergency medical services personnel.

A licensee may upgrade or downgrade a license by submitting the appropriate documentation to the EMS division administrative office, by completing any requirements and paying any fees established by the board.

68-140-325. Criminal background check as condition of employment.

(a) As a condition for employment of any licensed, certificated or authorized emergency medical services personnel, employers shall be allowed to initiate a criminal background check on any person applying for employment, or any employee that is currently employed by such employer, and such criminal background investigation shall be at the expense of the employer.

(b) Applicants shall:

(1) Provide past work history and personal references to be checked by the employer;

(2) Agree to the release of only such information and investigative records to the employer, or to any agency that contracts with this state, necessary for the purpose of verifying whether the individual has been convicted of a felony in this state;

(3) Supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee bureau of investigation, the federal bureau of investigation, other law enforcement agency, or any legally authorized entity; and

(4) Release any information required for a criminal background investigation by a professional background screening organization or criminal

background check service or registry.

(c) Any cost incurred by the Tennessee bureau of investigation, federal bureau of investigation, professional background screening organization, law enforcement agency or other legally authorized entity, in conducting such investigations of such applicants shall be paid by such applicants. In the event that such applicants fail to pay for these incurred expenses, the responsibility for payment will fall to the employer originally requesting such criminal background checks. Payments of such cost to the Tennessee bureau of investigation are to be made in accordance with §§ 38-6-103 and 38-6-109.

68-140-327. Certification by paramedic training centers.

(a) In order to be certified by the board pursuant to § 68-140-304(10), the training program offered by the paramedic training center must follow the United States department of transportation paramedic national standard curriculum. In addition, only paid career members of a fire department that operates its own fire training academy to provide training for career paramedics employed by the fire department are eligible to enter and graduate from the paramedic training program. Upon written intergovernmental agreement, paid career members of any fire department that operates within the county are also eligible to enter and graduate from the paramedic training program.

(b) Pursuant to § 68-140-304(10), any fire department that operates its own fire training academy shall have the option of permitting a fire fighter recruit to have between three (3) and five (5) years to complete the training for certification as a paramedic.

68-140-405. Rules relating to AED's — Adoption — Scope and contents.

The department of health shall adopt rules specifying the following:

(1) The contents of the written notice required by § 68-140-404;

(2) Reporting requirements for each use of an AED;

(3) The contents of a plan prepared in accordance with § 68-140-404 and requirements applicable to the subject matter of the plan;

(4) Training requirements in cardiopulmonary resuscitation and AED use that are consistent with the scientific guidelines of the American Heart Association for any individual authorized by an AED program plan to use an AED;

(5) Requirements for medical supervision of an AED program; and

(6) Performance requirements for an AED in order for the AED to be used in an AED program.

(7) [Deleted by 2012 amendment.]

68-142-103. Composition.

The state team shall be composed as provided in this section. Any ex officio member, other than the commissioner of health, may designate an agency representative to serve in such person's place. Members of the state team shall be as follows:

(1) The commissioner of health, who shall chair the state team;

(2) The attorney general and reporter;

(3) The commissioner of children's services;

(4) The director of the Tennessee bureau of investigation;

(5) A physician nominated by the state chapter of the American Medical Association;

(6) A physician to be appointed by the commissioner of health who is credentialed in forensic pathology, preferably with experience in pediatric forensic pathology;

(7) The commissioner of mental health and substance abuse services;

(8) A member of the judiciary selected from a list submitted by the chief justice of the Tennessee supreme court;

(9) The executive director of the commission on children and youth;

(10) The president of the state professional society on the abuse of children;

(11) A team coordinator, to be appointed by the commissioner of health;

(12) [Deleted by 2011 amendment.]

(13) Two (2) members of the house of representatives to be appointed by the speaker of the house of representatives, at least one (1) of whom shall be a member of the health and human resources committee;

(14) Two (2) senators to be appointed by the speaker of the senate, at least one (1) of whom shall be a member of the general welfare, health and human resources committee;

(15) The commissioner of education or the commissioner's designee; and

(16) The commissioner of intellectual and developmental disabilities.

68-201-104. Creation of air pollution control board — Members — Meetings — Organization.

(a) There is created an agency to be known as the air pollution control board.

(b)(1) The members of the board shall be the commissioner of environment and conservation, the commissioner of economic and community development, and twelve (12) other members who shall be appointed by the governor, as follows:

(A) One (1) shall be a registered professional engineer as defined in title 62, chapter 2, who shall have at least five (5) years' experience in the field of air pollution control;

(B) One (1) shall be a physician, licensed in compliance with title 63, chapter 6, who shall be experienced in the health effects of air contaminants;

(C) One (1) shall be engaged in a field which is directly related to agriculture or conservation;

(D) One (1) shall be actively engaged in the management of and with current full-time employment in a private manufacturing concern and have a college degree and eight (8) years' of combined technical training and experience in permit compliance for Title 5 or non-Title 5 sources for a manufacturing facility permitted in the state of Tennessee, and may be appointed from lists of qualified persons submitted by interested manufacturing groups, including, but not limited to, the Tennessee Chamber of Commerce and Industry;

(E) One (1) shall be a county mayor or chief executive officer of a Tennessee county who may be appointed from lists of qualified persons submitted by interested county services groups, including, but not limited to, the Tennessee county services association;

(F) One (1) shall be engaged in municipal government who may be appointed from lists of qualified persons submitted by interested munici-

pal groups, including, but not limited to, the Tennessee Municipal League;

(G) Two (2) shall be from Tennessee industry and with current full-time employment with a private manufacturing concern and have a college degree in engineering or equal and eight (8) years of combined technical training and experience in air pollution abatement for either a Title 5 permit holder or a non-Title 5 permitted source in the state of Tennessee, and may be appointed from lists of qualified persons submitted by interested manufacturing groups, including, but not limited to, the Tennessee Chamber of Commerce and Industry;

(H) One (1) shall be involved in the program of an institute of higher learning in the state involved in the conducting of training in air pollution evaluation and control;

(I) One (1) who may be appointed from lists of nominees submitted to the governor by interested conservation groups, including, but not limited to, the Tennessee Conservation League;

(J) One (1) shall be a small generator of air pollution who may be appointed from lists of qualified persons submitted by interested automotive groups, including, but not limited to, the Tennessee Automotive Association; and

(K) One (1) may be appointed from lists of qualified persons submitted by interested environmental groups, including, but not limited to, the Tennessee Environmental Council.

(L) [Deleted by 2012 amendment.]

(2) The governor shall consult with interested groups, including, but not limited to, the organizations listed in subdivision (b)(1) to determine qualified persons to fill positions on the board.

(3) The twelve (12) appointed members' terms of office shall be four (4) years and until their successors are selected and qualified, except that the terms of those first appointed shall expire as follows: two (2) at the end of one (1) year after date of appointment, two (2) at the end of two (2) years after date of appointment, two (2) at the end of three (3) years after date of appointment, two (2) at the end of four (4) years after the date of appointment, and, of the two (2) appointed in 1970 pursuant to former subdivisions (b)(8) and (9), one (1) at the end of two (2) years after date of appointment and one (1) at the end of four (4) years after date of appointment as designated by the governor at the time of appointment. In making appointments to the board, the governor shall strive to ensure that at least one (1) person appointed to serve on the board is sixty (60) years of age or older and that at least one (1) person appointed to serve on the board is a member of a racial minority. If a vacancy occurs, the governor may appoint a member for the remaining portion of the unexpired term created by the vacancy. The governor may remove any appointed member for cause. Each member shall be reimbursed for travel in accordance with the comprehensive travel regulations as approved by the attorney general and reporter and the commissioner of finance and administration. A per diem allowance of fifty dollars ($50.00) shall only be paid to members for meetings at which a quorum is present.

(c) The board shall hold at least two (2) regular meetings each calendar year at a place and time to be fixed by the board. The commissioner of environment and conservation shall be chair of the board and the board shall select at its first meeting one (1) of its members to serve as vice chair. At the first regular

meeting in each calendar year thereafter, the vice chair for the ensuing year shall be selected from among the members of the board. The director of the air pollution control division or service of the department of environment and conservation shall be technical secretary of the board. The director shall receive no additional compensation for such services. Special meetings may be called by the chair or by three (3) members of the board upon delivery of written notice to the office of each member of the board. Eight (8) members of the board shall constitute a quorum, and a quorum may act for the board in all matters. The decision of a majority of a quorum shall be determinative of any question before the board except as otherwise specially provided in this part.

68-201-105. Powers and duties of board — Notification of vacancy — Termination due to vacancy — Conflict of interest policy.

(a)(1) The board has the power and duty to:

(A) Promulgate rules and regulations to effect the intent and purpose of this part, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Such rules and regulations may include, but are not necessarily limited to, those defining: ambient air quality standards; emission standards; general policies or plans; a system of permits; and a schedule of fees for review of plans and specifications, issuance or renewal of permits or inspection of air contaminant sources. Emission standards for stationary sources adopted by the board shall include regulations based on the weight of materials entering the process causing the emission as an optional alternative to regulations previously adopted;

(B) Promulgate rules that authorize the technical secretary to issue permits that contain all provisions applicable to sources that are necessary under the federal Clean Air Act, compiled in 42 U.S.C. § 7401 et seq., and the effective regulations pursuant to such act, and that are necessary under this chapter and the effective rules of the board. The issuance of a permit by the technical secretary under the rules authorized by this subsection (a) shall not repeal by implication any rules of the board. The board shall monitor regulations under the Clean Air Act that are proposed by the United States environmental protection agency. If the environmental protection agency promulgates a rule that would roll back federal requirements under the Clean Air Act, the board shall initiate rulemaking on that subject and determine whether Tennessee should have a more restrictive rule than the federal rule on that subject;

(2) Hold hearings and issue such orders and determinations as may be necessary to effect the intent and purpose of this part;

(3) Establish, modify, or amend, without hearing, policies, practices, rules or regulations with respect to procedural aspects of board activities; and

(4) Cause legal proceedings to be instituted in a court of competent jurisdiction, to compel compliance with any order issued by the board, requirement of this part, or rule or regulation adopted pursuant to this part.

(b) The department has the power and duty to:

(1) Develop and recommend to the board plans for a comprehensive air pollution control program for the state, to review such plans from time to time and recommend to the board such changes as may be deemed appropriate;

(2) Require that any person furnish the department information required by it in discharge of its duties under this part, if the department has reason

to believe such person is, or may be about to, causing or contributing to air pollution; provided, that no such person shall be required to disclose any secret formulae, processes or methods used in any manufacturing operation carried on by such person or under such person's direction. The composition of air contaminants shall not be considered secret unless so declared by the department, and the department shall have the power to issue protection orders to prevent public dissemination;

(3) Enter at all reasonable times in or upon any private or public property except private residences for the purpose of inspecting and investigating any condition which the department shall have reasonable cause to believe to be an air contaminant source;

(4) Provide such technical, scientific and other services as may be required for carrying out this part. The basic personnel for such purposes shall be those employed by the department; however, the department, may, by agreement, secure these or other services from any other agency, and within budgetary limitations may arrange compensation for such services;

(5) Receive, budget, receipt for and administer such moneys as are duly appropriated or granted for the purpose of this part; provided, that all such moneys shall be deposited with the state treasurer;

(6) Represent the state in matters pertaining to plans, procedures or negotiations for interstate compacts relative to air pollution or in matters pertaining to air quality control regions;

(7) Collect and disseminate information relative to air pollution; encourage voluntary cooperation of affected persons or groups in preserving and restoring a reasonable degree of air purity; advise, consult and cooperate with other agencies, persons or groups in matters pertaining to air pollution; and encourage authorized air pollution agencies of political subdivisions to handle air pollution problems within their respective jurisdictions to the greatest extent possible and to provide technical assistance to political subdivisions requesting same; and

(8) Cause to be instituted in a court of competent jurisdiction legal proceedings to compel compliance with any order issued by the board.

(c) In exercising their powers and duties relative to major energy projects, as defined in § 13-18-102, the board and the departments shall participate in the joint review process and expedited review process provided for by the Major Energy Project Act of 1981, compiled in title 13, chapter 18.

(d)(1) If the board incurs a vacancy, it shall notify the appointing authority in writing within ninety (90) days after the vacancy occurs. All vacancies on the board, other than ex officio members, shall be filled by the appointing authority within ninety (90) days of receiving written notice of the vacancy and sufficient information is provided for the appointing authority to make an informed decision in regard to filling such vacancy. If sufficient information has been provided and the board has more than one (1) vacancy that is more than one hundred eighty (180) days in duration, the board shall report to the government operations committees of the house of representatives and the senate as to why such vacancies have not been filled.

(2) If more than one half (½) of the positions on the board are vacant for more than one hundred eighty (180) consecutive days, the board shall terminate; provided, that the board shall wind up its affairs pursuant to § 4-29-112. If the board is terminated pursuant to subdivision (d)(1) it shall be reviewed by the evaluation committees pursuant to the Uniform Admin-

istrative Procedures Act, compiled in title 4, chapter 5, before ceasing all its activities. Nothing in subdivision (d)(1) shall prohibit the general assembly from continuing, restructuring, or re-establishing the board.

(e) The board shall adopt and implement rules and regulations to create a conflict of interest policy for board members. The policy shall mandate annual written disclosures of financial interests, other possible conflicts of interest, and an acknowledgement by board members that they have read and understand all aspects of the policy. The policy shall also require persons who are to be appointed to the board to acknowledge, as a condition of appointment, that they are not in conflict with the conditions of the policy.

68-201-118. Variances.

(a) Any person seeking a variance shall do so by filing a petition for variance with the technical secretary. The technical secretary shall promptly investigate such petition and make recommendation to the board as to its disposition.

(b) Upon receiving the recommendation of the technical secretary, the board may, if such recommendation is for the granting of a variance, do so without hearing. If the recommendation of the technical secretary is against the granting of a variance, or the board, in its discretion, concludes that a hearing would be advisable, then a hearing shall be held not later than sixty (60) days after the board receives the recommendation of the technical secretary.

(c) The petitioner shall be given written notice at the earliest practicable time as to the time and place of such hearing.

(d) Any member of the board, or, with the approval of the governor, any person licensed to practice law in the state of Tennessee and designated by the board to act as hearing examiner, may act as hearing examiner to conduct hearings, administer oaths, subpoena witnesses, and enforce the attendance of witnesses at the hearing. Any member of the board, the hearing examiner or counsel representing the board may examine or cross-examine all witnesses. A complete record of the hearing shall be made for review by the board members.

(e) All testimony shall be under oath and stenographically recorded. The transcript so recorded shall be made available to the petitioner or any party to the hearing upon payment of the usual charges for such transcript.

(f) The board in considering the granting of a variance shall give due consideration to the equities of the petitioner and others who may be affected by granting or denial of the petition.

(g) The board may make the granting of a petition for variance contingent upon such other requirements or restrictions on the petitioner as it may deem appropriate and reasonable.

(h) Any variance granted shall be for a period not to exceed one (1) year, but may be extended from time to time but in no case for longer than one (1) year at a time upon recommendation of the technical secretary and affirmative action by the board.

(i) The board shall issue, enter and mail to the petitioner in writing, by certified mail, return receipt requested, within sixty (60) days following the final argument in such hearing or within sixty (60) days following receipt of the recommendation of the technical secretary when no hearing is held, its final order or determination. Such order or determination shall be approved in writing by at least seven (7) members of the board.

(j) Upon failure of the board to issue, enter and mail to the petitioner a final

order or determination within sixty (60) days after the final argument in any such hearing or within sixty (60) days following receipt of the recommendation of the technical secretary when no hearing is held, the petitioner shall be entitled to treat for all purposes such failure to act as a granting of the variance requested.

(k) The burden of proof in such hearings shall be upon the petitioner.

(*l*)(1) The board may delegate the authority to approve certain types of variances to the commissioner, or the commissioner's designee, pursuant to this subsection (*l*).

(2) The types of variances that may be delegated for granting by the commissioner upon recommendation by the technical secretary include, but are not limited to, the following:

(A) The use of open burning, not otherwise permitted by rules or regulations, for the limited purpose of testing a fire control device or system in order to obtain insurance; and

(B) The use of a variance in the case of financial hardship or other extenuating circumstances under which a vehicle that fails emissions testing required by § 55-4-130 and for which a waiver under § 55-4-128, or any rules and regulations promulgated pursuant thereto, is not permitted.

(3) Any petitioner for a variance who objects to a conditional grant of a variance by the commissioner may seek a hearing before the full board as if the variance was denied. Any such hearing shall be subject to the procedural requirements for hearings conducted under subsection (b).

68-203-103. Fees.

(a)(1) In order to facilitate the proper administration of each statute listed in § 68-203-101(b), the department of environment and conservation shall charge fees for the various services and functions it performs under each of those statutes, including, but not limited to, permit processing fees, permit maintenance fees, license fees, registration fees, plans review fees, facility inspection fees and emission fees.

(2) The level of these fees shall be determined after careful consideration of the direct and indirect costs incurred by the department in performing its various functions and services under each of the statutes listed in § 68-203-101(b).

(3) It is the intention of the general assembly that the fees shall provide funding for additional staff of the environmental regulatory programs and an improvement of the salaries and benefits of the existing staff of the environmental regulatory programs, to continue to improve performance in carrying out its duties. Prior to promulgating any fee increase, the authorities listed in subsection (b) shall review the basis for the fee increase and make a determination that the fee increase is warranted. The factors in the determinations shall include, if relevant: staffing needs, ability to attract and retain quality staff, feasible cost containment measures, comparisons with salaries paid by other governments and the private sector, levels of federal grants and state appropriations, and the ability of the program to maintain or improve its performance in carrying out its duties.

(b) The fees shall be adopted by regulations by the following authorities:

(1) The fees under the Tennessee Safe Drinking Water Act of 1983, compiled in chapter 221, part 7 of this title, and the Water Quality Control Act of 1977, compiled in title 69, chapter 3, shall be set by the Tennessee board of water quality, oil and gas;

(2) The fees under the Tennessee Air Quality Act shall be set by the air pollution control board;

(3) The fees under the Tennessee Solid Waste Disposal Act, compiled in chapter 211, part 1 of this title, and the Tennessee Hazardous Waste Management Act, compiled in chapter 212, part 1 of this title, shall be set by the underground storage tanks and solid waste disposal control board;

(4) The fees under the Water Environmental Health Act, compiled in chapter 221, part 9 of this title, shall be set by the board of certification created by § 68-221-905; and

(5) The fees under chapter 221, part 4 of this title, relative to subsurface sewage disposal; the Wastewater Facilities Act of 1987, compiled in chapter 221, part 10 of this title; the Radiological Health Service Act, compiled in chapter 202, part 2 of this title; the Medical Radiation Inspection Safety Act; title 69, chapter 10, relative to water wells; and the Safe Dams Act of 1973, compiled in title 69, chapter 11, shall be set by the commissioner of environment and conservation.

(c) All fees in existence prior to January 1, 1992, under the statutes identified in § 68-203-101(b), shall be continued and shall be calculated and maintained with any such additional fees authorized herein; provided, that such existing fees may be used in any manner consistent with the commissioner's authority, notwithstanding the provisions of this chapter.

(d) No permit or renewal of a permit shall be issued to an applicant for a permit under the foregoing authorities until all fees required by this chapter are paid in full.

(e)(1) If any part of any fee imposed under this chapter is not paid within fifteen (15) days of the due date, a penalty of five percent (5%) of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued penalty remains unpaid, an additional penalty of five percent (5%) of the then unpaid balance shall accrue and be added thereto. In addition, the fees not paid within fifteen (15) days after the due date shall bear interest at the maximum lawful rate from the due date to the date paid; however, the total of the penalties and interest that accrue pursuant to this section shall not exceed three (3) times the amount of the original fee.

(2) If any maintenance fee is not paid in full, including any interest and penalty within sixty (60) days of the due date, the commissioner may suspend the permit pending the opportunity for hearing until the amount due is paid in full.

(3) In addition to other powers and authority provided in this chapter, the commissioner is authorized to seek injunctive relief in the chancery court of Davidson County or any court of competent jurisdiction for a judgment in the amount owed the state under this chapter.

(4)(A) Any person required to pay the fees set forth under this chapter who disagrees with the calculation or applicability of the fee may petition the appropriate entity identified in subsection (b) for a hearing.

(B) In order to perfect a hearing, a petition for a hearing, together with the total amount of the fee due, must be received by the commissioner not

later than fifteen (15) days after the due date.

(C) Such hearing shall be in accordance with contested case provisions set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(D) If it is finally determined that the amount in dispute was improperly assessed, the commissioner shall return the amount determined to be improperly assessed with interest.

(f) No permit maintenance fees shall be levied under the subsurface sewage disposal law on homeowners or other persons who have subsurface sewage disposal systems on their property.

(g)(1) Under each program for which a permit processing fee is established pursuant to this chapter, the promulgating authority shall also establish by regulation a schedule for timely action by the department on permit applications under that program.

(2) Such schedules shall set forth the maximum length of time which is necessary and appropriate for a thorough and prompt review of each category of permit applications, and shall take into account the nature and complexity of permit application review required by the statute under which the permit is sought.

(3) Should the department fail to grant or deny the permit within the time frame established by regulation, the department shall refund the permit processing fee to the permit applicant.

(4) Each promulgating authority shall at least quarterly be provided an update of information on the timeliness of permit processing. In the event the commissioner is the promulgating authority, such information shall be published in the Tennessee Administrative Register at least quarterly.

(h) For the following categories, the fees shall not exceed the following maximum amounts; however, the promulgating authorities are encouraged to use graduated fees to reflect the volume of waste, population served, or other factors determined necessary to fairly apportion the fees:

(1) Filing/processing fee for state water quality permit: five thousand dollars ($5,000);

(2) Annual maintenance fee for NPDES permit or state water quality permit: fifteen thousand dollars ($15,000);

(3) Inspection fee for a major public water or wastewater treatment system: two thousand five hundred dollars ($2,500);

(4) Engineering plans review for water or wastewater systems: one thousand five hundred dollars ($1,500);

(5) Filing/processing fee for construction permit for a new air emission source or the increased emissions to a source: seven thousand five hundred dollars ($7,500);

(6) Filing/processing fee for permit modification for an air emission source: seven hundred fifty dollars ($750);

(7) Air contaminant emissions fee: eighteen dollars and seventy-five cents ($18.75) per ton per year, based on the air contaminant sources allowable emissions level; provided, that emissions subject to this fee are capped at four thousand (4,000) tons per pollutant, such as TSP, VOC, SO2, NOx, and other pollutants, excluding CO, per facility;

(8) Filing/processing fee for solid waste processing facility: two thousand five hundred dollars ($2,500);

(9) Filing/processing fee for solid waste landfill permit: ten thousand

dollars ($10,000);

(10) Annual maintenance fee for a solid waste processing facility: five thousand dollars ($5,000);

(11) Annual maintenance fee for a solid waste landfill: fifteen thousand dollars ($15,000);

(12) Filing/processing fee for a commercial hazardous waste storage or treatment facility: thirty-seven thousand five hundred dollars ($37,500);

(13) Filing/processing fee for a commercial hazardous waste disposal facility or landfill site: seventy-five thousand dollars ($75,000);

(14) Annual maintenance fee for a commercial hazardous waste storage or treatment facility: thirty-seven thousand five hundred dollars ($37,500);

(15) Annual maintenance fee for a commercial hazardous waste disposal facility or landfill site: seventy-five thousand dollars ($75,000);

(16) Filing/processing fee for an on-site hazardous waste storage or treatment facility: fifteen thousand dollars ($15,000);

(17) Filing/processing fee for an on-site hazardous waste disposal facility or landfill site: thirty thousand dollars ($30,000);

(18) Annual maintenance fee for an on-site hazardous waste storage or treatment facility: eighteen thousand seven hundred fifty dollars ($18,750);

(19) Annual maintenance fee for an on-site hazardous waste disposal facility or landfill site: twenty-two thousand five hundred dollars ($22,500);

(20)(A) **Class I.** Dental radiation machines: all diagnostic equipment used exclusively for dental diagnostic procedures: ninety-eight dollars ($98.00);

(B) **Class II.** Priority two medical radiation machines: all diagnostic equipment, not in Class III, used exclusively for medical and veterinary diagnostic procedures: two hundred twenty-five dollars ($225);

(C) **Class III.** Priority one medical radiation machines: all diagnostic X-ray equipment used in radiologists' offices, orthopedic surgeons' offices or hospitals exclusively for medical diagnostic procedures: three hundred dollars ($300); and

(D) **Class IV.** Therapy medical radiation machines: all X-ray equipment with energies less than nine tenths megaelectron volts (0.9 MeV) used for the purpose of medical and veterinary radiation therapy: four hundred fifty dollars ($450);

(21) Well driller annual license fee: two hundred fifty dollars ($250);

(22) Well pump and treatment device installer annual license fees: one hundred fifty dollars ($150);

(23) Safe dams plans review fee: five thousand dollars ($5,000);

(24) Safe dams safety inspection fee: one thousand dollars ($1,000);

(25) Permit application fee for oil or gas well: one thousand two hundred dollars ($1,200); and

(26) Mineral test hole permit application fee: one hundred dollars ($100).

68-211-103. Part definitions.

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

(1) "Baled waste" means all waste that has been mechanically compacted to achieve high density per unit volume and strapped to retain its form as a bale. Not included is compaction which has occurred only in collection vehicles as an incidental part of the wastes collected from individual generators and stationary or self-contained compactors which compact

waste but do not produce a strapped bale unit;

(2) "Board" means, unless otherwise indicated, the underground storage tanks and solid waste disposal control board created in § 68-211-111;

(3) "Commissioner" means the commissioner of environment and conservation or the commissioner's authorized representative;

(4) "Department" means the department of environment and conservation;

(5) "Health officer" means the director of a city, county, or district health department having jurisdiction over the community health in a specific area, or the director's authorized representative;

(6) "Person" means any and all persons, natural or artificial, including any individual, firm or association, and municipal or private corporation organized or existing under the laws of this state or any other state, and any governmental agency or county of this state and any department, agency, or instrumentality of the executive, legislative, and judicial branches of the federal government;

(7) "Registration" means a process by which a solid waste disposal or processing operation is granted a permit to operate. In this part, the words "registration" and "permit" are synonymous and may be used interchangeably;

(8) "Solid waste" means garbage, trash, refuse, abandoned material, spent material, byproducts, scrap, ash, sludge, and all discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities. Solid waste includes, without limitation, recyclable material when it is discarded or when it is used in a manner constituting disposal. Solid waste does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under § 402 of the Federal Water Pollution Control Act codified in 33 U.S.C. § 1342;

(9) "Solid waste disposal" means the process of permanently or indefinitely placing, confining, compacting, or covering solid waste; and

(10) "Solid waste processing" means any process that modifies the characteristics or properties of solid waste, including, but not limited to, treatment, incineration, composting, separation, grinding, shredding, and volume reduction; provided, that it does not include the grinding or shredding of landscaping or land clearing wastes or unpainted, unstained, and untreated wood into mulch or other useful products.

68-211-104. Unlawful methods of disposal.

It is unlawful to:

(1) Place or deposit any solid waste into the waters of the state except in a manner approved by the department or the Tennessee board of water quality, oil and gas;

(2) Burn solid wastes except in a manner and under conditions prescribed by the department and the Tennessee air pollution control board;

(3) Construct, alter, or operate a solid waste processing or disposal facility or site in violation of the rules, regulations, or orders of the commissioner or in such a manner as to create a public nuisance; or

(4) Transport, process or dispose of solid waste in violation of this chapter, the rules and regulations established under this chapter or in violation of the orders of the commissioner or board.

68-211-111. Underground storage tanks and solid waste disposal control board — Members and terms — Vacancies — Termination due to vacancy — Notice of hearings — Public comment — Rules and regulations — Meetings — Compensation.

(a)(1)(A) There is created an underground storage tanks and solid waste disposal control board that shall be composed of fourteen (14) members appointed by the governor as follows:

(i) One (1) person engaged in a field directly related to agriculture, who may be appointed from lists of qualified persons submitted by interested farm business groups including, but not limited to, the Tennessee Farm Bureau;

(ii) One (1) person who is employed by, or is the owner of, a private petroleum concern, with at least ten (10) years of experience owning or operating a wholesale or retail gasoline business with management responsibility for at least fifteen (15) underground storage tanks, who may be appointed from a list of qualified persons submitted by interested wholesale or retail gasoline business groups including, but not limited to, the Tennessee Fuel and Convenience Store Association. Such person shall have demonstrated leadership in the industry by membership and involvement in a trade association representing fuel distributors and convenience store owners;

(iii) One (1) person who is employed by a private manufacturing concern in Tennessee, who shall have a college degree in engineering or the equivalent and at least eight (8) years of combined technical training and experience in permit compliance and management of solid wastes or hazardous waste, who may be appointed from a list of qualified persons submitted by interested business groups including, but not limited to, the Tennessee Chamber of Commerce and Industry;

(iv) One (1) person employed by a private manufacturing concern in Tennessee, who shall have a college degree in engineering or the equivalent and at least eight (8) years of combined technical training and experience in the management of petroleum underground storage tanks and hazardous materials. This person may be appointed from a list of qualified persons submitted by business groups including, but not limited to, the Tennessee Chamber of Commerce and Industry;

(v) One (1) person who is a registered engineer or geologist or qualified land surveyor with knowledge of management of solid wastes or hazardous materials or the management of underground storage tanks from the faculty of an institution of higher learning, who may be appointed from a list of four (4) persons, two (2) of whom may be nominated by the board of trustees of the University of Tennessee system and two (2) of whom may be nominated by the board of regents of the state university and community college system;

(vi) One (1) person with knowledge of management of solid wastes, hazardous materials, or underground storage tanks to represent envi-

ronmental interests, who may be appointed from a list of qualified persons submitted by environmental groups including, but not limited to, the Tennessee Environmental Council;

(vii) One (1) representative of county governments, who may be appointed from lists of qualified persons submitted by interested county services groups including, but not limited to, the County Services Association;

(viii) One (1) representative of municipal governments, who may be appointed from lists of qualified persons submitted by interested municipal groups including, but not limited to, the Tennessee Municipal League;

(ix) One (1) person shall be a small generator of solid wastes or hazardous materials, who may be appointed from lists of qualified persons submitted by interested automotive groups including, but not limited to, a list of three (3) persons that shall be submitted by the Tennessee Automotive Association;

(x) One (1) person employed by a private petroleum concern with experience in the management of petroleum, who may be appointed from lists of qualified persons submitted by interested petroleum groups including, but not limited to, the Tennessee Petroleum Council;

(xi) One (1) person engaged in the business of management of solid wastes or hazardous materials;

(xii) One (1) person who is employed by, or is the owner of, a private petroleum concern, with at least five (5) years of experience owning or operating a wholesale or retail gasoline business with management responsibility for no more than five (5) underground storage tanks; and

(xiii) The commissioner of economic and community development or the commissioner's designee, and the commissioner of environment and conservation or the commissioner's designee, who shall be ex officio nonvoting members.

(B) The governor shall consult with the interested groups described in subdivision (a)(1)(A) to determine qualified persons to fill the positions on the board.

(2) The director of the division of solid and hazardous waste management or the director's designee shall serve as the technical secretary of the board but shall have no vote at board meetings.

(3) [Deleted by 2012 amendment.]

(b) In making the initial appointments to the board, three (3) members shall be appointed for a term of one (1) year, three (3) members shall be appointed for a term of two (2) years, three (3) members shall be appointed for a term of three (3) years, and three (3) members shall be appointed for a term of four (4) years. Upon expiration of these terms, members shall be appointed by the governor for a term of four (4) years. Vacancies resulting for reasons other than the expiration of the term shall be filled by the governor for the remainder of the term. In making appointments to the board, the governor shall strive to ensure that at least one (1) person appointed to serve on the board is at least sixty (60) years of age and that at least one (1) person appointed to serve on the board is a member of a racial minority.

(c)(1) All vacancies in appointed positions shall be filled by the original appointing authority to serve the remainder of the unexpired term.

(2) If the board incurs a vacancy, it shall notify the appointing authority in writing within ninety (90) days after the vacancy occurs. All vacancies on

the board, other than ex officio members, shall be filled by the appointing authority within ninety (90) days of receiving written notice of the vacancy and sufficient information is provided for the appointing authority to make an informed decision in regard to filling such vacancy. If such sufficient information has been provided and the board has more than one (1) vacancy that is more than one hundred eighty (180) days in duration such board shall report to government operations committees of the senate and the house of representatives why such vacancies have not been filled.

(3) If more than one half (½) of the positions on the board are vacant for more than one hundred eighty (180) consecutive days, the board shall terminate; provided, that such board shall wind up its affairs pursuant to § 4-29-112. A board that is terminated pursuant to this subsection (c) shall be reviewed by the evaluation committees pursuant to title 4, chapter 5, before ceasing all its activities. Nothing in this section shall prohibit the general assembly from continuing, restructuring, or re-establishing the board.

(d)(1) It is the duty of the board to adopt, modify, repeal, promulgate after due notice and enforce rules and regulations which the board deems necessary for the proper administration of this part. Prior to promulgating, adopting, modifying or repealing rules and regulations, the board shall conduct, or cause to be conducted, public hearings in connection therewith. All such acts relative to rules and regulations shall be in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) The board is authorized to promulgate rules and regulations to effectuate the purposes of parts 8 and 9 of this chapter. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(e) Notice of any hearing shall be given not less than thirty (30) days before the date of such hearing and shall state the date, time, and place of hearing, and the subject of the hearing. Any person who desires to be heard relative to solid waste matters at any such public hearing shall give written notice thereof to the board on or before the first date set for the hearing. The board is authorized to set reasonable time limits for the oral presentation of views by any person at any such public hearing.

(f) It is the duty of the board to act as a board of appeals as provided in § 68-211-113.

(g) The board shall hold at least six (6) regular meetings each calendar year at a place and time to be fixed by the board. The board has the authority of the municipal solid waste advisory committee. The board shall also meet at the request of the commissioner of environment and conservation, the chair of the board, or three (3) members of the board. Eight (8) members shall constitute a quorum, and a quorum may act for the board in all matters. The board shall select a chair from its members annually. The department of environment and conservation shall provide all necessary staff for the board.

(h) Each member of the board other than the ex officio members shall be entitled to be paid fifty dollars ($50.00) for each day actually and necessarily employed in the discharge of official duties, and each member shall be entitled to receive the amount of the member's traveling and other necessary expenses actually incurred while engaged in the performance of any official duties when so authorized by the board, but such expenses shall be reimbursed in accordance with the comprehensive state travel regulations promulgated by the commissioner of finance and administration and approved by the attorney

general and reporter.

(i) No member of the board shall participate in making any decision of a permit or upon a case in which the municipality, firm, or organization which the member represents, or by which the member is employed, or in which the member has a direct substantial financial interest, is involved.

68-211-117. Civil penalties.

(a)(1) Any person who violates or fails to comply with any provision of this part or any rule, regulation, or standard adopted pursuant to this part shall be subject to a civil penalty of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) per day for each day of violation; provided, however, that if the violation involves the disposal of solid waste in a sinkhole, it shall be subject to a civil penalty of not less than seven hundred dollars ($700) nor more than seven thousand dollars ($7,000) per day for each day of violation because of the increased likelihood of harm to the environment and the public.

(2) Each day such violation continues constitutes a separate violation. In addition, such person shall also be liable for any damages to the state resulting therefrom, without regard to whether any civil penalty is assessed.

(b) Any civil penalty or damages shall be assessed in the following manner:

(1) The commissioner may issue an assessment against any person responsible for the violation or damages. Such person shall receive notice of the assessment by certified mail, return receipt requested;

(2) Any person against whom an assessment has been issued may secure a review of the assessment by filing with the commissioner a written petition setting forth the grounds and reasons for such person's objections and asking for a hearing in the matter involved before the underground storage tanks and solid waste disposal control board. Such a hearing shall be a contested case and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall apply. The underground storage tanks and solid waste disposal control board has the power to enter such orders as in its opinion will best further the purposes of this part;

(3) If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator is deemed to have consented to the assessment and it shall become final;

(4) Whenever any assessment has become final because of a person's failure to appeal either the commissioner's assessment or the board's order, the commissioner may apply to the appropriate court for a judgment and seek execution on such judgment. The court, in such proceedings, shall treat the failure to appeal such assessment as a confession of judgment in the amount of the assessment; and

(5) The commissioner may institute proceedings for assessment in the chancery court of Davidson County or in the chancery court of the county in which all or part of the violation or failure to comply occurred. Such court shall have venue over such actions, notwithstanding § 20-4-101 to the contrary.

(c) In assessing a civil penalty, the following factors may be considered:

(1) The harm done to public health or the environment;

(2) The economic benefit gained by the violators;

(3) The amount of effort put forth by the violator to attain compliance; and

(4) Any unusual or extraordinary enforcement costs incurred by the commissioner.

(d) Damages to the state may include any reasonable expenses incurred in investigating and enforcing violations of this part, and in restoring the air, water, land and other property, including animal, plant and aquatic life, of the state to their former condition.

68-211-203. Part definitions.

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

(1) "Biological product" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product or an analogous product, or arsphenamine or any other trivalent organic arsenic compound used for the prevention or treatment of a disease or condition of human beings or animals;

(2) "Board" means, unless otherwise indicated, the underground storage tanks and solid waste disposal control board established by § 68-211-111;

(3) "Commissioner" means the commissioner of environment and conservation or the commissioner's authorized representative;

(4) "Covered generator" means any generator that:

(A) Employs ten (10) or more employees;

(B) Owns or maintains a building, excluding private residences, of at least three thousand square feet (3,000 sq. ft.);

(C) Owns or maintains electrical distribution systems;

(D) Owns or operates a business that demolishes buildings, excluding private residences; or

(E) Owns or operates a tanning bed salon business;

(5) "Department" means the department of environment and conservation;

(6) "Discarded mercury-added consumer product" means a mercury-added consumer product that can, or will, no longer be used for its intended purpose as determined by its generator;

(7) "Disposed of" means originally placed in a solid waste container whose contents are destined for delivery to a solid waste landfill for disposal or to an incinerator, boiler, or industrial furnace for burning;

(8) "Generator" means the person who owns or otherwise controls the fate of a discarded mercury-added consumer product;

(9) "Hazardous waste" shall have the same meaning as provided in by Tenn. Comp. R. & Regs. 1200-01-11-.02(1)(c);

(10) "Hazardous waste management facility" means:

(A) All contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing, transporting, or disposing of hazardous waste. A facility may consist of several treatment, storage, transportation, or disposal operational units (e.g., one (1) or more landfills, surface impoundments, or combinations of them);

(B) For the purpose of implementing corrective action under Tenn. Comp. R. & Regs. 1200-01-11-.06(6)(*l*) or § 68-212-111, all contiguous property under the control of the owner or operator seeking a permit under the Hazardous Waste Management Act, compiled in chapter 212, part 1 of this title; and

(C) Notwithstanding subdivision (10)(B), a remediation waste management site if such site is located within a facility that is subject to Tenn.

Comp. R. & Regs. 1200-01-11-.06(6)(*l*);

(11)(A) "Mercury-added consumer product" means any material, device, or part of a device including, but not limited to, those materials, devices, or parts listed in subdivision (11)(B):

(i) Into which elemental mercury or mercury compounds are intentionally added during the formulation or manufacture of such material or device; and

(ii) In which the continued presence of mercury is required to provide a specific characteristic, appearance or quality, or to perform a specific function;

(B) "Mercury-added consumer product" includes, but is not limited to:

(i) Thermostats;

(ii) Thermometers;

(iii) Switches (whether individually or as part of another product);

(iv) Medical or scientific instruments;

(v) Electrical relays and other electrical devices;

(vi) Lamps and light bulbs; and

(vii) Batteries other than those defined as mercury-containing excluded products;

(12) "Mercury-containing excluded product" means:

(A) Photographic film and paper;

(B) Pharmaceutical products;

(C) Biological products;

(D) Any substance that can lawfully be sold over the counter without a prescription under the Federal Food, Drug and Cosmetics Act, compiled in 21 U.S.C. § 301 et seq.;

(E) Any device or material from which the elemental mercury or mercury compounds have been removed;

(F) Button batteries used in hearing aids, radios, cameras, and other devices;

(G) Medical devices; or

(H) Restorative dental materials;

(13) "Person" means any and all persons, natural or artificial, including any individual, firm or association, or municipal or private corporation organized or existing under the laws of this state or any other state, and any governmental agency or county of this state and any department, agency, or instrumentality of the executive, legislative, and judicial branches of the federal government;

(14)(A) "Solid waste" means:

(i) Garbage, trash, refuse, abandoned material, spent material, by-products, scrap, ash, sludge, and all discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities; or

(ii) Without limitation, recyclable material when it is discarded or when it is used in a manner constituting disposal;

(B) "Solid waste" does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under § 402 of the Federal Water Pollution Control Act, codified in 33 U.S.C. § 1342;

(15) "Universal waste" means any of the hazardous wastes listed in Tenn. Comp. R. & Regs. 1200-01-11-.12(1)(a) that are managed under the universal waste requirements of Tenn. Comp. R. & Regs. 1200-01-11-.12;

(16) "Universal waste destination facility" means a facility that treats, disposes of, or recycles universal waste, except those management activities described in Tenn. Comp. R. & Regs. 1200-01-11-.12(2)(d)1 and 3 and Tenn. Comp. R. & Regs. 1200-01-11-.12 (3)(d)1 and 3. For the purpose of managing universal waste, "universal waste destination facility" does not include a facility at which universal waste is only accumulated; and

(17)(A) "Universal waste handler" means:

(i) Any person, by site, whose act or process produces universal waste or whose act causes universal waste to become subject to regulation; or

(ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a universal waste destination facility, or to a foreign destination;

(B) "Universal waste handler" does not include:

(i) A person who treats, except under the provisions of Tenn. Comp. R. & Regs. 1200-01-11-.12(2)(d)1 or 3, or Tenn. Comp. R. & Regs. 1200-01-11-.12(3)(d)1 or 3, disposes of, or recycles universal waste; or

(ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

68-211-802. Part definitions.

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

(1) "Authority" or "solid waste authority" means any public instrumentality organized pursuant to part 9 of this chapter;

(2) "Board" means a board, established to manage the affairs of a municipal solid waste management region, except in §§ 68-211-119 — 68-211-121, 68-211-852 [repealed], 68-211-853, 68-211-867 and 68-211-871 where "board" means the underground storage tanks and solid waste disposal control board created in § 68-211-111;

(3) "Commissioner" means the commissioner of environment and conservation;

(4) "Convenience center" means any area which is staffed and fenced that has waste receptacles on site that are open to the public, when an attendant is present, to receive household waste, municipal solid waste and recyclable materials;

(5) "Department" means the department of environment and conservation;

(6) "Development district" means a development district organized pursuant to title 13, chapter 14;

(7) "Household hazardous waste" means solid wastes discarded from homes or similar sources as listed in 40 CFR 261.4(b)(1), that are either hazardous wastes as listed by the EPA in 40 CFR 261.33(e) or (f), or wastes that exhibit any of the following characteristics as defined in 40 CFR 261.21 — 261.24: ignitability, corrosivity, reactivity and TCLP toxicity;

(8) "Household waste" means any waste material, including garbage, trash and refuse, and yard waste derived from households. Households include single and multiple residences, campgrounds, picnic grounds and day-use recreation areas;

(9) "Landfill" means a facility, permitted pursuant to part 1 of this chapter, where solid wastes are disposed of by burial in excavated pits or trenches or by placement on land and covering with soil or other approved material;

(10) "Municipal solid waste" means any garbage, refuse, industrial lunchroom or office waste, household waste, household hazardous waste, yard waste, and any other material resulting from the operation of residential, municipal, commercial or institutional establishments and from community activities; provided, that "municipal solid waste" does not include the following:

(A) Radioactive waste;

(B) Hazardous waste as defined in § 68-212-104;

(C) Infectious waste;

(D) Materials that are being transported to a facility for reprocessing or reuse; provided further, that reprocessing or reuse does not include incineration or placement in a landfill; and

(E) Industrial waste which may include office, domestic or cafeteria waste, managed in a privately owned solid waste disposal system or resource recovery facility, if such waste is generated solely by the owner of the solid waste disposal system or resource recovery facility;

(11) "Operator" means the person who is in charge of the actual, on-site operation of a solid waste management facility during any period of operation;

(12) "Person" means "person" as defined in § 68-211-103;

(13) "Recovered materials" means those materials which have been diverted or removed from the solid waste stream for sale, use, reuse or recycling, whether or not requiring subsequent separation processing. Such recovered materials are not solid waste;

(14) "Recovered materials processing facility" means a facility engaged solely in the storage, processing and resale or reuse of recovered materials. A recovered materials processing facility is not a solid waste processing facility;

(15) "Recyclable materials" means those materials which are capable of being reused or returned to use in the form of raw materials or products, whether or not such materials have been diverted or removed from the solid waste stream;

(16) "Recycling" means the process by which recovered materials are transformed into new products, including the collection, separation, processing, and reuse of recovered materials either directly or as raw materials for the manufacture of new products;

(17) "Region" means a municipal solid waste region organized pursuant to § 68-211-813(a);

(18) "Solid waste stream" means the system through which solid waste and recoverable materials move from the point of discard to recovery or disposal;

(19) "Tire" means the continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle;

(20) "Transporter" means a person engaged in the transportation of municipal solid waste collected or to be baled or processed, or disposed of in Tennessee by rail, highway or water, in significant amounts. The amounts deemed significant shall be determined by the board and established by regulation;

(21) "Used oil" means any oil which has been refined from crude or synthetic, or recovered oil and, as a result of use, storage or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties, but which may be suitable for further use and may be economically recycled or may be burned as fuel;

(22) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage or defect; and

(23) "Yard waste" means vegetative matter resulting from landscaping, lawn maintenance and land clearing operations other than mining, agricultural and forestry operations.

(b) Unless the context requires otherwise or this section defines a term differently, the definitions set forth in §§ 68-211-103, 68-212-104 and 68-212-303, and in any regulations promulgated pursuant to this chapter and chapter 212 of this title, apply to terms used in this part.

68-211-832. Grants for investigation and corrective action at landfills causing contamination of ground water.

(a) From funds available in the solid waste management fund, the department may award a grant or grants to any county or municipality that operated a Class I landfill permitted by the department that is now closed and does not have a composite liner system in place, if the department determines that the landfill is causing harm to health or the environment through contamination of ground water.

(b) The grant shall be used by the county or municipality for the purpose of investigation or corrective action at the landfill. The amount of the grant shall be set at an amount sufficient to reimburse a county or municipality for not more than fifty percent (50%) of the total cost of investigation and corrective action of the ground water contamination as of the date of application for the grant.

(c) The underground storage tanks and solid waste disposal control board may promulgate rules it deems necessary or appropriate to effectuate this grant program.

68-211-841. [Repealed.]

68-211-849. Recommendations regarding solid waste disposal planning.

(a) The municipal solid waste advisory committee is directed to develop by December 31, 2009, recommendations using input from Tennessee State University and other stakeholders with regard to as many of the following as are possible:

(1) Finding a higher value use for materials in the waste stream than landfilling; and

(2) Reducing or eliminating from the landfills food waste, yard waste, radioactive waste, household hazardous waste, chemicals, or other materials that decompose into a liquid or gas or that may increase the environmental

hazards potentially created by the landfill or leachate.

(b) Using funds available in the solid waste management fund, the department may make a grant to Tennessee State University for this work.

(c) The recommendations shall:

(1) Determine how Class IV construction and demolition waste can be ground, mulched, crushed, or disposed of on the construction site;

(2) Determine the nature, amount, and source of hazardous waste in the solid waste stream and the construction and demolition waste stream;

(3) Illustrate how to use the materials in the waste stream for business, as compost, or in other ways;

(4) Identify states that have clear and concise regulations implementing such practices;

(5) Determine the components of the municipal waste stream and the construction and demolition waste stream in Tennessee, including sources of hazardous waste and materials that can be composted, reused, recycled or otherwise diverted from the landfills; and

(6) Determine methods by which waste can be diverted from landfills using transfer stations, drop-off points, composting facilities or other means.

(d) The recommendations of the advisory committee shall be made available to the public, municipalities, counties, and businesses in the state so that they may be implemented and shall also be considered by the underground storage tanks and solid waste disposal control board for incorporation into rules.

(e) There is a moratorium imposed on waste from the bulk survey for release program being disposed in landfills in any county having a population of not less than one hundred eighty-two thousand (182,000) nor more than one hundred eighty-two thousand one hundred (182,100), according to the 2000 federal census or any subsequent federal census, pending the results of the municipal solid waste advisory committee's recommendations, which shall be submitted no later than sixty (60) days after July 5, 2007.

68-211-861. State waste reduction and diversion goal — Credit — Basis for goal — Sanction for failure to meet goal — Rule promoting recycling and waste reduction. [For contingent amendment, see the Compiler's Notes.]

(a) **[For contingent amendment, see the Compiler's Notes.]** The goal of the state is to reduce by twenty-five percent (25%) the amount of solid waste disposed of at Class I municipal solid waste disposal facilities and incinerators, measured on a per capita basis within Tennessee by weight. As an alternative to calculating the waste reduction and diversion goal on a per capita basis, regions shall have the option of calculating the goal on an economic growth basis using the method prescribed by the department and approved by the municipal solid waste advisory committee. The goal shall also apply to each municipal solid waste region; provided, that the goal shall not apply to individual disposal facilities or incinerators. The base year from which reductions are to be measured is 1995, unless a region can demonstrate that 1995 data is clearly in error. The method of calculating goals based on economic growth using the method prescribed by the department and approved by the municipal solid waste advisory committee shall be promulgated as a rule in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) **[For contingent amendment, see the Compiler's Notes.]** If a region

does not meet the twenty-five percent (25%) waste reduction and diversion goal, then the department will objectively assess the activities and expenditures of the region and the local governments in the region to determine whether the region's program is qualitatively equivalent to other regions that meet the goal and whether the failure is due to factors beyond the control of the region. This qualitative assessment method shall be developed by the department and approved by the municipal solid waste advisory committee. The qualitative assessment method prescribed by the department and approved by the municipal solid waste advisory committee shall be promulgated as a rule in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) **[For contingent amendment, see the Compiler's Notes.]** A county or region may receive credit toward the waste reduction and diversion goal established by this section for documented reductions from recycling and source reduction programs prior to 1995, but no earlier than 1985.

(d) **[For contingent amendment, see the Compiler's Notes.]** The twenty-five percent (25%) goal pertains only to facilities which accept municipal solid waste for disposal or incineration. Measurements of waste are to be based on the amount of waste entering a disposal facility prior to combustion or landfilling. Measurements of waste disposed of shall not include materials that are recovered or collected for recycling. The department shall issue guidelines concerning, and promulgate by rule, a method for calculating source reduction and recycling.

(e) **[For contingent amendment, see the Compiler's Notes.]** Failure of the region either to meet the twenty-five percent (25%) waste reduction and diversion goal, or to receive a favorable qualitative assessment of its activities by the department pursuant to subsection (b), may subject the offending counties and municipalities, including any solid waste authority created by such counties and municipalities, to sanctions in the same manner as a region may receive sanctions pursuant to § 68-211-816. In the event the failure of a region to meet its waste reduction and diversion goals is due to the failure of less than all of the constituent counties or municipalities of the region, the commissioner may apply sanctions only to the counties, municipalities or solid waste authorities that have caused the failure.

(f) **[For contingent amendment, see the Compiler's Notes.]** A county or region has the flexibility to design its own plan and methods which take into account local conditions for attaining the waste reduction and diversion goal set by this section. This plan shall be included as a part of the county or regional plan required by § 68-211-814.

(g) The general assembly recognizes that the ways in which solid waste is generated and managed are very dynamic. The opportunities for recycling and for reduction of waste generated change with both market factors and technological developments. These in turn, affect the costs of solid waste management and recycling. Also, there are many factors that change the feasibility of different approaches among the counties. In addition to population and amount of commercial and industrial activity, these include proximity to markets for recyclable materials and the solid waste activities of municipalities. In order to better address all of these changing circumstances, the underground storage tanks and solid waste disposal control board is authorized to adopt a rule promoting recycling and waste reduction. In so doing, the board shall consider the use of incentives, disincentives, public education, costs

and benefits of recycling, and the widely varying circumstances of the different solid waste regions. Upon the effective date of the rule, subsections (a)-(f) shall be repealed and of no further force and effect and the rule shall be enforceable according to its terms and in accordance with § 68-211-816.

68-211-915. Annual audit — Cost — Copies of audit available to public.

Except as otherwise approved by the comptroller of the treasury, any authority created pursuant to this chapter has the power and shall cause to be made an annual audit of the accounts and records of the authority. The audit shall include all funds of the authority, whether held by the authority or pursuant to trust indentures. The comptroller of the treasury shall be responsible for ensuring that the audits are prepared in accordance with generally accepted governmental auditing standards and determining if the audits meet minimum audit standards which shall be prescribed by the comptroller of the treasury. No audit may be accepted as meeting the requirements of this section until such audit has been approved by the comptroller of the treasury. The audits may be prepared by certified public accountants, public accountants or by the comptroller of the treasury. In the event the authority shall fail or refuse to have the audit prepared, then the comptroller of the treasury may appoint a certified public accountant or public accountant or direct the department of audit to prepare the audit. The cost of such audit shall be paid by the authority. All such audits shall be completed as soon as practicable after the end of the authority's fiscal year. One (1) copy of the audit shall be furnished to each member of the board of directors, the chief executive officer or officers of the county or counties with respect to which the authority has organized and the comptroller of the treasury. Copies of each audit shall also be made available to the public.

68-211-1015. Development of management standards for collection and recycling.

(a) The department shall develop management standards for used oil recycling and collection. Such standards shall comply with all rules and regulations of the federal environmental protection agency but shall not exceed such rules and regulations.

(b) The underground storage tanks and solid waste disposal control board is authorized to promulgate rules and regulations to effectuate the purposes of this part. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

68-211-1019. Used oil filters.

(a) Used oil filters shall be:

(1) Punctured and hot-drained for a minimum of twelve (12) hours;

(2) Punctured and cold-drained for a minimum of twenty-four (24) hours;

(3) Drained and crushed; or

(4) Prepared for disposal as otherwise provided by rules and regulations promulgated by the underground storage tanks and solid waste disposal control board.

(b) Subsequent to such draining, draining and crushing or other prepara-

tion for disposal, such used oil filters shall be recycled or disposed of in accordance with this chapter and rules and regulations promulgated pursuant to this chapter.

68-212-104. Part definitions.

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

(1) "Board" means the underground storage tanks and solid waste disposal control board as established by § 68-211-111, unless otherwise indicated;

(2) "Commercial facility" means any hazardous waste management facility that stores, treats or disposes of hazardous waste generated off-site. However, a facility shall not be deemed to be a commercial facility if the only hazardous waste that it receives from off-site is either:

(A) Hazardous waste generated from material manufactured by a corporation, generated only at a site or sites owned or operated by the same manufacturing corporation, or subsidiaries of such corporation, or product distribution sites under contract to such corporation; provided, that the volume of hazardous waste received from such sites and placed in storage for more than thirty (30) days does not exceed ten percent (10%) of the permitted or interim status storage capacity at the facility; and provided further, that during no annual period may more than ten percent (10%) of the total hazardous waste treated or disposed at the facility be from such sites;

(B) Mixed hazardous waste (hazardous waste that is also regulated as a radioactive material) that is received for storage and treatment (but not disposal or incineration) pursuant to an order, compliance plan or similar plan or agreement in which such receipt for storage and treatment is specifically approved by the commissioner or board; provided, that any such order, compliance plan or similar plan or agreement also requires that the ultimate land disposal of such mixed hazardous waste or waste from its treatment be at a commercial facility permitted under this part or a properly authorized facility in another jurisdiction; or

(C) Hazardous wastes in the same waste codes and generated from the same industrial operations that a combustion facility was permitted to receive on July 1, 2001, notwithstanding any change of ownership of such operations since such date. The volume of such waste treated annually shall not exceed ten percent (10%) of the combustion facility's July 1, 2001, permitted treatment capacity;

(3) "Commissioner" means the commissioner of environment and conservation, the commissioner's authorized representatives, or, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner;

(4) "Department" means the department of environment and conservation;

(5) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land, water or air so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;

(6) "Facility" means all contiguous land, and structures, other appurtenances and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units;

(7) "Generation" means the act or process of producing hazardous wastes;

(8) "Hazardous secondary material" means a secondary material, such as spent material, by-product or sludge, that when discarded would be identified as hazardous waste under the rules promulgated pursuant to this part;

(9) "Hazardous waste" means waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(A) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible illness or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed;

(10) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage;

(11) "Off-site" means any property that is not classified as on-site by subdivision (12);

(12) "On-site" means on the site of generation. "On-site" further means the same or geographically contiguous property which may be divided by public or private right(s)-of-way. Noncontiguous property owned by the hazardous waste generator that is connected by a right-of-way which such hazardous waste generator controls and to which the public does not have access is also considered on-site property;

(13) "Permit" means the whole or part of any written authorization of the commissioner pursuant to regulations to own or operate a facility for the treatment, storage, or disposal of or transportation of hazardous waste;

(14) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, any interstate body, and governmental agency of this state and any department, agency, or instrumentality of the executive, legislative and judicial branches of the federal government;

(15) "Portable commercial unit" means any commercial facility, as defined by subdivision (2), which is transportable from site to site for the purpose of storage, treatment or disposal of hazardous waste;

(16) "State" means the state of Tennessee;

(17) "Storage" means the containment of hazardous waste in such a manner as not to constitute disposal of such hazardous waste;

(18) "Transporter" means any person engaged in the transportation of hazardous waste;

(19) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport,

amenable for recovery, amenable for storage, or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;

(20) "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under § 402 of the Federal Water Pollution Control Act, codified in 33 U.S.C. § 1342, as amended 92 P.L. 500, or source, special nuclear, or byproduct material as defined in the Atomic Energy Act of 1954, as amended 83 P.L. 703, compiled in 42 USCS § 2011 et seq.; and

(21) "Waste management" means the orderly control of storage, transportation, treatment, and disposal of hazardous waste.

68-212-105. Unlawful acts.

It is unlawful to:

(1) Place or deposit any hazardous waste into the waters of the state except in a manner approved by the department or the Tennessee board of water quality, oil and gas;

(2) Burn hazardous waste except in a manner and under the conditions prescribed by the department or the air pollution control board;

(3) Construct, alter, operate, own, close, or maintain after closure a hazardous waste treatment, storage, or disposal facility in violation of the rules and regulations established under this part or in violation of orders of the commissioner or board, or in such a manner as to create a public nuisance or a hazard to public health;

(4) Store, containerize, label, transport, treat or dispose of hazardous waste or fail to provide information in violation of the rules, regulations, or orders of the commissioner or board, or in such a manner as to create a public nuisance or a hazard to the public health;

(5) Refuse or fail to pay to the department fees assessed pursuant to this part and in violation of the rules, regulations, or orders of the commissioner or board; or

(6) Site a new commercial hazardous waste facility less than one thousand five hundred feet (1,500′) from residential, child care, church, park or school property.

68-212-203. Remedial action fees.

(a) In addition to any other fees assessed by law, there is levied a remedial action fee on the generation and management of hazardous waste. The amounts of the fees are to be set for different categories of activities in a rule promulgated by the underground storage tanks and solid waste disposal control board; however, none of the fees may exceed the following maximum amounts:

(1) Annual fees on the generation of hazardous waste: thirty-three thousand dollars ($33,000); and

(2) Additional fees on the off-site shipment of hazardous waste, including the shipment of the waste to Tennessee facilities from out of state: seventy-five thousand dollars ($75,000).

(b) For the purposes of determining the amount of hazardous waste subject to the fees levied under subsection (a), the following shall be excluded:

(1) Waste which is exempted from regulation or otherwise exempted from assessment of fees in rules adopted by the board including, but not limited to, Rule 1200-1-11-.02(1)(d)(3), Rule 1200-1-11-.01(3)(c), Rule 1200-1-11-.02(1)(a) and Rule 1200-1-11-.04(1)(a)(4)(ii);

(2) Waste which is discharged directly to any publicly owned treatment works or any wastewater treatment facility permitted pursuant to § 402 of the federal Clean Water Act, codified in 33 U.S.C. § 1342, as amended (P.L. No. 92-500), or the Tennessee Water Quality Control Act, compiled in title 69, chapter 3. However, hazardous wastewater shipped off-site to a commercial facility which discharges to a publicly owned treatment works or a permitted wastewater treatment facility is not excluded from the original generator's waste volume;

(3) Sludge from publicly owned treatment works located in the state;

(4) Bottom boiler ash and flyash from incinerators which process solely municipal waste;

(5) Hazardous wastes generated from remediation or corrective actions required by the Tennessee Hazardous Waste Management Acts of 1977 and 1983, compiled in part 1 of this chapter; the Resource Conservation and Recovery Act (RCRA), compiled in 42 U.S.C. § 6901 et seq.; and the Comprehensive Environmental Response, Compensation and Liability Act, compiled in 42 U.S.C. § 9601 et seq.;

(6) Hazardous waste or hazardous waste sludges produced as a result of on-site treatment of hazardous waste. However, if the waste itself is excluded, the sludge resulting from treatment of such waste cannot be excluded;

(7) Wastes which have been recycled on-site or transported off-site to be recycled, as "recycled" is defined at 40 CFR 261.2, including, but not limited to, fuel blending, solvent recovery and metals recovery;

(8) Hazardous waste resulting from a spill of hazardous waste or other material which, when spilled, becomes a hazardous waste; and

(9) Hazardous wastes resulting from the removal and associated cleanup of an underground storage tank that previously contained a hazardous waste or other material which when discarded, leaked or spilled becomes a hazardous waste.

(c) The board shall adopt rules and regulations governing the collection of fees levied under this section, and the records to be maintained in accordance with this part. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) The payment of fees levied under this section shall be made to the department and deposited solely to the credit of the hazardous waste remedial action fund created in § 68-212-204.

(e) For each fiscal year, there is appropriated from the state's general fund to the hazardous waste remedial action fund the sum of at least one million dollars ($1,000,000). This contribution must be paid to this fund in total in a new recurring appropriation each year, and shall not include any funds

contributed in previous years which have not been expended. Despite any other law to the contrary, if the general assembly fails to authorize this appropriation in any given fiscal year, the maximum generator fee in that fiscal year shall be seven thousand five hundred dollars ($7,500) calculated at the rate of fourteen cents (14¢) per kilogram, the maximum off-site shipment fee shall be seven dollars ($7.00) per ton for hazardous waste, there shall be no fee for hazardous wastewaters, and the maximum transporter fee shall be two hundred seventy-five dollars ($275).

(f) At no time shall the maximum unobligated balance in the hazardous waste remedial action fund exceed ten million dollars ($10,000,000). Fees shall be adjusted downward so that this level is not exceeded.

68-212-207. Liability for costs, expenditures, and damages.

(a) Whenever a hazardous substance site is placed on the list of hazardous substance sites pursuant to § 68-212-206(e), or whenever the commissioner otherwise begins to expend money for the investigation, identification, containment or clean-up of a particular site under this part, the commissioner may issue an order to any liable party assessing that party's apportioned share of all costs expended or to be expended.

(b)(1) In assessing a party's apportioned share, the commissioner may consider equitable factors, including, but not limited to, the following:

(A) Any monetary or other benefit accruing to each liable party from the disposal of hazardous substances upon the site;

(B) The culpability of each liable party in placing hazardous substances upon the site;

(C) Efforts of each liable party to restore the land, water, air and all other aspects of the site to its natural condition;

(D) Any expenditures required by this part made by a liable party shall be credited toward that party's share of the cost;

(E) The party's portion of the total volume of hazardous substances at the hazardous substance site;

(F) The monetary benefit accruing to an owner as a result of the clean up of the site if, at the time of acquisition of the site, such owner knew or should have known that hazardous substances were previously disposed of at the site; and

(G) The monetary benefit accruing to an owner as a result of the clean-up of the site if such owner was the owner at the time hazardous substances were disposed of on the property and knew or should have known of such disposal.

(2) Any person against whom an assessment is issued may secure a review of the propriety or amount of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objection and asking for a hearing before the underground storage tanks and solid waste disposal control board. Any such assessment shall become final and not subject to review unless the person named therein files such a petition within thirty (30) days after it is received.

(3) In no event shall the total moneys recovered from the liable party or parties exceed the total expenditure from the fund for such site, except that the commissioner may recover punitive damages as provided in subsection (c).

(4) Any party found liable for any costs or expenditures recoverable under this part who establishes by a preponderance of the evidence that only a portion of such costs or expenditures are attributable to such party's actions shall be required to pay only for such portion.

(5) The fund shall pay any portion of the total expenditure in excess of the aggregate amount of costs or expenditures apportioned pursuant to this section. All moneys recovered from liable parties pursuant to this section shall be deposited in the fund.

(c) Any liable party who fails without sufficient cause to properly provide for removal of hazardous substances or remedial action upon order of the commissioner pursuant to this part may be liable to the state for punitive damages in an amount equal to one hundred fifty percent (150%) of the amount of any costs incurred by the fund as a result of such failure to take proper action. The commissioner shall recover the punitive damages in an action commenced under subsection (b) or in a separate civil action, and such punitive damages shall be in addition to any costs recovered from such liable party pursuant to this part. Any punitive damages awarded pursuant to this subsection (c) shall be deposited in the fund.

(d) No person shall be liable under this part for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice at the direction of an on-scene coordinator appointed by the commissioner, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection (d) shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct constitutes gross negligence.

(e) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the federal government and the state government shall be subject to, and comply with, this part in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section.

(f) No person, including the state, may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act, compiled in 7 U.S.C. § 135 et seq.

68-212-303. Part definitions.

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

(1) "Board" means the underground storage tanks and solid waste disposal control board as established by § 68-211-111;

(2) "Commissioner" means the commissioner of environment and conservation or the commissioner's authorized representative;

(3) "Department" means the department of environment and conservation;

(4) "Large quantity generator" means a generator which generates two and two-tenths pounds (2.2 lbs.) of acute hazardous waste, or two thousand two hundred pounds (2,200 lbs.) or more of hazardous waste in any one (1) month;

(5) "Small quantity generator" means any generator which generates between two hundred twenty (220) and two thousand two hundred pounds

(2,200 lbs.) of hazardous waste in any one (1) month;

(6) "Source reduction" or "waste reduction" means the reduction or elimination of waste at the source, usually within a process, including process modifications, feedstock substitutions, improvements in feedstock purity, housekeeping and management practices, increases in the efficiency of machinery and on-site, closed-loop recycling, or any action that reduces the amount and toxicity of the waste exiting the production process; and

(7) "Waste," "hazardous waste" or "acute hazardous waste" means any hazardous waste as defined in part 1 of this chapter, and the regulations promulgated pursuant thereto, and for which the generator is required to notify the department pursuant to such regulations. However, for the purpose of this part only, these terms do not include such wastes which result from the clean up of contaminated sites or spills of hazardous material.

(b) All other terms used in this part shall be defined as such terms are defined in part 1 of this chapter or in regulations promulgated pursuant to that part.

68-215-103. Chapter definitions in addition to the definitions in § 68-215-201.

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

(1) "Board" means the underground storage tanks and solid waste disposal control board created pursuant to § 68-211-111;

(2) "Commissioner" means the commissioner of environment and conservation, the commissioner's authorized representatives, or in the event of the commissioner's absence or a vacancy in the commissioner's office, the deputy commissioner;

(3) "Department" means the department of environment and conservation;

(4) "Flow through process tank" means a tank whose principal use is not for storage but is primarily used in the manufacture of a product or in a treatment process;

(5) "Inactive petroleum site" means a site that is no longer in operation, is abandoned, or the responsible party has filed a bankruptcy petition;

(6) "Local government agency" means a government agency as defined by § 67-3-103 other than agencies of state or federal governments;

(7) "Notification form" means the petroleum underground storage tank notification form completed by the owner for the petroleum underground storage tanks at each facility and required by this chapter;

(8) "Occurrence" means the discovery of environmental contamination at a specific time and date, due to the release of petroleum products from petroleum underground storage tanks;

(9) "Operator" means any person in control of, or having responsibility for, the daily operation of the petroleum underground storage tank;

(10) "Owner" means:

(A) For petroleum storage tanks in use or brought into use on or after November 8, 1984, any person who owns a petroleum underground storage tank used for the storage, use, or dispensing of petroleum products;

(B) For petroleum underground storage tanks used prior to November 8, 1984, but no longer in use after that date, the person who last owned the petroleum underground storage tank used for storage, use, or dispensing

of petroleum immediately before discontinuation of its use;

(11) "Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this or any other state or country;

(12) "Petroleum" means crude oil or any fraction of crude oil which is a liquid at standard temperature and pressure (sixty degrees Fahrenheit (60° F) and fourteen and seven tenths pounds per square inch (14.7 p.s.i.) absolute);

(13) "Petroleum site" means any site or area where a petroleum underground storage tank is located;

(14) "Petroleum underground storage tank" means any one (1) or combination of tanks (including the underground lines connected thereto) which are used or have been used to contain an accumulation of petroleum substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. "Petroleum underground storage tank" does not include any tank exempted from this chapter pursuant to § 68-215-124;

(15) "Petroleum underground storage tank fund" means the fund established by this chapter to provide for the cleanup of releases from petroleum underground storage tanks and assist with the financial responsibilities of owners/operators of petroleum underground storage tanks;

(16) "Release" means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing of a petroleum substance from a petroleum underground storage tank or its associated piping into groundwater, surface water, or subsurface soils;

(17)(A) "Responsible party" means:

(i) The owner and/or operator of a petroleum site;

(ii) Any person who at the time of the release which caused the contamination was an owner and/or operator of a petroleum underground storage tank;

(iii) Any person whose intentional actions directly cause the release of petroleum at a petroleum site; or

(iv) Any person other than an employee, officer, director, principal, or shareholder of the owner or operator of the underground storage tank system or of the owner of the petroleum site, whose negligent actions directly cause the release of petroleum at a petroleum site; or

(B) A responsible party does not include a unit of state or local government which becomes an owner or operator of a petroleum site by acquiring ownership or control through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless such governmental entity has otherwise owned or operated a petroleum underground storage tank on the site or has caused or contributed to the release or threatened release from such a tank;

(18) "State" means the state of Tennessee; and

(19) "Tank" means a stationary device, designed to contain an accumulation of petroleum substances which is constructed primarily of non-earthen materials (e.g. wood, concrete, steel, fiberglass) which provide structural support.

68-215-112. [Repealed.]

68-215-115. Recovery of costs by state — Apportionment of liability.

(a) Whenever the commissioner expends money for the investigation, identification, containment or cleanup of a particular site under this part, the commissioner may issue an order to any responsible party, other than an owner or operator of an underground storage tank system or a petroleum site owner if the release at such system or site is covered by the fund, to recover the amount expended or to assess that party's apportioned share of all costs expended or to be expended. Notwithstanding the commissioner's rights under this section, nothing herein shall prevent the reimbursement of expenditures for investigation, identification, containment and cleanup, including monitoring and maintenance incurred by tank owners and operators or petroleum site owners pursuant to § 68-215-111. Service of such an order shall be made by either personally serving the responsible party or by certified mail.

(b)(1) In assessing a responsible party's apportioned share, the commissioner may consider equitable factors, including, but not limited to, the following:

(A) Any monetary or other benefit accruing to each responsible party from the release of petroleum at the site;

(B) The culpability of each responsible party in regard to the release of petroleum at the site;

(C) Efforts of each responsible party to remediate the land, water, or other aspects of the site and any other affected property and to cooperate with the department in its work to investigate, contain or clean up the release of petroleum at the site; and

(D) Any expenditures required by this part made by a responsible party shall be credited toward that party's share of the cost.

(2) Any person against whom an assessment is issued may secure a review of the propriety or amount of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objection and asking for a hearing before the underground storage tanks and solid waste disposal control board. Any such assessment shall become final and not subject to review unless the person named therein files such a petition within thirty (30) days after it is received.

(3) In no event shall the total monies recovered from the responsible party or parties exceed the total expenditure from the fund for such site, except that the commissioner may assess civil penalties as provided in § 68-215-121. No tank owners and operators or petroleum site owners that are eligible to be reimbursed expenses pursuant to § 68-215-111 shall be liable to any other responsible party for contribution or cost recovery actions, related to any amounts recovered by the commissioner pursuant to this section under any law, including any common law claim, or for other similar third-party claims.

(4) The fund shall pay any portion of the total expenditure in excess of the aggregate amount of costs or expenditures apportioned pursuant to this section. All monies recovered from the responsible parties pursuant to this section shall be deposited in the fund.

68-215-120. Criminal penalties.

(a) Any person violating, failing to, neglecting to, or refusing to comply with any of § 68-215-104, commits a Class C misdemeanor. Each day upon which such violation occurs constitutes a separate offense.

(b) Any person who knowingly tampers with or disables a release detection or prevention device associated with an underground storage tank, or who knowingly causes or allows a release of petroleum into the environment in violation of this chapter, rules, regulations or orders of the commissioner or board commits a Class E felony; provided, however, that, if such release results in an expenditure for cleanup by any other person or from the fund, the offense shall be graded for such expenditure in the same manner as theft under § 39-14-105(a)(2)-(5).

68-221-201. Part definitions.

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

(1) "Authority" means the Tennessee local development authority, a public agency, created by title 4, chapter 31, or its successor;

(2) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works, preliminary planning to determine the economic and engineering feasibility of sewage treatment works, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of sewage treatment works, and the inspection and supervision of the construction of sewage treatment works;

(3) "Department" means the department of environment and conservation;

(4) "Eligible project" means a project for construction of sewage treatment works:

(A) For which approval is required under this chapter;

(B) Which is, in the judgment of the department, either eligible for federal pollution abatement assistance, or required to be undertaken by a federal or state agency, whether or not federal funds are then available therefor;

(C) Which conforms with applicable rules and regulations of the department; and

(D) Which is, in the judgment of the department, necessary for the accomplishment of the state's policy of water purity as established by the Tennessee board of water quality, oil and gas under § 69-3-105;

(5) "Federal pollution abatement assistance" means funds available to a municipality, either directly or through allocation by the state, from the federal government as grants for construction of sewage treatment works;

(6) "Grant," "grants," "state grant," "state grants," "repayable grant," or "repayable grants" means the loan or loans of state funds to a municipality to be repaid by the municipality excluding any federal pollution abatement assistance;

(7) "Municipality" means any county, town or city, or special district empowered to provide municipal sewage collection and treatment services, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project;

(8) "Sewage treatment works" means any facility for the purpose of treating, neutralizing or stabilizing municipal sewage, including treatment or disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances; and

(9) "User" means the owner, tenant or occupant of any lot or parcel of land connected to a sanitary sewer, or for which a sanitary sewer line is available if a municipality levies a sewer charge on the basis of such availability.

68-221-703. Part definitions.

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

(1) "Administrator" means the administrator of the United States environmental protection agency (EPA), or the administrator's designated representative;

(2) "Board" means the Tennessee board of water quality, oil and gas as established by § 69-3-104;

(3) "Certified laboratory" means any facility for performing bacteriological, chemical or other analysis on drinking water which has received interim or final certification by the department;

(4) "Commissioner" means the commissioner of environment and conservation, the commissioner's duly authorized representative, and, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner;

(5) "Construction" means any placement, assembly or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises;

(6) "Contaminant" means any physical, chemical, biological or radiological substance or matter in water;

(7) "Cross connection" means any physical arrangement whereby a public water supply is connected, directly or indirectly, with any other water supply system, sewer, drain, conduit, pool, storage reservoir, plumbing fixture or other device which contains, or may contain, contaminated water, sewage or other waste or liquid of unknown or unsafe quality which may be capable of imparting contamination to the public water supply as a result of backflow. Bypass arrangements, jumper connections, removable sections, swivel or change-over devices through which, or because of which, backflow could occur are considered to be cross-connections;

(8) "Department" means the department of environment and conservation;

(9) "Director" means the director of the division of water supply;

(10) "Division" means the division of water supply of the department;

(11) "Drinking water regulations" means regulations promulgated pursuant to this part;

(12) "Federal act" means the Safe Drinking Water Act, P.L. 93-523, as amended;

(13) "Ground water" means water beneath the surface of the ground, whether or not flowing through known or definite channels;

(14) "Lead free" means:

(A) When used with respect to solder or flux, a solder or flux containing

not more than two tenths of one percent (0.2%) lead; or

(B) When used with respect to pipe or pipe fitting, a pipe or pipe fitting containing not more than eight percent (8%) lead;

(15) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system;

(16) "National primary drinking water regulations" means primary drinking water regulations, as amended, promulgated by the administrator pursuant to the federal act;

(17) "Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies, or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this or any other state or country;

(18) "Primary drinking water regulations" are regulations promulgated by the board in accordance with this part which specify contaminants which may have any adverse effect on the health of persons, and which specify a maximum contaminant level for each such contaminant and monitoring, reporting and record-keeping requirements as determined by the board;

(19) **In general.**

(A) "Public water system" means a system for the provision of water for human consumption through pipes or other constructed conveyances, if such serves fifteen (15) or more connections or which regularly serves twenty-five (25) or more individuals daily at least sixty (60) days out of the year. A public water system includes:

(i) Any collection, treatment, storage or distribution facility under control of the operator of such system and used primarily in connection with such system; and

(ii) Any collection or pretreatment storage facility not under such control which is used primarily in connection with such system.

(B) **Connection.**

(i) **In general.** For purposes of subdivision (A), a connection to a system that delivers water by a conveyance other than a pipe shall not be considered a connection, if:

(a) The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);

(b) The commissioner determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or

(c) The commissioner determines that the water provided for residential or similar uses for drinking, cooking and bathing is centrally treated or treated at the point of entry by the provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

(ii) **Irrigation Districts.** An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall

not be considered to be a public water system if the system or the residential or similar users of the system comply with subdivision (19)(B)(i)(*b*) or (*c*).

(20) "Secondary drinking water regulations" means regulations which apply to public water systems and which specify the maximum contaminant levels which, in the judgment of the board, are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water which may:

(A) Adversely affect the odor or appearance of such water and consequently may cause a substantial number of persons served by the public water system providing such water to discontinue its use; or

(B) Otherwise adversely affect the public welfare;

(21) "Streams" includes any river, creek, slough or natural water course in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some parts of the bed or channel have been dredged or improved does not prevent the water course from being a stream;

(22) "Supplier of water" means any person who owns, operates or controls a public water system;

(23) "Surface water" includes waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other water courses, lakes and reservoirs; and

(24) "Waters" means any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through, or border upon Tennessee, or any portion thereof, except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

68-221-708. Notification to public and regulatory agencies.

(a) Whenever a public water system is not in compliance with the current primary drinking water regulations, the supplier shall inform the division of such noncompliance as soon as practicable, but not later than twenty-four (24) hours after learning of the noncompliance.

(b) The supplier shall also give such public notification as may be prescribed by regulations.

(c) Any public water system or waterworks system, as defined in this title, which determines to initiate or permanently cease fluoridation of its water supply, shall notify the department of environment and conservation and the department of health of its intention thirty (30) days prior to any vote. The water system shall additionally give public notice to its customers in a general mailing at least thirty (30) days prior to the meeting at which said vote shall take place.

68-221-1111. Water quality regulation authority not limited by this part.

Nothing herein shall be construed to limit the power or authority of the department of environment and conservation or of the Tennessee board of water quality, oil and gas with respect to regulation of the waters of the state.

Any ordinances or regulations adopted or imposed by municipalities shall be subject to regulation and oversight by the department of environment and conservation or the Tennessee board of water quality, oil and gas.