1-1-108. Substantive changes in text prohibited — Changes authorized — Effect of error in enrollment.

(a) In preparing the manuscript of the revised compilation (including pocket supplements and replacement volumes) for publication and distribution, the commission shall not alter the sense, meaning or effect of any act of the general assembly, but shall copy the exact language of the text of the statutes, codes and session laws of a public and general nature of the state of Tennessee, except that the commission is authorized to rearrange, regroup and renumber the titles, chapters, sections and parts of sections of the statutes, codes and code supplements and to change reference numbers to agree with any renumbered chapter or section; to change the wording of and prepare new section headings and symbols; to substitute the proper section or chapter reference where the terms "this act" or "the preceding section" or similar expressions are used in the statutes; to correct manifest misspelling and typographical errors and to change capitalization and spelling for the purpose of uniformity; to change references to governmental agencies, departments and officers when part or all of the powers, rights and/or duties of such agencies, departments or officers have, by an act of the general assembly, been transferred to other agencies, departments or officers; to omit enacting clauses, repealing clauses, severability clauses, conditional clauses, preambles, captions and statements declaring legislative intent; and to make other stylistic, nonsubstantive changes if such changes are consistent with style guidelines that have been approved by the commission and submitted to the judiciary committee of the senate and the civil justice committee of the house of representatives. Where the application or effect of a statute, by its terms, depends on the time when the act creating the statute took effect, the commission may substitute the actual effective date for the various forms of expression which mean that date — such as "when this act (or chapter, or section) takes effect," or "after (or before) the effective date of this act (or chapter, or section)." No such change shall be deemed an alteration of or departure from the enrolled statute.

(b)(1) When the commission is advised by certificate of the secretary of state that a bill which is signed by the governor, or passed over the governor's veto, or otherwise becomes a public act, differs, by reason of an error in the enrolling process or otherwise from such bill as passed on third reading by both houses of the general assembly, the commission will not compile the public act for codification, but will have a compiler's note inserted in the manuscript of Tennessee Code Annotated, which compiler's note shall set forth the facts revealed by the certificate received from the secretary of state in reference to such error.

(2) Nothing in this subsection (b) shall affect the powers granted the commission under subsection (a).

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

(a) **Reenactment of the Acts of the 2013 Session of the General Assembly.**

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

(2) This compilation shall be deemed a reenactment of the general acts of a permanent nature enacted at the 2013 regular session of the general

assembly to the extent codified by the codification act. The sections so reenacted shall be construed as continuations of the previous laws so reenacted, and pending litigation, criminal prosecutions and statutes of limitations shall not be affected by such reenactments.

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

(4) All public acts of a general and permanent nature passed at the 2013 session of the general assembly, to the extent codified in the code, are repealed except those laws excepted by § 1-2-105 of the Tennessee Code.

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

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

(7) In case of any conflict between the acts of the 2014 session of the general assembly, or any extraordinary session occurring after the 2013 session of the general assembly, and this reenactment, the former shall be controlling regardless of the respective dates of passage or approval.

(8) All references and amendments in the acts of the 2014 session of the general assembly to code sections included in this reenactment shall be deemed to be references or amendments to provisions of law as stated in this reenactment.

(b) **Reenactment of the Acts of the 1955 Through 2013 Sessions of the General Assembly.**

(1)(A) The supplemental material enacted by chapter 1 of the Public Acts of 1959, chapter 1 of the Public Acts of 1961, chapter 1 of the Public

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

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

(C) The material contained in replacement volumes 9A (1983 edition), 12A (1983 edition), 6 (1984 edition), 2 (1985 edition), 2A (1985 edition), 2B (1985 edition), 11 (1986 edition), 3A (1987 edition), 12A (1987 edition), 12B (1987 edition), 8 (1987 edition), 8B (1988 edition), 3 (1988 edition), 10 (1988 edition), 10A (1989 edition), 10B (1989 edition), 12 (1989 edition), 9 (1990 edition), 10C (1990 edition), 11 (1990 edition), 7A (1990 edition), 6A (1991 edition), 7 (1991 edition), 2A (1991 edition), 9A (1991 edition), 12A (1992 edition), 3A (1992 edition), 2B (1992 edition), 8A (1992 edition), 11A (1993 edition), 10 (1993 edition), 3 (1993 edition), 8 (1993 edition), 4 (1994 edition), 10A (1994 edition), 2 (1994 edition), 12 (1994 edition), 8B (1995 edition), 12B (1995 edition), 6A (1996 edition), 8A (1996 edition), 9 (1996 edition), 12A (1996 edition), 7 (1997 edition), 7A (1997 edition), 10C (1997 edition), 11 (1997 edition), 2A (1998 edition), 2B (1998 edition), 10 (1998 edition), 12 (1998 edition), 3A (1999 edition), 3B (1999 edition), 9A (1999 edition), 4A (2000 edition), 5 (2000

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(2) The supplemental reenactments set out in subdivision (b)(1) shall be deemed reenactments of the general acts of a permanent nature enacted at the sessions of the general assembly held in the years 1955 through 2013 which were codified therein. The sections so reenacted shall be construed as continuations of the previous laws so reenacted, and pending litigation, criminal prosecutions and statutes of limitations shall not be affected by such reenactments.

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

(4) All public acts of a general and permanent nature, to the extent codified in this act and the supplemental reenactments set out in subdivision (b)(1), which were passed prior to the 2013 session of the general assembly and after the 1953 session are repealed, except chapters 6 and 121 of the Public Acts of 1955, all of the supplemental reenactments set out in subdivision (b)(1), and those laws excepted by § 1-2-105 of the

Tennessee Code.

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

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

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

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

1-3-120. Newspapers of general circulation that publish public notices required to post notice in its entirety on web site for same price.

(a) Beginning April 1, 2014, in all cases where a public notice or legal notice is required to be published in a newspaper of general circulation, the newspaper shall for the same price post the complete notice:

(1) On the newspaper's web site, where it shall be published contemporaneously with the notice's first print publication and will remain on the web site for at least as long as the notice appears in the newspaper; and

(2) On a statewide web site established and maintained as a joint venture of the majority of Tennessee newspapers as a repository for such notices and will remain on the repository web site for at least as long as it appears in the newspaper. Any newspaper of general circulation that meets the criteria of this subsection (a) shall have access to the statewide web site at no charge.

(b) Any such notice shall be published online in its entirety, including maps and other exhibits, and shall include the date on which it was first printed in the newspaper.

(c) An error in a notice placed on the newspaper web site or statewide web site, or temporary web site outages or service interruptions prohibiting the posting or display of such notice shall be considered harmless error and proper legal notice requirements shall be considered met if the notice published in the newspaper is correct.

(d) Each newspaper of general circulation publishing public notices shall include on its web site home page a link to its public notice section and shall include on its public notice home page a link to the statewide public notice web

site.

(e) Any notice published on a web site pursuant to subdivisions (a)(1) and (2) shall be accessible to the public at no charge.

2-1-112. Restrictions on commission or board membership or service as election official.

(a)(1) Neither an elected official nor an employee of a county, municipal or federal governmental body or agency or of an elected official may serve as a member of a county election commission or as a member of a county primary board or as an election official. No candidate in an election may act in connection with that election as a member of any board or commission established under this title or as an election official.

(2) No state employee may serve as a member of a county election commission or as a member of a county primary board.

(3) No member of a county election commission who is appointed to the commission after January 1, 2009, shall be the campaign manager or treasurer of any candidate's political campaign in a local, state or federal election during the commissioner's term of office. A violation of this subdivision (a)(3) subjects the member to immediate removal from office by a majority vote of the state election commission. Nothing in this subdivision (a)(3) shall be construed to prohibit a member of the county election commission from providing uncompensated advice on a one-on-one basis to a candidate or party officer, nor shall it prohibit providing a financial contribution to a candidate or party organization.

(b)(1) This section does not disqualify any person who is within its terms solely because the person is a notary public, or a member of a reserve unit of the United States army, air force, marine corps or navy, or a member of the national guard unless the person is a full-time employee or member of such reserve unit or the national guard, or unless the person is on active duty.

(2) This section does not disqualify any employee of a county or city school system who does not work directly under the supervision of an elected official.

(3) This section does not disqualify any person from service as an officer of elections, judge, machine operator, assistant precinct registrar or inspector because the person is a member of a reserve unit of the United States army, air force, marine corps or navy or the national guard except while the person is on active duty.

2-2-109. Registration periods.

(a) A qualified voter may register or have the voter's registration altered at the commission office at any time the office is open, except that applications for registration shall not be processed for twenty-nine (29) days before an election, except as provided in subsection (b); provided, that a qualified voter may file a mail registration form by postmarking the registration form or submitting the registration form thirty (30) days before an election. A mail registration form lacking a postmark, but signed and dated at least thirty (30) days before an election, shall be timely filed if it is received by the county election commission no later than the twenty-seventh day prior to the election. A qualified voter may correct a deficient but timely filed mail registration form if the voter comes to the commission office no later than five (5) days before the election

and presents the rejection of registration notice to the administrator of elections. The administrator shall register the person to vote if the person is otherwise eligible to register. The administrator shall be empowered to update an existing registration until no later than five (5) days before an election to place it within the correct precinct in the county when a voter changes the voter's address through the process described in § 2-7-140.

(b) When the thirtieth day before an election falls on a Saturday, Sunday, or legal holiday, applications for registration shall be accepted and processed the next business day following such Saturday, Sunday, or legal holiday. This extends the deadline for applications for registration completed at the county election commission office as well as the deadline for having a by-mail registration form postmarked.

(c) When elections are being held in two (2) or more voting districts within any county, the time period for such registration or alteration of permanent registration records shall be calculated for each election separately, and such registration or alteration of permanent registration records is not prohibited in one (1) election because it is twenty-nine (29) days prior to another within the same county.

2-2-111. Supplemental registrations generally.

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

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

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

(d) In addition to any supplemental voter registration otherwise required by this chapter, the county election commission, or its designee, shall conduct a supplemental voter registration when a planned and scheduled group naturalization ceremony is held within the county. The county election commission shall attend the supplemental voter registration in person or shall send one (1) or more assistant registrars or other designees in their stead to register such new citizens.

2-2-140. Duplicate voter registrations.

(a)(1) The state coordinator of elections is encouraged to make every reasonable effort to enter into agreements with other states for the purpose of comparing data to identify duplicate voter registrations. If agreements are entered into with other states, upon finding any duplicate voter registrations, the state coordinator of elections shall make every effort to determine in which state the voter is rightfully entitled to vote.

(2) The state coordinator of elections shall promulgate rules and regulations for any agreements entered into that make provisions for security,

maintenance of the integrity of Tennessee's voter information and a method to determine, verify and resolve duplicate voter registrations between the states. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The state coordinator of elections shall file a report with the state and local government committee of the senate and the state government committee of the house of representatives by January 15, 2009, and by January 15 in each year thereafter, regarding the status of any agreements entered into with other states, the progress or difficulties of reaching agreements with other states, and any other information the state coordinator of elections deems necessary to include in the report to keep the members of the general assembly apprised on this essential issue regarding the integrity of Tennessee's statewide voter registration database.

2-3-107. Polling places — Physical requirements — Use of public buildings — Rentals for private buildings.

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

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

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

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

2-3-202. Judicial and county officers — Time for election.

Elections for the following offices shall be held at the regular August election when the election immediately precedes the commencement of a full term:

(1) Assessor of property;
(2) Constable;
(3) County clerk and clerks of the circuit and other courts;
(4) County trustee;
(5) District attorney general;
(6) Judges of all courts;
(7) Members of the county legislative body;
(8) Register; and
(9) Sheriff.

2-3-308. Evaluation report of pilot projects.

The state election coordinator shall file a report with the state and local government committee of the senate and the state government committee of the house of representatives by January 31 following any municipal election conducted under the pilot project. The report shall contain the coordinator's evaluation of the pilot project together with the coordinator's recommendations as to whether convenient voting centers should continue on a limited basis or whether they could be implemented statewide in all elections.

2-4-102. Appointment of election officials and inspectors.

(a)(1) Not more than sixty (60) days nor less than ten (10) days before each election, the county election commission shall appoint the following minimum number of election officials to hold elections at each polling place: one (1) officer of elections, and three (3) judges. Two (2) of the judges appointed hereunder shall concurrently serve as precinct registrars, in accordance with § 2-12-202. In precincts where voting machines are used, any judge not appointed to serve as a precinct registrar shall concurrently serve as a machine operator for that polling place. Additional precinct registrars and machine operators may be appointed in accordance with § 2-4-105 as necessary to adequately staff the polling place. One (1) machine operator may be appointed to operate no more than two (2) voting machines.

(2) [Deleted by 2013 amendment, effective July 1, 2013.]

(b)(1) The county election commission may appoint for election day as many inspectors as it may deem necessary.

(2) If a statewide political party has no member on the county election commission and there is not at least one (1) election official appointed from its nominees under § 2-4-106 for each polling place for which it nominates officials, the county election commission shall, on request of the party's county primary board, appoint from that party's nominees under § 2-4-106 one (1) inspector for every thirty thousand (30,000) people in the county according to the 1970 federal census or any later federal census but not less than two (2) inspectors or more than ten (10).

(3) Inspectors represent the commission in its investigation of the conduct of elections. Inspectors shall report any irregularities to the county election commission and the county election commission shall promptly rule on the objections.

(4) No inspector may serve on election day who has not received the instruction provided under § 2-4-108.

2-5-151. Petitions for recall, referendum or initiative.

(a) Any governmental entity having a charter provision for a petition for recall, referendum or initiative or any person acting pursuant to such charter provision shall meet the requirements of this section.

(b) Before a petition may be circulated, at least one (1) registered voter of the city or county shall file with the county election commission:

(1) The proper form of the petition; and

(2) The text of the question posed in the petition.

(c) The county election commission shall certify whether the petition is in proper form within thirty (30) days after the filing of the documentation

required by subsection (b). The individual or individuals filing the petition shall have fifteen (15) days to cure any defects in the documentation required by subsection (b) by filing revised documentation in proper form with the county election commission. The county election commission shall determine within fifteen (15) days whether or not the revised documentation shall be certified for final approval.

(d) Petitions shall be signed by at least fifteen percent (15%) of those registered to vote in the municipality or county. The disqualification of one (1) or more signatures shall not render a petition invalid, but shall disqualify such signatures from being counted towards the statutory minimum number of signatures required in this section.

(e) Upon filing, each completed petition shall contain the following:

(1) The full text of the question attached to each petition;

(2) The genuine signature and address of registered voters only, pursuant to the requirements of § 2-1-107;

(3) The printed name of each signatory; and

(4) The date of signature.

(f)(1) Completed petitions shall be filed with the county election commission within seventy-five (75) days after final certification by the county election commission as required by subsection (c).

(2) In addition, a petition for recall, referendum or initiative shall be filed at least ninety (90) days before a general municipal or county election may be held on the question contained in such petition. The question contained in a petition filed less than ninety (90) days before an upcoming general municipal or county election will be placed on the ballot of the following general municipal or county election.

(g) Any person may request either in person or in writing that the county election commission remove such person's name from a petition. Such request must be made within eight (8) days of filing of the completed petition and before final certification by the county election commission of the petition.

(h) The county election commission shall certify whether or not the completed petition meets all applicable requirements within thirty (30) days of filing of the completed petition.

(i) Upon certification by the county election commission pursuant to subsection (h), the election commission shall publish the question contained in the petition pursuant to § 2-12-111.

(j) This section shall control notwithstanding any statutory provision or charter provision of a municipality or county to the contrary; provided, that any contrary charter provision of a municipality or county which is enacted after July 1, 1997, shall control with respect only to the requirements set forth in subsection (d) relating to the statutory minimum number of signatures required in a petition, and to the provisions of subdivision (f)(1) relating to the seventy-five-day deadline for filing of a petition after final certification by the county election commission.

(k) This section shall control any petition with signatures filed with the county election commission on or after June 25, 1997.

(*l*) Notwithstanding any other provision of law to the contrary, the provisions of this section shall not apply to any county having a metropolitan form of government and a population greater than one hundred thousand (100,000), according to the 2000 federal census or any subsequent federal census.

2-5-208. Arrangement of material on ballots.

(a) The requirements of this section apply to all ballots.

(b) Immediately following the title of each office shall be printed the words "Vote for one (1)," "Vote for two (2)," according to the number to be elected.

(c)(1) The order of the titles of the offices to be filled or for which nominees are to be chosen shall be substantially as follows:

(A) Presidential and vice presidential electors;

(B) Governor;

(C) United States senate;

(D) United States house of representatives;

(E) Tennessee senate;

(F) Tennessee house of representatives;

(G) Supreme court judge;

(H) Court of appeals judge;

(I) Court of criminal appeals judge;

(J) Circuit court judge;

(K) Chancellor;

(L) Criminal court judge;

(M) District attorney general;

(N) Public defender;

(O) County mayors, including popularly elected mayors of metropolitan county governments;

(P) County legislative offices, including members of the county legislative bodies;

(Q) Assessor of property;

(R) County trustee;

(S) General sessions judge;

(T) Juvenile court judge;

(U) Sheriff;

(V) Clerks of courts;

(W) County clerk;

(X) Register;

(Y) Elective county department offices, including road superintendents or commissioners, school boards and purchasing agents;

(Z) Municipal executive offices;

(AA) Municipal legislative offices;

(BB) Municipal judicial offices; and

(CC) Offices which do not fall into any classification listed in this subdivision (c)(1).

(2) If several offices to be filled are within a single classification, they shall be arranged in alphabetical order.

(3) If any judicial offices listed in subdivision (c)(1) are to be placed on the ballot as a yes/no retention question, the question shall be placed at the end of the ballot.

(d)(1) Notwithstanding any other provision of this chapter or this title, on general election ballots, the name of each political party having nominees on the ballot shall be listed in the following order: majority party, minority party, and recognized minor party, if any. The names of the political party candidates shall be alphabetically listed underneath the appropriate column for the candidate's party. A column for independent candidates shall follow

the recognized minor party, or if there is not a recognized minor party on the ballot, shall follow the minority party, with the listing of the candidates' names alphabetically underneath.

(2) On nonpartisan general election ballots and on the political party's primary ballot, the names of all candidates for the same office shall be arranged alphabetically according to the initials of their surnames, beginning with the first initial.

(e) No number may be prefixed before or affixed after the names of candidates for any office so as to designate by number the order in which candidates' names are on the ballot for any office. The limitation set out in this subsection (e) does not prohibit the printing of numerals on the face of punch cards or ballots used with the microvote electronic voting system.

(f)(1) Whenever a question is submitted to the vote of the people, it shall be placed at the end of the ballot, followed by the words "Yes" and "No", so that the voter can vote a preference by making a cross mark (X) opposite the proper word. If a retention judicial question is on the ballot as provided for in subdivision (c)(3), this question shall be placed after the retention judicial question; provided, that whenever the question of a state constitutional amendment is submitted to the vote of the people pursuant to article XI, § 3, paragraph 1 of the Tennessee Constitution, it shall be printed upon the ballot directly after the list of candidates for governor followed by the words "Yes" and "No", so that the voter can vote a preference by making a cross mark (X) opposite the proper word. Any question submitted to the people shall be worded in such a manner that a "yes" vote would indicate support for the measure and a "no" vote would indicate opposition.

(2) If the full statement of a question is more than three hundred (300) words in length, the question shall be preceded by a brief summary of the proposal written in a clear and coherent manner using words with common everyday meanings. Such summary shall not exceed two hundred (200) words in length. The summary shall be written by the attorney general and reporter for questions submitted to the voters of the entire state or of more than one (1) county or by the county attorney of the county in which the question is to be voted upon for questions to be submitted to the voters of one (1) county or any part of a county. The summary for questions submitted to the voters of a municipality shall be written by the city attorney of the municipality in which the question is to be voted upon.

(g) The ballot for each political party's presidential preference primary shall be headed "Candidates of the Party for President of the United States." Beneath the heading shall be "I declare my preference for candidate for the office of President of the United States to be:" followed by the names of the candidates.

(h) The names of presidential candidates shall be arranged according to political parties, and followed by the words, (giving the name) for president and (giving the name) for vice president. Names of electors need not appear on the ballot.

(i) When there are so many candidates for an office that their names will not all fit either horizontally or vertically on the ballot with the name of the office, the names shall be listed in alphabetical rotation from left to right in each necessary row in the following manner:

[ ] ADAMS	[ ] BLACK	[ ] CONWAY
[ ] SMITH	[ ] THOMAS	[ ] THOMS
[ ] VADEN		

(j) Each state primary board shall prescribe a color for its party's primary ballots which shall be uniform throughout the state and different from every other party's.

(k) At the time of qualification for judge of the supreme court, the candidate shall state on the qualifying petition the grand division in which the candidate resides and the particular seat on the supreme court for which the candidate seeks election. The county election commission shall cause the names of the candidates to be arranged on the ballot so as to denote the grand division of the state for which they are seeking to be elected or whether they are candidates from the state at large by prefixing to the names of the candidates the words "eastern," "western" or "middle" division or "the state at large."

(*l*) On ballots in a referendum election held by a local government, any question submitted to the vote of the people shall be printed followed by the words "Yes" and "No", so that the voter can vote a preference by making a cross mark (X) opposite the proper word. Any question submitted to the people shall be worded in such a manner that a "yes" vote would indicate support for the measure and a "no" vote would indicate opposition.

2-5-211. Sample ballots.

(a) The county election commission shall provide two (2) sample ballots for each polling place, arranged in the manner of the paper ballots for the polling place where voting machines are not used, but arranged in the form of a diagram showing the part of the face of the voting machine in use at that election where voting machines are used. Sample ballots may be either full or reduced size and shall contain suitable illustrated instructions for voting; provided, that in any county in which the votomatic punch card system is used, the county election commission may use copies of the guide page ballot as sample ballots.

(b) At least five (5) days before the beginning of an early voting period and at least five (5) days before an election, the county election commission shall:

(1) Publish a sample ballot in a newspaper of general circulation. Where voting machines are used, the sample ballot shall be the machine sample ballot. The sample ballot shall contain the names of all candidates and all offices and a statement of all questions on which voters may vote. A sample ballot does not have to be published in a newspaper of general circulation if a sample ballot that complies with this section has been mailed at least five (5) days prior to the beginning of the early voting period to every active registered voter. If more than one (1) registered voter is at the same address, then only one (1) sample ballot may be sent to that address; and

(2) Post a sample ballot on a web site maintained by the county election commission or, if the county election commission does not have or maintain a web site, on the web site maintained by the secretary of state. The sample ballot shall contain the names of all candidates and all offices and a statement of all questions on which voters may vote.

2-6-201. Methods of voting absentee.

A registered voter in any of the following circumstances may vote absentee by mail in the procedures outlined in this part:

(1) **Persons Outside of County.** If the voter will be outside the county where the voter is registered during the early voting period and on election day during all the hours the polls are open for any reason other than the fact that the voter will be imprisoned;

(2) **Students and Spouses Outside of County.** If a voter is enrolled as a full-time student in an accredited college, university or similar accredited institution of learning in this state which is outside the county where the voter is registered. This provision also applies to the spouse of the student who resides with the student;

(3)(A) **Permanent Absentee Voting Register.** The county election commission shall establish a permanent absentee voting register for any person who is, because of sickness, hospitalization or physical disability unable to appear at either the commission office or at the person's polling place for the purpose of voting. To be eligible for placement on the register, a voter shall file a statement by the person's licensed physician with the county election commission stating, under the penalty of perjury, that in the physician's professional medical judgment, the patient (voter) is medically unable to appear at the polling place to vote and is medically unable to go to the commission office for the purpose of early voting. The voter shall file the physician's statement and the application not less than seven (7) days before the election. The administrator of elections shall attach the physician's statement to the voter's permanent registration record. Without any further request, the administrator shall send to each person placed on the permanent absentee voting register an application for an absentee ballot for each election in which the person may vote;

(B) **Residents of Certain Institutions.** In the case of individuals who are full-time residents of any licensed nursing home, home for the aged or similar licensed institution providing relatively permanent domiciliary care, other than a penal institution, outside the voter's county of residence, the procedure for voting shall substantially follow the provisions established in subdivision (3)(A) for voters on the permanent absentee voting register, or the voter may vote under the procedures established in subdivision (1) for voters outside of the county;

(4) **Jurors.** If an individual expects to be unable to appear during the early voting period or at the polling place on election day because the person is serving as a juror for a federal or state court;

(5) **Persons Over 65 — Persons Hospitalized, Ill or Disabled.**

(A) A person sixty-five (65) years of age or older when the person requests to vote absentee; provided, however, that between May 21, 2012, and July 1, 2017, a person sixty (60) years of age or older may vote absentee, when the person requests to vote absentee;

(B) The person is a voter with a disability as defined in § 2-3-109, and the voter's polling place is inaccessible;

(C) The person is hospitalized, ill or physically disabled, and because of such condition, the person is unable to appear at the person's polling place on election day; or

(D) The person is a caretaker of a hospitalized, ill or disabled person;

(6) **Candidates for Office.** Without stating any reason therefor, if the voter is a candidate for office in the election for which the voter seeks to cast an absentee ballot;

(7) **Election Officials — Election Commission Members or**

Employees. If the person is an election official or a member or employee of the election commission on election day;

(8) **Observance of a Religious Holiday.** If the voter cannot appear during the early voting period or at the polling place because of observance of a religious holiday; or

(9) **Persons Possessing a Valid Commercial Driver License or Transportation Worker Identification Credential.** A voter who possesses a valid commercial driver license or a valid transportation worker identification credential and who certifies that the voter:

(A) Will be working outside of the county or state where the voter is registered during the early voting period and on election day during all the hours the polls are open; and

(B) Has no specific out-of-county or out-of-state location to which mail may be sent or received during such time;

may complete an application to vote absentee by mail at the voter's county election commission office or complete an absentee by-mail application pursuant to § 2-6-202(a)(3); provided, that if applicable, such voter satisfies the requirements of § 2-2-115(b)(7). In order for the absentee application to be processed, the voter must provide a photocopy of the commercial driver license or transportation worker identification credential, the commercial driver license number on the voter's current commercial driver license, if applicable, and provide a current residential address and a mailing address to which the ballot shall be mailed. This subdivision (9) also applies to the spouse of the person who possesses the commercial driver license.

2-6-401. Emergency absentee ballots.

(a)(1) The county election commission may designate emergency registrars who shall have the responsibility of supplying ballots to and receiving ballots from persons who have been hospitalized in their county of residence within twenty (20) days of an election when such persons will be unable to vote in person on election day.

(2) The county election commission may appoint the hospital administrator to act as an emergency registrar for any person who is a patient in that hospital due to an emergency; provided, that no such appointment shall be made more than fifteen (15) days before the election.

(3) Any ballots cast in accordance with this section shall be witnessed by a voter registered in the county.

(b) A registered voter eligible to request the services of an emergency registrar shall make such a request not more than twenty (20) days before the election and no later than the opening of the polls on election day. Upon receiving a bona fide request for the services of an emergency registrar, the county election commission shall direct an emergency registrar to provide the following materials to such person:

(1) An application;

(2) A paper ballot or ballots;

(3) A duplicate of the person's permanent voter registration; and

(4) An envelope in which to seal the ballot.

(c) In addition to those persons or that category of persons otherwise authorized to vote absentee under this chapter, a voter shall upon a showing of reasonable proof to the administrator of elections or the administrator's deputy be eligible to vote absentee by personal appearance at the commission office,

not more than five (5) days nor later than the day prior to the election if:

(1) Due to the death of a relative of a voter which would result in the voter's absence from the state or county on election day; or

(2) If the voter receives a subpoena or service of process requiring the voter's presence on election day.

(d) The procedure for voting shall substantially follow the provisions for voting absentee by personal appearance set out in §§ 2-6-102 and 2-6-109.

2-7-112. Procedure for voting.

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

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

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

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

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

(E) [Deleted by 2011 amendment, effective January 1, 2012.]

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

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

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

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

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

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

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

(ii) After the voter has completed the voter registration application and supplied verification of the voter's residential address, the voter shall complete an application for ballot pursuant to this section.

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

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

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

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

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

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

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

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

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

reason for such rejection.

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

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

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

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

(1) A Tennessee driver license;

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

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

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

(4) A valid United States passport;

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

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

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

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

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

(1) The voter shall complete an application for ballot pursuant to this section, and if the voter has changed residence, or the voter's registration is

inactive, the voter shall complete a fail safe affidavit. The voter must vote in the precinct in which the person is a resident. The voter shall also be given a written statement that specifies the voter has until the second business day after the election to provide evidence of identification. The voter shall sign such statement and return it along with the application of ballot.

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

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

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

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

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

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

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

for such rejection.

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

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

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

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

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

2-8-101. Meeting of county election commission following election.

(a) The county election commission shall meet at its office upon completion of its duties under § 2-8-104, but no later than the third Monday after the election to compare the returns on the tally sheets, to certify the results as shown by the returns in writing signed by at least the majority of them, and to perform the duties prescribed by this chapter.

(b) The commission may not recount any paper ballots, including absentee ballots.

(c) Upon the completion of the vote tabulation on election night, each county election commission shall report unofficial results to the coordinator of elections in a form prescribed by the coordinator.

(d) Any county election commission which fails to certify any election by the deadlines set forth in subsection (a), unless such failure is determined by the state election commission to be for good cause, shall forfeit any compensation due the members for the holding of such election. The chair of the state election commission shall promptly notify the chief fiscal officer of any county of such failure to certify under the provisions of this section.

(e) Upon certifying the results of a referendum held by a municipality or county pursuant to title 57, the county election commission shall send certification of the results to the alcoholic beverage commission.

2-8-111. Tie votes.

If there is a tie vote between the two (2) or more persons having the highest number of votes for an office, the state election commission shall cast the deciding vote except that:

(1) The county legislative body may cast the deciding vote for offices filled by the votes of a single county or civil district, or, in the alternative, the legislative body may by resolution call for a run-off election between the tied

candidates;

(2) The municipal legislative body shall cast the deciding vote for municipal offices, or, in the alternative, the legislative body may by resolution call for a run-off election between the tied candidates;

(3) The governor shall cast the deciding vote for representatives in congress;

(4) The election shall be void if it is for senator in congress, and the governor shall immediately issue an order directing the holding of a special election for the office; and

(5) The general assembly in joint convention shall cast the deciding vote for governor.

2-10-101. Short title — Application — Administration — Adoption of more stringent requirements.

(a) This part shall be known and may be cited as the "Campaign Financial Disclosure Act of 1980."

(b) The provisions of this part do not apply to any candidate for public office for which the service is part time and for which the compensation is less than one thousand dollars ($1,000) per month; provided, that this exemption shall not be applicable to any such candidate for a public office as a chief administrative officer or to any such candidate whose expenditures exceed one thousand dollars ($1,000).

(c) Any charter provisions of municipalities regarding campaign financial disclosures of candidates for public office apply to candidates for public office, except to the extent that such provisions are in conflict with the provisions of this part.

(d) The registry of election finance shall have the jurisdiction to administer and enforce the provisions of this part concerning campaign financial disclosure.

(e) Nothing in this part shall be construed as prohibiting the largest municipality located within any county having a population of not less than three hundred thirty-five thousand (335,000) nor more than three hundred thirty-six thousand (336,000), according to the 1990 federal census or any subsequent federal census, from enacting, by ordinance or charter amendment, more stringent financial disclosures of candidates for municipal local public office than those requirements imposed by the provisions of this part. A municipality adopting more stringent requirements pursuant to this chapter shall compensate the county for any additional expenses incurred by the county election commission as a result of adopting more stringent requirements.

2-12-116. Duty to promote voter registration and the electoral process.

(a) The county election commission shall promulgate such policies as are necessary to aid the personnel of the election commission office in the performance of their duties with regard to the promotion of voter registration and the electoral process. These duties shall include the following:

(1) The commission shall appoint an administrator of elections, who shall be the chief administrative officer of the commission and shall be responsible for the daily operations of the commission office and the execution of all elections. After May 31, 1993, any administrator appointed at large for the

first time to such position shall possess a high school education or GED®. In evaluating a prospective appointee, the commission shall consider the knowledge and experience of such prospective appointee in the following areas: administrative, managerial, instructional, communication, budgetarial, purchasing, promotional, legal and general office skills and other related skills necessary to fulfill the statutory requirements of administrator;

(2) Upon the recommendation of the administrator, the commission shall approve an annual budget for the operation of the election commission;

(3) Upon the recommendation of the administrator, the commission shall be responsible for approving any voting equipment to be purchased by the county for use by the commission;

(4) Upon the recommendation of the administrator, hire legal counsel if necessary to conduct the business of the commission;

(5) The commission shall appoint voting machine technicians as required in § 2-9-103. A voting machine technician shall work under the direction of the administrator;

(6) The commission shall certify all voting machines prior to each election and shall canvass all voting machines after each election;

(7) The commission shall assist the administrator in designating polling places, precinct boundaries and, in conjunction with the primary boards and the administrator, shall assist in obtaining and appointing poll workers as needed for each election;

(8) The commission shall be responsible for locking or sealing all absentee ballot boxes and shall retain possession of the keys for such boxes;

(9) The commission members shall be available to assist election commission personnel upon request throughout each election day;

(10) The commission may act as the central absentee counting board if the total number of absentee ballots to be counted is fewer than one hundred (100);

(11) The commission shall be responsible for certifying the results of each election in regard to official tabulations and shall be responsible for certifying all expenses incurred in regard to the commission's responsibility in the performance of its duties for a presidential preference primary or a special election for the sole purpose of selecting a member of the general assembly;

(12) The commission shall be responsible for the keeping and writing of the minutes of all commission meetings;

(13) The commission shall be responsible for determining a uniform time for the opening of the polls;

(14) The commission members shall not request, except in the event of an emergency, that the administrator employ members of the county election commission, their spouses, parents, brothers, sisters or children, including in-laws, of commission members as clerical assistants, absentee voting deputies, poll officials or as a member of the absentee counting board;

(15) The commission shall be responsible for maintaining the security of the election commission office and any other rooms or facilities it may use in the performance of its duties, including all locks and keys. The commission may delegate this responsibility to the administrator; and

(16) The commission members shall not appoint or hire, except in the event of and during an emergency, spouses, parents, brothers, sisters, or children, including in-laws, of the administrator as deputies, clerical assistants, absentee voting deputies, machine technicians, poll officials, or as

members of the absentee counting board.

(b) [Deleted by 2013 amendment, effective April 25, 2013.]

2-12-201. Employment of election administrators and clerical assistants.

(a) The commission shall appoint an administrator of elections who shall be the chief administrative officer of the commission and who shall be responsible for the daily operations of the office and the execution of all elections. The duties of the administrator of elections may, upon the administrator's discretion, be performed by a designee. Such duties include, but are not limited to, the following:

(1) Employment of all office personnel; after July 1, 2011, administrators of elections may not appoint or hire, except in the event of and during an emergency, members of the county election commission, or spouses, parents, brothers, sisters or children, including in-laws of commission members or spouses, parents, brothers, sisters or children, including in-laws of the administrator of elections as deputies, clerical assistants, absentee voting deputies, machine technicians, poll officials or as members of the absentee counting board;

(2) Preparation of the annual operating budget and presentation of such budget to the election commission for approval;

(3) Upon approval by the county election commission, presentation of the annual budget to the county commission or other legislative body for funding;

(4) Requisition and purchase of any supplies necessary for the operation of the election commission office and the conduct of all elections;

(5) Maintenance of voter registration files, campaign disclosure records, and any other records required by this title;

(6) Conducting of instruction class for poll workers or designation of another qualified person to conduct such class;

(7) Preparation of all notices for publication required by this title;

(8) Preparation and maintenance of all fiscal records necessary for the daily operation of the election commission office and all elections. This may include any requests for funding or changes in funding, if necessary, after adoption of the current fiscal budget;

(9) Compilation, maintenance and dissemination of information to the public, the candidates, the voters, the press and all inquiring parties in regard to all aspects of the electoral process on all governmental levels;

(10) Promotion of the electoral process through supplemental registrations, public functions, press releases and media advertising whenever possible;

(11) Attendance at any required seminar and other educational seminars, as funding permits, to gain knowledge beneficial to the administration of the election commission office or to the electoral process;

(12) Having knowledge of all current laws pertaining to the election process and any changes mandated by the general assembly, and apprising the election commission, office staff, candidates, the press and the public in general of this information;

(13) Assistance in the planning and implementation of any plan of apportionment or reapportionment of any governmental entity involved in

the electoral process;

(14) The county election commissioners may not employ themselves or any of their spouses, parents, siblings, in-laws or children as administrator;

(15) Preparation of a plan for placing precinct voting locations and presentation of such plan to the election commission for approval;

(16) Preparation of a plan for early voting sites and presentation of such plan to the election commission for approval; and

(17) Upon request, assist the:

(A) City councils, as appropriate, for cities located in the county;

(B) County legislative body;

(C) Local board of education; and

(D) Members of the general assembly representing the county, concerning redistricting in 2012, and thereafter every two-year period following each decennial census taken by the United States census bureau.

(b) [Deleted by 2013 amendment, effective April 25, 2013.]

2-12-202. Precinct registrars and assistants — Appointment and duties.

(a)(1) The majority party members of the county election commission shall appoint one (1) precinct registrar for each polling place, and the minority party members of the commission shall appoint one (1) precinct registrar for each polling place. The appointments shall be made for each election.

(2) [Deleted by 2013 amendment, effective April 25, 2013.]

(b) The commission may appoint for each polling place for each election only as many assistant precinct registrars as may be necessary to expedite voting.

(c) Precinct registrars and assistant precinct registrars shall perform the duties imposed by this title and duties assigned them by the county election commission.

3-1-102. Composition of state senatorial districts.

(a) Senators elected to the One Hundred Seventh General Assembly shall, until the next general election for senators, represent their respective districts as constituted prior to February 9, 2012. Nothing in this section shall be construed as depriving any member of the senate of the One Hundred Seventh General Assembly of such member's office, or as affecting or modifying the constitutional requirement of staggered senatorial terms, or as affecting or modifying any other provisions of article II, § 3 of the Constitution of Tennessee. At the November 2012 general election, and thereafter until changed by law, senators shall be elected to represent the districts as constituted and provided by this section. On the date of such November 2012 general election and thereafter until changed by law, senators shall represent the districts as constituted and provided by this section. If an election is required prior to the general election in November 2012, to fill a vacancy in accordance with article II, § 15(a) of the Constitution of Tennessee, then the election to fill the vacancy shall be held in the district as constituted and provided prior to February 9, 2012.

(b)(1) All census descriptions, counties, voting districts (VTDs), whether designated as precincts, wards, council districts, or otherwise, tracts, blocks, census delineations, census district lines and other census designations are those established for or by the United States department of commerce,

bureau of the census, for taking the 2010 federal decennial census in Tennessee as contained in the automated geographic database, known as the TIGER (topologically integrated geographic encoding and referencing) system.

(2) As provided in subsection (d), each district is described county by county in alphabetical order and, if a county is split, by the portion of such split county. Split counties are described by VTDs and, if further divided, by census blocks.

(c) Any reapportionment of county legislative bodies shall not affect these legislative districts.

(d) Until the next enumeration of qualified voters and apportionment of senators, the state senatorial districts shall be composed as follows:

(1) **District 01:**

Cocke County

Greene County

Hamblen County

Sevier County

VTD: 1-1 Caton's Chapel

VTD: 11-2 Pittman Center City Hall

VTD: 1-2 Jones Cove

VTD: 3-1 New Center

Blocks (080602): 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047 1048 1049 1050 1051 1052 1053 1054 1055 1056 1057 1058 1059 1060 1061 1062 1063 1064 1065 1066 1067 1068 1069 1070 1071 1072 1073 1074 1075 1076 1077 1078 1079 1080 1081 1082 1083 1084 1085 1086 1087 1088 1089 1090 1091 1092 1093 1094 1095 1096 1097 1098 1106 2027 3006 3008 3012 4059 4060 4073 4074 4075 4076 4077 4078 4079 4080 4081 4082 4083 4084 4085 4086 4087 4088 4089 4090 4091 4092 4093 4094 4095 4096 4097 4099 4101

VTD: 7-1 Voting Machine Warehouse

Blocks (080602): 4002 4003 4006 4033 4038 4040 4041 4042 4043 4045 4046 4047 4048 4049 4050 4051 4053 4054 4055 4056 4057 4058 4069 4070 4071 4100

VTD: 7-2 Catlettsburg

Blocks (080102): 3073 3074 3092 3093

Blocks (080602): 4000 4001 4004 4005 4007 4008 4009 4010 4011 4012 4013 4014 4015 4016 4017 4018 4019 4020 4021 4022 4023 4025 4027 4028 4030 4031 4032 4034 4035 4036 4037 4039 4044 4052 4061 4064 4065 4066 4098

VTD: 8-1 Kodak

VTD: 8-2 Underwood;

(2) **District 02:**

Blount County

Sevier County

VTD: 10-1 Boyd's Creek Elementary School

VTD: 10-2 DuPont Community Center

VTD: 10-3 Adult H.S. (Whites)

VTD: 11-1 Gatlinburg Amer. Legion

VTD: 2-1 Waldens Creek
VTD: 2-2 Wearwood School
VTD: 3-1 New Center
Blocks (080602): 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2028 2029 2030 2031 2032 2034 2035 2039 2040 2041 2043 2044 3007 3009 3010 3011 3013 3014 3015 3016 3017 3050
Blocks (080700): 1055 1056 1057
VTD: 3-2 Vocational Ctr. Harrisbg.
VTD: 4-1 Pigeon Forge City Hall
VTD: 5-1 Sevierville Middle School
VTD: 5-2 Senior Citizens Bldg.
VTD: 6-1 Seymour Intmdte. School
VTD: 7-1 Voting Machine Warehouse
Blocks (080400): 1071 1072 1073 1074 1076 1077 1078 1079 1080 1081 1082 1135 1142
Blocks (080500): 3009 3010 3011 3013 3014 3015 3016 3017 3018 3019 3020 3021 3029 3031 3035 3036 3039 3043 3044 3045 3046 3082 3083
Blocks (080601): 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1012 1013 1014 1015 1016 1017 1018 1019 1030 1031 1032 1035 1036 1038 1039 1040 1041 1046 1047 1048 1056 1057 2099 2100 2101 2102 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2130 2131 2132 2133 2134 2135 2138 2139 2140 2141 2142 2143 2144 2145 2148 2149 2150 2152 2153 2154 2155 2156
Blocks (080602): 3037 3047 3048
VTD: 7-2 Catlettsburg
Blocks (080102): 1052 1059 1060 1061 1062 1063 1064 1066 1067 1068 1069 1070 1071 1072 1074 1075 1076 1077 1078 1079 1080 1081 3046 3051 3078 3079 3080 3081 3082 3083 3084 3085 3086 3087 3088 3089 3090 3091
Blocks (080400): 1000 1001 1002 1008 1019 1020 1021 1022 1023 1024 1025 1026 1028 1029 1030 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047 1048 1049 1050 1051 1052 1053 1054 1075 1083 1138 1139 1140 1141
Blocks (080500): 3000 3001 3002 3003 3004 3005 3006 3007 3008 3012
Blocks (080601): 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2103 2104 2127 2128 2129 2136 2137 2146 2147 2151 2157 2158
Blocks (080602): 4024 4026 4029 4062 4063 4067 4068 4072
VTD: 9-1 Seymour Primary School;

(3) **District 03:**
Carter County
VTD: Central
VTD: Court House
VTD: Eastside
VTD: Elk Mills
VTD: Gap Creek
VTD: Hampton
VTD: Happy Valley
VTD: Harold McCormick
VTD: High School
VTD: Little Milligan
VTD: Range
Blocks (071100): 1069 1071 1072 1079 1088
Blocks (071200): 2060 2061 2062 2063
VTD: Roan Mountain
VTD: Siam
VTD: Tiger Valley
VTD: Valley Forge
VTD: Watauga
Blocks (071100): 1070
VTD: Westside
Unicoi County
Washington County;
(4) **District 04:**
Carter County
VTD: Hunter
VTD: Keenburg
VTD: Midway
VTD: Range
Blocks (071100): 1012 1016 1019 1024 1073 1074
Blocks (071200): 2041 2042 2043 2048 2049 2050 2064 2065 2075 2076
VTD: Unaka
VTD: Watauga
Blocks (071000): 1000 1001 1005
Blocks (071100): 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1014 1015 1017 1018 1020 1021 1022 1023 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047 1048 1049 1050 1051 1052 1053 1054 1055 1056 1057 1058 1059 1060 1061 1062 1063 1064 1065 1066 1067 1068 1080 1081 1082 1083 1085 1086 1087
Blocks (071200): 1007 1016
Johnson County
Sullivan County;
(5) **District 05:**
Anderson County
Knox County
VTD: 18 Lincoln Park
VTD: 19 S.O.A.R. Youth Ministries
VTD: 20 Beaumont

VTD: 37 Inskip Elementary
VTD: 38 Inskip Elementary
VTD: 39 Inskip Recreation Center
VTD: 56 Heiskell
VTD: 57 Hills
VTD: 58 Pedigo
Blocks (006205): 2000 2001 2002
Blocks (006301): 1039 1040 1041 1042 1057 1058 1060 1062 1063 1064
VTD: 62 Hardin Valley
VTD: 62W Hardin Valley West
VTD: 63N Karns North
VTD: 64 Solway
VTD: 72E Boys and Girls Club
VTD: 72M Boys and Girls Club
VTD: 72W Boys and Girls Club
VTD: 73 Powell

Loudon County;

(6) **District 06:**

Knox County

VTD: 12 Eastport
VTD: 13 Fair Garden
VTD: 14E Austin-East
VTD: 14M Walter P. Taylor Center
VTD: 15 John T. O'Connor Center
VTD: 24N Pellissippi State Tech
VTD: 24Q Sequoyah Hills
VTD: 25 South Knox Community Center
VTD: 26 Dogwood
VTD: 27 South Knox Optimist Club
VTD: 28 South-Doyle Middle
VTD: 29 Anderson
VTD: 30 Sarah Moore Greene
VTD: 31 Chilhowee
VTD: 32 Spring Hill
VTD: 48 Pond Gap
VTD: 49 Bearden Elementary
VTD: 50S West High
VTD: 51 Deane Hill Recreation Center
VTD: 60 Fort Sumpter
VTD: 61 Halls
VTD: 65 Concord
VTD: 69N A.L. Lotts
VTD: 69S Bluegrass
VTD: 71 Rocky Hill
VTD: 74 Shannondale
VTD: 75 Huffs
VTD: 76 Sunnyview
VTD: 77 Ramsey
VTD: 78 Riverdale
VTD: 79 Dora Kennedy

VTD: 80 Corryton
VTD: 81 Gibbs
VTD: 82 Ellistown
VTD: 84 Ritta
VTD: 85 Skaggston
VTD: 86 Carter
VTD: 87 Thorngrove
VTD: 88 Kings
VTD: 89 Mt.Olive
VTD: 90 Bonny Kate
VTD: 91 Vestal
VTD: 92 Gap Creek
VTD: 93 Hopewell;

(7) **District 07:**

Knox County

VTD: 06 Green School
VTD: 09 Moses Center
VTD: 10N Fort Sanders
VTD: 10S Stokley Athletics Center
VTD: 11 Central United Methodist Church
VTD: 16N North Knox Recreation Center
VTD: 16S Belle Morris
VTD: 17 Christenberry
VTD: 23N Bible Church of God
VTD: 23S Westview
VTD: 33 Richard Yoakley
VTD: 34 Fountain City Library
VTD: 35 Shannondale
VTD: 36 Gresham
VTD: 40 Norwood Elementary
VTD: 41 Norwood Library
VTD: 42 Pleasant Ridge
VTD: 43 West Haven
VTD: 44 Ridgedale
VTD: 45 Bearden Middle
VTD: 46 West Hills
VTD: 47 Bearden High
VTD: 50N West High
VTD: 55 Lonas
VTD: 58 Pedigo
Blocks (006205): 1006 1007 1008 1009 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014
Blocks (006206): 1000 1001 1002 1003 1004 1005 1006 1007 1008 1013 1020 1022 1023 1024 2000 2001 2002 2003 2004 2005 2006
Blocks (006301): 1059 1065 1066 1067
VTD: 59 Brickey
VTD: 63 Karns
VTD: 65N Concord North
VTD: 66N Farragut I
VTD: 66S Farragut II
VTD: 67 North Cedar Bluff

VTD: 68 South Cedar Bluff
VTD: 68E East Cedar Bluff
VTD: 70 Ball Camp;

(8) **District 08:**

Claiborne County
Grainger County
Hancock County
Hawkins County
Jefferson County
Union County;

(9) **District 09:**

Bradley County
VTD: 102-1 Prospect
VTD: 103-1 Hopewell
VTD: 201-1 E.L. Ross
VTD: 301-1 Lee University
VTD: 302-1 Senior Center
VTD: 501-1 T.C. Bower
VTD: 502-1 Community Serv
VTD: 701 Stuart
VTD: 702 Cleveland High
McMinn County
Meigs County
Monroe County
Polk County;

(10) **District 10:**

Bradley County
VTD: 101-1 McDonald
VTD: 202-1 Charleston
VTD: 401 Oak Grove
VTD: 402 Michigan Avenue
VTD: 601-1 Valley View
VTD: 602-1 Blue Spring
VTD: 603-1 Waterville
VTD: 604-1 Black Fox
Hamilton County
VTD: 002 Alton Park
VTD: 003 Amnicola
VTD: 004 Avondale
VTD: 006 Brainerd
VTD: 007 Brainerd Hills
VTD: 008 Bushtown
VTD: 009 Cedar Hill
VTD: 011 Clifton Hills 1
VTD: 012 Concord 1
VTD: 013 Courthouse
VTD: 014 Dalewood
VTD: 015 Downtown
VTD: 017 East Brainerd 1
VTD: 018 East Chattanooga 1
VTD: 019 East Lake

VTD: 020 East Side 1
VTD: 021 Eastdale 1
VTD: 023 Glenwood
VTD: 024 Highland Park
VTD: 026 Howard
VTD: 031 Missionary Ridge
VTD: 032 Moccasin Bend
VTD: 035 North Chattanooga 1
VTD: 040 Piney Woods
VTD: 041 Ridgedale
VTD: 042 Riverview
VTD: 043 St Elmo 1
VTD: 044 Stuart Heights 1
VTD: 045 Sunnyside
VTD: 048 Lookout Valley 1
VTD: 049 Woodmore
VTD: 050 Apison 1
VTD: 053 East Ridge 1
VTD: 054 East Ridge 2
VTD: 055 East Ridge 3
VTD: 056 East Ridge 4
VTD: 057 East Ridge 5
VTD: 061 Ridgeside
VTD: 064 Westview 1
VTD: 072 Lookout Mountain 1
VTD: 076 Red Bank 1
VTD: 091 Westview 2
VTD: 092 Lookout Valley 2
VTD: 094 Eastgate 1
VTD: 095 Eastgate 2
VTD: 096 Westview 3
VTD: 104 East Brainerd 2
VTD: 111 Lookout Valley 3*
VTD: 117 Mountain Creek 4
VTD: 118 Apison 2
VTD: 121 Lookout Mountain 2
VTD: 125 Red Bank 4
VTD: 131 Eastdale 2
VTD: 132 East Side 2
VTD: 133 Clifton Hills 2
VTD: 137 St. Elmo 2
VTD: 138 St. Elmo 3
VTD: 139 North Chattanooga 2
VTD: 141 Concord 3
VTD: 160 St Elmo 4
VTD: 161 Lookout Valley 4;

(11) **District 11:**

Hamilton County

VTD: 001 Airport 1
VTD: 005 Bonny Oaks
VTD: 016 DuPont

VTD: 025 Hixon 1
VTD: 027 Kingsport
VTD: 028 Lake Hills
VTD: 029 Lupton City
VTD: 033 Mountain Creek 1
VTD: 034 Murray Hills
VTD: 036 Northgate
VTD: 037 Northwoods 1
VTD: 038 Northwoods 2
VTD: 046 Tyner 1
VTD: 051 Birchwood
VTD: 052 Collegedale 1
VTD: 058 Harrison 1
VTD: 059 Meadowview
VTD: 060 Ooltewah 1
VTD: 062 Snowhill
VTD: 063 Summit
VTD: 065 Bakewell
VTD: 066 Dallas
VTD: 067 Fairmount
VTD: 068 Falling Water 1
VTD: 069 Flat Top Mountain
VTD: 070 Ganns
VTD: 071 Lakesite
VTD: 073 Middle Valley
VTD: 074 Mowbray
VTD: 075 Pleasant Grove 1
VTD: 077 Red Bank 2
VTD: 078 Red Bank 3
VTD: 080 Sale Creek
VTD: 081 Signal Mountain East
VTD: 082 Signal Mountain West
VTD: 083 Soddy Daisy 1
VTD: 084 Soddy Daisy 2
VTD: 085 Valdeau
VTD: 086 Walden
VTD: 088 Hixson 2
VTD: 089 Ooltewah 2
VTD: 090 Harrison 2
VTD: 093 Concord 2
VTD: 097 Tyner 2
VTD: 098 Harrison 3
VTD: 101 Hixson 3
VTD: 102 Northwoods 5
VTD: 103 Pleasant Grove 2
VTD: 106 Mountain Creek 2
VTD: 109 Falling Water 2
VTD: 112 Airport 2
VTD: 119 Northwoods 3
VTD: 122 Collegedale 2
VTD: 127 Red Bank 6

VTD: 130 Tyner 4
VTD: 140 Harrison 4
VTD: 143 Ooltewah 3*
VTD: 144 Soddy Daisy 3
VTD: 144 Stuart Heights 2
VTD: 148 Soddy Daisy 4
VTD: 154 Airport 4
VTD: 162 Northwoods 4*
VTD: 164 Hixson 4*
VTD: 165 Soddy Daisy 5*
VTD: 166 Summit 2;

(12) **District 12:**

Campbell County
Fentress County
Morgan County
Pickett County
Rhea County
Roane County
Scott County;

(13) **District 13:**

Rutherford County

VTD: 01-1 LaVergne City Hall
VTD: 01-2 Roy Waldron School
VTD: 02-2 Walter Hill School
Blocks (040501): 1000 1001 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 3026 3035 3036 3039 3040 3041 3042 3043 3044 3045 3046
Blocks (040502): 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1019 1020 1021 1023 1026 2009 2010 2011 2012
Blocks (041000): 1038 1041 1059
Blocks (041101): 3022 3023 3025 3026 3027 3067
VTD: 03-1 Leana Community Center
Blocks (040901): 2004 2030 2031 2052 2053 2054 2059
Blocks (041000): 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1044 1045 1046 1051 1053 1054 1055 1056 2000 2001 2002 2003 2004 2005 2006 2020 2021 2022 2023 2028 2029 3000 3001 3002 3007 3008 3009 3010 3011 3012 3014 3015 3016 3017 3018 3019 3027 3029 3030 3033 4000 4001 4002 4003 4007 4008 4013 4014 4015 4016 4017 4019 4024 4025 4026 4027 4028 4029 4030 4031 4032 4033 4034 4035 4036
VTD: 03-2 Nissan Activity Center
VTD: 03-3 Wilson Elementary School
Blocks (040403): 4000 4001 4002 4003 4004 4011 4012 4013 4014 4036 4037 4040 4044 4045
Blocks (040501): 1006 1007 1008 1009 1010 1011 1012 3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012 3013 3014 3015 3016 3017 3018 3019 3020 3021 3022 3023 3024 3025 3027 3028 3029 3030 3031 3032 3033 3034 3037 3038 4000 4001 4002 4003 4004

4005 4006 4007 4008 4009 4010 4011 4012 4013 4014 4015 4016 4017 4018 4019 4020 4021 4022 4023 4024 4025 4026 4027 4028 4029 4030 4031 4032 4033 4034 4035 4036

Blocks (042200): 3000 3001 3004 3021 3029

VTD: 03-4 Florence Baptist Church
VTD: 05-1 First Baptist Church of LaVergne
VTD: 07-1 Blackman Elementary School
VTD: 07-3 Middle TN Electric Membership Corp
VTD: 08-1 Blackman United Methodist Church
VTD: 08-2 Eagleville Community Center
VTD: 08-3 Lebanon Camp Church
VTD: 08-4 Rockvale Community Center
VTD: 09-1 Stewart Creek Elementary
VTD: 09-2 Giles Creek Baptist Church
VTD: 10-1 Cedar Grove Elementary
VTD: 10-2 Stewartsboro School
VTD: 10-3 Rock Springs School III
VTD: 11-1 Smyrna Middle School
VTD: 12-1 Tennessee Rehab Center
VTD: 13-1 Bellwood School
VTD: 13-2 World Outreach Church
VTD: 14-2 Siegal Elementary School

Blocks (041000): 1039 1040 1042 1043 1047 1048

Blocks (041301): 2000 2001 2002 2003 2013 3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012 3013 3014 3015 3016 4000 4001 4002 4003 4004 4005 4006 4007 4008 4009 4010 4011 4012 4013 4014 4015 4016 4017

VTD: 16-1 Central Middle School
VTD: 16-2 Mitchell Neilson Elementary
VTD: 17-1 North Blvd Church of Christ
VTD: 18-1 Patterson Park

Blocks (041600): 3045 3046 3052 3053 3054 3055 3056 3057 3058 4020 4021 4022 4023 4024 4026 4027

Blocks (041800): 3039 3040 3041 3042 3043 3048 3050 3053 3054 3055 3057

Blocks (041900): 1000 1001 1002 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 3000 3001 3002 4000 4001 4002 4003 4004 4005 4006 4007 4008 4009 4010 4011 4012 4013 4014 4015 4016 4017 4018 4019 4020 4021 4022

Blocks (042000): 1004 1018 2000 2003 2004 2007 2008 2009 2012

Blocks (042100): 1019 1020 1021 1022 1023 1024 1025 1027 1030 1031 1032 1033 1034

VTD: 19-1 Mitchell Neilson Primary
VTD: 19-2 Seigel Middle School
VTD: 19-3 Lane Agri-Park
VTD: 20-1 Creekmont General Baptist Church
VTD: 20-2 Blackman Middle School;

(14) **District 14:**

Bedford County
Lincoln County

Marshall County
Moore County
Rutherford County
VTD: 02-1 Lascassas School
VTD: 02-2 Walter Hill School
Blocks (040501): 1002 1003 1004 1013 1014 1016 1018 1019
Blocks (040502): 1018 1022 1024 1025 2019 2020 2021 2022 2023 2024
Blocks (041000): 1000
Blocks (041101): 1035 1036 1038 1041 1042 1043 1044 1054 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2013 2014 2015 2016 2020 2026 2027 2034 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012 3014 3016 3017 3018 3019 3020 3021 3024 3028 3029 3030 3031 3032 3033 3037 3039 3040 3041 3042 3043 3048 3053 3054 3056 3057 3058 3059 3060 3061 3062 3063 3064 3065 3066 3068 4009 4010 4011 4012 4013 4014 4025
VTD: 02-3 Milton Fire Hall
VTD: 03-1 Leana Community Center
Blocks (041000): 1033 1034 1035 1036 1037 4018
VTD: 03-3 Wilson Elementary School
Blocks (040501): 1005 1015 1017 1020
VTD: 04-1 Advent Lutheran Church
VTD: 04-2 Bud's Tire Shop
VTD: 04-3 Kittrell School IV
VTD: 04-4 Oakland High School
VTD: 06-1 Buchanan School
VTD: 06-2 Christiana Middle School
VTD: 06-3 Kittrell School VI
VTD: 07-2 Riverdale High School
VTD: 14-1 Northfield Elementary School
VTD: 14-2 Siegal Elementary School
Blocks (041101): 2011 2012 2017 2018 2019 2021 2022 2023 2024 2025 2028 2031 2033 2035 3015 3034 3035 3036 3038 3052
VTD: 15-1 Kingwood Church of Christ
VTD: 18-1 Patterson Park
Blocks (042000): 3024
VTD: 18-2 Mid TN Realtors Association Bldg
VTD: 18-3 Wilderness Station III
VTD: 21-1 Hobgood School;

(15) **District 15:**
Bledsoe County
Cumberland County
Jackson County
Overton County
Putnam County
White County;

(16) **District 16:**
Coffee County
Franklin County
Grundy County
Marion County

Sequatchie County
Van Buren County
Warren County;
(17) **District 17:**
Cannon County
Clay County
DeKalb County
Macon County
Smith County
Wilson County;
(18) **District 18:**
Davidson County
VTD: 11-3 Andrew Jackson School
Blocks (010502): 3040 3041 3045 3046
Blocks (015401): 1000 1003 1004 1005 1006 1013 1014 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2017 2018 2019 2020 2021 2022 3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012 3013 3014 3015 3016 3017 3018 3019 3020 3021 3022 3023 3024 3025 3026 3027 3028 3029 3030 3031 3032 3033 3034 3035 3036 3037 3038 3039
VTD: 11-4 DuPont-Tyler Middle School
VTD: 12-1 Hermitage Presby Church
VTD: 12-2 Ruby Major Elementary
VTD: 12-3 Dupont-Tyler Middle School
VTD: 12-4 Central Pike Church of Christ
VTD: 33-1 Eagle Christian Church
Sumner County
Trousdale County;
(19) **District 19:**
Davidson County
VTD: 01-3 Temple Baptist Church
VTD: 01-5 Bordeaux Library
VTD: 01-6 Cathedral of Praise
VTD: 02-1 Haynes Middle School
VTD: 02-2 White's Creek Pk Fire Hall #25
VTD: 02-3 Hillhurst Baptist Church
VTD: 02-4 Hillhurst Baptist Church
VTD: 02-5 Looby Comm Ctr
VTD: 02-6 Northwest YMCA
VTD: 03-4 Alex Green School
VTD: 03-5 Bellshire Elem. School
VTD: 03-6 Old Brick Church School
VTD: 03-7 New Brick Church Middle School
VTD: 03-8 Davidson Academy
VTD: 04-1 Madison Station Senior Ctr
VTD: 04-3 Windland Retirement Center
VTD: 05-1 Kipp Academy
VTD: 05-2 Cleveland St. Park Comm Ctr
VTD: 05-3 Eastland Baptist Church
VTD: 05-4 McFerrin Park Comm. Ctr.
VTD: 05-5 Ross Elementary School

VTD: 06-1 Martha O'Bryan Center
VTD: 06-3 East Park Comm. Center
VTD: 06-5 Cora Howe Elem School
VTD: 07-3 Memorial Lutheran Church
VTD: 08-1 Tom Joy School
VTD: 08-2 Gra-Mar School
VTD: 10-5 Parkway Baptist Church
VTD: 13-2 Glengarry School
VTD: 15-5 Vultee Church of Christ
VTD: 16-2 Polk Ave Firehall #12
VTD: 16-3 Vultee Church of Christ
VTD: 16-4 Woodbine Cumberland Pres. Church
Blocks (017200): 2015 2016 2017 2023 2024 2025 2026 2027 2028 2029 2030 2039 2040 2041
Blocks (017300): 3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012 3013 3015 3016
VTD: 17-1 Napier Comm. Ctr
VTD: 17-2 Trevecca Towers
VTD: 17-3 Johnson Middle School
VTD: 17-8 Napier School
VTD: 17-9 Edgehill Library
VTD: 19-1 Buena Vista Elementary School
VTD: 19-2 15th Ave Baptist Church
VTD: 19-3 Watkins Park Comm Ctr
VTD: 19-4 Kayne Av Baptist Church
VTD: 19-5 Murrell School
VTD: 20-2 Union Hall 737
VTD: 21-1 Hadley Park Community Center
VTD: 21-2 Nashville Big Picture High School
VTD: 21-3 Pearl-Cohn High School
VTD: 21-6 McGruder Center
VTD: 24-4 Park Ave School
VTD: 26-1 Paragon Mills School
VTD: 28-1 Una Baptist Church
VTD: 28-3 Una Baptist Church
Blocks (015613): 4000 4007 4010
VTD: 28-4 Antioch Church of Christ
VTD: 28-5 Apollo Middle School
VTD: 29-1 Priest Lake Presbyterian
VTD: 29-2 Lakeview School
VTD: 29-3 Hamilton UMC
VTD: 30-2 Haywood Hills Baptist
VTD: 32-5 Antioch Middle School
VTD: 33-3 Southeast Library
VTD: 33-4 Hickory Hollow Baptist
VTD: 6-4 Main Library;

(20) **District 20:**

Davidson County

VTD: 01-1 1st Baptist Church of Joelton
VTD: 01-2 Greenville UMC
VTD: 01-4 Scottsboro Comm. Ctr.

VTD: 03-1 Union Hill 1st Baptist Church
VTD: 03-2 Joelton Elem School
VTD: 09-1 Madison Park Comm. Ctr
VTD: 09-3 Neely's Bend Middle School
VTD: 10-1 Luton's UMC
VTD: 10-2 Walker Creek UMC
VTD: 10-3 Goodlettsville Comm. Ctr.
VTD: 10-4 First Baptist Church of Goodlettsville
VTD: 10-6 Gateway School
VTD: 11-1 Old Hickory Comm. Ctr.
VTD: 11-2 Lakewood City Hall
VTD: 11-3 Andrew Jackson School
Blocks (010502): 3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012 3013 3014 3015 3016 3017 3018 3019 3020 3021 3022 3023 3024 3025 3026 3027 3028 3029 3030 3031 3032 3033 3034 3035 3036 3037 3038 3039 3042 3043 3044 3047 3048 3049
Blocks (015401): 1001 1007 2016
VTD: 14-1 Hermitage Hills Baptist
VTD: 14-2 Hermitage School
VTD: 14-3 TN School for the Blind
VTD: 14-5 Hickman School
VTD: 15-1 Two Rivers School
VTD: 15-2 Donelson Heights UMC
VTD: 15-3 Donelson Presbyterian Church
VTD: 16-4 Woodbine Cumberland Pres. Church
Blocks (980200): 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1051 1055 1059 1060 1061
VTD: 17-5 Berry Hill City Hall
VTD: 22-1 Bellevue Comm Ctr
VTD: 22-2 Bellevue Church of Christ
VTD: 22-3 Bellevue Middle School
VTD: 22-4 Bellevue UMC
VTD: 23-1 Brook Hollow Baptist
Blocks (018102): 1003 1004 1006 1007 1008 1009 1010 1011 1012 1013 3001 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012 3013 3014 3015 3016 3017 3018 3019 3020 3021 3022 3023 3024 3025 3026 3027 3028 3029 3030 3031 3032 3033 3034 3035 3036 3037
Blocks (018201): 1001 1003 1004 1005 1006 1007 1008 1009 1010 1012 1013 1014 1015 1016 1017 2000 2001 2002 2003 2004 2008 2010 2011 2012 2013 2014 2015 2016 2017 2018 3000 3001 3002 3005 3007
Blocks (018203): 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2015 2016
Blocks (018301): 3010 3011
VTD: 23-2 West Meade School
VTD: 23-3 Jewish Community Ctr
VTD: 23-4 Belle Meade City Hall
VTD: 24-3 Westminister Presbyterian Church
VTD: 24-6 West End Middle School

VTD: 25-1 West End Middle School
VTD: 25-2 Boy Scouts of America
VTD: 25-5 Hillsboro High School
VTD: 25-6 YWCA
Blocks (017701): 2001 2002 2003 2006 2007 2008 2009 2012 2013 2014 2015 2016 2017
Blocks (017702): 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018
VTD: 26-4 Crievewood Baptist Church
VTD: 26-5 Ellington Agricultural Center
VTD: 27-2 Ellington Agricultural Center
VTD: 27-3 McMurray Middle School
VTD: 27-4 Christ Church
VTD: 31-1 Woodson Chapel Church of Christ
VTD: 31-2 Woodson Chapel Church of Christ
VTD: 31-4 Granbery Elementary School
VTD: 34-1 Calvary UMC
VTD: 34-10 Forest Hills Baptist
VTD: 34-2 Hillsboro Presbyterian Church
VTD: 34-3 Percy Priest School
VTD: 34-4 John Trotwood Moore School
VTD: 34-5 Brentwood Hills Church of Christ
VTD: 34-8 Glendale UMC
VTD: 35-1 Gower School
VTD: 35-2 South Harpeth Church of Christ
VTD: 35-3 Harpeth Valley School
VTD: 35-4 Bellevue UMC
VTD: 35-5 Jewish Comm. Ctr.;

(21) **District 21:**

Davidson County

VTD: 04-2 Madison Library
VTD: 04-4 Windland Retirement Center
VTD: 06-2 Shelby Comm. Ctr.
VTD: 07-1 Stratford High School
VTD: 07-2 Dalewood UMC
VTD: 07-4 Cornelia Fort Air Park
VTD: 07-5 Aldergate UMC
VTD: 08-3 Brush Hill Cumberland Pres.
VTD: 08-4 Dalewood Baptist Church
VTD: 09-2 Madison Firehall
VTD: 13-1 Glencliff Presbyterian Church
VTD: 13-3 Vultee Firehall
VTD: 13-4 Whitworth Baptist Christ Church
VTD: 15-4 Margaret Allen School
VTD: 15-7 Margaret Allen School
VTD: 16-4 Woodbine Cumberland Pres. Church
Blocks (017200): 2032 2038 2042 2043 2050
VTD: 16-5 Woodbine Baptist Church
VTD: 16-6 Glencliff High School
VTD: 17-10 Sevier Park Comm Ctr
VTD: 17-4 Sevier Park Comm. Center

VTD: 17-6 Berry Headstart
VTD: 17-7 Knowles Senior Center
VTD: 18-1 Eakin Elementary
VTD: 18-2 Eakin Elementary
VTD: 18-3 Eakin Elementary
VTD: 18-6 Belmont University (Curb Event Center)
VTD: 18-7 Belmont Heights Baptist Church
VTD: 20-3 Union Hall 737
VTD: 20-4 Charlotte Park School
VTD: 21-4 Centennial Park Art Ctr.
VTD: 21-5 Centennial Park Art Ctr.
VTD: 23-1 Brook Hollow Baptist
Blocks (018102): 3000 3002
VTD: 24-1 Sylvan Park School
VTD: 24-2 TN Technology Center at Nashville
VTD: 24-5 McCabe Park Comm Ctr
VTD: 25-4 Granny White Church of Christ
VTD: 25-6 YWCA
Blocks (017702): 2002 2011 2020 3000 3001 3002 3003 3004 3005 3006
Blocks (017800): 2013 2014 2015 2018 2019 2020 2021 2022 3000 3001 3002 3003 3004 3005 3006 3007 3008 3009
VTD: 26-3 Norman Binkley School
VTD: 27-1 Church of the Holy Spirit
VTD: 28-3 Una Baptist Church
Blocks (015613): 4001
VTD: 29-4 Smith Springs Church of Christ
VTD: 30-1 Haywood School
VTD: 30-3 Grace Cole School
VTD: 30-4 Tusculum Hills Baptist Church
VTD: 31-3 Oasis Worship Centre
VTD: 32-1 Antioch UMC
VTD: 32-2 Bell Road Baptist
VTD: 32-3 Cane Ridge Comm. Ctr.
VTD: 32-4 Spirit of Life Church
VTD: 33-2 New Antioch High School
VTD: 34-9 Church of the Redeemer;

(22) **District 22:**
Houston County
Montgomery County
Stewart County;

(23) **District 23:**
Williamson County;

(24) **District 24:**
Benton County
Carroll County
Gibson County
Henry County
Obion County
Weakley County;

(25) **District 25:**

Cheatham County
Dickson County
Hickman County
Humphreys County
Robertson County;

(26) **District 26:**
Chester County
Decatur County
Fayette County
Hardeman County
Hardin County
Haywood County
Henderson County
McNairy County;

(27) **District 27:**
Crockett County
Dyer County
Lake County
Lauderdale County
Madison County;

(28) **District 28:**
Giles County
Lawrence County
Lewis County
Maury County
Perry County
Wayne County;

(29) **District 29:**
Shelby County

VTD: Locke
VTD: Lucy 1
VTD: Lucy 2
VTD: Lucy 3
VTD: McConnell's
VTD: Memphis 01
VTD: Memphis 02
VTD: Memphis 12
VTD: Memphis 15
VTD: Memphis 16-1
VTD: Memphis 17
VTD: Memphis 22
VTD: Memphis 25-2
VTD: Memphis 26-1
VTD: Memphis 28
VTD: Memphis 29-1
VTD: Memphis 29-2
VTD: Memphis 31-1
VTD: Memphis 31-2
VTD: Memphis 31-4
VTD: Memphis 33
VTD: Memphis 34-2

VTD: Memphis 35-1
VTD: Memphis 48
VTD: Memphis 49
VTD: Memphis 50-1
VTD: Memphis 60-1
VTD: Memphis 60-3
VTD: Memphis 60-4
VTD: Memphis 60-6
VTD: Memphis 60-8
VTD: Memphis 60-9
VTD: Memphis 61
VTD: Memphis 69-1
VTD: Memphis 69-2
VTD: Memphis 71-5
VTD: Memphis 75-1
VTD: Memphis 75-11
VTD: Memphis 75-5
VTD: Memphis 75-6
VTD: Memphis 75-7
VTD: Memphis 76-4
VTD: Memphis 76-5
VTD: Memphis 76-6
VTD: Memphis 77-1
VTD: Memphis 77-2
VTD: Memphis 77-3
VTD: Memphis 78-1
VTD: Memphis 78-3
VTD: Memphis 79-1
VTD: Memphis 79-2
VTD: Memphis 79-3
VTD: Memphis 79-7
VTD: Memphis 79-8
VTD: Memphis 82-1
VTD: Memphis 82-2
VTD: Memphis 82-3
VTD: Millington 1
VTD: Millington 2
VTD: Stewartville
Blocks (020210): 1000 1001 1002 1003 1004
Blocks (020222): 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1015 1016 1038
Blocks (020400): 2032
Blocks (020700): 1016 1017 1018 1019 1020 1022 1023 1024 1025 1026 1027 1029 1030
VTD: Woodstock 2;

(30) **District 30:**

Shelby County

VTD: Bartlett 10
VTD: Bartlett 14
VTD: Memphis 11
VTD: Memphis 13

VTD: Memphis 20-1
VTD: Memphis 20-3
VTD: Memphis 21
VTD: Memphis 27
VTD: Memphis 32
VTD: Memphis 36-1
VTD: Memphis 36-2
VTD: Memphis 36-3
VTD: Memphis 37
VTD: Memphis 38-2
VTD: Memphis 40-1
VTD: Memphis 40-2
VTD: Memphis 41-1
VTD: Memphis 41-3
VTD: Memphis 42-1
VTD: Memphis 43-2
VTD: Memphis 52-1
VTD: Memphis 52-2
VTD: Memphis 52-3
VTD: Memphis 53-1
VTD: Memphis 53-2
VTD: Memphis 53-3
VTD: Memphis 54
VTD: Memphis 62-0
VTD: Memphis 63-2
VTD: Memphis 68-1
VTD: Memphis 68-2
Blocks (009200): 5003
VTD: Memphis 70-1
VTD: Memphis 70-2
VTD: Memphis 70-3
VTD: Memphis 71-3
VTD: Memphis 71-4
VTD: Memphis 72-1
VTD: Memphis 72-3
VTD: Memphis 72-5
VTD: Memphis 72-7
VTD: Memphis 80-2
Blocks (009200): 3046 5000 5001 5002 5031 5032
Blocks (021311): 1003 1004 1005 1006 1007 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1034 1042 1043 1044 1045
Blocks (021320): 2006 3002 3003 3004 3005 3006 3007 3009 3025 3028 3029 3030
VTD: Memphis 81-1
VTD: Memphis 81-4
Blocks (021320): 2007 2008 2009 2010 2012 2013 2014
VTD: Memphis 81-6
VTD: Memphis 83
VTD: Memphis 84-1
VTD: Memphis 84-2

VTD: Memphis 86
VTD: Memphis 87-1
VTD: Memphis 87-3
VTD: Memphis 88-3
VTD: Memphis 88-4
VTD: Memphis 88-5
VTD: Memphis 90-1
VTD: Memphis 90-2
VTD: Memphis 90-3;

(31) **District 31:**

Shelby County

VTD: Cordova 10
VTD: Cordova 3
VTD: Cordova 4
VTD: Cordova 5
VTD: Cordova 6
VTD: Cordova 9
VTD: Germantown 01
VTD: Germantown 02
VTD: Germantown 03
VTD: Germantown 04
VTD: Germantown 05
VTD: Germantown 06
VTD: Germantown 08
VTD: Germantown 09
VTD: Germantown 10
VTD: Germantown 11
VTD: Germantown 12
VTD: Memphis 44-1
VTD: Memphis 44-2
VTD: Memphis 44-3
VTD: Memphis 44-4
VTD: Memphis 44-5
VTD: Memphis 45-1
VTD: Memphis 45-4
VTD: Memphis 55-1
VTD: Memphis 55-2
VTD: Memphis 56-1
VTD: Memphis 57
VTD: Memphis 64
VTD: Memphis 67-3
Blocks (009500): 3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012 3013 3014 3015 3016 3017 3018 3019 3020 3021 3022 3023 3024 3025 3026 3027 3028 4000 4001 4002 4003 4004 4005 4006 4007 4008 4009 4010 4011 4012 4025 4026 4027 4028 4029 4030 4031 4033
VTD: Memphis 68-2
Blocks (009200): 4011 4012 4013 4026 4027 4028 5004 5005 5006 5007 5008 5009 5010 5011 5016 5025 5026 5027 5028
Blocks (009600): 1005 1010 2000 2001 2002 2007 2008 2009
VTD: Memphis 68-3

VTD: Memphis 74-6
VTD: Memphis 80-2
Blocks (021311): 1000 1001 1002 1008 1041 1046 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012 3013 3014 3015 3016 3017 3018 3019 3020 3021 3022 3023 3024 3025 3026 3027 3028
Blocks (021312): 1000 1001 1002 1005 1006 1007 1008 1009 1012 1013 1014 1015 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2017
Blocks (021320): 2000 2001 2002 2003 2004 2005 2011
Blocks (021410): 1002 1003 1005 1028 1029
VTD: Memphis 81-2
VTD: Memphis 81-3
VTD: Memphis 81-4
Blocks (021320): 2015 2016 2017 2018 2019 2020 2021 2022 2023
VTD: Memphis 81-7
VTD: Memphis 89-1
VTD: Memphis 89-2
VTD: Memphis 91-1
VTD: Memphis 91-2
VTD: Memphis 91-3
VTD: Memphis 95-1
VTD: Memphis 95-2
VTD: Memphis 95-3
VTD: Memphis 95-5
VTD: Memphis 95-6
VTD: Memphis 95-7
VTD: Memphis 96-01
VTD: Morning Sun 01
VTD: Morning Sun 02;

(32) **District 32:**

Shelby County

VTD: ARL-01
VTD: ARL-02
VTD: Bartlett 02
VTD: Bartlett 03
VTD: Bartlett 04
VTD: Bartlett 05
VTD: Bartlett 06
VTD: Bartlett 08
VTD: Bartlett 09
VTD: Bartlett 11
VTD: Bartlett 12
VTD: Bartlett 13
VTD: Brunswick 1
VTD: Brunswick 2
VTD: Collierville 09
VTD: Collierville 1
VTD: Collierville 2
VTD: Collierville 3

VTD: Collierville 4
VTD: Collierville 5
VTD: Collierville 6
VTD: Collierville 7
VTD: Eads
VTD: Forest Hills 2
Blocks (021520): 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047 1048 1054 1055 1056 1057 1058 1059 1060 1061 1064 1065 1066 1067 2162 2163 2164 2165 2166 2167 2220 2221
VTD: Kerrville
VTD: Lakeland 1
VTD: Lakeland 2
VTD: Memphis 88-2
VTD: Stewartville
Blocks (020644): 1000
Blocks (020700): 1028 1031 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021
Blocks (020810): 1024 1025 1026 1027 1038 1039 1041 1042 1043 1044 1045 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042
Blocks (020820): 1000

Tipton County;

(33) **District 33:**

Shelby County

VTD: Capleville 1
VTD: Capleville 5
VTD: Forest Hills 1
VTD: Forest Hills 2
Blocks (021510): 1020 1030 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071
VTD: Memphis 45-2
VTD: Memphis 46-1
VTD: Memphis 46-2
VTD: Memphis 47-1
VTD: Memphis 56-3
VTD: Memphis 58-1
VTD: Memphis 58-4
VTD: Memphis 59-1
VTD: Memphis 59-5
VTD: Memphis 60-2
VTD: Memphis 60-5
VTD: Memphis 60-7
VTD: Memphis 65-1
VTD: Memphis 66
VTD: Memphis 67-1

VTD: Memphis 67-3
Blocks (009500): 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 2018 2019 2020 2021 2022 2023 4013 4014 4015 4016 4017 4018 4019 4020 4021 4022 4023 4024
VTD: Memphis 73-1
VTD: Memphis 73-3
VTD: Memphis 73-4
VTD: Memphis 74-1
VTD: Memphis 74-2
VTD: Memphis 74-4
VTD: Memphis 74-5
VTD: Memphis 74-9
VTD: Memphis 81-5
VTD: Memphis 92-1
VTD: Memphis 92-2
VTD: Memphis 93-1
VTD: Memphis 93-2
VTD: Memphis 93-3
VTD: Memphis 94-2
VTD: Memphis 94-3
VTD: Memphis 94-5
VTD: Memphis 94-7
VTD: Memphis 94-8
VTD: Ross Store 01
VTD: Ross Store 05
VTD: Ross Store 13
VTD: Ross Store 14
VTD: Ross Store 16;

(e) It is the legislative intent that all senate districts shall be contiguous and contiguity by water is sufficient, and, toward that end, if any voting district or other geographical entity designated as a portion of a senate district is found to be noncontiguous with the larger portion of the senate district, it shall be constituted a portion of the senate district smallest in population to which it is contiguous.

(f) A candidate for election to the office of senator shall be required to reside in the senatorial district from which such candidate seeks to be elected for one (1) year immediately preceding the election.

(g) County election commissions shall, with the assistance of the office of local government, redraw or establish any precinct lines to ensure that there will be no split precincts in legislative districts.

(h) Any subsequent reapportionment of county legislative bodies shall not affect these legislative districts.

(i) It is the intention of the general assembly in passing a plan apportioning the state senatorial districts to do so in a manner which complies with the constitutional mandates of the United States Constitution and the Constitution of Tennessee and applicable judicial decisions.

3-1-106. Expenses — Mileage allowances. [Effective until November 4, 2014. See the version effective on November 4, 2014.]

(a) Each member of the general assembly shall be paid for the member's expenses in attending legislative sessions and legislative committee meetings,

and such conferences, symposiums, workshops, assemblages, gatherings and other official meetings and endeavors concerning state business and the duties of a legislator, held within or without the state of Tennessee, as are attended by members of the general assembly with the approval or at the direction of the speaker of either house or both houses. Expense and mileage allowances shall be paid for attending sessions and such other meetings as provided in this section. For attendance at such conferences, symposiums, workshops and meetings which are held outside this state, each member shall additionally receive the expense allowance provided in subsection (b) for one (1) day preceding and one (1) day following such activities if such days are required for travel purposes.

(b)(1) Each member shall be paid an expense allowance equal to the allowance granted federal employees for expenditure reimbursement for the Nashville area for each legislative day, which is defined as each day the general assembly, or either house thereof, officially convenes for the transaction of business, or for each day in attendance at any such other meeting as described in subsection (a).

(2) In addition to the other provisions of this section, a member of the general assembly who is attending a conference, symposium, workshop or other official meeting outside this state with the approval or at the direction of the speaker of either house, or both houses, shall be reimbursed for the actual receipted costs of a standard grade hotel room and intra-city transportation. Costs of meals shall be reimbursed out of the expense allowance otherwise provided by this section.

(c) Each member shall be paid a mileage allowance per mile, equal to the mileage allowance authorized for state employees who have been authorized to use personally owned vehicles in the daily performance of their duties, for each mile traveled from the member's home to the seat of government and back, limited to one (1) round trip each week of any legislative session, and one (1) round trip from the member's home to the site of any such other meeting as described in subsection (a). The preceding allowance shall be paid only in the case of attendance at such meetings described in subsection (a) as are held within the state of Tennessee. In the case of travel to out-of-state meetings, each member traveling by commercial conveyance shall be reimbursed for the member's actual travel expenses which can include, but are not limited to, mileage to and from the member's home to the airport, parking fees at the airport, limousine or taxi fares to and from the member's hotel or motel, or public conveyance charges to and from a hotel or motel to a meeting place. Appropriate receipts shall be provided with the travel expenses claim. Each member traveling by the member's personally provided vehicle shall be reimbursed at the mileage rate fixed herein, as adjusted in accordance with the provisions of § 8-23-101. The reimbursement rate provided for by the first sentence of this subsection (c) shall be adjusted after the election of each general assembly at which time the rate shall be revised to reflect the reimbursement rate allowed state employees on the day previous to the regular November election, and the rate as adjusted shall continue in effect during the term of that general assembly. The first such adjustment shall take effect November 6, 1984.

(d)(1) In lieu of the mileage allowance provided in subsection (c), a member who resides more than one hundred (100) miles from Nashville may be reimbursed the cost of a coach-class airline ticket from the member's home

to the seat of government and back, limited to one (1) round trip each week of any legislative session or may be reimbursed the cost of a coach-class airline ticket from the member's home to the seat of government and back, limited to one (1) round trip for attendance, approved by the speaker, for each committee meeting.

(2) In lieu of the mileage allowance provided in subsection (c), a member who resides more than one hundred (100) miles from the site of a committee meeting may be reimbursed the cost of a coach-class airline ticket from the member's home to the airport nearest the site of such meeting and back, limited to one (1) round trip for attendance, approved by the speaker, for each such meeting.

(3) For the purposes of this subsection (d), coach class shall be construed as the lowest fare available.

(4) Each member of the general assembly shall be paid the member's expenses for transportation from an airport to the site of destination pursuant to the provisions of this subsection (d).

(e) Senators, when sitting as a court of impeachment, shall be paid expense and mileage allowances at the same rate and under the same conditions.

(f)(1) Except as provided in subdivision (f)(2), each member of the general assembly shall be paid a monthly expense allowance of one thousand dollars ($1,000), to provide for expenses necessitated in connection with the member's official duties when away from the seat of government including, but not limited to, telecommunications, office, secretarial and other assistance or incidental expenses.

(2) In lieu of being paid the monthly expense in the manner provided in subdivision (f)(1), a member who is receiving early retirement benefits from social security may decline, in whole or in part, any such authorized expense and may apply to the appropriate speaker for reimbursement of actual monthly documented expenses otherwise authorized in this subsection (f); provided, that in no event shall the reimbursement requested exceed the maximum amount of expenditure authorized under subdivision (f)(1). If such member elects to be reimbursed as provided in this subdivision (f)(2), the records of the department of finance and administration shall reflect that such payments are a reimbursement for expenses incurred.

(g) Notwithstanding any provision of this section to the contrary, each member of the house of representatives shall be limited to one (1) round trip each week from such representative's home to the seat of government when the general assembly is not in session to attend meetings for which reimbursement is otherwise authorized by the provisions of this section.

3-1-106. Expenses — Mileage allowances. [Effective on November 4, 2014. See the version effective until November 4, 2014.]

(a) Except as otherwise provided in this section, each member of the general assembly shall be paid for the member's expenses in attending legislative sessions and legislative committee meetings, and such conferences, symposiums, workshops, assemblages, gatherings and other official meetings and endeavors concerning state business and the duties of a legislator, held within or without the state of Tennessee, as are attended by members of the general assembly with the approval or at the direction of the speaker of either house or both houses. Expense and mileage allowances shall be paid for attending

sessions and such other meetings as provided in this section. For attendance at such conferences, symposiums, workshops and meetings which are held outside this state, each member shall additionally receive the expense allowance provided in subsection (b) for one (1) day preceding and one (1) day following such activities if such days are required for travel purposes.

(b)(1) Each member shall be paid an expense allowance equal to the allowance granted federal employees for expenditure reimbursement for the Nashville area for each legislative day, which is defined as each day the general assembly, or either house thereof, officially convenes for the transaction of business, or for each day in attendance at any such other meeting as described in subsection (a).

(2) In addition to the other provisions of this section, a member of the general assembly who is attending a conference, symposium, workshop or other official meeting outside this state with the approval or at the direction of the speaker of either house, or both houses, shall be reimbursed for the actual receipted costs of a standard grade hotel room and intra-city transportation. Costs of meals shall be reimbursed out of the expense allowance otherwise provided by this section.

(3) A member whose principal residence is fifty (50) miles from the capitol or less shall only be paid an expense allowance for meals and incidentals equal to the allowance granted federal employees for such expenses in the Nashville area for each legislative day in Nashville or any day the member participates in any other meeting or endeavor as described in subsection (a) held in Nashville; provided, however, that, if such member is unable to return home at the conclusion of any such day, with the express approval of the speaker of such member's house, the member shall be reimbursed an expense allowance for lodging equal to the allowance granted federal employees for lodging expense in the Nashville area.

(c) Each member shall be paid a mileage allowance per mile, equal to the mileage allowance authorized for state employees who have been authorized to use personally owned vehicles in the daily performance of their duties, for each mile traveled from the member's home to the seat of government and back, limited to one (1) round trip each week of any legislative session, and one (1) round trip from the member's home to the site of any such other meeting as described in subsection (a); provided, that a member whose principal residence is fifty (50) miles from the capitol or less shall be paid a mileage allowance per mile traveled for each legislative day in Nashville or any Monday, Tuesday, Wednesday or Thursday that the member participates in any other meeting or endeavor as described in subsection (a) held in Nashville, limited to one (1) round trip per day. The preceding allowance shall be paid only in the case of attendance at such meetings described in subsection (a) as are held within the state of Tennessee. In the case of travel to out-of-state meetings, each member traveling by commercial conveyance shall be reimbursed for the member's actual travel expenses which can include, but are not limited to, mileage to and from the member's home to the airport, parking fees at the airport, limousine or taxi fares to and from the member's hotel or motel, or public conveyance charges to and from a hotel or motel to a meeting place. Appropriate receipts shall be provided with the travel expenses claim. Each member traveling by the member's personally provided vehicle shall be reimbursed at the mileage rate fixed herein, as adjusted in accordance with the provisions of § 8-23-101. The reimbursement rate provided for by the first sentence of this subsection (c) shall

be adjusted after the election of each general assembly at which time the rate shall be revised to reflect the reimbursement rate allowed state employees on the day previous to the regular November election, and the rate as adjusted shall continue in effect during the term of that general assembly. The first such adjustment shall take effect November 6, 1984.

(d)(1) In lieu of the mileage allowance provided in subsection (c), a member who resides more than one hundred (100) miles from Nashville may be reimbursed the cost of a coach-class airline ticket from the member's home to the seat of government and back, limited to one (1) round trip each week of any legislative session or may be reimbursed the cost of a coach-class airline ticket from the member's home to the seat of government and back, limited to one (1) round trip for attendance, approved by the speaker, for each committee meeting.

(2) In lieu of the mileage allowance provided in subsection (c), a member who resides more than one hundred (100) miles from the site of a committee meeting may be reimbursed the cost of a coach-class airline ticket from the member's home to the airport nearest the site of such meeting and back, limited to one (1) round trip for attendance, approved by the speaker, for each such meeting.

(3) For the purposes of this subsection (d), coach class shall be construed as the lowest fare available.

(4) Each member of the general assembly shall be paid the member's expenses for transportation from an airport to the site of destination pursuant to the provisions of this subsection (d).

(e) Senators, when sitting as a court of impeachment, shall be paid expense and mileage allowances at the same rate and under the same conditions.

(f)(1) Except as provided in subdivision (f)(2), each member of the general assembly shall be paid a monthly expense allowance of one thousand dollars ($1,000), to provide for expenses necessitated in connection with the member's official duties when away from the seat of government including, but not limited to, telecommunications, office, secretarial and other assistance or incidental expenses.

(2) In lieu of being paid the monthly expense in the manner provided in subdivision (f)(1), a member who is receiving early retirement benefits from social security may decline, in whole or in part, any such authorized expense and may apply to the appropriate speaker for reimbursement of actual monthly documented expenses otherwise authorized in this subsection (f); provided, that in no event shall the reimbursement requested exceed the maximum amount of expenditure authorized under subdivision (f)(1). If such member elects to be reimbursed as provided in this subdivision (f)(2), the records of the department of finance and administration shall reflect that such payments are a reimbursement for expenses incurred.

(g) Notwithstanding any provision of this section to the contrary, each member of the house of representatives shall be limited to one (1) round trip each week from such representative's home to the seat of government when the general assembly is not in session to attend meetings for which reimbursement is otherwise authorized by the provisions of this section.

(h) For the purpose of this section, "fifty (50) miles from the capitol" means the most commonly traveled route between the member's principal residence and the state capitol building.

3-2-107. Fiscal notes for revenue bills — Cumulative fiscal notes during session — Comparison of actual fiscal impact — Written summary.

(a)(1) Fiscal notes shall be provided for all general bills or resolutions increasing or decreasing state or local revenues, making sum-sufficient appropriations, or increasing or decreasing existing appropriations or the fiscal liability of the state or of the local governments of the state. Not more than ten (10) days following the introduction of any such bill or resolution, the fiscal review committee shall furnish to the chief clerk of the house or houses of introduction a statement of analysis of the fiscal effect of such bill or resolution and shall prepare and distribute copies of the statement to members of the general assembly. Within ten (10) days following receipt of a request from a member of the general assembly for a fiscal note on any proposed bill or resolution requiring a fiscal note, the fiscal review committee shall prepare a fiscal note statement to accompany such proposal at the time of introduction. Within twenty-four (24) hours following a request by the sponsor of an amendment to any pending measure on which a fiscal note is required by this section, the fiscal review committee shall prepare for the sponsor a fiscal note showing what effect the amendment would have on the estimates made in the fiscal note which applies to the bill or resolution. In regard to any bill or resolution affecting local government, the office of the comptroller of the treasury is directed to provide to the fiscal review committee, upon request, the information necessary to determine the fiscal effect of such bill or resolution.

(2)(A) The fiscal note shall, if possible, include an estimate in dollars of the anticipated change in revenue, expenditures, or fiscal liability under the provisions of the bill or resolution. It shall also include a statement as to the immediate effect and, if determinable or reasonably foreseeable, the long-range effect of the measure. If, after careful investigation, it is determined that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar estimate can be given. The fiscal note statement shall include an explanation of the basis or reasoning on which the estimate is founded, including any assumptions involved.

(B)(i) The fiscal note shall also include a statement as to the immediate effect and, if determinable or reasonably foreseeable, the long-range effect on commerce and jobs in this state. Such impact to commerce statement shall also include, if possible, an estimate in dollars of the anticipated change in costs or savings to commerce under the bill or resolution.

(ii) Beginning January 1, 2014, impact to commerce statements shall be required for general bills or resolutions referred to the following standing committees:

(a) Business and utilities committee of the house of representatives;

(b) Insurance and banking committee of the house of representatives; and

(c) Commerce and labor committee of the senate.

(3) No comment or opinion shall be included in the fiscal note regarding the merits of the measure for which the note is prepared; however, technical

or mechanical defects may be noted.

(b) A cumulative fiscal note shall be prepared weekly by the fiscal review committee and a copy shall be distributed to each member of the general assembly each week while the general assembly is in session. The cumulative fiscal note shall show the cumulative increase or decrease of revenue or expenditures as caused by legislation enacted from the beginning of the session then convened.

(c)(1) Within sixty (60) days after the conclusion of each annual regular legislative session, the fiscal review committee staff shall select a fair and representative sample of at least five (5) public chapters enacted within the preceding five (5) years and compare the actual fiscal impact of each public chapter to the fiscal impact as stated in the cumulative fiscal note.

(2) Upon completing the review, the fiscal review committee staff shall present the results of this review to the fiscal review committee at a meeting of the committee. The committee may also invite testimony from other witnesses, including representatives of executive departments and agencies affected by the bill. A written summary of the results of such review shall be provided to each member of the general assembly each year.

3-6-302. Electronic registration of lobbyists and employers of lobbyists — Lobbyist photographs — Amendment of inaccuracies — Consolidated statements — Fees.

(a)(1) Not later than seven (7) days after becoming an employer of a lobbyist, the employer shall electronically register with the Tennessee ethics commission. Each year thereafter, the employer shall register in the same manner, if the employer continues to employ one (1) or more lobbyists.

(2) Not later than seven (7) days after becoming a lobbyist, the lobbyist shall electronically register with the ethics commission. The information provided by the lobbyist shall include, but not be limited to, the lobbyist's name and birthdate, and the last four (4) digits of the lobbyist's social security number; provided, that the last four (4) digits of the lobbyist's social security number is not a public record and shall only be used by the state or a local governmental entity for purposes related to the administration of chapter 519 of the Public Acts of 2012. Each year thereafter, the lobbyist shall register in the same manner if the lobbyist continues to engage in lobbying.

(3) Within thirty (30) days after registering, each lobbyist shall provide a current photographic portrait to the ethics commission; however, no lobbyist shall be required to submit more than one (1) portrait during any year.

(b)(1) As a component of the registration process, each employer of a lobbyist shall electronically file a registration statement that includes the following information:

(A) Employer's name, business address, telephone number and e-mail address; and, in the case of a corporation, association or governmental entity, the names of the individuals performing the functions of chief executive officer and chief financial officer;

(B) Name, business address, telephone number and e-mail address of each lobbyist authorized to represent the employer; and

(C) Verification that the employer has downloaded from the commission web site or otherwise obtained the commission's manual for lobbyists and

employers of lobbyists.

(2) As a component of the registration process, each lobbyist shall electronically file a registration statement that includes the following information:

(A) Lobbyist's name, business address, telephone number and e-mail address;

(B) Name, business address, telephone number and e-mail address of each employer the lobbyist is authorized to represent;

(C) Subject matters lobbied for such employers during the registration year, to be indicated among general categories listed by the ethics commission;

(D) Name and business address of any member of the lobbyist's immediate family who is an official within the legislative or executive branch; and

(E) The extent of any direct business arrangement or partnership between the lobbyist and any candidate for public office or any official in the legislative or executive branch.

(c) Throughout the year, by amendment electronically filed with the ethics commission, each employer of a lobbyist and each lobbyist shall update, correct or otherwise modify the employer's or lobbyist's registration statement not later than seven (7) days following the occurrence of any event, action or changed circumstance that renders the registration statement inaccurate or incomplete.

(d) A lobbying firm shall be authorized, by rule promulgated pursuant to § 4-55-103(1), to file consolidated lobbyist registration, registration statements, and registration amendments on behalf of all partners, associates and employees within the firm; however, the partners, associates and employees of the firm shall be individually named and shall remain individually accountable for the timeliness and accuracy of the consolidated filing.

(e) Registration fees for employers of lobbyists and registration fees for lobbyists shall be established by rule, promulgated pursuant to § 4-55-103(1). The registration fee shall be paid not later than thirty (30) days following submission of a registration statement or amendment through which an employer reports a lobbyist or additional lobbyist or through which a lobbyist reports an employer or additional employer.

(f) Employer and lobbyist registration statements, as may be amended, as well as lobbyist photographs, shall be promptly posted on the commission's Internet site.

(g) The initial registration year for lobbyists and employers of lobbyists shall be the period from October 1, 2006, through December 31, 2007. Thereafter, the registration year for lobbyists and employers of lobbyists shall be the period of January 1 through December 31.

3-6-309. Registration of person in default on student loans.

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

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

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

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

(b) Upon receiving a copy of a final order as provided in subsection (c) from

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Whether the debtor:

(a) Has entered into a payment plan or service obligation approved

by TSAC or the guarantee agency;

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

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

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

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

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

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

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

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

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

3-9-101. Creation — Membership.

(a) There is hereby created a council on pensions and insurance to be composed of the following members, ex officio:

(1) The speaker of the senate;

(2) The speaker of the house of representatives;

(3) The chair, chair emeritus and first vice chair of the committee on finance, ways and means of the senate; provided, that, if the office of the

chair emeritus is vacant, the second vice chair;

(4) The chair, vice chair and subcommittee chair of the committee on finance, ways and means of the house of representatives;

(5) The comptroller of the treasury;

(6) The commissioner of finance and administration;

(7) The commissioner of personnel;

(8) The state treasurer;

(9) The director of retirement;

(10) Three (3) members of the senate finance, ways and means committee, appointed by the chair of that committee and approved by the speaker of the senate; and

(11) Three (3) members of the house finance, ways and means committee to be appointed by the chair of that committee and approved by the speaker of the house of representatives.

(b) The three (3) members appointed from the house finance, ways and means committee and the three (3) members appointed from the senate finance, ways and means committee shall serve for their full term of office as members of the general assembly and until their successors are selected and qualified if reelected to either house of the general assembly. Members are eligible to succeed themselves as members of the committee. As terms expire, successors shall be selected during the fifteen-day organizational session of the general assembly.

(c) Vacancies among the six (6) appointed members shall be filled in the same manner as in the original selection of members; provided, that if a vacancy occurs during a period of time when the general assembly is no longer in existence, the speaker of the respective bodies shall fill such vacancies.

(d)(1) All legislative members of the council on pensions and insurance shall be voting members; provided, that the recommendations of any nonlegislative members of the committee attending any meeting of the council shall be made a part of the minutes.

(2) A quorum shall consist of seven (7) voting members.

(3) No member of the council shall have a vote except elected representatives or senators and these votes must be public.

(4) The speaker of the senate may designate a member of the senate and the speaker of the house of representatives may designate a member of the house to serve as alternates to vote or otherwise act at council meetings in the absence of the respective speaker. A speaker participating in a council meeting through a designee shall be deemed present at such meeting for purposes of quorum requirements and voting.

(e) The council shall elect from its members a chair, vice chair and any other officers as it considers necessary except the director of retirement, who shall serve as secretary of the council. The division of retirement shall furnish all secretarial, professional, technical and clerical services as required by the council; provided, that all professional and technical services relative to state insurance program issues shall be furnished by the state insurance staff as required by the council.

(f) The council on pensions and insurance shall meet until the new members are duly appointed. The council on pensions and insurance can be called into session at any time by the chair or by a quorum of the council.

(g) All bills pertaining to retirement and state insurance programs shall be referred to this committee for recommendation.

(h) Members of the council on pensions and insurance who are also

members of the general assembly shall each receive the same per diem and travel allowance provided by law for members of the general assembly in attending meetings of the general assembly and committees thereof.

(i) For purposes of this chapter, "state insurance programs" means all insurance programs administered by the state insurance committee or the local education insurance committee pursuant to title 8, chapter 27.

3-12-109. Office of the repealer — Creation — Duties — Online capability.

(a) There is created the office of the repealer within the office of legal services created pursuant to § 3-12-101. The director of legal services shall serve as the administrator of the office of the repealer. The research analysts of the house of representatives and of the senate shall assist the office of legal services in performing the functions of the office of the repealer.

(b) In order to assist the chairs of the standing committees, and other members of the general assembly, it shall be the duty of the office of the repealer to:

(1) Solicit and receive suggestions and supporting information concerning state statutes, uncodified public acts, or rules that may be anachronistic, obsolete, defective, duplicative, contradictory, unnecessary or incomprehensible;

(2) Review and evaluate systematically such suggestions and supporting information;

(3) Identify specific state statutes, uncodified public acts, or rules that may, in fact, be anachronistic, obsolete, defective, duplicative, contradictory, unnecessary or incomprehensible and that may, therefore, be appropriate for legislative consideration of repeal, modification or revision; and

(4) Report findings and recommendations annually, beginning December 1, 2014, to the speaker of the senate, the speaker of the house of representatives, and the chairs of the standing committees.

(c) In consultation with the director of legislative information systems, the office of the repealer shall establish an online capability to solicit and receive suggestions and supporting information pursuant to subdivision (b)(1).

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

(a)(1)(A) A 501(c)(3) organization seeking to operate an annual event for the benefit of that organization located in this state shall submit an annual event application to the secretary:

(i) By December 31, 2008, for the annual event period beginning July 1, 2009, and ending June 30, 2010, and by December 31 in subsequent years, for subsequent annual event periods;

(ii) Notwithstanding any provision of this chapter to the contrary, within fifteen (15) calendar days after May 7, 2009, for the annual event period beginning July 1, 2009, and ending June 30, 2010;

(iii) Notwithstanding any provision of this chapter to the contrary, within fifteen (15) calendar days after March 25, 2010, for the annual event period beginning July 1, 2010, and ending June 30, 2011;

(iv) Notwithstanding any provision of this chapter to the contrary, within five (5) calendar days after March 24, 2011, for the annual event period beginning July 1, 2010, and ending June 30, 2011;

(v) Notwithstanding any provision of this chapter to the contrary, within five (5) calendar days after March 24, 2011, for the annual event period beginning July 1, 2011, and ending June 30, 2012;

(vi) Notwithstanding any provision of this chapter to the contrary, within two (2) calendar days after April 16, 2012, for the annual event period beginning July 1, 2011, and ending June 30, 2012;

(vii) Notwithstanding any provision of this chapter to the contrary, within three (3) calendar days after April 17, 2012, for the annual event period beginning July 1, 2012, and ending June 30, 2013; and

(viii) Notwithstanding any provision of this chapter to the contrary, within three (3) calendar days after April 8, 2013, for the annual event period beginning July 1, 2013, and ending June 30, 2014.

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

(2) The organization shall be a 501(c)(3) organization as defined in § 3-17-102.

(3)(A) A 501(c)(3) organization, including chapters or affiliates operating under the same tax exemption, shall not operate more than one (1) annual event within any twelve-month period beginning July 1 and ending June 30.

(B)(i) An annual event shall be operated at a single location within a county in Tennessee where the 501(c)(3) organization has a physical presence or in a county that is contiguous to a county where the organization maintains a physical presence, as disclosed pursuant to § 3-17-104(a)(2)(A), or a 501(c)(3) organization may operate an annual event on the same day in one (1) county where it has a physical presence in each grand division of the state as described in §§ 4-1-201 — 4-1-204. Such location, or locations, shall be listed as the location of the annual event in the annual event application pursuant to § 3-17-104(a)(16).

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

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

(C) Notwithstanding any provision of this chapter to the contrary, a 501(c)(3) organization authorized to conduct an annual event may change the location of the annual event if the location listed on the annual event application is subsequently unavailable during the time in which the annual event was to be conducted and if the following conditions are

satisfied:

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

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

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

(4)(A) A 501(c)(3) organization may operate an annual event in conjunction with one (1) or more 501(c)(3) organizations under the following circumstances:

(i) Each 501(c)(3) organization files an independent annual event application including, but not limited to, the appropriate application fee, in accordance with the provisions of this chapter;

(ii) Each 501(c)(3) organization submits, with the annual event application, a joint statement of authorization indicating the intention to conduct a joint annual event and listing all organizations participating in such joint event; and

(iii) Each 501(c)(3) applicant is in compliance with the provisions of this chapter and is eligible for inclusion on the omnibus list.

(B) If one (1) or more 501(c)(3) organizations are not eligible for inclusion on the omnibus list, or fail to timely file an annual event application, all applicants for a joint annual event shall be excluded from the omnibus list. No provision of this subdivision (a)(4) shall be construed as authorizing a 501(c)(3) organization participating in a joint event to operate, participate or conduct, jointly or otherwise, more than one (1) annual event within any twelve-month period beginning July 1 and ending June 30.

(5)(A)(i) Except as otherwise provided in this subdivision (a)(5), a 501(c)(3) organization authorized to conduct an annual event pursuant to the provisions of this chapter shall not employ, contract with, or otherwise utilize the services of any person including, but not limited to, any management company, consultant or other entity, to manage, conduct or operate any aspect of an annual event. An authorized annual event shall be managed, conducted and operated only by bona fide directors, officers or employees of a 501(c)(3) organization who:

(a) Manage, conduct or operate only one (1) such annual event in any twelve-month period beginning on July 1 and ending on June 30 each year for any 501(c)(3) organization; and

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

annual event.

(ii) Unpaid volunteer personnel, including members of a 501(c)(3) organization, may be utilized by a 501(c)(3) organization to manage, conduct or operate an annual event.

(B)(i) Nothing in this subdivision (a)(5) or § 39-17-654(b) shall be construed as prohibiting a 501(c)(3) organization from purchasing, leasing or accepting donations of prizes, facilities, locations, advertising services, printing services, telephone services and any records, devices or other supplies necessary to conduct an authorized annual event; provided, that the compensation paid for such purchases or leases shall not be at a price greater than fair market value and shall not be based on a percentage of the proceeds of an annual event or by any other contingency agreement based on the proceeds of an annual event.

(ii) No 501(c)(3) organization shall purchase or lease prizes, facilities, locations, advertising services, printing services, telephone services and any records, devices or other supplies necessary to conduct an authorized annual event from any director, officer or employee of the 501(c)(3) organization.

(iii) [Deleted by 2005 amendment.]

(6)(A) Except as provided in subdivision (a)(6)(B), a 501(c)(3) organization authorized to conduct an annual event pursuant to the provisions of this chapter shall return all of the gross proceeds, less any amount expended pursuant to subdivision (a)(5)(B), to the organization for the purposes or programs described in § 3-17-104(a)(19), but in any event, a 501(c)(3) organization shall return at least twenty-five percent (25%) of gross proceeds to the organization for the purposes or programs described in § 3-17-104(a)(19).

(B) A 501(c)(3) organization that fails to return at least twenty-five percent (25%) of gross proceeds from the annual event to the purposes or programs described in § 3-17-104(a)(19) in any year shall file notice with the secretary on a form prescribed by the secretary. If, in the sound discretion of the secretary, the organization was not at fault in failing to return the required percentage, the organization shall be allowed to file an annual event application for the next annual event period; provided, that if an organization fails to return the required percentage in two (2) consecutive annual event periods, the organization shall be permanently disqualified from filing annual event applications. If an organization is not permitted by the secretary to file an event application pursuant to this subdivision (a)(6)(B), the organization may request a review and appeal pursuant to the procedures set forth in § 3-17-105(g) and (h).

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

(b)(1) The secretary shall review all annual event applications timely submitted and shall transmit an omnibus list of qualifying applicants to the clerk of the senate and the clerk of the house of representatives in an electronic format, as is required by the respective clerks, on or before May 4, 2004, and by March 1 in any subsequent year. The omnibus list shall include, at a minimum, the name of the 501(c)(3) organization, the name of the event, the type of lottery game, the event date for the event and the location or locations of the event. The omnibus list shall list 501(c)(3) organizations alphabetically by county in which the annual event is proposed to be

operated.

(2) In addition to the omnibus list transferred to the clerk of the senate and the clerk of the house of representatives by March 1, 2009, the secretary shall transfer an additional omnibus list listing any organizations approved pursuant to subdivision (a)(1)(A)(ii) and subsection (f) for the annual event period beginning July 1, 2009, and ending June 30, 2010. The list shall be transferred in a manner consistent with subdivision (b)(1) by twelve o'clock (12:00) noon central daylight time (CDT) within thirty (30) calendar days after May 7, 2009.

(3) In addition to the omnibus lists transferred to the clerk of the senate and the clerk of the house of representatives by March 1, 2010, the secretary shall transfer an additional omnibus list listing any organizations approved pursuant to subdivision (a)(1)(A)(iii) and subsection (f) for the annual event period beginning July 1, 2010, and ending June 30, 2011. The list shall be transferred in a manner consistent with subdivision (b)(1) by twelve o'clock (12:00) noon central daylight time (CDT) within thirty (30) calendar days after March 25, 2010.

(4) In addition to the omnibus lists transferred to the clerk of the senate and the clerk of the house of representatives pursuant to subdivisions (b)(1) and (3), the secretary shall transfer an additional omnibus list listing any organizations approved pursuant to subdivision (a)(1)(A)(iv) and subsection (f) for the annual event period beginning July 1, 2010, and ending June 30, 2011. The list shall be transferred in a manner consistent with subdivision (b)(1) by twelve o'clock (12:00) noon central standard time (CST) within ten (10) calendar days after March 24, 2011.

(5) In addition to the omnibus lists transferred to the clerk of the senate and the clerk of the house of representatives pursuant to subdivision (b)(1), the secretary shall transfer an additional omnibus list listing any organizations approved pursuant to subdivision (a)(1)(A)(v) and subsection (f) for the annual event period beginning July 1, 2011, and ending June 30, 2012. The list shall be transferred in a manner consistent with subdivision (b)(1) by twelve o'clock (12:00) noon central standard time (CST) within ten (10) calendar days after March 24, 2011.

(6) In addition to the omnibus lists transferred to the clerk of the senate and the clerk of the house of representatives pursuant to subdivisions (b)(1) and (5), the secretary shall transfer an additional omnibus list listing any organizations approved pursuant to subdivision (a)(1)(A)(vi) and subsection (f) for the annual event period beginning July 1, 2011, and ending June 30, 2012. The list shall be transferred in a manner consistent with subdivision (b)(1) by twelve o'clock (12:00) noon central standard time (CST) within five (5) calendar days after April 16, 2012.

(7) In addition to the omnibus lists transferred to the clerk of the senate and the clerk of the house of representatives pursuant to subdivision (b)(1), the secretary shall transfer an additional omnibus list listing any organizations approved pursuant to subdivision (a)(1)(A)(vii) and subsection (f) for the annual event period beginning July 1, 2012, and ending June 30, 2013. The list shall be transferred in a manner consistent with subdivision (b)(1) by twelve o'clock (12:00) noon central daylight time (CDT) within ten (10) calendar days after April 17, 2012.

(8) In addition to the omnibus lists transferred to the clerk of the senate and the clerk of the house of representatives pursuant to subdivision (b)(1),

the secretary shall transfer an additional omnibus listing of any organizations approved pursuant to subdivision (a)(1)(A)(viii) and subsection (f) for the annual event period beginning July 1, 2013, and ending June 30, 2014. The list shall be transferred in a manner consistent with subdivision (b)(1) by twelve o'clock (12:00) noon central daylight time (CDT) within five (5) calendar days after April 8, 2013.

(c) Upon authorization by the general assembly, the clerk of the house last approving such authorization shall transmit a copy of such authorization to the secretary and to each district attorney general. The secretary shall transmit such authorization to each authorized 501(c)(3) organization at the mailing address listed in such organization's annual event application; provided, that in the case of an organization with multiple chapters, branches or affiliates in Tennessee, such authorization shall be transmitted only to the primary mailing address of the applicant. Such authorization shall be posted on the web site of the secretary with such additional information as the secretary deems appropriate. At a minimum, the secretary shall post the name of the 501(c)(3) organization, the name of the event, the type of lottery game, the event date for the event and the location, or locations, of the event.

(d)(1)(A) An authorized annual event shall be held within twenty-eight (28) calendar days of the event date listed in the annual event application; provided, that for the annual event period beginning July 1, 2011, and ending June 30, 2012, an authorized annual event shall be held within forty-five (45) calendar days of the event date listed in the annual event application; provided further, that nothing in this subdivision (d)(1) shall be construed as allowing two (2) annual events in any one-year period or as allowing a 501(c)(3) organization to operate an annual event at authorized multiple locations on separate days.

(B) A 501(c)(3) organization shall give notice to each chief law enforcement officer of the county or municipality in which the annual event shall be conducted one hundred thirty (130) days prior to the event date listed in the annual event application; provided, that if the event date is within one hundred thirty (130) days from notification of authorization to conduct an annual event, the 501(c)(3) organization shall immediately, upon receipt of such notification and prior to the commencement of selling any tickets, shares, chances or similar records, give notice to the chief law enforcement officer of each county or municipality in which the annual event shall be conducted. In accordance with subdivision (d)(1)(A), if the actual event date is different than the event date listed in the annual event application, a 501(c)(3) organization shall give an additional notice to each chief law enforcement officer of the county or municipality in which the annual event shall be conducted prior to conducting the annual event. For the purposes of this subdivision (d)(1)(B), "notice" means a letter sent by certified mail, or by actual physical delivery of a letter to the chief law enforcement officer or such officer's designee, containing, at a minimum, the following information:

(i) The name of the 501(c)(3) organization;

(ii) The name of the event;

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

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

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

application;

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

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

(viii) The name, address and telephone number of the 501(c)(3) organization's chair, president or chief administrative officer; and

(ix) If applicable, the name, address and telephone number of the person responsible for the operation of the annual event for the 501(c)(3) organization, if different than the organization's chair, president or chief administrative officer.

(2) Except as provided in subdivision (d)(3), upon receipt of authorization from the secretary pursuant to subsection (c), a 501(c)(3) organization may conduct all necessary activities for such event including, but not limited to, planning, advertising, promoting, printing of materials and tickets, shares, chances or similar records and the transportation of such records and other devices.

(3) A 501(c)(3) organization, or any person authorized pursuant to subdivision (a)(5)(A) on behalf of the 501(c)(3) organization, may sell tickets, shares, chances or similar records on the actual date of the annual event and for one hundred twenty (120) days immediately preceding the event date listed in the application and for any period after the event date listed in the annual event application but prior to the actual date of the annual event if such actual date is after the event date in accordance with the provisions of subdivision (d)(1). No person shall sell tickets, shares, chances or similar records outside of the period authorized by this subdivision (d)(3). Notwithstanding any provision of this chapter to the contrary, the secretary shall establish rules and regulations concerning modification of the actual dollar amount at which a ticket, share, chance or other similar record shall be sold by a 501(c)(3) organization authorized to conduct an annual event; provided, that only one (1) such modification shall be made prior to the sale of any ticket, share, chance or other similar record and only in an amount within fifty dollars ($50.00) of the actual dollar amount disclosed pursuant to § 3-17-104(a)(14)(B).

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

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

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

(f)(1) Notwithstanding any provision of this chapter to the contrary, a 501(c)(3) organization seeking to operate an annual event for the benefit of that organization located in this state that does not intend to raise gross revenue from the annual event exceeding five thousand dollars ($5,000) shall submit an annual event application to the secretary:

(A) By December 31, 2008, for the annual event period beginning July 1, 2009, and ending June 30, 2010, and by December 31 in subsequent years, for subsequent annual event periods;

(B) Notwithstanding any provision of this chapter to the contrary, within fifteen (15) calendar days after May 7, 2009, for the annual event period beginning July 1, 2009, and ending June 30, 2010;

(C) Notwithstanding any provision of this chapter to the contrary, within fifteen (15) calendar days after March 25, 2010, for the annual event period beginning July 1, 2010, and ending June 30, 2011;

(D) Notwithstanding any provision of this chapter to the contrary, within five (5) calendar days after March 24, 2011, for the annual event period beginning July 1, 2010, and ending June 30, 2011;

(E) Notwithstanding any provision of this chapter to the contrary, within five (5) calendar days after March 24, 2011, for the annual event period beginning July 1, 2011, and ending June 30, 2012;

(F) Notwithstanding any provision of this chapter to the contrary, within two (2) calendar days after April 16, 2012, for the annual event period beginning July 1, 2011, and ending June 30, 2012;

(G) Notwithstanding any provision of this chapter to the contrary, within three (3) calendar days after April 17, 2012, for the annual event period beginning July 1, 2012, and ending June 30, 2013; and

(H) Notwithstanding any provision of this chapter to the contrary, within three (3) calendar days after April 8, 2013, for the annual event period beginning July 1, 2013, and ending June 30, 2014.

(2) For purposes of the submission deadline provided in subdivision (f)(1)(A) or (f)(1)(H), an annual event application shall not be considered submitted to the secretary until in the physical possession of the secretary as evidenced by the secretary's date and time endorsement on such documentation.

(3) For purposes of the submission deadline provided in subdivision (f)(1)(B), the postmark date on the annual event application shall be considered the date of filing.

3-17-108. Recordkeeping.

(a) Every 501(c)(3) organization subject to the provisions of this chapter and the rules and regulations prescribed by the secretary, shall keep:

(1) True and accurate fiscal records including, but not limited to, all income and expenses; and

(2) True and accurate records regarding the conduct of any annual event, including records of any documents, information, notices, or applications required to be prepared or filed pursuant to this chapter. Unless otherwise provided, such records shall be retained for a period of at least five (5) years after the event date to which they relate.

(b) Upon request and at a reasonable time and place within Tennessee, such records, as well as any other records regarding annual events within this state, shall be made available to the secretary, the state and local government committee of the senate and the state government committee of the house of representatives, the attorney general and reporter, or an appropriate district attorney general for inspection.

4-1-333. Official state botanical garden.

The University of Tennessee Botanical Gardens are designated as the official state botanical garden.

4-1-410. Tennessee's Day of Prayer.

The governor shall designate the first Thursday during the month of May of each calendar year as "Tennessee's Day of Prayer" on which the people of this state may turn to prayer, meditation or otherwise give thanks, in accordance with their own faiths and consciences.

4-1-412. Tennessee heritage protection.

(a)(1) No statue, monument, memorial, nameplate, or plaque which has been erected for, or named or dedicated in honor of, the French and Indian War, American Revolution, War of 1812, United States-Mexican War, the War Between the States, Spanish American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam War, Operation Urgent Fury (Grenada), Operation El Dorado Canyon (Libya), Operation Just Cause (Panama), Operation Desert Shield/Desert Storm (Persian Gulf War I), Operation Enduring Freedom (Afghanistan), and Operation Iraqi Freedom (Persian Gulf War II), and is located on public property, may be relocated, removed, altered, renamed, rededicated, or otherwise disturbed.

(2) No statue, monument, memorial, nameplate, plaque, historic flag display, school, street, bridge, building, park, preserve, or reserve which has been erected for, or named or dedicated in honor of, any historical military figure, historical military event, military organization, or military unit, and is located on public property, may be renamed or rededicated.

(b) No person may prevent the governmental entity having responsibility for maintaining any of the items, structures, or areas described in subsection (a) from taking proper and appropriate measures, and exercising proper and appropriate means, for the protection, preservation, care, repair, or restoration of such items, structures, or areas.

(c) Any entity exercising control of public property on which an item, structure or area described in subsection (a) is located may petition the Tennessee historical commission for a waiver to this section. A petition for waiver shall be in writing and shall state the reason, or reasons, upon which the waiver is sought. At any regularly scheduled meeting of the commission, the commission may grant a petition for waiver by a majority vote of those present and voting. The commission may include reasonable conditions and instructions to ensure that any items, structures, or areas are preserved to the greatest extent possible.

(d) For the purposes of this section, "public property" means all property owned or leased by the state of Tennessee, any county, municipality, metropolitan government, or any other entity that is created by act of the general assembly to perform any public function.

(e)(1) This section shall apply to items, structures, or areas described in subsection (a) in existence prior to January 1, 1970, and those lawfully erected, named or dedicated on or after January 1, 1970.

(2) This section shall not apply to items, structures, or areas described in subsection (a) that are located on public property under the control of, or acquired by, the department of transportation which may interfere with the construction, maintenance, or operation of the public transportation system. The department shall strive to ensure that any such items, structures, or areas are preserved to the greatest extent possible.

4-3-205. License, certification or registration — Notifications — Prerequisites — Web site.

(a) The department and any board, commission, committee, or other governmental entity created pursuant to titles 43 and 44 shall notify each applicant for a professional or occupational license, certification or registration from the department, 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) The department and any board, commission, committee, or other governmental entity created pursuant to titles 43 and 44 shall notify each holder of a professional or occupational license, certification or registration from the department, 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 a holder's license, certification or registration.

(c) The department and any board, commission, committee, or other governmental entity created pursuant to titles 43 and 44 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 professional or occupational license, certification, or registration from the entity.

(d)(1) The department and any board, commission, committee, or other governmental entity created pursuant to this title and titles 43 and 44 shall allow each holder of a professional or occupational license, certification or registration from the department, board, commission, committee, 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) The department and any board, commission, committee or other governmental entity created pursuant to this title and titles 43 and 44 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.

4-3-509. License, certification or registration — Notifications — Prerequisites — Web site.

(a) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall notify each applicant for a professional or occupational license, certification or registration from the department, divi-

sion, 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) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall notify each holder of a professional or occupational license, certification or registration from the department, division, 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 a holder's license, certification or registration.

(c) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department 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 professional or occupational license, certification, or registration from the entity.

(d)(1) The department and any division, board, commission, committee, agency, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall allow each holder of a professional or occupational license, certification or registration from the department, division, 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) The department and any division, board, commission, committee, agency or other governmental entity under the jurisdiction of, or administratively attached to, the department 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.

4-3-717. Grants and loans.

(a) FastTrack infrastructure development, training, and economic development grants from the FastTrack fund shall be made only where there is a commitment by a responsible official in an eligible business for the creation or retention of private sector jobs and private investment, or where the commissioner of economic and community development determines that such investment will have a direct impact on employment and investment opportunities in

the future.

(b)(1) FastTrack industrial infrastructure and industrial site preparation grants or loans to assist eligible businesses may be made only to local governments or to their economic development organizations or other political subdivisions of the state.

(2) Infrastructure grants may not be applied to private land or to land that is expected to become privately owned.

(3) Land owned by a political subdivision of the state shall not be considered private land and any such land that is subject to a purchase option by a private entity shall not be considered to be land that is expected to become privately owned so long as the purchase option covering the land may not be exercised for a period of at least five (5) years following the date of an infrastructure grant pursuant to this section.

(c) FastTrack industrial training grants from the FastTrack fund shall be awarded only to eligible businesses for industrial training under the following conditions:

(1) To support the training of new employees for locating or expanding industries; and

(2) To support the retraining of existing employees where retraining is required by the installation of new machinery or production processes.

(d)(1) FastTrack economic development grants or loans to assist eligible businesses may be made only to local governments or to their economic development organizations or other political subdivisions of the state. FastTrack economic development grants or loans may be used to facilitate economic development activities that are not eligible for FastTrack infrastructure development or job training assistance funds. These activities include, but are not limited to, grants or loans for retrofitting, relocating equipment, purchasing equipment, building repairs and improvements, temporary office space or other temporary equipment related to relocation or expansion. It is the intent of the general assembly that these economic development funds be used in exceptional circumstances when the funds will make a proportionally significant economic impact on the affected community.

(2) The department of economic and community development shall notify and provide to the state funding board a detailed written explanation of the purpose for which a FastTrack economic development grant or loan is being awarded or used when FastTrack economic development grants or loans are awarded or used for activities that are not eligible for FastTrack infrastructure development or job training assistance funds.

(3) The state funding board shall maintain as confidential any records or information obtained in accordance with subdivision (d)(2) that is otherwise confidential pursuant to state law.

(e) The total amount of FastTrack grants or loans made pursuant to these programs shall not exceed seven hundred fifty thousand dollars ($750,000) per eligible business within any three-year period beginning July 1, 2005, unless approved by the state funding board. The state funding board is authorized to establish, by policy or action, the process by which the commissioner of economic and community development shall seek and receive approval for such grants and loans to exceed the dollar limitation.

(f) In determining the level of grant assistance for infrastructure and site preparation consideration shall be given to local ability-to-pay with areas of

lesser ability being eligible for higher grant rates.

(g) Notwithstanding any other law to the contrary, the department shall post the following information on its web site at least quarterly:

(1) The name of the company or entity receiving FastTrack funds;

(2) The amount of the FastTrack funds received;

(3) The number of jobs to be created by a project funded by FastTrack funds; and

(4) The location of a project funded by FastTrack funds.

(h) As used in §§ 4-3-715, 4-3-716 and this section, unless the context otherwise requires:

(1) "Eligible business" means:

(A) Manufacturing and other types of economic activities which export more than half of their products or services outside of Tennessee;

(B) Businesses where more than half of the business' products or services enter into the production of exported products;

(C) Businesses where the uses of the business' products primarily result in import substitution on the replacement of imported products or services with those produced in the state; or

(D) Other types of economic activity, including, but not limited to, research funding, technology projects and other projects that contribute significantly to community development education as determined by the commissioner of economic and community development to have a beneficial impact on the economy of the state; and

(2) "Industrial infrastructure" includes, but is not limited to, water, wastewater, or transportation systems, line extensions or industrial site preparation where it is demonstrated that such infrastructure improvements are necessary for the location or expansion of business or industry. Industrial infrastructure also means significant technological improvements, including, but not limited to, digital switches, fiber optic cabling or other technological improvements determined by the commissioner of economic and community development to have a beneficial impact on the economy of this state.

4-3-727. Local government planning advisory committee.

(a) There is created a local government planning advisory committee composed of seven (7) officers of local governments to be appointed by the governor for a term of four (4) years; provided, that four (4) of the members shall be appointed for an initial term of four (4) years and three (3) for an initial term of two (2) years.

(b) Membership on the committee shall terminate upon:

(1) Separation of any member from local government office; or

(2) The failure of any member to attend three (3) consecutive meetings of the committee.

(c) The governor shall fill vacancies for any unexpired term.

(d) No member shall serve for more than one (1) consecutive term.

(e) 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. All members of the committee shall serve as such without compensation, but they shall be allotted necessary traveling and other appro-

priate expenses while engaged in the work of or for the committee.

(f) The committee has the duty to exercise the powers over regional planning commissions provided for in §§ 13-3-101 and 13-3-102.

(g) The committee shall adopt and implement a conflict of interest policy for committee members. The policy shall mandate annual written disclosures of financial interests, other possible conflicts of interest, and an acknowledgement by committee 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 committee to acknowledge, as a condition of appointment, that they are not in conflict with the conditions of the policy.

4-3-731. Execution of a separate agreement when grant or loan contract reserves right of recovery if person or entity fails to fulfill commitments.

Notwithstanding any law to the contrary, the department of economic and community development shall execute a separate agreement in conjunction with any grant or loan contract awarded pursuant to § 4-3-717(d)(1) that reserves the right of the department to recover the amount of money, grants, funds, or other incentives disbursed by the department, in whole or in part, if the person or entity benefitting from such money, grants, funds, or other incentives fails to fulfill the commitments made by such person or entity to the department.

4-3-737. Small business incentive.

(a)(1) As an incentive to encourage the creation of more small businesses in this state by making access to essential information necessary to begin a business user friendly, the department of economic and community development, in consultation with the office of small business advocate, created within the office of the comptroller of the treasury pursuant to § 8-4-702, shall develop a web page to aid the user in obtaining information concerning state laws, regulations and requirements that apply to the specific type of small business the user desires to form. The web page shall have its own domain name with a URL that indicates it is related to small businesses. The web page shall also contain hyperlinks to such laws, regulations and requirements. The hyperlinks shall include, but not be limited to:

(A) Forms or documents which a state department or agency requires to be filed for that type of business to operate in Tennessee;

(B) Contact information and web sites for boards and commissions which regulate the specific type of entity to be formed; and

(C) Notices regarding potential and pending rule making hearings for the various boards and commissions.

(2) The web page shall also provide notice to the user of the importance of checking with the local government where the business is to be located to ensure compliance with local zoning and code requirements and may provide a hyperlink to the county or municipality's web page, if one is maintained by the county or municipality.

(b) All departments and agencies with regulatory authority over business shall provide assistance in the compilation of this information.

(c) The department of economic and community development shall monitor the web page to insure the accuracy of its information and to update it as

necessary.

(d) The office of small business advocate shall report the status of the project no later than February 15, 2013, to the commerce and labor committee of the senate and the business and utilities committee of the house of representatives.

4-3-738. Made in Tennessee Act — Pilot project to encourage producers and promotion of Tennessee products.

(a) This section shall be known and may be cited as the "Made in Tennessee Act."

(b) The purpose of this section is to create a pilot project that will terminate January 1, 2016, unless extended by the general assembly, to encourage producers and promotion of non-agricultural products made in this state.

(c) The University of Tennessee Center for Industrial Services may:

(1) Use a logo or seal for "Made in Tennessee" products and goods, except for food and agricultural products, that have been substantially processed, fabricated, manufactured or otherwise transformed in this state; and

(2) Take appropriate steps to protect the logo or seal from misuse or infringement as deemed necessary by the center.

(d) Prior to use of the logo or seal, a producer or retailer shall register with the center and comply with all terms, conditions and requirements for use of the logo or seal as determined by the center. A list of all producers and retailers registered with the center may be made available on the center's web site.

(e) The center may deny, suspend or revoke a producer or retailer's registration and the ability to use the logo or seal if the producer or retailer fails to comply with the terms, conditions and requirements promulgated by the center.

(f) The department may provide technical assistance to the center upon request.

(g) The center may seek any available grants and other sources of funding to implement and administer the pilot program described in this section.

(h) The center shall report on the pilot project to the commerce and labor committee of the senate and the business and utilities committee of the house of representatives no later than February 1, 2015, and annually thereafter if the pilot project is extended by the general assembly.

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

(1) "Agricultural products" means horticultural, poultry, dairy and farm products, livestock and livestock products, harvested trees, nursery stock and nursery products;

(2) "Center" means the University of Tennessee Center for Industrial Services;

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

(4) "Producer" means any individual or legal entity engaged in the processing, fabrication, manufacture or other transformation of goods or products, other than food and agricultural products, in this state; and

(5) "Retailer" means any individual or legal entity engaged in the business of making sales of a producer's goods or products to the public.

4-3-1003. Establishment and transfer of sections.

(a) To discharge the authority, powers and duties hereby imposed upon the department of finance and administration and the commissioner of the department, there are created within the department the following sections:

(1) The accounts section;

(2) The architectural section;

(3) The budget section;

(4) The data processing section; and

(5) The program coordinating section.

(b) The commissioner is authorized to assign to these sections the duties imposed upon the department and the commissioner thereof. The commissioner is authorized to combine, consolidate or abolish any of these sections, or to create such new sections as are necessary to carry out the duties imposed upon the commissioner and the department.

(c) [Deleted by 2013 amendment, effective May 16, 2013.]

4-3-1006. Budget powers.

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

(1) Prepare and submit to the governor, annually, a state budget document in accordance with the provisions outlined in title 9, chapter 4, part 51;

(2) Prescribe forms for the preparation of the budget estimates by all the spending agencies of state government, and furnish every state officer, department and agency with a sufficient number of the budget estimate forms not later than October 15 of each year;

(3) Prescribe the classifications of expenditures and revenues for the purposes of budget making and accounting;

(4) Examine and recommend for approval the work program and quarterly allotments of each spending agency of state government before the appropriations made for such agency shall become available for expenditure;

(5) Examine and recommend for approval any changes made in the work program and quarterly allotments of any spending agency during the fiscal year;

(6) Investigate duplication of work among the departments and other agencies of state government, study the organization and administration of such departments and agencies, and formulate plans for better management and more efficient and economical operation;

(7) Prepare and report to the governor when requested, any financial data or statistics that the governor may require, such as monthly or quarterly estimates of the state's income, and cost figures on the current operations of state institutions and other agencies;

(8) Examine all requisitions for purchases as the department may deem necessary, with power and authority to refuse to approve or honor any and all requisitions for purchases, except requisitions for purchases of the general assembly, state court system, attorney general and reporter, secretary of state, comptroller of the treasury, and state treasurer; and

(9) Review and approve or refuse to approve any personal services, professional services, or consultant services contract concerning management services of all types, management studies, planning services, public relations, evaluations, systems designs, data processing, auditing, or ac-

counting services entered into by an executive branch department or agency of state government.

4-3-1011. [Transferred.]

4-3-1012. Transfer of office of energy management functions relating to state buildings and state-owned facilities.

(a) The state building energy management program shall be transferred from the department of general services to the department of finance and administration, as to any functions related to the energy management program for state buildings and state-owned facilities. All staff, staff positions, equipment, supplies, property, funds and other resources of the functions referenced above shall be transferred to the department of finance and administration. Energy management functions not related to state buildings and state-owned facilities shall remain with the department of general services.

(b) The duties of the department relative to energy management shall include:

(1) Defining and implementing specific yearly conservation/energy management goals for state-owned facilities in coordination with the state architect's office and the state building commission;

(2) Defining and implementing an energy efficiency code for future state buildings to include a review of renewable options by means of life-cycle analysis. This life-cycle analysis of renewable options shall be mandatory;

(3) Developing and implementing, in coordination with the department of general services, a formalized monitoring and analyzing schedule for utility data from state buildings, including both costs and usage;

(4) Developing and implementing an energy management program for state government; and

(5) Preparing an annual report on the activities of the department relative to energy management. The department shall publish the report on the department's web site and shall submit the report to the governor, the speakers of the senate and the house of representatives, the chairs of the government operations committees of the senate and the house of representatives and the chairs of the energy, agriculture and natural resources committee of the senate and the agriculture and natural resources committee of the house of representatives, or their successor committees. The report shall include savings realized by the state as a result of the office's activities expressed in both units of energy saved and monetary cost-avoidance.

(c) The energy management program described in subsection (b) may include, but is not limited to, implementing energy cost saving measures in buildings under the jurisdiction of the state building commission. The measures may include, but shall not be limited to, maintenance, repair or replacement of lighting and mechanical equipment and related controls. Energy cost saving measures may be implemented through contracts with energy professionals, including, but not limited to, energy service companies, commissioning and retro commissioning firms and agencies and energy auditing consultants. Such contracts are subject to approval by the state building commission. All departments, institutions and agencies having control of, or responsibility for, the management or operation of buildings under the

jurisdiction of the state building commission shall cooperate with state building energy management in implementing energy cost saving measures.

4-3-1013. Authority to develop prescription drug programs and to contract with pharmacy benefits managers (PBMs).

(a) The TennCare bureau is authorized to develop prescription drug programs and to contract with one (1) or more pharmacy benefit managers (PBMs) or other appropriate third party contractors to administer all or a portion of such prescription drug programs for the TennCare program. It is the legislative intent that, insofar as practical, any such pharmacy programs shall be developed and implemented in a manner that seeks to minimize undue disruption in successful drug therapies for current TennCare enrollees.

(b) Under such a contract, a PBM may be directed by the TennCare bureau to:

(1) Provide information to the state TennCare pharmacy advisory committee for making recommendations related to a state preferred drug list (PDL);

(2) Provide claims processing and administrative services for the TennCare program;

(3) Provide data on utilization patterns to the bureau of TennCare, the department of finance and administration, TennCare managed care organizations, the University of Tennessee Health Science Center, and other entities determined by the TennCare bureau;

(4) Conduct prospective and retrospective drug utilization review as directed by the bureau of TennCare;

(5) Establish procedures for determining potential liability of third party payers, including, but not limited to, Medicare and private insurance companies, for persons receiving pharmacy services through the state of Tennessee;

(6) Maintain a retail pharmacy network to provide prescription drugs through state programs;

(7) Set pharmacy reimbursement rates and dispensing fee schedules necessary to maintain an adequate retail pharmacy network and increase the cost-effectiveness of state pharmacy purchases;

(8) Negotiate supplemental rebates with pharmaceutical manufacturers for prescription drug expenditures;

(9) Propose other initiatives to the bureau of TennCare to maintain or improve patient care while reducing prescription drug costs; and

(10) Provide other services as directed by the bureau of TennCare.

(c) The state TennCare program shall be authorized to receive one hundred percent (100%) of all rebates and any other financial incentives directly or indirectly resulting from the state's contract with any PBM.

(d) The PBM contract may include performance goals and financial incentives for success or failure in attaining those goals. It is the legislative intent that such goals and incentives shall include the reliable and timely performance of any system of prior authorization that may be implemented pursuant to pharmacy programs authorized by this section.

(e) To the extent permitted by federal law and the TennCare waiver, the bureau of TennCare may implement, either independently or in combination with a PDL, cost saving measures for pharmaceutical services including, but

not limited to, tiered co-payments, reference pricing, prior authorization, step therapy requirements, exclusion from coverage of drugs or classes of drugs, mandating the use of generic drugs, and mandating the use of therapeutic equivalent drugs.

(f) The TennCare bureau shall be required to annually report to the health committee of the house of representatives and the health and welfare committee of the senate concerning pharmacy benefits under the medical assistance program provided pursuant to title 71, chapter 5, on or before January 15 of each calendar year, beginning on January 15, 2013. The report shall specifically report on the use and cost of opioids and other controlled substances in the program.

4-3-1016. Restrictions on carry forwards and transfers of funds to the state general fund.

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

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

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

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

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

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

(3) Department of finance and administration, electronic fingerprint imaging systems fund, created or referenced in title 67, chapter 4, part 6;

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

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

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

(7) Department of finance and administration, sexual assault program, created or referenced in title 40, chapter 24, part 1;

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

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

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

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

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

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

(14) Department of environment and conservation, Tennessee board of water quality, oil and gas reclamation fund, created or referenced in title 60, chapter 1, part 4;

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

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

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

(18) Department of environment and conservation, drycleaner environmental response fund, created or referenced in title 68, chapter 217, part 1;

(19) Department of environment and conservation, environmental protection fund, created or referenced in title 68, chapter 203, part 1;

(20) Department of environment and conservation, heritage conservation trust fund, created or referenced in title 11, chapter 7, part 1;

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

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

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

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

(25) Department of environment and conservation, surface mine reclamation fund, created or referenced in title 59, chapter 8, part 2;

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

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

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

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

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

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

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

of this title;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(49) Department of commerce and insurance, auctioneer education and recovery account, created or referenced in title 62, chapter 19, part 1;

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

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

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

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

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

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

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

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

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

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

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

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

(62) Tennessee bureau of investigation, expunged criminal offender pretrial diversion database accumulated fees, created or referenced in title 38, chapter 6, part 2 and title 40, chapter 32;

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

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

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

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

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

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

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

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

(71) Court system court automation hardware replacement revolving loan fund, created or referenced in title 16, chapter 3, part 10;

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

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

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

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

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

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

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

(79) Tennessee regulatory authority, deferred revenue account, created or referenced in title 65, chapter 1, part 1 and any other reserve fund

maintained by the Tennessee regulatory authority;

(80) Tennessee regulatory authority, assistive telecommunication device distribution program, created or referenced in title 65, chapter 21, part 1; and

(81) Tennessee advisory commission on intergovernmental relations, accumulated balances or carry-over funds, created or referenced in chapter 10, part 1 of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

4-3-1018. Energy management program — Liaisons — Action — Re-evaluation.

(a) To assist the department of finance and administration in developing an energy management plan for state government under §§ 4-3-1017 — 4-3-1019, each department of state government, institution or agency having control of or responsibility for the management or operation of a building used by state

government, including the postsecondary public institutions and subparts of the University of Tennessee, the state board of regents and the state board of education, whether owned or leased, shall designate a representative for each building or group of buildings under one (1) management as a liaison with the department. Such person shall be the building manager or superintendent or someone familiar with the operation of the building.

(b) Each person designated as a liaison with the department shall cooperate with and assist the department in conducting energy audits of the building or group of buildings for which the person is the designated liaison, as well as any other studies or plans carried out by the department under this chapter or energy efficiency codes. Duties of the person shall include, but not be limited to, collecting energy use and other data requested by the department, assisting the department in identifying energy use reduction opportunities, implementing energy use reduction efforts and monitoring and reporting results following such efforts.

(c)(1) When the department, in accordance with §§ 4-3-1017 — 4-3-1019, makes recommendations for energy conservation measures in any building for which an energy audit, or other similar study, has been conducted, it is the duty of the department, institution, board or agency and the building superintendent or manager to implement these recommendations.

(2) Implementation shall occur as soon as is feasible, taking into account the nature of the recommendations and the availability of personnel for implementation.

(3) Any recommendation in conflict with health or building codes shall be superseded by such codes, and such conflict shall be reported to the department.

(4) Any recommendation requiring capital outlays for equipment, building modifications, or similar actions and for which there are no appropriated funds, shall be submitted by the department and the involved department, institution, board, commission or agency to the state building commission, with an estimate of savings that would result from implementation of such recommendations, the anticipated costs of implementation and a recommendation for action. Such submissions shall be made and shall pass through such intermediate steps as are required by the laws and regulations governing capital requests or building projects by such department, institution, board, commission or agency.

(d)(1) After a recommendation has been implemented and in effect for a reasonable period of time, the effects and results of the implementation shall be reevaluated by the department, in cooperation with the designated building liaison.

(2) In reevaluating the recommendations, the department shall consider any hardship or inconvenience, either to affected workers or the public, caused by such recommendation, the actual, as opposed to estimated, savings effected by such recommendations, and such other factors as the department, the liaison persons or the involved department, institution or agency may consider important.

(3) After such reevaluation, any implemented recommendation may be modified or rescinded.

(4) The department shall report to the energy, agriculture and natural resources committee of the senate and the agriculture and natural resources committee of the house of representatives, or their successor committees, on

the implementation of the plan, and on compliance therewith. Copies of these reports will be made available to interested agencies.

4-3-1021. Monitoring and auditing of pharmacy benefits manager's compliance with state pharmacy benefits management contract.

(a) The department of finance and administration shall monitor, and cause to be audited by its qualified independent auditor, the pharmacy benefits manager's compliance with any state pharmacy benefits management contract. The commissioner of finance and administration, or the commissioner's designee, shall report, by July 1 of each year, on the pharmacy benefits manager's contract compliance to the speaker of the senate, the speaker of the house of representatives and the fiscal review committee.

(b) In order to comply with subsection (a), the department shall, after one (1) year of entering into or renewing any state pharmacy benefits management contract, annually perform a single risk assessment to determine those areas of the contracts that pose the greatest risk of noncompliance, fraud, waste and abuse. Upon completion of the risk assessment, the department shall incorporate the results of the risk assessment into its audit and monitoring plan. The department shall update the risk assessment when contract amendments result in additional risks of noncompliance, fraud, waste, or abuse. The department shall consult with the office of the comptroller of the treasury in determining the scope and extent of the audit and monitoring plan procedures. The department may submit the updated audit and monitoring plan, along with any audit or monitoring findings, to comply with the reporting requirement in subsection (a).

(c) The audit and monitoring plan shall address all state pharmacy benefits management contracts and be designed to examine source documentation whenever such documentation is available. The plan shall include, but not be limited to, a review of:

(1) Repricing of pharmacy claims at the drug level;

(2) Validation of the national drug code (NDC) usage;

(3) Appropriateness of the nationally recognized reference prices, or average wholesale price (AWP), in accordance with § 56-7-3104;

(4) Eligibility of beneficiaries for pharmacy claims paid;

(5) For pharmacy benefits contracts entered into or renewed on or after July 1, 2013, reconciliation of the pharmacy benefits manager's payments to pharmacies with the state's reimbursement to the pharmacy benefits manager;

(6) Confirmation that the pharmacy benefits manager's payments to pharmacies do not reflect disparity among network pharmacies attributable to preferential treatment of one (1) or more pharmacies;

(7) Recalculation of discount and dispensing fee guarantees;

(8) Review of the state's claim utilization to ensure that per claim rebate guarantees were accurately calculated by the pharmacy benefits manager;

(9) Review of rebate contracts between the pharmacy benefits manager and five (5) drug manufacturers, to be selected by the benefits administration division of the department, and the contracted auditor to ensure that eligible rebate utilization was accurately invoiced on behalf of the state;

(10) Comparison of total rebates collected by the PBM (pass-through rebates) to the minimum rebate guarantees (per claim rebates) to ensure that annual reconciliation of rebate payments to the state represented the greater of the two (2) amounts;

(11) Monitor the activities of the pharmacy benefits manager to ensure that the contractor is conducting audits and other reviews of pharmacies as provided in the contractor's scope of services; and

(12) Consideration of other industry related risks to reduce the risk of financial losses due to fraud, waste and abuse.

(d) The department shall seek appropriate remedies for contract noncompliance and occurrences of fraud, waste or abuse that are discovered through monitoring or audits.

(e) The department shall have the authority to contract with a qualified independent auditor experienced in conducting pharmacy audits for auditing the pharmacy benefits manager's compliance with the contract. No contracted qualified independent auditor shall subcontract any part of the plan described in this section without the express written approval by the commissioner, or the commissioner's designee, and notification in writing to the comptroller of the treasury.

(f) This section shall apply to any state or local health insurance plan established under title 8, chapter 27.

4-3-1104. Divisions — Creation.

(a) In order to discharge the functions of this department, there are hereby created within the department the following divisions:

(1) The food services management division;

(2) The motor vehicle management division;

(3) The photographic division;

(4) The printing division;

(5) The property services management division;

(6) The public works division; and

(7) The purchasing and administration division.

(8) [Deleted by 2013 amendment, effective April 23, 2013.]

(b) The commissioner shall assign to the divisions the functions and duties imposed upon the department. The commissioner may combine, consolidate or abolish any of the divisions, or create such new divisions as are necessary to carry out the duties imposed upon the department, subject to the approval of the commissioner of finance and administration.

4-3-1105. Powers and duties.

The department of general services has the power and is required to:

(1) Establish facilities for the testing of any materials, supplies or equipment purchased, or to be purchased, for this state or any of its departments, institutions or agencies, use the testing facilities of any other state department, institution or agency, and contract for testing services from any other private or public facility;

(2) Sell supplies, materials and equipment that are surplus, obsolete or unused;

(3) Have general care and supervision of all central storerooms operated by the state government, and establish and maintain such other central storerooms as may be necessary for the proper administration of title 12,

chapter 3;

(4) Establish, maintain and conduct a central mail room, central postage metering, and centralized outgoing mail services for all state departments, institutions and agencies located at the state capitol, except those exempted by the commissioner;

(5) Prepare, publish and keep current a purchasing manual containing, among other things, the material provisions of title 12, chapter 3, the rules and regulations of the department and the procurement commission, and an explanation of the procedures followed in the handling and making of purchases and contracts under this part;

(6) Exercise, with the approval of the procurement commission, all the rights, powers and duties vested by title 12, chapter 5;

(7) Furnish, when requested, without cost, to the chief fiscal officer in each county and in each municipality of this state the current catalog or price listing of goods and materials, which the department may purchase for local government, by virtue of § 12-3-1201;

(8) Supervise the maintenance of public buildings, including the state capitol and capitol annexes except as otherwise provided by § 4-8-101(a)(2), and of the capitol grounds, and the supplying of furniture and fixtures to these buildings;

(9) Study the use of state-owned automobiles by the state departments, offices and agencies, and establish rules and regulations for the housing, repair and operation of such automobiles;

(10) Make provisions for the centralization of such departmental services as mimeographing, duplicating, addressographing, copying, typesetting, copy preparation and binding, in order to save duplicate outlays for costly equipment used only part time;

(11) Supervise and maintain all public memorials and monuments erected or owned by the state, except where the supervision and maintenance is otherwise provided by law;

(12) Exercise general custodial care of all real property of the state;

(13) Provide for the supervision of the planning, preparing and serving of food including, but not limited to, the training and supervision of state food service employees;

(14) Exercise all functions previously exercised by the state educational agency for surplus property, as described in § 49-1-304;

(15) Supervise and regulate parking in the main state employee parking lot at the base of Capitol Hill in Nashville, as well as any other state employee parking lots now in existence or hereafter created throughout the state, except as provided in § 4-8-201, the parking lot adjacent to the Supreme Court Building in Nashville that is utilized by the personnel employed in the Supreme Court Building, and the underground parking facility adjacent to the War Memorial Building in Nashville. Such regulation shall include, but not be limited to, issuance of parking stickers to state employees, assessment of civil penalties in the manner provided in § 4-8-203, and removal of unauthorized vehicles. Such regulations shall not be applicable to tourists with out-of-state tags;

(16) Supervise the supplying of utilities to the state-owned buildings under the department's control and implement a system for monitoring and controlling the cost of such utilities;

(17) Provide state vehicle energy management life-cycle (operational and

maintenance) cost analysis;

(18) Define and implement an energy efficiency code for state procurement of equipment and appliances;

(19) Administer the state employee van pool program;

(20) Prepare an annual report on the activities of the department concerning the definition and implementation of an energy efficiency code for state procurement of equipment and appliances. The department shall publish the report on the department's web site and submit the report to the governor, the speakers of the senate and the house of representatives, the chairs of the government operations committees of the senate and the house of representatives, and the chairs of the energy, agriculture and natural resources committee of the senate and the agriculture and natural resources committee of the house of representatives, or their successor committees. The report shall include savings realized by the state as a result of the office's activities expressed in both units of energy saved and monetary cost-avoidance;

(21) Implement and administer the procurement of energy-efficient motor vehicles as provided in this part; and

(22) Impose a reasonable real estate transaction fee on all real estate transactions when the transaction is processed through the department of general services and to grant a fee waiver when deemed appropriate by the department. Said fee structure and waivers shall be subject to approval by the state building commission.

4-3-1109. Energy efficient state vehicles.

(a) The commissioner shall encourage the acquisition of energy-efficient and alternative fuel motor vehicles in the fleet of state vehicles. Each year, every effort should be made to achieve a target goal that one hundred percent (100%) of newly purchased passenger motor vehicles be energy-efficient or alternative fuel motor vehicles. The department shall ensure that at least twenty-five percent (25%) of newly purchased passenger motor vehicles procured for use in areas designated by the United States environmental protection agency (EPA) as nonattainment areas shall be hybrid-electric vehicles or vehicles powered by natural gas; provided, that such vehicles and fueling infrastructure are available at the time of procurement and such vehicles are purchased at competitive prices. In the event that such vehicles or fueling infrastructure is not available at the time of procurement, the department may instead meet this mandate by procuring compact fuel-efficient vehicles. In areas not designated by the EPA as nonattainment areas, the department shall ensure that at least twenty-five percent (25%) of newly purchased passenger motor vehicles are hybrid-electric vehicles, vehicles powered by natural gas, or compact fuel-efficient vehicles; provided, that such vehicles are purchased at competitive prices.

(b)(1) Commencing June 30, 2013, the commissioner shall compile and maintain information on the nature of passenger motor vehicles that are owned and leased by the state, including, but not limited to:

(A) The number of passenger motor vehicles purchased during the fiscal year categorized by energy-efficiency; and

(B) The number of passenger motor vehicles owned as of June 30 of each year categorized by energy-efficiency.

(2) The commissioner shall file an annual report with the governor and the general assembly concerning such passenger motor vehicles. The report shall include at a minimum:

(A) Problems or concerns the state may have experienced in meeting the target goal set pursuant to subsection (a) relative to obtaining such energy-efficient motor vehicles;

(B) Any savings or increased expenditures to the state in the purchase of, as well as the operation and maintenance cost of, such motor vehicles;

(C) Plans for integrating energy-efficient motor vehicles identified in subdivisions (c)(1)(E) and (G) into the state passenger motor vehicle fleet;

(D) The volume of gasoline or diesel displaced by the usage of energy-efficient or alternative fuel vehicles; and

(E) The emissions reduction achieved by the usage of energy-efficient or alternative fuel vehicles.

(3) The information compiled and maintained pursuant to subdivisions (b)(1) and (2) shall be made accessible to the public on the department's web site through a prominent link provided on the home page. In addition, the department shall submit an annual report containing the information compiled and maintained pursuant to subdivisions (b)(1) and (2) to the speaker of the senate and the speaker of the house of representatives and to the chairs of the committees concerning government operations and to the chair of the energy, agriculture and natural resources committee of the senate and the chair of the agriculture and natural resources committee of the house of representatives.

(c) For purposes of this section, unless the context otherwise requires:

(1) "Energy-efficient motor vehicle" means a passenger motor vehicle that is:

(A) An alternative fuel vehicle as defined by the Energy Policy Act of 1992 (P.L. 102-486);

(B) A flexible fuel vehicle (FFV) utilizing ethanol, biodiesel, or any other commercially available alternative fuel approved by the United States department of energy;

(C) A hybrid-electric vehicle (HEV);

(D) A compact fuel-efficient vehicle, defined as a vehicle powered by unleaded gasoline that has a United States EPA estimated highway gasoline mileage rating of at least twenty-five miles per gallon (25 mpg) or greater for the model year purchased;

(E) An electric vehicle (EV);

(F) A vehicle powered by natural gas; or

(G) A vehicle powered by ultra low sulfur diesel fuel that meets Bin 5, Tier II emission standards mandated by the EPA and that has an EPA estimated highway mileage rating of at least thirty miles per gallon (30 mpg) or greater for the model year purchased; and

(2) "Passenger motor vehicle" means a motor vehicle designed for carrying six (6) or fewer adult passengers and used for the transportation of persons; provided, that vans, including cargo vans, trucks, sport utility vehicles, and police pursuit vehicles shall not be considered passenger motor vehicles.

(d) For purchases of vehicles that are not passenger motor vehicles, including cargo vans, trucks, and sport utility vehicles, the department is encouraged to make reasonable efforts to achieve a target goal that at least five percent (5%) of newly purchased vehicles are vehicles powered by natural gas; provided, that such vehicles and fueling infrastructure are available at the

time of procurement and such vehicles are purchased at competitive prices.

(e) In order to facilitate the development of natural gas fueling infrastructure, the department is authorized to participate in such pilot projects as may be necessary to insure the availability of natural gas fueling infrastructure throughout the interstate highway corridors in Tennessee.

4-3-1304. Administration of regulatory boards — Notification of vacancy — Termination of regulatory board — Expediting issuance of license.

(a) Except as provided in § 68-115-103 relative to the Tennessee athletic commission, all state regulatory boards are attached to the division of regulatory boards, which is authorized to administer all the administrative functions and duties of the regulatory boards, except those discretionary regulatory duties and powers vested by law in the board members. The regulatory boards attached to the division are as follows:

(1) Auctioneer commission;

(2) Board for licensing general contractors;

(3) Board of accountancy;

(4) Board of barber examiners;

(5) Board of cosmetology;

(6) Board of examiners for architects and engineers;

(7) Board of examiners for land surveyors;

(8) Board of funeral directors and embalmers;

(9) Commission on firefighting personnel standards and education;

(10) Motor vehicle commission;

(11) Personnel recruiting services board;

(12) Private investigation and polygraph commission;

(13) Real estate commission; and

(14) All other boards, commissions and agencies created to regulate professions, vocations and avocations in this state, except that there shall not be included the Tennessee athletic commission, the board of healing arts, the board for licensing hospitals, the stream pollution control board, the pest control board, the board of examiners for registered professional sanitarians, the board of examiners of miners or the board of law examiners.

(b) Each regulatory board incurring a vacancy shall notify the appointing authority in writing within ninety (90) days after the vacancy occurs. All vacancies on the state regulatory boards attached to the division of regulatory boards 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 such board has more than one (1) vacancy that is more than one hundred eighty (180) days in duration, such board shall report to the house of representatives and senate government operations committees why such vacancies have not been filled.

(c) If more than one half (½) of the positions on any state regulatory board are vacant for more than one hundred eighty (180) consecutive days, such state regulatory board shall terminate; provided that such board shall wind up its affairs pursuant to § 4-29-112. If a state regulatory board is terminated pursuant to this subsection (c) it shall be reviewed by the evaluation committees pursuant to the Uniform Administrative Procedures Act, compiled in

chapter 5 of this title, before ceasing all its activities. Nothing in this section shall prohibit the general assembly from continuing, restructuring, or re-establishing a state regulatory board.

(d)(1) Notwithstanding any other law to the contrary, each board attached to the division of regulatory boards shall establish a procedure to expedite the issuance of a license, certification or permit to perform services regulated by each such board to a person:

(A)(i) Who is certified or licensed in another state to perform services in a state other than Tennessee;

(ii) Whose spouse is a member of the armed forces of the United States;

(iii) Whose spouse is the subject of a military transfer to this state; and

(iv) Who left employment to accompany the person's spouse to this state; or

(B)(i) Who, as a member of the armed forces of the United States, carries a current license or certification in another state to perform substantially similar services in a state other than Tennessee; and

(ii) Who applies for a license in Tennessee within one hundred eighty (180) days of:

(a) Retiring from the armed forces of the United States;

(b) Receiving any discharge other than a dishonorable discharge from the armed forces of the United States; or

(c) Being released from active duty into a reserve component of the armed forces of the United States.

(2) The procedure shall include:

(A) Issuing the person a license, certificate or permit if in the opinion of the board, the requirements for certification or licensure of such other state are substantially equivalent to that required in this state; or

(B) Developing a method to authorize the person to perform services regulated by the board in this state by issuing the person a temporary permit for a limited period of time to allow the person to perform services while completing any specific requirements that may be required in this state that were not required in the state in which the person was licensed or certified.

(e) The commissioner and each regulatory board shall, upon application for certification or licensure, accept military education, training or experience completed by a person described in subdivisions (d)(1)(B)(ii)(*a*)-(*c*) toward the qualifications to receive the license or certification if such education, training or experience is determined by the commissioner or board to be substantially equivalent to the standards of this state.

(f)(1) Notwithstanding any other law to the contrary, the license, certification or permit issued by a board, commission or agency attached to the division of regulatory boards of any member of the national guard or a reserve component of the armed forces of the United States called to active duty that expires during the period of activation shall be eligible to be renewed upon the licensee being released from active duty without:

(A) Payment of late fees or other penalties;

(B) Obtaining continuing education credits when:

(i) Circumstances associated with the person's military duty prevented the obtaining of continuing education credits and a waiver

request has been submitted to the appropriate regulatory board; or

(ii) The person performs the licensed or certified occupation as part of such person's military duties and provides documentation to the appropriate regulatory board; or

(C) Performing any other act typically required for the renewal of the license or certification.

(2) The license, certification or permit shall be eligible for renewal pursuant to subdivision (f)(1) for six (6) months from the person's release from active duty.

(3) Any person described in subdivision (f)(1) shall provide the regulatory board which issued the license, permit or certification such supporting documentation evidencing activation as may be required by the regulatory board prior to the renewal of any license pursuant to this subsection (f).

4-3-1306. License, certification or registration — Notifications — Prerequisites — Web site.

(a) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall notify each applicant for a professional or occupational license, certification or registration from the department, division, 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) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall notify each holder of a professional or occupational license, certification or registration from the department, division, 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 a holder's license, certification or registration.

(c) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department 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 professional or occupational license, certification, or registration from the entity.

(d)(1) The department and any division, board, commission, committee, agency, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall allow each holder of a professional or occupational license, certification or registration from the department, division, 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) The department and any division, board, commission, committee, agency or other governmental entity under the jurisdiction of, or administratively attached to, the department 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.

4-3-1405. Powers of the department.

(a) The department of labor and workforce development is designated as the department of this state for the implementation and administration of the following federal programs relating to workforce development, including, but not limited to, the:

(1) Workforce Investment Act of 1998, compiled in 29 U.S.C. § 2801 et seq.;

(2) Wagner-Peyser Act, compiled in 29 U.S.C. § 49 et seq.; and

(3) The former Job Training Partnership Act, compiled in 29 U.S.C. § 1501 et seq. [repealed].

(b) The department shall cooperate with all authorities of the United States having powers or duties under the acts of congress mentioned in subsection (a), and shall do and perform all things necessary to secure to this state the benefits of such acts.

(c) Except for the supervisory responsibilities of the department of commerce and insurance, the department of labor and workforce development has full and complete charge of the administration of the state's Workers' Compensation Law, compiled in title 50, chapter 6, the Employment Security Law, compiled in title 50, chapter 7, and the state employment service for this state and has the administration of such other functions exercised by the department of employment security or the department of labor, or both, prior to June 17, 1999.

(d) The department of labor and workforce development has full and complete charge of the following:

(1) Adult basic education authorized by the Tennessee Rules, Regulations and Minimum Standards of the state board of education and administered by the department of education prior to June 17, 1999; and

(2) Employment and employment training programs authorized under the Food Stamp Act of 1977, codified in 7 U.S.C. § 2015.

(e) The department of labor and workforce development shall coordinate the collaborative and cooperative activities and functions of other departments and state agencies and commissions, including, but not limited to, the department of education, the department of human services, the department of economic and community development, and the Tennessee higher education system, including colleges of applied technology and two-year post secondary institutions, to reduce duplication among employment and employment-related training activities in the state, and to maximize Tennessee's efforts to increase the skills of its workforce, foster economic growth through job

placement and training services and provide high quality services to its customers including employees, families, business and industry, and particularly those individuals who are economically disadvantaged, dislocated workers, and others with substantial barriers to employment. The department of human services has the responsibility for contracting for the activities required of Families First participants pursuant to § 71-3-104.

(f) The department of labor and workforce development may do all acts and functions necessary or proper to carry out the powers expressly granted under this part, including, but not limited to, entering into agreements or contracts with local governmental units or corporations to provide services that assist the department in carrying out the duties imposed by this part or elsewhere in this code. It is not the intent of this part to create new state authority or to expand any existing authority to contract for services with private entities.

(g) The department of labor and workforce development has authority over such other functions generally, as the governor may lodge with the department by executive order duly signed and filed with the secretary of state.

(h) The department of labor and workforce development has the power to:

(1) Collect information on the subject of labor, its relation to capital, the hours of labor, and the earnings of laboring men and women, and the means of promoting their material, social, intellectual and moral prosperity;

(2) Visit and inspect, as often as necessary, during reasonable hours all shops, factories and mercantile establishments and other places where workers are employed and to cause the provisions of law to be enforced therein;

(3) Inspect the sanitary conditions, system of sewerage, system of heating, lighting and ventilation of rooms where persons are employed at labor and the means of exit in case of fire, or other disaster within or connected with shops and factories;

(4) Examine the machinery in and about workshops and factories, to see that it is not located so as to be dangerous to employees when engaged in their ordinary duties;

(5) Declare and prescribe what safety devices, safeguards or other means of protection are well adapted to render employees or places of employment safe;

(6) Order such reasonable changes in the construction, maintenance and repair of places of employment as shall render them safe;

(7) Require the performance of any act necessary for the protection of life, health and safety of employees;

(8) Collect and compile reliable data that, if disseminated, would tend to the development of the state by inducing population and capital to come within its borders; and

(9) Collect and compile accurate listings of employers who do not comply with § 50-6-405.

(i) Activities associated with Title V of the federal Older Americans Act of 1965, compiled in 42 U.S.C. § 3001, et seq. shall be administered by the department. Funding to community providers pursuant to a grant or contract with the commission on aging and disability in effect on June 30, 2003, shall continue so long as federal funding continues and each provider continues to meet program goals and requirements and complies with any applicable audit and financial accountability laws.

(j)(1) To the extent permitted by any federal law or rule, regulation, guideline, or advisory opinion of the internal revenue service, the depart-

ment shall accept and process any IRS Form 8850, or any successor to such form, that is submitted with electronic signatures in the same manner as the department accepts such forms when submitted with physical signatures if such form is submitted to the department by mail, facsimile, or e-mail copy.

(2) For purposes of this subsection (j), "electronic signatures" includes a physical printout of an electronically signed IRS Form 8850 indicating that the signature field is "signed electronically".

4-3-1408. Divisions — Creation — Office of administrator.

(a) In addition to the creation of the division of the Tennessee state employment service within the department of labor and workforce development as provided in § 50-7-601, there are created within the department, the following divisions:

(1) The division of employment security;

(2) The division of workers' compensation; and

(3) The division of occupational safety and health.

(b) The division of employment security and the division of occupational health and safety shall be under the supervision and charge of the commissioner of labor and workforce development, and shall be separate administrative entities for programs, personnel, and budgets. The division of workers' compensation shall also be a separate administrative entity for programs, personnel, and budgets; the supervision and charge of the division shall be in accordance with § 4-3-1409.

(c)(1)(A) The office of administrator is hereby created for each division created pursuant to subdivisions (a)(1)-(3). The administrator shall have the general administrative authority of the division.

(B) Except as otherwise provided in this chapter, the administrator of the division of employment security is responsible, to the greatest extent possible, for administering, implementing, and enforcing title 50, chapter 7, and any rules or regulations promulgated in accordance with such chapter that are within the purview of employment security, but not including WOTC alien certification, veterans' programs and the Tennessee state employment service. The administrator shall have a minimum of five (5) years' credible experience in the field of employment security and shall have a comprehensive knowledge of and experience in the operation and programs of the division. The administrator shall be recognized by the representatives of the business and labor communities as a person of good standing and reputation in matters concerning employment security.

(C) The administrator of the division of workers' compensation is responsible for administering, implementing, and enforcing all of the provisions enacted into law and compiled in title 50, chapter 6, and any rules or regulations promulgated in accordance with such chapter.

(D) The administrator of the division of occupational safety and health shall be responsible for administering, implementing, and enforcing all of the provisions enacted into law and compiled in title 50, chapter 3, and any rules or regulations promulgated in accordance with such chapter. The administrator shall have a minimum of five (5) years' credible experience in the field of occupational safety and health and shall have a comprehensive knowledge of and experience in the operation and programs of the division. The administrator shall be recognized by the representatives of the business and labor communities as a person of good standing and

reputation in matters concerning occupational safety and health.

(2) In addition to other duties, each administrator is responsible for preparing and submitting to the commissioner of labor and workforce development an annual budget for the division the administrator heads.

(3) The administrators of the division of employment security and the division of occupational safety and health shall be appointed by the commissioner of labor and workforce development for a term of four (4) years. The first appointment shall be made July 1, 1999, or as soon as practical thereafter. The four-year terms shall begin on July 1 and end on June 30 of appropriate years. The commissioner of labor and workforce development has the authority to remove an administrator only for non-performance of duties and responsibilities. If removed, a vacancy shall exist in the office of the administrator. A vacancy in the office shall be filled for the unexpired term with a person meeting the requirements applicable to the original appointee.

(4) The administrator of the division of workers' compensation shall be appointed in the manner provided in § 4-3-1409.

(d) The transfer of the functions and activities of the various departments and programs to the department of labor and workforce development shall not, because of the transfer, result in any preferred service employee suffering loss of employment, compensation, benefits, or state service status. Such rights, benefits, and compensation shall continue without any impairment, interruption, or diminution; provided, that the department may engage in disciplinary actions or reductions in force as provided for by law. The commissioner of human resources is authorized to enforce this section and shall determine whenever the rights, benefits, and compensation are impaired, interrupted, or diminished. Any employee aggrieved by any impairment in violation of this section shall have the right to seek redress through the grievance procedure established in § 8-30-318.

4-3-1409. Independence of the workers' compensation division — Division under the charge and general supervision of the administrator of the division — Powers and duties of administrator —Appointment of administrator.

(a) In recognition of Tennessee's endeavor to reform the workers' compensation law in a manner designed to ensure the health and safety of Tennessee workers and to promote Tennessee as an attractive destination for business, the general assembly has determined that the independence of the workers' compensation division is paramount. The workers' compensation division shall be an autonomous unit that shall be attached to the department of labor and workforce development for administrative matters only.

(b)(1) The division of workers' compensation shall be under the charge and general supervision of the administrator.

(2) The administrator or the administrator's designee has the following powers and duties, in addition to other powers and duties specifically provided by law:

(A) Development and maintenance of an organizational structure to ensure fair, equitable, expeditious, and efficient administration of the workers' compensation law; and

(B) Responsibility for the administration of a workers' compensation system that protects the life, health, and safety of Tennessee's workforce

and ensures the continued viability of Tennessee's business environment.

(c)(1) The administrator of the division of workers' compensation shall be appointed by the governor for a term of six (6) years. No administrator shall serve more than two (2) full terms, and service of more than half of a six-year term shall constitute service of one (1) full term; provided, that any administrator appointed to serve less than a full term to fill a vacancy created by the removal or resignation of the previous administrator shall be eligible to serve an additional two (2) full terms. The first appointment shall be made July 1, 2013, or as soon as practical thereafter. The first six-year term shall begin on July 1, 2013, and end on June 30, 2019. Thereafter, all terms shall begin on July 1 and end, six (6) years later, on June 30 of the following years. The governor has the authority to remove the administrator for nonperformance of duties and responsibilities or for cause. If the administrator is removed or resigns, a vacancy shall exist in the office, which shall be filled for the unexpired term by a person meeting the requirements of subdivision (c)(2).

(2) The administrator shall have a minimum of seven (7) years' credible experience in the field of workers' compensation and shall have a comprehensive knowledge of and experience in the operation and programs of the workers' compensation industry. The administrator shall be recognized by the representatives of the business and labor communities as a person of good standing and reputation in matters concerning workers' compensation.

4-3-1419. License, certification or registration — Notifications — Prerequisites — Web site.

(a) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall notify each applicant for a professional or occupational license, certification or registration from the department, division, 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) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall notify each holder of a professional or occupational license, certification or registration from the department, division, 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 a holder's license, certification or registration.

(c) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department 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 professional or occupational license, certification, or registration from the entity.

(d)(1) The department and any division, board, commission, committee, agency, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall allow each holder of a professional or occupational license, certification or registration from the department, division, 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) The department and any division, board, commission, committee, agency or other governmental entity under the jurisdiction of, or administratively attached to, the department 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.

4-3-1422. Lois M. DeBerry Alternative Diploma Act — Assessments that lead to high school equivalency credential.

(a) This section shall be known and may be cited as the "Lois M. DeBerry Alternative Diploma Act."

(b) The department of labor and workforce development is authorized to make recommendations relative to assessments that lead to the award of a high school equivalency credential. The state board shall review the recommendations of the department. Any recommendation approved by the state board of education shall be considered a high school equivalency assessment and the successful completion of such assessment shall lead to the award of a high school equivalency credential. The department, as needed, may consult with or request assistance from other state agencies in performing its duties under this section.

4-3-2010. Division of motor vehicle enforcement — Duties.

(a) The division of motor vehicle enforcement, or such other division of the department as may be directed to by the commissioner, has the following responsibilities and duties:

(1) Perform odometer fraud investigations, detect altered titles and vehicles, identify perpetrators, secure vehicle documentation and evidence for eventual indictment and prosecution of persons involved in odometer fraud;

(2) Perform covert odometer fraud investigations of individuals and dealers in odometer tampering by use of surveillance, undercover odometer rollbacks, title washing buys and other techniques;

(3) Perform overt odometer fraud investigations of individuals and dealers by interpreting title histories, interviewing subjects, informants, spinners and suspected perpetrators and utilizing lab analysis reports to support altered documents;

(4) Prepare odometer fraud outline memoranda to be used by United States attorneys in the indictment and prosecution of odometer tamperers;

(5) Assist United States attorneys in the indictment and trial process of major odometer fraud cases, and analyze and evaluate the total factual investigation for maximum effectiveness in the trial presentation by the United States attorneys;

(6) Testify before grand juries and in criminal prosecutions;

(7) Serve subpoenas in the investigation and prosecution of odometer fraud;

(8) Assist and coordinate with state and federal agencies nationwide in the investigation and prosecution of odometer fraud;

(9) Train and supervise persons involved in investigations by the unit; and

(10) Perform other duties relative to odometer fraud as may be assigned to the unit by the division.

(b) The division shall maintain agents in each grand division to investigate odometer fraud, but the activities of such agents shall be coordinated so as to ensure the most effective use of all employees.

(c) [Deleted by 2013 amendment, effective July 1, 2013.]

(d) The increased costs imposed on the department by this section and the provisions of Acts 1989, chapter 276 amending §§ 55-2-112 and 55-6-101 shall be funded from the increase in the state fee for certificates of title authorized by Acts 1989, chapter 276, increasing the fee from three dollars ($3.00) to three dollars and fifty cents ($3.50).

4-3-2018. Authority of department regarding statewide P25 interoperable communications system.

(a) The department has the authority to promulgate rules and regulations regarding access to its statewide P25 interoperable communications system, including the authority to collect, by rules or regulations, assessments for the use and/or maintenance of the system.

(b) Any assessments collected by the department pursuant to the rules and regulations established in subsection (a) shall be expendable receipts of the department for use in maintaining the statewide P25 interoperable communications system.

4-3-2203. Divisions — Creation.

The commissioner is authorized to create, with the approval of the governor, such new divisions as are necessary to carry out the duties imposed upon the commissioner and the department.

4-3-2205. [Repealed.]

4-3-2303. Powers and duties of commissioner.

The commissioner has the power and duty to:

(1) Retain, employ and contract for the services of private and public consultants, research and technical personnel and procure by contract, consulting, research, technical and other services and facilities, whenever considered by the commissioner necessary or desirable in the performance of the functions of the department and whenever funds shall be available for

those purposes;

(2) Establish and promulgate such rules and regulations governing the administration and operation of the department as may be deemed necessary by the commissioner and that are not inconsistent with the laws of this state;

(3) Maintain such facilities throughout the state as may be required for the effective and efficient operation of the department;

(4) Apply for and accept on behalf of the state any grant from the federal government to be used for any of the purposes of the department, and to comply with any conditions and limitations annexed;

(5) Supervise, direct and account for the administration and operation of the department and its employees;

(6) Organize the department into such units as the commissioner deems necessary to carry out the duties and functions imposed on the commissioner and the department. Any reorganization or creation or elimination of any units after July 1, 2003, shall be jointly reviewed by the officers of the house of representatives and senate finance, ways and means committees and the officers of the transportation committee of the house of representatives and the transportation and safety committee of the senate, it being the intent of the general assembly to recognize the organization of the department as of July 1, 2003, as the legal organization of the department;

(7) Appoint such personnel as may be necessary for the administration and operation of the department, within reasonable budgetary limitations;

(8) Delegate any of the commissioner's powers, duties or functions to a departmental employee of the commissioner's choosing, except the commissioner's power to remove employees of the department or to fix their compensation;

(9) Undertake programs of transportation related to investigation, research and operation of safe, adequate and efficient transportation modes, including, but not limited to, aeronautics, waterways, rails, highways and mass transit;

(10) Provide technical assistance and financial assistance, as it may become available, to other public agencies;

(11) Develop and implement a continuing, comprehensive, and multimodal statewide transportation planning process that is consistent with the transportation planning requirements of the United States department of transportation and includes the development and periodic updating of a long-range statewide transportation plan, including: consideration and provision, as applicable, of elements and connections of and between highway, rail, mass transit, waterway, aviation, pedestrian and bicycle facilities; consideration of operations and maintenance of those facilities; and a review of projected costs and anticipated revenues;

(12) Plan, propose and coordinate transportation related policies, activities and programs among state departments and agencies and within the state;

(13) Prepare and report annually to the general assembly an updated multimodal transportation improvement program for the state, which shall be based on the long-range statewide transportation plan and shall provide the basis for annual funding recommendations by the commissioner and for annual expenditures by the department;

(14) Administer a statewide rideshare/car pooling program, including the establishment of appropriate rideshare parking locations on the perimeter of major urban areas or other areas needing such facilities, as determined by the commissioner;

(15) Document and evaluate the cost-effectiveness of contracting maintenance work with private vendors;

(16) Develop a plan to establish and maintain long-term, cost-effective highway condition ratings;

(17) Develop, document and demonstrate to the general assembly a system of accountability over transportation field units;

(18) Exercise all duties, responsibilities and powers granted the department in title 65, chapters 3, 11, and 12, and establish and promulgate rules and regulations necessary for the administration and enforcement of title 65, chapters 3, 11, and 12; and

(19) Solely at the commissioner's discretion, upon awarding federal transportation enhancement grant funds to be used for the acquisition, preservation or protection of civil war battlefield sites or related properties or easements, the commissioner may contract directly with any established and nationally recognized nonprofit organization dedicated to the preservation of civil war battlefields; provided, that the commissioner finds that the organization complies with federal eligibility requirements for grantees of such enhancement grant funds.

4-3-2305. Compliance.

(a) The department of transportation shall comply with all the terms and conditions of the disadvantaged business enterprise and historically underutilized business enterprise provisions of the federal Transportation Equity Act for the 21st Century, compiled in 23 U.S.C. § 101 et seq.

(b) In addition to subsection (a), the department shall continue to comply with the good faith efforts requirements of § 67-3-904, which apply to the revenue generated from the 1986 and 1989 gasoline tax increases with respect to disadvantaged business enterprises or women business enterprises.

(c) It being in the public interest and for a public purpose to support the participation of small businesses in department contracts, the department is authorized to establish the programs described in this section to assist small businesses to participate in department contracts, either as a prime or as a subcontractor. Small business shall be defined to include certified disadvantaged business enterprises as defined by 49 CFR Part 26, and business enterprises that satisfy all the requirements of a disadvantaged business enterprise under Part 26, including but not limited to, requirements of business size and net worth of owners, other than the requirement that the owners of the business qualify as members of the groups identified in subsection 2 of the definition of socially and economically disadvantaged individuals in 49 CFR Part 26.5. The commissioner may promulgate rules to implement the purpose of this section.

(1) The department is authorized to conduct studies to determine whether any group consisting of socially and economically disadvantaged individuals as defined in 49 CFR Part 26 is underutilized on state funded construction projects. In the event underutilization is documented and any other necessary findings are made, the commissioner may elect to set appropriate goals

on state funded projects.

(2) The department is authorized to offer construction management development programs for small businesses and may charge a fee for the programs.

(3) The department is authorized to create and implement a surety bond guarantee program for small businesses to act as subcontractors on department construction projects. The state may guarantee up to ninety percent (90%) of a surety bond amount of two hundred fifty thousand dollars ($250,000) or less and up to eighty percent (80%) of a surety bond amount greater than two hundred fifty thousand dollars ($250,000), which surety bond is provided by an approved surety. The department may be entitled to receive a fee from a participating small business and may require any participating small business to set aside part of the subcontract amount as security for the surety bond or guarantee, or both. The department is required to promulgate rules to effectuate this subsection (c). In no event shall the total amount guaranteed under this program at any given time exceed five million dollars ($5,000,000). The department is authorized to expend funds from the highway fund to fund administrative expenses and fund any losses that may arise under the surety bond guarantee program.

(4) The commissioner shall report in writing the progress of this program to any member of the general assembly upon request. The report shall include, as a minimum, the number of users of the surety bond guarantee plan; the number of defaults and dollar loss; the cost of the program categorized by cost of administration; and the cost of on-the-job and classroom instruction.

4-3-2308. [Repealed.]

4-3-2311. Special committee to study improvement of transportation services.

(a) For purposes of this section, "transportation services" means public transportation services and transportation services for populations needing specialized assistance.

(b)(1) There is hereby created a special committee, to be known as "the coordination committee," to study the improvement of the methods of delivery and coordination of transportation services by state departments and agencies, as well as transportation provided by local government and non-profit agencies that are funded by state departments and agencies; the effectiveness of existing services and the need for new types of services; improvements in the effective use of existing funding by state departments and agencies to maximize financial efficiency; reduction of barriers to the effective funding of transportation services; identification of new sources of transportation funding; and improvement of universal mobility for Tennessee citizens and visitors.

(2) The coordination committee shall consist of the following persons and organizations:

(A) One (1) member of the transportation and safety committee of the senate and one (1) other member of the senate, each to be selected by the speaker of the senate;

(B) One (1) member of the transportation committee of the house of representatives and one (1) other member of the house of representatives,

each to be selected by the speaker of the house of representatives;

(C) Two (2) representatives of the department of transportation;

(D) One (1) representative of the department of human services;

(E) One (1) representative of the department of children's services;

(F) One (1) representative of the department of finance and administration;

(G) One (1) representative of the Tennessee department of veterans affairs;

(H) One (1) representative of the bureau of TennCare;

(I) One (1) representative of the commission on aging and disability;

(J) One (1) representative of the Tennessee Public Transportation Association; and

(K) A representative from each department or state agency as deemed necessary by the department of transportation.

(3) The lead agency for supporting and staffing the coordination committee shall be the department of transportation.

(4) All appropriate state agencies shall provide assistance to the coordination committee upon request.

(5) All legislative members of the coordination committee who are duly elected members of the general assembly shall remain members of such committee until the committee reports its findings and recommendations to the general assembly. Non-legislative members shall serve without compensation.

(6) The coordination committee shall only meet on days when the house of representatives and the senate are otherwise meeting in session or committee.

(c) Departmental representatives on the coordination committee shall represent such department's policy and operational levels. The coordination committee's purpose shall be to regularly coordinate the efforts of each agency as follows:

(1) Improve transportation coordination;

(2) Improve methods of delivery of passenger transportation;

(3) Improve effectiveness of service and improve overall financial efficiency;

(4) Improve universal mobility for Tennessee citizens and visitors; and

(5) Identify opportunities and barriers, and recommend solutions to improve transportation coordination.

(d) The coordination committee shall promote public education about the availability and use of transportation services in this state and provide such information to all departments in state government and to the general public.

(e) The coordination committee is directed to create a strategic transportation coordination plan that will guide its work for the next five (5) years. Such plan shall be updated every five (5) years.

(f) The department of transportation shall present an executive summary for the coordination committee to the transportation and safety committee of the senate and transportation committee of the house of representatives annually.

(g) It is the intent of the general assembly that all departments of state government effectuate this section using existing resources.

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

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

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

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

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

(e) The commissioner of transportation shall report to the state funding board and to the chairs of the finance, ways and means committees of the senate and house of representatives no later than January 31, 2013, and annually thereafter prior to January 31, as to the utilization of the authority of this section.

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

4-3-2403. Division of retirement — Retirement systems attached to division.

(a)(1) A division of retirement is hereby created in the department of the treasury.

(2) The division shall attend to all duties heretofore performed by the personnel of such retirement systems as shall by law be attached to it, except those discretionary duties performed directly by the boards administering such retirement systems.

(3) The authority of retirement systems attached to the division of retirement to employ personnel is hereby abolished, but the authority of boards administering retirement systems is not otherwise impaired hereby.

(b) The following retirement systems are hereby attached to the division of

retirement:

(1) The Tennessee consolidated retirement system;

(2) The Tennessee teachers' retirement system;

(3) The Tennessee state retirement system;

(4) [Deleted by 2013 amendment, effective April 16, 2013.]

(5) The attorneys general retirement system of Tennessee; and

(6) The Tennessee judges' retirement system.

4-3-3001. Establishment of a human trafficking task force.

The governor shall establish a human trafficking task force to develop and implement a state plan for the prevention of human trafficking.

4-3-3002. Meetings —Authority.

The human trafficking task force shall meet at least biannually and is authorized to address all aspects of human trafficking, including, but not limited to, sex trafficking and labor trafficking of both United States citizens and foreign nationals.

4-3-3003. Task force membership — No compensation or reimbursement for expenses.

(a) The human trafficking task force shall be comprised of the following members:

(1) A human trafficking task force chair, to be appointed by the governor;

(2) One (1) representative from each of the following:

(A) Tennessee bureau of investigation;

(B) Office of the attorney general and reporter;

(C) Department of labor and workforce development;

(D) Tennessee Association of Chiefs of Police;

(E) Tennessee Sheriffs' Association;

(F) Department of safety;

(G) District attorneys general conference;

(H) District public defenders conference;

(I) Department of health;

(J) Department of children's services; and

(K) Department of human services;

(3) At least one (1) representative from each of the following entities, associations, or categories, to be appointed by the governor:

(A) Non-governmental organization specializing in human trafficking;

(B) Member of a community or group disproportionately affected by human trafficking;

(C) Agency or group specializing in child services and runaway services;

(D) Academic researcher specializing in human trafficking; and

(E) Survivor or victim of human trafficking; and

(4) One (1) member of the house of representatives to be appointed by the speaker of the house of representatives and one (1) member of the senate to be appointed by the speaker of the senate.

(b) The governor may invite representatives of the following to be members of the human trafficking task force:

(1) United States attorney's offices; and

(2) Federal law enforcement agencies, including, but not limited to, the federal bureau of investigation and United States immigration and customs enforcement.

(c) The task force shall serve without compensation, and members of the task force shall not be reimbursed for necessary expenses in attending such meetings, unless otherwise required by law.

4-3-3004. Duties.

The human trafficking task force, directly or through one (1) or more of its constituent agencies, shall:

(1) Develop the state plan for the prevention of human trafficking;

(2) Coordinate the collection and sharing of human trafficking data regarding victims, while ensuring their privacy, among government agencies;

(3) Coordinate the sharing of information regarding detection of criminal groups involved in human trafficking among government agencies;

(4) Consider establishing policies regarding time limits for the issuance of law enforcement agency endorsements described in 8 CFR 214.11(f)(1);

(5) Establish policies to improve cooperation between state government agencies and non-governmental organizations and other advocacy groups to prevent human trafficking and provide assistance to victims;

(6) Review the effectiveness of existing services and facilities regarding victims of human trafficking;

(7) Make recommendations regarding a system to coordinate services for victims of human trafficking, including, but not limited to, the following services:

(A) Health services, including mental health;

(B) Housing;

(C) Education and job training;

(D) English as a second language classes;

(E) Language interpretation services;

(F) Legal services; and

(G) Victim compensation; and

(8) Evaluate approaches used by other state and local governments to increase public awareness for human trafficking and its victims.

4-3-3005. Annual report.

The human trafficking task force shall submit an annual report to the governor or the governor's designee by December 31 of each year. Such report shall include detailed information on the findings and recommendations of the human trafficking task force.

4-3-5301. [Repealed.]

4-3-5302. [Repealed.]

4-3-5303. [Repealed.]

4-3-5304. [Repealed.]

4-3-5305. [Repealed.]

4-4-101. Reorganization of divisions.

(a) The commissioner of each department under chapter 3 of this title, with the approval of the governor, has the authority to consolidate any two (2) or more offices within the commissioner's department, or reduce the number of divisions, or create new divisions therein.

(b) Notwithstanding subsection (a), no state department or agency in the executive branch of state government shall make organizational changes within such department or agency without the prior approval of the commissioner of finance and administration. If such organizational changes require a transfer of funds between organizational accounts and are contrary to the manner in which appropriations have been made in the appropriations act, then such transfer of funds is subject to approval by the commissioner of finance and administration and by a majority of a committee comprised of the speaker of the senate, the speaker of the house of representatives, and the comptroller of the treasury; provided, however, that if the transfer of funds is merely a change in the organizational account to which the appropriation is allocated and does not constitute a change in the purpose of the appropriation, then the approval of the committee shall not be required; provided further, however, that the approval of the commissioner of finance and administration shall be required.

4-4-119. [Repealed.]

4-5-106. Application.

(a) This chapter shall not apply to the military, the governor, the general assembly, the state building commission, the state funding board or the courts, nor shall they apply to county and municipal boards, commissions, committees, departments or officers.

(b) Disciplinary and job termination proceedings for inmates under the supervision of the department of correction or juveniles under the supervision of the department of children's services shall not be considered "contested cases" as defined by § 4-5-102.

(c) Sections 4-5-105, 4-5-219, 4-5-223, 4-5-225 and 4-5-301 — 4-5-323 shall not apply to the board of claims, the state election commission or the board of parole.

(d) The rulemaking and publication provisions of this chapter shall not apply to proclamations promulgated under title 70, and the promulgation, filing and publication provisions of such title shall control, except that the secretary of state shall publish on the administrative register web site current and effective proclamations in the same manner that rules and other notices

are published under § 4-5-220. The text of proclamations shall be published on the administrative register web site under the proclamation section and shall have the same weight and effect prescribed in § 4-5-221(c), for the text of rules so published. The wildlife resources agency shall keep an original copy of all proclamations from which the effective dates of all proclamations can be determined.

(e) Sections 4-5-303, 4-5-309, 4-5-311(a), (b) and (c), 4-5-312(c), 4-5-314(b), 4-5-315 — 4-5-318, 4-5-322 and 4-5-323, shall not apply to the department administering the Employment Security Law under title 50, chapter 7.

(f) This chapter shall not apply to revenue rulings and letter rulings issued by the commissioner of revenue.

4-5-226. Expiration of rules — Review by general assembly.

(a) Notwithstanding any other law to the contrary, unless legislation is enacted to continue a rule to a date certain or indefinitely, any permanent rule filed in the office of the secretary of state shall expire on June 30 of the year following the year of its filing.

(b)(1) Notwithstanding any other law to the contrary, unless legislation is enacted to continue a rule to a date certain or to a date indefinitely beyond the date upon which an agency terminates, each permanent rule that does not expire under subsection (a), shall expire on the day provided in chapter 29, part 2 of this title for termination of the agency that promulgated such rule; provided, that if such agency continues in existence pursuant to § 4-29-112, such agency rule shall expire upon completion of such wind-up period.

(2) All rules and regulations issued or promulgated by any department or agency of state government whose functions, duties, or responsibilities have been transferred to another department or agency shall remain in full force and effect, and shall thereafter be administered and enforced by the agency or department assuming responsibility for those functions, duties, or responsibilities as rules of that agency or department, and all proposed rules pending with the attorney general and reporter or secretary of state, unless withdrawn, shall continue that status as proposed rules until becoming effective as rules of the agency assuming the functions, duties, or responsibilities. The agency or department assuming responsibility for such functions, duties, or responsibilities shall have the authority to promulgate new rules and regulations pursuant to this chapter to effectuate its duties and responsibilities. To this end, the department or agency shall have the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred, to modify or rescind orders, rules and regulations, decisions or policies heretofore issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions transferred.

(c) Rules promulgated pursuant to this chapter may be reviewed by the government operations committees of the senate and the house of representatives meeting jointly or separately; or, alternatively, at the discretion of the chair of either of such committees, such rule may be reviewed by a subcommittee of the government operations committees. Members of the government operations committees of the senate and the house of representatives shall serve as members of such committees until their successors are duly ap-

pointed; provided, that such members remain members of the general assembly. Any member of either government operations committee who ceases to be a member of the general assembly shall cease to be a member of the government operations committee on the same date such member's membership in the general assembly ceases, as provided in the Constitution of Tennessee. In the event a majority of the membership of either government operations committee shall cease to be members of the general assembly, the speaker of the senate or the speaker of the house of representatives, as the case may be, may designate an appropriate number of members to serve interim appointments until the government operations committee is reconstituted. The house of representatives and senate government operations committees shall strive to hear rules within ninety (90) days of such rules being filed in the office of the secretary of state.

(d) In conducting the review required by subsection (c), the committees or subcommittees shall hold at least one (1) public hearing to receive testimony from the public and from the administrative head of the agency. At such hearing, the agency shall have the burden of demonstrating that consideration of the factors enumerated in subsection (e) justifies the continued existence of an agency rule. Notice of the time and place of the public hearing shall be on the general assembly web site prior to the hearing. To the extent reasonably practicable, the committees or subcommittees shall conduct hearings on newly filed rules, other than emergency rules, during the ninety-day period immediately following the filing of the original of such rule in the office of the secretary of state.

(e) In conducting the review of agency rules, the committees or subcommittees shall consider the following factors:

(1) Authority;

(2) Clarity;

(3) Consistency;

(4) Justification;

(5) Necessity, which shall include the need for a regulation where no regulations presently apply; and

(6) Reference.

(f) As used in subsection (e):

(1) "Authority" means provisions of law that permit or obligate the agency to adopt, amend or repeal a regulation;

(2) "Clarity" means the grammatical and structural soundness of a rule that tends to ensure that the rule will be easily understood by those persons directly affected by such rule;

(3) "Consistency" means the quality of being in harmony with, and not in conflict with or contradictory to, existing provisions of laws;

(4) "Justification" refers to the diligent, knowledgeable, zealous and timely efforts of the agency proposing continuation of a rule to produce all pertinent and relevant documents, records, written and verbal comments, and other items of information needed to justify continuation of the rule to the committee;

(5) "Necessity" means the need for and usefulness of a regulation as dictated by public policy considerations; and

(6) "Reference" means the statute, court decision or other provision of law that the agency implements, interprets or makes specific by adopting,

amending or repealing a regulation.

(g) Nothing contained in this chapter shall be construed to prohibit the general assembly by legislative enactment from directly or indirectly repealing or amending any rule.

(h) The committees or subcommittees have the authority to hold hearings, subpoena records, documents and persons, and to exercise all powers otherwise vested upon committees of the general assembly by title 3, chapter 3, and by the rules of the appropriate house.

(i)(1) All agencies, upon filing a rule in the office of the secretary of state, shall also submit the following information:

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

(H) Office address, e-mail address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

(2)(A) All amendments to existing executive agency rules to be reviewed by the committees or subcommittees pursuant to this part shall be filed with the secretary of state. One (1) copy of the amendments shall be filed in redline form for review by the committees or subcommittees.

(B) As used in subdivision (i)(2)(A), "redline form" means to denote all amendments to an existing rule by placing a line through all language to be deleted and by including all language to be added in brackets or underlined or by another clearly recognizable method that indicates the changes made to the rule.

(3) Failure to comply with this subsection (i) may be considered as evidence of the failure by an agency to meet its burden of proof required by subsection (d).

(4) The secretary of state shall refuse to accept the filing of any rule that fails to comply with this subsection (i).

(j)(1) The committee may express its disapproval of a rule that fails to satisfy any or all of the factors enumerated in subsection (e), by voting to allow such rule to expire upon its established expiration date or by voting to request the agency to repeal, amend or withdraw this rule before such established expiration date. Notice of the committee's disapproval of a rule whether by vote to allow the rule to expire or by vote to request the agency to repeal, amend or withdraw a rule shall be posted on the administrative register web site as soon as possible after the committee meeting in which such action was taken.

(2) In the event an agency fails to comply with the committee's request to repeal, amend or withdraw a rule within a reasonable time and before the established expiration date, the committee may vote to request the general assembly to suspend any or all of such agency's rulemaking authority for any reasonable period of time or with respect to any particular subject matter, by legislative enactment.

(k) In addition to the grounds stated in subdivision (j) it shall also be grounds for the government operations committee to recommend to the general assembly to terminate a rule promulgated under authority of any provision of title 68, chapters 201—221, or title 69, chapter 3, that imposes environmental requirements or restrictions on municipalities or counties that are more stringent than federal statutes or rules on the same subject, and that result in increased expenditure requirements on municipalities or counties beyond those required to meet the federal requirements, unless the general assembly has appropriated funds to the affected local government or governments to cover the increased expenditures, in addition to those they receive pursuant to other laws; provided, a timely comment was addressed to the promulgating authority pursuant to § 4-5-204, raising this issue and specifying the level of increased expenditure mandated by the rule.

(*l*) If, pursuant to this section, the general assembly terminates a rule amending a previously existing rule, then such previously existing rule shall continue in effect until it is later amended, repealed or superseded by law.

(m) If, pursuant to this chapter, an agency withdraws a rule amending a previously existing rule, then such previously existing rule shall continue in effect until it is later amended, repealed or superseded by law.

4-5-229. Effective date of new fees or fee increases promulgated by state agency rule.

(a) Except as provided in subsections (b) and (c), any new fee or fee increase promulgated by state agency rule, in accordance with this chapter, shall take effect on July 1, following expiration of the ninety (90) days as provided in § 4-5-207.

(b) This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process.

(c) This section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

4-7-119. [Obsolete.]

4-10-112. Monitoring of current wholesale power supply arrangements between the TVA and municipal utilities and electric cooperatives.

The Tennessee advisory commission on intergovernmental relations (TACIR) is directed to continue to monitor, within existing resources, whether the current wholesale power supply arrangements between the Tennessee Valley authority and municipal utilities and electric cooperatives are likely to change in the future in a way that could affect payments in lieu of taxes from the Tennessee Valley authority to the state and to its local governments. No later than February 1, 2011, and annually thereafter, TACIR shall report written findings to the commerce and labor committee of the senate, the business and utilities committee of the house of representatives, the finance, ways and means committee of the senate, and the finance, ways and means committee of the house of representatives. The report shall include recommendations, if any, on adjustments to the state tax system that would keep the state and local governments whole from such future changes.

4-11-112. Site preservation fund.

(a) There is created a special account in the state treasury to be known as the Tennessee Civil War or War Between the States site preservation fund, hereinafter referred to as the "preservation fund".

(b)(1) Moneys in the preservation fund shall be used exclusively by the Tennessee historical commission to provide grants to private nonprofit organizations to match federal and other matching funds. All such grants shall be made solely for the fee simple purchase of, or purchase of protective interests in, any Tennessee Civil War or War Between the States historic site listed in the Report on the Nation's Civil War Battlefields, issued in 1993, or as amended or reissued pursuant to the Civil War Battlefield Preservation Act of 2002 (P.L. 107-359) as amended or supplemented by new information by the national park service's American battlefield protection program, hereinafter referred to as "the report" or any historic site associated with the Underground Railroad that is eligible for national historic landmark designation or for listing in the national register of historic places.

(2) The commission shall establish, administer, manage and make expenditures and allocations from the preservation fund.

(3)(A) Private nonprofit organizations seeking grant funding from the preservation fund shall be required to provide matching funds from any non-state sources on a dollar-for-dollar basis.

(B) For the purposes of this section, "matching funds" means both cash and the value of any non-cash contribution due to a bargain sale or the donation of land or interest therein made by the landowner as part of the proposed project.

(C) No state funds may be included in determining the amount of the match.

(4) Eligible costs for which moneys from the preservation fund may be allocated include acquisition of land and any improvements thereon or permanent protective interests, including, but not limited to, conservation easements, and costs associated with such acquisitions, including, but not limited to, the cost of appraisals, environmental reports, surveys, title

searches and title insurance, and other closing costs.

(5) Grants from the preservation fund shall not exceed fifty percent (50%) of the appraised value of the land or permanent protective interest therein.

(6) Grants from the preservation fund may be awarded for prospective purchases or for acquisitions which the applicant has closed; provided, that for closed acquisitions, the applicant shall demonstrate that:

(A) The closing occurred no more than twelve (12) months prior to the date of application for the grant; and

(B) An identifiable threat to the resource or compelling need for preservation existed at the time of the purchase.

(7) Any eligible organization making an acquisition of land or interest therein pursuant to this section shall grant to the state or other qualified holder a perpetual easement placing restrictions on the use or development of the land. In cases where the easement is granted to a holder other than the state, all terms and conditions of the easement shall be reviewed by and found by the commission to be consistent with the intent and purpose of the Conservation Easement Act, compiled in title 66, chapter 9, part 3, and to accomplish the perpetual preservation of Civil War or War Between the States historic site or historic site associated with the Underground Railroad. Such other holder shall demonstrate to the commission that it has the capacity and expertise to manage and enforce the terms of the easement.

(8) Nothing in this section shall be construed to prevent the subsequent transfer of property acquired pursuant to this section to the United States, its agencies or instrumentalities.

(9) The commission shall establish, administer, manage and make expenditures and allocations from the preservation fund and shall establish guidelines for applications, prioritization and award of grants from the preservation fund in consultation with appropriate site preservation interests. Consideration shall be given, but not limited to, the following:

(A) Significance of the battlefield and the location of the proposed project in relation to core and study areas as identified in the report as well as proximity to other protected lands;

(B) Threat to and integrity of the features associated with the battle which occurred there; and

(C) The financial and administrative capacity of the applicant to complete the project and to maintain and manage the property consistent with the public investment and public interests, such as education, recreation, research, heritage tourism promotion or orderly community development.

(10) All grant recipients are subject to audit by the comptroller of the treasury as to the funds received pursuant to this section.

(c)(1) In addition to appropriations made to the preservation fund, the commission may accept other funds, public or private, by way of gift or grant to the fund. Any such gift or grant shall be deposited into the preservation fund to be distributed in accordance with this section.

(2) Moneys in the preservation fund may be invested by the state treasurer in accordance with § 9-4-602.

(3) Notwithstanding any law to the contrary, interest accruing on investments and deposits of the preservation fund shall be credited to such fund, shall not revert to the general fund, and shall be carried forward into the subsequent fiscal year.

(4) Any balance remaining unexpended at the end of a fiscal year in the preservation fund shall not revert to the general fund but shall be carried forward into the subsequent fiscal year.

4-11-401. Creation of commission [Effective from June 28, 2014, until November 11, 2018.]

There is created the Great War commission, hereinafter "the commission", to facilitate the appropriate recognition by Tennessee, along with other states and nations, of the centenary of the cataclysm of 1914 through 1919, later called World War I.

4-11-402. Commission members — Eligibility to serve — Officers — No travel expenses or compensation. [Effective from June 28, 2014, until November 11, 2018.]

(a) The commission shall be composed of nine (9) members: three (3) members to be appointed by the governor, three (3) members to be appointed by the speaker of the house of representatives, and three (3) members to be appointed by the speaker of the senate. Each appointing authority shall select persons who reside in each of the three (3) grand divisions of the state to serve on the commission. Vacancies shall be filled by the original appointing authority. All appointees to the commission shall be persons who have demonstrated an interest in Tennessee history, twentieth century world history, modern European world history, or the continuing significance of World War I.

(b) Any survivor of a World War I veteran may serve as an honorary, nonvoting member of the commission.

(c) From its membership, the commission shall elect a chair and such other officers as the commission deems necessary to effectuate the purposes for which the commission was created.

(d) Members of the commission shall not receive travel expenses or compensation for their service.

(e) For administrative purposes only, the commission shall be attached to the office of the secretary of state.

4-11-403. Powers, duties and authority of the commission. [Effective from June 28, 2014, until November 11, 2018.]

(a) The Great War commission has the power and duty to formulate, develop and execute plans for projects and activities that facilitate the appropriate recognition by Tennessee, along with other states and nations, of the centenary of World War I, with particular emphasis on those Tennesseans who made the supreme sacrifice and those who returned home gravely wounded.

(b) The commission is authorized to:

(1) Cooperate with national and international activities that commemorate World War I with appropriate solemnity and accurate scholarship;

(2) Elevate young Tennesseans' knowledge and understanding of World War I, in connection with the teaching of Tennessee, American or world history in public schools and public institutions of higher education; and

(3) Receive and accept loans, gifts, grants, donations or contributions of property, facilities, or services, with or without consideration from any person, firm or corporation or from the state of Tennessee or any agency or

instrumentality thereof or from any county, municipal corporation or local government or governing body.

4-11-404. Annual report. [Effective from June 28, 2014, until November 11, 2018.]

Beginning July 15, 2015, the commission shall file an annual report with the chair of the government operations committee of the senate and the chair of the government operations committee of the house of representatives that details the commission's activities for the prior fiscal year. The report shall also include, but not be limited to, all commission plans and projects, in addition to an accounting of commission revenues by source and expenditures by item.

4-11-405. Termination of commission — Preservation of items of historical value. [Effective from June 28, 2014, until November 11, 2018.]

The commission shall cease to exist on November 11, 2018, at which time all of the commission's minutes, files, papers, recordings, publications, and any other items of historical value shall be delivered to the state library and archives to ensure the preservation of such items.

4-14-109. Industrial development division — Building finance committee.

(a) There is created in the industrial development division, referred to in this section as the "division," a building finance committee referred to in this section as the "committee," which shall exercise the powers and duties and discharge the responsibilities enumerated in this section and in title 7, chapters 53 and 55 for such committee, subject to such review and rules and regulations as may be prescribed by the division.

(b) The committee shall consist of the vice chair of the former Tennessee board of economic growth, serving ex officio as chair of the committee, and six (6) additional members appointed by the governor, two (2) from each of the three (3) grand geographical divisions of the state, who shall be competent to serve on the committee by reason of experience in the fields of investment finance or industry.

(c) The term of each appointive member shall be four (4) years.

(d) Any vacancy in the appointive membership shall be filled by the governor for the unexpired term.

(e) The members of the committee shall serve without pay, except for actual expenses incurred in the course of attending to the official business of the committee.

(f) The director of the division shall serve as secretary of the committee, and such additional staff may be assigned or employed as may be deemed necessary by the committee, to carry out effectively title 7, chapters 53 and 55.

(g) A majority of the members of the committee shall constitute a quorum for the transaction of any and all business of the committee, and one (1) member shall be designated as a vice chair to preside at meetings and otherwise act as chair in the absence of the chair.

(h) All orders, findings, acts and certificates of the committee shall be attested by the signature of the chair or vice chair, and the secretary, and when

so attested, all orders, acts, findings and certificates of the committee shall be competent evidence and shall be given full faith and credit in any court or proceeding, and unless affirmatively shown to the contrary, it shall be presumed that the proceedings of the committee were in all things regular.

(i) The secretary, or in the secretary's absence, some person designated by the secretary to act in the secretary's place, shall keep regular and accurate minutes of the committee's proceedings, in a minute book provided for that purpose, which shall be a public record, and all orders, findings and acts of the committee shall be entered upon its minutes.

(j) The committee is authorized and empowered to use and expend such funds as may be made available for its purposes by the staff division.

(k) The committee shall hold regular meetings at the offices of the division, and at such other times and places as its duties may require, with the express authority to adjourn or recess from time to time, and place to place, and to convene special meetings by unanimous consent.

(*l*) 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.

(m) The committee shall adopt and implement a conflict of interest policy for committee members. The policy shall mandate annual written disclosures of financial interests, other possible conflicts of interest, and an acknowledgement by committee 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 committee to acknowledge, as a condition of appointment, that they are not in conflict with the conditions of the policy.

4-14-303. Board of directors — Officers.

(a) The corporation shall be governed by a board of directors consisting of twenty-two (22) natural persons.

(b) Fourteen (14) members of the board of directors shall represent and be appointed from the private sector. Three (3) representatives of the private sector shall be appointed by the governor, two (2) representatives shall be appointed by the speaker of the house of representatives, two (2) representatives shall be appointed by the speaker of the senate, and seven (7) representatives from the private sector shall be nominated by the board of directors' nominating committee and approved by majority vote of the board of directors.

(c) Seven (7) members of the board of directors shall represent and be appointed from the public sector. Three (3) representatives of the public sector shall be appointed by the governor, two (2) representatives shall be appointed by the speaker of the house of representatives and two (2) representatives shall be appointed by the speaker of the senate. One (1) representative of the public sector appointed by the governor may be selected 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 governor shall consult with such interested organizations to determine a qualified person to fill the position on the board.

(d) The commissioner of economic and community development shall serve ex officio on the board of directors of the corporation.

(e) The corporation shall elect a chair, vice chair, secretary and such other officers as it deems necessary from among its members.

(f) One (1) representative of the private sector and one (1) representative of

the public sector appointed by the governor shall initially serve a two-year term. One (1) representative of the private sector and one (1) representative of the public sector appointed by the speaker of the house of representatives shall initially serve a two-year term. One (1) representative of the private sector and one (1) representative of the public sector appointed by the speaker of the senate shall initially serve a two-year term. Three (3) representatives from the private sector nominated by the board of directors' nominating committee and approved by majority vote of the board of directors shall initially serve a two-year term. One (1) representative of the private sector and one (1) representative of the public sector appointed by the governor shall initially serve a three-year term. One (1) representative of the private sector appointed by the speaker of the senate and one (1) representative of the public sector appointed by the speaker of the house of representatives shall initially serve a three-year term. Two (2) representatives from the private sector nominated by the board of directors' nominating committee and approved by majority vote of the board of directors shall initially serve a three-year term. One (1) representative of the private sector and one (1) representative of the public sector appointed by the governor shall initially serve a four-year term. One (1) representative of the private sector appointed by the speaker of the house of representatives and one (1) representative of the public sector appointed by the speaker of the senate shall initially serve a four-year term. Two (2) representatives from the private sector nominated by the board of directors' nominating committee and approved by majority vote of the board of directors shall initially serve a four-year term. After the initial appointments, all members shall serve four-year terms, except the commissioner of economic and community development who shall serve by virtue of such office, and the two (2) members of the former Tennessee science and technology advisory council who shall serve according to their respective terms on the council. Board members are eligible to serve successive terms if reappointed by the original authority.

(g) The board of directors shall appoint an executive committee of five (5) of its members to administer the day-to-day operations of the corporation. The chair of the corporation shall also serve as the chair of the executive committee.

(h) The board of directors shall not meet more than eight (8) times in a calendar year. The executive committee shall not meet more than four (4) times in a calendar year.

(i) In making appointments to the board of directors, the governor, speaker of the house of representatives and the speaker of the senate shall consider the racial diversity of the board of directors in order to ensure that representatives selected reflect the racial composition of Tennessee.

(j) The board of directors shall adopt and implement 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 of directors to acknowledge, as a condition of appointment, that they are not in conflict with the conditions of the policy.

4-15-104. Rules and regulations for construction.

(a) The commission is authorized to prescribe standards and promulgate rules and regulations for the construction of state buildings, and the procedure

to be followed with respect thereto.

(b) The commission is encouraged to prescribe high performance building requirements and other standards, and promulgate rules and regulations, which meet or exceed the 2005 sustainable design guidelines that the commission implemented, that are necessary to ensure all state buildings perform in an energy efficient manner.

(c) Notwithstanding subsection (b), the commission shall not prescribe any high performance building requirement or any other standard, nor promulgate any rules and regulations, which require or permit any wood products harvested or manufactured in this state, or any wood products designed or manufactured by a forest products company that is headquartered in this state, to be in any way less preferred in the design and construction of state buildings than any wood products harvested or manufactured outside this state, or to be in any way less preferred than any other wood products grown or harvested in this state, that have been certified or graded by any certifying or grading association or agency, including, but not limited to, the Sustainable Forestry Initiative, the American Tree Farm System, or the Forest Stewardship Council.

4-16-101. Creation — Personnel — Functions and duties.

(a) There is hereby created the office of local government to be located in the office of the comptroller of the treasury.

(b)(1) The office of local government shall have a director who shall be appointed by the comptroller of the treasury and serve at the pleasure of the comptroller of the treasury.

(2) The staff of the office of local government shall be appointed by the director, subject to the approval of the comptroller of the treasury.

(c) The office of local government has the following functions and duties:

(1) Provide geographic information systems technical support, training, and map maintenance to the division of property assessments and local governments;

(2) Assist local governments with geographic information systems and mapping issues;

(3) Assist and advise local governments with local redistricting and reapportionment;

(4) Compile and maintain precinct boundaries and maps in the state and assist with their development;

(5) Serve as the liaison with the United States census bureau and participate in its redistricting data program;

(6) Assist with other geographic information systems activities in the office of the comptroller of the treasury; and

(7) Such other duties as may be assigned by the comptroller of the treasury.

4-17-401. [Repealed.]

4-17-402. [Repealed.]

4-17-403. [Repealed.]

4-17-404. [Repealed.]

4-17-405. [Repealed.]

4-17-406. [Repealed.]

4-17-407. [Repealed.]

4-17-408. [Repealed.]

4-17-409. [Repealed.]

4-17-410. [Repealed.]

4-17-411. [Repealed.]

4-17-412. [Repealed.]

4-17-413. [Repealed.]

4-17-414. [Repealed.]

4-17-415. [Repealed.]

4-20-301. Creation — Members.

(a) There is created and established a state commission to be known as the Douglas Henry state museum commission, referred to as "the commission" in this part, to consist of thirteen (13) voting members.

(b)(1) Two (2) members of the commission shall be appointed by the speaker of the house of representatives. These members shall serve four-year terms.

(2) Two (2) members of the commission shall be appointed by the speaker of the senate. These members shall serve four-year terms.

(c) Six (6) members of the commission shall be appointed by the governor, with two (2) members to be appointed from each grand division of the state. These members shall serve three-year terms and shall not serve for more than two (2) consecutive terms. The successor of any of these members shall be appointed from their grand division.

(d) One (1) member of the commission shall be appointed jointly by the speaker of the senate and the speaker of the house of representatives as an at-large member. This member shall serve a three-year term and shall not serve more than two (2) consecutive terms.

(e) One (1) member of the commission shall be the chair of the senate finance, ways and means committee or the chair's designee. One (1) member of the commission shall be the chair of the house of representatives finance, ways

and means committee or the chair's designee.

(f) The commission shall include, as an ex officio, nonvoting member, the executive director of the state museum, whose term shall be for so long as the person remains the executive director of the state museum.

(g) The commission shall include, as an ex officio, nonvoting member, the chair of the Tennessee arts commission as of January 1, 2009, who shall serve only one (1) two-year term beginning on July 1, 2009. This member shall serve as a resource to the state museum commission. Notwithstanding § 55-4-215 or § 55-4-216 or any other law to the contrary, this member shall facilitate transition grants awarded from revenue granted from the sale of new specialty earmarked and cultural plates to the state museum commission from the arts commission, with the grant money to be used at the discretion of the museum commission for operating expenses. The commission shall be eligible to receive these transition grants pursuant to the authority granted to the member in this subsection (g) for the period beginning July 1, 2009, and ending June 30, 2011. Nothing in this subsection (g) shall prohibit the commission from receiving transition grants pursuant to any other authority.

(h) In making appointments to the state museum commission, the governor shall strive to ensure that at least one (1) person serving on the commission is sixty (60) years of age or older and that at least one (1) person serving on the commission is a member of a racial minority.

(i) All vacancies shall be filled for the balance of the unexpired term in the same manner as original appointments.

(j) A quorum shall be six (6) voting members of the commission.

4-21-401. Employer practices.

(a) It is a discriminatory practice for an employer to:

(1) Fail or refuse to hire or discharge any person or otherwise to discriminate against an individual with respect to compensation, terms, conditions or privileges of employment because of such individual's race, creed, color, religion, sex, age or national origin; or

(2) Limit, segregate or classify an employee or applicants for employment in any way that would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee, because of race, creed, color, religion, sex, age or national origin.

(b) This section does not apply to the employment of an individual by such individual's parent, spouse or child or to employment in the domestic service of the employer.

(c) It is not a discriminatory practice for an employer to institute a policy in the employer's workplace requiring that all employees speak only in English at certain times when the employer has a legitimate business necessity for such a policy, including, but not limited to, the safe and efficient operation of the employer's business, and the employer provides notice to employees of the policy and the consequences of violating the policy.

(d)(1) No employer shall terminate an employee who is a volunteer rescue squad worker, as this term is defined in § 7-51-207, because the employee, when acting as a volunteer rescue squad worker, is absent or late to the employee's employment in order to respond to an emergency prior to the time the employee is to report to the employee's place of employment.

(2) An employer may charge against the employee's regular pay any time that an employee who is a volunteer rescue squad worker loses from

employment because of the employee's response to an emergency.

(3) An employer has the right to request an employee who loses time from the employee's employment to respond to an emergency to provide the employer with a written statement from the supervisor or acting supervisor of the volunteer rescue squad worker stating that the employee responded to an emergency and list the time and date of the emergency.

(4) Any employee who is absent or late to the employee's employment in order to respond to an emergency shall make a reasonable effort to notify the employee's employer that the employee may be absent or late.

(5) Any employee terminated in violation of this section may bring a civil action against the employee's employer. The employee may seek reinstatement to the employee's former position, payment of back wages, reinstatement of fringe benefits, and where seniority rights are granted, the reinstatement of seniority rights. The employee has one (1) year from the date of a violation of this section to file an action.

4-22-101. Plans to reduce use of petroleum products.

(a) All state agencies, universities, and community colleges that have state owned motor vehicle fleets consisting of more than ten (10) motor vehicles shall develop and implement plans to increase the state's use of alternative fuels, synthetic lubricants, and energy-efficient motor vehicle or low-emission vehicles. Each entity's plan shall have a goal of reducing or displacing at least twenty percent (20%) of the current petroleum products consumed by each entity's motor vehicle fleet by January 1, 2015. All entities shall initiate plan implementation by January 1, 2014.

(b) Reductions may be met by displacing the use of petroleum or oils through the use of biodiesel, ethanol, synthetic oils or lubricants, or other alternative fuels; the use of hybrid electric vehicles, natural gas vehicles or other energy-efficient motor vehicle or low-emission vehicles; or additional methods that reduce harmful emissions as may be approved by the department of general services, thereby reducing the amount of harmful emissions.

(c) No plan shall impede mission fulfillment of the entity and every plan shall allow for changes in vehicle usage and total miles driven and provide exceptions for technological or budgetary limitations and emergencies. Technological exceptions may include, but not be limited to, that the entity's vehicles will be operating primarily in an area in which there is no refueling station established for alternative fuels.

(d) For purposes of this section:

(1) "Energy-efficient motor vehicle" means a passenger motor vehicle that is:

(A) An alternative fuel vehicle as defined by the Energy Policy Act of 1992 (P.L. 102-486);

(B) A flexible fuel vehicle (FFV) utilizing ethanol, biodiesel, or any other commercially available alternative fuel approved by the United States department of energy;

(C) A hybrid-electric vehicle (HEV);

(D) A compact fuel-efficient vehicle, defined as a vehicle powered by unleaded gasoline that has a United States EPA estimated highway gasoline mileage rating of at least twenty-five miles per gallon (25 mpg) or greater for the model year purchased;

(E) An electric vehicle (EV);

(F) A vehicle powered by natural gas; or

(G) A vehicle powered by ultra low sulfur diesel fuel that meets Bin 5, Tier II emission standards mandated by the EPA and that has an EPA estimated highway mileage rating of at least thirty miles per gallon (30 mpg) or greater for the model year purchased; and

(2) "Motor vehicle" means a self-propelled vehicle licensed for highway use.

4-22-103. [Repealed.]

4-24-112. Minimum training requirements.

(a) Any full-time, part-time or volunteer firefighter hired or accepted as a firefighter on or after July 1, 2009, by a fire department recognized under title 68, chapter 102, part 3 must meet the following minimum training requirements:

(1) The firefighter must have previously completed or must complete after joining the fire department a minimum of sixteen (16) hours of initial training developed by the Tennessee fire service and codes enforcement academy in firefighting procedures and techniques or complete equivalent training approved by the Tennessee commission on firefighting personnel standards and education before being allowed to actively fight a fire; and

(2) Within thirty-six (36) months after hire or acceptance date as a firefighter, the firefighter must have completed, or must complete after joining the fire department, the basic and live firefighting course offered by the Tennessee fire service and codes enforcement academy or an equivalent course.

(b) The following firefighters are exempt from the training requirements of subsection (a):

(1) Any firefighter in the fire service on July 1, 2009, and who entered the fire service before June 30, 2004; and

(2) Any firefighter who is certified by a medical doctor as medically or physically unable to complete the training requirements; however, the fire department may not allow these firefighters to engage in active firefighting operations.

(c) Any firefighter who is certified by the fire department's chief officer that they will not operate within an environment determined to be immediately dangerous to life and health (IDLH) is exempt from the live firefighting portion of the training referenced in subdivision (a)(2).

(d) Any firefighter in the fire service on July 1, 2009, and who was hired or accepted as a firefighter between July 1, 2004, and June 30, 2009, has until July 1, 2012, to show proof of completion of the minimum training requirements of this section.

(e) The commission on firefighting personnel standards and education may issue any rules and take any other administrative action necessary to implement this section.

(f) The governmental unit, person, organization, agency or entity that obtained a certificate of recognition from the state fire marshal's office for the fire department is authorized to determine whether it or the firefighter shall be responsible for paying any fees charged for or associated with obtaining the

training required under this section.

(g)(1) This section shall not apply in counties having the following populations, according to the 2000 federal census or any subsequent federal census, nor to municipalities located within such counties:

not less than	nor more than
7,600	7,700
8,050	8,100
11,025	11,100
11,300	11,368
16,000	16,100
17,475	17,575
17,600	17,675
17,700	17,775
17,800	17,875
17,900	18,000
20,600	20,700
22,200	22,300
29,400	29,450
29,800	29,900
39,900	40,000

unless the governing body of any such county or of a municipality located in any such county adopts a resolution of its governing body to apply such requirements within the jurisdictional boundaries of their respective municipality or county, as appropriate; provided, that any action by the county legislative body concerning the implementation of this subdivision (g)(1) 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) The governing body of any such county or of a municipality located in any such county that has taken the action pursuant to subdivision (g)(1) is authorized to reverse such action by adopting a resolution to exempt their municipality or county from the application of this section 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.

(3) Notwithstanding any other provision of law to the contrary, if a firefighter located in a county or a municipality located within a county to which Chapter 661 of the Public Acts of 2010 applies is exempt from meeting the minimum training requirements established pursuant to this section, then the pay supplement authorized pursuant to § 4-24-202 for firefighters completing the in-service training course shall not be available to such a firefighter unless the firefighter meets the minimum training requirements established pursuant to this section.

(4) Notwithstanding any other provision of law to the contrary, if a firefighter located in a county or a municipality located within a county having a population of not less than seventeen thousand seven hundred (17,700) nor more than seventeen thousand seven hundred seventy-five (17,775), according to the 2000 federal census or any subsequent federal

census, is exempt from meeting the minimum training requirements established pursuant to this section, then the pay supplement authorized pursuant to § 4-24-202 for firefighters completing the in-service training course shall not be available to such a firefighter unless the firefighter meets the minimum training requirements established pursuant to this section.

(h)(1) This section shall not apply in the unincorporated areas, outside the municipal boundaries of any municipality, in counties having a population of not less than eighty seven thousand nine hundred (87,900) nor more than eighty-eight thousand (88,000), according to the 2000 federal census or any subsequent federal census, unless the governing body of any such county adopts a resolution to apply such requirements within the jurisdictional boundaries of the county 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) The governing body of any such county that has taken the action pursuant to subdivision (h)(1) is authorized to reverse such action by adopting a resolution to exempt their county from the application of this section within the jurisdictional boundaries of the county 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.

(i) This section shall not apply in counties having the following populations, according to the 2000 federal census or any subsequent federal census, nor to municipalities located within such counties:

not less than	nor more than
12,300	12,368
46,800	46,900

(j)(1) Except as provided in subdivision (j)(2), this section shall not apply in the unincorporated areas, outside the municipal boundaries of any municipality in any 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.

(2) This section shall not apply to any city having a population of not less than two thousand twenty (2,020) nor more than two thousand thirty (2,030), according to the 2000 federal census or any subsequent federal census.

(k)(1) This section shall not apply in the unincorporated areas, outside the municipal boundaries of any municipality, in counties having the following populations, according to the 2000 federal census or any subsequent federal census:

not less than	nor more than
4,900	5,000
7,975	8,025
16,600	16,700
19,500	19,775
20,100	20,200
21,100	21,200
39,050	39,150

unless the governing body of any such county adopts a resolution of its governing body to apply such requirements within the jurisdictional boundaries of the county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(2) The governing body of any such county that has taken the action pursuant to subdivision (k)(1) is authorized to reverse the action by adopting a resolution to exempt the county from the application of this section within the jurisdictional boundaries of the county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(*l*)(1) This section shall not apply in any county having a population of not less than forty-nine thousand (49,000) nor more than forty-nine thousand one hundred (49,100), according to the 2000 federal census or any subsequent federal census, unless the governing body of any such county adopts by a two-thirds (⅔) vote a resolution to apply such requirements within the jurisdictional boundaries of the county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(2) The governing body of any such county that has taken the action pursuant to subdivision (*l*)(1) is authorized to reverse such action by adopting a resolution to exempt their county from the application of this section. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(m)(1) This section shall not apply in counties having the following populations, according to the 2000 federal census or any subsequent federal census:

not less than	nor more than
7,200	7,300
12,826	12,900

unless the governing body of any such county adopts a resolution of its governing body to apply the requirements within the jurisdictional boundaries of the county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(2) The governing body of any such county that has taken the action pursuant to subdivision (m)(1) is authorized to reverse such action by adopting a resolution to exempt the county from the application of this section within the jurisdictional boundaries of the county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(n) This section shall not apply in counties having a population, according to the 2000 federal census or any subsequent federal census, of:

not less than	nor more than
6,700	6,800
7,900	7,970
11,700	11,800
16,500	16,575

(o) The legislative body of any municipality or county that has been exempted from this section may adopt a resolution by a two-thirds (⅔) vote to make this section applicable within the jurisdictional boundaries of their respective municipality or county, as appropriate; provided, that any action by

the county legislative body concerning the action 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.

4-25-107. Reports.

(a) The director shall make a written report to the governor, the speaker of the senate, the speaker of the house of representatives and the chairs of the state and local government committee of the senate and the state government committee of the house of representatives at least once each year, such report to be made no later than December 1.

(b) The director shall include in the report:

(1) Proposals for legislative action needed to improve forms reduction and management;

(2) A summary of accomplishments and planned initiatives to reduce the number of forms used by agencies;

(3) A statement of targeted areas of reduction of paperwork within agencies of state government;

(4) A tabulation of areas of duplication in agency forms identified during the preceding year and efforts made to preclude the collection of duplicate information; and

(5) A summary of procedures developed to improve efficient procurement, receipt, storage and distribution of forms by all agencies.

4-26-105. Reports.

(a) The department shall make a written report to the governor, the speaker of the senate, the speaker of the house of representatives, the chair of the commerce and labor committee of the senate, the chair of the business and utilities committee of the house of representatives, and any governor's advisory committee on minority economic development, at least once each year, such report to be made no later than December 1.

(b) The report shall advise the officials and committees mentioned in subsection (a) on the administration and operation of this chapter.

4-28-105. Standardized format for TNInvestco to apply for investment tax credits — Information required in applications — Submission of irrevocable investment commitments — Penalty for failure to perform — Review of applications — Criteria — Aggregate amount of investment tax credits to be allocated — Deadline for approval.

(a) The department of economic and community development, in consultation with the department of revenue must provide a standardized format for a TNInvestco to apply for the investment tax credits.

(b) Applications shall contain such information as required by the department of revenue and the department of economic and community development, including statements regarding the ability to obtain the required investment commitments. Each TNInvestco shall submit irrevocable investment commitments from participating investors and TNInvestco owners in an aggregate amount equal to at least the base investment amount not later than November

30, 2009. TNInvestcos that are awarded investment tax credits under this chapter based on the asserted ability to raise the required capital shall be subject to a fifty-thousand-dollar ($50,000) penalty for failure to perform. The proceeds from any such penalty shall be deposited into the Tennessee rural opportunity fund to further the state's economic development efforts.

(c)(1)(A) The department of revenue and the department of economic and community development, in consultation with the Tennessee Technology Development Corporation, shall review the applications and award the investment tax credits based on the overall strength of the application using the following criteria:

(i) The applicant has at least two (2) investment managers with five (5) or more years of investment experience;

(ii) The applicant has been based, as defined by having a principal office, in this state for at least five (5) years or has at least five (5) years of experience in investing primarily in Tennessee domiciled companies;

(iii) The applicant's proposed investment strategy for achieving transformational economic development outcomes through focused investments of capital in seed or early stage companies with high-growth potential; and

(iv) The applicant's demonstrated ability to lead investment rounds, advise and mentor entrepreneurs and facilitate follow-on investments.

(B) TNInvestcos that do not meet the criteria in subdivision (c)(1)(A)(ii) may submit a joint application with an entity that meets the criteria set out in subdivision (c)(1)(A)(ii), and such application shall be judged based on the combined attributes of the joint application.

(2) The awarding of investment tax credits shall be in the sole discretion of the commissioner of revenue and the commissioner of economic and community development.

(d) The aggregate amount of investment tax credits to be allocated to all participating investors of qualified TNInvestcos under this chapter shall not exceed one hundred twenty million dollars ($120,000,000). The investment tax credits will be awarded in twenty-million-dollar ($20,000,000) allocations. No TNInvestco, on an aggregate basis with its joint applicants, may apply for more than two (2) twenty-million-dollar ($20,000,000) allocations.

(e) The TNInvestco will receive, no later than December 31, 2009, a written notice from the department of economic and community development stating whether or not it has been approved as a qualified TNInvestco and, if applicable, stating the amount of its investment tax credit allocation.

(f) Notwithstanding subsection (d), the commissioner of revenue and the commissioner of economic and community development are authorized to allocate additional investment tax credits in the total amount of eighty million dollars ($80,000,000) such that the aggregate amount of investment tax credits to be allocated under this chapter shall not exceed two hundred million dollars ($200,000,000). Such additional investment tax credits shall consist of four (4) twenty-million-dollar allocations, which shall be awarded, respectively, to the four (4) TNInvestcos, chosen as finalists by the commissioner of revenue and the commissioner of economic and community development during the selection process set out in subsections (a)-(e), that did not receive an allocation of investment tax credits under subsection (d). Final allocation of such tax credits to such TNInvestcos shall occur after the TNInvestcos have obtained irrevocable investment commitments from participating investors and TNInvestco

owners in an aggregate amount equal to at least the base investment amount. The tax credits awarded pursuant to this section shall be syndicated in a manner approved by the state treasurer and the commissioner of economic and community development. Any contract to sell tax credits, entered on or after June 30, 2010, in a manner that has not been approved by the state treasurer and the commissioner of economic and community development shall be voidable in the sole discretion of the state treasurer.

(g) If the general assembly subsequently authorizes an allocation of investment tax credits in addition to the two hundred million dollars ($200,000,000) authorized by subsection (f) and by Chapter 610 of the Public Acts of 2009, in reviewing applications and awarding such credits, the commissioner of revenue and the commissioner of economic and community development shall strive to select applicants whose investment team membership is reflective of the racial, ethnic and gender diversity of Tennessee's population.

4-29-233. Governmental entities terminated on June 30, 2012.

(a) The following entities shall terminate on June 30, 2012:

(1) [Deleted by 2011 amendment, transferred to § 4-29-235.]

(2) [Deleted by 2012 amendment, transferred to § 4-29-237.]

(3) [Deleted by 2012 amendment, transferred to § 4-29-237.]

(4) [Deleted by 2012 amendment, transferred to § 4-29-236.]

(5) [Deleted by 2012 amendment, transferred to § 4-29-238.]

(6) [Deleted by 2012 amendment, transferred to § 4-29-235.]

(7) [Deleted by 2012 amendment, transferred to § 4-29-236.]

(8) [Deleted by 2012 amendment, transferred to § 4-29-238.]

(9) [Deleted by 2012 amendment, transferred to § 4-29-235.]

(10) [Deleted by 2012 amendment, transferred to § 4-29-235.]

(11) [Deleted by 2012 amendment, transferred to § 4-29-238.]

(12) [Deleted by 2011 amendment, commission terminated.]

(13) [Deleted by 2012 amendment, transferred to § 4-29-238.]

(14) [Deleted by 2012 amendment, transferred to § 4-29-238.]

(15) Judicial nominating commission, created by § 17-4-102;

(16) [Deleted by 2012 amendment, transferred to § 4-29-234.]

(17) [Deleted by 2013 amendment, board terminated, responsibilities transferred to the underground storage tanks and solid waste disposal control board, created by § 69-211-111. See § 4-29-235.]

(18) [Deleted by 2013 amendment, transferred to § 4-29-238.]

(19) [Deleted by 2013 amendment, board terminated, responsibilities transferred to the underground storage tanks and solid waste disposal control board, created by § 69-211-111. § 4-29-235.]

(20) [Deleted by 2012 amendment, transferred to § 4-29-237.]

(21) [Deleted by 2013 amendment, transferred to § 4-29-237.]

(22) [Deleted by 2012 amendment, transferred to § 4-29-238.]

(23) [Deleted by 2012 amendment, transferred to § 4-29-238.]

(24) [Deleted by 2011 amendment, transferred to § 4-29-235.]

(25) [Deleted by 2011 amendment, transferred to § 4-29-235.]

(26) [Deleted by 2012 amendment, transferred to § 4-29-238.]

(27) [Deleted by 2012 amendment, transferred to § 4-29-238.]

(28) [Deleted by 2012 amendment, court terminated; responsibilities transferred to the Tennessee board of judicial conduct. See § 4-29-235.]

(29) [Deleted by 2012 amendment, transferred to § 4-29-238.]
(30) [Deleted by 2012 amendment, transferred to § 4-29-238.]
(31) [Deleted by 2013 amendment, transferred to § 4-29-235.]
(32) [Deleted by 2013 amendment, transferred to § 4-29-235.]
(33) [Deleted by 2012 amendment, transferred to § 4-29-238.]
(34) [Deleted by 2012 amendment, transferred to § 4-29-238.]
(35) [Deleted by 2012 amendment, transferred to § 4-29-238.]
(36) [Deleted by 2012 amendment, transferred to § 4-29-235.]
(37) [Deleted by 2013 amendment, board terminated, responsibilities transferred to the Tennessee board of water quality, oil, and gas, created by § 69-3-104. See § 4-29-235.]

(b) Each department, commission, board, agency, or council of state government created during calendar year 2010 terminates on June 30, 2012.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished or restructured in accordance with this chapter.

4-29-234. Governmental entities terminated on June 30, 2013.

(a) The following entities shall terminate on June 30, 2013:
(1) [Deleted by 2013 amendment, transferred to § 4-29-240.]
(2) [Deleted by 2013 amendment, transferred to § 4-29-238.]
(3) Board of barber examiners, created by § 62-3-101;
(4) [Deleted by 2013 amendment, transferred to § 4-29-238.]
(5) [Deleted by 2013 amendment, transferred to § 4-29-238.]
(6) Board of cosmetology, created by § 62-4-103;
(7) [Deleted by 2013 amendment, transferred to § 4-29-238.]
(8) [Deleted by 2013 amendment, transferred to § 4-29-238.]
(9) [Deleted by 2013 amendment, transferred to § 4-29-239.]
(10) [Deleted by 2013 amendment, transferred to § 4-29-238.]
(11) [Deleted by 2013 amendment, transferred to § 4-29-238.]
(12) [Deleted by 2013 amendment, transferred to § 4-29-238.]
(13) [Deleted by 2013 amendment, transferred to § 4-29-236.]
(14) [Deleted by 2013 amendment, transferred to § 4-29-238.]
(15) [Deleted by 2013 amendment; transferred to § 4-29-240.]
(16) [Deleted by 2013 amendment, transferred to § 4-29-239.]
(17) [Deleted by 2013 amendment, transferred to § 4-29-239.]
(18) [Deleted by 2013 amendment, transferred to § 4-29-239.]
(19) [Deleted by 2013 amendment, transferred to § 4-29-239.]
(20) [Deleted by 2013 amendment, transferred to § 4-29-236.]
(21) [Deleted by 2013 amendment, transferred to § 4-29-238.]
(22) [Deleted by 2013 amendment, transferred to § 4-29-236.]
(23) [Deleted by 2013 amendment, transferred to § 4-29-238.]
(24) [Deleted by 2013 amendment, transferred to § 4-29-238.]
(25) [Deleted by 2013 amendment, transferred to § 4-29-239.]
(26) Drycleaner environmental response board, created by § 68-217-104;
(27) [Deleted by 2013 amendment, transferred to § 4-29-235.]
(28) [Deleted by 2013 amendment, transferred to § 4-29-235.]
(29) [Deleted by 2013 amendment, transferred to § 4-29-240.]
(30) [Deleted by 2013 amendment, transferred to § 4-29-238.]
(31) [Deleted by 2013 amendment, transferred to § 4-29-240.]

(32) [Deleted by 2013 amendment, transferred to § 4-29-238.]

(33) Industrial development division, building finance committee, created by § 4-14-109;

(34) [Deleted by 2013 amendment, transferred to § 4-29-239.]

(35) [Deleted by 2013 amendment, transferred to § 4-29-239.]

(36) [Deleted by 2013 amendment, transferred to § 4-29-239.]

(37) Judicial performance evaluation commission, created by § 17-4-201; and

(38) [Deleted by 2011 amendment, commission terminated.]

(39) [Deleted by 2013 amendment, transferred to § 4-29-239.]

(40) [Deleted by 2013 amendment, transferred to § 4-29-239.]

(41) [Deleted by 2013 amendment, transferred to § 4-29-239.]

(42) [Deleted by 2013 amendment, transferred to § 4-29-239.]

(43) [Deleted by 2013 amendment, transferred to § 4-29-239.]

(44) [Deleted by 2013 amendment, transferred to § 4-29-235.]

(45) [Deleted by 2013 amendment, transferred to § 4-29-240.]

(46) [Deleted by 2013 amendment, transferred to § 4-29-240.]

(47) [Deleted by 2013 amendment, transferred to § 4-29-240.]

(48) [Deleted by 2013 amendment, transferred to § 4-29-240.]

(49) [Deleted by 2013 amendment, transferred to § 4-29-236.]

(50) [Deleted by 2013 amendment, transferred to § 4-29-238.]

(51) [Deleted by 2013 amendment, transferred to § 4-29-238.]

(52) Surplus Lines Insurance Multi-State Compliance Compact, created by § 56-14-201;

(53) [Deleted by 2013 amendment, transferred to § 4-29-238.]

(54) [Deleted by 2013 amendment, transferred to § 4-29-239.]

(55) [Deleted in 2013, council repealed by Acts 2013, ch. 454, § 4, effective July 1, 2013.]

(56) [Deleted by 2013 amendment, transferred to § 4-29-236.]

(57) [Deleted by 2013 amendment, transferred to § 4-29-235.]

(58) [Deleted by 2013 amendment, transferred to § 4-29-238.]

(59) [Deleted by 2013 amendment, transferred to § 4-29-238.]

(60) [Deleted by 2013 amendment, transferred to § 4-29-236.]

(61) [Deleted by 2013 amendment, transferred to § 4-29-240.]

(62) [Deleted by 2013 amendment, transferred to § 4-29-235.]

(63) [Deleted by 2013 amendment, transferred to § 4-29-240.]

(b) Each department, commission, board, agency, or council of state government created during calendar year 2011 terminates on June 30, 2013.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished or restructured in accordance with this chapter.

4-29-235. Governmental entities terminated on June 30, 2014.

(a) The following governmental entities shall terminate on June 30, 2014:

(1) Advisory committee for children's special services, created by § 68-12-106;

(2) Advisory council on child nutrition and wellness, created by § 68-1-2303;

(3) Advisory council on state procurement, created by § 4-56-106;

(4) Beech River watershed development authority, board of directors,

created by § 64-1-101;

(5) Board of appeals for the department of human resources, created by § 8-30-108;

(6) Board of law examiners, created by § 23-1-101;

(7) Board of nursing, created by § 63-7-201;

(8) Board of occupational therapy, created by § 63-13-216;

(9) Board of physical therapy, created by § 63-13-318;

(10) Board of social work licensure, created by § 63-23-101;

(11) [Deleted by 2011 amendment; responsibilities transferred to the state procurement commission.]

(12) Chickasaw basin authority, created by § 64-1-201;

(13) Child care advisory council, created by § 49-1-302;

(14) Council on children's mental health care, created by § 37-3-111;

(15) Department of agriculture, created by §§ 4-3-101 and 4-3-201;

(16) Department of children's services, created by §§ 4-3-101 and 37-5-101;

(17) Department of human services, created by §§ 4-3-101 and 4-3-1201;

(18) Department of intellectual and developmental disabilities, created by §§ 4-3-101 and 4-3-2701;

(19) Department of revenue, created by §§ 4-3-101 and 4-3-1901;

(20) Department of safety, created by §§ 4-3-101 and 4-3-2001;

(21) Department of veterans' affairs, created by §§ 4-3-101 and 4-3-2501;

(22) Doe Mountain recreation authority, created by § 11-25-103;

(23) Domestic violence state coordinating council, created by § 38-12-101;

(24) Emergency communications board, created by § 7-86-302;

(25) Employee misclassification advisory task force, created by § 50-6-919;

(26) Energy efficient schools council, created by § 49-17-103;

(27) Four Lake regional industrial developmental authority, created by § 64-5-201;

(28) Housing development agency, board of directors, created by § 13-23-104;

(29) Integrated criminal justice steering committee, created by § 16-3-815;

(30) Interstate Mining Compact, created by § 59-10-101;

(31) Interstate Nurse Licensure Compact, created by § 63-7-301;

(32) Judicial information system advisory committee, created by § 16-3-809;

(33) Local education insurance committee, created by § 8-27-301;

(34) Local government planning advisory committee, created by § 4-3-727;

(35) Pest control board, created by § 62-21-104;

(36) Pest Control Compact, created by § 43-6-301;

(37) Sam Davis memorial association, board of trustees, created by § 4-13-301;

(38) School bond authority, created by § 49-3-1204;

(39) Sequatchie Valley planning and development agency, created by §§ 64-1-501 and 64-1-502;

(40) Soil scientist advisory committee, created by § 62-18-210;

(41) Southern Regional Education Compact, created by § 49-12-101;

(42) State board for licensing contractors, created by § 62-6-104;

(43) State building commission, created by § 4-15-101;

(44) State law library commission, created by § 10-4-101;

(45) State procurement commission, created by § 4-56-102;

(46) State protest committee, created by § 4-56-103;

(47) State textbook commission, created by § 49-6-2201;

(48) State university and community college system, board of regents, created by § 49-8-201;

(49) Statewide community services agency, created by § 37-5-305;

(50) Tennessee alliance for fitness and health, created by § 4-40-301;

(51) Tennessee athletic commission, created by § 68-115-103;

(52) Tennessee board of court reporting, created by § 20-9-604;

(53) Tennessee board of judicial conduct, created by § 17-5-201;

(54) Tennessee board of water quality, oil and gas, created by § 69-3-104;

(55) Tennessee bureau of investigation, created by § 38-6-101;

(56) Tennessee corrections institute, board of control, created by § 41-7-105;

(57) Tennessee court information system steering committee, created by § 16-3-811;

(58) Tennessee dairy promotion committee, created by § 44-19-114;

(59) Tennessee Duck River development agency, created by §§ 64-1-601 and 64-1-602;

(60) Tennessee film, entertainment and music commission, created by § 4-3-5003;

(61) Tennessee fish and wildlife commission, created by § 70-1-201;

(62) Tennessee governor's council on physical fitness and health, created by § 4-40-101;

(63) Tennessee heritage conservation trust fund board of trustees, created by § 11-7-104;

(64) Tennessee higher education commission, created by § 49-7-201;

(65) [Deleted by 2013 amendment, committee terminated, responsibilities transferred to the underground storage tanks and solid waste disposal control board, created by § 69-211-111. See § 4-29-235.]

(66) Tennessee public television council, created by § 49-50-905;

(67) Tennessee rehabilitative initiative in correction board, created by § 41-22-404;

(68) Tennessee soybean promotion board, created by § 43-20-102;

(69) Tennessee student assistance corporation, board of directors, created by § 49-4-202;

(70) Tennessee tobacco farmers certifying board, created by § 43-36-102;

(71) Underground storage tanks and solid waste disposal control board, created by § 68-211-111;

(72) University of Tennessee, board of trustees, created by § 49-9-202;

(73) Wastewater financing board, created by § 68-221-1008; and

(74) West Tennessee river basin authority, created by § 64-1-1101.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2012 terminates on June 30, 2014.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished or restructured in accordance with this chapter.

4-29-236. Governmental entities terminated on June 30, 2015. [Effective until July 1, 2014. See the version effective on July 1, 2014.

(a) The following governmental entities shall terminate on June 30, 2015:

(1) Advisory committee on women's health, created by § 68-1-1804;

(2) Advisory council for education of students with disabilities, created by § 49-10-105;

(3) Advisory council on teacher education and certification, created by § 49-5-110;

(4) Air pollution control board, created by § 68-201-104;

(5) Beef promotion board, created by § 43-29-118;

(6) Board for professional counselors, marital and family therapists, and clinical pastoral therapists, created by § 63-22-101;

(7) Board of alcohol and drug abuse counselors, created by § 68-24-604;

(8) [Deleted by 2009 amendment, board terminated.]

(9) Board of boiler rules, created by § 68-122-101;

(10) Board of claims, created by § 9-8-101;

(11) Board of dispensing opticians, created by § 63-14-101;

(12) Board of ground water management, created by § 69-10-107;

(13) Board of osteopathic examination, created by § 63-9-101;

(14) Board of parole, created by § 40-28-103;

(15) Board of trustees of the baccalaureate education system trust fund program, created by § 49-7-804;

(16) Bureau of TennCare within the department of finance and administration, pursuant to Executive Order No. 23 on October 19, 1999;

(17) Carroll County watershed authority, created by § 64-1-801;

(18) Commission on children and youth, created by § 37-3-102;

(19) Commission on firefighting personnel standards and education, created by § 4-24-101;

(20) Consumer advocate division in the office of the attorney general and reporter, created by § 65-4-118;

(21) Delta human resource agency, created by § 13-26-102;

(22) Department of commerce and insurance, created by §§ 4-3-101 and 4-3-1301;

(23) Department of correction, created by §§ 4-3-101 and 4-3-601;

(24) Department of education, created by §§ 4-3-101 and 4-3-801;

(25) Department of environment and conservation, created by §§ 4-3-101 and 4-3-501;

(26) Department of health, created by §§ 4-3-101 and 4-3-1801;

(27) Department of labor and workforce development, created by §§ 4-3-101 and 4-3-1403;

(28) East Tennessee human resource agency, created by § 13-26-102;

(29) Elevator and amusement device safety board, created by § 68-121-102;

(30) Egg promotion board, created by § 43-29-120;

(31) First Tennessee human resource agency, created by § 13-26-102;

(32) Hemophilia advisory committee, created by § 68-41-103;

(33) Higher education and technical institutions publication committee, created by § 12-7-106;

(34) Information systems council, created by § 4-3-5501;

(35) [Deleted by 2013 amendment, institute terminated.]

(36) James K. Polk memorial association, created by § 4-13-201;

(37) Medical care and cost containment committee, created by § 50-6-125;

(38) Mid-Cumberland human resource agency, created by § 13-26-102;

(39) Northwest Tennessee human resource agency, created by § 13-26-102;

(40) Occupational safety and health review commission, created by § 50-3-801;

(41) Office of business enterprise, created by § 4-26-101;

(42) Perinatal advisory committee, created by § 68-1-803;

(43) Pork promotion board, created by § 43-29-119;

(44) Prevailing wage commission, created by § 12-4-404;

(45) Rail service authorities, created by § 7-56-201;

(46) Renal disease advisory committee, created by § 68-35-102;

(47) Review committee, created by former § 12-4-109 [See the Compiler's Notes];

(48) South Central Tennessee human resource agency, created by § 13-26-102;

(49) South Central Tennessee railroad authority, created by § 64-2-201;

(50) Southeast Tennessee human resource agency, created by § 13-26-102;

(51) Southern growth policies board, created by § 13-2-101;

(52) Southwest Tennessee human resource agency, created by § 13-26-102;

(53) State board of education, created by § 49-1-301;

(54) State board of equalization, created by § 4-3-5101;

(55) State unemployment compensation advisory council, created by § 50-7-606;

(56) Tennessee aeronautics commission, created by § 42-2-301;

(57) Tennessee claims commission, created by § 9-8-301;

(58) Tennessee consolidated retirement system, board of trustees, created by § 8-34-301;

(59) Tennessee council for the deaf, deaf-blind, and hard of hearing, created by § 71-4-2102;

(60) Tennessee economic council on women, created by § 4-50-101;

(61) Tennessee health information committee, created by § 56-2-125;

(62) Tennessee peace officers standards and training commission, created by § 38-8-102;

(63) [Deleted by 2009 amendment, removed from governmental review.]

(64) Tennessee state veterans' home board, created by§ 58-7-102;

(65) Traumatic brain injury advisory council, created by § 68-55-102;

(66) Tri-county railroad authority, created by § 64-2-301;

(67) Upper Cumberland human resource agency, created by § 13-26-102; and

(68) Utility management review board, created by § 7-82-701.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2013 terminates on June 30, 2015.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished or restructured in accordance with this chapter.

4-29-236. Governmental entities terminated on June 30, 2015. [Effective on July 1, 2014. See the version effective until July 1, 2014.

(a) The following governmental entities shall terminate on June 30, 2015:

(1) Advisory committee on women's health, created by § 68-1-1804;

(2) Advisory council for education of students with disabilities, created by § 49-10-105;

(3) Advisory council on teacher education and certification, created by § 49-5-110;

(4) Air pollution control board, created by § 68-201-104;

(5) Beef promotion board, created by § 43-29-118;

(6) Board for professional counselors, marital and family therapists, and clinical pastoral therapists, created by § 63-22-101;

(7) Board of alcohol and drug abuse counselors, created by § 68-24-604;

(8) [Deleted by 2009 amendment, board terminated.]

(9) Board of boiler rules, created by § 68-122-101;

(10) Board of claims, created by § 9-8-101;

(11) Board of dispensing opticians, created by § 63-14-101;

(12) Board of ground water management, created by § 69-10-107;

(13) Board of osteopathic examination, created by § 63-9-101;

(14) Board of parole, created by § 40-28-103;

(15) Board of trustees of the baccalaureate education system trust fund program, created by § 49-7-804;

(16) Bureau of TennCare within the department of finance and administration, pursuant to Executive Order No. 23 on October 19, 1999;

(17) Carroll County watershed authority, created by § 64-1-801;

(18) Commission on children and youth, created by § 37-3-102;

(19) Commission on firefighting personnel standards and education, created by § 4-24-101;

(20) Consumer advocate division in the office of the attorney general and reporter, created by § 65-4-118;

(21) Delta human resource agency, created by § 13-26-102;

(22) Department of commerce and insurance, created by §§ 4-3-101 and 4-3-1301;

(23) Department of correction, created by §§ 4-3-101 and 4-3-601;

(24) Department of education, created by §§ 4-3-101 and 4-3-801;

(25) Department of environment and conservation, created by §§ 4-3-101 and 4-3-501;

(26) Department of health, created by §§ 4-3-101 and 4-3-1801;

(27) Department of labor and workforce development, created by §§ 4-3-101 and 4-3-1403;

(28) East Tennessee human resource agency, created by § 13-26-102;

(29) Elevator and amusement device safety board, created by § 68-121-102;

(30) Egg promotion board, created by § 43-29-120;

(31) First Tennessee human resource agency, created by § 13-26-102;

(32) Hemophilia advisory committee, created by § 68-41-103;

(33) Higher education and technical institutions publication committee, created by § 12-7-106;

(34) Information systems council, created by § 4-3-5501;

(35) [Deleted by 2013 amendment, institute terminated.]

(36) James K. Polk memorial association, created by § 4-13-201;

(37) Medical advisory committee, created by § 50-6-135

(38) Medical care and cost containment committee, created by § 50-6-125;

(39) Medical payment committee, created by § 50-6-125;

(40) Mid-Cumberland human resource agency, created by § 13-26-102;

(41) Northwest Tennessee human resource agency, created by § 13-26-102;

(42) Occupational safety and health review commission, created by § 50-3-801;

(43) Office of business enterprise, created by § 4-26-101;

(44) Perinatal advisory committee, created by § 68-1-803;

(45) Pork promotion board, created by § 43-29-119;

(46) Prevailing wage commission, created by § 12-4-404;

(47) Rail service authorities, created by § 7-56-201;

(48) Renal disease advisory committee, created by § 68-35-102;

(49) Review committee, created by former § 12-4-109 [See the Compiler's Notes];

(50) South Central Tennessee human resource agency, created by § 13-26-102;

(51) South Central Tennessee railroad authority, created by § 64-2-201;

(52) Southeast Tennessee human resource agency, created by § 13-26-102;

(53) Southern growth policies board, created by § 13-2-101;

(54) Southwest Tennessee human resource agency, created by § 13-26-102;

(55) State board of education, created by § 49-1-301;

(56) State board of equalization, created by § 4-3-5101;

(57) State unemployment compensation advisory council, created by § 50-7-606;

(58) Tennessee aeronautics commission, created by § 42-2-301;

(59) Tennessee claims commission, created by § 9-8-301;

(60) Tennessee consolidated retirement system, board of trustees, created by § 8-34-301;

(61) Tennessee council for the deaf, deaf-blind, and hard of hearing, created by § 71-4-2102;

(62) Tennessee economic council on women, created by § 4-50-101;

(63) Tennessee health information committee, created by § 56-2-125;

(64) Tennessee peace officers standards and training commission, created by § 38-8-102;

(65) [Deleted by 2009 amendment, removed from governmental review.]

(66) Tennessee state veterans' home board, created by§ 58-7-102;

(67) Traumatic brain injury advisory council, created by § 68-55-102;

(68) Tri-county railroad authority, created by § 64-2-301;

(69) Upper Cumberland human resource agency, created by § 13-26-102; and

(70) Utility management review board, created by § 7-82-701.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2013 terminates on June 30, 2015.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished or restructured in accordance with this chapter.

4-29-237. Governmental entities terminated on June 30, 2016.

(a) The following governmental entities terminate June 30, 2016:

(1) Advisory board for rehabilitation centers, created by § 49-11-704;
(2) Advisory council on workers' compensation, created by § 50-6-121;
(3) Archaeological advisory council, created by § 11-6-103;
(4) Board for licensing healthcare facilities, created by § 68-11-203;
(5) Board of athletic trainers, created by § 63-24-102;
(6) Board of dietitian/nutritionist examiners, created by § 63-25-106;
(7) Board of examiners for architects and engineers, created by § 62-2-201;
(8) Board of examiners for nursing home administrators, created by § 63-16-102;
(9) Board of land survey examiners, created by § 62-18-103;
(10) Board of medical examiners, created by § 63-6-101;
(11) Board of pharmacy, created by § 63-10-301;
(12) Board of respiratory care, created by § 63-27-103;
(13) Bureau of ethics and campaign finance, created by § 4-55-101;
(14) Center for earthquake research and information, created by § 49-8-602;
(15) [Deleted by 2012 amendment; commission terminated.]
(16) Commission on aging and disability, created by § 71-2-104;
(17) Committee for clinical perfusionists, created by § 63-28-112;
(18) [Deleted by 2013 amendment, commission terminated.]
(19) Controlled substance database advisory committee, created by § 53-10-303;
(20) Council of certified professional midwifery, created by § 63-29-103;
(21) Council for hearing instrument specialists, created by § 63-17-202;
(22) Department of finance and administration, created by §§ 4-3-101 and 4-3-1001;
(23) Department of human resources, created by §§ 4-3-101 and 4-3-1701;
(24) Department of transportation, created by §§ 4-3-101 and 4-3-2301;
(25) Douglas Henry state museum commission, created by § 4-20-301;
(26) Emergency medical services board, created by § 68-140-303;
(27) Employee suggestion award board, created by § 4-27-102;
(28) Great Smoky Mountain parks commission, created by § 11-19-101;
(29) Interstate Compact on Mental Health, created by § 33-9-201;
(30) Interstate Compact on the Placement of Children, created by § 37-4-201;
(31) Massage licensure board, created by § 63-18-103;
(32) [Deleted by 2013 amendment, board terminated, responsibilities transferred to Tennessee board of water quality, oil, and gas, created by § 69-3-104. See § 4-29-235.]
(33) Polysomnographic professional standards committee, created by § 63-31-103;
(34) Public records commission, created by § 10-7-302;
(35) Regional transportation authority, created by § 64-8-101;
(36) Selection panel for TennCare reviewers, created by § 56-32-126;
(37) Southeast Interstate Low-Level Radioactive Waste Compact, created by § 68-202-701;
(38) Southern Dairy Compact, created by § 43-35-101;
(39) State board for alarm systems contractors, created by § 62-32-306;
(40) State board of accountancy, created by § 62-1-104;
(41) State election commission, created by § 2-11-101;

(42) State family support council, created by § 33-5-208;

(43) State funding board, created by § 9-9-101;

(44) State soil conservation committee, created by § 43-14-203;

(45) State TennCare pharmacy advisory committee, created by § 71-5-2401;

(46) Tellico Reservoir development agency, created by § 64-1-701;

(47) Tennessee advisory committee for acupuncture, created by § 63-6-1003;

(48) Tennessee medical examiner advisory council, created by § 38-7-201;

(49) Tennessee medical laboratory board, created by § 68-29-109;

(50) Tennessee motor vehicle commission, created by § 55-17-103;

(51) Tennessee sports hall of fame, created by § 4-3-5402;

(52) Tennessee-Tombigbee waterway development authority, created by § 69-8-101;

(53) Water and wastewater operators, board of certification, created by § 68-221-905; and

(54) West Fork Drakes Creek dam and reservoir interstate authority, created by § 64-1-901.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2014 terminates on June 30, 2016.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

4-29-238. Governmental entities terminated on June 30, 2017.

(a) The following governmental entities terminate on June 30, 2017:

(1) Alcoholic beverage commission, created by § 57-1-102;

(2) Board of chiropractic examiners, created by § 63-4-102;

(3) Board of communication disorders and sciences, created by § 63-17-104;

(4) Board of dentistry, created by § 63-5-101;

(5) Board of examiners in psychology, created by § 63-11-101;

(6) Board of medical examiners' committee on physician assistants, created by § 63-19-103;

(7) Board of optometry, created by § 63-8-103;

(8) Board of podiatric medical examiners, created by § 63-3-103;

(9) Board of veterinary medical examiners, created by § 63-12-104;

(10) Civil Defense and Disaster Compact, created by § 58-2-401;

(11) Committee for purchase from the blind and other severely disabled, created by § 71-4-703;

(12) Council on pensions and insurance, created by § 3-9-101;

(13) Department of economic and community development, created by §§ 4-3-101 and 4-3-701;

(14) Department of financial institutions, created by §§ 4-3-101 and 4-3-401;

(15) Department of general services, created by §§ 4-3-101 and 4-3-1101;

(16) Department of mental health and substance abuse services, created by §§ 4-3-101 and 4-3-1601;

(17) Emergency Management Assistance Compact, created by § 58-2-403;

(18) Health services and development agency, created by § 68-11-1604;

(19) Human rights commission, created by § 4-21-201;
(20) Interstate Compact on Detainers, created by § 40-31-101;
(21) Interstate Corrections Compact, created by § 41-23-102;
(22) Interstate Earthquake Compact of 1988, created by § 58-2-701;
(23) Interstate Insurance Product Regulation Compact of 2007, created by § 56-58-101;
(24) Local government insurance committee, created by § 8-27-207;
(25) Second look commission, created by § 37-3-803;
(26) Southeast Interstate Forest Fire Protection Compact, created by § 11-4-501;
(27) State capitol commission, created by § 4-8-301;
(28) State forestry commission, created by § 11-4-201;
(29) State insurance committee, created by § 8-27-101;
(30) State trust of Tennessee, created by § 9-4-801;
(31) Statewide planning and policy council for the department of intellectual and developmental disabilities, created by § 33-5-601;
(32) Statewide planning and policy council for the department of mental health and substance abuse services, created by § 33-1-401;
(33) Tennessee advisory commission on intergovernmental relations, created by § 4-10-102;
(34) Tennessee arts commission, created by § 4-20-101;
(35) Tennessee code commission, created by § 1-1-101;
(36) Tennessee community resource board, created by § 41-10-105;
(37) Tennessee council for career and technical education, created by § 49-11-201;
(38) Tennessee emergency management agency, created by § 58-2-103;
(39) Tennessee financial literacy commission, created by § 49-6-1702;
(40) Tennessee interagency cash flow committee, created by § 9-4-610;
(41) Tennessee life and health insurance guaranty association, created by § 56-12-205;
(42) Tennessee regulatory authority, created by § 65-1-101;
(43) Tennessee residence commission, created by § 4-23-202; and
(44) Tennessee technology development corporation, created by § 4-14-301.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2015 terminates on June 30, 2017.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

4-29-239. Governmental entities terminated on June 30, 2018. [Effective until July 1, 2014. See the version effective on July 1, 2014.]

(a) The following governmental entities shall terminate on June 30, 2018:
(1) Board of funeral directors and embalmers, created by § 62-5-201;
(2) Collateral pool board, created by § 9-4-506;
(3) Collection service board, created by § 62-20-104;
(4) Commission for uniform legislation, created by § 4-9-101;
(5) Compact for Education, created by § 49-12-201;
(6) Department of tourist development, created by §§ 4-3-101 and

4-3-2201;

(7) Interstate Compact for Juveniles, created by § 37-4-101;

(8) Interstate Compact for Supervision of Adult Offenders, created by § 40-28-401;

(9) Investment advisory council, created by § 8-37-108;

(10) Post-conviction defender oversight commission, created by § 40-30-203;

(11) Private investigation and polygraph commission, created by § 62-26-301;

(12) Real estate appraiser commission, created by § 62-39-201;

(13) Real estate commission, created by § 62-13-201;

(14) Sex offender treatment board, created by § 39-13-704; and

(15) Tennessee auctioneer commission, created by § 62-19-104.

(b) Each department, commission, board, agency or council of state government created during calendar year 2016 terminates on June 30, 2018.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

4-29-239. Governmental entities terminated on June 30, 2018. [Effective on July 1, 2014. See the version effective until July 1, 2014.]

(a) The following governmental entities shall terminate on June 30, 2018:

(1) Board of funeral directors and embalmers, created by § 62-5-201;

(2) Collateral pool board, created by § 9-4-506;

(3) Collection service board, created by § 62-20-104;

(4) Commission for uniform legislation, created by § 4-9-101;

(5) Compact for Education, created by § 49-12-201;

(6) Department of tourist development, created by §§ 4-3-101 and 4-3-2201;

(7) Division of workers' compensation, created by § 4-3-1408;

(8) Interstate Compact for Juveniles, created by § 37-4-101;

(9) Interstate Compact for Supervision of Adult Offenders, created by § 40-28-401;

(10) Investment advisory council, created by § 8-37-108;

(11) Post-conviction defender oversight commission, created by § 40-30-203;

(12) Private investigation and polygraph commission, created by § 62-26-301;

(13) Real estate appraiser commission, created by § 62-39-201;

(14) Real estate commission, created by § 62-13-201;

(15) Sex offender treatment board, created by § 39-13-704; and

(16) Tennessee auctioneer commission, created by § 62-19-104.

(b) Each department, commission, board, agency or council of state government created during calendar year 2016 terminates on June 30, 2018.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

4-29-240. Governmental entities terminated on June 30, 2019.

(a) The following governmental entities shall terminate on June 30, 2019:

(1) Child care agency licensing board of review, created by § 71-3-510;

(2) Genetic advisory committee, created by § 68-5-503.
(3) Historical commission, created by § 4-11-102;
(4) Southern states energy board, created by § 68-202-601;
(5) Southern States Nuclear Compact, created by § 68-202-601;
(6) Standards committee, department of children's services, created by § 37-5-516;
(7) Standards committee, department of human services, created by § 71-3-511;
(8) Tennessee agricultural hall of fame board, created by § 43-1-601;
(9) Tennessee wars commission, created by § 4-11-301; and
(10) Viticulture advisory board, created by § 43-30-102.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2017 terminates on June 30, 2019.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished or restructured in accordance with this chapter.

4-32-101. [Repealed.]

4-32-102. [Obsolete.]

4-32-103. [Repealed.]

4-35-107. Establishment of confidential reporting of illegal, improper, wasteful or fraudulent activity.

(a) An audit committee created pursuant to this chapter shall establish a process by which employees, taxpayers, or other citizens may confidentially report suspected illegal, improper, wasteful, or fraudulent activity. If the information provided causes the chair of the audit committee to believe that illegal, improper, wasteful, or fraudulent activity may have occurred, then the chair of the audit committee shall report the information to the office of the comptroller of the treasury. The comptroller of the treasury shall have the power to prescribe the method of making the report by the chair of the audit committee. The detailed information received and generated pursuant to a report of suspected illegal, improper, wasteful, or fraudulent activity shall be considered audit working papers and is therefore not an open record pursuant to title 10, chapter 7.

(b) Section 8-50-116 shall apply to all state governing board, council, commission or equivalent body employees. In addition, no state governing board, council, commission or equivalent body's employees shall suffer any of the prohibited retaliatory actions specified in § 8-50-116 for reporting or cooperating with the audit committee, internal auditors, or auditors from, or approved by, the comptroller of the treasury, or for reporting any facts to the state governmental body to which the audit committee is attached. Any person who knowingly and willingly retaliates or takes adverse action of any kind against any person for reporting alleged wrongdoing pursuant to this chapter commits a Class A misdemeanor.

4-38-103. Duties of Tennessee office for refugees.

The Tennessee office for refugees shall:

(1) Provide at least a written quarterly report to representatives of local governments to plan and coordinate the appropriate placement of refugees in advance of the refugees' arrival, and appear before the local government to provide additional information at the request of the local government. Specifically, the local government may request reporting of information related to the factors of absorptive capacity as stated in § 4-38-102.

(2) Ensure that representatives of local resettlement agencies, local community service agencies, and other publicly-funded or tax-exempt agencies that serve refugees in this state shall upon request meet with representatives of local governments to plan and coordinate the appropriate placement of refugees in the host community in advance of the refugees' arrival;

(3) Execute a letter of agreement with each agency providing refugee resettlement services in this state. The letter of agreement shall require the parties to mutually consult and prepare a plan for the initial placement of refugees in a host community and set forth the continuing process of consultation between the parties. The provisions of the letter of agreement shall be consistent with federal law regulating the resettlement of refugees;

(4) At least quarterly transmit to the chairs of the state government committee of the house of representatives and state and local government committee of the senate, and to the chair of the budget committee of either the city council or the county legislative body regulating the host community copies of:

(A) The letters of agreement;

(B) Any initial refugee placement plans prepared pursuant to letters of agreement; and

(C) Any communications received and responded to pursuant to subdivision (5), including how or to the extent any issue regarding the concerns of host communities and representatives of local governments was resolved; and

(5) Ensure that residents of host communities and representatives of local governments are aware that any and all concerns regarding local refugee resettlement activities in any host community shall be filed with the Tennessee office for refugees and further that the Tennessee office for refugees shall respond timely in writing to all such communications.

4-47-101. [Repealed.]

4-47-102. [Repealed.]

4-47-103. [Repealed.]

4-47-104. [Repealed.]

4-47-105. [Repealed.]

4-51-109. Duties of chief executive officer.

(a) The chief executive officer of the corporation shall direct and supervise all administrative and technical activities in accordance with this chapter and with the regulations, policies, and procedures adopted by the board. It shall be the duty of the chief executive officer to:

(1) Facilitate the initiation and supervise and administer the operation of

the lottery games;

(2) Employ and direct such personnel as deemed necessary;

(3) Employ by contract and compensate such persons and firms as deemed necessary;

(4) Promote or provide for promotion of the lottery and any functions related to the corporation;

(5) Prepare a budget for the approval of the board;

(6) Require bond from such retailers and vendors in such amounts as required by the board;

(7) Report quarterly to the comptroller of the treasury, the state treasurer, the state and local government committee of the senate, the state government committee of the house of representatives, the office of legislative budget analysis and the board a full and complete statement of lottery revenues and expenses for the preceding quarter;

(8) Report quarterly to the commissioner of finance and administration, the commissioner of education, the chairs of the finance, ways and means committees of the senate and house of representatives, the chairs of the education committees of the senate and house of representatives and the office of legislative budget analysis, a full and complete statement of the moneys that became unclaimed prize moneys for deposit in the after school programs special account in the preceding quarter; and

(9) Perform other duties generally associated with a chief executive officer of a corporation of an entrepreneurial nature.

(b) The chief executive officer may for good cause suspend, revoke, or refuse to renew any contract entered into in accordance with this chapter or the regulations, policies, and procedures of the board.

(c) The chief executive officer or a designee may conduct hearings and administer oaths to persons for the purpose of assuring the security or integrity of lottery operations or to determine the qualifications of or compliance by vendors and retailers.

(d)(1) No person shall serve as chief executive officer of the corporation who has been convicted of:

(A) Any felony;

(B) A misdemeanor involving gambling, theft, computer offenses, forgery, perjury, dishonesty or unlawfully selling or providing a product or substance to a minor;

(C) Any violation of this chapter; or

(D) Any offense in a federal court, military court or court of another state, territory or jurisdiction that under the laws of this state would disqualify such person pursuant to subdivisions (d)(1)(A), (d)(1)(B), or (d)(1)(C).

(2) Prior to employment of a person as the chief executive officer, the board shall submit the names of potential chief executive officers to the Tennessee bureau of investigation and the Tennessee bureau of investigation, pursuant to § 38-6-109, shall conduct a criminal history records check on all such persons. The Tennessee bureau of investigation may contract with the federal bureau of investigation, other law enforcement agency or any other legally authorized entity to assist in such investigation. Such persons shall supply a fingerprint sample on request and in the manner requested by the investigating entity. The Tennessee bureau of investigation shall conduct such investigation as soon as practicable after submission of

names by the board. The corporation shall pay, as an operating expense, the cost of the records check. The results of such a records check shall not be considered a record open to the public pursuant to title 10, chapter 7, part 5.

(e) No person shall be selected to serve as the initial chief executive officer of the corporation who does not possess:

(1) At least two (2) years of experience as a chief executive officer or chief operating officer of a state lottery within the United States; or

(2) At least five (5) years of management level experience with a state lottery within the United States.

4-51-111. Lottery proceeds.

(a)(1) All lottery proceeds shall be the property of the corporation.

(2) From its lottery proceeds the corporation shall pay the operating expenses of the corporation. As nearly as practical, at least fifty percent (50%) of the amount of money from the actual sale of lottery tickets or shares shall be made available as prize money; provided that this subdivision (a)(2) shall not be deemed to create any lien, entitlement, cause of action, or other private right, and any rights of holders of tickets or shares shall be determined by the corporation in setting the terms of its lottery or lotteries.

(3) As nearly as practical, for each fiscal year, net lottery proceeds shall equal at least thirty-five percent (35%) of the lottery proceeds or an amount that maximizes net lottery proceeds; provided, however, that for the first two (2) full fiscal years and any partial first fiscal year of the corporation, net lottery proceeds need only equal, as nearly as practical, thirty percent (30%) of the lottery proceeds. If, after the second full fiscal year, the corporation determines that an amount that maximizes net lottery proceeds is less than thirty-five percent (35%) of the lottery proceeds, then, immediately upon making such determination, the corporation shall file with the state funding board a statement of reasons supporting such determination and a projection of such amount.

(b)(1) There is created within the state treasury a "lottery for education account." Amounts remaining in the account at the end of each fiscal year shall not revert to the general fund. Money in the account shall be invested by the state treasurer pursuant to title 9, chapter 4, part 6 for the sole benefit of the account. All earnings attributable to such investments shall be credited to the lottery for education account.

(2) On or before the fifteenth day of the first month of each quarter, the corporation shall transfer to the state treasury, for credit to the lottery for education account, an amount representing an estimate of the net lottery proceeds for the immediately preceding quarter. Any additional transfers required to reconcile the amount of the net lottery proceeds transferred on the fifteenth day of the month shall be completed by the last business day of the month following the end of the quarter. Upon deposit into the state treasury, net lottery proceeds shall become the unencumbered property of the state of Tennessee and the corporation shall have no power to agree or undertake otherwise. Except as otherwise provided in subdivision (b)(3), such funds shall be expended for education programs and purposes in accordance with article XI, § 5 of the Constitution of Tennessee.

(3)(A) A general shortfall reserve subaccount shall be maintained within the lottery for education account.

(B) Except as provided in subdivision (b)(3)(D), the amount of the general shortfall reserve subaccount shall equal one hundred million dollars ($100,000,000). In any fiscal year, only an amount necessary to maintain the general shortfall reserve subaccount in an amount equal to one hundred million dollars ($100,000,000) shall be deposited into the subaccount.

(C) If the net lottery proceeds deposited into the lottery for education account in any year, exclusive of the amount in the general shortfall reserve subaccount, are not sufficient to meet the amount appropriated for educational programs and purposes pursuant to subsection (c), the general shortfall reserve subaccount may be drawn upon to meet the deficiency; provided, however, that reserves in the account shall be used first for any shortfall in the amount appropriated to the educational scholarship program and then to any other educational programs and purposes otherwise provided by law for which net lottery proceeds may be expended. In the event it becomes necessary to draw from the general shortfall reserve subaccount in any fiscal year for educational programs and purposes, such programs and purposes shall be reviewed and shall be reduced to the amount of available net lottery proceeds, exclusive of the general shortfall reserve subaccount, estimated to be available in the next fiscal year. In the event the general shortfall reserve subaccount is drawn upon in any fiscal year, the subaccount shall be brought back to its prior level in subsequent fiscal years. Five percent (5%) of net lottery proceeds shall be deposited into the lottery for education account each quarter, until the amount of the general shortfall reserve subaccount equals one hundred million dollars ($100,000,000). Notwithstanding any provision of this subdivision (b)(3)(C) to the contrary, the program reduction and repayment provisions of this subdivision (b)(3)(C) shall not be triggered, if amounts in excess of one hundred million dollars ($100,000,000) are recommended for appropriation pursuant to subdivision (b)(3)(D).

(D) In addition to the amount provided pursuant to subdivision (b)(3)(B), the funding board may recommend appropriation of funds to the general shortfall reserve subaccount if such fund is deemed inadequate. The funding board may recommend appropriation of funds from the general shortfall reserve subaccount if adequate funds are deemed to be available in the general shortfall reserve subaccount and if such funds are needed for educational programs and purposes consistent with article XI, § 5 of the Constitution of Tennessee; provided, that "adequate funds" shall not be deemed to be available if such recommended appropriation would reduce the general shortfall reserve account below one hundred million dollars ($100,000,000).

(E) The comptroller of the treasury shall annually review and report to the education committees of the senate and the house of representatives concerning the adequacy of the balance of the general shortfall reserve subaccount, whether payment from net lottery proceeds for educational programs authorized in the Constitution of Tennessee has been sufficient to fund the programs without drawing on the general shortfall reserve subaccount and whether triggers for replenishing or increasing the general shortfall reserve subaccount, if deemed inadequate, are sufficient.

(4) A special reserve subaccount shall be maintained within the lottery for education account. The amount of the special reserve subaccount shall be

equal to one percent (1%) of net lottery proceeds deposited into the lottery for education account from all deposits made to the fund from the initial deposit until the last deposit made in fiscal year 2007-2008. Transfers to the special reserve subaccount shall be made from the lottery for education account quarterly until the end of such fiscal year. The amount in the special reserve subaccount may be used to make or support loans to local government units for educational programs and purposes in accordance with article XI, § 5 of the Constitution of Tennessee and to pay or secure debt issued for such programs and purposes as otherwise provided by law. Such amount shall supplement, not supplant, nonlottery educational resources for such programs and purposes. Notwithstanding any provision of this section to the contrary, treasurer's earnings on the special reserve subaccount shall be credited to the special reserve subaccount to be used in a manner consistent with this subdivision (b)(4).

(c)(1) No later than the date in 2003 upon which the state funding board presents state revenue estimates to the governor pursuant to § 9-4-5202(e)(3), the funding board shall establish a projected revenue range for net lottery proceeds for the remainder of the current fiscal year and the next succeeding fiscal year. No later than the date of presentation of such estimates to the governor by the state funding board in all subsequent years, the funding board shall project the revenue for net lottery proceeds for the remainder of the then current fiscal year and the next succeeding four (4) fiscal years. Such projection shall be made in the same manner as other state revenues are projected by the funding board, which figure may be adjusted prior to the enactment of the general appropriations act. In making such projections, the funding board shall recognize unusual fluctuations in lottery proceeds. In making such projections, the funding board is authorized to obtain information from those having expertise and experience in projecting revenue from the sale of lottery tickets or shares.

(2)(A)(i) Before December 15, 2003, and before December 15 in each succeeding year, the Tennessee student assistance corporation shall prepare a report setting forth an estimate of the total cost of lottery related financial assistance to be provided to Tennessee citizens during the next fiscal year pursuant to title 49, chapter 4, part 9. Such report shall include the major assumptions and the methodology used in arriving at such estimate. For the report due in December 2003, the Tennessee student assistance corporation shall base its estimate of total costs on the award values established pursuant to title 49, chapter 4, part 9. For subsequent reports, the Tennessee student assistance corporation shall base its estimate of total costs on the award values in effect at the time the report is prepared. The Tennessee higher education commission, the board of trustees of the University of Tennessee system, the state board of regents, the department of education and the Tennessee independent college and universities association shall provide the Tennessee student assistance corporation with such information as is needed to prepare its report. The Tennessee student assistance corporation shall deliver its report to the governor, the funding board, the speaker of the senate, the speaker of the house of representatives, the chairs of the senate and house of representatives finance, ways and means committees, the chairs of the senate and house of representatives education committees, the state and local government committee of the senate, the state government committee of the house of representatives,

and the office of legislative budget analysis.

(ii) Before December 15 of each year, the state funding board, with the assistance of the Tennessee student assistance corporation, shall project long-term funding needs of the lottery scholarship and grant programs established under title 49, chapter 4, part 9. The projections shall cover at least the four (4) fiscal years next succeeding the current fiscal year. The analysis shall be performed to determine if adjustments in lottery scholarship and grant programs should be made to prevent funding required in the future for such programs from exceeding estimates of net lottery proceeds made under subdivision (c)(1).

(B) Before December 15, 2003, and before December 15 in each succeeding year, appropriate state agencies shall submit to the funding board and to the governor their recommendations for other educational programs and purposes consistent with article XI, § 5 of the Tennessee Constitution based on the difference between the funding board's projections and recommendations for the lottery scholarship program based on the report submitted pursuant to subdivision (c)(2)(A). In no event shall such recommendations exceed the projections of the funding board for a specific fiscal year.

(3)(A) The governor shall submit to the general assembly in the annual budget document prepared pursuant to title 9, chapter 4, part 51 recommendations concerning the distributions to be made from the lottery for education account based on the projections of the funding board, including recommended appropriations by the funding board from the general shortfall reserve subaccount, if any, and any treasurer's earnings credited to the lottery for education account.

(B) In a separate budget category entitled "net education lottery proceeds," the governor shall estimate the amount of net lottery proceeds and treasurer's earnings thereon to be credited to the lottery for education account during the fiscal year and the amount of unappropriated surplus estimated to be accrued in the account at the beginning of the fiscal year. The sum of estimated net lottery proceeds, treasurer's earnings thereon, and unappropriated surplus shall be designated "net education lottery proceeds."

(C) In the budget document, the governor shall submit specific recommendations as to the educational programs and purposes for which appropriations should be made from the lottery for education account. Such recommendation shall include the specific value of each category of awards to be offered pursuant to title 49, chapter 4, part 9. The recommendation for each category of award shall be the value of such award as set in the previous general appropriations act unless such value, based on the estimates of the Tennessee student assistance corporation and the funding board, should be adjusted in a manner consistent with title 49, chapter 4, part 9 and this chapter.

(D) The governor's recommendations as to the educational programs and purposes for which appropriations should be made in accordance with this subdivision (c)(3) shall be referred to the education committees of both houses for recommendation and comments prior to final action by the finance, ways and means committees of both houses on the general appropriations act.

(4) The general assembly shall appropriate from the lottery for education account by specific reference to it, or by reference to "net education lottery

proceeds." All appropriations to any particular budget unit shall be made together in a separate part entitled, identified, administered, and accounted for separately as a distinct budget unit for net education lottery proceeds. Such appropriations shall otherwise be made in the manner required by law for appropriations.

(5) It is the intent of the general assembly that appropriations from the lottery for education account shall be allocated and expended for educational programs and purposes only in accordance with article XI, § 5 of the Constitution of Tennessee. Such net education lottery proceeds shall be used to supplement, not supplant, existing resources for educational programs and purposes.

(d) Any funds appropriated, but not expended, for educational programs or purposes from the lottery for education account or from the general shortfall reserve subaccount shall not revert to the general fund at the end of the fiscal year but shall be credited, respectively, to the lottery for education account or the general shortfall reserve subaccount and retained there until allocated and appropriated as provided in subdivision (b)(3) and subsection (c).

(e) In compliance with the requirement of this chapter that there shall be a separate accounting of net education lottery proceeds, no deficiency in the lottery for education account shall be replenished by book entries reducing any nonlottery reserve of general funds, including specifically, but without limitation, the reserve for revenue fluctuations or other reserve accounts established by law; nor shall any program or project started specifically from net education lottery proceeds be continued from the general fund; such programs must be adjusted or discontinued according to available net education lottery proceeds unless the general assembly by general law establishes eligibility requirements and appropriates specific other funds within the general appropriations act; nor shall any nonlottery surplus in the general fund be reduced. No surplus in the lottery for education account shall be reduced to correct any nonlottery deficiencies in sums available for general appropriations, and no surplus in the lottery for education account shall be included in any revenue or surplus calculated for setting aside any additional funds in the reserve for revenue fluctuations as provided in § 9-4-211.

(f)(1) There is created a special account in the state treasury to be known as the "after school programs special account," hereinafter referred to as the "after school account." In accordance with § 4-51-123, one hundred percent (100%) of moneys constituting an unclaimed prize shall be deposited in the after school account at the end of each fiscal year.

(2) In any fiscal year in which the financial assistance program for attendance at post-secondary educational institutions located within this state is funded pursuant to title 49, chapter 4, part 9, and excess is available from net lottery proceeds for other educational purposes and projects consistent with article XI, § 5 of the Constitution of Tennessee, then in any such fiscal year moneys in the after school account may be appropriated by the general assembly from such account pursuant to subdivision (f)(3).

(3) Moneys in the after school account shall be used exclusively for after school programs consistent with article XI, § 5 of the Constitution of Tennessee. Such moneys shall supplement, not supplant, nonlottery educational resources for after school educational programs and purposes. The general assembly shall appropriate from the after school programs special account by specific reference to it, or by reference to the "after school account." Such appropriations shall otherwise be made in the manner

required by law for appropriations.

(4) Any reserve balance remaining unexpended at the end of a fiscal year in the after school account shall not revert to the general fund but shall be carried forward into the subsequent fiscal year.

(5) Notwithstanding any provision of this section to the contrary, interest accruing on investments and deposits of the after school account shall be credited to such account, shall not revert to the general fund, and shall be carried forward into the subsequent fiscal year.

(6) Moneys in the after school account shall be invested by the state treasurer in accordance with § 9-4-603.

4-51-112. Minority-owned businesses.

(a) It is the intent of the general assembly that the corporation encourage participation by minority-owned businesses. Accordingly, the board of directors shall adopt a plan that achieves to the greatest extent possible a level of participation by minority-owned businesses taking into account the total number of all retailers and vendors, including any subcontractors. The corporation is authorized and directed to undertake training programs and other educational activities to enable such minority-owned businesses to compete for contracts on an equal basis. The corporation will strive to maximize participation of minority-owned businesses to achieve a minimum participation goal of fifteen percent (15%) through both prime and second tier business contracting opportunities. The board shall monitor the results of minority-owned business participation and shall report the results of minority-owned business participation to the general assembly at least on an annual basis.

(b)(1) The chair of the board, in consultation with the board of directors, shall appoint an advisory council on minority business participation. The council shall be composed of nine (9) citizens, three (3) of whom shall be appointed from and represent each grand division of the state. The membership of the council shall collectively reflect a richness of diversity in professional and business experience, educational attainment, ethnicity, race, gender, heritage, and socio-economic perspective.

(2) The advisory council on minority business participation shall serve as an educational, research and technical resource for the board of directors. It shall be a duty of the council to solicit, analyze and present the views and concerns of minority business owners throughout the state. The council may report to the board of directors or to the state and local government committee of the senate and the state government committee of the house of representatives in writing at any time. The board of directors may invite the council to present oral testimony to the board of directors at any meeting of the board.

(3) The advisory council on minority business participation shall annually elect from its membership a chair, a vice chair and such other officers as it deems necessary. The council shall meet at least quarterly at the call of the chair. The organizational meeting of the advisory board shall be convened by the chair of the board of directors.

(4) Members appointed to the advisory council shall each serve regular terms of three (3) years; provided, however, that in order to stagger such terms, three (3) of the initial appointees shall serve terms of two (2) years,

and three (3) of the initial appointees shall serve terms of one (1) year.

(5) The advisory council on minority business participation shall establish its own rules and internal operating procedures. As an operating expense of the corporation, members of the advisory council shall receive a per diem not to exceed the per diem provided to members of the general assembly pursuant to § 3-1-106, for each day's service spent in the performance of the duties and responsibilities of the advisory council.

4-51-116. Lottery retailer advisory board.

(a) The chair of the board of directors shall appoint a lottery retailer advisory board to be composed of twelve (12) lottery retailers, four (4) from each grand division, representing the broadest possible spectrum of geographical, racial, and business characteristics of lottery retailers. The function of the advisory board shall be to advise the board of directors on retail aspects of the lottery and to present the concerns of lottery retailers throughout the state.

(b) Members appointed to the lottery retailer advisory board shall serve terms of two (2) years; provided, however, that six (6) of the initial appointees shall serve terms of one (1) year.

(c) The advisory board shall establish its own rules and internal operating procedures. The advisory board may report to the board of directors or to the state and local government committee of the senate and the state government committee of the house of representatives in writing at any time. The board of directors may invite the advisory board to make an oral presentation to the board of directors at regular meetings of the board.

(d) As an operating expense of the corporation, members of the advisory board shall receive a per diem not to exceed the per diem provided to members of the general assembly pursuant to § 3-1-106, for each day's service spent in the performance of the duties and responsibilities of the advisory board.

4-51-129. Financial reports, audits, and records.

To ensure the financial integrity of the lottery, the corporation, through its board of directors, shall:

(1) Submit quarterly and annual reports to the governor, the state and local government committee of the senate, the state government committee of the house of representatives, the comptroller of the treasury and the state treasurer, disclosing the total lottery revenues, prize disbursements, operating expenses, and administrative expenses of the corporation during the reporting period. The annual report shall additionally describe the organizational structure of the corporation and summarize the functions performed by each organizational division within the corporation;

(2) Adopt a system of internal audits; all audits performed by the internal audit staff of the corporation shall be conducted in accordance with the standards established by the comptroller of the treasury pursuant to § 4-3-304(9);

(3) Maintain weekly or more frequent records of lottery transactions, including the distribution of tickets or shares to retailers, revenues received, claims for prizes, prizes paid, prizes forfeited, and other financial transactions of the corporation;

(4)(A) Be subject to audits by the comptroller of the treasury in accordance with § 8-4-109. Such audits may be undertaken at anytime at the

sole discretion of the comptroller; provided, however, that the comptroller shall conduct, or contract for, an annual financial audit of the corporation. The comptroller of the treasury, or the comptroller's designated representatives, shall have access to the corporation's books, records, and accounts whenever deemed necessary by such office. The comptroller of the treasury, or the comptroller's designated representatives, shall have access to any and all of the records of the corporation's distributing agencies, lottery vendors or lottery retailers that relate to the operation, administration or promotion of the lottery. Except as provided in subdivision (4)(B), the corporation may, with prior notice to the comptroller of the treasury, contract with a licensed independent certified public accountant or firm for additional audits concerning any phase of the operations of the corporation; provided, however, that the licensed certified public accountant or firm shall have no financial interest in any vendor with whom the corporation is under contract. The corporation shall be responsible, as an operating expense, for reimbursement of the costs of audits prepared by the comptroller of the treasury and for the payment of fees for audits prepared by a licensed independent certified public accountant or firm. All audits shall be prepared in accordance with generally accepted governmental auditing standards;

(B) The corporation may, with prior approval of the comptroller of the treasury, contract with a licensed independent certified public accountant or firm for an additional annual financial audit of the corporation; provided, however, that the licensed certified public accountant or firm shall have no financial interest in any vendor with whom the corporation is under contract. If a licensed independent certified public accountant or firm is employed pursuant to this subdivision (4)(B), the audit contract between the corporation and the licensed independent certified public accountant or firm shall be on contract forms prescribed by the comptroller of the treasury. The corporation shall be responsible, as an operating expense, for the payment of fees for audits prepared pursuant to this subdivision (4)(B). Such audits shall be prepared in accordance with generally accepted governmental auditing standards and shall meet minimum audit standards prescribed by the comptroller of the treasury;

(C) A copy of any audit performed by the comptroller of the treasury or any independent certified public accountant or firm shall be transmitted to the governor, the speaker of the senate, the speaker of the house of representatives, the chairs of the state and local government committee of the senate and the state government committee of the house of representatives, the state treasurer and, if applicable, the comptroller of the treasury;

(5) Submit to the department of finance and administration, the office of legislative budget analysis and the comptroller of the treasury by June 30 of each year a copy of the annual operating budget for the corporation for the next fiscal year. This annual operating budget shall be approved by the board and be on such forms as prescribed by the department of finance and administration;

(6) For informational purposes only, submit to the department of finance and administration on September 1 of each year a proposed operating budget for the corporation for the succeeding fiscal year. This budget proposal shall also be accompanied by an estimate of the net lottery proceeds to be

deposited into the lottery for education account during the succeeding fiscal year. This budget shall be on such forms as prescribed by the department of finance and administration; and

(7) Adopt the same fiscal year as that used by state government.

4-56-101. Chapter definitions.

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

(1) "Commission" means the state procurement commission, which replaces the board of standards within title 12, chapter 3, part 4;

(2) "Committee" means the state protest committee, which replaces the board of standards protest authority within former § 12-3-214 [repealed] and the review committee within former § 12-4-109(a)(1)(E) [repealed];

(3) "Council" means the advisory council on state procurement;

(4) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. Goods does not include leases, acquisitions, and disposals of real property, which are governed under chapter 15 of this title;

(5) "Grant" means any grant awarded to the state or awarded by the state for the furnishing by the state of assistance, whether financial or otherwise, to any person to support a program authorized by law. Grant does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award;

(6) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration;

(7) "Proposer" includes a "bidder" or "proposer" that is a legal entity that has properly registered as required by the state. The terms "bidder" and "proposer" may be used interchangeably for the term "proposer";

(8) "Services" means all services and agreements obligating the state, except services for highway and road improvements, which are governed by title 54, and designer and construction services, which are governed under chapter 15 of this title; and

(9) "Vendor" means a legal entity that has been established by the department of finance and administration's division of accounts as a vendor through proper authority for which payment may be made by the state.

4-56-102. Procurement commission — Creation.

(a)(1) There is created a procurement commission, which shall consist of the commissioners of general services and finance and administration, and the comptroller of the treasury. The chief procurement officer shall serve as a nonvoting member.

(2) The commission shall adopt a procedure governing its proceedings, and the chief procurement officer shall keep a permanent and accurate record of all of its proceedings.

(3) All departments and agencies shall submit existing rules related to procurement to the commission for the commission's review, comment, and recommendations for any changes to such rules. Prior to forwarding draft

rules related to procurement to the secretary of state, all departments shall submit such draft rules to the commission for the commission's review and comment together with any recommendations for changes to such draft rules.

(4) The attorney general and reporter shall serve as legal counsel to the commission in accordance with the requirements of § 8-6-301.

(b)(1) The commission has the power and authority, except as otherwise provided in this chapter, to review, comment, and approve draft rules and regulations, policies, standards, and procedures to be followed consistent with this chapter and title 12, chapters 3 and 4, and to make recommendations for changes thereto, governing the procurement of goods and services, contracting, agency contract and grant management, training and professional development, and the disposal of goods and services by the state.

(2) The commission is authorized to promulgate necessary rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, as well as policies and procedures to implement this chapter.

(3) The commission shall not exercise authority over the award or administration of any particular contract or grant.

4-56-103. Proposed rules related to procurement — State protest committee — Creation — Commission's authority.

(a) **Creation of Committee.**

(1) There is created a state protest committee, which shall consist of the commissioners of general services and finance and administration, and the treasurer.

(2) The committee shall adopt procedures governing its operations, and the chief procurement officer shall keep a permanent and accurate record of all of its proceedings.

(3) If a member is not available to hear a scheduled protest, the member is authorized to appoint a designee to hear the scheduled protest on the member's behalf.

(b) **Appeals to Committee.**

(1) The committee is authorized to act on any appeal of the chief procurement officer's decision of a protest.

(2) Any committee member whose department is the requestor of a procurement or the resulting contract may not hear the protest.

(3) The chief procurement officer shall provide the minutes of the protest proceedings to each committee member and to the comptroller of the treasury and shall post the final determination within fifteen (15) business days to the single public procurement web site.

4-56-104. Procurement office — Creation — Chief procurement officer — Personnel — Contracts and contract rights and responsibilities — Adoption of operational procedures.

(a) There is created a procurement office headed by the chief procurement officer in such department as the governor shall designate, after consulting with the comptroller of the treasury, which shall take effect as provided in subsection (b).

(b) Effective July 1, 2011, the governor shall appoint the chief procurement

officer, who shall be a person:

(1) Qualified by training and relevant and recent experience in large scale public procurement of goods and services, establishment of contracts, contract oversight, providing training and contract administration, and demonstrated executive and organizational ability to perform the duties of this office; and

(2) Qualified by training or relevant and recent experience in administering programs to encourage and enhance economic opportunities for small businesses and minority-owned businesses.

(c) The chief procurement officer shall be a full-time public official of the state as an executive service employee appointed by the governor to serve at the pleasure of the governor.

(d)(1) Necessary personnel in the department of general services involved in the procurement of goods and necessary personnel in the department of finance and administration involved in the procurement of services, as required by the procurement officer, shall be transferred to the procurement office together with the funding for the compensation and benefits for such personnel.

(2) The chief procurement officer is authorized to employ such additional personnel as are necessary to carry out the purposes of this chapter, upon the approval of the governor.

(3) The compensation of employees of the procurement office shall be fixed by the governor.

(e)(1) All contracts and contract rights and responsibilities, and renewals for such contracts, in existence with the department of general services and the department of finance and administration with respect to the duties transferred by this section shall be preserved and transferred to the procurement office.

(2) Any bidding procedure or negotiations concerning any such procedure which is in the process but not complete shall continue under the purview of the procurement officer.

(3) All documents, books, records, papers or other writings in the possession of the department of general services and the department of finance and administration with respect to the duties transferred by this section shall be transferred to and remain in the custody of the procurement office.

(4) Any rules, regulations, orders, decisions and policies formerly issued or promulgated by the departments of finance and administration or general services whose functions have been transferred under this section to the procurement office shall remain in full force and effect and shall hereafter be administered and enforced by the procurement officer. The commission shall have the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred herein, to modify or rescind orders, rules and regulations, decisions or policies formerly issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions herein transferred.

(f) Subject to this chapter and other procurement laws under the jurisdiction of the chief procurement office, the chief procurement officer may adopt operational procedures governing the internal functions of the procurement office.

4-56-105. Powers and duties of chief procurement officer.

The chief procurement officer has the power and duty to:

(1) Effective January 1, 2012, establish a single, public procurement web site that includes how to do business with the state; registration for bidders; posting of all procurements in process and related status to award; and a database of established contracts by state agencies, departments and institutions;

(2) Effective April 1, 2012, develop a transition plan that provides for the implementation by date and action to consolidate the procurement and contracting for goods, services and grants; to include employee job classifications for the state procurement office and agency procurement functions that include development and training plans and other plans as prescribed and approved by the commission;

(3) Develop and propose to the general assembly any changes required to consolidate statutes;

(4) Develop proposed rules and regulations, policies, standards and procedures consistent with this chapter and title 12, chapters 3 and 4 and approved by the commission that establish:

(A) A central procurement process with opportunities for strategic sourcing;

(B) A central contract management process;

(C) A central grant management process that will assist agencies in identifying grant opportunities and provide for a central database of information regarding grant recipients and sub-recipients for monitoring purposes;

(D) A central performance and quality assurance process that assists agencies in identifying risk areas and recommending contract performance and management best practices; and

(E) A central bidder relations management process to include a central bidder registration database and program for conducting business with the state, which provides bidders and vendors with training and assistance with technical matters, procurement notification, and contract and grant awards;

(5) Develop and conduct training to foster professional development and certification for the state procurement office and agency procurement staff to promote procurement excellence, either independently or in cooperation with other state governments, municipalities or other units of local government, or other persons. In conducting this training, the chief procurement officer shall:

(A) Prescribe professional and accountability standards and guidelines for procurement, contract, grant, performance and quality assurance management personnel;

(B) Conduct or participate in procurement education and training programs;

(C) Conduct research into existing and new methods of procurement; and

(D) Establish and maintain an electronic library of education and training courses and technical reference resources;

(6) Delegate authority to designees or to any department, agency, or official, subject to additional approvals including approval by the comptroller of the treasury and such other requirements as prescribed in rules, regula-

tions, standards, policies and procedures approved by the commission;

(7) Establish and maintain agenda and minutes of the commission and the council and all actions of both, which shall be open to public inspection during regular office hours and on the single public procurement web site in accordance with bylaws established by the council and commission. The chief procurement officer shall chair the council. Except as otherwise indicated, all requirements of this section shall be ready for implementation by the chief procurement officer by April 1, 2012;

(8) Prescribe the manner in which goods and services shall be purchased, delivered, stored and distributed;

(9) Require periodic reports by departments, institutions and agencies of state government of stocks of supplies, materials, and equipment on hand and prescribe the form of such reports;

(10) Prescribe the dates for making requisitions and estimates, the periods for which they are to be made and the manner of authentication;

(11) Prescribe the manner of inspecting all deliveries of supplies, materials, and equipment and of making chemical and physical tests of samples submitted with solicitation responses, and sample deliveries to determine whether deliveries have been made to departments, institutions, and agencies in compliance with specifications;

(12) Prescribe the manner for the handling and processing of specifications, estimates, requisitions, solicitations, responses to solicitations, and all reports made and required to be made to the department;

(13) Prescribe the manner in which respondents may qualify and show responsibility in compliance;

(14) Prescribe the manner for responding to solicitations on lease-purchase contracts and multi-year contracts for the rental of personal property;

(15) Prescribe the manner that provides for and regulates the advertisement, soliciting, and letting of state contracts that include escalator clauses;

(16) Resolve controversies concerning protests of qualification of respondents, suspension from competing, solicitations, and stay of award prior to actual award;

(17) Prescribe the manner for conducting discussions and negotiations, particularly with respect to participants and safeguarding of information, for all solicitation types;

(18) Prescribe the process to be followed in making data available to respondents of solicitations;

(19) Prescribe the process to be followed by agencies in requisitioning goods or services through the central procurement office; and

(20) Provide for any other matters that may be necessary to give effect to the powers and duties of the chief procurement officer under this section by rules and regulations, standards, policies and procedures approved by the commission.

4-56-106. Advisory council on state procurement — Creation.

(a)(1) Effective November 1, 2011, there is created an advisory council on state procurement. There shall be five (5) voting members of the council. There shall be seven (7) non-voting members of the council representing the proposer and vendor community and other procurement professionals. All members shall have a demonstrable working knowledge of the state pro-

curement process. In making the appointments to the advisory council, the appointing authorities shall give due consideration to the need for geographic, age, racial, gender, and ethnic diversity on the council.

(2) The five (5) voting members of the council shall consist of one (1) representative of state agencies appointed by the commissioner of general services, one (1) representative from the department of general services to be appointed by the commissioner of general services, one (1) representative from the department of finance and administration to be appointed by the commissioner of finance and administration, one (1) representative from the office of the comptroller of the treasury to be appointed by the comptroller of the treasury, and the chief procurement officer who shall serve as chair. The initial appointments by the commissioners shall be made prior to November 1, 2011. The initial appointment by the comptroller of the treasury shall be made prior to November 1, 2011. Any vacancy shall be filled for the unexpired term by the appointing authority making the initial appointment. The pattern established for initial appointments shall be followed for appointments by the appropriate officials when appointments are to fill expired terms.

(b)(1) Voting members appointed by the commissioner of general services shall serve a staggered four-year term, beginning November 1, 2011. These voting members of the council shall, upon expiration of the member's term, be eligible for reappointment and shall serve until a successor is appointed.

(2)(A) The terms shall be staggered so that the terms of only two (2) voting members shall terminate at the same time.

(B) The term of one (1) voting member initially appointed by the commissioner of general services and the voting member appointed by the commissioner of finance and administration shall be for a two-year term to begin on November 1, 2011, to expire on October 31, 2013, and the successors shall serve a four-year term to begin on November 1, and expire October 31 of the appropriate year.

(C) The term of the other voting member initially appointed by the commissioner of general services shall be for a three-year term to begin on November 1, 2011, to expire on October 31, 2014, and the successor shall serve a four-year term to begin on November 1, and expire October 31 of the appropriate year.

(D) The chief procurement officer shall be an ex officio member whose term shall begin November 1, 2011.

(E) The one (1) voting member appointed by the comptroller of the treasury shall be appointed for a four-year term to begin on November 1, 2011, to expire on October 31, 2015. The successor shall serve a four-year term to begin on November 1, and expire October 31 of the appropriate year.

(3) 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.

(c)(1) Except as provided in subsections (a) and (b), the seven (7) non-voting members shall be selected to serve staggered four-year terms as follows:

(A) The speaker of the house of representatives, the speaker of the senate, and the governor shall each appoint two (2) representatives, with one (1) representative from the bidder or vendor community and one (1)

representative recommended by the National Institute of Government Purchasing. The final advisory non-voting member appointment shall be appointed by the chair of the fiscal review committee. The initial appointments to the council shall be made prior to November 1, 2011, by the speaker of the senate and the speaker of the house of representatives. The pattern established for initial appointments shall be followed for appointments by the appropriate officials when appointments are to fill expired terms;

(B) The non-voting member appointed by the chair of the fiscal review committee shall serve a two-year term, beginning November 1, 2011, until the term expires October 31, 2013. The non-voting member appointed by the chair of fiscal review shall be eligible for reappointment to succeeding two-year terms without limitation; the two-year term of office of successor appointees shall begin November 1, and expire October 31 of the appropriate year; and

(C) The initial appointments of the non-voting members shall be staggered. The speaker of the senate and the speaker of the house of representatives shall each initially appoint one (1) member for a two-year term to begin November 1, 2011, and expire October 31, 2013, and one (1) member for a three-year term to begin November 1, 2011, and expire October 31, 2014; and the governor shall initially appoint one (1) member for a two-year term to begin November 1, 2011, and expire October 31, 2013, and one (1) member for a three-year term to begin November 1, 2011, and expire October 31, 2014. All subsequent appointments shall be for a four-year term to begin November 1, and expire October 31 of the appropriate year.

(d) Except as provided in subdivision (c)(1)(B), each non-voting member of the council, upon expiration of the member's term, shall not be eligible for reappointment for two (2) years after the conclusion of that member's term. In no event shall a non-voting member of the council serve more than four (4) consecutive years as a non-voting member of the council. 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.

(e) No employer shall discriminate in any manner against an employee who serves on the council because of the employee's service on the council. Employees who serve on the council shall not be denied any benefit from their employer because of the employee's service on the council.

(f) 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.

(g) The council shall meet at least twice each year for the discussion of problems and recommendations for improvement of the procurement process or any other matter relevant to procurement as determined by the chief procurement officer.

(h) The council shall review and issue a formal comment approved by the council on procurement policies, standards, guidelines, and procedures established by the chief procurement officer prior to being presented for approval by the commission. All reviews and formal comments shall be issued within sixty (60) days of being presented to the council by the chief procurement officer. The formal comments approved by the council shall be provided to the members of

the commission, and the officers of the fiscal review committee.

(i) When requested by the chief procurement officer, the council may conduct studies, research, analyses, and make reports and recommendations with respect to subjects or matters within the authority and duties of the chief procurement officer. The chief procurement officer may appoint advisory groups to assist in specific areas, and with respect to any other matters within the authority of the chief procurement officer.

(j) In performing its responsibilities, the council's role shall be strictly advisory, but it may do any of the following:

(1) Make recommendations to the governor, general assembly, fiscal review committee, commissioner of general services, commissioner of finance and administration, and comptroller of the treasury relating to the enactment or promulgation of laws or rules that affect this title and title 12, chapters 3 and 4;

(2) Make recommendations to the commissioner of general services and commissioner of finance and administration regarding the method and form of statistical data collections; and

(3) Monitor the performance of the chief procurement office in the implementation of legislative directives.

(k) The council may develop evaluations, statistical reports, and other information from which the general assembly may evaluate the impact of legislative changes to procurement laws.

(*l*) Whenever any bill is introduced in the general assembly proposing to amend this chapter, to make any change in public procurement or contract law, or to make any change in the law that may have a financial or other substantive impact on the administration of public procurement and contract 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 procurement and contract law shall include, but not be limited to, bills that propose to amend this chapter and title 12, chapters 3 and 4. All bills referred to the council shall be reported back to the standing committee to which they were assigned in a reasonable time. Notwithstanding the absence of a report from the council, the standing committee may consider the bill at any time. The chair making the referral shall immediately notify the prime sponsors of the bill of the referral and the council shall not review and comment on the proposed legislation until the prime sponsors of the bill have been notified. The comments of the council shall describe the potential effects of the proposed legislation on the procurement and contract process and its operations and any other information or suggestions that the council may determine to be helpful for the sponsors, standing committees, or the general assembly. The comments of the council may include recommendations concerning the proposed legislation. Except for reporting the recommendations for or against passage of proposed bill and responding to any inquiries made by the members of the general assembly, council staff shall not lobby or advocate for or against passage of any proposed legislation.

4-56-107. Requests for noncompetitive contracts to fiscal review committee — Review by the fiscal review committee — Exceptions to requests — Goods and services quarterly report — Report to fiscal review committee of list of all contracts awarded under delegated authority — Report to fiscal review committee by department of transportation on highway and road improvement contracts — Report by state building commission.

(a) All requests of the procuring agency to procure goods or services by negotiation with a single service provider, referred to in this section as a noncompetitive contract, shall be contemporaneously filed with the fiscal review committee of the general assembly, comptroller of the treasury and the chief procurement officer. Such requests shall document the following:

(1) Description of the goods or services to be acquired;

(2) Explanation of the need for or requirement to acquire the goods or services;

(3) Name and address of the proposed contractor's principal owner;

(4) Evidence that the proposed contractor has experience in providing the same or similar goods or services and evidence of the length of time the contractor has provided the same or similar goods or services;

(5) Explanation of whether the goods or services were purchased by the procuring agency in the past, and if applicable, the method used to purchase the goods or services and the name and address of the contractor;

(6) Description of the procuring agency's efforts to use existing state employees and resources, or in the alternative, to identify reasonable and competitive procurement alternatives, rather than to use noncompetitive negotiation;

(7) Justification of why the goods or services should be acquired through noncompetitive negotiation; and

(8) Any additional information that the fiscal review committee may direct the procuring agency to provide that will assist the committee in evaluating the contract.

(b)(1) The following contracts and contract amendments shall be subject to review by the fiscal review committee:

(A) Proposed noncompetitive contracts with a term of more than one (1) year or which contain a provision to allow for extension by either party that would extend the contract beyond twelve (12) months and which have a cumulative value of not less than two hundred fifty thousand dollars ($250,000), including all possible extensions; and

(B) Any amendment to a contract meeting the term and dollar threshold requirements as described in subdivision (b)(1)(A), regardless of whether the original contract was procured through competitive or noncompetitive means, where the amendment:

(i) Increases or decreases the maximum liability;

(ii) Extends or shortens the contract term;

(iii) Changes the entity or name of the entity with which the state is contracting; or

(iv) Otherwise changes an original contract or amended contract in a substantive manner.

(2) If the chief procurement officer or delegated state agency is unable to determine whether a proposed contract or amendment would be subject to review by the fiscal review committee, the chief procurement officer or delegated state agency shall contact the fiscal review committee staff for a determination.

(3) The contracts subject to review shall include all contracts of the executive branch that otherwise meet the requirements of subdivision (b)(1), including, but not limited to, contracts of higher education, including the board of regents, the University of Tennessee, and the Tennessee higher education commission. Highway and road improvement contracts reviewed by the department of transportation, contracts reviewed by the state building commission and debt issuance contracts reviewed by the comptroller of the treasury shall not be subject to this review.

(4) The fiscal review committee, pursuant to its jurisdiction under § 3-7-103(a), is authorized to review any other state contract or contract amendment in accordance with the procedures established in this section without regard to whether the contract or contract amendment meets the requirements of subdivision (b)(1).

(5)(A) The fiscal review committee shall have forty (40) business days from receipt of the request as provided in this section to comment on the proposed contract. After this forty-day period, any such contract authorized by the chief procurement officer may be executed. All other requests to negotiate noncompetitive contracts shall be reviewed by the fiscal review committee after approval by the chief procurement officer. With respect to such requests, the fiscal review committee shall be provided the same information to be submitted in accordance with subsection (a). The chair or the chair's designee, after consultation with the comptroller of the treasury, shall have authority to waive the forty-day period for comment and authorize the chief procurement officer to execute contracts or amendments that are determined to be in the best interest of the state, and to proceed with reporting and comment by the committee at their next scheduled meeting.

(B) If an exception is granted to any request, approved in accordance with subdivision (a)(1) or rules promulgated pursuant to § 4-56-103, then any such exception shall be filed with the fiscal review committee for its perusal, comment and review.

(C) The procurement office shall file a goods and services contract report quarterly with the fiscal review committee. The report shall list contracts approved in accordance with rules authorized by § 4-56-103 during the prior quarter and detail whether each contract procurement was competitive.

(D) Each procuring agency granted a special delegated authority, pursuant to rules authorized by § 4-56-103, to establish goods and services contracts shall report to the fiscal review committee a list of all contracts awarded under the delegated authority. The list of contracts awarded shall be filed quarterly and shall include the contractor name, contract period, contract amount, method used to select the contractor, and the completion date for a monitoring review, as defined by any applicable policy developed by the chief procurement officer and any other information the procuring agency wishes to include.

(E) The department of transportation shall report to the fiscal review committee on approved highway and road improvement contracts that

would otherwise meet the requirements of subdivision (b)(1) within thirty (30) days of approval, including all of the information specified in subsection (a) and any other information the committee deems necessary or helpful. The fiscal review committee shall have the option to conduct a separate hearing on highway and road improvement contracts approved by the department of transportation.

(F) The state building commission shall report to the fiscal review committee on contracts it has approved that would otherwise meet the requirements of subdivision (b)(1) within thirty (30) days of approval, including all of the information specified in subsection (a) and any other information the committee deems necessary or helpful. The committee shall have the option to conduct a separate hearing on contracts approved by the building commission.

4-56-108. Review and approval by the comptroller of the treasury — Authority of comptroller to examine any documents under the authority of the chief procurement officer — Documentation of the cancellation of procurements or rejection of all responses to a procurement — Protests — Executed documents — Posting of reports.

(a) The comptroller of the treasury shall review and approve such procurements, contracts, grants, and other related documents prior to the public posting on the single procurement web site of such procurements; after posting any amendments thereto; after recommendation for award; and prior to execution of the contract as applicable for the following:

(1) Delegation of procurement or contract authority by the chief procurement officer. All initial, reduced or revoked delegations as provided under § 12-3-401 shall be reported to the comptroller of the treasury in such format and time interval as reasonable. All periodic reviews of purchasing activities of any state agency granted such delegation shall be provided to the comptroller of the treasury;

(2) Procurement and contracts for goods and services where authority exists under both the state building commission and the central procurement office to procure and contract;

(3) Procurement and contracts for auditing services;

(4) Cooperative agreement to participate, sponsor, conduct or administer as provided in § 12-3-512 with any other entity;

(5) Fee for service procurement or contracts with a maximum liability in excess of five million dollars ($5,000,000), which may be increased or decreased by action of the commission;

(6) Grant contracts with a maximum liability in excess of five million dollars ($5,000,000), which may be increased or decreased by action of the commission;

(7) Fee for service procurement or contracts for new or replacement information systems and technical infrastructure projects for goods and services in excess of five hundred thousand dollars ($500,000), which may be increased or decreased by action of the commission;

(8) Procurement or contracts that would utilize competitive or noncompetitive negotiations with a maximum liability in excess of two hundred fifty thousand dollars ($250,000), which may be increased or decreased by action

of the commission. Competitive or noncompetitive negotiation shall not be utilized by a state agency unless such procurement is performed by the central procurement office;

(9) Procurement or contracts for which the state would receive revenue;

(10) Procurement or contracts that would incur no cost;

(11) Procurement or contracts that propose a term that exceeds sixty (60) months;

(12) Procurement or contracts that propose a limitation of liability that is less than two (2) times the maximum liability;

(13) Procurement or contracts that propose to change the records, annual report and audit or monitoring provisions;

(14) Procurement or contracts that would provide for the negotiation of a necessary, mandatory or standard contract clause;

(15) Procurement that would provide that a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal;

(16) Procurement or contract that provides an automatic price escalator; and

(17) Such other procurements, contracts or other items as may be directed by the commissioner of finance and administration or by the commission.

(b) Without limitation of the audit authority of the comptroller of the treasury, the comptroller is authorized to examine any documents under the authority of the chief procurement officer.

(c) Cancellation of procurements or rejection of all responses to a procurement shall be documented in accordance with rules and regulations, standards, policies and procedures as approved by the commission and the reason for the cancellation or rejection of all bids for a procurement shall be provided to the comptroller of the treasury within three (3) business days after such determination.

(d) Any protest after notice of intent to award by an aggrieved respondent received by the chief procurement officer or the protest committee shall be filed with the comptroller of the treasury within three (3) business days of receipt. All responses to the aggrieved respondent regarding the protest whether allowed or not, shall be filed with the comptroller of the treasury at the same time provided to the aggrieved respondent.

(e) Contracts shall contain on the last page of the secured contract document the signature and approval date of all required approvers to be a fully executed document and for the release of a purchase order against the contract.

(f) The comptroller of the treasury shall be provided view access to any information or data from any system housing procurement and contract related data, information, and processes.

(g) The chief procurement officer shall post on the single procurement web site reports or data queries, subject to approval by the comptroller of the treasury as to format and time interval for update. Such reports shall include, but are not limited to, the following:

(1) Noncompetitive, sole source or proprietary contracts;

(2) Cancellation of procurements or contract awards;

(3) Cancellation of contracts before term extension or for cause;

(4) Protests to chief procurement officer and protest committee;

(5) Emergency procurements and contracts;

(6) Contracts with term extensions beyond sixty (60) months;

(7) Rule exceptions approved by the chief procurement officer; and

(8) Persons or entities that are prevented from contracting or submitting a response to a procurement.

4-56-109. [Repealed.]

4-56-110. [Repealed.]

4-58-102. Chapter definitions.

As used in this chapter:

(1) "Federal public benefit":

(A) Has the same meaning as provided in 8 U.S.C. § 1611; and

(B) Does not mean a benefit listed in 8 U.S.C. § 1611(b);

(2) "Political subdivision" means any local governmental entity, including, but not limited to, any municipality, metropolitan government, county, utility district, school district, public building authority, and development district created and existing pursuant to the laws of this state, or any instrumentality of government created by any one (1) or more of the named local governmental entities;

(3) "Qualified alien" means:

(A) A qualified alien as defined by 8 U.S.C. § 1641(b); or

(B) An alien or nonimmigrant eligible to receive state or local public benefits under 8 U.S.C. § 1621(a);

(4) "SAVE program" means the systematic alien verification for entitlements program created pursuant to the federal Immigration Reform and Control Act of 1986, compiled in 8 U.S.C. § 1101 et seq., and operated by the United States department of homeland security, or any successor program thereto;

(5) "SEVIS system" means the student and exchange visitor information system created pursuant to § 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208 (as amended), and operated by the United States department of homeland security, or any successor program thereto;

(6) "State governmental entity":

(A) Means a state agency, department, board, commission, and other body which carries out state functions and programs; and

(B) Does not mean a political subdivision; and

(7) "State or local public benefit":

(A) Means any public benefit as defined in 8 U.S.C. § 1621, that is provided or administered by a state governmental entity or a local health department; and

(B) Does not mean a benefit listed in 8 U.S.C. § 1621(b).

4-58-103. Verification of citizenship of applicants for benefits.

(a) Except where prohibited by federal law, every state governmental entity and local health department shall verify that each applicant eighteen (18) years of age or older, who applies for a federal, state or local public benefit from the entity or local health department, is a United States citizen or lawfully present in the United States in the manner provided in this chapter.

(b)(1) As provided in subdivision (b)(2), every state governmental entity or local health department shall include on all forms, electronic or otherwise,

and all automated phone systems, a written or verbal statement:

(A) Requiring an applicant for a federal, state or local public benefit to, under penalty of perjury, attest to the applicant's status as either:

(i) A United States citizen; or

(ii) A qualified alien; and

(B) Describing the penalties for violations of this chapter.

(2) Subdivision (b)(1) shall be implemented upon the entity's or local health department's first reprinting of applicable forms or updating of the electronic or automated phone systems, described in subdivision (b)(1), after October 1, 2012.

(c) For an applicant who claims United States citizenship, the entity or local health department shall make every reasonable effort to ascertain verification of the applicant's citizenship, which may include requesting the applicant to present any one (1) of the following:

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

(B) A valid driver license or photo identification license from another state where the issuance requirements are at least as strict as those in Tennessee, as determined by the department of safety;

(2) An official birth certificate issued by a state, jurisdiction or territory of the United States, including Puerto Rico, United States Virgin Islands, Northern Mariana Islands, American Samoa, Swains Island, Guam; provided, that Puerto Rican birth certificates issued before July 1, 2010, shall not be recognized under this subdivision (c)(2);

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

(4) A valid, unexpired United States passport;

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

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

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

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

(9) A United States citizen identification card (I-197, I-179);

(10) Any successor document of subdivisions (c)(4)-(9); or

(11) A social security number that the entity or local health department may verify with the social security administration in accordance with federal law.

(d)(1) For an applicant who claims qualified alien status, the applicant shall present two (2) forms of documentation of identity and immigration status, as determined by the United States department of homeland security to be acceptable for verification through the SAVE program; provided, that no entity or local health department is required to verify such applicant's documents through the SAVE program if two (2) such documents are presented unless otherwise required by federal law.

(2) If an applicant who claims eligibility as a qualified alien is unable to present two (2) forms of documentation as described in subdivision (d)(1), then the applicant shall present at least one (1) such document that the entity or local health department shall then verify through the SAVE program or the SEVIS system.

(e) Each state governmental entity or local health department shall maintain a copy of all documentation submitted by an applicant for verification in a manner consistent with the entity's or local health department's rules, regulations or policies governing storage or preservation of such

documentation.

(f)(1) Any document submitted pursuant to subsections (c) or (d) shall be presumed to be proof of an individual's eligibility under this chapter until a final verification is received by the state governmental entity or local health department, and no entity or local health department shall delay the distribution of any federal, state or local benefit based solely on the pendency of final verification.

(2) Upon receipt of a final verification that indicates that the applicant is not a United States citizen or qualified alien, the state governmental entity or local health department shall terminate any recurring benefit, and shall pursue any action applicable against the applicant pursuant to § 4-58-104 or § 4-58-105.

(g) The verification process required by this section shall be enforced without regard to race, religion, gender, ethnicity or national origin.

5-1-104. County officers — Filling vacancies.

(a) Each organized county shall have, in addition to the judicial officers elected by the qualified voters or by the county legislative body, such other officers as are authorized by law to manage county business.

(b)(1) Vacancies in county offices required by the Constitution of Tennessee or by any statutory provision to be filled by the people shall be filled by the county legislative body, and any person so appointed shall serve until a successor is elected at the next general election, as defined in § 2-1-104, in the county and is qualified. The county legislative body shall be required to make an appointment to fill a vacancy within one hundred twenty (120) days of receiving notice of the vacancy unless during that time period there is a general election scheduled in the county and there is sufficient time for the vacancy to be placed on the ballot in accordance with this section. Any appointment to fill a vacancy by the county legislative body shall be made in accordance with chapter 5, part 1 of this title. This subdivision (b)(1) shall not apply to any county that has 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. This subdivision (b)(1) shall not apply in any county having a population of not less than eight hundred ninety-seven thousand four hundred (897,400) nor more than eight hundred ninety-seven thousand five hundred (897,500), according to the 2000 federal census or any subsequent federal census.

(2) If the vacancy occurs after the time for filing nominating petitions for the party primary election and more than sixty (60) days before the party primary election, then nominees of political parties shall be selected in such primary election and a successor elected in the August general election. If the vacancy occurs less than sixty (60) days before the party primary election but sixty (60) days or more before the August election, then nominees of political parties shall be selected by party convention and a successor elected in the August election. If the vacancy occurs less than sixty (60) days before the August election but sixty (60) days or more before the November election, then nominees of political parties shall be selected by party convention and a successor elected in the November election.

(3) If a vacancy occurs more than ten (10) days prior to the regular qualifying deadline, then the regular qualifying deadline shall apply. If the

vacancy occurs after the tenth day prior to the regular qualifying deadline, independent candidates and candidates nominated by any political party for the vacancies shall qualify by filing all nominating petitions no later than twelve o'clock (12:00) noon, prevailing time, on the fifty-fifth day before the election. If the qualifying deadline is the fifty-fifth day before the election, candidates must withdraw no later than twelve o'clock (12:00) noon, prevailing time, on the fifty-second day before the election.

(c) Notwithstanding any provision of law or any provision of any charter of a metropolitan government to the contrary, whenever an election is held to fill a vacancy in a county office that is elected from districts, including, but not limited to, county school board members, county legislative body members, county highway commissions, and constables, the county legislative body may provide by resolution duly certified to the county election commission that persons qualifying as candidates shall be elected from the most recently adopted reapportionment plan in the county. If the county legislative body requires the election to be held using districts as adopted in the most recently adopted reapportionment plan in the county, the county legislative body shall specify to the county election commission which district shall be used to fill the vacancy by election. In the absence of a resolution requiring the latest reapportionment plan be used and specifying which district shall be used for the election, the election shall be held using the district as constituted for the election of the vacated incumbent.

5-6-109. Powers and duties — Bond.

All county mayors shall, before entering upon the discharge of their duties, enter into an official bond prepared in accordance with title 8, chapter 19, to be approved by the county legislative bodies, in the sum of one hundred thousand dollars ($100,000), or in a greater sum as the county legislative body may determine, payable to the state of Tennessee, for the use of their respective counties, conditioned for the faithful discharge of their duties as accounting officers and general agents of their counties, during their official terms, as set forth in § 5-6-108. The bond shall be recorded in the office of the county register of deeds and transmitted to the office of the county clerk for safekeeping.

5-12-104. Budget committee.

(a) A county budget committee is hereby created.

(b)(1) Except as provided in subsection (e), the committee shall consist of five (5) members, one (1) of whom shall be the county mayor, and the other four (4) shall be appointed by the county mayor with the approval of the county governing body at its regular January session of each year or at any subsequent session.

(2) The members of the committee need not be members of the county governing body.

(3) The county mayor shall be the ex officio chair of the budget committee, and the director of accounts and budgets shall be the ex officio secretary of the budget committee.

(c)(1) The county governing body may in its discretion allow members of the budget committee such compensation for their service as the commission may deem proper.

(2) Any provision for compensation, as well as provision for printing, publicity, supplies and other necessary expenses of the budget committee, shall be payable from the county general fund and shall be included in the annual appropriations.

(d) The budget committee shall perform all the duties respecting county budgets and appropriations now performed, or required to be performed, by the finance committee, tax levy committee or other committees of the county, and shall perform such other duties as provided in this part.

(e) In any county having a population of not less than one hundred fifty-six thousand eight hundred (156,800) nor more than one hundred fifty-six thousand nine hundred (156,900), according to the 2010 federal census or any subsequent federal census, the committee shall consist of not more than nine (9) nor less than five (5) members, one (1) of whom shall be the county mayor. The other members shall be appointed by the county mayor with the approval of the county governing body at its regular January session of each year or at any subsequent session. The number of members shall be determined annually by the legislative body of the county.

5-13-103. Director of accounts and budgets — Appointment — Compensation — Staff.

(a) The county mayor of any county that has adopted the provisions of this part shall appoint, with the approval of the county legislative body or other governing body, a director of accounts and budgets who shall be a county employee.

(b) The director of accounts and budgets shall be qualified by training and experience in the field of accounting to perform the director's duties in a proficient manner and in accordance with generally recognized principles of governmental accounting.

(c)(1) Before assuming the director's duties the director shall execute a corporate surety bond, the amount of which shall be established by the county mayor at not less than one hundred thousand dollars ($100,000).

(2) 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.

(3) The premium for such bond shall be paid from the county general fund.

(d)(1) The compensation of the director, which shall not be in excess of compensation allowed county officials in accordance with §§ 8-24-101 and 8-24-102, shall be set annually by the county legislative body or other governing body of the county.

(2) The amount of such compensation, the compensation of such stenographers, typists or assistants as the director may need, and the other necessary expenses of the director's office shall be provided for by annual appropriation from the county general fund.

(e) The director has the power, in accordance with such regulations as may be established from time to time by the county mayor, to appoint and remove the director's assistants, to prescribe their duties, and to fix their salaries within the limits of the annual appropriation.

(f)(1) In any county having a population of not less than thirty-eight thousand six hundred (38,600) nor more than thirty-eight thousand seven

hundred (38,700), according to the 1970 federal census or any subsequent federal census, the director shall not be terminated or discharged without the approval of the county legislative body.

(2) The provisions of this subsection (f) shall not apply in any county that has a metropolitan form of government.

5-14-103. Purchasing agent — Appointment — Compensation — Staff.

(a) The county mayor of any county that has adopted the provisions of this part shall appoint, with the approval of the county legislative body or other governing body, a purchasing agent who shall be a county employee.

(b) A purchasing agent shall be qualified by training and experience to perform the purchasing agent's duties in a proficient manner and in accordance with generally recognized principles of governmental purchasing and in accordance with the provisions of this part.

(c)(1) Before assuming the purchasing agent's duties, a purchasing agent shall execute a corporate surety bond, the amount of which shall be established by the county mayor at not less than one hundred thousand dollars ($100,000).

(2) The bond shall be prepared in accordance with the provisions of 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.

(3) The premium for such bond shall be paid from the county general fund.

(d) The compensation of the purchasing agent, which shall not be in excess of compensation allowed county officials in accordance with §§ 8-24-101 and 8-24-102, shall be set annually by the county legislative body or other governing body; and the amount of such compensation, the compensation of such clerks and assistants as may be needed, and the other necessary expenses of this office shall be provided for by annual appropriation made by the county legislative body or other governing body from the county general fund.

(e) The purchasing agent has the power, in accordance with such regulations as may be established by the county mayor, to appoint and remove the purchasing agent's assistants, to prescribe their duties, and to fix their salaries within the limits of the annual appropriation made therefor.

5-14-108. Purchases, sales, etc. — Bidding, auctions.

(a)(1) All purchases of and contracts for purchases of supplies, materials, equipment and contractual services, and all contracts for the lease or rental of equipment, and all sales of county-owned property that has become surplus, obsolete or unusable, shall be based wherever possible on competitive bids.

(2) Contracts for legal services, auditing services by certified public accountants, and similar services by professional persons or groups of high ethical standards shall not be based upon competitive bids but shall be awarded on the basis of recognized competence and integrity.

(3) Bids need not be required for services for which the rate or price is fixed by a public authority authorized by law to fix such rates or prices.

(4) The prohibition in this subsection (a) against competitive bidding shall not prohibit the county from interviewing eligible persons or groups to

determine the capabilities of such persons or groups.

(b) The county may purchase materials, supplies, commodities and equipment from any federal, state or local governmental unit or agency, without conforming to the competitive bidding requirements of this part.

(c)(1) If the amount of the expenditure or sale is estimated to exceed five hundred dollars ($500), sealed bids shall be solicited, unless the county legislative body by resolution establishes a higher amount not to exceed ten thousand dollars ($10,000).

(2) The county legislative body by resolution may exempt perishable commodities from the requirements of sealed or competitive bidding when such items are purchased in the open market.

(3) The county purchasing agent shall solicit sealed bids by public notice inserted at least once in a newspaper of county-wide circulation, five (5) days prior to the final date for submitting bids or by posting notices on a public bulletin board in the county courthouse.

(4) The county purchasing agent shall also, when deemed necessary or desirable, solicit sealed bids by sending requests by mail to prospective suppliers.

(5) All such notices shall include a general description of the commodities or contractual services to be purchased or property to be sold, and shall state where bid blanks and specifications may be obtained and the time and place of opening bids.

(d)(1) All purchases or sales in amounts that do not require bid solicitation pursuant to subsection (c) may be made by the county purchasing agent in the open market without newspaper notice, but shall whenever possible be based upon at least three (3) competitive bids.

(2) Requisitions for items estimated to cost an amount such as to require public newspaper notice shall not be subdivided in order to circumvent the requirement for public newspaper notice as herein provided.

(3) All sales by the purchasing agent shall be made to the highest responsible bidder.

(e) Bids on purchases shall in all cases be based on such standards as may be adopted and promulgated by the county purchasing agent and approved by the county purchasing commission.

(f) All open market purchase orders or contracts made by the county purchasing agent or in extreme emergencies by any county department or agency shall be awarded to the lowest and best bidder, taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the county government, and the delivery terms. Any or all bids may be rejected for good cause.

(g) All bids taken under the requirements of this part, and all other documents, including purchase orders, pertaining to the award of contracts on such bids, shall be preserved for a period of five (5) years.

(h) If all bids received on a pending contract are for the same unit price or total amount, the county purchasing agent shall have authority to reject all bids and to purchase the required supplies, materials, equipment or contractual services in the open market; provided, that the price paid in the open market does not exceed the bid price.

(i) All sealed bids received shall be opened publicly at the time and place fixed in the advertisement. Each bid, with the name and address of the bidder, shall be entered on a record, and each record with the names of the bidders, the amounts of their bids, and the name of the successful bidder indicated thereon,

shall, after the award or contract or order, be open to public inspection.

(j) All contracts shall be approved as to form by the county attorney, and the original copy of each long-term contract shall be filed with the county clerk.

(k) No purchase shall be made or purchase order or contract of purchase issued but in consequence of a written requisition for the supplies, materials, equipment or contractual services required, which requisition shall be signed by the head of the department, office or agency of the county requiring such articles or services. Original copies of all such requisitions shall be kept on file in the office of the county purchasing agent.

(*l*) No purchase shall be made or purchase order or contract of purchase issued for tangible personal property or services by county officials or employees, acting in their official capacity, from any firm or individual whose business tax or license is delinquent.

(m)(1) The county purchasing agent is authorized to purchase and contract to purchase materials, supplies, equipment and contractual services on a fiscal year basis, but no commitment shall be made that extends beyond the end of the current fiscal year for which appropriations have been made by the county legislative body, except such commitments as are authorized by resolution of the county legislative body.

(2) In the determination of the county's annual needs of certain commodities or services, or both, the county purchasing agent may request the various departments, offices and agencies of the county government to anticipate their needs for the remainder of the fiscal year and to issue their requisitions based upon such estimates.

(n)(1) Perishable commodities, at the election of the local governing body, may be exempted from the requirements of public advertisements and competitive bidding when such items are purchased in the open market.

(2) A record of all such purchases shall be made by the purchasing agent and shall specify the amount paid, the items purchased, and from whom the purchase was made.

(3) A report of such purchases shall be made to the county mayor and the governing body of the county at frequencies specified by the governing body.

(4) Fuel and fuel products may be purchased in the open market without public newspaper notice, but shall whenever possible be based on at least three (3) competitive bids. Fuel and fuel products may be purchased from the department of general services' contract where available.

(5) This subsection (n) shall apply to any county having a population of not less than seventy-seven thousand seven hundred (77,700) nor more than seventy-seven thousand eight hundred (77,800), according to the 1980 federal census or any subsequent census, if it is approved by a two-thirds (⅔) vote of the county legislative body of any county to which it may apply.

(o)(1) All sales of county-owned property, real or personal in nature, that has become surplus, obsolete or unusable shall be made by public auction or by sealed bid under this section, in the discretion of the purchasing agent or responsible official. "Public auction" includes sale by Internet auction.

(2) The county purchasing agent shall give public notice of such auction by inserting at least once in a newspaper of county-wide circulation or by posting on a public bulletin board in the county courthouse at least five (5) days prior to the date of such auction, a notice specifying the auction date, time, place, property to be sold and terms of such auction.

(3) The provisions of this subsection (o) do not apply to any books, recordings, or other material previously in general circulation at a county

public library; provided, however, that the county public library shall conduct a public sale of surplus, obsolete or otherwise unusable books, recordings or other materials previously in general circulation at the county public library and shall give public notice of such sale by inserting at least once in a newspaper of county-wide circulation, by posting such sale on a Web site maintained by the county, or by posting on a public bulletin board in the county courthouse and at the county public library at least five (5) days prior to the date of such sale, a notice specifying generally that such a sale shall occur, including the dates, times, places, and terms of such sale.

(4) Notwithstanding any other law, a procedure may be established upon approval by resolution or ordinance, by a two-thirds (⅔) majority vote of the county legislative body, to provide the purchasing agent, upon request of the county mayor, the authority to declare county owned personal property with an accumulative estimated value of one thousand dollars ($1,000) or less surplus, obsolete, or unusable personal property and to dispose of the personal property, at the purchasing agent's discretion, by selling the personal property on the open market or by gift, trade, or barter to a nonprofit or charitable organization properly incorporated under the laws of this state and in which no part of the net earnings of the organization inures or may lawfully inure to the benefit of any private shareholder or individual and that it provides services benefiting the general welfare of the residents of the county. Items having an accumulative estimated value that exceeds one thousand dollars ($1,000) shall not be subdivided in order to circumvent the requirement for public notice or receipt of sealed bids or selling the property through public or Internet auction. The purchasing agent shall keep all records of transactions of the disposal of personal property under this subdivision (o)(4) for a minimum of five (5) years.

(p) In any county having a population of not less than one hundred seven thousand one hundred (107,100) nor more than one hundred seven thousand two hundred (107,200), according to the 2000 federal census or any subsequent federal census, the county may purchase and enter into contracts for group health insurance for county employees and officials without conforming to the competitive bidding requirements of this part. The provisions of this subsection (p) shall only be implemented in any county to which this subsection (p) applies upon the adoption of a resolution by a two-thirds (⅔) vote of the county legislative body of such county.

5-14-202. Application of part.

This part applies to all purchases by authorized officials in all counties using or encumbering county funds, except that this part does not apply to purchases:

(1) Made from county highway funds pursuant to § 54-7-113;

(2) Made from county education funds pursuant to § 49-2-203;

(3) Made by any county that has adopted either the County Purchasing Law of 1957, compiled in part 1 of this chapter, or the County Financial Management System of 1981, compiled in chapter 21 of this title;

(4) Made by any county governed by a private act regarding purchasing if such private act provides for advertisement and competitive bidding before a purchase is made and if the dollar amount for each purchase requiring advertisement and competitive bidding is ten thousand dollars ($10,000) or

some lesser amount;

(5) Made under the provisions of § 12-3-1201;

(6) Made by any county having a population of seven hundred thousand (700,000) or more according to any federal census and governed by a private act regarding purchasing, if such private act provides for advertisement and competitive bidding before a purchase is made and if the dollar amount for each purchase requiring advertisement and competitive bidding is five thousand dollars ($5,000) or some lesser amount;

(7) From nonprofit corporations, such as the Local Government Data Processing Corporation, whose purpose is to provide goods or services specifically to counties; or

(8) Made by a county with a population of not less than two hundred thousand (200,000) according to any federal census, so long as the county through county or metropolitan government charter, private act, or ordinance has established a procedure regarding purchasing that provides for advertisement and competitive bidding and sets a dollar amount for each purchase requiring advertisement and competitive bidding; provided that purchases of less than the dollar amount requiring advertisement and competitive bidding shall, wherever possible, be based upon at least three (3) competitive bids.

5-14-207. Bid specifications for purchases of chemical products.

(a) Bid specifications for purchases of chemical products pursuant to this chapter shall require that the manufacturer of the chemical products create and maintain a material safety data sheet (MSDS) for such chemical products on the national MSDSSEARCH repository or the manufacturer's web site so that the information can be accessed by means of the Internet. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is freely accessible to the public.

(b) The URL for MSDSSEARCH shall be posted on the web site of the department of general services as provided in § 12-3-808. In lieu of posting a MSDS on MSDSSEARCH, a bidder shall include the manufacturer's URL for their MSDS in the bid proposal or purchase order.

5-20-101. Chapter definitions.

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

(1) "Code" means any published compilation of rules and regulations that has been prepared by technical trade associations or model code organizations regulating building construction, plumbing and gas installation, fire prevention, any portion of such rules, or any amendment of such rules; and

(2) "Governing body" means the county legislative body, board of commissioners, county council, or other body in which the general legislative powers of a county are vested.

5-21-109. Director — Bond.

(a) The director shall execute a blanket bond in an amount of not less than one hundred thousand dollars ($100,000) for the faithful performance of the director's duties as director and of the department employees in accordance with the general law for such bonds.

(b) The cost of such bond shall be paid from funds appropriated to the

department for such purpose.

(c) The amount of such bond may be increased subject to the approval of the committee, and additional appropriations by the county legislative body.

(d) The bond shall be prepared in accordance with the provisions of 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.

6-51-103. Quo warranto to contest annexation ordinance — Appellate review.

(a)(1)(A) Any aggrieved owner of property that borders or lies within territory that is the subject of an annexation ordinance prior to the operative date thereof, may file a suit in the nature of a quo warranto proceeding in accordance with this part, § 6-51-301 and title 29, chapter 35 to contest the validity thereof on the ground that it reasonably may not be deemed necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole and so constitutes an exercise of power not conferred by law. Notwithstanding the provisions of any other section in this chapter, for purposes of this section, an "aggrieved owner of property" does not include any municipality or public corporation created and defined under title 7, chapter 82 that owns property bordering or lying within the territory that is the subject of an annexation ordinance requested by the remaining property owner or owners of the territory and whose property and services are to be allocated and conveyed in accordance with § 6-51-111, § 6-51-112 or § 6-51-301, or any contractual arrangement otherwise providing for such allocation and conveyance.

(B) Subdivision (a)(1)(A) does not apply to the counties covered by subdivision (a)(2).

(2)(A) Any aggrieved owner of property, lying within territory that is the subject of an annexation ordinance prior to the operative date thereof, may file a suit in the nature of a quo warranto proceeding in accordance with this part, § 6-51-301 and title 29, chapter 35 to contest the validity thereof on the ground that it reasonably may not be deemed necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole, and so constitutes an exercise of power not conferred by law.

(B) Subdivision (a)(2)(A) shall apply only in counties having a metropolitan form of government and in counties having populations of:

not less than	nor more than
4,000	4,300
14,940	15,000
43,700	44,700
49,400	49,500
58,000	59,000
67,300	67,400
74,500	74,600
100,000	250,000
475,000	480,000
700,000	

according to the 1980 federal census or any subsequent federal census, and in any county with a population of not less than two hundred eighty-five thousand (285,000) and not more than two-hundred ninety thousand (290,000) based upon the 1980 federal census.

(b) The rendering of services under a mutual aid agreement, an automatic response agreement, an operational agreement, or any other agreement as allowed under a comprehensive growth plan, pursuant to chapter 58 of this title, or the providing of mutual aid or assistance under the Mutual Aid and Emergency and Disaster Assistance Agreement Act of 2004, compiled in title 58, chapter 8, is not admissible as evidence against the municipality in any action brought under this section or title 29, chapter 14.

(c) The municipality shall have the burden of proving that an annexation ordinance is reasonable for the overall well-being of the communities involved.

(d)(1) If more than one (1) suit is filed, all of them shall be consolidated and tried as one (1) in the first court of appropriate jurisdiction in which suit is filed. Suit or suits shall be tried on an issue to be made up there, and the question shall be whether the proposed annexation is or is not unreasonable in consideration of the health, safety and welfare of the citizens and property owners of the territory sought to be annexed and the citizens and property owners of the municipality. Should the court find the ordinance to be unreasonable, or to have been done by exercise of powers not conferred by law, an order shall be issued vacating the ordinance and the municipality shall be prohibited from annexing, pursuant to the authority of § 6-51-102, any part of the territory proposed for annexation by such vacated ordinance for a period of at least twenty-four (24) months following the date of such order. In the absence of such finding, an order shall be issued sustaining the validity of such ordinance, which shall then become operative thirty-one (31) days after judgment is entered unless an abrogating appeal has been taken from the judgment, or unless the presiding court grants the municipality's petition to defer the effective date pursuant to subdivision (d)(2).

(2) Upon petition of the municipality, the presiding court may, as part of the judgment sustaining the validity of the annexation ordinance, order that the effective date of the ordinance be fixed as December 31 following the date of entry of the judgment or determination of appeal. In making any order under this subdivision (d)(2), the court shall consider the necessity of the deferred effective date to render municipal services to the annexed territory within a reasonable time. The petition shall be filed by the municipality in the presiding court where the annexation ordinance is being contested in a quo warranto proceeding as provided in this section.

(e) If on appeal judgment shall be against the validity of such ordinance, an order shall be entered vacating the same and the municipality shall be prohibited from annexing, pursuant to the authority of § 6-51-102, any part of the territory proposed for annexation by such vacated ordinance for a period of at least twenty-four (24) months following the date of such order. If judgment shall be in favor of the validity of such ordinance, it shall become operative forthwith by court order and shall not be subject to contest or attack in legal or equitable proceeding for any cause or reason, the judgment of the appellate court being final.

(f) Should the territory hereafter sought to be annexed be the site of

substantial industrial plant development, a fact to be ascertained by the court, the municipality shall have the burden of proving that the annexation of the site of the industrial plant development is not unreasonable in consideration of the factors above mentioned, including the necessity for or use of municipal services by the industrial plant or plants, and the present ability and intent of the municipality to benefit the industrial plant development by rendering municipal services thereto when and as needed. The policy and purpose of this provision is to prevent annexation of industrial plants for the sole purpose of increasing municipal revenue, without the ability and intent to benefit the area annexed by rendering municipal services, when and as needed, and when such services are not used or required by the industrial plants.

(g) During the time that any annexation ordinance is being contested as provided in this section, the annexing municipality and the county governing body or any affected school, sanitary or utility district, or all such districts, may enter into an agreement to provide for new, expanded, and/or upgraded services and facilities, including, but not limited to, equipment, land and buildings, and capital expenditures, including sale of bonds, to finance such services and facilities, which agreement shall include an equitable division of the cost and liabilities of such capital expenditures between the annexing municipality and the county governing body or any affected school, sanitary, or utility district, or all such districts, upon final determination of such contested annexation ordinance.

(h) When territory is annexed that is located in a county other than one in which the city hall of the annexing municipality is then located, any suit filed pursuant to this section for the purpose of contesting the annexation ordinance shall be filed in the county where the city hall of the annexing municipality is located. The chancellor, however, shall change the venue to a county that is adjacent to either the county where the annexing municipality's city hall is located or the county where the proposed annexation is located.

(i) When a final judgment is rendered in a quo warranto suit contesting a proposed annexation, the municipality shall notify the county mayor of the outcome of the litigation, so the county may keep abreast of the status of a pending annexation. Similarly, when a municipality files an appeal of a decision in a quo warranto suit, the municipality shall notify the county mayor of the pending appeal.

6-51-108. Rights of residents of annexed territory — Plan of service and progress report.

(a) Residents of, and persons owning property in, annexed territory shall be entitled to rights and privileges of citizenship, in accordance with the provisions of the annexing municipality's charter, immediately upon annexation as though such annexed territory had always been a part of the annexing municipality. It shall be the duty of the governing body to put into effect with respect to an annexed area any charter provisions relating to representation on the governing body.

(b)(1) This subsection (b) shall apply to any municipality whose annexation ordinance becomes effective by court order pursuant to § 6-51-103(d).

(2) Within ten (10) days after the date on which a court order is entered sustaining the validity of a proposed annexation, any annexing municipality to which this subsection (b) applies shall submit written notification,

meeting the requirements of subdivision (b)(3), to each person owning real property in the territory that the territory will become a part of the municipality. In the event an appeal is taken from the court order, the annexing municipality shall notify the property owners in writing of the pending appeal. If on appeal the court affirms the validity of the proposed annexation, the municipality shall submit written notification, meeting the requirements of subdivision (b)(3), to the property owners within ten (10) days of entry of judgment of the appellate court.

(3) The advance written notification shall include the date on which the annexed territory becomes a part of the municipality, a detailed description of the annexed territory, and the reasons for the annexation. The notification shall be sent by first class mail to the last known address listed in the office of the property assessor for each property owner of record within the annexed territory.

(4) A person with personal knowledge of the mailing of the notification shall submit a notarized affidavit to the presiding officer of the annexing municipality attesting that the notifications were mailed in accordance with subdivision (b)(3).

(c) Upon the expiration of six (6) months from the date any annexed territory for which a plan of service has been adopted becomes a part of the annexing municipality, and annually thereafter until services have been extended according to such plan, there shall be prepared and published in a newspaper of general circulation in the municipality a report of the progress made in the preceding year toward extension of services according to such plan, and any changes proposed therein. The governing body of the municipality shall publish notice of a public hearing on such progress reports and changes, and hold such hearing thereon. Any owner of property in an annexed area to which such plan and progress report are applicable may file a suit for mandamus to compel the governing body to comply with the requirements of this subsection (c).

(d) A municipality may amend a plan of services by resolution of the governing body only after a public hearing for which notice has been published at least fifteen (15) days in advance in a newspaper of general circulation in the municipality when:

(1) The amendment is reasonably necessary due to natural disaster, act of war, act of terrorism, or reasonably unforeseen circumstances beyond the control of the municipality;

(2) The amendment does not materially or substantially decrease the type or level of services or substantially delay the provision of services specified in the original plan; or

(3) The amendment:

(A) Proposes to materially and substantially decrease the type or level of services under the original plan or to substantially delay those services;

(B) Is not justified under subdivision (d)(1); and

(C) Has received the approval in writing of a majority of the property owners by parcel in the area annexed. In determining a majority of property owners, a parcel of property with more than one (1) owner shall be counted only once and only if owners comprising a majority of the ownership interests in the parcel petition together as the owner of the particular parcel.

(e) An aggrieved property owner in the annexed territory may bring an

action in the appropriate court of equity jurisdiction to enforce the plan of services at any time after one hundred eighty (180) days after an annexation by ordinance takes effect and until the plan of services is fulfilled, and may bring an action to challenge the legality of an amendment to a plan of services if such action is brought within thirty (30) days after the adoption of the amendment to the plan of services. If the court finds that the municipality has amended the plan of services in an unlawful manner, then the court shall decree the amendment null and void and shall reinstate the previous plan of services. If the court finds that the municipality has materially and substantially failed to comply with its plan of services for the territory in question, then the municipality shall be given the opportunity to show cause why the plan of services was not carried out. If the court finds that the municipality's failure is due to natural disaster, act of war, act of terrorism, or reasonably unforeseen circumstances beyond the control of the municipality that materially and substantially impeded the ability of the municipality to carry out the plan of services, then the court shall alter the timetable of the plan of services so as to allow the municipality to comply with the plan of services in a reasonable time and manner. If the court finds that the municipality's failure was not due to natural disaster, act of war, act of terrorism, or reasonably unforeseen circumstances beyond the control of the municipality that materially and substantially impeded the ability of the municipality to carry out the plan of services, then the court shall issue a writ of mandamus to compel the municipality to provide the services contained in the plan, shall establish a timetable for the provision of the services in question, and shall enjoin the municipality from any further annexations until the services subject to the court's order have been provided to the court's satisfaction, at which time the court shall dissolve its injunction. If the court determines that the municipality has failed without cause to comply with the plan of services or has unlawfully amended its plan of services, the court shall assess the costs of the suit against the municipality.

6-51-115. Receipt and distribution of tax revenues. [Effective until July 1, 2015. See the version effective on July 1, 2015.]

(a) Notwithstanding any provisions of law to the contrary, whenever a municipality extends its boundaries by annexation, the county or counties in which the municipality is located shall continue to receive the revenue from all state and local taxes distributed on the basis of situs of collection, generated within the annexed area, until July 1 following the annexation, unless the annexation takes effect on July 1.

(1) If the annexation takes effect on July 1, then the municipality shall begin receiving revenue from such taxes generated within the annexed area for the period beginning July 1.

(2) Whenever a municipality extends its boundaries by annexation, the municipality shall notify the department of revenue of such annexation upon the annexation becoming effective, for the purpose of tax administration.

(3) Such taxes shall include the local sales tax authorized in § 67-6-702, the wholesale beer tax authorized in § 57-6-103, the income tax on dividends authorized in § 67-2-102, and all other such taxes distributed to counties and municipalities based on the situs of their collection.

(b) In addition to the provisions of subsection (a), when a municipality

annexes territory in which there is retail or wholesale activity at the time the annexation takes effect or within three (3) months after the annexation date, the following shall apply:

(1) Notwithstanding the provisions of § 57-6-103 or any other law to the contrary, for wholesale activity involving the sale of beer, the county shall continue to receive annually an amount equal to the amount received by the county in the twelve (12) months immediately preceding the effective date of the annexation for beer establishments in the annexed area that produced wholesale beer tax revenues during that entire twelve (12) months. For establishments that produced wholesale beer tax revenues for at least one (1) month but less than the entire twelve-month period, the county shall continue to receive an amount annually determined by averaging the amount of wholesale beer tax revenue produced during each full month the establishment was in business during that time and multiplying this average by twelve (12). For establishments that did not produce revenue before the annexation date but produced revenue within three (3) months after the annexation date, and for establishments that produced revenue for less than a full month prior to annexation, the county shall continue to receive annually an amount determined by averaging the amount of wholesale beer tax revenue produced during the first three (3) months the establishment was in operation and multiplying this average by twelve (12). The provisions of this subdivision (b)(1) are subject to the exceptions in subsection (c). A municipality shall only pay the county the amount required by this subdivision (b)(1), for a period of fifteen (15) years.

(2) Notwithstanding the provisions of § 67-6-712 or any other law to the contrary, for retail activity subject to the Local Option Revenue Act, compiled in title 67, chapter 6, part 7, the county shall continue to receive annually an amount equal to the amount of revenue the county received pursuant to § 67-6-712(a)(2)(A) in the twelve (12) months immediately preceding the effective date of the annexation for business establishments in the annexed area that produced Local Option Revenue Act revenue during that entire twelve (12) months. For business establishments that produced such revenues for more than a month but less than the full twelve-month period, the county shall continue to receive an amount annually determined by averaging the amount of local option revenue produced by the establishment and allocated to the county under § 67-6-712(a)(2)(A) during each full month the establishment was in business during that time and multiplying this average by twelve (12). For business establishments that did not produce revenue before the annexation date and produced revenue within three (3) months after the annexation date, and for establishments that produced revenue for less than a full month prior to annexation, the county shall continue to receive annually an amount determined by averaging the amount of the 1963 Local Option Revenue Act, compiled in title 67, chapter 6, part 7, produced and allocated to the county under § 67-6-712(a)(2)(A) during the first three (3) months the establishment was in operation and multiplying this average by twelve (12). The provisions of this subdivision (b)(2) are subject to the exceptions in subsection (c). A municipality shall only pay the county the amount required by this subdivision (b)(2), for a period of fifteen (15) years.

(c) Subsection (b) is subject to these exceptions:

(1) Subdivision (b)(1) ceases to apply as of the effective date of the repeal

of the wholesale beer tax, should this occur;

(2) Subdivision (b)(2) ceases to apply as of the effective date of the repeal of the Local Option Revenue Act, compiled in title 67, chapter 6, part 7, should this occur;

(3) Should the general assembly reduce the amount of revenue from the Wholesale Beer Tax, compiled in title 57, chapter 6, part 1, or the 1963 Local Option Revenue Act, compiled in title 67, chapter 6, part 7, accruing to municipalities by changing the distribution formula, the amount of revenue accruing to the county under subsection (b) will be reduced proportionally as of the effective date of the reduction;

(4) A county, by resolution of its legislative body, may waive its rights to receive all or part of the revenues provided by subsection (b). In these cases, the revenue shall be distributed as provided in §§ 57-6-103 and 67-6-712 of the respective tax laws unless otherwise provided by agreement between the county and municipality; and

(5) Annual revenues paid to a county by or on behalf of the annexing municipality are limited to the annual revenue amounts provided in subsection (b) and known as "annexation date revenue" as defined in subdivision (d)(2). Annual situs-based revenues in excess of the "annexation date revenue" allocated to one (1) or more counties shall accrue to the annexing municipality. Any decrease in the revenues from the situs-based taxes identified in subsection (b) shall not affect the amount remitted to the county or counties pursuant to subsection (b), except as otherwise provided in this subsection (c); provided, that a municipality may petition the department of revenue no more often than annually to adjust annexation date revenue as a result of the closure or relocation of a tax producing entity.

(d)(1) It is the responsibility of the county within which the annexed territory lies to certify and to provide to the department a list of all tax revenue producing entities within the proposed annexation area.

(2) The department shall determine the local share of revenue from each tax listed in this section generated within the annexed territory for the year before the annexation becomes effective, subject to the requirements of subsection (b). This revenue shall be known as the "annexation date revenue."

(3) The department, with respect to the revenues described in subdivision (b)(2), and the municipality, with respect to the revenues described in subdivision (b)(1), shall annually distribute an amount equal to the annexation date revenue to the county of the annexed territory.

6-51-115. Receipt and distribution of tax revenues. [Effective on July 1, 2015. See the version effective until July 1, 2015.]

(a) Notwithstanding any provisions of law to the contrary, except that § 67-6-716 shall control the effective date of local jurisdictional boundary changes for sales and use tax purposes, whenever a municipality extends its boundaries by annexation, the county or counties in which the municipality is located shall continue to receive the revenue from all state and local taxes distributed on the basis of situs of collection, generated within the annexed area, until July 1 following the annexation, unless the annexation takes effect on July 1.

(1) If the annexation takes effect on July 1, then the municipality shall begin receiving revenue from such taxes generated within the annexed area

for the period beginning July 1.

(2) Whenever a municipality extends its boundaries by annexation, the municipality shall notify the department of revenue of such annexation upon the annexation becoming effective, for the purpose of tax administration.

(3) Such taxes shall include the local sales tax authorized in § 67-6-702, the wholesale beer tax authorized in § 57-6-103, the income tax on dividends authorized in § 67-2-102, and all other such taxes distributed to counties and municipalities based on the situs of their collection.

(b) In addition to the provisions of subsection (a), when a municipality annexes territory in which there is retail or wholesale activity at the time the annexation takes effect or within three (3) months after the annexation date, the following shall apply:

(1) Notwithstanding the provisions of § 57-6-103 or any other law to the contrary, for wholesale activity involving the sale of beer, the county shall continue to receive annually an amount equal to the amount received by the county in the twelve (12) months immediately preceding the effective date of the annexation for beer establishments in the annexed area that produced wholesale beer tax revenues during that entire twelve (12) months. For establishments that produced wholesale beer tax revenues for at least one (1) month but less than the entire twelve-month period, the county shall continue to receive an amount annually determined by averaging the amount of wholesale beer tax revenue produced during each full month the establishment was in business during that time and multiplying this average by twelve (12). For establishments that did not produce revenue before the annexation date but produced revenue within three (3) months after the annexation date, and for establishments that produced revenue for less than a full month prior to annexation, the county shall continue to receive annually an amount determined by averaging the amount of wholesale beer tax revenue produced during the first three (3) months the establishment was in operation and multiplying this average by twelve (12). The provisions of this subdivision (b)(1) are subject to the exceptions in subsection (c). A municipality shall only pay the county the amount required by this subdivision (b)(1), for a period of fifteen (15) years.

(2) Notwithstanding the provisions of § 67-6-712 or any other law to the contrary, for retail activity subject to the Local Option Revenue Act, compiled in title 67, chapter 6, part 7, the county shall continue to receive annually an amount equal to the amount of revenue the county received pursuant to § 67-6-712(a)(2)(A) in the twelve (12) months immediately preceding the effective date of the annexation for business establishments in the annexed area that produced Local Option Revenue Act revenue during that entire twelve (12) months. For business establishments that produced such revenues for more than a month but less than the full twelve-month period, the county shall continue to receive an amount annually determined by averaging the amount of local option revenue produced by the establishment and allocated to the county under § 67-6-712(a)(2)(A) during each full month the establishment was in business during that time and multiplying this average by twelve (12). For business establishments that did not produce revenue before the annexation date and produced revenue within three (3) months after the annexation date, and for establishments that produced revenue for less than a full month prior to annexation, the county shall continue to receive annually an amount determined by averaging the amount of the 1963 Local

Option Revenue Act, compiled in title 67, chapter 6, part 7, produced and allocated to the county under § 67-6-712(a)(2)(A) during the first three (3) months the establishment was in operation and multiplying this average by twelve (12). The provisions of this subdivision (b)(2) are subject to the exceptions in subsection (c). A municipality shall only pay the county the amount required by this subdivision (b)(2), for a period of fifteen (15) years.

(3) When the amount of local option sales tax produced by businesses in the annexed area cannot be determined from sales tax returns filed by the businesses, the commissioner may determine the amount to be distributed to the county over the fifteen-year period based on the best information available. For this purpose, the commissioner may use information obtained from business tax returns or obtain additional information from the businesses involved.

(c) Subsection (b) is subject to these exceptions:

(1) Subdivision (b)(1) ceases to apply as of the effective date of the repeal of the wholesale beer tax, should this occur;

(2) Subdivision (b)(2) ceases to apply as of the effective date of the repeal of the Local Option Revenue Act, compiled in title 67, chapter 6, part 7, should this occur;

(3) Should the general assembly reduce the amount of revenue from the Wholesale Beer Tax, compiled in title 57, chapter 6, part 1, or the 1963 Local Option Revenue Act, compiled in title 67, chapter 6, part 7, accruing to municipalities by changing the distribution formula, the amount of revenue accruing to the county under subsection (b) will be reduced proportionally as of the effective date of the reduction;

(4) A county, by resolution of its legislative body, may waive its rights to receive all or part of the revenues provided by subsection (b). In these cases, the revenue shall be distributed as provided in §§ 57-6-103 and 67-6-712 of the respective tax laws unless otherwise provided by agreement between the county and municipality; and

(5) Annual revenues paid to a county by or on behalf of the annexing municipality are limited to the annual revenue amounts provided in subsection (b) and known as "annexation date revenue" as defined in subdivision (d)(2). Annual situs-based revenues in excess of the "annexation date revenue" allocated to one (1) or more counties shall accrue to the annexing municipality. Any decrease in the revenues from the situs-based taxes identified in subsection (b) shall not affect the amount remitted to the county or counties pursuant to subsection (b), except as otherwise provided in this subsection (c); provided, that a municipality may petition the department of revenue no more often than annually to adjust annexation date revenue as a result of the closure or relocation of a tax producing entity.

(d)(1) It is the responsibility of the county within which the annexed territory lies to certify and to provide to the department a list of all tax revenue producing entities within the proposed annexation area.

(2) The department shall determine the local share of revenue from each tax listed in this section generated within the annexed territory for the year before the annexation becomes effective, subject to the requirements of subsection (b). This revenue shall be known as the "annexation date revenue."

(3) The department, with respect to the revenues described in subdivision (b)(2), and the municipality, with respect to the revenues described in subdivision (b)(1), shall annually distribute an amount equal to the annexation date revenue to the county of the annexed territory.

6-51-122. No municipality permitted to extend corporate limits by annexation ordinance on municipality's own initiative for certain period of time — Exceptions — Comprehensive review and evaluation of state policies.

(a)(1)(A) Notwithstanding this part or any other law to the contrary, from April 15, 2013, through May 15, 2014, no municipality shall extend its corporate limits by means of annexation by ordinance upon the municipality's own initiative, pursuant to § 6-51-102, in order to annex territory being used primarily for residential or agricultural purposes; and, except as otherwise permitted pursuant to subdivision (a)(2), no such ordinance to annex such territory shall become operative during such period.

(B) As used in this subsection (a), "municipality" does not include any county having a metropolitan form of government.

(2) If, prior to April 15, 2013, a municipality formally initiated an annexation ordinance delayed by subdivision (a)(1)(A); and if the municipality would suffer substantial and demonstrable financial injury if such ordinance does not become operative prior to May 15, 2014; then, upon petition by the municipality, the county legislative body may, by a majority vote of its membership, waive the restrictions imposed on such ordinance by subdivision (a)(1)(A).

(b) On or before January 14, 2014, the Tennessee advisory commission on intergovernmental relations (TACIR) shall complete a comprehensive review and evaluation of the efficacy of state policies set forth within title 6, chapters 51 and 58, and shall submit a written report of findings and recommendations, including any proposed legislation, to the speaker of the senate and the speaker of the house of representatives.

6-54-141. Fees to be adjudged as part of costs — Disbursement of fees.

(a) As provided in § 38-6-103, the following fees shall be adjudged as a part of the costs in each case upon conviction of the following offenses:

(1) Controlled substances, narcotics, drugs $20.00

(2) Driving a motor vehicle, or operating a boat while under the influence of intoxicants and/or drugs, except as provided in § 55-10-413(d) 17.50

(3) Certification of criminal histories and records ...Amount fixed by the federal bureau of investigation

(4) Upon the forfeiture of a cash bond or other surety entered as a result of a municipal traffic citation, whether considered a fine, a bond or a tax 13.75

(b) Such fees shall be in addition to and not in substitution for any and all fines and penalties otherwise provided for by law.

(c) Except when and as provided in this section, the appropriate clerk, after deducting five percent (5%) as compensation when applicable, shall identify those fees set out in subsection (a) that are dedicated for use by the Tennessee bureau of investigation and remit the fees to the state treasury to be expended by the Tennessee bureau of investigation as appropriated by the general assembly. These fees shall be transmitted by the clerk of the court to the state treasurer for deposit in a fund to be used by the Tennessee bureau of investigation for the purpose of employing personnel; for the purchase of equipment and supplies; to pay for the education, training and scientific development of employees; or for any other purpose to allow the bureau's

business to be done in a more efficient and expeditious manner. The moneys received in the fund shall be invested for the benefit of the fund by the state treasurer pursuant to § 9-4-603. Amounts in the fund shall not revert to the general fund of the state, but shall, together with interest income credited to the fund, remain available for expenditure in subsequent fiscal years.

(d) Upon approval of the director of the Tennessee bureau of investigation, local governing bodies which have the responsibility for providing funding for sheriffs' offices and police departments are authorized to purchase from state contracts approved for bureau purchases, scientific instruments designed to examine a person's breath and measure the alcohol content of a person's breath, for use as evidence in the trial of cases; provided, that prior to use of the scientific instruments, such instruments must be delivered to the forensic services division for testing and certification pursuant to § 38-6-103(g). The bureau shall continue to maintain and certify the instruments and operating personnel, pursuant to § 38-6-103(g), and furnish expert testimony in support of the use of the scientific instruments when required.

6-55-202. Tax suit — Jurisdiction.

It is lawful for any incorporated municipality to sue in the chancery court of the county in which it is located for taxes due the municipality upon real estate, whenever the taxes are past due and unpaid. The fact that the complaint contains the names of more than one (1) defendant shall not subject the complaint to an objection for misjoinder by reason of the distinct interests the several defendants have in the properties proceeded against.

6-56-302. Application of part.

This part shall apply to all purchases by authorized officials in all municipalities using or encumbering municipal funds, except as follows:

(1) This part shall not apply to purchases by authorized officials in municipalities that have a charter provision or private act that either establishes within the charter or act itself dollar limits over which competitive bidding is required, or authorizes the municipality to set a dollar limit by ordinance but establishes the maximum dollar limit over which competitive bidding is required, and the municipality has established either by charter, private act, or ordinance general bidding procedures that include, but are not limited to, public advertising, securing and opening bids, and any exemptions from competitive bidding. Any exemptions must be substantially similar to those listed in § 6-56-304, except that any dollar amounts listed must be established in accordance with the municipality's charter or private act;

(2) This part shall not apply to purchases by authorized officials in municipalities that have charter provisions relative to competitive bidding but that do not establish a dollar limit over which competitive bidding is required, as long as the municipality, by ordinance, establishes:

(A) A dollar limit over which competitive bidding is required, which may not exceed twenty-five thousand dollars ($25,000);

(B) A dollar limit, which may not exceed forty percent (40%) of the amount established under subdivision (2)(A), over which the municipality need not advertise but must, when possible, obtain three (3) competitive bids and below which no advertisement or competitive bidding is required;

(C) Procedures for public advertising, securing, and opening bids; and

(D) Any exemptions from competitive bidding, which must be substantially similar to those listed in § 6-56-304, except that any dollar amounts listed must be in accordance with the municipality's ordinances;

(3) This part shall not apply to purchases made under § 12-3-1201;

(4) This part shall not apply to investments in or purchases from the pooled investment fund established pursuant to title 9, chapter 4, part 7;

(5) This part shall not apply to purchases from instrumentalities created by two (2) or more cooperating governments such as, but not limited to, those established pursuant to the Interlocal Cooperation Act, compiled in title 12, chapter 9; and

(6) This part shall not apply to purchases from nonprofit corporations such as, but not limited to, the Local Government Data Processing Corporation, whose purpose or one of whose purposes is to provide goods or services specifically to municipalities.

6-56-307. Bid specifications for purchases of chemical products.

(a) Bid specifications for purchases of chemical products pursuant to this chapter shall require that the manufacturer of the chemical products create and maintain a material safety data sheet (MSDS) for such chemical products on the national MSDSSEARCH repository or the manufacturer's web site so that the information can be accessed by means of the Internet. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is freely accessible to the public.

(b) The URL for MSDSSEARCH shall be posted on the web site of the department of general services as provided in § 12-3-808. In lieu of posting a MSDS on MSDSSEARCH, a bidder shall include the manufacturer's URL for their MSDS in the bid proposal or purchase order.

6-56-402. Employment of person with oversight responsibilities regarding financial operations — Exceptions.

(a) To ensure competence in the handling of municipal funds and the protection of public moneys, each municipality shall have in its employ, except as provided in this section, at least one (1) certified municipal finance officer (CMFO) or an exempt individual as recorder, city clerk, director of finance, or other official or employee who has oversight responsibilities regarding the municipality's financial operations, in accordance with the schedule established in this part.

(b) [Deleted by 2013 amendment, effective July 1, 2013.]

(c) Any municipality with five hundred thousand dollars ($500,000) or less in gross revenues for all funds, including utilities, but excluding one-time non-recurring grants, and with debt totaling five hundred thousand dollars ($500,000) or less in the immediately preceding fiscal year may, instead of employing a CMFO, or a qualified individual who is exempt from CMFO certification for financial oversight, shall be required to have in their employment an individual who has met the continuing education requirements of § 6-56-404.

6-56-403. Development of curriculum for certified municipal finance officer — Candidates for course — Demonstrated proficiencies — Training and testing administration.

(a) The municipal technical advisory service (MTAS) of the University of Tennessee's institute for public service, with the approval of the state comptroller's office, shall develop a curriculum, including testing, leading to the designation certified municipal finance officer (CMFO). The program shall include at least eighty (80) combined hours of course and lab work, including the following topics:

(1) Governmental environment;
(2) Auditing and internal controls;
(3) Governmental accounting;
(4) Financial reporting;
(5) Budgeting;
(6) Debt administration;
(7) Cash and investment management;
(8) Strategic planning and capital improvement plans;
(9) Pensions and benefits administration and risk management; and
(10) Procurement and enterprise resource planning systems.

(b) A candidate for the CMFO designation shall:

(1) Be at least eighteen (18) years of age;
(2) Be a high school graduate or the equivalent;
(3) Not have been convicted of any felony or any lesser crime involving theft, fraud, or other crimes of dishonesty under the laws of this state, the United States, or any other state or country if the acts involved would have constituted such a crime under the laws of this state; and
(4) Not engage in any conduct reflecting adversely upon the candidate's fitness to perform services while certified as a CMFO.

(c) To achieve the CMFO designation, a candidate shall demonstrate proficiency in the subject matter by passing a series of examinations on the course materials. A CMFO candidate, however, may choose to take an examination on the subject matter before taking a course, except for the course covering governmental environment, which is mandatory for all candidates. If the candidate makes a passing grade on the examination, the candidate shall receive credit toward the CMFO designation without attending the training class in which the particular subject matter is covered. A candidate who passes all the examinations covering the ten (10) topics listed in subsection (a) shall be eligible to receive the CMFO designation, and shall receive that designation upon application to and certification by the comptroller of the treasury's office.

(d) Training will be provided and examinations administered by the staff of the MTAS.

6-56-404. Continuing education to maintain certification — Revocation.

(a) To maintain certification, a certified municipal finance officer (CMFO) shall earn at least twenty-four (24) hours of continuing professional education (CPE) of financial education each calendar year after receiving the designation. A CMFO wishing to maintain certification who earns more than the minimum CPE hours during any calendar year may carry over to the next calendar year a maximum of twenty-four (24) CPE hours. CPE hours shall be

filed with and maintained by the comptroller of the treasury's office, which shall keep individual records on CMFOs and CMFO candidates. The comptroller may allow exceptions to the continuing education requirement for good cause shown.

(b) A CMFO's certification may be revoked for either or both of the following:

(1) Failure to obtain or maintain the required continuing education;

(2) Failure to comply with the standards for CMFO candidates as set forth in § 6-56-403.

6-56-406. Compliance.

(a) Municipalities shall comply with the requirement that they have a certified municipal finance officer (CMFO) in their employ based on the following schedule determined by the gross revenues the municipality derived from all funds, including utilities, during the July 1, 2006, to June 30, 2007, fiscal year:

Gross revenues	Compliance date
$10 million or more	January 1, 2011
$5 million to $9,999,999.99	January 1, 2012
Less than $5 million	January 1, 2013

(b) After the compliance date applicable to a municipality has passed and it later becomes necessary for the municipality to hire an individual in a position in which the CMFO designation is required, the individual hired shall either be exempt as provided in § 6-56-405 or shall become certified within two (2) years of the hiring date.

(c) If a municipality is in compliance before the applicable mandatory compliance date in subsection (a) and the CMFO or exempt finance officer leaves employment with the municipality within two (2) years before the applicable mandatory compliance date, leaving the municipality in noncompliance, the municipality shall have two (2) years from the date of the departing finance officer's last day of employment to comply.

(d) For municipalities that have been subject to § 6-56-402(c), and circumstances change that would make them subject to § 6-56-402(a), the municipality shall be required to comply with the requirements of § 6-56-402(a) within two (2) years from:

(1) The submission date of the financial report used to determine that the municipality is subject to § 6-56-402(a); or

(2) Six (6) months following the fiscal year end of the financial report used to make the determination, whichever is earlier.

6-56-407. Violations.

Any municipality determined by the comptroller of the treasury to be in violation of the requirement of this part that the municipality have in its employ a certified municipal finance officer (CMFO) or exempt individual in a position of financial oversight is subject to a civil penalty to be levied by the comptroller of up to fifty dollars ($50.00) per day during the entire time the violation continues.

6-58-112. New municipalities — Property tax — Incorporation election.

(a)(1) After January 1, 1999, a new municipality may only be created in territory approved as a planned growth area in conformity with the provisions of § 6-58-104;

(2) A county may provide or contract for the provision of services within a planned growth area and set a separate tax rate specifically for the services provided within a planned growth area; and

(3) A county may establish separate zoning regulations within a planned growth area, for territory within an urban growth boundary or within a rural area.

(b) [Deleted by 2013 amendment, effective April 24, 2013.]

(c) A municipality, incorporated after May 19, 1998, shall impose a property tax that raises an amount of revenue not less than the amount of the annual revenues derived by the municipality from state-shared taxes as estimated by the department of revenue on or before July 1. The municipality shall levy and provide for the administration and collection of a property tax in the required amount before the municipality may receive state-shared taxes. Furthermore, the provisions of § 6-51-115(b), shall apply within the territory of such newly incorporated municipality as if such territory had been annexed rather than incorporated. For purposes of levying a property tax, the incorporation of a municipality shall be effective on January 1 following the election at which the incorporation is approved.

(d)(1) If the residents of a planned growth area petition to have an election of incorporation, the county legislative body shall approve the corporate limits and the urban growth boundary of the proposed municipality before the election to incorporate may be held.

(2) Within six (6) months of the incorporation election, the municipality shall adopt by ordinance a plan of services for the services the municipality proposes to deliver. The municipality shall prepare and publish its plan of services in a newspaper of general circulation distributed in the municipality. The rights and remedies of § 6-51-108 apply to the plan of services adopted by the municipality.

7-3-316. Fees to be adjudged as part of costs — Disbursement of fees.

(a) As provided in § 38-6-103, the following fees shall be adjudged as a part of the costs in each case upon conviction of the following offenses:

(1) Controlled substances, narcotics, drugs $20.00

(2) Driving a motor vehicle, or operating a boat while under the influence of intoxicants and/or drugs, except as provided in § 55-10-413(d) 17.50

(3) Certification of criminal histories and records ...Amount fixed by the federal bureau of investigation

(4) Upon the forfeiture of a cash bond or other surety entered as a result of a municipal traffic citation, whether considered a fine, a bond or a tax .....13.75.

(b) Such fees shall be in addition to and not in substitution for any and all fines and penalties otherwise provided for by law.

(c) Except when and as provided in this section, the appropriate clerk, after deducting five percent (5%) as compensation when applicable, shall identify those fees set out in subsection (a) that are dedicated for use by the Tennessee

bureau of investigation and remit the fees to the state treasury to be expended by the Tennessee bureau of investigation as appropriated by the general assembly. These fees shall be transmitted by the clerk of the court to the state treasurer for deposit in a fund to be used by the Tennessee bureau of investigation for the purpose of employing personnel; for the purchase of equipment and supplies; to pay for the education, training and scientific development of employees; or for any other purpose to allow the bureau's business to be done in a more efficient and expeditious manner. The moneys received in the fund shall be invested for the benefit of the fund by the state treasurer pursuant to § 9-4-603. Amounts in the fund shall not revert to the general fund of the state, but shall, together with interest income credited to the fund, remain available for expenditure in subsequent fiscal years.

(d) Upon approval of the director of the Tennessee bureau of investigation, local governing bodies which have the responsibility for providing funding for sheriffs' offices and police departments are authorized to purchase from state contracts approved for bureau purchases, scientific instruments designed to examine a person's breath and measure the alcohol content of a person's breath, for use as evidence in the trial of cases; provided, that prior to use of the scientific instruments, such instruments must be delivered to the forensic services division for testing and certification pursuant to § 38-6-103(g). The bureau shall continue to maintain and certify the instruments and operating personnel, pursuant to § 38-6-103(g), and furnish expert testimony in support of the use of the scientific instruments when required.

7-4-202. Additional tax on hotel room occupancy. [For Expiration of Provisions in Subsection (a) on May 21, 2020, See Subdivision (d)(2).]

(a) In addition to any other tax or fee imposed pursuant to this chapter on the occupancy of a hotel room, upon the adoption of an ordinance by the metropolitan council in a county having a metropolitan government, there is authorized an additional privilege tax of up to two dollars and fifty cents ($2.50) upon the occupancy of each hotel room within the territory of that metropolitan government. The tax so imposed is a privilege tax upon each occupied room for each night of occupancy and is to be collected and distributed as provided in part 1 of this chapter.

(b) All revenues received by the metropolitan government from the privilege tax imposed pursuant to subsection (a) shall be deposited into a metropolitan government fund entitled "the convention center fund" and shall be used for the purpose of paying costs incurred in modification or construction of a publicly owned convention center in excess of four hundred million dollars ($400,000,000) in costs located within the territory of the metropolitan government. The revenues may also be used for the operation, promotion, management and marketing of such a convention center. If the revenues from the surcharge or tax in any fiscal year exceed the total of the debt service requirements from that year, the surplus revenue thus accruing shall be retained by the metropolitan government as a reserve fund for future convention center debt service requirements.

(c) In the event that the total bonded indebtedness incurred for the modification or construction of the convention center facility by the metropolitan government is paid in full as to bond principal and interest, including

expenses of bond sale or sales, the metropolitan government's taxing resolution imposing taxes authorized by subsection (a) shall be repealed and this tax shall no longer be levied; provided, however, that any funds and interest remaining in the reserve fund after all obligations imposed under this part have been fulfilled shall be used by the governmental board or agency responsible for the operation of the convention center for use by it in the operation, promotion and advertisement of the convention center facilities.

(d)(1) Upon the adoption of an ordinance by the metropolitan council in a county having a metropolitan government, all revenues received by the metropolitan government from the privilege tax imposed pursuant to subsection (a) and that exceed two dollars ($2.00) shall be deposited into a metropolitan government fund entitled the event and marketing fund. For administrative purposes, the event and marketing fund and the committee that approves expenditures shall be attached to a convention and visitors bureau in a county having a metropolitan government or a similar entity approved by the metropolitan council and the metropolitan government mayor. The fund will be governed by a five-person committee and a chair who votes only to break a tie. The committee and the chair shall be appointed by the mayor of the metropolitan government. Members of the committee shall include at least one (1) person nominated by a hotel and lodging association located in the county having a metropolitan government, one (1) person from the hospitality industry, one (1) representative from a hotel corporation that operates a single hotel in a county with a metropolitan government with an excess of two thousand nine hundred (2,900) rooms, two (2) members of the public, and a chair to be selected by the mayor. Expenditures from the event and marketing fund may be used for any purpose allowable under § 7-4-110(a)(1). All expenditures are subject to the approval of the finance director of the metropolitan government. An audited financial statement shall be supplied annually to the finance director and the council of the metropolitan government.

(2) The authority to charge the amount of the privilege tax imposed on hotel room occupancy by subsection (a) in excess of two dollars ($2.00) and the terms of the committee members shall expire six (6) years from May 21, 2014.

7-4-205. Wage rates and benefits for workers. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

(a) During the construction of a new publicly owned convention center as provided in this part, any contractor entering into a contract with the metropolitan government for the performance of work on the convention center shall pay all workers performing work under those contracts not less than the prevailing wage rate for all types and classifications of work for contractors entering into a state contract pursuant to the Prevailing Wage Act of 1975, compiled in title 12, chapter 4, part 4. In addition, all such contractors shall provide health insurance coverage for all workers performing work under the contracts.

(b) After the construction of the convention center is completed, all persons employed to perform labor or services at the convention center shall be paid a wage that is not less than an average of the prevailing wage rate for all types and classifications of work for contractors entering into a state contract

pursuant to the Prevailing Wage Act of 1975, compiled in title 12, chapter 4, part 4. In addition, health insurance coverage shall be provided to all such employees.

7-4-205. Wage rates and benefits for workers. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

(a) During the construction of a new publicly owned convention center as provided in this part, any contractor entering into a contract with the metropolitan government for the performance of work on the convention center shall pay all workers performing work under those contracts not less than the mean wage for the applicable occupation under the "construction and extraction occupations" published in the Tennessee Occupational Wages Report, as defined in § 12-4-907. In addition, all such contractors shall provide health insurance coverage for all workers performing work under the contracts.

(b) After the construction of the convention center is completed, all persons employed to perform labor or services at the convention center shall be paid a wage that is not less than the mean wage for the applicable occupation under the "construction and extraction occupations" published in the Tennessee Occupational Wages Report, as defined in § 12-4-907. In addition, health insurance coverage shall be provided to all such employees.

7-4-206. Minority-owned businesses.

(a) A metropolitan government, in soliciting bids for the construction of a publicly owned convention center in excess of four hundred million dollars ($400,000,000) in costs located within the territory of that metropolitan government, shall actively solicit bids from minority-owned businesses. The metropolitan government shall strive to maximize participation of minority-owned businesses through both prime and second tier business contracting opportunities.

(b)(1) The metropolitan council shall ensure that the funds that are deposited into the convention center fund created pursuant to this part, are expended in a nondiscriminatory manner.

(2) The metropolitan government shall monitor the expenditure of funds from the convention center fund to ensure that all contractors, vendors, suppliers and professional services providers receiving compensation from the fund do not discriminate in hiring, partnering, contracting or subcontracting on the basis of race, religion, ethnic background, or sex.

(3) The metropolitan government shall monitor the results of minority-owned business participation. The metropolitan government shall periodically investigate to ascertain whether minority-owned business participation is being achieved at a level contemplated pursuant to subsection (a) and shall report information to the comptroller of the treasury in the manner proscribed in subdivision (b)(4).

(4) The metropolitan government shall prepare and submit a quarterly report entitled "the convention center compliance report," which shall be submitted to the comptroller of the treasury no later than twenty (20) business days after the end of any calendar quarter in which funds are expended from the convention center fund. The report shall include:

(A) Data on the race, religion, ethnic background and sex of the workforce of each person that receives funds from the convention center

fund;

(B) Data on the actual expenditure of funds to minority-owned businesses from the convention center fund; and

(C) Data summarizing the findings of all periodic investigations conducted in accordance with subdivision (b)(3).

(5) The comptroller of the treasury shall, upon receipt of the report from the metropolitan government, transmit a synopsis of the report to the chairs and membership of the state and local government committee of the senate and the local government committee of the house of representatives.

7-51-1802. Local government authority regarding civil rights, leave policies, and health insurance.

(a)(1) No local government shall by ordinance, resolution, or any other means impose on or make applicable to any person an anti-discrimination practice, standard, definition, or provision that shall deviate from, modify, supplement, add to, change, or vary in any manner from:

(A) The definition of "discriminatory practices" in § 4-21-102 or deviate from, modify, supplement, add to, change, or vary any term used in such definition and also as defined in such section; or

(B) Other types of discrimination recognized by state law but only to the extent recognized by the state.

(2) Any such practice, standard, definition, or provision imposed or made applicable to any person by a local government prior to May 23, 2011, shall be null and void.

(b)(1)(A) No local government shall by ordinance, resolution, contract or any other means authorize or mandate, as a condition of a doing business within the jurisdictional boundaries of a local government or contracting with a local government, that employers establish a leave policy that deviates from, modifies, supplements, adds to, changes, or varies in any manner from state statutorily imposed or recognized requirements such as those authorized pursuant to § 4-21-408.

(B) Subdivision (b)(1)(A) shall not apply if the local government is entering into a contract with the federal government and the federal government requirements are different from those imposed pursuant to state law.

(c) Except to the extent specifically required pursuant to any federal law, no local government shall by ordinance, resolution, contract or any other means, mandate or require, as a condition of a doing business within the jurisdictional boundaries of the local government or contracting with the local government, that employers must provide health insurance benefits to persons employed by such employer.

(d) Subsections (a), (b) and (c) shall not apply with respect to employees of a local government.

7-52-103. Powers of municipalities.

(a) Every municipality has the power and is authorized to:

(1) Acquire, improve, operate and maintain within or without the corporate or county limits of such municipality, and within the corporate or county limits of any other municipality, with the consent of such other municipality, an electric plant and to provide electric service to any person, firm, public or private corporation, or to any other user or consumer of electric power and

energy, and charge for the electric service;

(2) Acquire, improve or use jointly with any other municipality a transmission line or lines together with all necessary and appropriate facilities, equipment and appurtenances for the purpose of transmitting power and energy or connecting their respective electric plants with a wholesale source of supply and, to this end, such municipality may provide by contract for the method of holding title, for the allocation of responsibility for operation and maintenance and for the allocation of expenses and revenues;

(3) Accept grants, loans or other financial assistance from any federal agency, for or in aid of the acquisition or improvement of any electric plant;

(4) Contract debts for the acquisition or improvement of any electric plant, borrow money, and issue bonds and notes pursuant to the Local Government Public Obligations Act of 1986, compiled in title 9, chapter 21, to finance such acquisition or improvements;

(5) Assess, levy and collect unlimited ad valorem taxes on all property subject to taxation to pay such bonds, and the interest on the bonds;

(6) Acquire, hold and, subject to the applicable provisions of any bonds or contracts, dispose of any property, real or personal, tangible or intangible, or any right or interest in any such property in connection with any electric plant, and whether or not subject to mortgages, liens, charges or other encumbrances, but no municipality shall dispose of all or substantially all of its electric plant, except as provided in § 7-52-132;

(7) Make contracts and execute instruments containing such covenants, terms and conditions as in the discretion of the municipality may be necessary, proper or advisable for the purpose of obtaining loans from any source, or grants, loans or other financial assistance from any federal agency; make all other contracts and execute all other instruments as in the discretion of the municipality may be necessary, proper or advisable in or for the furtherance of the acquisition, improvement, operation and maintenance of any electric plant and the furnishing of electric service; and carry out and perform the covenants and terms and conditions of all such contracts and instruments;

(8) Enter on any lands, waters and premises for the purpose of making surveys, soundings and examinations in connection with the acquisition, improvement, operation or maintenance of any electric plant and the furnishing of electric service; and

(9) Do all acts and things necessary or convenient to carry out the powers expressly given in this part.

(b) In addition to the powers listed in subsection (a), each municipality has the power and is authorized to promote economic and industrial development through participation both as a borrower and a lender in the rural economic development loan and grant program established and administered by the rural development administration or its successor.

(c) In addition to the authority granted under otherwise applicable law, each municipality operating an electric plant has the power and is authorized within its service area and on behalf of its municipality, acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to contract to establish a joint venture or other business relationship with one (1) or more third parties to provide the services authorized by § 7-52-601; provided, that, with respect to cable services, at least one (1) such third party shall be a current franchise holder that has been

providing services in any state, either itself or its predecessor or predecessors, for not less than three (3) years at the time of the establishment of the joint venture or other business relationship. Any such joint venture or other business relationship shall be subject to §§ 7-52-602 — 7-52-609.

(d) In addition to the authority granted under otherwise applicable law, each municipality operating an electric plant has the power and is authorized on behalf of its municipality, acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to establish a joint venture or any other business relationship with one (1) or more third parties to provide related services, subject to §§ 7-52-402 — 7-52-407. No contract or agreement between a municipal electric system and one (1) or more third parties for the provision of related services that provides for the joint ownership or joint control of assets, the sharing of profits and losses, or the sharing of gross revenues shall become effective or enforceable until the Tennessee regulatory authority approves such contract or agreement on petition, and, after notice and opportunity to be heard, has been extended to interested parties. Notwithstanding § 65-4-101(6)(B) or any other provision of this code or of any private act, to the extent that any such joint venture or other business relationship provides related services, such joint venture or business relationship and every member of such joint venture or business relationship shall be subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other certified providers of telecommunications services, including, but not limited to, rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in § 65-4-101, but only to the extent necessary to effect such regulation and only with respect to the provision of related services. This provision shall not apply to any related service or transaction that is not subject to regulation by the Tennessee regulatory authority.

(e)(1) In addition to the authority granted under otherwise applicable law, a municipality operating an electric plant has the power and is authorized, acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to accept and distribute voluntary contributions for bona fide economic development or community assistance purposes pursuant to programs approved by the board or supervisory body, which programs may include, but shall not be limited to, programs in which utility bills are rounded up to the next dollar when such contribution is shown as a separate line on the utility bill.

(2) Contributions accepted by a municipal electric plant pursuant to programs authorized by subdivision (e)(1) shall not be considered revenue to the municipal electric plant or the municipality's other utility systems, and such contributions shall be used only for economic development or community assistance purposes.

(f) For purposes of this section, "related services" means those services authorized by § 7-52-401.

(g) In addition to the authority granted under otherwise applicable law, each municipal electric system and each other governmental utility system established by private act that operates an electric plant have the power and are authorized, acting through the authorization of the board or supervisory body having responsibility for the municipal electric system or governmental utility system, to enter into an employment contract for a term not to exceed

five (5) years with the superintendent, general manager or chief executive officer of the electric plant. Any such contract must be terminable for cause, as more specifically defined in the contract, and the term of the contract may be renewed. If the board or supervisory body also has responsibility for other utility systems, and if the superintendent, general manager or chief executive officer is also the superintendent, general manager or chief executive officer for such other systems, then the contract may address all rights and responsibilities of such superintendent, general manager or chief executive officer. This subsection (g) shall only apply where, by private act or general law, the board or supervisory body having responsibility for the municipal electric system or governmental utility system is directly responsible for making decisions regarding the employment of the superintendent, general manager or chief executive officer of the electric plant.

7-52-408. [Repealed.]

7-52-409. [Repealed.]

7-52-410. [Repealed.]

7-53-305. Exemption from taxation — Payments in lieu of ad valorem taxes — Securities.

(a) The corporation is hereby declared to be performing a public function in behalf of the municipality with respect to which the corporation is organized and to be a public instrumentality of such municipality. Accordingly, the corporation and all properties at any time owned by it, and the income and revenues from the properties, and all bonds issued by it, and the income from the bonds, shall be exempt from all taxation in the state of Tennessee. Also for purposes of the Securities Act of 1980, compiled as title 48, chapter 1, part 1, bonds issued by the corporation shall be deemed to be securities issued by a public instrumentality or a political subdivision of the state of Tennessee.

(b)(1) The municipality has the power to delegate to the corporation the authority to negotiate and accept from the corporation's lessees, payments in lieu of ad valorem taxes; provided, that any such authorization shall be granted only upon a finding that such payments are deemed to be in furtherance of the corporation's public purposes as defined in this section; provided, further, that no contract, lease, understanding, or other agreement of any kind, including any renewal or extension of the agreement, entered into by a municipality or corporation to which such authority has been delegated shall permit payment in lieu of taxes to be waived or otherwise not assessed for a period of greater than twenty (20) years from the date of such contract, lease, understanding or other agreement, unless both the commissioner of economic and community development and the comptroller of the treasury have made a written determination that such agreement is in the best interest of the state. The corporation shall attach to each agreement an analysis of the costs and benefits of the agreement, in such manner and under such conditions as shall be prescribed by the commissioner of economic and community development or the commissioner's designee. The legislative body of the municipality making such delegation may, in its sole discretion, require the corporation to submit any such agreement to such

legislative body for its approval. With regard to any project located within an area designated as the center-city area by a municipality in which there has been created a central business improvement district pursuant to chapter 84 of this title, the amount of such payments shall not be fixed below the lesser of:

(A) Ad valorem taxes otherwise due and payable by a tax paying entity upon the current fair market value of the leased properties; or

(B) Ad valorem taxes that were or would have been due and payable on the leased properties for the period immediately preceding the date of their acquisition by the corporation.

(2) The minimum payments in subdivisions (b)(1)(A) and (B) shall not be applicable to an eligible headquarters facility.

(c) This section shall apply, from the date of their issuance, to all bonds heretofore or hereafter issued under this chapter and the income from such bonds whether heretofore or hereafter received.

(d)(1) Payments in lieu of taxes and any lease payments payable to a corporation, to the extent such payments in lieu of taxes and lease payments in the aggregate do not exceed ad valorem taxes otherwise due and payable where the leased property is owned by an entity subject to taxation, shall become and remain a first lien upon the fee interest in the leased property from January 1 of the year in which such payment in lieu of taxes on lease payments is due. The corporation may enforce such lien, and also obtain interest at ten percent (10%) per annum from the date due and reasonable attorneys' fees, by suit filed in the circuit or chancery court.

(2) Subdivision (d)(1) shall apply with equal force to all such subleases and their sublessees.

(3) To the extent lease payments or payments in lieu of taxes exceed the amount necessary to defray debt service on project bonds or other financing, any payments not timely made as agreed may be collected by or on behalf of the city or county in the same manner as delinquent property taxes.

(e)(1) On or before October 1 of each year, the corporation lessee shall submit to the state board of equalization an annual report containing:

(A) A list of all the real and personal property owned by the corporation and its associated entities and subsidiaries;

(B) The value of each listed property as estimated by the lessee;

(C) The date and term of the lease for each listed property;

(D) The amount of payments made in lieu of property taxes for each listed property;

(E) The date each listed property is scheduled to return to the regular tax rolls;

(F) A calculation of the taxes that would have been due for each listed property if the properties were privately owned or otherwise subject to taxation;

(G) The property address and parcel identification number of the property assigned by the assessor of property;

(H) The amount of rents paid to the governing body;

(I) The amount of any property taxes paid on the leasehold assessment under § 67-5-502(d);

(J) Any changes in the name since the last filing;

(K) How the payments in lieu of taxes are allocated according to the economic development agreement; and

(L) Identification of project type according to definitions provided in this chapter.

(2) A copy of the filing made pursuant to subdivision (e)(1) shall be filed with the assessor of property in the county where the property is located on or before October 15 of the year in which the filing is made with the state board of equalization. The assessor of property may audit or review, or both, the data report on all payment in lieu of tax agreements and conduct comparative analysis to ensure that all agreements are reported to the assessor of property.

(3) Each lessee of the corporation shall be responsible for the timely completion and filing of the report. Failure to timely complete and file the report shall subject the lessee to a late filing fee of fifty dollars ($50.00) payable to the state board of equalization. In addition, any lessee failing to file the report with the board or the assessor within thirty (30) days after written demand for the report, shall owe an additional payment in lieu of tax in the amount of five hundred dollars ($500). This payment shall be collectable by the trustee for the benefit of the county, in the same manner as property taxes, on certification from the board or the assessor.

(f) The corporation to which authority has been delegated to create pilot leaseholds and payments in lieu of ad valorem taxes shall prepare biannual reports detailing the lessee's compliance with the terms and conditions of the pilot lease agreement or any other agreement whereby ad valorem taxes are substituted in favor of a payment in lieu of taxes. Such report shall detail the lessee's compliance and noncompliance where applicable, and its fiscal impact on revenues generated from ad valorem taxes in each municipality affected by such payment in lieu of taxes. This subsection (f) shall apply only to counties with populations of eight hundred thousand (800,000) or more, according to the 1990 federal census or any subsequent federal census, and to municipalities within such counties.

(g)(1) An industrial development corporation may not negotiate any payment in lieu of tax agreement for less than the county ad valorem taxes otherwise due unless:

(A) The corporation is a joint corporation organized by the county and one or more of the municipalities in the county;

(B) The corporation has entered into an interlocal agreement with the county in regard to payments in lieu of ad valorem taxes; or

(C) The corporation has received written approval from the county mayor and the legislative body of the county regarding payments in lieu of ad valorem taxes.

(2) Subdivision (g)(1) shall apply to any county having a population of not less than eight hundred ninety-seven thousand four hundred (897,400) nor more than eight hundred ninety-seven thousand five hundred (897,500) and at least five (5) industrial development corporations formed under title 7, chapter 53, according to the 2000 federal census or any subsequent federal census.

(h) Notwithstanding this section or any other law to the contrary, an industrial development corporation organized solely by a municipality that does not impose a real property tax may only enter into a payment in lieu of ad valorem tax agreement or lease if:

(1) The county in which the municipality is located has approved the entering into a payment in lieu of ad valorem tax agreement or lease with

respect to the property at issue; or

(2) Either the industrial development corporation or the municipality which organized the industrial development corporation agrees to pay to the county in which the municipality is located an amount equal to the amount of real property tax that would have been assessed to the property at issue for each year in which the payment in lieu of ad valorem tax agreement or lease is effective were the property not owned by the industrial development corporation during such time period.

7-59-311. Prohibited discrimination — Low-income households — Affirmative defenses — Measuring compliance — Waiver or extension.

(a)(1) A holder of a state-issued certificate of franchise authority shall not discriminate among residential subscribers or potential subscribers. For purposes of this section, "discrimination" means the denial of access to cable or video service to any individual or group of residential subscribers or potential subscribers because of the race, income, gender, or ethnicity of the residents in the local area in which the individual or group resides.

(2) Within forty-two (42) months after the date it receives a state-issued certificate of franchise authority, twenty-five percent (25%) of the households with access to a holder of a state-issued certificate of franchise authority's cable or video service shall be low-income households. Compliance with this requirement shall be an affirmative defense to any allegations of discrimination pursuant to subdivision (a)(1). With respect to an incumbent cable service provider that obtains a state-issued certificate of franchise authority, the affirmative obligation to provide access to low-income households as specified in this subsection (a) shall be measured based upon the percentage of low-income households that exist only in new areas that are not covered, or were not previously covered, by a local franchise, referred to in this section as the new areas. An incumbent cable service provider that obtains a state-issued certificate of franchise authority will be deemed to satisfy its affirmative obligation if the provider certifies to the department in its application for a state-issued certificate of franchise authority that it will deploy its cable or video system to all the households located within the proposed service area. An incumbent cable service provider that obtains a state-issued certificate of franchise authority and satisfies its affirmative obligation as provided for in this subsection (a) shall have an affirmative defense to an allegation of discrimination pursuant to subdivision (a)(1) with respect to new areas. With respect to areas served under a state-issued certificate of franchise authority by such a holder other than new areas, the holder shall have an affirmative defense to a subdivision (a)(1) complaint with respect to any municipality or county to the extent that the holder can establish that twenty-five percent (25%) of the households with access to its cable or video service in the applicable municipality or county are low-income households.

(3) After the forty-two (42) months has elapsed, except as provided in this subdivision (a)(3), all holders of a state-issued certificate of franchise authority shall prepare an annual report on the estimated percentage of low-income households with access to its service. This report shall contain information demonstrating the estimated percentage share of low-income

households with access to its video or cable service compared with the total number of all customers with access to its video or cable service anywhere within the area served under its state-issued certificate of franchise authority. The report need not be broken out into percentages based on geographic subdivisions, counties, or municipalities. The report shall be provided to all counties and municipalities in which the provider offers video or cable service and to the department. With respect to incumbent cable providers that obtain a state-issued certificate of franchise authority, no annual report shall be required with respect to any service areas that are, or have been subject to, the provisions of a local franchise. To the extent that such a holder expands cable or video service to new areas pursuant to a state-issued certificate of franchise authority, the incumbent shall file the annual report limited to the new areas. In cases involving new areas where the annual report is required for the holders, if the holder certifies in its application to the department that it will provide cable or video service to all homes within the proposed new area that have at least a density of twenty (20) homes per mile measured from the holder's existing distribution plant, then no additional reports shall be required with respect to such areas.

(b) Except as otherwise provided in this section, a holder of a state-issued certificate of franchise authority shall provide access to its cable or video service, or to broadband Internet service as provided in subsection (d), to a number of households equal to at least thirty percent (30%) of the households in its franchise area within forty-two (42) months after the date it receives a state-issued certificate of franchise authority. With respect to incumbent cable service providers that obtain a state-issued certificate of franchise authority, the deployment thresholds provided for in this subsection (b) shall not be measured with respect to any service areas that are, or have been, subject to the provisions of a local franchise. To the extent that such a holder expands cable or video service to new areas pursuant to a state-issued certificate of franchise authority, the deployment thresholds shall apply to the new areas only.

(c) For purposes of determining whether a holder of a state-issued certificate of franchise authority has violated subsection (a) or (b), a holder of a state-issued certificate of franchise authority may satisfy the requirements of this section through the use of alternate technology, except for direct-to-home satellite service or direct broadcast satellite service, that offers service, functionality, and content that is demonstrably similar to that provided through the holder's video service network and may include a technology that does not require the use of any public rights-of-way or other alternative technology that, in the opinion of the department, is sufficiently similar to satisfy the obligations of this section. The technology utilized to comply with the requirements of this section shall include local public, education and government channels and messages over the emergency alert system as required by this part.

(d)(1) For purposes of calculating whether a holder of a state-issued certificate of franchise authority has met the requirements of subsection (b), each household to which the holder provides access to broadband Internet service that did not have access to such service from the holder prior to the date of application to the department for a state-issued certificate of franchise authority, shall count as two (2) households for measurement purposes. A household to which the holder of a state-issued certificate of franchise

authority provides access to broadband Internet service that did not have broadband Internet access from any provider prior to the date of application to the department for a state-issued certificate of franchise authority, shall count as four (4) households for measurement purposes.

(2) It is the legislative intent that in measuring compliance with this section, the department may rely upon verification provided by Connected Tennessee, as to the expansion of access to broadband Internet service to households by a holder of a state-issued certificate of franchise authority.

(3) To qualify for any broadband Internet service credit provided for in this section, a holder must have submitted to the verifier on the date of its application for a state-issued certificate of franchise authority a base line report identifying all zip codes in the state where the holder provides broadband Internet service to all households. If the holder provides broadband Internet service to fewer than all households in a zip code the holder shall identify the geographic area within the zip code where broadband Internet service is provided. The base line report shall be certified as true and correct by an officer of the holder. In providing a recommendation to the department as to whether a credit should be provided to a holder, the verifier shall provide the department with an explanation on what basis a credit should be provided supported by a sworn certification by an officer of the verifier that the holder is eligible for the specific credit that is recommended. The attorney general and reporter shall have the authority upon reasonable cause to investigate the request for or award of any credit under this section. Upon such an investigation, the attorney general and reporter shall have access to all information relied upon by the verifier with regard to the application for or award of a credit under this part.

(4) For the purposes of this subsection (d), households to which a holder extends access to broadband Internet service as described in this section shall be counted toward the deployment requirements of subsection (b), notwithstanding that the households may or may not have access to cable or video services from the holder. Any information submitted to, or obtained by the verifier or attorney general and reporter pursuant to this subsection (d) shall be considered proprietary information and therefore is confidential and not subject to the open records laws, compiled in title 10, chapter 7.

(e)(1) A holder of a state-issued certificate of franchise authority may apply to the department for a waiver of or an extension of time to meet the requirements of subsection (a) or (b) or for an extension of time for deployment as set forth in § 7-59-305(c)(3) if one (1) or more of the following conditions materially impaired the ability of the holder to meet the requirements:

(A) The inability to obtain access to public and private rights-of-way under reasonable terms and conditions;

(B) Developments or buildings not being subject to competition because of existing exclusive service arrangements;

(C) Developments or buildings being inaccessible using reasonable technical solutions under commercially reasonable terms and conditions;

(D) Natural disasters; or

(E) Factors beyond the control of the holder of a state-issued certificate of franchise authority.

(2) The department may grant the waiver or extension only if the holder has made substantial and continuous effort to meet the requirements of

subsection (a) or (b) or of § 7-59-305(c)(3). If an extension is granted, the department shall establish a new compliance deadline. Absent a complaint brought as provided in § 7-59-312, the department is not authorized to make any determination regarding a provider's compliance with this section.

(f) Notwithstanding any other provision of this part to the contrary, a holder of a state-issued certificate of franchise authority shall not be obligated to provide service outside the holder's franchise area; provided, however, that a holder of a state-issued certificate of franchise authority that is a large telecommunications provider shall not be obligated to provide service to customers within its franchise area for whom the holder does not offer wireline broadband Internet service.

(g) Except as otherwise provided in this part, a holder of a state-issued certificate of franchise authority shall not be required to comply with, and no entity may impose or enforce, any mandatory build-out or deployment provisions, schedules, or requirements except as required by this section.

7-59-315. Tennessee broadband deployment fund.

(a) There is created the Tennessee broadband deployment fund, referred to in this section as the fund, as a separate account in the state treasury. Amounts remaining in the fund at the end of each fiscal year shall not revert to the general fund. Moneys 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.

(b)(1) Monies shall be deposited into the fund as provided by law or provisions of the general appropriations act. Monies in the fund shall be used by the department to promote the deployment of broadband Internet service to unserved areas of the state pursuant to guidelines developed by the department in consultation with Connected Tennessee. The guidelines shall provide for the making of grants to political subdivisions or entities of political subdivisions, cable service providers, video service providers, telecommunications companies, and similar entities as the department may determine.

(2) It is declared to be the legislative intent that broadband Internet service be deployed throughout the state as expeditiously as possible. The general assembly finds that it is in the public interest that broadband Internet service be made available in unserved areas through means of public investment, private investment and public-private partnerships.

7-82-102. Review of rates and services.

(a) In all counties and districts, except those excluded in subsection (b), the following shall apply:

(1)(A) Except as to those districts coming within § 7-82-103(b)(2), in addition to any other procedure provided by law for the review of the actions of the board of commissioners, there is hereby granted to the utility management review board the authority to review rates charged and services provided by public utility districts. The review provided for in this subsection (a) can only be initiated by a petition containing the genuine signatures of at least ten percent (10%) of the customers within the authorized area of the public utility district;

(B) To be considered by the board, the customer or customers initiating the petition must file a letter of intent to compile and file the petition with

the board before the petition is signed. All signatures of customers on the petition must have been obtained within ninety (90) days of the date the notice of intent to compile and file petition is filed with the board. Each customer signing the petition shall include the address at which the customer receives utility service and the date the customer signed the petition. The petition shall be addressed to the utility management review board and a copy of the petition shall be served upon the board of commissioners of the affected utility district. The petition must contain the genuine signatures of the customers of the utility district. All information submitted in the petition must be legible;

(C) Upon receipt of the petition, the board shall verify the names and addresses of the signers of the petition to ensure that they are bona fide customers of the utility district and to ensure that all signatures have been obtained within ninety (90) days of the date the notice of intent to compile and file petition is filed with the board. As used in this part, "customer" means a person who receives a bill for utility services and pays money for such services. Each utility account shall be entitled to one (1) signature, but no person shall sign the petition more than once. Only one (1) petition to review the rates and services provided under this section can be filed in any twelve-month period. The review by the utility management review board shall be held only upon public hearings, after notice;

(2) The utility management review board shall review those petitions pertaining to rates on the basis of all provisions of this chapter governing the establishment of rates, the provisions of any bond resolutions or other debt contract instruments binding upon such utility districts, and the rules and regulations promulgated by the comptroller of the treasury pursuant to § 7-82-401;

(3) It is the express intent of the general assembly that the review granted in this subsection (a) shall be a substantive and meaningful review. In order to accomplish this intention, the utility district shall take no action that will result in contractually binding the district or obligating the district to issue bonds that would require a rate increase, until the district shall have first given notice to the customers of the district of such anticipated action; and

(4) The Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall apply to all procedures and proceedings coming before the utility management review board pursuant to this subsection (a), to the extent not inconsistent with this chapter.

(b) In those counties and districts specified in subdivision (b)(5), the following shall apply:

(1) Except as to those districts coming within § 7-82-103, in addition to any other procedure provided by law for the review of the actions of the board of commissioners, there is hereby granted to the Tennessee regulatory authority the authority to review rates charged and services provided by public utility districts. The review provided for in this subsection (b) can only be initiated by a petition signed by at least ten percent (10%) of the users within the authorized area of the public utility district. The petition shall be addressed to the authority and a copy of the petition shall be served upon the board of commissioners of the affected utility district. The review by the authority shall be held only upon public hearings, after notice, in the county in which the utility district maintains its principal office;

(2) The authority shall review those petitions pertaining to rates as fully as in the case of private utility companies; provided, that the burden shall be upon the petitioners to show that the rates are discriminatory or unjust and unreasonable. In considering rate petitions, the authority shall take no action that adversely impairs the obligation of contracts or payment of existing bonds by such district, and may, within its sound legal discretion, assess costs of such hearings as equity and justice may demand;

(3) It is the express intent of the general assembly that the review granted in this subsection (b) shall be a substantive and meaningful review. In order to accomplish this intention, the utility district shall take no action that will result in contractually binding the district or obligating the district to issue bonds that would require a rate increase, until the district shall have first given notice to the users of the district of such anticipated action;

(4) The Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall apply to all procedures and proceedings coming before the authority pursuant to this subsection (b), to the extent not inconsistent with this chapter; and

(5)(A) This subsection (b) applies to any gas utility district for the reasons set out in § 7-82-103; and

(B) This subsection (b) also applies in counties having the following populations, according to the 1980 federal census or any subsequent federal census:

not less than	nor more than
13,600	13,610
28,500	28,560
28,690	28,750
48,400	48,500
84,000	84,100

7-82-307. Commissioners — Numbers — Terms — Vacancies — Election of commissioners.

(a)(1) Each utility district shall have three (3) commissioners, except those multi-county utility districts and utility districts having a greater number of commissioners on May 6, 2004.

(2)(A) Each utility district shall select board members using the selection method set forth in subdivisions (a)(4) or (a)(5).

(B) The commissioners of any single-county utility district using a selection method other than appointment by a county mayor as provided in subdivision (a)(4) on May 6, 2004, shall be appointed by the county mayor unless, on July 1, 2011, or hereafter approved by the general assembly, the selection method used by a single-county utility district is a plurality vote of customers of the utility district voting in an election held by the utility district or the single-county district is located in a county with a metropolitan form of government and the selection method is by appointment by a county probate judge.

(C) No later than July 1, 2014, vacancies occurring in multi-county utility districts shall be as provided in subdivision (a)(5) or subsection (h), unless, on July 1, 2011, or hereafter approved by the general assembly, the selection method used by a multi-county utility district is a plurality vote of customers of the utility district voting in an election held by the utility

district or the multi-county district is located in a county with a metropolitan form of government and the selection method is by appointment by a county probate judge.

(3) The term of office of each commissioner shall be four (4) years after the initial appointment by the county mayor to create staggered terms, except for replacement commissioners filling unexpired terms. Each member, upon expiration of such member's term, shall continue to hold office until a successor is appointed or elected and qualified.

(4) Vacancies on the board of commissioners of single-county utility districts shall be filled by appointment of the county mayor. Within sixty (60) days after the occurrence of a vacancy in the office of any commissioner caused by death, resignation, disability, or forfeiture of office, and no later than thirty (30) days prior to the expiration of the term of office of any incumbent commissioner, the board of commissioners or its remaining members shall select three (3) nominees to fill such office, in full accordance with any residential requirements that may apply to the office vacated or to be vacated, and under the seal of the board of commissioners, shall certify such list of nominees in order of preference recommended by such commissioners, to the county mayor of the county in which the utility district or its principal office is located; or of the county in which the commissioners of the district customarily meet if the district has no principal office. Within twenty-one (21) days after the issuance of any certification by the board of commissioners to the county mayor, the county mayor may enter an order either appointing one (1) of the nominees or rejecting the entire list or may refrain from taking any action, in which event the first name on the list of nominees shall be deemed appointed to fill the vacancy or new term by operation of law. Any order either appointing or rejecting a list of nominees shall be entered of record on the minutes of the county legislative body and a certified copy of the order shall be furnished to the board of commissioners and to the appointee; provided, however, that upon the rejection of any entire list of nominees by the county mayor, the board of commissioners shall, to the extent authorized in this subdivision (a)(4), submit a new non-identical list or lists of three (3) nominees to the county mayor within sixty (60) days after the date of the written request to the board of commissioners or its remaining members to submit an additional list as required in subdivision (a)(6). If the county mayor enters an order rejecting the third list of nominees within twenty-one (21) days after the submission of the third list of nominees, then the county legislative body shall appoint a commissioner from the third list of nominees to fill the vacancy at the meeting of the county legislative body in which the mayor's order rejecting the third list of nominees is entered of record on the minutes of the county legislative body.

(5)(A) Effective July 1, 2014, and thereafter, unless, on July 1, 2011, or hereafter approved by the general assembly, the selection method used by a multi-county utility district is a plurality vote of customers of the utility district voting in an election held by the board of commissioners of the utility district, the procedure as provided in subdivision (a)(4) for submitting nominees to the county mayor to fill a vacancy shall be followed by the board of commissioners of multi-county utility districts for the filling of vacancies occurring on the board of commissioners of such multi-county utility district, except that, the utility district's charter, bylaws, state law or prior order creating or recreating such utility district board of commis-

sioners shall be followed to determine which county mayor is the appropriate county mayor to fill the vacancy. In certifying the list of nominees to the appropriate county mayor, the board of commissioners shall send copies of the certification to the county mayor of every county which is a part of the multi-county utility district. The original certification shall include a statement listing all counties to which copies of the certification shall be furnished to the county mayors.

(B) As provided in its charter, bylaws, state law or prior order creating or recreating the multi-county utility district, if an appointee to the board of commissioners rotates between or among the counties which are included in the multi-county utility district, then the appropriate county mayor to make the appointment shall be the county mayor in the next rotation for the appointment. If a vacancy must be filled for an unexpired term, the county mayor which made the original appointment for that commissioner shall be the appropriate county mayor to fill the appointment for the unexpired term.

(C) Except for the appointment of the commissioner which is a rotating appointment, in all multi-county utility districts, the appointee shall be a resident of the same county as the appointee's predecessor.

(6) If the first or second list is rejected in its entirety, then within fourteen (14) days following the entry of the order rejecting the entire list of nominees, the county mayor shall make a written request to the board of commissioners or its remaining members to submit an additional list in accordance with subdivision (a)(4) or (a)(5).

(7) The method of filling vacancies set forth in subdivisions (a)(2), (4) and (5) is the uniform method created by the legislature for the filling of vacancies on a utility district board of commissioners. It is the legislature's intent to create a uniform general law of statewide application for selecting utility district commissioners.

(8) At least two (2) weeks prior to the board meeting at which the board of commissioners intends to select three (3) nominees to certify to the county mayor or county mayors to fill an existing vacancy or upcoming vacancy on the utility district's board of commissioners under subdivisions (a)(4) and (5), the utility district shall notify its customers in writing of the board's intent to select three (3) nominees to certify to the county mayor or county mayors at such board meeting and shall invite its customers to submit the names of qualified persons to be considered for nomination to fill the vacancy. The notice shall be:

(A) Mailed to the district's customers by including the notice on the customer's bill or by a separate insert with the customer's bill;

(B) Mailed to the district's customers by including the notice in a general mailing to its customers or by a separate insert with a general mailing to its customers; or

(C) Published in a newspaper of general circulation in the county or counties in which the utility district is created or recreated.

(9) Notwithstanding any law to the contrary, the board of commissioners of a utility district excepted by subdivision (a)(2) from the uniform method created by the legislature for the filling of vacancies may, by resolution, choose to change its present method of selection to appointment by a county mayor or mayors under subdivision (a)(4) or (a)(5). Upon the filing of a certified copy of the resolution with the utility management review board,

the board shall enter an order either approving or disapproving the resolution. The board shall approve the resolution upon finding that a change in the method of filling vacancies to appointment by a county mayor under subdivision (a)(4) or (a)(5) is in the best interest of the utility district and its customers. All vacancies on the utility district's board of commissioners that occur after the entry of an order approving the resolution shall be by appointment by a county mayor under subdivision (a)(4) or (a)(5). If the board enters an order disapproving the resolution, then the utility district's method of filling vacancies shall remain unchanged, and the utility district shall continue to fill vacancies under the method the utility district has been using before the adoption of the resolution.

(b)(1)(A) Upon the petition of at least twenty percent (20%) of the customers of a utility district to the utility management review board requesting the removal of a member or members of the utility district board of commissioners, the board shall conduct a contested case hearing on the question of whether such member or members should be removed from office and a new member or members appointed or elected. To be considered by the board, the customer or customers initiating the petition must file a letter of intent to compile and file the petition with the board before the petition is signed. All signatures of customers on the petition must have been obtained within ninety (90) days of the date the notice of intent to compile and file petition is filed with the board. The petition must contain the genuine signatures of the customers of the utility district. All information submitted in the petition must be legible. Each customer signing the petition shall include the address at which the customer receives utility service and the date the customer signed the petition. Upon receipt of the petition, the board shall verify the names and addresses of the signers of the petition to ensure that they are bona fide customers of the utility district and to ensure that all signatures have been obtained within ninety (90) days of the date the notice of intent to compile and file petition is filed with the board. As used in this subdivision (b)(1), "customer" means a person who receives a bill for utility services and pays money for such services. Each utility account shall be entitled to one (1) signature, but no person shall sign the petition more than once. Only one petition to remove a utility district commissioner under this section can be filed in any twelve-month period.

(B) Upon filing the petition as provided in this subdivision (b)(1), the petitioners shall also file a cash bond or attorney or corporate surety bond in the sum of three hundred fifty dollars ($350); the bond being made payable to the state of Tennessee. Such bond shall be for the costs of hearing and processing the petition. The bond may be refunded if the utility management review board determines that the member or members of the utility district board of commissioners that are the subject of the petition should be removed; in such instance the cost of the hearing shall be assessed against the district. The administrative judge may assess additional costs against either the petitioners or the district, in accordance with this subdivision (b)(1)(B), to cover the total cost of the hearing.

(2)(A) If the comptroller of the treasury investigates or conducts an audit of a utility district, the comptroller shall forward to the utility management review board any published investigative audit reports involving a

utility district incorporated under this chapter. The board shall review those reports and may conduct a contested case hearing on the question of whether utility district commissioners should be removed from office for knowingly or willfully committing misconduct in office, knowingly or willfully neglecting to fulfill any duty imposed upon the member by law, or failing to fulfill the commissioner's or commissioners' fiduciary responsibility in the operation or oversight of the district.

(B) If the board concludes the member or members of the utility district board of commissioners has knowingly or willfully committed misconduct in office or has knowingly or willfully neglected to perform any duty imposed upon such member by law, or failed to fulfill the commissioner's or commissioners' fiduciary responsibility in the operation or oversight of the district, then the board shall issue an order removing such member from office. Any vacancy on the board of commissioners shall then be filled by the selection method used by the utility district to fill vacancies; provided, that no member of the board of commissioners ousted by order of the board shall be eligible for reappointment, reelection, or to participate in either the nomination, appointment or election of new members by the board of commissioners.

(3)(A)(i) If a utility district is under the jurisdiction of the utility management review board pursuant to § 7-82-701(a), then the utility management review board may initiate a contested case hearing on the question of whether a member or members of the board of commissioners of the utility district should be removed from office and a new member or members appointed or elected on the grounds that either:

(a) The utility district failed to comply with an order of the utility management review board, which shall include failing to comply with an order concerning excessive water losses;

(b) A member or members failed to fulfill the commissioner's or commissioners' fiduciary responsibility in the operation or oversight of the district; or

(c) A member or members of the board of commissioners of the utility district committed misconduct in connection with such office or failed to perform any duty imposed by law on such office, including taking appropriate actions pursuant to § 7-82-709(b) to reduce water loss to an acceptable level as determined by the board.

(ii) Failure of a member to vote in favor of a rate structure prescribed by the utility management review board that has been adopted by the utility district does not in itself constitute grounds for removal.

(B) If the utility management review board concludes a member or members of the board of commissioners of the utility district should be removed from office for failure to comply with an order of the utility management review board or should be removed from office for committing misconduct in connection with such office or failing to perform any duty imposed by law, then the utility management review board shall issue an order removing such member or members from office. Any vacancy on the board of commissioners shall then be filled by the selection method used by the utility district to fill vacancies; provided, that no member of the board of commissioners ousted by order of the utility management review board shall be eligible for reappointment or reelection or shall participate in either the nomination, appointment or election of

new members by the board of commissioners.

(C) This subdivision (b)(3) shall not be construed as limiting any civil or criminal liability of any such member of the board of commissioners or the applicability of the ouster law, compiled in title 8, chapter 47.

(4) When the member of a utility district board of commissioners is absent from four (4) consecutive regular board meetings or from one half (½) or more of the regular board meetings in a calendar year, the utility district shall report such absenteeism in writing to the county mayor of the county in which the utility district commissioner resides or is a customer and to the county mayor of the county in which the utility district's principal office is located, if different. The utility district's written report of absenteeism shall be sent to the county mayor or mayors within thirty (30) days after:

(A) The fourth consecutive unattended board meeting; or

(B) The end of the calendar year in which one half (½) or more of the regular board meetings were not attended, with a copy of such written report sent to the utility district commissioner, all such reports to be sent by certified mail.

(5) A utility district commissioner who fails to meet the training and continuing education requirements set forth in § 7-82-308(h) or (i) before the end of the commissioner's term of office shall not be eligible for reappointment or reelection to another term of office. For the purposes of this subdivision (b)(5), the continuing education period used to determine whether a utility district commissioner has met the training and continuing education requirements set forth in § 7-82-308(h) or (i) shall be the last full continuing education period before the utility district commissioner's term of office ends.

(c) When the utility management review board reviews the annual financial statements and operations of a financially distressed utility district pursuant to § 7-82-703, and the utility district fills vacancies on its board of commissioners by a method other than appointment by a county mayor or mayors, the board may elect to hold a public hearing on the issue of whether the method of filling vacancies on the district's board should be changed. If the board elects to hold a public hearing, then the board shall conduct a contested case hearing on this issue. If the board finds that it is in the best interest of the public served by the utility district that the method of filling vacancies on the utility district's board be changed, then the board shall enter an order that provides that all future vacancies on the utility district board shall be filled by appointment of the county mayor or mayors pursuant to the procedures set forth in subdivisions (a)(4) and (5).

(d) Notwithstanding any provision of this section to the contrary, if a utility district board of commissioners fails to undertake the necessary actions as prescribed in this section to provide for the appointment or election of a new commissioner to take office upon the expiration of a term or fill a vacancy that may occur for any reason within the period of time set forth in this section, then the county mayor of the county in which such utility district was incorporated shall have the power and responsibility to make an interim appointment to such board of commissioners until such time as the proper actions required pursuant to this section have been undertaken.

(e) In implementing this section, the appointing and electing authorities that fill vacancies on utility district boards of commissioners shall give due consideration to the need for racial, gender, age and ethnic minority diversity

on utility district boards of commissioners.

(f) Immediately upon indictment for misconduct in office, the indicted utility district commissioner shall be suspended from office pending the final disposition of the criminal proceeding or until the expiration of the commissioner's term of office, whichever occurs first. While suspended, an indicted commissioner shall be ineligible to receive any payments or benefits as provided in § 7-82-308(a). In a single county utility district, the county mayor of that county shall have the power and responsibility to make an interim appointment to fill the vacancy created by the suspension from office. In a multi-county utility district, the county mayor of the county in which the indicted utility district commissioner resides or is a customer shall have the power and responsibility to make an interim appointment to fill the vacancy created by the suspension from office. If the criminal proceeding against the suspended utility district commissioner has not terminated by the expiration of the term, the office will be considered vacant and be filled as provided by law. If the criminal proceeding is terminated with a finding or verdict of guilty on any of the charges on which the commissioner was indicted, then the suspension shall be made permanent, the office will be considered vacant, and the interim appointee shall serve until the office is filled as provided by law. If the criminal proceeding against the suspended utility district commissioner related to the indictment for misconduct in office is terminated by any finding, adjudication or deferral of the proceedings, including a not guilty verdict or a dismissal on the merit, the suspension of the utility district commissioner shall be removed, and the commissioner shall become eligible to serve his or her office; simultaneously the county mayor's interim appointee shall cease to hold office.

(g)(1) Notwithstanding this section or any other law to the contrary, any water utility district having less than one thousand six hundred (1,600) customers in any county having a population of not less than thirty-nine thousand nine hundred (39,900) nor more than forty thousand (40,000), according to the 2000 federal census or any subsequent federal census, shall be governed by a five-member board of utility district commissioners. No person shall be eligible for appointment as utility district commissioner unless the person is a customer of the utility district and resides within the service area of the utility district. As used in this subdivision (g)(1), "customer" means a person who is regularly billed for utility service rendered by the district and who pays money for such service.

(2) The regular term of office of each utility district commissioner shall be four (4) years. In order to establish staggered terms on the board, the three (3) incumbent commissioners serving on May 24, 2004, shall each serve an initial term of four (4) years, commencing on May 24, 2004. Thereafter, those three (3) offices shall be subject to appointment every four (4) years in accordance with the requirements and procedures set forth in this subsection (g). The initial term of office of each of the two (2) commissioners added by this subsection (g) shall be two (2) years, commencing on May 24, 2004, to be filled in accordance with the requirements and procedures set forth in this subsection (g). Thereafter, those two (2) offices shall be subject to appointment every four (4) years in accordance with the requirements and procedures set forth in this subsection (g). All unscheduled vacancies arising after May 24, 2004, shall be filled, for the remainder of the unexpired term, in accordance with the requirements and procedures set forth in this subsection (g).

(3) Within fourteen (14) days after the occurrence of any vacancy in the office of any utility district commissioner caused by death, resignation, disability, or forfeiture of office, and no later than sixty (60) days prior to the expiration of the term of office of any incumbent utility district commissioner, the board of utility district commissioners or its remaining members shall select three (3) qualified nominees to fill such office for the remainder of the term or for the full term, as the case may be, and, under the seal of the board of commissioners, shall certify such list of nominees in order of preference recommended by such commissioners, to the county mayor. Within fourteen (14) days after issuance of certification by the board of commissioners to the county mayor, the county mayor shall enter an order either appointing one of the nominees or rejecting the entire list. If this or any subsequent list of nominees is not timely submitted to the county mayor, then the county mayor shall proceed to appoint a qualified person to serve on the board of utility commissioners. Any order either making an appointment or rejecting the entire list of nominees shall be entered of record on the minutes of the county legislative body, and a certified copy of the order shall be furnished to the board of utility district commissioners. However, if the entire list of nominees is rejected by the county mayor, then the board of commissioners shall select a second list consisting of three (3) other qualified nominees to fill such office and, under the seal of the board of commissioners, shall certify such second list of other nominees in order of preference recommended by such commissioners, to the county mayor within fourteen (14) days following entry of the order rejecting the first list of nominees. Within fourteen (14) days after the second issuance of certification by the board of utility district commissioners to the county mayor, the county mayor shall enter an order either appointing one of the nominees or rejecting the entire second list. Any order either making an appointment or rejecting the entire list of nominees shall be entered of record on the minutes of the county legislative body, and a certified copy of the order shall be furnished to the board of utility district commissioners. However, if the entire second list of nominees is rejected by the county mayor, then, within fourteen (14) days following entry of such order, the county mayor shall request the board of commissioners or its remaining members to submit the third and final list consisting of three (3) other qualified nominees to fill such office or, alternatively, the county mayor shall request the county legislative body to submit the third and final list consisting of three (3) other, qualified nominees to fill such office; provided, further, however, that prior to requesting a list of nominees from the county legislative body, the county mayor must file a written statement with the county legislative body setting forth the mayor's specific reasons for rejecting each of the six (6) nominees previously selected by the utility district board of commissioners or its remaining members. Such written statement shall constitute a public record and shall be available for public inspection. Within fourteen (14) days following such request, the board of utility district commissioners or the county legislative body shall select the final list consisting of three (3) other qualified nominees to fill such office and shall certify such list of additional nominees in order of preference recommended to the county mayor. Within fourteen (14) days following such certification, the county mayor shall enter an order either appointing one of the nominees or rejecting the entire final list. Any order either making an appointment or rejecting the entire list of

nominees shall be entered of record on the minutes of the county legislative body, and a certified copy of the order shall be furnished to the board of utility district commissioners. If the county mayor rejects the entire final list, then the vacant, or to be vacated, office of utility district commissioner shall be filled by appointment by the county mayor without any further nominations.

(A) [Deleted by 2011 amendment.]

(B) [Deleted by 2011 amendment.]

(4) In implementing this subsection (g), the nominating and appointing authorities shall give due consideration to the need for racial, gender, age and ethnic minority diversity on the utility district board of commissioners.

(h)(1) Notwithstanding any provision of this section or any other law to the contrary, the membership of the board of commissioners for any multi-county water utility district, whose principal office is located in, and whose present service area primarily lies within, the boundaries of any 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, and containing and physically divided by a United States government corps of engineers dam and reservoir project of thirty-four thousand (34,000) acres, shall be as provided in this subsection (h). On June 3, 2004, board membership from the county containing the principal office and the primary service area of such utility district shall be increased by two (2) members giving such county three (3) members on the board. The other two (2) counties within the service area having not less than one hundred fifty (150) customers shall be represented by one (1) board member from each such county and the two (2) present board members shall continue to serve on the board for the remainder of their terms and be appointed from such counties as otherwise provided by law.

(2) The two (2) new members of the board of commissioners added pursuant to subdivision (h)(1) shall be filled by appointment of the county mayor of the county containing the principal office and the primary service area of such utility district. As soon as possible after June 3, 2004, the existing board of commissioners shall select three (3) nominees for each of such two (2) new members, in full accordance with any residential requirements that may apply to the office created, and under the seal of the board of commissioners, shall certify such lists of nominees to such county mayor. Within twenty-one (21) days after the issuance of certification by the board of commissioners to the county mayor, the county mayor may enter an order either appointing one of the nominees from each such list or rejecting one of the lists or both lists. Any order either appointing or rejecting a list of nominees shall be entered of record on the minutes of the county legislative body and a certified copy of the order shall be furnished to the board of commissioners and to the appointee; provided, however, that upon the rejection of any entire list of nominees by the county mayor, the board of commissioners shall continue to submit new nonidentical lists of three (3) nominees to the county mayor within sixty (60) days after each such rejection until such procedure shall result in the position being filled for the new term, as provided in this subdivision (h)(2). If the county mayor fails to make an appointment for a position from such list or lists following three (3) submissions for such position, then the county mayor shall appoint the director or directors for such position or positions, as the case may be,

without any further nominations.

(3) Notwithstanding any provision of this section or any other law to the contrary, within two (2) weeks after the occurrence of a vacancy in the office of any commissioner and no later than thirty (30) days prior to the scheduled expiration of the term of office of any incumbent commissioner, the board of commissioners or its remaining members shall select three (3) nominees to fill such office, in full accordance with residential requirements applicable to the office vacated or to be vacated, and, under the seal of the board of commissioners, shall certify such list of nominees to the county mayor of the county whose representation on the board shall be directly affected by the vacancy. Copies shall also be sent to the county mayors of the other two (2) counties. If all three (3) nominees are rejected by the mayor of the affected county, then the nominating process shall be repeated and repeated again, if necessary. Thereafter, without any further nominations, the county mayor shall appoint a person to fill such vacancy for the remainder of the term or for the next term of office.

(4) **[Effective until July 1, 2014.]** Notwithstanding any provision of this section or any other law to the contrary, any member of the board of commissioners appointed by a county mayor in the water utility district described in subdivision (h)(1), shall not have to be approved by the other county mayors in such district.

(5) No later than January 31 of each year, the chair of the board of commissioners shall certify the number of customers within each county and mail a list of customers from each such county to the appropriate county mayor.

(6) Notwithstanding any provision of this section or any other law to the contrary, no contract entered into or renewed after June 3, 2004, for the sale of water to a water utility district described in subdivision (h)(1) shall, and it is against public policy for such a contract to, contain a clause that prohibits the district from lawfully selling water to other municipalities or governmental entities.

(i) [Deleted by 2012 amendment, effective March 6, 2012.]

7-82-401. Audit — Accounting manual — Books and records.

(a)(1) The commissioners of each utility district shall cause an annual audit to be made of the books and records of their district. The comptroller of the treasury, through the department of audit, is responsible for determining that such audits are prepared in accordance with generally accepted governmental auditing standards, and that such audits meet the minimum standards prescribed by the comptroller of the treasury.

(2)(A) In all counties and districts, except as provided in subdivision (a)(2)(B), the comptroller of the treasury shall prepare a uniform accounting manual and shall promulgate such other rules and regulations as are required to assure that the books and records are kept in accordance with generally accepted accounting principles and that audit standards prescribed by the comptroller of the treasury are met. Such manual and rules shall not be applied to invalidate obligations contained in bond resolutions or other debt contracts, nor to modify any substantive legal powers or requirements applicable to utility districts.

(B) In gas utility districts, and in the counties having the following populations, according to the 1980 federal census or any subsequent

census, the comptroller of the treasury shall promulgate such rules and regulations as are required to assure that the books and records are kept in accordance with generally accepted accounting procedures and that audit standards prescribed by the comptroller of the treasury are met:

not less than	nor more than
13,600	13,610
28,500	28,560
28,690	28,750
48,400	48,500

(b) The audits shall be prepared by certified public accountants, public accountants or by the department of audit. In the event the governing body of the utility district shall fail or refuse to have the audit prepared, then the comptroller of the treasury may appoint a certified public accountant, or public accountant or direct the department to prepare the audit, the cost of such audit to be paid by the utility district.

(c) The comptroller of the treasury is authorized to modify the requirements for an audit as set out in this section for utility districts whose activity, in the comptroller of the treasury's judgment, is not sufficient to justify the expenses of a complete audit. Furthermore, the comptroller of the treasury is authorized to direct the department of audit to make an audit or financial review of the books and records of utility districts.

(d) Within ninety (90) days after the close of the fiscal year of each district organized and operating under the provisions of this law, the commissioners of the district shall publish in a newspaper of general circulation, published in the county in which the district is situated, a statement showing:

(1) The financial condition of the district at the end of the fiscal year;

(2) The earnings of the district during the fiscal year just ended;

(3) All travel and related costs or expenses where any portion of such costs or expenses is paid by the district or any entity or entities, public or private, associated with the district, including, but not limited to, travel for commissioners and employees;

(4) A statement of the water rates then being charged by the district; and

(5) A brief statement of the method used in arriving at such rates.

(e) A copy of such annual statement and audit shall be filed with the county mayor or mayors where publication is required in accordance with this section and § 7-82-608, and a copy shall be forwarded to the office of the comptroller of the treasury. The failure to file such copies is a Class C misdemeanor.

(f) Audits performed by the internal audit staffs of the utility districts shall be conducted in accordance with the standards established by the comptroller of the treasury pursuant to § 4-3-304(9).

(g)(1) Any utility district that is a financially distressed utility district shall be subject to the supervision and evaluation of the utility management review board created pursuant to part 7 of this chapter. For the purposes of this chapter, a financially distressed utility district is a utility district, its system or systems, that, as shown by the annual audits, has either deficit total net assets, is in default on an indebtedness, or has a negative change in net assets for two (2) consecutive years. Notwithstanding any other law to the contrary, a government joint venture that supplies or treats water or wastewater for wholesale use only to other governments, shall not fall under

the jurisdiction of the utility management review board for the purpose of reporting negative change in the net assets annually, but shall be referred to the board if the government joint venture is in a deficit or default position as provided herein.

(2) [Deleted by 2011 amendment, effective July 1, 2011.]

(h)(1) Utility districts operating public water systems shall include in their annual audit the utility district's water loss in the manner as prescribed by the utility management review board. Failure of the utility district to include the schedule required in this section constitutes excessive water loss and the utility district shall be referred to the utility management review board. Within sixty (60) days from the time that a utility district's audit is filed with the comptroller of the treasury, the comptroller of the treasury shall file with the utility management review board the audit report of any utility district operating a water system whose water loss is excessive as established by rules promulgated by the utility management review board.

(2) For the purposes of subdivision (h)(1), "utility district" includes agencies, authorities or instrumentalities of government created by public or private act having the authority to administer a water or wastewater facility, other than those agencies, authorities or instrumentalities of government electing pursuant to § 68-221-1006(a) or § 68-221-1008 to come under the jurisdiction of the water and wastewater financing board.

(i) By February 1 of each year, the comptroller of the treasury shall provide a written report to the speaker of the house of representatives and the speaker of the senate listing the average annual water loss contained in the annual audit for those utility districts described in subsection (h).

7-82-402. Protest of water rates — Adjustment of complaints — Consumer information records — Fire protection.

(a)(1)(A) Within thirty (30) days of the date on which the statement provided for in § 7-82-401 is published, any water customer of the district may file with the commissioners of the district a protest, giving reasons why, in the opinion of the water customer, the rates so published are too high or too low. Within a period of fifteen (15) days after the end of this thirty-day period during which such protest may be filed, the commissioners shall notify each such protestant of a hearing to be held by the commissioners on such protests as may have been filed within the thirty-day period prescribed. Upon the hearing date so fixed, which shall be some date within a period of sixty (60) days after giving such notices to the protestants, all such protests shall be heard together by the commissioners. After hearing and examining statements, exhibits and arguments of the protestants or their counsel, the commissioners shall make and spread upon the minutes of the commission their finding as to the reasonableness or unreasonableness of the published rates, and, at the same time, the commission may increase or decrease such rates upon a finding that they are too low or too high, as the case may be.

(B) For the purposes of this part, "customer" means a person who receives a bill for water services and pays money for such services.

(2) The commissioners shall not be required to receive, consider or act upon any protest filed at any time other than within the thirty-day period provided in this section.

(3) Any protestant feeling aggrieved by the final action of the commissioners under this section may obtain a review of the commissioners' action by simple written request to the utility management review board within thirty (30) days thereafter, with the right to judicial review as provided in § 7-82-702.

(b) Except in those districts coming within the provisions of § 7-82-103, from and after September 1, 1973, it is the duty of the board of commissioners of each utility district to have and maintain a set of rules and regulations regarding the adjustment of all complaints that may be made to the district concerning the availability of utility services to persons in need of utility services, the quality of service performed, the adjustment of bills, and all other complaints of any nature, with provision as to the manner of resolution of individual complaints, provision as to the types of complaints that may be resolved by salaried employees of the district, and those that may be resolved only by the board of commissioners. Such rules shall be posted or otherwise available for convenient inspection by customers and members of the public in the offices of the district. Such rules shall provide for office employees or other employees of the district to schedule for consideration by the board of commissioners any complaint of such nature as may be decided by the board under its rules and regulations, and also to schedule for consideration by the board of commissioners the review of any complaint that has not been settled to the satisfaction of the customer or citizen by a salaried employee to whom the settlement of such complaint shall have been delegated.

(c) Each utility district under this chapter shall:

(1) Publish in local telephone directories the telephone number of the district and a telephone number in its service area to be used to report emergencies and for after hours, weekends, and holidays;

(2) Print on its regular billing the address of the office of the district, office hours, if appropriate, the telephone number, and the time and place of the regular meeting of the board of commissioners;

(3) Notify customers of any service interruption that will, or is likely to, last ten (10) hours or longer. Notification may be by public service broadcast over commercial radio stations in the area;

(4) Maintain a log of service interruptions, service restorations, customer complaints and disposition of complaints;

(5) When it is determined by the board to be financially feasible, facilities shall be furnished for fire protection under such arrangements as the district may decide and negotiate with other governmental or private agencies; and

(6) Notify its customers at least once a year that decisions by a utility district board of commissioners on customer complaints may be reviewed by the utility management review board pursuant to § 7-82-702(7), and notify its customers at least once a year of the method used to fill vacancies on the utility district's board of commissioners. This notice may be published in a newspaper of general circulation in the county or counties in which the district is situated, along with the statement required to be published under § 7-82-401(d), or may be mailed annually to the district's customers in a separate correspondence, in any annual report or newsletter mailed to the district's customers or other writing provided annually to the district's customers.

7-82-702. Powers and duties.

In order to effectuate the purposes of this part, the board has the power and authority to:

(1) Promulgate rules and regulations for the conduct of the affairs of the board;

(2) Adopt a seal for the board, prescribe the style of the seal and alter the seal at pleasure;

(3) Subject to title 9, chapter 4, appoint and fix the salaries and duties of such experts, agents and employees as it deems necessary;

(4) Make and enter into contracts;

(5) Accept gifts, grants or other moneys and receive appropriations that may be made by law;

(6) Give advisory technical assistance to any utility district upon request;

(7) Review any decision of any utility district under § 7-82-402, regardless of exemptions or exclusions as may be enumerated in § 7-82-103, upon simple written request of any utility district customer or any member of the public within thirty (30) days after such decision, with any judicial review of any decision of the board thereon, to be held by common law certiorari within the county of the utility district's principal office;

(8) Upon the failure of the board of commissioners of a utility district to adopt the rules and regulations required by § 7-82-402(b), regardless of exemptions or exclusions as may be enumerated in § 7-82-103, or any other section of this chapter or, upon the failure of a utility district to consider and resolve consumer complaints in accordance with such rules and regulations, establish an alternate mechanism for consideration and resolution of such complaints;

(9) In the conduct of any hearing upon request or complaint, the board may receive affidavit evidence, in addition to minutes, transcripts, and other evidence of actions by the utility district, and may render its decision thereon or, if it shall deem an open hearing appropriate, may order the interested parties be notified of the date, time and place that such hearing will be held;

(10) From time to time, submit to the governor its suggestions for proposed amendments to this chapter;

(11) Exercise all the powers and take all the actions necessary, proper or convenient for the accomplishment of the purposes enumerated in this part;

(12) Issue subpoenas requiring attendance of witnesses and production of such evidence as requested; administer oaths; and take such testimony as the board deems necessary in fulfilling its purpose. If a person or entity refuses to obey a subpoena issued by the board under this part, the chancery court of Davidson County shall have jurisdiction upon application of the board to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished by such court as contempt;

(13) Conduct a contested case hearing and issue an order on the question of whether a member or members of a utility district board should be removed from office and a new board or member appointed or elected as provided in § 7-82-307(b);

(14) Conduct a contested case hearing and issue an order on the question of whether a utility district that fills vacancies on its board using a method

other than appointment by a county mayor or mayors should be required to begin filling vacancies under the uniform method for the filling of vacancies set forth by § 7-82-307(a)(4) and (5) as provided in § 7-82-307(c);

(15) Establish, adopt and promulgate in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, rules that the board deems necessary for the training of utility district commissioners;

(16) Establish, adopt and promulgate in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, rules to define excessive water losses for utility districts;

(17) Review and approve, by order, the model of ethical standards prepared by the Tennessee Association of Utility Districts (TAUD) for water, wastewater and gas authorities created by a private act or under the general law and for utility districts pursuant to § 8-17-105(b); and review and find, by order, that the ethical standards adopted by any water, wastewater or gas authority created by a private act or under the general law or a utility district that differ from the TAUD model are more stringent than the TAUD model;

(18) Hear and act upon the request for utility service by or for a utility district customer made pursuant to § 7-82-112; and

(19) Review and conduct a hearing of any decision of any utility district upon a written request of any utility district customer or an affected developer concerning the justness and reasonableness of the utility district's requirement that the customer or the developer build utility systems to be dedicated to the utility district or the justness and reasonableness of fees or charges against the customer or the developer related to the utility systems. The written complaint must be filed within thirty (30) days after the utility board has taken action upon a written complaint to the board of commissioners of the utility district. In making its decision as to whether the requirements, fees or charges are just and reasonable, the utility management review board shall take into account the reasonableness of the utility district's rules, policies and cost of service as well as any evidence presented during the hearing. Any judicial review of a decision of the board is by common law certiorari with the county of the utility district's principal office as the proper venue.

7-82-709. Authority of board to investigate compliance with federal and state law.

(a) Notwithstanding any provision of law to the contrary, the utility management review board shall have the authority, in the case of public water systems of utility districts, to investigate, with the assistance of the department of environment and conservation and the comptroller of the treasury, and determine the financial, technical, and managerial capacity of the systems to comply with the requirements of the federal and the state acts; and to require systems to take appropriate action to correct any deficiencies in such areas, including, but not limited to, changes in ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures. The utility management review board also may approve or disapprove such corrections as a condition for any public water system of a utility district to receive assistance from the authority under § 68-221-1206(a)(3).

(b) The utility management review board shall have the authority to

investigate public water systems of utility districts whose water loss as reported in the utility district's annual audit is excessive as established by rules determined by the board. In the event a utility district fails to take the appropriate actions required by the board to reduce water loss to an acceptable level, the utility management review board may petition the chancery court in a jurisdiction in which the utility district is operating to require the utility district to take such actions.

7-82-803. Purchases not required to be addressed in a utility district purchasing policy.

Purchases of the following shall not be required to be included in any utility district policy:

(1) Purchases made under § 12-3-1201;

(2) Purchases from instrumentalities created by two (2) or more cooperative governments, such as, but not limited to, the Local Government Data Processing Corporation;

(3) Purchases from nonprofit corporations, such as, but not limited to, the Local Government Data Processing Corporation, whose purpose or one (1) of whose purposes is to provide goods or services specifically to various forms of local governments, including utility districts;

(4) Purchases, leases, or lease-purchases of real property; and

(5) Purchases, leases, or lease-purchases from any federal, state, or local government.

7-83-101. [Repealed.]

7-83-102. [Repealed.]

7-83-103. [Repealed.]

7-83-104. [Repealed.]

7-83-105. [Repealed.]

7-83-201. [Repealed.]

7-83-202. [Repealed.]

7-83-203. [Repealed.]

7-83-204. [Repealed.]

7-83-205. [Repealed.]

7-83-206. [Repealed.]

7-83-301. [Repealed.]

7-83-302. [Repealed.]

7-83-303. [Repealed.]

7-83-304. [Repealed.]

7-83-305. [Repealed.]

7-83-306. [Repealed.]

7-83-307. [Repealed.]

7-83-308. [Repealed.]

7-83-309. [Repealed.]

7-83-310. [Repealed.]

7-83-311. [Repealed.]

7-83-401. [Repealed.]

7-83-402. [Repealed.]

7-83-403. [Repealed.]

7-83-404. [Repealed.]

7-86-105. Creation — Board of directors — Membership — Terms — Appointment of replacement.

(a) Upon approval by a majority of the eligible voters within the area of the proposed district voting at such referendum, the legislative body may create an emergency communications district.

(b)(1) Except as otherwise provided by law, an emergency communications district shall have a board of directors composed of no fewer than seven (7) nor more than nine (9) members to govern the affairs of the district. For districts created by a county legislative body, the county mayor shall appoint the members of the board of directors subject to confirmation by the county legislative body. When the county mayor names an appointee to the board, the county legislative body has ninety (90) days or until the conclusion of its next regularly scheduled meeting, whichever is later, to confirm or reject the appointment. If the legislative body does not act within this time period, the appointment shall take effect without confirmation. In any municipality having a population of less than thirty thousand (30,000), according to the 1980 federal census or any subsequent federal census, having adopted home rule pursuant to the Constitution of Tennessee, article XI, § 9, and having an incorporated area lying in two (2) counties, the board of directors may be the legislative body of such municipality, if the emergency services are provided by such municipality.

(2) In any county having a metropolitan form of government and having a population of not less than four hundred thousand (400,000) nor more than five hundred thousand (500,000), according to the 1980 federal census or any subsequent federal census, the chief executive officer of the metropolitan

government may appoint a board of directors, composed of no fewer than seven (7) nor more than nine (9) members, subject to confirmation by the chief legislative body of the metropolitan government, which shall govern the affairs of the district. Appointments to the board of directors shall include members selected from minorities as well as members of the sex that historically has been underrepresented on boards and commissions of the metropolitan government.

(3) In emergency communication districts established by counties with a population greater than three hundred thousand (300,000) and less than seven hundred fifty thousand (750,000), according to the 1980 federal census or any subsequent federal census, except in counties with a metropolitan form of government, the mayor, the chief of police and the fire chief of the municipality, or their representatives, with the largest population in the district, the county sheriff in the district, and the county mayor in the district, or their representatives, shall be members of the board of directors of the district. If, at the time this subdivision (b)(3) takes effect, any person or persons holding any one (1) of the positions mentioned in this subdivision (b)(3) is not a member of the board of directors of the district, then the board shall be immediately expanded to include such person or persons. In districts covered by this subsection (b), the legislative body may appoint up to eleven (11) members to govern the affairs of the district to allow for the appointment of two (2) additional directors, one (1) of whom shall be a woman and one (1) of whom shall be a representative of the nongovernmental emergency agencies servicing such district. Such additional members shall serve for an initial term of one (1) year. Each term thereafter shall be for a period of four (4) years. The method of appointment of the board of directors by the county legislative body referred to in this subdivision (b)(3) shall be by the confirmation process described in subdivision (b)(1).

(4) Notwithstanding the provisions of this subsection (b) to the contrary, in any county having a population of not less than forty-three thousand seven hundred (43,700) nor more than forty-three thousand eight hundred (43,800), according to the 1980 federal census or any subsequent federal census, the legislative body may appoint an additional two (2) members to the board of directors for an initial term of two (2) years. Each term thereafter of such members shall be for a period of four (4) years.

(5) Notwithstanding any provisions of this section to the contrary, in any county having a population of not less than eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census, the county mayor may appoint a board of directors, composed of no fewer than seven (7) nor more than eleven (11) members, subject to confirmation by the chief legislative body of the county, which shall govern the affairs of the district. The county mayor and legislative body shall ensure that the views and opinions of all participating governmental entities are given full consideration in the selection of members of the board, with the exact methodology to be determined by local ordinance or resolution. The county mayor and legislative body shall make every effort to appoint members who represent the diversity of the community, including women and minorities.

(6) In emergency communication districts established in any county having a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census, one (1) of

the members of the board of the directors of the district shall be an actively engaged firefighter, police officer or emergency medical technician; provided, that, if, on April 5, 1995, one (1) such person is not a member of the board in such county, when a vacancy occurs on the board or at the expiration of the term of office of a member of the board, at least one (1) person meeting the qualifications established in this subdivision (b)(6) shall be appointed to the board.

(7) It is the public policy of this state to encourage the consolidation of emergency communications operations in order to provide the best possible technology and service to all areas of the state in the most economical and efficient manner possible. Pursuant to this policy, if two (2) or more counties, cities, or existing emergency communications districts, or any combination of these, desire to consolidate their emergency communications operations, a joint emergency communications district may be established by the parties using an interlocal agreement as authorized by title 5, chapter 1, part 1, and title 12, chapter 9; provided, that, notwithstanding the language of this subdivision (b)(7) or any other law to the contrary, no such consolidation of emergency communications operations shall result in the creation of a separate emergency communications district within the boundaries of an existing emergency communications district. Under such an agreement, the funding percentages for each party, and the size and appointment of the board of directors of such combined emergency communications district shall be determined by negotiation of the parties, notwithstanding the provisions of this subsection (b) to the contrary; provided, that the board of directors of such combined district shall be composed of no fewer than seven (7) members to govern the affairs of the district. The terms, remuneration, and duties stated in subsections (c)-(i) shall apply to any board of directors of any combined emergency communications district.

(8)(A) Notwithstanding the provisions of this section to the contrary, in any emergency communications district created by a municipality after July 1, 2002, the board of directors of the district may be the legislative body of such municipality. If the board of the directors of the district is comprised of the legislative body, then the terms of the members of the board of directors shall run concurrently with their terms as members of the legislative body. The terms of the members of the legislative body shall run concurrently with their terms as members on the board of directors.

(B) In the event subdivision (b)(8)(A) is in effect for an emergency communications district, and any member of the emergency communications district board is removed pursuant to § 7-86-314, then the mayor shall appoint a private citizen to serve in the member's place until such time as the replaced member no longer serves on the legislative body of the municipality. Such appointment shall be subject to confirmation by the remaining members of the board of directors of the district.

(C) In the event subdivision (b)(8)(A) is in effect for an emergency communications district, and the entire emergency communications district board is removed pursuant to § 7-86-314, then the mayor shall appoint private citizens to serve in each such member's place until such time as the replaced members no longer serve on the legislative body of the municipality. Such appointment shall be subject to confirmation by the board.

(D) Nothing in this subdivision (b)(8) shall be construed to be contrary to § 7-86-310.

(c) The members shall serve for a term of four (4) years. The initial members

shall be appointed for staggered terms of two (2), three (3) and four (4) years, dating from the effective date of the ordinance or resolution creating such district. Members shall serve until a successor is duly appointed and, if required by this section or any other provision of law, confirmed.

(d) The members shall serve without compensation.

(e) The board of directors shall have complete and sole authority to appoint a chair and any other officers the board may deem necessary from among the membership of the board of directors.

(f) A majority of the board of directors shall constitute a quorum, and all official action of the board shall require a quorum.

(g) The board has the authority to employ such employees, experts and consultants as the board may deem necessary to assist the board in the discharge of its responsibilities to the extent that funds are made available.

(h) The board has the authority to establish or make available for the benefit and welfare of the board's employees such pension, insurance or other employee benefit plans as the board may deem appropriate, including participation in the Tennessee consolidated retirement system in accordance with title 8, chapter 35, part 2.

(i) No member of the board of directors shall be an employee of the emergency communications district.

7-86-119. Surety bond.

(a) Any board member, executive committee member, employee, officer, or any other authorized person of an emergency communications district, who receives public funds, has authority to make expenditures from public funds, or has access to any public funds is hereby required to give bond made payable to the state of Tennessee with such sureties as provided in this section. Such bond is to be conditioned in all cases in which a different condition is not prescribed, upon the faithful discharge of the duties of such office, employment or other authorized activity in which such person is engaged during the time such person continues in the duties, or in the discharge of any part of such duties.

(b) Provisions for bonds of all state and county officers set forth in title 8, chapter 19, shall also govern the bonds of all persons covered under this section, so far as the provisions of title 8, chapter 19, are not inconsistent with this section.

(c)(1) The amount of such required bond shall be a reasonable amount as determined by the amount of public funds received, expended, or the amount of such bond shall be reasonable to protect the public from breach of the condition of faithful discharge of the duties of such office or position, when the amount of public funds to be received, or expended, or to which that person will have access is considered.

(2)(A) Effective July 1, 2013, the minimum amount of such required bond shall be determined from the amount of revenues handled by the respective emergency communications district as reported in the last audit approved by the comptroller of the treasury. The minimum amount of the bond shall be based on revenues as follows:

(i) Four percent (4%) of the revenues up to three million dollars ($3,000,000); and

(ii) Two percent (2%) of the excess over three million dollars

($3,000,000) shall be added.

(B) The amounts indicated in subdivisions (2)(A)(i) and (ii) shall be cumulative.

(d) All such official bonds shall be signed by authorized individuals of a corporate surety, and such corporation shall be duly licensed to do business in the state of Tennessee as a surety.

(e) The official bonds required under this section are hereby required to be recorded in the office of the register of deeds where the office of the emergency communications district is located and transmitted to the office of the county clerk in the same county for safekeeping.

(f) The respective emergency communications district shall pay the premiums for such bonds.

7-86-302. Emergency communication board established — Members — Terms of office — Officers — Meetings.

(a) There is created in the department of commerce and insurance an emergency communications board, referred to in this part as "the board", for the purpose of assisting emergency communications district boards of directors in the area of management, operations, and accountability, and establishing emergency communications for all citizens of the state. Notwithstanding the provisions of any law to the contrary, the board shall, upon being constituted, exercise its powers and duties, in accordance with the provisions of this part, relative to all emergency communications districts established pursuant to this chapter or by any public or private act.

(b)(1) The board shall be composed of nine (9) members as follows:

(A) One (1) member, appointed by the governor, who has no connection to emergency communications districts and who does not fulfill any other requirements for appointment to the board;

(B) The comptroller of the treasury or the comptroller's designee. The appointment of the comptroller's designee to the board shall be for the term of office of the comptroller;

(C) One (1) representative of county government, appointed by the governor, 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;

(D) One (1) representative of city government, appointed by the governor, who may be appointed from lists of qualified persons submitted by interested municipal groups including, but not limited to, the Tennessee Municipal League; and

(E)(i) Five (5) members, appointed by the governor, who shall either be current directors of emergency communications districts or current members of emergency communications district boards of directors at the time of their appointment. The governor may appoint such members from lists of qualified persons submitted by interested emergency communications groups including, but not limited to, the Tennessee Emergency Number Association, or from a nominating resolution adopted by an emergency communications district. No more than two (2) members appointed pursuant to this subdivision (b)(5) shall be residents of the same congressional district.

(ii) Nominations shall be made not less than thirty (30) days before the end of a term, and shall be filed with the governor and the board. In

appointing members, the governor shall strive to ensure that the composition of the board represents the diversity of persons in Tennessee by considering race, gender, age, and geographical and political interests.

(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.

(c) Members shall be appointed to four-year terms, except as provided in this subsection (c). Two (2) of the members appointed by the governor shall be appointed to serve an initial term of two (2) years, two (2) members shall be appointed to serve an initial term of three (3) years, and the remaining four (4) members shall be appointed for an initial term of four (4) years. The governor may select the members whose initial terms are less than four (4) years. Thereafter, such members shall be appointed and serve four-year terms. Members appointed by the governor may be appointed to successive terms.

(d) The board shall elect a chair and such other officers as it may deem necessary and appropriate. Such officers shall be elected for two-year terms.

(e) The board shall meet at least quarterly, and at the call of the chair.

(f) A quorum shall consist of five (5) or more members; and all official action of the board shall require a quorum.

(g) All meetings of the board shall be subject to the open meeting provisions of title 8, chapter 44, and the public records provisions of title 10, chapter 7.

7-86-316. 911 calls in nonemergency situations prohibited — Penalty.

(a) Contacting 911 for some purpose other than to report an emergency or an event that the person contacting 911 reasonably believes to be an emergency is a Class C misdemeanor.

(b)(1) Aggravated nonemergency contact of 911 is contacting 911 as described in subsection (a) where:

(A) An individual makes nonemergency contact to 911 in an offensively repetitious manner;

(B) The nonemergency contact of 911 creates a delay in the response to an emergency; or

(C) The nonemergency contact of 911 results in harm to person or property.

(2) An aggravated nonemergency contact of 911 is a Class A misdemeanor.

(c)(1) Harassing noninitialized 911 phone calls are ten (10) or more nonemergency calls within a one-hour period or twenty (20) or more nonemergency calls within a twenty-four-hour period made to 9-1-1 from a handset that is not registered for service with any commercial mobile radio service (CMRS) carrier.

(2) A public safety answering point (PSAP) or a district may authorize the emergency communications board to divert harassing noninitialized 911 phone calls, for a period of no more than twelve (12) hours, to an entity designated by the emergency communications board to receive such calls.

(3) Repetitive harassing noninitialized 911 phone calls are phone calls from a handset from which calls have previously been diverted pursuant to subdivision (c)(2).

(4) A PSAP or a district may authorize the emergency communications board to indefinitely divert repetitive harassing noninitialized 911 phone

calls to an entity designated by the emergency communications board to receive such calls; provided, that the entity notifies the caller that the caller may contact the PSAP or district to request it rescind its authorization to divert 911 calls from the caller's handset.

(5) The emergency communications board, CMRS service providers, providers of non-wireline service, and PSAPs, and their employees, vendors, agents, and authorizing government entities, if any, shall have immunity from liability for diverting or not diverting harassing noninitialized 911 phone calls to an entity designated by the emergency communications board to receive such calls.

(6) An entity designated by the emergency communications board to receive diverted harassing noninitialized 911 phone calls shall have immunity from liability for receiving and processing such calls.

7-88-112. Bidding for construction of conference or convention facilities.

(a) For the purposes of this section, unless the context otherwise requires:

(1) "Metropolitan government" means a county having a metropolitan form of government which has a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(2) "Minority-owned business" means a business that is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of the business and who is impeded from normal entry into the economic mainstream because of:

(A) Past practices of discrimination based on race, religion, ethnic background, or sex;

(B) A disability as defined in § 4-26-102; or

(C) Past practices of racial discrimination against African-Americans; and

(3) "Person" means any individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

(b) Any person, in soliciting bids for the construction of any conference or convention center facilities located in a secondary tourist development zone within the territory of a metropolitan government and receiving any benefit, directly or indirectly, from public financing pursuant to Acts 2007, ch. 461, shall actively solicit bids from minority-owned businesses. A person shall strive to maximize participation of minority-owned businesses through both prime and second tier business contracting opportunities.

(c)(1) The metropolitan government shall monitor the results of minority-owned business participation. The government shall periodically investigate to ascertain whether minority-owned business participation is being achieved at a level contemplated pursuant to subsection (b) and shall report the information to the comptroller of the treasury in the manner proscribed in subdivision (c)(2).

(2) The metropolitan government shall prepare and submit an annual report entitled "The Conference and Convention Center Facilities Compliance Report" which shall be submitted to the comptroller of the treasury. The

report shall include:

(A) Data on the race, religion, ethnic background and sex of each person employed in the construction of any conference or convention center facilities located in a secondary tourist development zone within the territory of a metropolitan government and receiving any benefit, directly or indirectly, from public financing pursuant to Acts 2007, ch. 461;

(B) Data on the actual expenditures to minority-owned businesses employed in the construction of any conference or convention center facilities located in a secondary tourist development zone within the territory of a metropolitan government and receiving any benefit, directly or indirectly, from public financing pursuant to Acts 2007, ch. 461; and

(C) Data summarizing the findings of all periodic investigations conducted in accordance with subdivision (c)(1).

(3) The comptroller of the treasury shall, upon receipt of the report from the metropolitan government, transmit a synopsis of the report to the chairs and membership of the state and local government committee of the senate and the local government committee of the house of representatives.

7-88-116. Involvement of minority-owned business.

(a) For the purposes of this section, unless the context otherwise requires:

(1) "Covered qualified public use facility" means a qualified public use facility that elects to qualify as a qualified public use facility under § 7-88-103(7)(A)(ii) or (7)(A)(iii). "Covered qualified public use facility" also means a qualified public use facility created after January 1, 2007, in any county that does not have a metropolitan form of government;

(2) "Local government" means a municipality that creates a tourism development zone for the benefit of a covered qualified public use facility;

(3) "Minority-owned business" means a business that is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of the business and who is impeded from normal entry into the economic mainstream because of:

(A) Past practices of discrimination based on race, religion, ethnic background, or sex;

(B) A disability as defined in § 4-26-102; or

(C) Past practices of racial discrimination against African Americans;

(4) "Minority-owned business participation plan" means a business plan for actively soliciting bids from minority-owned businesses when a municipality or public authority proposes to finance, construct, lease, equip, renovate or acquire a qualified public use facility within a tourism development zone. Any such plan shall strive to maximize participation of minority-owned businesses through both prime and second tier business contracting opportunities throughout the tourism development zone and shall strive to achieve a level of minority-owned business participation representative of the population demographics of the county in which the tourism development zone is located; and

(5) "Person" means any individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

(b) Any person, in soliciting bids for the construction of a covered qualified

public use facility in a tourist development zone within the territory of a local government and receiving any benefit, directly or indirectly, from public financing pursuant to Acts 2007, ch. 524, shall actively solicit bids from minority-owned businesses. Such person shall strive to maximize participation of minority-owned businesses through both prime and second tier business contracting opportunities.

(c)(1) The local government shall monitor the results of minority-owned business participation. The local government shall periodically investigate to ascertain whether minority-owned business participation is being achieved at a level contemplated pursuant to subsection (b) and shall report the information to the comptroller of the treasury in the manner proscribed in subdivision (c)(2).

(2) The local government shall prepare and submit an annual report entitled "The Conference and Convention Center Facilities Compliance Report," which shall be submitted to the comptroller of the treasury. The report shall include:

(A) Data on the race, religion, ethnic background and sex of each person employed in the construction of a covered qualified public use facility that is located within the territory of the local government and that receives any benefit, directly or indirectly, from public financing pursuant to the provisions Acts 2007, ch. 524;

(B) Data on the actual expenditures to minority-owned businesses employed in the construction of any such qualified public use facility; and

(C) Data summarizing the findings of all periodic investigations conducted in accordance with subdivision (c)(1).

(3) The comptroller of the treasury shall, upon receipt of the report from the local government, transmit a synopsis of the report to the chairs and membership of the state and local government committee of the senate and the local government committee of the house of representatives.

(d)(1) Notwithstanding § 7-88-108(a) or any other law to the contrary, to be entitled to receive the allocations of state and local sales and use taxes as provided in this chapter, a municipality or public authority must first file with the department of finance and administration an application seeking certification of the tourism development zone and the planned public use facility as a qualified public use facility. The application shall include a master development plan for the proposed tourism development zone, containing such information as may be reasonably required by the department, and a minority-owned business participation plan for the tourism development zone. No application shall be approved by the department that fails to include a master development plan or a minority-owned business participation plan. A master development plan shall be approved by the legislative body of the municipality creating the tourism development zone and the plan shall take into consideration any historic site, structure, or object listed on the national register of historic places. The department shall review the application to confirm that:

(A) The planned public use facility is qualified under the requirements of this chapter;

(B) The planned public use facility will be located within a qualified tourism development zone; and

(C) The minority-owned business participation plan includes the following information:

(i) The proposal for purchasing goods and services from minority-owned businesses;

(ii) Information on programs to provide technical assistance to such businesses;

(iii) A statement of intent to make a concerted effort to follow its minority-owned business participation plan; and

(iv) Any other information deemed relevant in the discretion of the commissioner.

(2) Notwithstanding any provision of this chapter to the contrary, the department of finance and administration shall annually review each municipality or public authority receiving an allocation pursuant to this chapter for compliance with the municipality's or public authority's minority-owned business participation plan.

(3) This subsection (d) shall only apply to any county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census.

7-88-117. Fee on sales of services and tangible personal property within central business improvement district within tourism development zone. [Effective on January 1, 2014.]

(a)(1) Notwithstanding any law to the contrary, any metropolitan government which has created a tourism development zone pursuant to this chapter and which tourism development zone completely includes one (1) or more central business improvement districts, may, by resolution of its governing body, impose an additional fee on the sales price of services and tangible personal property sold at retail within one (1) central business improvement district located within the tourism development zone; provided, that there shall be exempt from the fee imposed by this chapter any sales of the following:

(A) Professional services;

(B) Lodging provided to transients;

(C) Tickets to sporting events or other live ticketed events;

(D) Alcoholic beverages which are subject to the liquor by the drink tax in addition to sales tax;

(E) Newspapers and other publications; and

(F) Overnight and long term parking.

(2) The fee authorized by this section shall not exceed the rate of twenty-five hundredths percent (0.25%).

(b)(1) The metropolitan government shall furnish a certified copy of the adopting resolution to the department of revenue in accordance with regulations prescribed by the department. Such resolution shall clearly designate the one (1) central business improvement district within which the additional fee applies and shall include a description of the boundaries of such district.

(2) The department of revenue shall collect such fee concurrently with the collection of the state sales tax in the same manner as the state sales tax is collected.

(3) Except as provided in subdivision (b)(4), the proceeds of the fee provided for in this section shall be distributed to the metropolitan government from which the fee was collected to be deposited into the event and marketing fund of such government. The funds derived from the collection of this fee shall be

used to assist in the recruitment of major conventions and group meetings, the improvement of promotion, and to provide additional focused security in the central business improvement districts located within a tourism development zone. The funds derived from the collection of this fee shall not be used to assist in the recruitment of, directly or indirectly, conventions or group meetings which are considering, or would otherwise consider absent the use of this fee, other meeting and convention venues located in a county in which such fee is imposed.

(4)(A) For fiscal year 2013-2014, the first one hundred sixty-five thousand dollars ($165,000) of the fee collected shall be deposited into the state general fund prior to any distribution to metropolitan government.

(B) For fiscal year 2014-2015 and subsequent fiscal years, the first fifty thousand dollars ($50,000) of the fee collected shall be deposited into the state general fund prior to any distribution to metropolitan government.

8-4-103. Performance audit for energy conservation, production and security.

(a) On or before January 8, 2008, and every five (5) years on or before the second Tuesday of the month of January thereafter, the comptroller of the treasury shall undertake a performance audit of those agencies and departments authorized or required by legislation or executive order to act relative to the conservation of energy, the study and production of alternative sources of energy, and energy security in the state. The comptroller of the treasury shall assess the extent to which those agencies and departments have fulfilled their mandates and capitalized on authorizations relative to energy conservation, production, and security and shall report findings and recommendations to the energy, agriculture and natural resources committee of the senate, the agriculture and natural resources committee of the house of representatives, and the government operations committees of the senate and the house of representatives.

(b) Agencies and departments to be audited pursuant to this section shall include, but not be limited to:

(1) The department of environment and conservation, office of environmental assistance;

(2) The department of economic and community development, energy division;

(3) The department of finance and administration, division of real property administration, office of energy management;

(4) The department of general services, motor vehicles and purchasing divisions;

(5) The department of transportation;

(6) The Tennessee regulatory authority;

(7) The department of human services, low income home energy assistance program and weatherization assistance program; and

(8) The state building commission.

8-4-115. Standardized procedures for booking of arrestees.

(a)(1) The comptroller of the treasury, in consultation with the Tennessee bureau of investigation, the Tennessee Sheriff's Association, the Tennessee Association of Chiefs of Police, and the Tennessee corrections institute,

developed standardized booking procedures which include:

(A) A photograph of the arrestee;

(B) A set of fingerprints. If fingerprints are maintained manually, the booking agency shall mail two (2) sets of properly completed fingerprint cards to the Tennessee bureau of investigation. If fingerprints are transmitted to the Tennessee bureau of investigation electronically, the booking agency shall maintain with the arrest report one (1) hard copy of the fingerprints along with an acknowledgement from the Tennessee bureau of investigation that a copy of the fingerprints have been received and accepted;

(C) Delivery to the appropriate local law enforcement agency of a completed judgment order signed by a judge to be used by the local law enforcement agency for completion of an R-84 Disposition Card, except as provided in this subdivision (a)(1)(C). A local law enforcement agency and a clerk of court can collaborate on an automated process for the electronic submission of final dispositions for criminal cases to the Tennessee bureau of investigation. After a law enforcement agency and a clerk of court have implemented an automated process for the electronic submission of final dispositions for criminal cases, and have had the process certified by the Tennessee bureau of investigation, all final dispositions shall be reported electronically. Upon implementation of an automated process for the electronic submission of final dispositions for criminal cases, the delivery to the local law enforcement agency of a completed judgment order signed by a judge to be used by the local law enforcement agency for completion of an R-84 Disposition Card, and the submission by the local law enforcement agency of a completed R-84 Disposition Card to the Tennessee bureau of investigation are no longer required;

(D) An arrest report; and

(E) Delivery to the appropriate court clerk office of a warrant or capias for offense containing the state control number assigned by the law enforcement agency upon the arrest of an individual to be recorded in the court information system of the court clerk office.

(2) Notwithstanding the provisions of § 8-8-201 or § 38-3-122 to the contrary, it shall be the duty of the law enforcement agency responsible for maintaining the arrested person's booking records to take the fingerprints from such person as required by such sections.

(3) Where individuals are arrested multiple times for a violation of § 39-17-310, the offense of public intoxication, the arresting officer shall note on the arrest report that fingerprints are on file for this individual pursuant to § 38-3-122(a).

(4) Compliance with these standardized booking procedures shall be the basis for the comptroller of the treasury determining compliance with the fingerprinting requirements of §§ 8-8-201(a)(35) and 38-3-122. The Tennessee corrections institute and the law enforcement training academy shall train correctional personnel in municipal, county and metropolitan jurisdictions in the application of these standardized booking procedures.

(b) The respective county or municipal legislative body shall appropriate funds for the respective sheriff's office or police department, including funds for personnel and supplies which are sufficient to comply with the provisions of this section.

(c)(1) The comptroller of the treasury shall audit or cause to be audited under provisions of title 4, chapter 3, part 3 and title 6, chapter 56, part 1,

on an annual basis the sheriff's office or police department to determine whether or not such law enforcement agency is in compliance with the requirements of this section. If the comptroller of the treasury determines that a particular sheriff's office or police department is not in compliance with §§ 8-8-201(a)(35), 38-3-122 and this section, the comptroller of the treasury, within thirty (30) days of such determination, shall notify such sheriff or police chief and the Tennessee peace officer standards and training commission of such noncompliance.

(2) Such sheriff or police chief shall show cause to the Tennessee peace officer standards and training commission within thirty (30) days of notification why such sheriff or police chief should not be found to be in noncompliance with the requirements of §§ 8-8-201(a)(35) and 38-3-122. If the appropriate sheriff or police chief does not respond or show good cause within thirty (30) days, the Tennessee peace officer standards and training commission shall forthwith decertify the appropriate sheriff or police chief and impound the supplement provided for such sheriff or police chief in § 38-8-111. The Tennessee peace officer standards and training commission shall notify the comptroller of the treasury and both the sheriff and county commission or the police chief and city council of such action.

(3) The burden shall be on such sheriff or police chief to demonstrate compliance to the Tennessee peace officer standards and training commission and if such sheriff or police chief is found to be in compliance with the provisions of this section within sixty (60) days after decertification, the Tennessee peace officer standards and training commission shall rescind the decertification order and cause any salary supplement impounded to be returned to the appropriate sheriff or police chief except for one twelfth ($^1/_{12}$) of the annual supplement.

(d) In addition to any proceeding under the provisions of chapter 47 of this title, the sheriff or police chief may be removed from office in accordance with the provisions of this section. The comptroller of the treasury shall forward a copy of reports of noncompliance with provisions of this section by the sheriff or police chief to the district attorney general having jurisdiction and to the attorney general and reporter. The district attorney general and the attorney general and reporter shall each review the report and determine if there is sufficient cause for further investigation. If further investigation indicates willful misfeasance, malfeasance or nonfeasance by the sheriff or police chief, the district attorney general shall proceed pursuant to chapter 47 of this title, to remove the sheriff or police chief from office. The provisions of this subsection (d) become effective for fingerprints taken or required to be taken on or after July 1, 1999.

(e) Prior to purchasing an electronic fingerprint imaging system, the sheriff or municipal police department shall obtain certification from the Tennessee bureau of investigation that such equipment is compatible with the Tennessee bureau of investigation's and the federal bureau of investigation's integrated automated fingerprint identification system.

(f) Subject to the approval of the general assembly, a portion of the funds derived from the additional privilege tax levied on all criminal cases instituted in this state as provided for in § 67-4-602(g), may be appropriated to the Tennessee bureau of investigation for the purchase, installation, maintenance, and line charges of electronic fingerprint imaging systems.

(g) Upon establishment of an automated system for final disposition report-

ing, clerks of court shall submit final disposition reports electronically to the Tennessee bureau of investigation. Jurisdictions that submit final disposition reports electronically will cease the submission of R-84 Disposition Cards upon advisement from the Tennessee bureau of investigation. The submission of an electronic final disposition report shall have the same force and effect as the submission of a R-84 Disposition Card.

(h) Any automated court information system being used or developed on or after July 1, 2005, including, but not limited to, the Tennessee court information system (TnCIS) being designed pursuant to § 16-3-803(h), shall ensure that an electronic file of final disposition data will be reported to the Tennessee bureau of investigation. The form, general content, time, and manner of submission of the electronic file of final disposition data will comply with the rules and regulations prescribed by the Tennessee bureau of investigation.

8-4-602. Advisory committee — Membership.

(a) There is created an advisory committee on open government to provide guidance and advice for the office of open records counsel.

(b)(1) The advisory committee shall consist of fourteen (14) members to be appointed for a term of four (4) years; provided, that the five (5) members listed in subdivisions (b)(1)(A)-(E) shall be appointed for an initial term of four (4) years and the five (5) members listed in subdivisions (b)(1)(F)-(J) shall be appointed for an initial term of two (2) years. The members listed in subdivisions (b)(1)(K), (L), (M) and (N) shall be appointed for an initial term of four (4) years. The advisory committee shall be made up of one (1) member from each of the following groups who will be appointed by the comptroller of the treasury from a list of three (3) nominees submitted from each group:

(A) One (1) member from the Tennessee Coalition for Open Government;

(B) One (1) member from the Tennessee Press Association;

(C) One (1) member from the Tennessee Municipal League;

(D) One (1) member from either the Tennessee County Services Association or the County Officials Association of Tennessee;

(E) One (1) member from the Tennessee School Boards Association;

(F) One (1) member from Common Cause;

(G) One (1) member from the League of Women Voters;

(H) One (1) member from public hospitals submitted by the Tennessee Hospital Association;

(I) One (1) member from the Tennessee Association of Broadcasters;

(J) One (1) member representing the board of regents or the University of Tennessee;

(K) One (1) member from the Tennessee Association of Chiefs of Police;

(L) One (1) member from the Tennessee Sheriffs' Association;

(M) One (1) member from the Society of Professional Journalists; and

(N) One (1) member from the American Association of Retired People.

(2) The advisory committee shall also consist of the chair of the state and local government committee of the senate and the state government committee of the house of representatives and the attorney general and reporter or the attorney general and reporter's designee.

(c) The nonlegislative members shall not receive compensation for serving on the committee but shall be reimbursed for attendance at meetings in

accordance with the comprehensive travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

8-4-705. Annual report to general assembly on enforcement activities.

The small business advocate shall report annually to the commerce and labor committee of the senate and the business and utilities committee of the house of representatives regarding evaluating the enforcement activities of department and agency personnel, including a rating of the responsiveness to small business owners' concerns.

8-7-231. Prior service credits for criminal investigators.

(a) The executive director of the Tennessee district attorneys general conference shall certify the entry level of compensation awarded to criminal investigators of the district attorneys general based on prior service credits. Criminal investigators for the district attorneys general shall be entitled to prior service credits as follows:

(1) Any criminal investigator for the district attorney general who has prior experience as a criminal investigator for the district attorneys general or for the district public defenders shall be eligible to receive year-for-year credit upon the recommendation of the hiring district attorney general and subject to the approval of the executive committee of the Tennessee district attorneys general conference;

(2) The executive director of the Tennessee district attorneys general conference may certify prior service credits for prior law enforcement experience and post-secondary education degrees obtained and in no case shall year-for-year credit exceed twelve (12) years.

(b) As used in subsection (a), prior law enforcement experience includes full-time employment with a law enforcement agency during which the employee performed duties typically performed by law enforcement personnel, including exercising arrest powers. An employment record from the law enforcement agency shall be used to establish such law enforcement experience.

8-7-315. Budget submitted to general assembly.

Each year's budget for the operation of the office of executive director of the district attorneys general conference shall be submitted to the criminal justice committee of the house of representatives and the senate judiciary committee prior to approval of the budget by the general assembly.

8-8-102. Qualifications for office — Affidavits.

(a) After May 30, 1997, to qualify for election or appointment to the office of sheriff a person shall:

(1) Be a citizen of the United States;

(2) Be at least twenty-five (25) years of age prior to the date of qualifying for election;

(3) Be a qualified voter of the county and a resident of the county for one (1) full year prior to the date of the qualifying deadline for running as a candidate for sheriff;

(4) Have obtained a high school diploma or its equivalent in educational training as recognized by the Tennessee state board of education;

(5) Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any misdemeanor crime of domestic violence or any felony charge or violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances;

(6) Be fingerprinted and have the Tennessee bureau of investigation (TBI) make a search of local, state and federal fingerprint files for any criminal record. Fingerprints are to be taken under the direction of TBI. It shall be the responsibility of TBI to forward all criminal history results to the peace officer standards and training (POST) commission for evaluation of qualifications;

(7) Not have been released, separated or discharged from the armed forces of the United States with a dishonorable or bad conduct discharge, or as a consequence of conviction at court martial for either state or federal offenses;

(8) Have been certified by a Tennessee licensed health care provider qualified in the psychiatric or psychological field as being free from any impairment, as set forth in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association at the time of the examination, that would, in the professional judgment of the examiner, affect the applicant's ability to perform an essential function of the job, with or without a reasonable accommodation;

(9)(A) Except as provided in subdivision (a)(9)(B), have at least three (3) years of full-time experience as a POST commission certified law enforcement officer in the previous ten (10) years or at least three (3) years of full-time experience as a state or federal certified law enforcement officer with training equivalent to that required by the POST commission in the previous ten (10) years; provided, that any person holding the office of sheriff on May 30, 2011 shall be deemed to have met the requirements of this subdivision (a)(9).

(B) Subdivision (a)(9)(A) shall not apply in any county having a metropolitan form of government where the sheriff does not have full law enforcement powers; and

(10) Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or violation of any federal or state laws relating to controlled substance analogues.

(b)(1) Any person seeking the office of sheriff shall file with the POST commission, at least fourteen (14) days prior to the qualifying deadline, the following:

(A) An affidavit sworn to and signed by the candidate affirming that the candidate meets the requirements of this section; and

(B) A confirmation of psychological evaluation form certified by the psychologist/psychiatrist providing psychological evaluation as provided for in subdivision (a)(8) for the purposes of sheriff candidacy qualification. The form shall be developed by the POST commission and shall include the examining psychologist's/psychiatrist's license number and state of licensure. The form shall clearly state in bold face type directly above the signature line that a person who, with intent to deceive, makes any false statement on such application commits the offense of perjury pursuant to § 39-16-702. The form shall be made available by the POST commission

upon request by any candidate for the office of sheriff.

(2) If such affidavit and form are not filed with the POST commission by the fourteenth day prior to the qualifying deadline for the office of sheriff, such candidate's name shall not be placed on the ballot. The POST commission shall have the authority to verify the validity of such affidavit and form.

(3)(A) The POST commission shall verify peace officer standards and training certification of any person seeking the office of sheriff to the extent subdivision (a)(9) requires such person to have such certification. If the person does not have such certification on the date the person files the affidavit seeking to qualify as a candidate for the office of sheriff, the POST commission shall certify whether the person has the three (3) years of full-time experience as a POST commission certified law enforcement officer and whether the certification is current. If the candidate does not have a current certification, or if the person has the law enforcement experience as a state or federal law enforcement officer pursuant to subdivision (a)(9), then such candidate shall certify with the county election commission by the withdrawal deadline their exemption pursuant to such subdivision.

(B) The original notarized verification form from the POST commission shall be filed by the POST commission with the county election commission by the withdrawal deadline.

(C) If the POST commission or the candidate, as appropriate, has not certified to the county election commission by the withdrawal deadline a person seeking to qualify as a candidate for the office of sheriff as meeting the qualifications as provided for in this section, such person's name shall not appear on the ballot.

(D) In the event that a person seeks election to the office of sheriff by the county legislative body to fill a vacancy in office, such verification must be filed with the county clerk prior to the election.

(c)(1) Every person who is elected or appointed to the office of sheriff after May 30, 1997, shall, annually during the sheriff's term of office, complete forty (40) hours of in-service training appropriate for the rank and responsibilities of a sheriff. The training shall be approved by the POST commission. Any sheriff who does not fulfill the obligations of this annual in-service training shall lose the power of arrest.

(2) Every person who is elected to the office of sheriff after August 1, 2006, in a regular August general election for a four-year term, and is a first term sheriff, regardless of the person's previous law enforcement experience, must successfully complete the newly elected sheriffs' school prior to September 1 immediately following the person's election, and thereafter must successfully complete forty (40) hours of annual in-service training appropriate for the rank and responsibilities of a sheriff pursuant to subdivision (c)(1). The newly elected sheriffs' school shall be taught at the Tennessee law enforcement academy during the month of August, only in the years that elections for sheriffs are held. The curriculum shall be developed by the Tennessee law enforcement training academy in cooperation with the Tennessee Sheriffs' Association and must be approved by the POST commission. Any usual and customary cost associated with attending the newly elected sheriffs' school shall be paid by the county. Any such sheriff who does not fulfill the obligations of this training course shall lose the power of arrest. No fees

collected for the sheriffs' school shall inure to the benefit of the Tennessee Sheriffs' Association.

8-8-103. Surety bond.

The sheriff, before entering on the duties of that office, shall enter into an official bond prepared in accordance with the provisions of chapter 19 of this title, in a penalty of not less than one hundred thousand dollars ($100,000), or in a greater sum as the county legislative body may determine, payable to the state, and conditioned well and truly to execute and make due return of all process directed to the sheriff, and to pay all fees and sums of money received by the sheriff, or levied by virtue of any process, into the proper office or to the person entitled, and faithfully to execute the office of sheriff and perform its duties and functions during such person's continuance therein. This bond shall be acknowledged before the county legislative body, in open session, approved by it, recorded upon the minutes, and recorded in the office of the county register of deeds and transmitted to the office of the county clerk for safekeeping.

8-8-201. Duties of office.

(a) It is the sheriff's duty to:

(1) Execute and return, according to law, the process and orders of the courts of record of this state, and of officers of competent authority, with due diligence, when delivered to the sheriff for that purpose;

(2)(A) Except as provided in subdivision (a)(2)(B), attend upon all the courts held in the county when in session; cause the courthouse or courtroom to be kept in order for the accommodation of the courts; furnish them with fire and water; and obey the lawful orders and directions of the court;

(B)(i) In any municipality having a metropolitan form of government and a population of over four hundred fifty thousand (450,000), according to the 1990 federal census or any subsequent federal census, the trial judges shall, within the annual budget appropriation, appoint persons to serve as court officers for the respective courts, such persons to serve at the will of, and under the direction and supervision of the appointing judge. The officers shall be paid in accordance with the general pay plan of such a municipality;

(ii) It is the duty of such court officers to maintain order during sessions of the court, to serve process as ordered and to perform such other duties as may be prescribed by the judge. The court officers shall, while acting in the performance of their duties, possess and exercise police powers to the same extent as that granted to members of the metropolitan police department;

(3) Take charge and custody of the jail of the sheriff's county, and of the prisoners therein; receive those lawfully committed, and keep them personally, or by deputies or jailer, until discharged by law; be constantly at the jail, or have someone there, with the keys to liberate the prisoners in case of fire; provided, that if two (2) or more counties enter into an interlocal agreement providing for a jail to serve the counties which are parties to the agreement, the sheriff of any county which is party to such agreement shall not take charge and custody of the jail shared by the agreeing counties unless the

interlocal agreement so provides, nor shall the sheriff have charge of the prisoners lawfully committed to such a jail unless so provided by the interlocal agreement;

(4) Mark on all process delivered to the sheriff to be executed, the day on which the sheriff received the same;

(5)(A) Execute all writs and other process legally issued and directed to the sheriff, within the county, and make due return thereof, either personally or by a lawful deputy or, in civil lawsuits only, by a lawfully appointed civil process server except in counties specified in subdivision (a)(5)(B);

(B) The provisions of subdivision (a)(5)(A), relative to other authorized process servers, do not apply in the counties having a population of:

not less than	nor more than
41,800	41,900
85,725	85,825
143,900	144,000
287,000	288,000

according to the 1980 federal census or any subsequent census;

(6) Execute every notice to take depositions, delivered to the sheriff, for any party residing in the county, by delivering a copy thereof to such party in due time; mark on the original notice the time of delivering such copy, and return the same to the clerk of the court in which the suit is pending;

(7) Serve, in due time, any delinquent officer or principal debtor with a copy of any notice of motion delivered to the sheriff to be served on such officer or debtor, and return the original notice in due time to the clerk of the court in which the motion is to be made, with the sheriff's endorsement of service;

(8) Go to the house or place of abode of every defendant against whom the sheriff has process, before returning on the same that the defendant is not to be found;

(9) Specify in the return in what county in the state the defendant resides, when the defendant is a known inhabitant of any other county than that of the sheriff to which the process is directed;

(10) Use, in the execution of process, a degree of diligence exceeding that which a prudent person employs in such person's own affairs;

(11) Give a receipt, if required by the party, for executions delivered to the sheriff;

(12) Receive nothing but money, or, unless otherwise instructed, current convertible bank notes, in satisfaction of any writ of execution delivered to the sheriff;

(13) Levy every writ of execution first on the defendant's goods and chattels, if there are any;

(14) Levy the same upon lands to the amount of the whole debt, or so much of the debt as may exceed the value of the goods and chattels, if there are not, to the best of the sheriff's knowledge, goods and chattels sufficient to answer the plaintiff's demand;

(15) Exhaust the property of a principal before selling the property of a surety, as provided in § 26-3-105;

(16) Take from a defendant, on whose personal property the sheriff has levied an execution, a delivery bond, if requested, with surety, for double the amount of the execution, payable to the plaintiff, conditioned for the delivery of the property at the day and place of sale;

(17) Levy such execution, if the bond be forfeited, upon so much of the property of the defendant, if to be found, as shall be sufficient to satisfy it; and, if there be a deficit, then upon the surety's property, sufficient to satisfy so much of the debt as the property not delivered was valued at;

(18) Summon a jury to ascertain the value of the undelivered property of the principal, if the value is not set forth in the delivery bond;

(19) Return the execution, and the bond with it, to the tribunal from which it issued, if satisfaction of the execution cannot be had before the return day;

(20) Have personal property that the sheriff sells under execution present at the time of sale, unless the defendant agrees that it may be sold without being present;

(21) Describe land levied upon by execution or attachment, so as to identify it and distinguish it from other lands;

(22) Serve the defendant in possession of land with twenty (20) days' notice of the levy, and of the time and place of sale;

(23) Advertise the sale of any land levied on by execution, as prescribed in §§ 35-5-101 — 35-5-104;

(24) Pay the expenses of such advertisement out of the proceeds of the sale;

(25) Return every execution which is delivered to the sheriff, on or before the day of return mentioned therein, with a sufficient response endorsed thereon or attached to it;

(26) Pay to the party entitled to the same, or to the party's agent or attorney, on demand, any moneys collected by the sheriff on any execution from a court of record;

(27) Return with such execution any money collected on such execution;

(28) Make out, if required by the defendant, on levying any debt, damages, or costs by virtue of an execution, a bill of fees due in the case, and set down, under the bill, a true copy of the clerk's and other endorsed fees separately and distinctly, and give a receipt for the same to the defendant in the execution;

(29) Endorse on the execution the amount of the sheriff's own fees taken on the same, to be entered by the clerk on the execution docket;

(30) Pay to the party entitled thereto, or to the party's agent or attorney, any money collected by the sheriff, by virtue of an execution from a judge of the court of general sessions, on or before the return day of the execution;

(31) Pay to the party entitled to receive the same, or to the party's agent or attorney, any money collected by the sheriff upon any debt or demand delivered to the sheriff for collection, whether the sheriff collects or receives the money before or after the issuance of any summons, or before or after the rendition of a judgment or the issuance of an execution;

(32) Return every execution issued by any judge of the court of general sessions and delivered to the sheriff, with a sufficient response thereon, within thirty (30) days after the issuance of the same, either to the judge who issued it, or to the judge having possession of that judge's papers;

(33) Perform such other duties as are, or may be, imposed by law;

(34) Enforce the ordinances of a municipality; provided, that the municipality has expressed by ordinance its intent to have the sheriff enforce its ordinances, and that the municipality has filed a certified copy of its ordinances with the sheriff and the general sessions court of the county;

(35)(A) Take or cause to be taken a full set of fingerprints of each person arrested whether by warrant or capias for an offense which results in such person's incarceration in a jail facility or the person's posting of a bond to avoid incarceration. If fingerprints are maintained manually, two (2) full sets of fingerprints shall be obtained and sent to the Tennessee bureau of investigation. If fingerprints are maintained electronically, a set of fingerprints shall be transmitted to the Tennessee bureau of investigation. Upon receipt of the fingerprints, the Tennessee bureau of investigation shall retain one (1) set of the fingerprints as provided in § 38-6-103, and shall send one (1) set of the fingerprints to the federal bureau of investigation;

(B) A person who is issued a citation pursuant to § 40-7-118 or § 40-7-120 shall not, for purposes of this section, be considered to have been arrested and the agency issuing the citation shall not be required to take the fingerprints of such person; and

(36) Promptly turn over and transfer custody of any inmate sentenced to the department of correction who is being housed in such sheriff's local jail awaiting transfer when called upon to do so by a state official pursuant to § 40-35-212 or § 41-8-106.

(b)(1) In addition to the duties set forth in subsection (a), the sheriff shall perform the duties set forth in the following sections: 2-17-106, 5-7-108, 6-55-201, 7-51-1105, 7-51-1107, 7-51-1111, 7-86-105, 8-4-115, 8-7-110, 8-22-110, 8-26-108, 11-24-112, 16-2-505, 16-15-715, 16-15-901, 18-1-206, 20-2-103, 20-2-111, 22-2-307, 22-2-310, 26-1-402, 26-2-216, 26-2-405, 26-2-406, 26-5-116, 29-16-111, 29-17-606 [transferred to 29-17-706], 29-18-115, 33-3-611, 33-5-409, 33-6-406, 33-6-407, 33-6-610, 33-6-611, 33-6-615, 33-6-901, 37-1-213, 37-1-310, 37-1-403, 37-1-405, 37-1-603, 37-1-605, 37-1-607, 37-5-205, 38-1-106, 38-3-102, 38-3-108, 38-3-122, 38-7-106, 38-7-108, 38-7-116 [repealed], 38-8-102, 38-8-111, 38-10-102, 38-11-204, 39-14-149, 39-17-420, 39-17-429, 39-17-714, 39-17-1315, 39-17-1317, 39-17-1351, 39-17-1361, 40-6-105, 40-6-210, 40-6-212, 40-6-215, 40-7-120, 40-9-103, 40-9-124, 40-9-127, 40-10-105, 40-10-106, 40-11-106, 40-11-135, 40-11-147, 40-11-207, 40-11-211, 40-11-212, 40-13-301, 40-20-117, 40-23-103, 40-23-113, 40-23-116, 40-25-111, 40-25-135, 40-28-107, 40-30-110, 40-33-102, 40-33-104, 40-33-105, 40-33-107, 40-35-307, 40-36-201, 40-38-103, 41-1-604, 41-7-105, 41-8-105, 41-8-117 [transferred to § 41-4-143], 41-11-105, 41-11-110, 41-21-308, 41-21-909, 41-22-301, 41-22-303, 41-22-307, 47-13-104, 47-25-404, 49-6-3007, 49-6-3203, 53-11-451, 54-11-105, 54-14-106, 55-10-402, 55-10-410, 55-10-420, 57-3-410, 57-5-202, 57-9-101, 57-9-102, 57-9-103, 57-9-104, 57-9-106, 57-9-107, 57-9-108, 57-9-110, 57-9-111, 57-9-115, 57-9-118, 60-1-205, 62-35-131, 63-3-126, 63-5-124, 63-8-120, 63-9-110, 63-16-115, 63-17-219, 63-25-110, 65-6-133, 66-19-206, 66-19-208, 66-19-209, 66-23-111, 67-1-1202, 67-1-1203, 67-4-110, 67-4-215, 67-4-603, 67-4-1017, 67-5-1333, 67-5-2006, 68-29-136, 68-102-145, 68-120-401, 68-140-522, 70-3-113, 70-4-106, 70-6-201, and 71-6-208.

(2) The sheriff shall perform such other duties as are, or may be, imposed by law or custom.

8-11-102. Entry into office — Bond.

Upon producing the certificate of election before the county legislative body, at the next session after the date and delivery of the certificate, the county trustee may enter upon the discharge of the duties of the office, after first giving bond, and taking an oath to support the constitutions of the state and of the United States, and an oath for the faithful performance of the duties of the office. The bond shall be prepared in accordance with the provisions of chapter 19 of this title, 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.

8-11-103. Minimum amount of bond — Determination — Surety — Examination of sufficiency.

(a) The minimum amount of the official bond executed by each county trustee for each term of office, as required by § 8-11-102, shall be determined from the amount of revenues handled by the trustee during the last fiscal year audited by the comptroller of the treasury, or from the last audit approved by the comptroller of the treasury which was duly prepared in counties using certified public accountants.

(b)(1) If the official bond of the county trustee is executed by a surety company authorized to transact business in this state, the minimum amount of the bond shall be based on the revenues as follows:

(A) Four percent (4%) up to three million dollars ($3,000,000) of the funds collected by the office; and

(B) Two percent (2%) of the excess over three million dollars ($3,000,000) shall be added.

(2) The amounts indicated in subdivisions (b)(1)(A) and (B) shall be cumulative.

(c)(1) If the official bond of the county trustee is executed by personal sureties, the minimum amount of the bond shall be based on revenues as follows:

(A) Six percent (6%) up to three million dollars ($3,000,000) of the funds collected by the office; and

(B) Four percent (4%) of the excess over three million dollars ($3,000,000) shall be added.

(2) The amounts indicated in subdivisions (c)(1)(A) and (B) shall be cumulative.

(d) The provisions of this section establish only the minimum amount of the bond and in no way prevent the county legislative bodies or other county governing bodies, exercising their power to approve or disapprove the bond as provided by § 8-11-102, from requiring trustees to execute bonds in greater amounts.

(e) It is the duty of the county legislative body to examine the solvency of the county trustee's bond, and, if the bond is found to be insufficient, as provided by law, it is the duty of the legislative body to notify the county trustee of the fact, and require the county trustee to give new or additional security, in such sum as may be fixed upon by the legislative body, sufficient in its judgment to cover the revenue of the county; and, if the required bond or security is not given on or before the ensuing session of the legislative body, then it is the duty of the legislative body, and it has the power, to declare the office vacant and to

elect or appoint a successor, who shall be required to enter into bond with good and sufficient securities, for the remainder of the term for which the trustee was elected.

8-13-102. Surety bonds — Oath of office.

(a) Upon producing the certificate of election before the county legislative body, at the next session after the delivery of the same, the register shall be entitled to enter upon the discharge of the duties of the office, after first giving bond, and taking the oath to support the constitutions of the state and of the United States, and an oath of office. The bond shall be prepared in accordance with the provisions of chapter 19 of this title, 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.

(b) The governing body of any county, by a two-thirds (⅔) vote, shall elect whether or not the county register of the county shall make a surety bond or a bond with two (2) or more good sureties, approved by the legislative body, prior to the time such register is inducted and sworn into office.

8-13-103. Terms of bond.

The bond shall be in the amount of fifty thousand dollars ($50,000) in counties with a population of less than fifteen thousand (15,000), and one hundred thousand dollars ($100,000) in counties with a population of fifteen thousand (15,000) or more, according to the 2010 federal census or any subsequent federal census, or in a greater sum as the county legislative body may determine, payable to the state of Tennessee, conditioned on the true and faithful discharge of the duties of the office.

8-14-210. Twentieth and thirtieth judicial districts — State funding.

For the twentieth and thirtieth judicial districts, the state shall pay, in equal quarterly installments, to the county or metropolitan government which has a local public defender, an amount annually appropriated for that purpose. Such amount shall not be less than the amount appropriated in fiscal year 1992-1993. In addition to the amount appropriated in 1992-1993 the base level of state support on July 1, 2013 shall be adjusted to reflect the percent of change in the average consumer price index (all items-city average) as published by the United States department of labor, bureau of labor statistics, between that figure for the calendar year 2011 and the calendar year 2012. Each succeeding July 1, a similar adjustment shall be made, based on the percent of change in the average consumer price index between the two (2) calendar years preceding July 1 of the year in which the adjustment is made. No adjustment provided for herein shall exceed five percent (5%) per annum. The base level of state support may be adjusted accordingly each year to meet state budget requirements or to reflect changes to programs, workloads or other operational costs.

8-14-408. Submission of budget.

Each year's budget for the operation of the office of executive director of the district public defenders conference shall be submitted to the criminal justice committee of the house of representatives and the judiciary committee of the senate prior to approval of the budget by the general assembly.

8-19-101. Execution of bonds — Form — Blanket bonds.

(a) The official bonds of all state and county officers, now required by law to furnish official bonds, shall be executed by such officials as principal and may be executed by some surety company authorized to do business in the state of Tennessee, as surety.

(b)(1) The form of all official bonds of all state officials and employees and all county officials and employees shall be prescribed by the comptroller of the treasury, with the approval of the attorney general and reporter. Such prescribed forms shall be filed in the office of the secretary of state. All official bonds of all such officers and employees executed hereafter shall be in the prescribed form if one has been provided. To the extent any such official bond is not in the prescribed form, the same shall stand reformed by implication of law so as to comply with the prescribed form.

(2) Should the prescribed form be amended, the amendment shall affect only bonds and undertakings executed subsequently thereto. Bonds shall continue to be executed in their present form until a form is prescribed therefor under this law. Forms shall be prepared so as to comply with the requirements of statutes of Tennessee relating to such bonds. Where the conditions of bonds are prescribed by statute, the statute shall prevail.

(c) Nothing in this chapter or elsewhere in this code shall be construed as prohibiting the use by any county, municipality, or metropolitan government, of a blanket bond for coverage of two (2) or more of its officials. A separate rider or attachment to the blanket bond shall be prepared for each principal, and wherever in this chapter the term "bond" is used, it likewise includes a blanket bond and each rider or attachment thereto. Each rider or attachment to a blanket bond shall be signed by the named principal, shall be acknowledged by the bond sureties, shall expressly incorporate the conditions stated in § 8-19-111, shall refer specifically to the blanket bond of which it is a part, and shall be filed, approved, and otherwise processed in the manner required for bonds under this chapter.

(d) The governing body of any county by a two-thirds (⅔) vote shall elect whether or not the county officials of the county shall make a surety bond or a bond with two (2) or more good sureties, approved by the legislative body, prior to the time such official is inducted and sworn into office.

(e) County governments are required to obtain and maintain blanket surety bond coverage for all county employees not covered by individual bonds referenced elsewhere in statute. The minimum amount of such blanket bonds shall be one hundred fifty thousand dollars ($150,000).

8-19-102. Place of filing bonds — Copies of bonds as evidence.

(a) The official bonds of county officials required by law to execute such bonds shall be transmitted to the office of county clerk for safekeeping immediately upon their execution, approval and recordation in the office of the county register of deeds.

(b) Where suit is necessary to enforce the obligation of any such bond or undertaking, the county clerk shall make such bond available to the proper authorities. A copy of the official bond duly certified by the county clerk is admissible as evidence in any suit on the bond to prove the execution of the bond and any condition thereof.

(c) The official bonds of state officials and state employees shall be lodged for safekeeping at an office designated by the governor.

8-19-115. Time of filing.

Official bonds, including blanket bonds, and each rider or attachment thereto, required by law to be filed in the office of the county clerk or secretary of state, shall be filed therein within forty (40) days after the election or appointment of the principal named on the bond, rider, or attachment, or within twenty (20) days after the term of the office legally begins. In all other cases, such bonds shall be filed in the proper office within thirty (30) days after such election or appointment, or within ten (10) days after the term of office legally begins.

8-19-122. When furnishing new bond required.

No bond required by this chapter shall be renewed upon its expiration or in the event of the reappointment or re-election of any officer or employee to a position for which a bond is required, but a new bond shall be furnished.

8-19-203. Notice by office of the county clerk if bond not filed.

If, at the expiration of four (4) months after a general election, or an appointment of clerks, such bonds have not been received by the office of the county clerk, the office of the county clerk shall forthwith notify the judges of the fact. If the bond from any cause was not taken, the judge may cause the same to be taken at the next or any subsequent term. If the bond was taken, and the original transmitted, but not received, the judge presiding at the first term after receiving the notice from the office of the county clerk shall direct the clerk to make a certified copy of the same from the records of the office, and transmit it to the office of the county clerk, who shall forthwith acknowledge the receipt of the same, in writing, addressed to the clerk.

8-19-208. Transmittal of bonds of revenue officers.

The bonds of the revenue officers, shall within ten (10) days after the same have been examined or taken, and after they shall have been attested, recorded and certified, according to law, be filed in the office of the county clerk for safekeeping.

8-21-401. Schedule of fees. [Effective until July 1, 2016. See the version effective on July 1, 2016.]

(a) Except as otherwise provided by law, the costs provided in this section in civil cases are chargeable and may be collected at the time the services are requested from the clerk or other officer of the court; however, nothing in this section should be construed to limit the ability of a party to initiate a judicial proceeding by filing a pauper's oath. In cases where payment of the clerk's fees would create a substantial hardship for a party, judges are encouraged to use the discretion provided in Rule 29 of the Tennessee Rules of the Supreme Court to find that the party is indigent, even if that person does not meet the Legal Services Corporation's poverty guidelines. If a party, other than a party who initiated a proceeding under a pauper's oath, pays costs at the time the services are requested, such payment shall be deemed to satisfy the requirement for security to be given for costs, pursuant to § 20-12-120. In proceedings covered by subdivision (b)(1)(A), and in workers compensation complaints, the attorney filing the action shall have the option to sign a cost bond, in lieu of the

party paying the clerk's fees at the time services are requested. The clerk shall not refuse to file an action where the attorney has opted to sign a cost bond. In any action where the clerk refuses to accept such cost bond in lieu of the party paying the clerk's fees, all costs in that action shall be forfeited by the clerk. These requirements for fees to be paid or security provided when services are requested from the clerk do not apply in criminal cases. The fees listed in this section do not include officer's fees as provided for in § 8-21-901 and elsewhere. These fees also do not include state and local litigation taxes.

(b) **Fees in civil cases in circuit and chancery court.**

(1)(A) Unless otherwise provided, court clerks in civil cases in courts of record shall charge a standard court cost of two hundred twenty-five dollars ($225) at the institution of a case. The types of cases covered by this fee would include, but not be limited to, actions for enforcement of contracts or breach of contract actions; injunctions; all torts, personal injury and property damage cases, including malpractice actions, health care liability actions, and wrongful death suits; employment discrimination suits; civil rights suits; tax disputes; special remedies; other property disputes; and any other type of actions not otherwise designated in this section or elsewhere by law.

(B) In divorce cases involving minor children, the clerk shall charge a standard court cost of two hundred dollars ($200) at the institution of a case. In divorce cases that do not involve minor children, the clerk shall charge a standard court cost of one hundred twenty-five dollars ($125) at the institution of a case.

(C) In the following specific types of civil actions, the clerk shall charge a standard court cost of one hundred fifty dollars ($150) at the institution of a case:

(i) Appeals to the circuit or chancery court from juvenile court, general sessions court, probate courts, municipal courts or an administrative hearing; writs of certiorari from lower courts; or administrative hearings;

(ii) Transfers of cases from foreign counties;

(iii) Requests for writ of mandamus;

(iv) Worker's compensation actions;

(v) Condemnations and inverse condemnations; and

(vi) Quo warranto proceedings.

(D) In the following specific types of civil actions, the clerk shall charge a standard court cost of one hundred dollars ($100) at the institution of a case:

(i) Adoptions;

(ii) Legitimations;

(iii) Paternity cases;

(iv) Restoration of citizenship;

(v) Termination of parental rights;

(vi) Other domestic relations matters not otherwise designated;

(vii) Name changes;

(viii) Minor settlements;

(ix) Enforcement of foreign judgments;

(x) Civil expungements where authorized by law; and

(xi) Orders of protection.

(E) In the following specific actions, the clerk shall charge a standard court cost of seventy-five dollars ($75.00): child support enforcement and modification, including interstate support cases and civil contempt actions, and requests for modification of a parenting plan.

(F) In delinquent property tax cases, the clerk shall assess a filing fee of forty-two dollars ($42.00) per parcel. For each parcel of property for which the judge issues an order to sell, there shall be a fee of one hundred dollars ($100) for clerk's services related to that action.

(2)(A) For the purposes of determining the fees of the clerk of court, when any third party complaint in a civil case is filed, the party filing the complaint shall be charged the same fee as was charged at the initiation of the original civil proceeding.

(B) The fee for cross-filings and counter complaints in civil cases in courts of record shall be one hundred dollars ($100).

(c) The clerks of the various courts administering estates, guardianships, conservatorships, and other probate matters are entitled to demand and shall receive for their services the following fees:

(1) For opening and closing an estate, other than a small estate, including giving notice of the opening of the estate to the department of revenue, two hundred thirty dollars ($230);

(A) For filing and docketing claims, giving notice and filing release on each claim for a decedent's estate, to be paid by claimant, eleven dollars ($11.00);

(B) For filing exceptions to claims against estates, mailing notices and entering order, forty-two dollars ($42.00);

(2) For filing small estate affidavits and giving notice of the opening of the estate to the department of revenue, forty-one dollars ($41.00);

(3) For filing a request for letters of guardianship and conservatorship; issuing all initial process and cost bond; entering order and issuing certificate of guardianship and conservatorship, not including fee of the sheriff; and including final accounting and order closing, regardless of court where filed, one hundred sixty dollars ($160);

(4) For filing a new request for removal of disabilities of minority, and incompetence, filing affidavits and entering orders; for filing a new request to legitimate a person, change a name or correct a birth certificate and enter orders; for filing a new request for habeas corpus, filing cost bond, issuing process and enter orders, not including fee of the sheriff, one hundred dollars ($100);

(5) For filing requests under the mental health law, compiled in title 33, issuing notices, entering return, and entering judgments after hearing, not including fee of the sheriff, fifty dollars ($50.00);

(6) For filing and docketing any request on an existing case, other than a request to close the case, not otherwise provided for, eighteen dollars ($18.00);

(7) For entering any order on an existing case, other than closing order, not otherwise provided for, twelve dollars ($12.00);

(8) For issuing summons, subpoenas, citations, writs and notices, including copies of process when required by law, other than initial process, six dollars ($6.00);

(9) For filing any document not otherwise provided for in probate court, seven dollars ($7.00); and

(10) For filing, reviewing, recording annual or interim settlement or accounting and entering order approving settlement only, forty dollars ($40.00).

(d) **Fees in Criminal Cases in Courts of Record.**

(1) Unless otherwise provided in this section, court clerks in criminal cases in courts of record shall charge a standard court cost of three hundred dollars ($300). This fee shall apply per case per defendant.

(2) The clerk shall charge a fee of one hundred dollars ($100) for proceedings related to a violation of probation, any post-judgment actions, or expungements.

(3) The clerk shall charge a fee of seventy-five dollars ($75.00) for criminal contempt actions, including criminal contempt proceedings in civil courts, for failure to appear, requests for bonding company release from final forfeiture, requests to reinstate a driver license, and requests for relief.

(4) Reimbursement from the state shall be limited to the fees as currently allowed by law.

(e) **Fees for Proceedings in Juvenile Court.**

(1) Unless otherwise provided in this section, court clerks in juvenile proceedings shall charge a standard court cost of one hundred dollars ($100). This fee shall apply to all juvenile proceedings not otherwise designated, including, but not limited to, requests to establish support or nonsupport, proceedings related to parentage, paternity cases, and legitimations.

(2) For requests for modification of child support, the clerk shall charge a fee of seventy-five dollars ($75.00).

(3) In the following actions, the clerk of the juvenile court shall charge a fee of forty-two dollars ($42.00): juvenile traffic cases, consent orders, diversion and nonjudicial disposition of juvenile cases, voluntary motions to grant custody, marriage waivers, attachment pro corpus, and bench warrants.

(4) In the following actions, the clerk of the juvenile court shall charge a fee of twenty-five dollars ($25.00): restricted licenses, drug screenings, entering order of appeal and taking appeal bond, entering judgment from appellate court, entering order allowing rehearing, and special pleas.

(5) In the following actions, the clerk of the juvenile court shall charge a fee of sixty-two dollars ($62.00): delinquency and unruly cases, and felony and misdemeanor cases in juvenile court.

(f) **Actions in general sessions court.**

(1) General sessions civil filing fee, forty-two dollars ($42.00). Unless otherwise provided elsewhere in this section, court clerks in civil cases in general sessions court shall charge a standard filing fee of forty-two dollars ($42.00). This fee is intended to cover all initial court clerk's costs for initiating a civil proceeding in general sessions court, including, but not limited to, hearings regarding short term mental health commitments, appeals of decisions denying the issuance of handgun permits, and requests not otherwise provided for. This fee shall not apply to orders of protection, which shall have the same fee, when costs are adjudged, as in courts of record, of one hundred dollars ($100).

(2) When a general sessions court is exercising concurrent civil jurisdiction with a court of record, the clerk shall charge the litigation taxes and court costs applicable in courts of record.

(g) **Criminal actions in general sessions court.**

(1) General session criminal base fee, sixty-two dollars ($62.00). This fee shall be charged per conviction per defendant. For cases involving traffic citations, instead of sixty-two dollars ($62.00), the base court cost shall be forty-two dollars ($42.00).

(2) Failure to appear, forty dollars ($40.00). In cases where the defendant fails to appear or pay fines or costs and the court issues an attachment, bench warrant, capias or other process to compel the defendant's attendance at the court, the defendant shall be charged an additional fee for clerk's costs of forty dollars ($40.00).

(3) Calling in surety, forty dollars ($40.00). The clerk shall charge the defendant this fee each time a scire facias or other proceeding is instituted to bring in a surety, or make action against a bond in criminal cases for failure to appear.

(4) The clerk shall charge a fee of seventy-five dollars ($75.00) for requests for bonding company release from final forfeiture, or requests to reinstate a driver license.

(5) The clerk shall charge a fee of one hundred dollars ($100) for expungements.

(h) **Clerk's commissions.**

(1) Except as provided in subdivisions (h)(2) and (3), for receiving and paying over all taxes, fines, forfeitures, fees and amercements, the clerk of the court is entitled to a five percent (5%) commission.

(2) In counties having a population of more than seven hundred thousand (700,000), according to the 1990 federal census or any subsequent federal census, the commission for receiving and paying over all taxes, fines, forfeitures, fees and amercements, shall be ten percent (10%), except as provided in subdivision (h)(3).

(3) For receiving and paying over all privilege taxes on litigation, the clerk of the court is entitled to a six and seventy-five hundredths percent (6.75%) commission. The total amount of commissions receivable by the clerk of the court during any fiscal year shall not be less than the amount received by such clerk during the fiscal year ending June 30, 2005; provided, that if the statewide amount of litigation tax collected during such fiscal year is less than the amount collected during the fiscal year ending June 30, 2005, then the total amount of commissions receivable by the clerk of the court for that fiscal year shall be reduced by a percentage equal to the percentage reduction in statewide litigation tax collections for that fiscal year.

(i) **Other fees of court clerks.** The following fees apply uniformly in all courts, general sessions, juvenile, probate, circuit or chancery, and may be charged in addition to the fees for cases listed in this section:

(1) **Standard post-judgment fee.** Unless otherwise provided, court clerks in criminal and civil cases in all courts shall charge a standard post-judgment fee of twenty-five dollars ($25.00). This fee shall be charged per occurrence and shall be charged regardless of whether judgment is enforced by garnishment, execution, levy or other process. This fee shall also apply to post-judgment interrogatories, publications, motions to set installment payments, and orders and pleas.

(2) For issuing a subpoena or subpoena duces tecum, the fee shall be six dollars ($6.00).

(3)(A) In all cases in all courts, the clerk shall charge a fee of five dollars ($5.00) for each requested continuance.

(B) In addition to the fee provided for in subdivision (i)(3)(A), the clerk shall also collect a courtroom security enhancement fee of two dollars ($2.00). The revenues from the two-dollar courtroom security enhancement fee shall be deposited into the county general fund. All revenue from this fee shall be used exclusively for the purposes of providing security and enhancing the security of court facilities in the county. For each fiscal year, the court security committee, created by § 16-2-505(d)(2), shall develop and submit recommendations to the county legislative body regarding how such funds shall be utilized.

(C) The fees for continuances shall be collected at the conclusion of the case. If multiple litigants request a continuance, the judge may assess these fees to one (1) or more parties.

(4) For making copies as requested, other than for an original filing and other than when preparing a record upon appeal, the fee shall be fifty cents (50¢) per page.

(5) For making certification and seal, providing a copy of an abstract, or providing driver license certification, the fee shall be five dollars ($5.00).

(6) For receiving funds paid into court on confirmation of private sales or other funds paid into the clerk pursuant to court order, and collecting and paying out the proceeds, the fee shall be forty dollars ($40.00). This fee also applies where there is a pre-judgment judicial attachment or similar process to bring property into the court's possession prior to judgment. This fee shall not apply to payments of proceeds made pursuant to court order to any person from funds held by the clerk, except for court orders concerning a redemption of delinquent taxes property sale; in such case, the fee shall only be charged one (1) time against the total amount of proceeds generated from the property.

(7) For selling real or personal property under decree of court, and receiving, collecting, and paying out the proceeds, a commission not to exceed ten percent (10%) on the amount of sales up to six thousand dollars ($6,000), and an additional amount to be fixed within such limits, in the discretion of the court. The clerk shall collect the sheriff's fee, plus the sheriff's fee for each additional defendant, in a proceeding to sell real estate.

(8) The clerks of the various courts have the authority to invest idle funds held under their control, not otherwise invested. Such investments shall be in banks or savings and loan associations operating under the laws of the state or under the laws of the United States; provided, that such deposits are insured under the federal deposit insurance corporation. Such investments shall not exceed the amounts that are federally insured, unless otherwise fully collateralized under a written collateral agreement, or unless the funds are deposited with an institution that is a member of the state collateral pool. The interest on such investments shall become part of the fees of the court clerk and the clerk shall be required to account for interest received, the same as with other fees received. Any funds authorized to be invested may be invested by the clerk in the local government investment pool administered by the state treasurer.

(9) Nothing in this section shall be construed to relieve the clerks of courts from the responsibility of investing funds held under their control, pursuant to court order or under the rules of court. The interest on those investments shall accrue to the benefit of those directed by the court or by agreement of the parties to the litigation.

(10) For investing funds, the clerk shall receive a fee of five percent (5%) of the earnings of such investment.

(11) For preparing a record on appeal from a court of record to an appellate court, the fee shall be three hundred dollars ($300).

(12) Whenever the clerk is required by law or by a judge to send documents by certified or registered mail, the clerk is entitled to recover the clerk's actual costs for mailing the documents.

(j) **Earmarked funds for computerization.**

(1) Out of all the general filing fees charged by court clerks, two dollars ($2.00) of the amount collected shall be earmarked for computer hardware purchases or replacement, but may be used for other usual and necessary computer related expenses at the discretion of the clerk. Such amount shall be preserved for these purposes and shall not revert to the general fund at the end of a budget year if unexpended.

(2) Effective July 1, 2012, all the general filing fees charged by court clerks shall be increased by two dollars ($2.00). The amount collected pursuant to this two-dollar increase shall be earmarked, along with the two dollars ($2.00) in subdivision (j)(1), for the purposes set forth in subdivision (j)(1), and shall be preserved for those purposes and shall not revert to the general fund at the end of a budget year if unexpended. Pursuant to subsection (*l*), the fees increased by this subdivision (j)(2) shall not be assessed against the state or otherwise represent a cost to the state in criminal cases, child support actions, mental health proceedings, actions under the Tennessee Adult Protection Act, compiled in title 71, chapter 6, part 1, actions with regard to child care licensing, and collection efforts brought by the department of human services.

(k) **Costs in extraordinary cases.** In any extraordinary cases, the clerk may petition the judge to award reasonable costs, in excess of the amounts provided in this section, to reimburse the clerk for the additional services demanded by the case. In such cases, the clerk may also petition the judge to require an appropriate cost bond. For the purposes of this subsection (k), an extraordinary case is defined as one in which there are ten (10) or more plaintiffs or ten (10) or more defendants.

(*l*) **Charges to the state unchanged.** Notwithstanding any provision of this section to the contrary, any fees increased by this section that are assessed against the state or that otherwise represent a cost to the state in criminal cases, child support actions, mental health proceedings, actions under the Tennessee Adult Protection Act. compiled in title 71, chapter 6, part 1, actions with regard to child care licensing, and collection efforts brought by the department of human services, shall be limited to the amounts chargeable prior to January 1, 2006.

(m) **Indigent parties.** No clerk shall be permitted to collect any fee authorized by this section without permitting any person the opportunity to institute a cause of action by means of a pauper's oath, in accordance with Rule 29 of the Rules of the Tennessee Supreme Court.

(n)(1) Except as provided in subdivision (n)(2), the fees provided for in this section shall not apply to circuit court clerks, criminal court clerks, clerks and masters of chancery courts, clerks of courts of general sessions, county clerks, clerks of juvenile and probate courts, and clerks of law and equity courts in counties with a charter form of government that has a population of not less than three hundred and fifty thousand (350,000) nor more than

four hundred and fifty thousand (450,000), according to the 2000 federal census or any subsequent federal census. In those counties, the clerks shall instead charge the fees provided for in § 8-21-409. For the purpose of administering court costs and clerk's fees in counties affected by this subsection (n), any statutory reference to this section shall be deemed to be a reference to § 8-21-409.

(2) The fees provided for in this section shall apply to the criminal court, fourth circuit and the general sessions court-criminal division in any county with a charter form of government that has a population of not less than three hundred and fifty thousand (350,000) nor more than four hundred and fifty thousand (450,000), according to the 2000 federal census or any subsequent federal census.

(o) **Fees for electronic filing and retrieval of court documents.**

(1) In any court where electronic filing, signing, or verification of papers has been authorized by local court rule, and in accordance with Rule 5B of the Tennessee Rules of Civil Procedure, clerks may charge a one-time subscription fee for each registered user of the electronic filing system in an amount not to exceed one hundred twenty dollars ($120). In addition clerks may charge a copy transaction fee not to exceed eight cents ($.08) per page. Such copy transaction fee shall not apply to the first copy of any document requested by a litigant or a litigant's attorney, and shall not exceed a total charge of two dollars and ten cents ($2.10) for any single document. Each of these fees shall be set in an amount necessary to defray the expenses associated with implementation and maintenance of the electronic filing and document retrieval system and shall be included in the local court rule authorizing it. Pursuant to subsection (*l*), these fees shall not be assessed against the state.

(2) In any court where electronic filing, signing, or verification of papers has been authorized by local court rule, the state and any department or contractor of the state shall not be required to file documents electronically, notwithstanding any local court rule.

8-21-401. Schedule of fees. [Effective on July 1, 2016. See the version effective until July 1, 2016.]

(a) Except as otherwise provided by law, the costs provided in this section in civil cases are chargeable and may be collected at the time the services are requested from the clerk or other officer of the court; however, nothing in this section should be construed to limit the ability of a party to initiate a judicial proceeding by filing a pauper's oath. In cases where payment of the clerk's fees would create a substantial hardship for a party, judges are encouraged to use the discretion provided in Rule 29 of the Tennessee Rules of the Supreme Court to find that the party is indigent, even if that person does not meet the Legal Services Corporation's poverty guidelines. If a party, other than a party who initiated a proceeding under a pauper's oath, pays costs at the time the services are requested, such payment shall be deemed to satisfy the requirement for security to be given for costs, pursuant to § 20-12-120. In proceedings covered by subdivision (b)(1)(A), and in workers compensation complaints, the attorney filing the action shall have the option to sign a cost bond, in lieu of the party paying the clerk's fees at the time services are requested. The clerk shall not refuse to file an action where the attorney has opted to sign a cost bond. In any

action where the clerk refuses to accept such cost bond in lieu of the party paying the clerk's fees, all costs in that action shall be forfeited by the clerk. These requirements for fees to be paid or security provided when services are requested from the clerk do not apply in criminal cases. The fees listed in this section do not include officer's fees as provided for in § 8-21-901 and elsewhere. These fees also do not include state and local litigation taxes.

(b) ***Fees in civil cases in circuit and chancery court.***

(1)(A) Unless otherwise provided, court clerks in civil cases in courts of record shall charge a standard court cost of two hundred twenty-five dollars ($225) at the institution of a case. The types of cases covered by this fee would include, but not be limited to, actions for enforcement of contracts or breach of contract actions; injunctions; all torts, personal injury and property damage cases, including malpractice actions, health care liability actions, and wrongful death suits; employment discrimination suits; civil rights suits; tax disputes; special remedies; other property disputes; and any other type of actions not otherwise designated in this section or elsewhere by law.

(B) In divorce cases involving minor children, the clerk shall charge a standard court cost of two hundred dollars ($200) at the institution of a case. In divorce cases that do not involve minor children, the clerk shall charge a standard court cost of one hundred twenty-five dollars ($125) at the institution of a case.

(C) In the following specific types of civil actions, the clerk shall charge a standard court cost of one hundred fifty dollars ($150) at the institution of a case:

(i) Appeals to the circuit or chancery court from juvenile court, general sessions court, probate courts, municipal courts or an administrative hearing; writs of certiorari from lower courts; or administrative hearings;

(ii) Transfers of cases from foreign counties;

(iii) Requests for writ of mandamus;

(iv) Worker's compensation actions;

(v) Condemnations and inverse condemnations; and

(vi) Quo warranto proceedings.

(D) In the following specific types of civil actions, the clerk shall charge a standard court cost of one hundred dollars ($100) at the institution of a case:

(i) Adoptions;

(ii) Legitimations;

(iii) Paternity cases;

(iv) Restoration of citizenship;

(v) Termination of parental rights;

(vi) Other domestic relations matters not otherwise designated;

(vii) Name changes;

(viii) Minor settlements;

(ix) Enforcement of foreign judgments;

(x) Civil expungements where authorized by law; and

(xi) Orders of protection.

(E) In the following specific actions, the clerk shall charge a standard court cost of seventy-five dollars ($75.00): child support enforcement and modification, including interstate support cases and civil contempt actions,

and requests for modification of a parenting plan.

(F) In delinquent property tax cases, the clerk shall assess a filing fee of forty-two dollars ($42.00) per parcel. For each parcel of property for which the judge issues an order to sell, there shall be a fee of one hundred dollars ($100) for clerk's services related to that action.

(2)(A) For the purposes of determining the fees of the clerk of court, when any third party complaint in a civil case is filed, the party filing the complaint shall be charged the same fee as was charged at the initiation of the original civil proceeding.

(B) The fee for cross-filings and counter complaints in civil cases in courts of record shall be one hundred dollars ($100).

(c) The clerks of the various courts administering estates, guardianships, conservatorships, and other probate matters are entitled to demand and shall receive for their services the following fees:

(1) For opening and closing an estate, other than a small estate, including giving notice of the opening of the estate to the department of revenue, two hundred thirty dollars ($230);

(A) For filing and docketing claims, giving notice and filing release on each claim for a decedent's estate, to be paid by claimant, eleven dollars ($11.00);

(B) For filing exceptions to claims against estates, mailing notices and entering order, forty-two dollars ($42.00);

(2) For filing small estate affidavits and giving notice of the opening of the estate to the department of revenue, forty-one dollars ($41.00);

(3) For filing a request for letters of guardianship and conservatorship; issuing all initial process and cost bond; entering order and issuing certificate of guardianship and conservatorship, not including fee of the sheriff; and including final accounting and order closing, regardless of court where filed, one hundred sixty dollars ($160);

(4) For filing a new request for removal of disabilities of minority, and incompetence, filing affidavits and entering orders; for filing a new request to legitimate a person, change a name or correct a birth certificate and enter orders; for filing a new request for habeas corpus, filing cost bond, issuing process and enter orders, not including fee of the sheriff, one hundred dollars ($100);

(5) For filing requests under the mental health law, compiled in title 33, issuing notices, entering return, and entering judgments after hearing, not including fee of the sheriff, fifty dollars ($50.00);

(6) For filing and docketing any request on an existing case, other than a request to close the case, not otherwise provided for, eighteen dollars ($18.00);

(7) For entering any order on an existing case, other than closing order, not otherwise provided for, twelve dollars ($12.00);

(8) For issuing summons, subpoenas, citations, writs and notices, including copies of process when required by law, other than initial process, six dollars ($6.00);

(9) For filing any document not otherwise provided for in probate court, seven dollars ($7.00); and

(10) For filing, reviewing, recording annual or interim settlement or accounting and entering order approving settlement only, forty dollars ($40.00).

(d) ***Fees in Criminal Cases in Courts of Record.***

(1) Unless otherwise provided in this section, court clerks in criminal cases in courts of record shall charge a standard court cost of three hundred dollars ($300). This fee shall apply per case per defendant.

(2) The clerk shall charge a fee of one hundred dollars ($100) for proceedings related to a violation of probation, any post-judgment actions, or expungements.

(3) The clerk shall charge a fee of seventy-five dollars ($75.00) for criminal contempt actions, including criminal contempt proceedings in civil courts, for failure to appear, requests for bonding company release from final forfeiture, requests to reinstate a driver license, and requests for relief.

(4) Reimbursement from the state shall be limited to the fees as currently allowed by law.

(e) ***Fees for Proceedings in Juvenile Court.***

(1) Unless otherwise provided in this section, court clerks in juvenile proceedings shall charge a standard court cost of one hundred dollars ($100). This fee shall apply to all juvenile proceedings not otherwise designated, including, but not limited to, requests to establish support or nonsupport, proceedings related to parentage, paternity cases, and legitimations.

(2) For requests for modification of child support, the clerk shall charge a fee of seventy-five dollars ($75.00).

(3) In the following actions, the clerk of the juvenile court shall charge a fee of forty-two dollars ($42.00): juvenile traffic cases, consent orders, diversion and nonjudicial disposition of juvenile cases, voluntary motions to grant custody, marriage waivers, attachment pro corpus, and bench warrants.

(4) In the following actions, the clerk of the juvenile court shall charge a fee of twenty-five dollars ($25.00): restricted licenses, drug screenings, entering order of appeal and taking appeal bond, entering judgment from appellate court, entering order allowing rehearing, and special pleas.

(5) In the following actions, the clerk of the juvenile court shall charge a fee of sixty-two dollars ($62.00): delinquency and unruly cases, and felony and misdemeanor cases in juvenile court.

(f) ***Actions in general sessions court.***

(1) General sessions civil filing fee, forty-two dollars ($42.00). Unless otherwise provided elsewhere in this section, court clerks in civil cases in general sessions court shall charge a standard filing fee of forty-two dollars ($42.00). This fee is intended to cover all initial court clerk's costs for initiating a civil proceeding in general sessions court, including, but not limited to, hearings regarding short term mental health commitments, appeals of decisions denying the issuance of handgun permits, and requests not otherwise provided for. This fee shall not apply to orders of protection, which shall have the same fee, when costs are adjudged, as in courts of record, of one hundred dollars ($100).

(2) When a general sessions court is exercising concurrent civil jurisdiction with a court of record, the clerk shall charge the litigation taxes and court costs applicable in courts of record.

(g) ***Criminal actions in general sessions court.***

(1) General session criminal base fee, sixty-two dollars ($62.00). This fee shall be charged per conviction per defendant. For cases involving traffic citations, instead of sixty-two dollars ($62.00), the base court cost shall be forty-two dollars ($42.00).

(2) Failure to appear, forty dollars ($40.00). In cases where the defendant fails to appear or pay fines or costs and the court issues an attachment, bench warrant, capias or other process to compel the defendant's attendance at the court, the defendant shall be charged an additional fee for clerk's costs of forty dollars ($40.00).

(3) Calling in surety, forty dollars ($40.00). The clerk shall charge the defendant this fee each time a scire facias or other proceeding is instituted to bring in a surety, or make action against a bond in criminal cases for failure to appear.

(4) The clerk shall charge a fee of seventy-five dollars ($75.00) for requests for bonding company release from final forfeiture, or requests to reinstate a driver license.

(5) The clerk shall charge a fee of one hundred dollars ($100) for expungements.

(h) ***Clerk's commissions.***

(1) Except as provided in subdivisions (h)(2) and (3), for receiving and paying over all taxes, fines, forfeitures, fees and amercements, the clerk of the court is entitled to a five percent (5%) commission.

(2) In counties having a population of more than seven hundred thousand (700,000), according to the 1990 federal census or any subsequent federal census, the commission for receiving and paying over all taxes, fines, forfeitures, fees and amercements, shall be ten percent (10%), except as provided in subdivision (h)(3).

(3) For receiving and paying over all privilege taxes on litigation, the clerk of the court is entitled to a six and seventy-five hundredths percent (6.75%) commission. The total amount of commissions receivable by the clerk of the court during any fiscal year shall not be less than the amount received by such clerk during the fiscal year ending June 30, 2005; provided, that if the statewide amount of litigation tax collected during such fiscal year is less than the amount collected during the fiscal year ending June 30, 2005, then the total amount of commissions receivable by the clerk of the court for that fiscal year shall be reduced by a percentage equal to the percentage reduction in statewide litigation tax collections for that fiscal year.

(i) ***Other fees of court clerks.*** *The following fees apply uniformly in all courts, general sessions, juvenile, probate, circuit or chancery, and may be charged in addition to the fees for cases listed in this section:*

(1) ***Standard post-judgment fee.*** *Unless otherwise provided, court clerks in criminal and civil cases in all courts shall charge a standard post-judgment fee of twenty-five dollars ($25.00). This fee shall be charged per occurrence and shall be charged regardless of whether judgment is enforced by garnishment, execution, levy or other process. This fee shall also apply to post-judgment interrogatories, publications, motions to set installment payments, and orders and pleas.*

(2) For issuing a subpoena or subpoena duces tecum, the fee shall be six dollars ($6.00).

(3)(A) In all cases in all courts, the clerk shall charge a fee of five dollars ($5.00) for each requested continuance.

(B) In addition to the fee provided for in subdivision (i)(3)(A), the clerk shall also collect a courtroom security enhancement fee of two dollars ($2.00). The revenues from the two-dollar courtroom security enhancement fee shall be deposited into the county general fund. All revenue from this fee

shall be used exclusively for the purposes of providing security and enhancing the security of court facilities in the county. For each fiscal year, the court security committee, created by § 16-2-505(d)(2), shall develop and submit recommendations to the county legislative body regarding how such funds shall be utilized.

(C) The fees for continuances shall be collected at the conclusion of the case. If multiple litigants request a continuance, the judge may assess these fees to one (1) or more parties.

(4) For making copies as requested, other than for an original filing and other than when preparing a record upon appeal, the fee shall be fifty cents (50¢) per page.

(5) For making certification and seal, providing a copy of an abstract, or providing driver license certification, the fee shall be five dollars ($5.00).

(6) For receiving funds paid into court on confirmation of private sales or other funds paid into the clerk pursuant to court order, and collecting and paying out the proceeds, the fee shall be forty dollars ($40.00). This fee also applies where there is a pre-judgment judicial attachment or similar process to bring property into the court's possession prior to judgment. This fee shall not apply to payments of proceeds made pursuant to court order to any person from funds held by the clerk, except for court orders concerning a redemption of delinquent taxes property sale; in such case, the fee shall only be charged one (1) time against the total amount of proceeds generated from the property.

(7) For selling real or personal property under decree of court, and receiving, collecting, and paying out the proceeds, a commission not to exceed ten percent (10%) on the amount of sales up to six thousand dollars ($6,000), and an additional amount to be fixed within such limits, in the discretion of the court. The clerk shall collect the sheriff's fee, plus the sheriff's fee for each additional defendant, in a proceeding to sell real estate.

(8) The clerks of the various courts have the authority to invest idle funds held under their control, not otherwise invested. Such investments shall be in banks or savings and loan associations operating under the laws of the state or under the laws of the United States; provided, that such deposits are insured under the federal deposit insurance corporation. Such investments shall not exceed the amounts that are federally insured, unless otherwise fully collateralized under a written collateral agreement, or unless the funds are deposited with an institution that is a member of the state collateral pool. The interest on such investments shall become part of the fees of the court clerk and the clerk shall be required to account for interest received, the same as with other fees received. Any funds authorized to be invested may be invested by the clerk in the local government investment pool administered by the state treasurer.

(9) Nothing in this section shall be construed to relieve the clerks of courts from the responsibility of investing funds held under their control, pursuant to court order or under the rules of court. The interest on those investments shall accrue to the benefit of those directed by the court or by agreement of the parties to the litigation.

(10) For investing funds, the clerk shall receive a fee of five percent (5%) of the earnings of such investment.

(11) For preparing a record on appeal from a court of record to an appellate court, the fee shall be three hundred dollars ($300).

(12) Whenever the clerk is required by law or by a judge to send documents by certified or registered mail, the clerk is entitled to recover the clerk's actual

costs for mailing the documents.

(j) ***Earmarked funds for computerization.*** *Out of all the general filing fees charged by court clerks, two dollars ($2.00) of the amount collected shall be earmarked for computer hardware purchases or replacement, but may be used for other usual and necessary computer related expenses at the discretion of the clerk. Such amount shall be preserved for these purposes and shall not revert to the general fund at the end of a budget year if unexpended.*

(k) ***Costs in extraordinary cases.*** *In any extraordinary cases, the clerk may petition the judge to award reasonable costs, in excess of the amounts provided in this section, to reimburse the clerk for the additional services demanded by the case. In such cases, the clerk may also petition the judge to require an appropriate cost bond. For the purposes of this subsection (k), an extraordinary case is defined as one in which there are ten (10) or more plaintiffs or ten (10) or more defendants.*

(l) Charges to the state unchanged. *Notwithstanding any provision of this section to the contrary, any fees increased by this section that are assessed against the state or that otherwise represent a cost to the state in criminal cases, child support actions, mental health proceedings, actions under the Tennessee Adult Protection Act. compiled in title 71, chapter 6, part 1, actions with regard to child care licensing, and collection efforts brought by the department of human services, shall be limited to the amounts chargeable prior to January 1, 2006.*

(m) ***Indigent parties.*** *No clerk shall be permitted to collect any fee authorized by this section without permitting any person the opportunity to institute a cause of action by means of a pauper's oath, in accordance with Rule 29 of the Rules of the Tennessee Supreme Court.*

(n)(1) Except as provided in subdivision (n)(2), the fees provided for in this section shall not apply to circuit court clerks, criminal court clerks, clerks and masters of chancery courts, clerks of courts of general sessions, county clerks, clerks of juvenile and probate courts, and clerks of law and equity courts in counties with a charter form of government that has a population of not less than three hundred and fifty thousand (350,000) nor more than four hundred and fifty thousand (450,000), according to the 2000 federal census or any subsequent federal census. In those counties, the clerks shall instead charge the fees provided for in § 8-21-409. For the purpose of administering court costs and clerk's fees in counties affected by this subsection (n), any statutory reference to this section shall be deemed to be a reference to § 8-21-409.

(2) The fees provided for in this section shall apply to the criminal court, fourth circuit and the general sessions court-criminal division in any county with a charter form of government that has a population of not less than three hundred and fifty thousand (350,000) nor more than four hundred and fifty thousand (450,000), according to the 2000 federal census or any subsequent federal census.

(o) ***Fees for electronic filing and retrieval of court documents.***

(1) In any court where electronic filing, signing, or verification of papers has been authorized by local court rule, and in accordance with Rule 5B of the Tennessee Rules of Civil Procedure, clerks may charge a one-time subscription fee for each registered user of the electronic filing system in an amount not to exceed one hundred twenty dollars ($120). In addition clerks may charge a copy transaction fee not to exceed eight cents ($.08) per page. Such copy transaction fee shall not apply to the first copy of any document

*requested by a litigant or a litigant's attorney, and shall not exceed a total charge of two dollars and ten cents ($2.10) for any single document. Each of these fees shall be set in an amount necessary to defray the expenses associated with implementation and maintenance of the electronic filing and document retrieval system and shall be included in the local court rule authorizing it. Pursuant to subsection (**l**), these fees shall not be assessed against the state.*

(2) In any court where electronic filing, signing, or verification of papers has been authorized by local court rule, the state and any department or contractor of the state shall not be required to file documents electronically, notwithstanding any local court rule.

8-21-901. Sheriffs and constables — Specific fees authorized.

(a) Notwithstanding any other provision of law to the contrary, the sheriff or constable is entitled to demand and receive the respective fees for the following services where services are actually rendered:

(1) **Service of Process.**

(A) For serving any process except as otherwise provided in this section or other applicable law, whether issued by a clerk for a general sessions, criminal, circuit, chancery or any other court, the sheriff or constable shall be entitled to the following fees, based on the manner in which process is served, for each item of process that must be served separately per person served:

(i) For service in person: $26.00

(ii) For service by mail: 10.00

(iii) For service by acceptance or consent or any other authorized method: 10.00

(B) For summoning jurors in any proceeding: 5.00

(C) For serving or delivering any other process or notice not related to a judicial proceeding and issued by an entity other than a court: 10.00

(D) For returning any service of process where the sheriff or constable attempts service but is unsuccessful, the sheriff or constable shall only be entitled to: ..... 9.00.

(2) **Collection of money; returning, transporting, storing or establishing possession of property.**

(A) For a levy of an execution on property or levy of an attachment or other process to seize property for the purpose of securing satisfaction of a judgment yet to be rendered or for executing a writ of replevin or writ of possession: $40.00

(B)(i) For collecting money to satisfy a judgment, whether by execution, fieri facias, garnishment or other process, in civil cases each time collection is attempted: 20.00

(ii) For purposes of the payment of fees for garnishments as provided in this subdivision (a)(2)(B), all garnishments shall be deemed to be original garnishments and the sheriff or other person authorized by law to serve garnishments shall be entitled to the fee provided for in this subdivision (a)(2)(B) for each such garnishment served.

(C) Whenever the sheriff or constable provides for the storage or maintenance of property including, but not limited to, vehicles, livestock

and farm and construction equipment, that has been levied on by execution, attachment or other process, the sheriff or constable is entitled to demand and receive a reasonable per day fee for such services. The sheriff or constable is also entitled to demand and receive reimbursement for costs of transportation of such personal property to a suitable location for storage and maintenance when such action is necessary to secure such property. Any such fees for transportation, maintenance and/or storage shall be approved by the court issuing the execution, attachment or other process.

(3) **Arrest and transportation of prisoners, bail bond.**

(A) For executing every capias, criminal warrant, summons or other leading process, making arrests in criminal cases and carrying to jail, prison or other place of incarceration and guarding defendant arrested by warrant involving taking custody of a defendant: $40.00

(B) For citation in lieu of arrest or criminal warrant not involving physical custody of a defendant: 25.00

(C) For every bail bond to be paid as cost at the time there is a disposition of the case:.....$10.00

(D) If a sheriff or constable is required to act as a guard to escort prisoners, such sheriff shall be entitled to a per mile fee equal to the mileage allowance granted federal employees. Such fee shall be separate for each prisoner and computed on the distance actually traveled with the prisoner and shall be for no more than two (2) guards. Such fee shall only apply when the sheriff or constable is required to transport a prisoner from county to county or from state to state. Similarly, the sheriff shall be entitled to the same mileage allowance when required to transport a prisoner to a hospital or other mental health facility in another county or state for a judicially ordered evaluation.

(E) When two (2) or more criminal warrants are executed at the same time against the same individual, there shall be but one (1) arrest fee allowed when the fee is chargeable to the county and/or the state.

(4) **Security Services.**

(A)(i) For attending on grand jury, or waiting in court: ..... per day $75.00

(ii) Notwithstanding subdivision (a)(4)(A)(i), in any county having a population of not less than eighty-eight thousand eight hundred (88,800) nor more than eighty-eight thousand nine hundred (88,900), according to the 2000 federal census or any subsequent federal census, the sheriff, constable, bailiff or other court officer, as applicable, shall be entitled to receive one hundred dollars ($100) per day for attending on grand jury or waiting in court. Such daily per diem allowance shall be a minimum daily per diem and may be increased no more than once annually by resolution of the county legislative body of any county to which this subdivision (a)(4)(A)(ii) applies.

(B) For waiting with a sequestered jury: ..... per day $100

(5) **Data processing services.**

(A) For data processing services: $2.00

(B) The revenue from the two-dollar data processing fee levied by subdivision (a)(5)(A), shall be allocated by the sheriff's county for computerization, information systems and electronic records management costs of the sheriff's office. Such funds shall remain earmarked within the general fund and shall be reserved for the purposes authorized in this

subdivision (a)(5)(B) at the end of each fiscal year.

(b) Notwithstanding other provisions of this section to the contrary, any fee or mileage allowance permitted under this section, which is assessed against the state or which otherwise represents a cost to the state, shall be limited in amount to the fees allowable immediately prior to May 28, 1977.

(c) The court in its discretion may award recovery of fees for process served by any private process server as part of any judgment rendered in a case but such fees awarded against a party shall not exceed the like fees as authorized by this section for services provided by sheriffs or constables.

8-23-202. Pay periods — Pay plan for all state officials and employees — Plan for direct deposit of compensation.

(a) The "pay period" for state employees shall be semimonthly. On or about the last day of every such "pay period," all state employees shall be paid for the preceding semimonthly period or any part thereof for which compensation is due.

(b) The provisions of § 8-23-101 to the contrary notwithstanding, the department of human resources and the department of finance and administration may develop a semimonthly pay plan for all officials and employees of state government, with the exception of persons employed by the University of Tennessee and the colleges and universities under the jurisdiction of the state board of regents. However, any pay plan for officials and employees of the legislative branch is subject to approval by the speaker of the senate and the speaker of the house of representatives, and any plan for the judicial branch is subject to approval by the presiding judges of the superior courts and the attorney general and reporter.

(c) The commissioner of finance and administration is authorized to require that salaries of state employees be paid through direct-deposit procedures in accordance with policies established by the commissioner.

8-25-104. Responsibility for implementing programs — Payroll deductions — Billing and administration — Requiring participation.

(a)(1) The responsibility for implementing the deferred compensation program for employees of state agencies shall be delegated to the chair of the consolidated retirement board, with the approval of the commissioner of finance and administration, the chair of the finance, ways and means committee of the senate and the chair of the finance, ways and means committee of the house of representatives.

(2) The responsibility for implementation of the deferred compensation plan for employees of institutions of higher education shall be delegated to the chancellor of the board of regents for employees of institutions thereunder, and to the president of the University of Tennessee for employees of institutions thereunder.

(3) The responsibility for implementing the deferred compensation plan for state employees who are not paid on either the centralized state payroll system or by an institution of higher education, may be delegated as determined by the chair of the consolidated retirement board.

(4)(A) Whenever plans are operated for state employees, including employees of institutions of higher education, pursuant to authority del-

egated herein to officials other than the chair of the consolidated retirement board, they shall be operated under the terms and conditions set out in contracts entered into by the chair of the consolidated retirement board for the purpose of effectuating this part.

(B) Subdivision (a)(4)(A) shall not apply to deferred or tax-sheltered compensation plans maintained on behalf of employees of institutions of higher education pursuant to § 403(b) of the Internal Revenue Code, codified in 26 U.S.C. § 403(b). Any such § 403(b) plans shall be operated under the terms and conditions set out in contracts entered into by the chancellor of the board of regents for any § 403(b) plan maintained on behalf of employees of institutions thereunder, and by the president of the University of Tennessee for any § 403(b) plan maintained on behalf of employees of institutions thereunder.

(5) The responsibility for implementing the deferred compensation program for all other employees, as defined hereunder, shall be delegated to the appropriate officer, board, or committee, as designated by the local legislative body of such other agencies, counties or municipalities.

(b) Payroll deductions shall be made, in each instance, by the appropriate payroll officer.

(c) The chair of the consolidated retirement board or appropriately designated local officer, board or committee of such deferred compensation program may contract with a private corporation, institution and/or custodial bank to provide consolidated billing and all or any other administrative services deemed necessary or appropriate for the administration and operation of the program. The chair of the consolidated retirement board or appropriately designated local officer, board or committee of such deferred compensation program may assess the costs associated with administrating the program to the respective participating employees in order that any such plans adopted shall operate without cost to or contribution from this state.

(d) Notwithstanding any law to the contrary, the chair of the consolidated retirement board, with the concurrence of the commissioner of finance and administration, has the authority to implement an automatic deferred or tax-sheltered compensation plan. Such plan shall provide that any person who becomes a full-time state employee on or after the implementation date of the plan, including a full-time employee of an institution of higher education, who is eligible to participate in one of the deferred or tax-sheltered compensation plans established pursuant to parts 1 or 3 of this chapter shall participate in at least one of the plans as a condition of employment, unless such employee files with that person's employer a notice of that person's election not to participate.

(e) Any notice of non-election shall be made in such format and through such medium as prescribed by the chair of the Tennessee consolidated retirement system and must be filed with that employee's employer by no later than thirty (30) calendar days from the date of the notice of automatic deferral letter. Any employee who does not file a notice of non-election within the prescribed period shall be automatically enrolled in the state's salary reduction plan established in part 3 of this chapter with a salary deferral of two percent (2%) of that employee's compensation. All contributions made by or on behalf of the employee shall be directed to such default option as shall be established by the chair of the consolidated retirement board until such time as the employee selects a different investment option or options. Notwith-

standing any provision of this section or any other law to the contrary, future deferrals may be cancelled or adjusted at any time by the employee provided the employee notifies that employee's employer in such format and through such medium as may be prescribed by the chair of the Tennessee consolidated retirement system at least one month before the payday on which the cancellation or change is to be effective; provided, however, that any adjustment in the deferrals, other than a cancellation, cannot cause the amount of the deferrals to be less than twenty dollars ($20.00) per month, or if the employee is paid twice a month, ten dollars ($10.00) semimonthly, or such other lower amount as may be established under chapter 25, part 3 of this title. In addition, any adjustment in the deferrals cannot cause the amount of the deferrals to exceed the maximum allowed under the Internal Revenue Code.

(f) Any employee who affirmatively declines to make employee deferrals after the first automatic enrollment contribution was made may make an election to withdraw that employee's entire automatic enrollment contribution. This election must be submitted no later than ninety (90) calendar days after the payroll date in which the first automatic enrollment contribution is made on behalf of the employee. The amount of the distribution shall be the value of the automatic enrollment contributions plus or minus investment gains or losses as of the date the distribution is processed. Automatic enrollment contributions made after such date shall remain in the plan and shall be subject to the plan's regular distribution rules. Further, an employee who has made an election to withdraw and who thereafter leaves employment and is then rehired by the same employer as defined in this subsection (f) or, by the same political subdivision in the case of a political subdivision employee, before a twelve-continuous month absence shall not be permitted to make another election to withdraw that participant's automatic enrollment contribution. For purposes of this subsection (f), "same employer" means the employer for which the person last worked prior to separation from covered employment. All departments, agencies and instrumentalities in the executive, legislative and judicial branches of state government, including public institutions of higher education, shall be deemed one and the same employer. All public schools within the Tennessee public school system, except for public institutions of higher education, shall be deemed one and the same employer. Notwithstanding the vesting provisions of the plan's document, the employer matching contributions described in § 8-25-303 that are attributable to the distribution of the automatic enrollment contributions shall be forfeited and placed in a forfeiture account. Amounts in the forfeiture account shall be used in the manner provided in the plan document established for the profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title. The employer matching contributions described in § 8-25-303 shall not be made if a permissible withdrawal is taken pursuant to this subsection (f) before the date the matching contribution is allocated.

(g) The initial two percent (2%) automatic enrollment contribution described in this section shall be subject to a percentage annual increase thereafter if provided for in the plan document established for the profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title.

(h) The automatic deferrals shall be contributed on a pre-tax basis and shall continue until the employee affirmatively elects otherwise.

8-25-105. Investment of funds from program. [Effective until July 1, 2014. See the version effective on July 1, 2014.]

Notwithstanding any other law to the contrary, the chair of the consolidated retirement board, and the appropriately designated local officer or local board responsible for implementing a deferred compensation program are hereby authorized to invest the moneys held pursuant to any such deferred compensation plan in investment options that meet the requirements of the Internal Revenue Code. This section shall not apply to deferred or tax-sheltered compensation plans maintained on behalf of employees of institutions of higher education pursuant to § 403(b) of the Internal Revenue Code, codified in 26 U.S.C. § 403(b). The chancellor of the board of regents for any § 403(b) plan maintained on behalf of employees of institutions thereunder, and the president of the University of Tennessee for any § 403(b) plan maintained on behalf of employees of institutions thereunder shall be responsible for investing the monies held pursuant to any such plan in investment options that meet the applicable requirements of the Internal Revenue Code.

8-25-105. Investment of funds from program. [Effective on July 1, 2014. See the version effective until July 1, 2014.]

Notwithstanding any other law to the contrary, the chair of the consolidated retirement board, and the appropriately designated local officer or local board responsible for implementing a deferred compensation program are hereby authorized to invest the moneys held pursuant to any such deferred compensation plan in investment options that meet the requirements of the Internal Revenue Code. It is the intent of the general assembly that a variety of investment options be offered to participants in the plan, which may include one (1) or more comingled funds whereby assets in the custody of the state treasurer are pooled. This section shall not apply to deferred or tax-sheltered compensation plans maintained on behalf of employees of institutions of higher education pursuant to § 403(b) of the Internal Revenue Code, codified in 26 U.S.C. § 403(b). The chancellor of the board of regents for any § 403(b) plan maintained on behalf of employees of institutions thereunder, and the president of the University of Tennessee for any § 403(b) plan maintained on behalf of employees of institutions thereunder shall be responsible for investing the monies held pursuant to any such plan in investment options that meet the applicable requirements of the Internal Revenue Code.

8-25-111. Election to become a participating employer in deferred compensation program — "Governmental entity" defined — Election of employer for matching of contributions — No increased cost to state.

(a) Notwithstanding any law to the contrary, any governmental entity as defined in subsection (b) may elect to become a participating employer in any deferred compensation program established on behalf of state employees under this part or under part 3 of this chapter; provided, that such participation shall be subject to the approval of the chair of the Tennessee consolidated retirement system and in conformity with such terms and conditions as may be prescribed by the chair. If such approval is given, then all employees of the respective entity shall be eligible to participate in any such deferred compensation program, except for the employer matching as provided for in

§ 8-25-303.

(b) For purposes of this section, "governmental entity" means any Tennessee local governmental entity, including, but not limited to, any municipality, metropolitan government, county, utility district, school district, public building authority, and development district created and existing pursuant to the laws of this state, or any instrumentality of government created by any one (1) or more of the named local governmental entities or by an act of the general assembly. Notwithstanding any provision of this section to the contrary, no entity shall be eligible to participate in any such deferred compensation program if the chair of the Tennessee consolidated retirement system determines, in the chair's sole discretion, that the entity's participation could have a potential adverse effect on the program's status as a qualified plan under the Internal Revenue Code, codified in U.S.C. title 26, and regulations. In making such determination, the chair may rely on the advice of a nationally recognized counsel in the area of governmental employee benefit plans.

(c) Any entity described in subsection (a) that elects to become a participating employer under the provisions of part 3 of this chapter shall have the option of providing for employer matching of contributions in any amount for which the entity is willing to contribute; provided, that the amount of employer matching shall not exceed the maximum allowed under the Internal Revenue Code, and shall conform to all applicable laws, rules and regulations of the internal revenue service governing profit sharing and/or salary reduction plans.

(d) It is the legislative intent that the state shall realize no increased cost as a result of such entities' participation in any such deferred compensation program. All costs associated with such participation, including administrative costs, shall be the responsibility of such entities and/or the entities' participating employees.

(e) A local board of education may elect to participate in the plan separately from the political subdivision with which it is associated. A political subdivision may elect to participate in the plan without extending coverage to the employees of the local board of education that is associated with the participating political subdivision. In the event that a political subdivision withdraws its participation in the deferred compensation plan, the local board of education, which is a part of the political subdivision, may continue its participation in the plan separately.

8-25-113. Authority of trustees of deferred or tax sheltered compensation plans to contract for investment management services, personal services, professional services and consultant services.

The trustees of any deferred or tax sheltered compensation plans established pursuant to this part are expressly authorized to contract for investment management services, personal services, professional services and consultant services for the deferred compensation programs. The trustees shall provide for the powers, duties, functions and compensation of any investment managers, professionals or consultants so engaged. Any contract for investment management services, personal services, professional services and consultant services may be procured in the manner prescribed by the trustees without regard to the requirements of former § 12-4-109 [see the Compiler's Notes], if

it is determined that the services are necessary or desirable for the efficient administration of the deferred compensation programs. All expenses and fees incidental to the procurement of services shall be charged to and paid from participant accounts.

8-25-301. State plans authorized. [Effective until July 1, 2014. See the version effective on July 1, 2014.]

The state treasurer is directed to develop and obtain internal revenue service approval of a profit sharing or salary reduction plan for state employees as permitted by the internal revenue service. The responsibility for implementation of the plan for employees of institutions of higher education may be delegated by the state treasurer to the chancellor of the board of regents for employees of institutions thereunder and to the president of the University of Tennessee for employees of institutions thereunder. The responsibility for implementing the plan for state employees who are not paid on either the centralized state payroll system or by an institution of higher education may be delegated as determined by the state treasurer.

8-25-301. State plans authorized. [Effective on July 1, 2014. See the version effective until July 1, 2014.]

The state treasurer is directed to develop and obtain internal revenue service approval of a profit sharing or salary reduction plan for state employees as permitted by the internal revenue service. The responsibility for implementation of the plan for employees of institutions of higher education may be delegated by the state treasurer to the chancellor of the board of regents for employees of institutions thereunder and to the president of the University of Tennessee for employees of institutions thereunder. The responsibility for implementing the plan for state employees who are not paid on either the centralized state payroll system or by an institution of higher education may be delegated as determined by the state treasurer. It is the intent of the general assembly that a variety of investment options be offered to participants in the plan, which may include one (1) or more comingled funds whereby assets in the custody of the state treasurer are pooled.

8-25-304. Alternative plans — Additional participation in state plan.

(a) Any political subdivision or instrumentality of the state, by resolution or ordinance of its governing body, is authorized to make available to its employees a profit sharing or salary reduction plan approved by the internal revenue service.

(b) Any entity other than a political subdivision participating in the Tennessee consolidated retirement system which has fewer than five (5) employees may request permission of the state treasurer to participate in the state plan. The state treasurer shall have full authority to grant permission, taking into account the number and location of employees of the entity, its financial soundness, the entity's status with the Tennessee consolidated retirement system, and other factors deemed relevant by the state treasurer. If permission is granted, such participation shall be in accordance with the terms specified by the state treasurer.

8-25-309. Assessing costs of administering program to participating employees.

The state treasurer may assess the costs associated with administering this program to the participating employees in order that such plan shall operate without administrative cost to or contribution from this state.

8-25-501. Development and implementation of plan — Automatic payment — Administration of plan.

(a) The commissioner of finance and administration and the state treasurer, with the concurrence of the state insurance committee, are authorized to develop and implement a cafeteria plan for state employees as permitted by § 125 of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 125. The commissioner of finance and administration and the state treasurer are further authorized to offer state employees a qualified transportation fringe benefit plan in accordance with § 132(f) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 132(f), or any subsequent corresponding United States Internal Revenue Code section. The responsibility for development and implementation of such plans for employees of institutions of higher education is delegated to the chancellor of the board of regents and to the president of the University of Tennessee for employees of institutions under the University of Tennessee. Any political subdivision or instrumentality of the state, by resolution or ordinance of its governing body, is authorized to make available to its employees either a cafeteria plan as permitted by § 125 of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 125, or a qualified transportation fringe benefit plan in accordance with § 132(f) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 132(f), or both.

(b) Any employer who has implemented a cafeteria plan pursuant to this section shall arrange for its employees' health insurance premiums and dental insurance premiums to be automatically paid through the cafeteria plan beginning January 1, 2008. Participation in other benefit options provided pursuant to this section is not automatic and requires an affirmative election by the employee authorizing the necessary payroll deductions and salary reductions for funding the benefits.

(c) Plans implemented pursuant to this section may either be administered internally or the party responsible for administration may contract with any person or entity otherwise eligible to provide for the services.

(d) With concurrence of the state insurance committee, the state treasurer may credit plan savings and assess the costs associated with administering these programs to the state agencies of participating employees, it being the intent that state agency payroll savings deriving from the plan be the funding source for administration.

8-26-101. Expenses of judicial officers.

The officials and employees named hereby below shall be reimbursed out of the state treasury for the expenses enumerated and to the extent set forth below:

(1)(A) The justices of the supreme court, judges of the intermediate appellate courts, criminal court judges, circuit court judges and chancellors shall be reimbursed for their necessary office rent, office supply and equipment expenses, and travel expenses pursuant to policies and guide-

lines promulgated by the supreme court;

(B) From the appropriation made in the appropriations act for the operation of such courts, the justices, judges, and chancellors shall be reimbursed for necessary travel expenses incurred by them during their absence from the counties of their residence on official business; provided, however, that such travel expenses shall be limited to board and lodging and mileage or conveyance expense each way necessary to travel on official business. Any justice, judge, or chancellor seeking reimbursement for official expense under this section shall file with the director of the administrative office of the courts, or other official upon whom this duty may be lodged by law, a statement of such amounts necessarily expended in the discharge of such official duties, and upon receipt of this verified statement, a warrant for reimbursement for such expenses shall be issued.

(2)(A) The state is hereby authorized to provide office equipment and supplies to district attorneys general, such equipment to be furnished on the basis of need. All such office equipment shall remain the property of the state of Tennessee and shall be returned to the custody of the executive director of the district attorneys general conference by each district attorney general upon the expiration of the district attorney general's official duties. The purchases made under this section shall be in conformity with rules and regulations to be prescribed by the executive director, the comptroller of the treasury, and the commissioner of finance and administration;

(B) District attorneys general are authorized the necessary expenses in the preparation and prosecution of cases in the name of the state of Tennessee. All expenditures of this section shall be made in accordance with such rules and regulations formulated by the executive director;

(C) Each district attorney general shall prepare an annual budget request, relating to items authorized in subdivisions (2)(A) and (2)(B), to be submitted to the executive director of the district attorneys general conference. The executive director shall review all requests and formulate a budget for all district attorneys general which the executive director shall submit to the commissioner of finance and administration for review and approval;

(D) No approval for any expenditure of state funds authorized in the above subdivisions shall be given in excess of the amount appropriated for such purposes by the general assembly;

(E) The several district attorneys general in all districts containing more than one (1) county shall be reimbursed for the necessary traveling expenses incurred while upon official business, outside the county of their residence, as prescribed under the comprehensive travel regulations for employees of the state of Tennessee. Any subsequent changes in the amounts or types of reimbursable expenses as prescribed under the comprehensive travel regulations then shall apply automatically, and without further action, to the several district attorneys general at such times as changes become effective as to employees of the state of Tennessee;

(F) All expense accounts submitted by any district attorney general shall be submitted upon forms provided and prescribed by the judicial cost accountant. In addition thereto, such expense accounts shall be submitted during the month following the month in which the expense was incurred,

and all such expense accounts must be verified by such district attorney general. If any person fails to comply with this section, the expense account shall be disallowed and the same shall not be paid;

(G) Secretarial help is hereby authorized for district attorneys general. Such secretarial help is to be furnished on the basis of need and is subject to the approval of the executive director, the comptroller of the treasury and the commissioner of finance and administration;

(H)(i) The executive director, in conjunction with the commissioner of human resources, shall determine the salary scales to be applied to secretaries to district attorneys general. Those persons employed under this section shall be paid monthly from state funds;

(ii) Such salary scales may be applied to the secretarial and clerical positions heretofore created by law, notwithstanding the fixing of salaries for such positions by prior legislative enactment. This subdivision (2)(H) shall not in any way affect salaries or compensation paid by any county in the state to secretarial or clerical employees of any district attorney general, nor shall it affect any public or private act creating or establishing such secretarial or clerical positions, except as provided by this subdivision (2)(H);

(I) Upon the determination by a district attorney general that secretarial help is needed in order for the district attorney general to maintain the district attorney general's office effectively, the district attorney general shall submit a request for secretarial help to the executive director;

(J) The executive director, upon receipt of the request for secretarial help, shall review the same and in accordance with subdivisions (2)(G) and (H) shall determine the extent of help needed and fix the salary therefor;

(K) The executive director may prescribe such rules and regulations as in the executive director's judgment are necessary to best administer subdivisions (2)(G)-(J);

(3) Traveling expenses under this section shall be as established for employees of the state of Tennessee, with the amount of reimbursement allowed for each mile necessarily traveled on official business being such established amount for state employees.

8-26-116. Claims for official travel expenses of state employees and members of boards and commissions.

Notwithstanding any law to the contrary, claims for official travel expenses of state employees and members of boards and commissions shall be subject to the uniform travel rules and regulations issued by the commissioner of finance and administration pursuant to § 4-3-1008, except for employees and members of boards and commissions attached to the court system and the general assembly, who shall be subject to travel rules and regulations under the law applying to them and approved by the head of those departments.

8-27-102. Administration of plan.

(a) The state insurance committee has the authority to enter into contracts with insurance companies, claims administrators and other organizations for some or all of the insurance benefits or services, including actuarial and consulting advice, necessary to administer the plans authorized in parts 1, 2

and 7 of this chapter. The procurement of such contracts shall be governed by the provisions of former § 12-4-109 [see the Compiler's Notes], and the rules promulgated thereunder.

(b) The state insurance committee has the authority to promulgate rules and regulations for the purpose of administering the group insurance plan for state officials and employees. Such rules and regulations may include provisions for the handling and resolution of disputes regarding benefits of the insurance plan.

(c)(1) The state insurance committee has the authority to delegate to a subcommittee or to staff the ability to handle and resolve disputes, including appeals, regarding benefits and the application of medical necessity guidelines of the insurance plan.

(2) The subcommittee appointed pursuant to subdivision (c)(1) by the state insurance committee to handle and resolve disputes, including appeals, shall have the authority to grant exceptions to the maximum allowable cost for a covered service if the service is a more cost effective service option than another covered service in the state plan.

8-27-201. Group plans — Premiums — Eligibility — Waiver of late applicant requirements — "State employee" defined.

(a) The committee established in § 8-27-101 shall approve a group insurance plan for state employees which shall consist of:

(1) A basic plan providing life, accident and medical expense insurance as it deems necessary and reasonable;

(2) A portion of the basic term life insurance and the basic accidental death and dismemberment paid for by the employer, as set forth annually in the general appropriations act, for those employees eligible to participate in the coverage established in subdivision (a)(1) but not enrolling in the basic plan;

(3) Such optional plans as may, in the judgment of the committee, be in the best interest of state employees;

(4) At the discretion of the committee, a supplemental disability insurance plan which may be part of the basic plan or an optional plan. Administration of such plan, if implemented, may be contracted to an agency of state government as determined by the committee. Any benefits paid under such plan shall be coordinated with any benefits paid by employer funded programs, including social security, retirement and workers' compensation; provided, that the committee may include in the plan a minimum guaranteed benefit for all claimants;

(5)(A) At the discretion of the committee, a dental insurance plan which may be offered as part of the basic plan or an optional plan; and

(B) Any retired state employee or retired employee of the University of Tennessee and the state university and community college system who meets the criteria to qualify for a continuation of coverage under § 8-27-205, may participate, as a retiree, in the dental plan established pursuant to subdivision (a)(5)(A). The plan of benefits or the monthly premiums, or both, for retirees may be adjusted subject to the approval of the state insurance committee. The insurance committee shall set the monthly amount collected from employee and retiree participants enrolled in the optional dental plan at a level sufficient to recover the initial start-up costs during the first twelve (12) months that retirees are eligible to participate

in the optional dental plan; and

(6) Notwithstanding the provisions of title 56 to the contrary, the state insurance committee is authorized to enter into self-insured contracts with health maintenance organizations established pursuant to title 56, chapter 32. The committee shall permit participation in such health maintenance organizations only in those locations for which the organization has been issued a certificate of authority by the department of commerce and insurance.

(b) From the appropriations made each year in the general appropriations act, the various departments, agencies, boards and commissions of state government shall pay, on behalf of each participating employee within the respective departments, agencies, boards and commissions not less than eighty percent (80%) of the cost of each individual's participation in the basic group insurance plan established pursuant to subdivision (a)(1). The committee may, in its discretion, establish premiums for each component of the basic plan coverage, in which case the payment on behalf of participating employees may vary among the different components of plan coverage so long as the aggregate of all premiums within the basic plan is not less than eighty percent (80%) of the total cost of each individual's participation in the basic group insurance plan. The committee shall not consider the cost of life insurance in excess of fifty thousand dollars ($50,000) in computing the payment to be made on behalf of participating employees. Such optional plans as the committee may adopt pursuant to subdivision (a)(3) shall be fully paid by the participating employees.

(c) It is expressly provided that the group insurance plan authorized in this section shall be the only such approved plan for state employees.

(d) Any employee who leaves the state payroll because of a work-related injury and who qualifies for temporary benefits after application to the board of claims shall be considered an eligible employee for the purpose of participating in the state group insurance plan during such period of temporary disability; provided, that such employee was participating in the state group insurance plan at the time such work-related injury occurred. The various departments, agencies, boards and commissions shall pay all of the cost of the insurance premium for such employees. Nothing in this subsection (d) shall be construed to permit payment by the group insurance plan for medical expenses incurred because of any work-related injury qualifying the employee for benefits from the board of claims.

(e)(1) All late applicant requirements of the state group insurance program, established pursuant to this section, shall be waived in cases where a state employee loses insurance coverage through the state employee's spouse's employer due to the death, divorce or nonvoluntary loss of employment by the spouse. As used in this subsection (e), "state employee" includes eligible dependents of a state employee. To qualify for this waiver, the state employee must show the state insurance committee through submission of reasonable information acceptable to the committee:

(A) That the state employee was covered under the spouse's insurance plan at the time of the spouse's death, divorce or loss of employment;

(B) That the state employee may not continue coverage under that employer's group insurance plan; and

(C) The date of the spouse's death as evidenced by a death certificate; the date of divorce as evidenced by the final divorce decree; or the date of employment termination as evidenced by the spouse's employment termi-

nation notice.

(2) The information required above must be submitted within sixty (60) days of the date of loss of insurance coverage. All other provisions of the state group insurance plan which are applicable to new employees shall apply to state employees for whom the late applicant requirements are waived.

(f) Any retired state employee who is participating in the insurance plan authorized by this section and who is in receipt of a disability retirement allowance pursuant to chapter 36, part 5 of this title, shall not be required to discontinue coverage in the basic medical plan authorized by subdivision (a)(1) upon eligibility for Part A of Medicare and may continue in the plan as a retired employee to the point at which Medicare eligibility would have been attained had the disability not occurred; provided, that such retired employee remains eligible for the disability retirement allowance and that Part B of Medicare is retained. The insurance premium shall be the same as that charged to non-disability retirees who are not yet eligible for Medicare. Any retired state employee who is granted a service retirement under the provisions of chapter 36 of this title, shall also qualify for a continuation of insurance coverage if they meet the conditions set forth in this subsection (f) and the eligibility criteria established by the state insurance committee.

(g)(1) "State employee":

(A) Means:

(i) Any person who is a state official, including members of the general assembly and legislative officials elected by the general assembly;

(ii) Any person who is employed in the service of, and whose compensation is payable by, the state;

(iii) Any person who is employed by the state whose compensation is paid, in whole or in part, from federal or other funds; or

(iv) Any director of the Tennessee regulatory authority; and

(B) Does not include any person performing services on a contractual or percentage basis.

(2) The committee shall, subject to the availability of funds as certified by the commissioner of finance and administration, have the authority to establish additional criteria that must be met by a state employee to be eligible for participation in any insurance plan offered by the committee; provided, that persons currently participating in any plan offered by the committee who are not state employees as defined in this subsection (g) shall remain eligible to participate until such time as coverage is provided by an alternative state administered plan offered by the committee.

(h) The group insurance plan for state employees shall include as eligible employees, each officer and employee of the several departments and agencies of state government who, having been employed by the state for at least twenty-four (24) months, will work one thousand four hundred fifty (1,450) hours or more in a fiscal year whether compensated on hourly, daily, monthly or piecework basis. The various departments, agencies, boards and commissions of state government shall pay, on behalf of each such participating employee within the respective departments, agencies, boards and commissions, the same rate of the cost of such individual's participation in the group insurance plan as is paid for other employees pursuant to subsection (b) while such employee is on active status. Such employee may maintain such insurance coverage during the time the employee is not on active status for a period

not to exceed three (3) months in any one (1) fiscal year, and shall be responsible for paying one hundred percent (100%) of the cost of such insurance during such time.

8-27-207. Health insurance plan for employees of local governments and quasi-governmental organizations — Local government insurance committee.

(a) There is hereby created a local government insurance committee, to be composed of the commissioner of finance and administration, the comptroller of the treasury, the state treasurer, a member to be appointed by the Tennessee Municipal League and a member to be appointed by the Tennessee County Services Association. The commissioner, the comptroller of the treasury and the state treasurer are authorized to designate an alternate representative to attend, participate and vote at meetings of the committee when that respective member is unable to attend. Such designation must be made in writing to the chair of the committee.

(b) The local government insurance committee has the authority, either independently or with the assistance of the state insurance committee and/or the local education insurance committee, to establish a health insurance plan for employees of local governments and quasi-governmental organizations established for the primary purpose of providing services for or on behalf of state and local governments.

(c) Such plan is authorized to be established, contingent upon sufficient participation on the part of eligible organizations to make the plan economically feasible.

(d) The local government insurance committee has the authority to enter into contracts with insurance companies, claims administrators and other organizations for some or all of the insurance benefits or services, including actuarial and consulting advice, necessary to administer the plans authorized in this section. The procurement of such contracts shall be governed by former § 12-4-109 [see the Compiler's Notes], and the rules promulgated thereunder.

(e) Participation by local governments and eligible quasi-governmental organizations shall be voluntary.

(f) The costs of the plan, including plan administration, shall be fully borne by participating local governments and eligible quasi-governmental organizations. The staff for the state group insurance program shall act as staff for the local government insurance plan.

(g) The local government insurance committee shall have the authority to promulgate rules and regulations for the purpose of administering the group insurance plan for employees of local governments and quasi-governmental organizations and the authority to delegate to a subcommittee or to staff the ability to handle and resolve disputes, including appeals, regarding benefits and the application of medical necessity guidelines of the insurance plan.

(h) At the discretion of the local government insurance committee, a dental insurance plan may be offered as part of the basic plan or as an optional plan.

(i) County officials shall be allowed to participate in any plan established by the local government insurance committee even if the county does not participate. The cost of such participation shall be determined by the committee and the official may be required to bear the full cost of such participation.

(j) Notwithstanding the provisions of title 56 to the contrary, the local

government insurance committee is authorized to enter into self-insured contracts with health maintenance organizations established pursuant to title 56, chapter 32. The committee shall permit participation in such health maintenance organizations only in those locations for which the organization has been issued a certificate of authority by the department of commerce and insurance.

(k) For purposes of this section and determining eligibility to participate within a health insurance plan established pursuant to this section, the term "employees of local governments and quasi-governmental organizations established for the primary purpose of providing services for or on behalf of state and local governments" shall include, but is not limited to, utility district commissioners appointed or elected pursuant to § 7-82-307. Nothing contained within this subsection (k) shall be construed to diminish, in any way, the provisions and requirements set forth within subsections (c), (e) and (f).

(*l*)(1) The surviving spouse and eligible dependent children of a participant in the health plan authorized in subsection (b), who maintains family coverage, who is a member of the Tennessee army national guard or the Tennessee air national guard, who has been activated for federal duty or who has been called up on state active duty, and who is subsequently killed in the performance of that duty, may participate in the group health insurance plan authorized in this section.

(2) The surviving spouse's cost and dependent children's cost of the coverage provided in this section shall be equal to twenty percent (20%) of the monthly premium paid by employees for the same coverage. The military department shall pay the balance of the monthly premium.

(3) The criteria for determination of eligibility of dependent children shall be the same as those established by the local government insurance committee for participating employees and their families.

(4) In the event that the surviving spouse becomes eligible for insurance coverage through a subsequent marriage, the extension of coverage authorized in this subsection (*l*) shall be terminated on the first day of the following month. The local government insurance committee may establish specific conditions for extensions in instances where preexisting conditions may apply during such transfer of coverage.

(5) In the event that insurance coverage under the local government plan is terminated for the surviving spouse pursuant to subdivision (*l*)(4), but the surviving spouse is unable to secure, through the new coverage, insurance coverage for the eligible dependent children, such children may continue coverage under this section; provided, that they continue to meet all dependent eligibility requirements.

(6) This subsection (*l*) shall be retroactive to September 11, 2001. As individuals who are qualified for such extension are identified, elect coverage and pay the appropriate contribution, the coverage shall be provided on a prospective basis.

(m)(1) The local government insurance committee shall develop a mechanism to provide an opportunity for eligible local government employees to enroll in a long-term care benefits program with the coverage to be effective January 1, 2012. The committee is authorized to determine the benefits package, funding mechanism, administrative procedures, eligibility provisions and rules relating to the program. Qualified agencies electing to offer access to this coverage for their employees may be required to provide a

payroll deduction capability for the collection of premiums and the Tennessee consolidated retirement system may be required to deduct monthly premiums for members participating in the long-term care plan. The long-term care benefits program established in this subsection (m) may be combined with the program for state employees authorized in § 8-27-210, and/or the program for employees of local education agencies authorized in § 8-27-302, or may be established as a separate program.

(2) The department of finance and administration shall report to the council on pensions and insurance its recommendations concerning this authorization on or before November 1, 2010.

(n)(1) The committee shall provide for the financing of the plan and determine premiums, copayments, benefit levels, and the disposition of government grants and subsidies to assist in the funding and provision of health insurance for enrolled individuals.

(2) Local government agencies enrolled in the plan shall cooperate with the committee in implementing and complying with the determinations of the committee as set forth in subdivision (n)(1). This cooperation includes entering into contracts or memoranda of understanding reflecting the financial determinations of the committee.

(3) The committee is authorized to take either or both of the following actions in response to a local government agency's failure to cooperate with the committee as required by this section:

(A) Assess and collect from the local government agency the costs incurred by the agency's failure to cooperate; and

(B) Terminate the local government agency's participation in the plan.

(4) The termination of the local government agency's participation shall be in effect for two (2) years, and shall be in effect regardless of any language in this chapter to the contrary regarding reinstatement to the plan.

(5) The local government agency shall have the right to request reconsideration of its exclusion before the committee. The committee's decision of the request for reconsideration shall be final.

8-27-301. Local education insurance committee — Staff — Regulations — Delegation of authority.

(a)(1) There is hereby created a local education insurance committee to be composed of the governor, who may designate the commissioner of education to attend in place of the governor as a full voting member, a representative of local school boards to be selected by the Tennessee School Boards Association, the state treasurer, the commissioner of commerce and insurance, the comptroller of the treasury, the commissioner of finance and administration and three (3) teachers elected to represent the three (3) grand divisions under the procedure contained in § 8-34-302.

(2) The state treasurer, the commissioner of commerce and insurance, the comptroller of the treasury and the commissioner of finance and administration are authorized to designate an alternate representative to attend, participate and vote at meetings of the committee when that respective member is unable to attend. The commissioner of education also has the authority to designate an alternate representative if the commissioner of education is designated by the governor, pursuant to this subsection (a), to serve on the local education insurance committee. The designation of an alternate representative must be made in writing to the chair of the

committee.

(b) The local education insurance committee has the authority to enter into contracts with insurance companies, claims administrators and other organizations for some or all of the insurance benefits or services, including actuarial and consulting advice, necessary to administer the plans authorized in this part. The procurement of such contracts shall be governed by the provisions of former § 12-4-109 [see the Compiler's Notes], and the rules promulgated thereunder.

(c) Notwithstanding the provisions of title 56 to the contrary, the local education insurance committee is authorized to enter into self-insured contracts with health maintenance organizations established pursuant to title 56, chapter 32. The committee shall permit participation in such health maintenance organizations only in those locations for which the organization has been issued a certificate of authority by the department of commerce and insurance.

(d) This committee shall act separately from the committee established under § 8-27-101, but the two (2) committees shall coordinate their activities to the maximum extent consistent with protecting the insurance coverage for each group.

(e) The staff for the state group insurance program shall act as staff for the local education group insurance program.

(f) The local education insurance committee has the authority to promulgate rules and regulations for the purpose of administering the group insurance plan for local education employees. Such rules and regulations may include provisions for the handling and resolution of disputes regarding benefits of the insurance plan.

(g) The local education insurance committee has the authority to delegate to a subcommittee or to staff the ability to handle and resolve disputes, including appeals, regarding benefits and the application of medical necessity guidelines of the insurance plan.

8-30-104. Authority of commissioner — Supervisory personnel — Designees.

(a) The commissioner, as executive head of the department of human resources, shall direct and supervise all administrative and technical human resources activities of state service. In addition to other authority and responsibilities imposed upon the commissioner by law, the commissioner shall have the authority to:

(1) Survey the administrative organization and procedures, including personnel procedures, of all state agencies, and submit to the governor measures to do the following among state agencies:

(A) Secure greater efficiency and economy;

(B) Minimize the duplication of activities; and

(C) Effect better organization and procedures;

(2) Prescribe rules and regulations for the administration and execution of this chapter in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(3) Develop personnel policies, methods, procedures, and standards for all state agencies;

(4) Establish and maintain a roster of all employees in state service;

(5) Appoint such departmental employees, experts, and special assistants as may be necessary to carry out this chapter;

(6) Establish, execute and administer a classification and compensation plan for all employees in state service;

(7) Approve or disapprove and record the appointments, transfers, demotions, promotions, suspensions, dismissals, layoffs, reclassifications, reappointments, resignations, sick, annual, compensatory and special leave, and hours of service of employees;

(8) Implement a job performance evaluation system for employees in state service;

(9) Make available education development specialists, who will administer educational and training programs for employees in the state service, including legal compliance, professional skills, talent development and leadership development. The commissioner shall approve any out-service training for state employees;

(10) Require that appointing authorities notify the employee of the right to appeal the employee's dismissal, demotion or suspension, if any such right exists, and the time in which the employee must exercise the employee's right to appeal;

(11) Make available employee relations specialists to:

(A) Offer assistance in employment related problems; and

(B) Help employees understand the procedures that are available for appeals;

(12) Evaluate the need for existing positions and approve new positions in state service and compensation for such positions;

(13) Check all payrolls and other compensation for personal services, and supply the information to the commissioner of finance and administration, before the same may be properly authorized for payment;

(14) Investigate personnel, salary rate and ranges, and employment conditions in state service as may be requested by the governor, and require the attendance of witnesses and production of documentary evidence pertinent to any such investigation;

(15) Process for payroll entry the personnel records of the state special schools; the state board of education shall have the exclusive authority to employ such personnel and determine their compensation;

(16)(A) In consultation with the commissioner of finance and administration, to designate a position or positions of appropriate classification within each executive branch agency of state government as chief fiscal officer or officers for that agency. Qualifications and appointments to fill any such position that, from time to time, may be vacant shall be in accordance with procedures established by the commissioner of human resources, with the approval of the commissioner of finance and administration;

(B) For the purposes of this subdivision (a)(16), "chief fiscal officer" means the position within a state agency that has overall daily responsibility for oversight of the agency fiscal operation;

(17) Implement, administer, and enforce this chapter and rules and policies adopted under this chapter; and

(18) Perform any other lawful acts that the commissioner considers necessary or desirable to carry out this chapter.

(b) All supervisory personnel, during the time such person is employed by

the state to hold such position, shall be physically present in Tennessee while supervising employees working within Tennessee unless business reasons require out-of-state travel. Supervisory personnel shall include any person who oversees, directs or manages the work, work flow, or employees in the performance of their daily duties. Nothing in this subsection (b) shall be construed as prohibiting telework policies issued by the department.

(c) The commissioner and appointing authorities may appoint a designee as they deem necessary to act within the scope of this chapter.

8-30-313. Performance standards and expected outcomes — Job performance evaluations.

(a) In cooperation with appointing authorities, the commissioner shall establish, and may periodically amend:

(1) The standards of performance for employees;

(2) The expected outcomes for employees; and

(3) A system of job performance evaluations based upon the standards described in subdivisions (a)(1) and (2).

(b) Employee performance standards and expected outcomes must be specific, measurable, achievable, relevant to the strategic objective of the employee's state agency or division, and time sensitive.

(c) Each appointing authority shall, at periodic intervals (but at least annually), make, and report to the commissioner, job performance evaluations for the employees in the appointing authority's department or state agency. Upon request by the commissioner, the appointing authority shall provide the information on which the appointing authority relied in evaluating job performance.

(d) The performance evaluations of state service employees shall not be considered public records under § 10-7-503. Nothing in this subsection (d) shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(e) Job performance evaluations may be used as follows:

(1) To determine salary increases and decreases within the limits established by the compensation plan developed under this chapter;

(2) As a factor in making or denying promotions; and

(3) As a means of determining employees:

(A) Who are candidates for promotion or transfer; or

(B) Who, because of a low job performance evaluation, are candidates for demotion, dismissal or reduction in force.

(f) On or before July 1, 2013, the department of human resources shall report to the state and local government committee of the senate and the state government committee of the house of representatives on the job performance evaluation system, and shall provide to those committees a copy of any rules or regulations promulgated with respect to the performance evaluation system.

(g) In the process of establishing the system of job performance evaluations, the department shall afford representatives of recognized employee groups an opportunity to present facts, views or arguments related to the proposed system of job performance evaluations.

8-33-109. Reservists' leave of absence.

All officers and employees of this state, or any department or agency thereof, or of any county, municipality, school district, or other political subdivision,

and all other public employees of this state who are, or may become, members of any reserve component of the armed forces of the United States, including members of the Tennessee army and air national guard, shall be entitled to leave of absence from their respective duties, without loss of time, pay, regular leave or vacation, impairment of efficiency rating, or any other rights or benefits to which otherwise entitled, for all periods of military service during which they are engaged in the performance of duty or training in the service of this state, or of the United States, under competent orders; provided, that an officer or employee while on such leave shall be paid salary or compensation for a period, or periods, not exceeding twenty (20) working days in any one (1) calendar year, plus such additional days as may result from any call to active state duty pursuant to § 58-1-106. The military leave herein provided shall be unaffected by date of employment or length of service and shall have no effect on other leaves provided by law, regulation, policy or practice. After the twenty (20) working days of full compensation, any public employer may provide partial compensation to its employees while under competent orders. After the twenty (20) working days of full compensation, members of any reserve component of the armed forces of the United States, including members of the Tennessee army and air national guard, may use up to five (5) days of sick leave in lieu of annual leave for the purposes of not having to take leave without pay.

8-34-101. Definitions for chapters 34-37.

As used in chapters 34-37 of this title, unless the context otherwise requires:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member, together with any amount transferred to the account of the member established pursuant to chapters 34-37 of this title from the respective account of the member under one (1) or more of the superseded systems, with interest thereon, as provided in § 8-37-307;

(2) "Actuarial equivalent" means a benefit of equal value when computed at regular interest upon the basis of the mortality tables last adopted for such purpose by the board of trustees;

(3) "Attorney general" means the attorney general and reporter and any assistant thereto by whatever name known, any district attorney general and any assistant thereto by whatever name called, and any officer or full-time employee of the general assembly or any committee thereof established by statute, who is duly licensed to practice law in Tennessee, whose duty it is to provide facilities for drafting bills or to assist individual legislators in drafting bills or who renders legal advice and services to the members of the general assembly or committees thereof;

(4)(A) "Average final compensation" means the average annual earnable compensation of a member during the five (5) consecutive years of the member's creditable service affording the highest such average, or during all of the years in the member's creditable service if less than five (5) years;

(B)(i) The annual earnable compensation received after June 30, 1981, for any member covered by the noncontributory provisions of the retirement system on July 1, 1981, or upon the effective date of the noncontributory provisions for any member covered after July 1, 1981, shall be increased by three and six-tenths percent (3.6%) for the purpose

of computing the average final compensation. Such increases in the annual earnable compensation shall be discontinued for earnable compensation received after June 30, 1991. However, such increases in the annual earnable compensation received after June 30, 1991, shall continue for such members until June 30, 1998, unless such members are employees of employers participating in the retirement system pursuant to chapter 35 of this title. The governing body of any such employer may at its discretion authorize and accept the liability for such continued increases by resolution;

(ii) Notwithstanding subdivision (4)(B)(i), effective July 1, 1998, such increases in the annual earnable compensation shall continue indefinitely for any member covered by the noncontributory provisions of the retirement system on July 1, 1981, or upon the effective date of the noncontributory provisions for any member covered after July 1, 1981, unless such members are employees of employers participating in the retirement system pursuant to chapter 35 of this title. The governing body of any such employer may at its discretion authorize and accept the liability for such continued increases by resolution;

(iii) The provisions of this subdivision (4) do not apply to a noncontributory prior class member of the superseded attorneys general retirement system who is a district attorney general, the executive director of the district attorneys general conference or a full-time assistant district attorney general;

(C) Average final compensation shall not include more than five (5) longevity payments to a member pursuant to § 8-23-206;

(5) "Beneficiary" means any person, persons or institution receiving a retirement allowance or other benefit as provided in chapters 34-37 of this title;

(6) "Board of trustees" or "board" means the board provided for in part 3 of this chapter;

(7) "Commissioner" means any person in office as a member of the public service commission, as prescribed by title 65, chapter 1, prior to June 30, 1996;

(8) "County judge" means any person who is, or when such office existed was, a judge of a general sessions court, trial justice court, county chair, county judge, probate judge, or judge of a juvenile and/or domestic relations court, and whose compensation for such judicial service is paid wholly by a county of the state, or any person who is a county attorney who receives regular monthly or quarterly compensation from a county of the state, or any county manager or county administrator who receives regular monthly or quarterly compensation from a county of the state; provided, that no county manager or county administrator shall be eligible for membership if a county judge, chair of the quarterly county court or county mayor from that county is a member;

(9)(A) "County official" means a county clerk, a clerk of a circuit court, a criminal court, or a probate court, a clerk and master of a chancery court, a clerk of a general sessions court where such general sessions court has an independent clerk who serves such court only, a register of deeds, a county trustee, a sheriff, a county road superintendent elected by a county legislative body, by a county road commission or commissioners, or by popular vote, and an assessor of property, any county commissioner

elected by popular vote, serving in a county having a county commission form of government. In the event a consolidation or reorganization of any or all of such courts is provided by constitutional amendments or by act of the general assembly or both, "county official" also means a clerk of any such consolidated or reorganized court;

(B) "County official" also includes any person filling the position of county mayor;

(10)(A) "Covered compensation" means, with respect to any calendar year, the amount of a member's earnable compensation subject to contributions under the provisions of the Federal Insurance Contributions Act, compiled in 26 U.S.C. §§ 3101-3126;

(B) The amount of nontaxable benefits elected in lieu of cash wages under a cafeteria plan, as permitted by § 125 of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 125, shall be included in computing the member's covered compensation. In no event shall the total amount included in covered compensation exceed the maximum social security wage base;

(11) "Creditable service" means prior service plus membership service, as provided in part 6 of this chapter;

(12) "Date of establishment" means the date as of which the retirement system is established as provided in § 8-34-201;

(13) "Disability" or "disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of not less than twelve (12) months. This means that the condition must be both totally and permanently disabling;

(14)(A) "Earnable compensation" means the compensation payable to a member for services rendered to an employer;

(B)(i) "Earnable compensation" includes, but is not limited to, any bonus or incentive payment; provided, that:

(a) Such payment is authorized by legislation passed by the general assembly and that such legislation provides that the payment shall be included as earnable compensation for retirement purposes and is not made for the purpose of increasing a member's retirement benefit or inducing a member to retire; or

(b) Such payment is authorized by resolution legally adopted and approved by the chief governing body of an employer participating in the retirement system pursuant to chapter 35, part 2 of this title and that the resolution provides that the payment shall be included as earnable compensation for retirement purposes and is not made for the purpose of increasing a member's retirement benefit or inducing a member to retire. All employees generally, or all employees in a broad class or broad group of employees must be given the opportunity to qualify for the bonus or incentive payment under similar terms and conditions. If the bonus or incentive payment plan only applies to a class or group of employees, a distinct and reasonable basis must exist for offering the plan to the particular class or group of employees;

(ii) "Earnable compensation" also includes the total amount for which an employee may choose to receive cash or a combination of cash and benefits under a cafeteria plan as permitted by § 125 of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 125. "Earnable compen-

sation" shall also include for any general employee in the executive, legislative, or judicial branch of government any compensation paid under § 3-1-106(f) and any non-cash compensation falling under Internal Revenue Service Regulation Section 1.61-2T(d) as such section exists on July 17, 2002, if such compensation was includable in gross income for federal income tax purposes and was subject to contributions under the provisions of the Federal Insurance Contributions Act, compiled in 26 U.S.C. § 3101 et seq.;

(C) In cases where compensation includes maintenance, the board of trustees shall fix the value of that part of the compensation not paid in money;

(D) Notwithstanding any other law to the contrary, "earnable compensation" does not include compensation paid to a teacher employed in a state-supported institution of higher education for performing extra services for the institution that exceeds twenty-five percent (25%) of the teacher's base compensation. For purposes of this subdivision (14), "extra services" means any duties other than summer school or regular duties;

(E) Notwithstanding anything in this subdivision (14) or in any other law to the contrary, "earnable compensation" does not include compensation that exceeds the maximum dollar limitation imposed by § 401(a)(17) of the Internal Revenue Code, codified in 26 U.S.C. § 401(a)(17). For any person becoming a member of the retirement system before July 1, 1996, the dollar limitation under § 401(a)(17) of the Internal Revenue Code, shall not apply to the extent the amount of compensation which is allowed to be taken into account under the system would be reduced below the amount which was allowed to be taken into account under the system as in effect on July 1, 1993;

(F) In all cases of doubt, the retirement system shall determine whether a certain payment is includable as earnable compensation;

(15) "Education television association" means a nonprofit educational organization which has a contract with the state department of education through its television division to provide education television service;

(16) "Employer" means:

(A) The state or any department, commission, institution, board or agency of the state government by which a member is paid, with respect to members in its employ;

(B) The state, the county board of education, the city board of education, the state board of education, the board of trustees of the University of Tennessee, the board of trustees of other educational institutions and agencies supported by and under the control of the state, or any other agency of and within the state by which a teacher is paid, with respect to teachers in its employ;

(C) Any political subdivision of the state or educational cooperative participating in the retirement system pursuant to chapter 35, part 2 of this title or the Tennessee County Services Association, with respect to members in its employ;

(D) Any county of the state with respect to members in its employ;

(E) Any other association which was a member of one (1) of the superseded systems;

(F) A contractor that manages and operates a mental health institute under this chapter; or

(G) A contractor that manages and operates a blind workshop pursuant to § 71-4-608;

(17) "Firefighter" means a person in the employ of a political subdivision participating under chapter 35, part 2 of this title who is a member of the fire department of such political subdivision, and is trained in firefighting and actively engaged in such work or subject to call for such services, providing such person's primary livelihood is derived from such work;

(18) "General employee" means any person who is a state official, including legislative officials elected by the general assembly, or who is employed in the service of, and whose compensation is payable in whole or in part by, the state, including employees under supervision of the state whose compensation is paid, in whole or in part, from federal or other funds, or any person in the employ of a political subdivision participating under chapter 35, part 2 of this title, or of the Tennessee County Services Association, but does not include any teacher, state police officer, wildlife officer, firefighter, police officer, state judge, county judge, attorney general, governor, or county official or public service commissioner, or any person performing services on a contractual or percentage basis;

(19) "In-service" means a member who has not retired, has not been refunded and is within one hundred fifty (150) days of such member's last paid day of employment. The last paid day of employment for a teacher shall be the last scheduled working day of the normal school year or the last day of employment if prior to the end of the school year;

(20) "Local retirement fund" means any teachers' retirement fund or other arrangement for payment of retirement benefits to teachers, except this retirement system, supported wholly or in part by contributions made by an employer as defined by chapters 34-37 of this title;

(21) "Medical advisors" means the physicians provided for in part 4 of this chapter;

(22) "Member" means any person included in the membership of the retirement system, as provided in chapter 35, part 1 of this title;

(23) "Member annuity" means annual payments for life derived from the accumulated contributions of the member;

(24) "Membership service" means service rendered while a member of the retirement system;

(25) "Minor" has the meaning set forth in § 1-3-105, except when a contrary intention is manifest;

(26) "Part-time employee" means any person employed by the state or a political subdivision who renders less than a full day of service per working day or less than a full week of service per working week. Any employee falling into either of the above categories shall be considered part-time unless the law otherwise provides. "Part-time employee" does not include employees who are students, seasonal or temporary employees under twenty-five (25) years of age, temporary employees in institutions of higher education, or substitute teachers, unless such substitutes are under contract and scheduled to work the same time as a regular teacher. "Part-time employee" includes any interim teacher who is employed on a temporary basis to teach for a regular teacher who is on unpaid leave;

(27) "Physical or mental impairment" means one which is medically determinable. This means that the condition should be one that can be determined by a physician. The physical or mental impairment must be the primary reason for the individual's inability to engage in substantial gainful

activity;

(28) "Police officer" means a person in the employ of a political subdivision participating under chapter 35, part 2 of this title who is a member of the police department of such political subdivision and is trained in police work and actively engaged in such work;

(29) "Prior class member" means a member who, on the day preceding the date of establishment, shall have been a member of a superseded system and who elects to remain covered by the benefit and contribution provisions of the superseded system, or who fails to elect to become covered by the benefit and contribution provisions of the retirement system applicable to new employees, as the case may be, in accordance with the provisions of chapter 35, part 1 of this title;

(30) "Prior service" means service rendered prior to the date of membership in the retirement system for which credit was given under the terms of one (1) or more of the superseded systems as provided in part 6 of this chapter;

(31) "Public school" means any school conducted within the state under the authority and supervision of a duly elected or appointed city or county school board, and any educational institution supported by and under the control of the state;

(32) "Regular interest" means interest at such rate or rates compounded annually as may be set from time to time by the board of trustees in accordance with § 8-34-505;

(33) "Retirement" means withdrawal from membership with a retirement allowance granted under the provisions of chapters 34-37 of this title;

(34)(A) "Retirement allowance" means the sum of the member annuity and the state annuity. All retirement allowances shall be payable in equal monthly installments, which shall cease with the month in which death occurs, unless otherwise specifically provided in this section; provided, that if the retirement allowance is less than ten dollars ($10.00) per month, it shall be paid in a lump sum of equivalent actuarial value. If the entire monthly retirement allowance is ten dollars ($10.00) or more per month but less than seventy-five dollars ($75.00) per month, it shall be paid in a lump sum of equivalent actuarial value unless the recipient thereof files with the retirement division an election to receive the benefit in equal monthly installments pursuant to this subdivision (34). To be effective, the recipient must file the election by no later than sixty (60) calendar days after the recipient's receipt of the lump sum payment and the recipient must return any such payment to the retirement division. Notwithstanding any provision of this subdivision (34) to the contrary, any retirement allowance that equals ten dollars ($10.00) or more per month but less than fifty dollars ($50.00) per month shall be paid in a lump sum of equivalent actuarial value if such allowance is payable on account of a person who became a member of the retirement system on or after July 1, 2001.

(B) Notwithstanding subdivision (34)(A) to the contrary, any retirement allowance that equals ten dollars ($10.00) or more per month but less than seventy-five dollars ($75.00) per month shall be paid in a lump sum of equivalent actuarial value if such allowance is payable on account of a person who became a member of the retirement system on or after July 1, 2013;

(35) "Retirement system" means the Tennessee consolidated retirement system as defined in §§ 8-34-201, 8-34-202;

(36) "Service" means service as a general employee, a teacher, a state police officer, a wildlife officer, a firefighter, a police officer, a state judge, a county judge, an attorney general, a commissioner or a county official which is paid for by an employer, and also includes service for which a former member of the general assembly is entitled to under the provisions of former §§ 3-401 and 3-406; provided, that such member received compensation for such service;

(37) "Service retirement date" means the date on which a member first becomes eligible for a service retirement allowance, or would first become eligible for a service retirement allowance if the member were to remain in service until such date, as provided in §§ 8-36-201 — 8-36-204 or §§ 8-36-301 — 8-36-304;

(38) "Social security integration level" means, with respect to the calendar year in which a member retires, the average annual amount of compensation with respect to which old age and survivors benefits would be provided under Title II of the Federal Social Security Act, compiled in 42 U.S.C. §§ 401-425, for a male employee attaining sixty-five (65) years of age in such calendar year, computed as though for each year prior to such calendar year annual compensation is at least equal to the maximum amount of annual earnings subject to contributions under the provisions of the Federal Insurance Contributions Act, compiled in 26 U.S.C. §§ 3101-3126. Such average annual amount of compensation shall be rounded to the nearest multiple of six hundred dollars ($600);

(39) "State" means the state of Tennessee;

(40) "State annuity" means annual payments for life derived from contributions by an employer;

(41) "State judge" means any person in office as a judge of a court of record in this state, whose salary for the judge's judicial position has been paid during the period of the judge's service wholly from the treasury of the state, including the administrative director of the courts;

(42) "State police officer" means any commissioned member of the department of safety, and any agent of the Tennessee bureau of investigation;

(43) "Student" means any person enrolled in a course of study in a school or in a post-secondary educational institution who as a condition of such enrollment is employed in a full-time position. However, "student" does not include any person who is otherwise eligible for membership in the retirement system in accordance with § 8-35-101(a);

(44)(A) "Substantial gainful activity" means the performance of significant duties over a reasonable period of time of work for remuneration or profit or in work of a type generally performed for remuneration or profit. Work which results in earnings considered by the law or regulations governing the social security administration to be substantial for disability recipients from that system shall be considered to be substantial gainful employment in this system; and

(B) "Significant duties" means that the duties are useful in the accomplishment of a job or the operation of a business but also that they have a degree of economic value;

(45) "Superseded system" means, where applicable, the Tennessee state retirement system, the Tennessee teachers' retirement system, the Tennes-

see judges' retirement system, the retirement system for county paid judges of Tennessee, the attorneys general retirement system of Tennessee, the public service commissioners' retirement system, and the Tennessee retirement system for county officials, any one (1) of them, or any combination thereof;

(46) "Teacher" means:

(A) Any person employed in a public school as a teacher, helping teacher, librarian, principal or supervisor, and includes any superintendent of public schools, or administrative officer of a department of education, or of any educational institution supported in whole or in part by and under the control of the state; or

(B) Any person employed in a public school as a teacher, librarian, principal, superintendent or chief administrative officer of a public school system, a supervisor of teachers, or any other position whereby the state requires the employee to be certificated as a teacher, or licensed as a nurse or physical therapist, in the public schools or of any educational institution supported in whole or in part by and under the control of the state. "Teacher" also includes any person employed in a public school as a reserve officer training corps (ROTC) instructor. This definition shall be in effect from and after July 1, 1986, and shall be applied to all persons seeking membership in the retirement plan as a teacher from this date forward. It is further provided that any teacher who has taught in the public schools for a period of at least one (1) year who transfers to a position within the Tennessee public school system that does not require a teacher's certificate shall continue participation in the retirement plan as a teacher;

(47) "Temporary employment" means any general employee can be considered as a temporary employee for a period not to exceed six (6) months before becoming eligible for membership in the retirement system, except as provided in § 8-35-107(b);

(48) "Transferred Class A member" means a member who on the day preceding the date of establishment shall have been a Class A member of the Tennessee teachers' retirement system or the Tennessee state retirement system and who is not a prior class member;

(49) "Transferred Class B member" means a member who on the day preceding the date of establishment shall have been a Class B member of the Tennessee teachers' retirement system or the Tennessee state retirement system and who is not a prior class member; and

(50) "Wildlife officer" means any commissioned employee of the wildlife resources agency engaged in law enforcement activities on a day-to-day basis.

8-35-201. Political subdivisions of state.

(a) The chief legislative body of any political subdivision of the state, not participating under §§ 8-35-212 — 8-35-214, may, by resolution legally adopted and approved by the chief legislative body, authorize all its employees in all of its departments or instrumentalities to become eligible to participate in the retirement system under the same terms and conditions, except as provided in subsection (e); provided that:

(1) Such participation shall be subject to the approval of the board of trustees and in conformity with such rules and regulations as may be

prescribed by the board;

(2) Any political subdivision maintaining a pre-existing public employee retirement system shall transfer to the retirement system any excess employer assets remaining in such pre-existing system after allocating the funds necessary to provide any unimpaired rights and benefits existing under such pre-existing system;

(3) The entire employer contribution for such public employees shall be provided and paid by the political subdivision and not by the state;

(4) Such employees will not have a voice in the election of the board of trustees except as provided for in § 8-34-302; and

(5) After such election and approval to become members of the retirement system, such body shall thereafter, for the purposes of chapters 34-37 of this title, be an employer.

(b) Acceptance of the employees of such political subdivision for membership in the retirement system shall be optional with the board of trustees, and if it shall approve their participation, then such employees may become members of the retirement system and participate therein as provided in chapters 34-37 of this title.

(c) Except as provided in subsection (e), the chief legislative body of any political subdivision in which one (1) or more of its departments or instrumentalities is participating in the retirement system shall be required to extend retirement coverage to all nonparticipating departments, if additional retirement coverage is sought and the remaining uncovered departments shall participate under the same terms and conditions.

(d) Notwithstanding anything to the contrary in this part, any governing body of any joint venture between one (1) or more political subdivisions of the state may by resolution authorize the employees of such joint venture to become members of the Tennessee consolidated retirement system under all the applicable provisions of this part; provided, that each political subdivision of the state which is represented in the joint venture shall by resolution prescribed by the board of trustees guarantee the payment of its prorated share of any outstanding liability so incurred by this action.

(e) Notwithstanding any other provision of the law to the contrary, a political subdivision may participate in the retirement system without extending retirement coverage to its hospitals, nursing homes, transit authorities, utilities, or other instrumentalities which operate under the direction of their own governing board and which are not subject to the general control and administration of the chief legislative body of the political subdivision. If retirement coverage is extended to such instrumentalities, the instrumentalities shall participate under the same terms and conditions as other departments and instrumentalities of the political subdivision.

(f) A local board of education may elect to participate in the retirement system separately from the political subdivision with which it is associated. If a local board of education elects to participate in the retirement system separately, the local board of education shall designate, by resolution, which city or the county shall accept financial responsibility for the liabilities associated with participation. The city or county that accepts the financial responsibility for the local board of education's participation in the retirement system, through its chief legislative body, governing body or authorizing body shall, by resolution, authorize and approve the local board of education's participation and shall demonstrate the city or county's acceptance of the

liability associated with that participation. A political subdivision may elect to participate in the retirement system without extending coverage to the employees of the local board of education that is associated with the participating political subdivision. In the event that a political subdivision withdraws its participation from the retirement system, the political subdivision may allow the local board of education, which is a part of the political subdivision, to continue its participation in the retirement system separately.

(g) All political subdivisions that participate in or desire to participate in the retirement system shall have a governing body and shall meet all applicable state and federal law requirements that are necessary for the retirement system to maintain its status as a qualified plan under the Internal Revenue Code.

8-35-218. Withdrawal by political subdivision.

(a) Upon giving at least one (1) year's advance notice in writing to the board of trustees, a political subdivision may terminate, effective July 1 following the end of the notice period, its participation in the retirement system, under the following terms and conditions:

(1) The political subdivision shall submit a resolution to withdraw from the retirement system, legally adopted by two thirds (⅔) of the membership of the chief legislative body of the political subdivision;

(2) The withdrawal shall apply to all departments of the political subdivision;

(3) Such resolution to withdraw may be rescinded and withdrawn by a resolution legally adopted and approved by the chief legislative body of the political subdivision at any time prior to the expiration of the one-year notice period;

(4) Employees who are members of the retirement system on the date such withdrawal resolution becomes effective shall continue membership in the retirement system until termination of employment, with the employer being liable for contributions and benefits as contained herein;

(5) An employee who is not yet a member but is serving a probationary period pursuant to § 8-35-107 on the date the withdrawal becomes effective shall have such probationary period waived and shall have thirty (30) days to elect to participate in the retirement system with the employer being liable for contributions as herein provided;

(6) Employees who are hired after the effective date of the resolution shall not be permitted to participate in the retirement system;

(7) Any employee who continues participation in the Tennessee consolidated retirement system shall not be eligible to participate in any other retirement system provided by the employer;

(8) Any employee who, upon termination of employment with such employer, withdraws service rendered to that employer shall not later be permitted to establish that service with the retirement system, unless the employer rejoins the retirement system pursuant to subdivision (a)(14). The establishment of such service shall be subject to the provisions of § 8-37-214;

(9) An employee of the withdrawing political subdivision shall not be permitted to retire, begin receiving a benefit, and continue working with the same employer;

(10) All members participating under this section, including retired former employees, shall be entitled to benefits according to the plan as it

exists for such employer on the date of withdrawal;

(11) An actuarial valuation shall be completed by the system's actuary when an employer voluntarily withdraws from the retirement system pursuant to this section. The actuarial valuation shall determine the appropriate employer contributions to be made to the plan based on a level dollar contribution so as to amortize the unfunded accrued liability over a period of time established by the board of trustees, such period not to exceed a thirty-year period. The board of trustees may, at its discretion, reestablish the amortization period at any time provided such re-established period does not exceed thirty (30) years. The level dollar contribution amount shall be remitted monthly to the retirement system. Pursuant to § 8-34-506, the biennial valuation shall continue to be performed;

(12) Employer contributions may be adjusted as frequently as monthly should such additional contributions be needed to fund the benefits of members and beneficiaries covered under this section;

(13) Any liabilities resulting from this section shall be a liability of the employer and not the state. Should any required employer costs become delinquent, the commissioner of finance and administration, at the direction of the board of trustees of the retirement system, is authorized to withhold such amount or part of such amount from any state-shared taxes which are otherwise apportioned to such employer, and any amounts so withheld shall come last from the state shared gasoline tax designated in title 54, chapter 4;

(14) An employer may elect at a later date to rejoin the retirement system in accordance with § 8-35-201; provided, that any such resolution to rejoin shall be irrevocable and the employer shall not later be permitted to withdraw under the provisions of this section. The governing body of any such employer that rejoins the retirement system may pass a resolution to permit its employees to claim service credit for service rendered during the period from the date the employer withdrew from the retirement system through the date the employer rejoined the retirement system, if the employer authorizes the credit and assumes the employer liability for such prior service. Upon the authorization and assumption of the employer liability, any employee who meets the requirements of § 8-35-203(a)(2)(A) and (B) shall be entitled to receive credit for such service by making a lump sum payment of the contributions such employee would have made had such employee been a contributory member during the period claimed, plus interest at the rate provided for in § 8-37-214. The employer shall not have the option of paying the employee contributions required under this subdivision (a)(14); and

(15) A political subdivision that withdraws its participation from the retirement system and elects to participate in the state's deferred compensation plan pursuant to § 8-25-111, shall not be subject to the one-year advance notice requirement in this section; instead, the political subdivision shall give the board of trustees at least six (6) months advance written notice of the effective date of the withdrawal. The political subdivision shall submit a withdrawal resolution, legally adopted by two-thirds (⅔) of the membership of the chief legislative body of the political subdivision, at least six (6) months in advance of the political subdivision's effective date of the withdrawal, which shall be submitted on the first day of any quarter following the six-month minimum notice requirement. Such resolution to withdraw

may be rescinded and withdrawn by a resolution legally adopted and approved by the chief legislative body of the political subdivision at any time prior to the expiration of the six-month notice period.

(b) Upon giving at least one (1) year's advance notice in writing to the board of trustees, a hospital, nursing home, transit authority, utility, or other instrumentality that operates under the direction of its own governing board and that is not subject to the general control and administration of the chief legislative body of the political subdivision may terminate, effective July 1 following the end of the notice period, its participation in the retirement system. To terminate such participation, the following terms and conditions must be met:

(1) The governing body of the instrumentality and the chief legislative body of the political subdivision shall each submit a resolution approving the withdrawal of the instrumentality from the retirement system. Both resolutions must be adopted by two thirds (⅔) of the membership of the chief legislative body of the political subdivision and of the governing body of the instrumentality;

(2) Either the instrumentality or the political subdivision may, by resolution legally adopted and approved by the respective governing body, rescind the resolution approving the withdrawal at any time prior to the expiration of the one-year notice period;

(3) Upon the effective date of any such withdrawal resolution, the current and future employees of the instrumentality shall be subject to the provisions of subdivisions (a)(4)-(9);

(4) All employees of the instrumentality that continue membership in the retirement system pursuant to subdivisions (a)(4) or (a)(5), including retired former employees, shall be entitled to benefits according to the plan as it exists for such instrumentality on the date of withdrawal, with the political subdivision being liable for contributions and benefits as provided in subdivisions (a)(11)-(13); and

(5) The political subdivision may elect at a later date to have the instrumentality rejoin the retirement system in accordance with § 8-35-201; provided, that any such resolution to rejoin shall be irrevocable and the instrumentality shall not later be permitted to withdraw under the provisions of this subsection (b). The employees of any such instrumentality that rejoins the retirement system may, pursuant to the terms and conditions described in subdivision (a)(14), establish service credit for service rendered during the period from the date the instrumentality withdrew from the retirement system through the date the instrumentality rejoined the retirement system.

8-35-226. Elected city, special school district, or county governmental personnel.

(a) Appointed or elected school board members of special school districts, and of city or county boards, commissions, committees, councils and the like, by whatever name known, who are elected by popular vote and whose duties are performed intermittently or periodically for the purposes of fixing rates, issuing permits or licenses, regulating trades or professions, or who serve in an advisory, study or planning capacity and the like, shall be eligible for membership in the Tennessee consolidated retirement system at the option of the chief legislative body of the city, special school district or county, upon

satisfying the provisions of the following subdivisions:

(1) The chief legislative body of the city, special school district or county shall pass a resolution authorizing an actuarial study to determine the liability associated with such membership and prior service, and accepting responsibility for the costs of such study;

(2) Following receipt of the actuarial study, the city, special school district or county shall adopt a resolution approved by a two-thirds (⅔) majority of the chief legislative body authorizing membership and prior service for such employees and accepting the liability therefor;

(3) An employee establishing such prior service must make a lump sum payment equal to the employee contributions such employee would have made had such employee been a member of the system during the period claimed, plus interest at the rate provided in § 8-37-214; and

(4) Membership in the retirement system pursuant to this section shall be permitted only if the chief legislative body that has authorized retirement participation for its departments or instrumentalities extends such coverage to all nonparticipating departments and instrumentalities. If such option is elected, the remaining departments and instrumentalities shall participate under the conditions of § 8-35-201.

(b)(1) Upon becoming a vested member of the Tennessee consolidated retirement system, any employee of a city who was formerly an elected official of the city where such employee is so employed shall be eligible to establish retirement credit for such time such employee served as an elected official of the city if the following conditions are met:

(A) The city has by a two-thirds (⅔) majority of its legislative body approved a resolution as provided in subsection (a);

(B) Such person was an employee of the city on the date such resolution was enacted;

(C) The city at its option approves by a two-thirds (⅔) majority of its legislative body a resolution authorizing an actuarial study to determine the liability associated with such prior service, and in such resolution the city accepts responsibility for the costs of such study; and

(D) Following receipt of the actuarial study, the city adopts a resolution approved by a two-thirds (⅔) majority of the legislative body authorizing prior service for such employee and accepts the liability for such service.

(2) Any employee establishing such prior service must make a lump sum payment equal to the employee contributions such employee would have made had such employee been a member of the retirement system during the period claimed, plus interest at the rate provided in § 8-37-214.

(3) The retirement system shall not be liable for the payment of retirement allowances or other benefits on account of such employee or such employee's beneficiaries for which reserves have not been previously created from funds contributed by the city and/or by or on behalf of such employee.

(4) It is the legislative intent that the state shall realize no increased cost as a result of this section. All costs associated with retirement coverage, including administrative costs, shall be the responsibility of the city legislative body.

(c) Retirement benefits payable on service established pursuant to this section shall be computed in accordance with the provisions of chapter 36 of this title. In no event shall the benefit payable on such service be less than that provided under § 8-36-209(a)(1)(A), (a)(1)(B), (a)(2)(A)(i) or (a)(2)(A)(ii), depending upon which option is exercised by the chief legislative body. Such

benefit is subject to the limitations of § 8-36-102.

(d) Service pursuant to this section shall be independent of all other creditable service for the purpose of calculating the member's average final compensation.

(e) For the purposes of determining the limitations on the amount of the retirement allowance as provided in § 8-36-102, the average final compensation for service granted pursuant to this section shall be independent of the average final compensation calculation on any other creditable service in the retirement system.

8-35-227. [Repealed.]

8-35-229. [Repealed.]

8-35-233. [Repealed.]

8-35-253. Additional plan options for political subdivisions to participate in the retirement system.

(a) For purposes of §§ 8-35-253 — 8-35-256, "political subdivision" means any entity authorized to participate in the retirement system pursuant to this part.

(b) Sections 8-35-253 — 8-35-256 are not applicable to:

(1) State officials, including legislative officials elected by the general assembly, or who are employed in the service of, and whose compensation is payable in whole or in part by, the state, including employees under supervision of the state whose compensation is paid, in whole or in part, from federal or other funds;

(2) Employees of state-supported institutions of higher education; or

(3) Teachers as defined by § 8-34-101.

(c) Sections 8-35-253 — 8-35-256 are applicable only to those employees that political subdivisions hire on or after July 1, 2012.

(d) It is the intent of the general assembly that there shall be multiple options for political subdivisions of the state to participate in the retirement system. It is further the intent of the general assembly that any political subdivision already participating in the retirement system on July 1, 2012, may continue to do so without making any changes to its existing plan. Accordingly, the following additional plans are established and available for adoption by political subdivisions of the state on or after July 1, 2012, in accordance with § 8-35-201.

(e) With respect to any of the plans adopted by a political subdivision on or after July 1, 2012, the following provisions are applicable:

(1) A political subdivision may for employees hired on or after July 1, 2012, freeze, suspend or modify benefits, employee contributions, plan terms and design prospectively; provided, that these actions are authorized by an enactment of the general assembly;

(2) Nothing under state law may confer to employees of a political subdivision who are hired on or after July 1, 2012, or after the date the political subdivision authorizes its employees to participate in the retirement system in accordance with this part, whichever is later, an implied right to future retirement benefit arrangements. For such employees, a

political subdivision may adjust retirement benefit formulas, cost of living adjustments, if allowable, contribution rates, and retirement eligibility ages in accordance with this section, unless prohibited by federal law;

(3) Employees hired on or after July 1, 2012, or after the date the political subdivision authorizes its employees to participate in the retirement system in accordance with this part, whichever occurs later, may not assert the indefinite continuation of the retirement formulas, contribution rates and eligibility ages in effect at the time of employment;

(4) For all employees hired on or after July 1, 2012, or after the date the political subdivision authorizes its employees to participate in the retirement system in accordance with this part, whichever occurs later, the actuarial value of accrued benefits earned prior to any adjustment pursuant to subdivision (e)(2) above shall remain an enforceable right and may not be reduced without written consent of the employee unless the employee is subject to the forfeiture of the employee's retirement benefits in accordance with § 8-35-124;

(5) Benefits accrued under any of the plans adopted pursuant to §§ 8-35-253 — 8-35-256 shall be in accordance with 26 U.S.C. § 411.

(f) Any political subdivision participating in any of the plans available to it shall be subject to the withdrawal provisions of § 8-35-211 and § 8-35-218. Notwithstanding any other law to the contrary, a political subdivision, by resolution legally adopted and approved by a majority of the membership of the chief governing body of the political subdivision, may change the plan in which it participates, prospectively for employees hired on or after July 1, 2012. Any such resolution shall set forth the effective date of the change; provided, that the date shall be on the first day of any quarter following a minimum of six (6) months' notice to the retirement system.

(g) A political subdivision may change its plan and cost of living election, if allowable by the respective plan, no more frequently than once every two (2) years, but only for those employees hired on or after July 1, 2012, or after the date the political subdivision authorizes its employees to participate in the retirement system in accordance with this part, whichever is later.

(h) Notwithstanding any provision of §§ 8-35-253 — 8-35-256 to the contrary and on or after July 1, 2012, a political subdivision may change its employee contribution rate within a plan as it applies to employees hired on or after July 1, 2012. A political subdivision may change its employee contribution rate no more frequently than once a year, or at such other intervals as the board may determine by rule.

(i) A political subdivision that provided notice of withdrawal pursuant to § 8-35-218 but whose effective withdrawal date is July 1, 2012, is not subject to the above-referenced six (6) months' notice requirement in order to change plans; provided, that the resolution to select an alternate plan is adopted prior to July 1, 2012.

8-35-255. Establishment of alternative defined benefit plan.

(a) There is established an alternate defined benefit plan that shall offer a service retirement allowance of one and four-tenths percent (1.4%) of the member's average final compensation, multiplied by the number of years of creditable service.

(b) A political subdivision may, by resolution legally adopted and approved

by the chief governing body and in accordance with the procedure set out in § 8-35-201, authorize its employees in all of its departments or instrumentalities to become eligible to participate in the alternate defined benefit plan.

(c) Except as otherwise provided in this subsection (c), any member in the alternate defined benefit plan shall be eligible for service retirement upon attainment of sixty-five (65) years of age and upon completion of five (5) years of creditable service, or upon attainment of a combination of age and years of creditable service as to equal ninety (90). Any member serving in a position covered by the mandatory retirement provisions of § 8-36-205 shall be eligible for service retirement upon attainment of sixty (60) years of age and upon completion of five (5) years of creditable service, or at any age upon completion of thirty (30) years of creditable service. Further, any member who has creditable service in a position covered by the mandatory retirement provisions of § 8-36-205 and who is entitled to the supplemental bridge benefit established pursuant to § 8-36-211 shall be eligible for service retirement upon attainment of fifty-five (55) years of age and upon completion of twenty-five (25) years of creditable service; provided, that the service rendered while the member was in a position covered by the mandatory retirement provisions shall be independent of all other creditable service for the purpose of calculating the member's retirement benefits under subsection (a). Section 8-36-211(b)(2) shall not apply in calculating the supplemental bridge benefit for members covered by the mandatory retirement provisions of § 8-36-205(a)(2) who retire on an early service retirement allowance pursuant to this subsection (c). Instead, the supplemental bridge benefit shall be equal to three-fourths of one percent (0.75%) of the member's average final compensation, multiplied by the member's years of creditable service when the member was in a position covered by the mandatory retirement provisions of § 8-36-205(a)(2), but reduced by an actuarially determined factor as set by the board from time to time.

(d) Except as otherwise provided in this subsection (d), any member in the alternate defined benefit plan shall be eligible for early service retirement upon attainment of sixty (60) years of age with five (5) years of creditable service, or upon attainment of a combination of age and years of creditable service as to equal eighty (80). Any member serving in a position covered by the mandatory retirement provisions of § 8-36-205 shall be eligible for early service retirement upon attainment of fifty-five (55) years of age and upon completion of five (5) years of creditable service. The early service retirement allowance calculated under this subsection (d) shall be computed as a service retirement allowance in accordance with subsection (a) but reduced by an actuarially determined factor as set by the board from time to time.

(e) Any member may apply for a disability retirement benefit pursuant to the provisions and criteria set forth in chapter 36, part 5 of this title. All provisions of chapter 36, part 5 of this title shall be applicable, except that the disability retirement allowance shall be equal to nine-tenths ($^{9}/_{10}$) of a service retirement allowance as computed in subsection (a) and as may be further reduced in accordance with chapter 36, part 5 of this title.

(f) Any reference in chapters 34-37 of this title to the eligibility requirements for an early or service retirement allowance shall for purposes of this section mean the eligibility requirements set forth in subsections (c) and (d). Any reference in chapters 34-37 of this title to the formula for computing an early or service retirement allowance, or for computing a disability retirement allowance, shall for purposes of this section mean the applicable formula as set

out in subsections (a), (d) or (e).

(g) Sections 8-36-109(b)(1)(C) and 8-36-123(a)(2) shall not apply in determining the retirement allowance payable under § 8-36-109(b) or under § 8-36-123(a) to a deceased member's surviving spouse, if any. Instead, the retirement allowance payable under such sections shall be reduced by an actuarially determined factor as set by the board from time to time.

(h) In no event shall any member in this alternate defined benefit plan receive a base annual pension benefit of more than eighty thousand dollars ($80,000) beginning July 1, 2012. Each July 1 thereafter, this amount shall be increased or decreased in accordance with the consumer price index as defined in § 8-36-701(c), and the amount of increase or decrease shall be based on the prior calendar year. The member's annual pension benefit shall be limited to the base benefit in effect at the time of the member's retirement. This provision does not preclude any cost of living adjustments authorized pursuant to § 8-36-701(b)(1).

(i) A political subdivision electing to participate in the retirement system pursuant to this section shall participate in the provisions of the plan as they exist for state employees on the date of participation, except that §§ 8-36-124 and 8-36-209 shall not apply and shall not be optional. Notwithstanding the foregoing, the following provisions shall remain optional to the political subdivision:

(1) Employee contributions as provided in this section;

(2) Part-time, seasonal, or temporary employee service credit in accordance with § 8-34-621;

(3) Mandatory retirement in accordance with § 8-36-205;

(4) Cost of living increase allowance in accordance with § 8-36-701.

(j) Any member who desires to establish service credit pursuant to chapters 34-37 of this title shall pay employee contributions equal to the amount the member would have paid had such member been a member of the system during the period claimed, plus interest at the rate provided in § 8-37-214. Any such service shall be credited to the plan in existence at the time the service is established, provided such plan is with the political subdivision for which the service was rendered.

8-35-256. Establishment of hybrid plan which consists of defined benefit plan with a defined contribution plan.

(a)(1) There is established a hybrid plan which consists of a defined benefit plan with a defined contribution plan. The defined benefit plan shall offer a service retirement allowance of one percent (1.0%) of the member's average final compensation, multiplied by the number of years of creditable service. The defined contribution plan shall be a plan that conforms to all applicable laws, rules and regulations of the internal revenue service governing such plans, may be any plan selected by the political subdivision, and may be acquired from any source. Notwithstanding any law to the contrary, a political subdivision electing to participate in the hybrid plan authorized in this section shall provide a cost of living increase allowance pursuant to § 8-36-701(b).

(2) Notwithstanding § 8-35-111 or any other law to the contrary, a political subdivision that adopts the hybrid plan authorized in this section may make employer contributions to the defined contribution plan compo-

nent of the hybrid plan and to any one or more additional tax deferred compensation or retirement plans; provided, that the total combined employer contributions to such defined contribution plans on behalf of an employee shall not exceed seven percent (7%) of the employee's salary.

(3) Notwithstanding this or any other law to the contrary, the amount of any employer matching shall not exceed the maximum allowed under the Internal Revenue Code, compiled in 26 U.S.C. § 1, et seq., and shall conform to all applicable laws, rules and regulations of the internal revenue service.

(b) A political subdivision may, by resolution legally adopted and approved by the chief governing body and in accordance with the procedure set out in § 8-35-201, authorize its employees in all of its departments or instrumentalities to become eligible to participate in the hybrid plan.

(c) Except as otherwise provided in this subsection (c), any member in the hybrid plan shall be eligible for service retirement upon attainment of sixty-five (65) years of age and upon completion of five (5) years of creditable service, or upon attainment of a combination of age and years of creditable service as to equal ninety (90). Any member serving in a position covered by the mandatory retirement provisions of § 8-36-205 shall be eligible for service retirement upon attainment of sixty (60) years of age and upon completion of five (5) years of creditable service, or at any age upon completion of thirty (30) years of creditable service. Further, any member who has creditable service in a position covered by the mandatory retirement provisions of § 8-36-205 and who is entitled to the supplemental bridge benefit established pursuant to § 8-36-211 shall be eligible for service retirement upon attainment of fifty-five (55) years of age and upon completion of twenty-five (25) years of creditable service; provided, that the service rendered while the member was in a position covered by the mandatory retirement provisions shall be independent of all other creditable service for the purpose of calculating the member's retirement benefits under subsection (a). Section 8-36-211(b)(2) shall not apply in calculating the supplemental bridge benefit for members covered by the mandatory retirement provisions of § 8-36-205(a)(2) who retire on an early service retirement allowance pursuant to this subsection (c). Instead, the supplemental bridge benefit shall be equal to three-fourths of one percent (0.75%) of the member's average final compensation, multiplied by the member's years of creditable service when the member was in a position covered by the mandatory retirement provisions of § 8-36-205(a)(2), but reduced by an actuarially determined factor as set by the board from time to time.

(d) Except as otherwise provided in this subsection (d), any member in the hybrid plan shall be eligible for early service retirement upon attainment of sixty (60) years of age with five (5) years of creditable service, or upon attainment of a combination of age and years of creditable service as to equal eighty (80). Any member serving in a position covered by the mandatory retirement provisions of § 8-36-205 shall be eligible for early service retirement upon attainment of fifty-five (55) years of age and upon completion of five (5) years of creditable service. The early service retirement allowance calculated under this subsection (d) shall be computed as a service retirement allowance in accordance with subsection (a) but reduced by an actuarially determined factor as set by the board from time to time.

(e) Any member may apply for a disability retirement benefit pursuant to the provisions and criteria set forth in chapter 36, part 5 of this title. All provisions of chapter 36, part 5 of this title shall be applicable, except that the

disability retirement allowance shall be equal to nine-tenths ($^{9}/_{10}$) of a service retirement allowance as computed in subsection (a) and as may be further reduced in accordance with chapter 36, part 5 of this title.

(f) Any reference in chapters 34-37 of this title to the eligibility requirements for an early or service retirement allowance shall for purposes of this section mean the eligibility requirements set forth in subsections (c) and (d). Any reference in chapters 34-37 of this title to the formula for computing an early or service retirement allowance, or for computing a disability retirement allowance, shall for purposes of this section mean the applicable formula as set out in subsections (a), (d) or (e).

(g) Sections 8-36-109(b)(1)(C) and 8-36-123(a)(2) shall not apply in determining the retirement allowance payable under § 8-36-109(b) or under § 8-36-123(a) to a deceased member's surviving spouse, if any. Instead, the retirement allowance payable under such sections shall be reduced by an actuarially determined factor as set by the board from time to time.

(h) In no event shall any member in this hybrid plan receive a base annual pension benefit of more than eighty thousand dollars ($80,000) beginning July 1, 2012. Each July 1 thereafter, this amount shall be increased or decreased in accordance with the consumer price index as defined in § 8-36-701(c), and the amount of increase or decrease shall be based on the prior calendar year. The member's annual pension benefit shall be limited to the base benefit in effect at the time of the member's retirement, but shall be subject to increase in accordance with the cost of living provisions of § 8-36-701(b)(1).

(i) A political subdivision electing to participate in the retirement system pursuant to this section shall participate in the provisions of the plan as they exist for state employees on the date of participation, except that §§ 8-36-124 and 8-36-209 shall not apply and shall not be optional. Notwithstanding the foregoing, the following provisions shall remain optional to the political subdivision:

(1) Employee contributions as provided in this section;

(2) Part-time, seasonal, or temporary employee service credit in accordance with § 8-34-621;

(3) Mandatory retirement in accordance with § 8-36-205.

(j) Any member who desires to establish service credit pursuant to chapters 34-37 of this title shall pay employee contributions equal to the amount the member would have paid had such member been a member of the system during the period claimed, plus interest at the rate provided in § 8-37-214. Any such service shall be credited to the plan in existence at the time the service is established, provided such plan is with the political subdivision for which the service was rendered.

8-35-319. Entity ineligible to participate in retirement system if participation would adversely affect system's status as a qualified plan.

Notwithstanding any provision of this chapter to the contrary, no entity shall be eligible to participate in the retirement system if the chair of the Tennessee consolidated retirement system determines, in the chair's sole discretion, that the entity's participation could have a potentially adverse effect on the retirement system's status as a qualified plan under the Internal Revenue Code, codified in U.S.C. title 26, and regulations. In making such determina-

tion, the chair may rely on the advice of a nationally recognized counsel in the area of government employee benefit plans.

8-36-101. [Transferred.]

8-36-116. Legislative intent to collect overpayments — Exceptions.

It is hereby expressly declared that the intent of the general assembly is to collect amounts that have been overpaid in error to members or beneficiaries, except that:

(1) Repayment may be waived at the discretion of the board of trustees where overpayments in retirement benefits have been made through an error committed by the retirement division if it is determined that the member or beneficiary:

(A) Was without fault or knowledge;

(B) Did not participate or induce the additional payment; and

(C) There was no way under the circumstance that the member or beneficiary knew or could have known that an overpayment had been made;

(2) It is further provided that waivers shall only be granted in cases where it can be shown to the board's satisfaction that repayment would deprive the person of income required for ordinary and necessary living expenses;

(3) The board's authority to grant a waiver shall be based upon a recommendation by a preliminary review committee composed of one (1) representative from each of the following state agencies or departments:

(A) Treasury department;

(B) Office of the comptroller of the treasury; and

(C) The department of finance and administration;

(4) Waivers, where granted, shall only be valid during the lifetime of the member or beneficiary and shall not defeat the right of the state to proceed against the estate upon death; nor shall the granting of a waiver prohibit the retirement system from requiring security to assure repayment upon death;

(5) Notwithstanding anything contained herein to the contrary, overpayments of one hundred dollars ($100) or less where the error was committed by the retirement division and without fault, knowledge, or participation on the part of the person overpaid shall be reviewed by the herein designated committee and repayment may be waived; and

(6) In the event that a retired member receives an overpayment in retirement benefits from the retirement system and that member returns to service, the retirement system may initiate an automatic payroll deduction to recoup the overpaid amount. The employer shall comply with the retirement system's request for an automatic payroll deduction.

8-36-128. Honoring claims under a qualified domestic relations order.

(a) The retirement system shall honor claims under a qualified domestic relations order at a time designated by the state treasurer.

(b) For purposes of this section, "qualified domestic relations order" has the same meaning as provided in § 414(p) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 414(p); provided, that such order may only relate to the provision of marital property rights relating to the retirement system for the benefit of the retirement system member's former spouse.

8-36-204. Creditable service required.

(a) Notwithstanding the provisions of this part and part 3 of this chapter, or any other provisions of the law to the contrary, any member in Group 1, 2, or 3 prior to July 1, 1979, shall not be eligible for a service or early service retirement allowance unless such member has a minimum of four (4) years of creditable service.

(b)(1) In addition to all requirements for service or early service retirement, any employee, except a Group 4 employee, becoming a member of the retirement system on or after July 1, 1979, must have a total of ten (10) years of creditable service to qualify for retirement benefits. A Group 4 member must have eight (8) years of creditable service to qualify for retirement benefits.

(2) Notwithstanding this section or any other provision to the contrary, any individual who is a Group 1 member of the retirement system on or after January 1, 1992, must have, in addition to all other requirements for service or early service retirement, a total of five (5) years of creditable service to qualify for retirement benefits; provided, that eligible individuals who are members of the retirement system by virtue of their employment with any employer participating in the retirement system pursuant to chapter 35 of this title must have a total of ten (10) years of creditable service to qualify for retirement benefits, unless the chief governing body of such employer passes and files with the board of trustees a resolution reducing the required years of service from ten (10) to five (5) years and accepting the liability therefor. Subsequent to an employer's election to decrease the required years of service from ten (10) to five (5) years, the employer, through a resolution passed by the employer's chief governing body, may then increase the required years of service from five (5) to ten (10) for employees hired on or after the increase in the years of service, without any limit to the number of increases or decreases that an employer may make by resolution from its chief governing body; provided, that any increases in the number of required years of service shall be applied prospectively for employees hired on or after the increase in the years of service. If a member has less than ten (10) years of service credit, part of which was rendered for an employer not electing to be covered by the provisions of this section, eligibility for a retirement benefit on that portion of service shall be determined independently for each employer. Such member is eligible for a refund of contributions and interest credited to such member's account associated with any period of service for which a benefit is not payable.

(c) This provision shall not apply to members of the general assembly.

(d) Any general state employee who was employed with the state prior to January 1, 1979, and who terminated state employment between January 1, 1979 and December 31, 1979, shall be eligible for a service or early service allowance with a minimum of four (4) years of creditable service if all of the following requirements are met:

(1) The employee must have returned to state service prior to July 1, 1989;

(2) The employee must have been fifty (50) years of age or older at the time the employee terminated state employment in 1979; and

(3) In accordance with the provisions of § 8-37-214, the employee must reestablish the employee's withdrawn service in the retirement system.

8-36-213. Excess benefit limitations — Qualified excess benefit arrangements (QEBA).

(a) Notwithstanding any law to the contrary, no benefit shall be paid to a member from the retirement system in excess of benefit limitations established in 26 U.S.C. § 415 and applicable federal rules and regulations.

(b) The board may establish a separate qualified excess benefit arrangement (QEBA) pursuant to 26 U.S.C. § 415(m) solely for the purpose of providing eligible members with retirement system benefits that are in excess of the benefit limits established in 26 U.S.C. § 415. For purposes of this section, "eligible member" means any person included in the membership of the retirement system as provided in chapter 35, part 1 of this title who is entitled to receive a retirement benefit in excess of the limits imposed by 26 U.S.C. § 415.

(c) The board shall have the authority to adopt a plan document and a trust agreement as well as administer, maintain, modify, terminate or reestablish the QEBA, and may, in its discretion, delegate its authority to the state treasurer.

(d) On or after the date that the QEBA is established, the retirement system shall pay from the QEBA to each eligible member or beneficiary a supplemental retirement allowance equal to the difference between the eligible member's monthly benefit otherwise payable from the applicable retirement system prior to any reduction or limitation because of 26 U.S.C. § 415 and the actual monthly benefit payable from the retirement system as limited by 26 U.S.C. § 415. The retirement system shall compute and pay the supplemental retirement allowance in the same form, at the same time, and to the same persons as such benefits would have otherwise been paid as a monthly pension under the retirement system except for 26 U.S.C. § 415 limitations.

(e) The retirement system shall determine the amount of an eligible member's benefits that cannot be provided to the member or beneficiary because of limitations established by 26 U.S.C. § 415, and the amount of employer contributions that must be made to the QEBA as a separate fund, separate and apart from the retirement system, for each eligible member whose retirement allowance would exceed federal law limitations. The retirement system shall engage actuarial services required to make these determinations.

(f) The eligible member's employer shall pay the excess benefits for an eligible member to the separate QEBA fund when the retirement system makes the assessment that the member's retirement allowance would exceed federal law limitations established by 26 U.S.C. § 415. An employer's contribution to the QEBA shall be a separate contribution from the employer contributions made pursuant to chapter 35 of this title.

(g) Payments under a QEBA are exempt from garnishment, assignment, alienation, judgments, and other legal processes to the same extent as the retirement allowance under the retirement system.

(h) An eligible member shall not elect to defer the receipt of all or any part of the payments due under a QEBA.

(i) The board shall have the authority to promulgate rules as may be necessary to implement a QEBA plan as provided in this section.

8-36-601. Election of options for designation of contingent beneficiaries authorized — Options enumerated — Retirement allowance for social security benefits.

(a) Any member may elect to convert the retirement allowance otherwise payable on the member's account after retirement, exclusive of any portion of a disability allowance not payable after commencement of unreduced social security benefits, into a retirement allowance of equivalent actuarial value under one (1) of the options named in subsection (b).

(b)(1) **Option 1.** A reduced retirement allowance payable during the retired member's life, with the provision that it shall continue after the member's death for the life of, and to, the beneficiary nominated by the member by written designation duly acknowledged and filed with the board of trustees at the time of retirement.

(2) **Option 2.** A reduced retirement allowance payable during the retired member's life, with the provision that it shall continue after the member's death at one half (½) the rate paid to the member and be paid for the life of, and to, the beneficiary nominated by the member by written designation duly acknowledged and filed with the board of trustees at the time of retirement.

(3) **Option 3.** A reduced retirement allowance payable during the retired member's life, with the provision that it shall continue after the member's death for the life of, and to, the beneficiary nominated by the member by written designation duly acknowledged and filed with the board of trustees at the time of retirement; provided, that if such designated beneficiary shall predecease the retired member, the retirement allowance payable to the member after the death of the designated beneficiary shall be equal to the retirement allowance which would have been payable had the member not elected an option.

(4) **Option 4.** A reduced retirement allowance payable during the retired member's life, with the provision that it shall continue after the member's death at one half (½) the rate paid to the member and be paid for the life of, and to, the beneficiary nominated by the member by written designation duly acknowledged and filed with the board of trustees at the time of retirement; provided, that if such designated beneficiary shall predecease the retired member, the retirement allowance payable to the member after death of the designated beneficiary shall be equal to the retirement allowance which would have been payable had the member not elected an option.

(c) Prior to retirement, any member who is covered by Title II of the Federal Social Security Act, compiled in 42 U.S.C. §§ 401-425, may elect to convert the retirement allowance otherwise payable on the member's account after retirement into a retirement allowance of equivalent actuarial value of such amount that, with the member's benefit under Title II of the Federal Social Security Act, compiled in 42 U.S.C. §§ 401-425, the member will receive, so far as possible, approximately the same amount per year before and after the commencement of such benefit.

(d) This section does not apply to a retiree receiving a disability retirement allowance if such retiree is also receiving social security disability benefits. Any member who is approved for a disability retirement allowance and who desires to convert such member's retirement allowance in accordance with subsection (c) shall be required to provide to the retirement system within

thirty (30) days after notification of such approval, that the member has made application for social security disability benefits. If the application for social security benefits is denied, the member shall be given thirty (30) days from the date of denial in which to seek a reconsideration of such member's claim from the social security administration and to notify the retirement system of such action. Should the member's claim for social security disability benefits be denied upon reconsideration, such member shall, within thirty (30) days after notice of such denial, file an appeal to the administrative law judge and notify the retirement system of such member's action. The member is required to keep the retirement system informed of the status of such member's claim for social security disability benefits through the entire appeals process as specified herein. Failure to comply with the requirements of this subsection (d) shall result in a reduction of the member's disability retirement allowance to the amount which would have been payable had the member selected the regular plan, and the member shall be required to make a payment equal to the difference in benefits received and the regular plan.

8-36-801. Suspension of benefits while reemployed — Further contributions optional.

(a) Except as provided in this part, any retired member of the Tennessee consolidated retirement system, or of any superseded system, or of any local retirement fund established pursuant to chapter 35, part 3 of this title who accepts employment in a position covered by the Tennessee consolidated retirement system shall, as a condition of such employment, cease to draw the member's retirement allowance during the period of the employment; however, the member shall keep the member's retirement benefit in the month that the member returns to work.

(b) A retiree restored to employment shall not be required to reenroll as an active member of the retirement system, to make further contributions to the retirement system or to void the retirement payment plan elected by the member. Employees covered by the noncontributory provisions of the system in accordance with § 8-34-206 shall reenroll and accrue service. Any retiree restored to employment who reenrolls as an active member of the retirement system shall be treated as voiding any optional benefit previously elected under § 8-36-601 for purposes of in-service death benefits. Subject to the provisions of § 8-36-802(e), any such optional benefit previously elected shall be restored upon subsequent retirement.

8-36-804. Retirement credit not earned during benefit period.

No member shall be entitled to establish retirement credit for any period during which the member received a retirement allowance; however, should a member return to a position covered by the retirement system, the member shall be able to obtain retirement credit for the month in which the member returns to work even though the member shall keep the member's retirement benefit in the month that the member returns to work as provided in § 8-36-801(a).

8-36-901. Short title. [Effective July 1, 2014.]

This part shall be known and may be cited as the "Hybrid Retirement Plan for State Employees and Teachers."

8-36-902. Part definitions. [Effective July 1, 2014.]

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

(1) "County judge" means a judge of a general sessions court, probate judge, or judge of a juvenile and/or domestic relations court;

(2) "Defined benefit component" means the portion of the hybrid plan that provides a defined benefit plan within the provisions of the retirement system, but which has its own vesting, benefit structure, and contribution requirements as set forth in this part;

(3) "Defined contribution component" means the portion of the hybrid plan that provides a defined contribution plan within the provisions of the profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title;

(4) "Hybrid plan" means a plan that provides a combination of a defined benefit plan and a defined contribution plan which, together, are intended to comply with the provisions of the Internal Revenue Code that are applicable to governmental plans;

(5) "Participant" means any state employee, teacher, or political subdivision employee participating in the hybrid plan;

(6) "Political subdivision" means any entity authorized to participate in the retirement system pursuant to chapter 35, part 2 of this title;

(7) "Political subdivision employee" means any person in the employ of a political subdivision, including a county judge, but does not include any person performing services on a contractual or percentage basis;

(8) "State employee" means any person who is a state official, including members of the general assembly, the attorney general and reporter, district attorneys general, and district public defenders, or any person who is employed in the service of and whose compensation is payable by the state, or any person who is employed by the state whose compensation is paid in whole or in part from federal or other funds. "State employee" also means any person who is employed in the service of and whose compensation is payable by a public institution of higher education, or any person who is employed by a public institution of higher education whose compensation is paid in whole or in part from federal or other funds. For purposes of this part, "state employee" does not include the governor or any person employed on a contractual or percentage basis. Any retirement allowances payable in respect of a former governor shall be as prescribed by the provisions of chapter 39, part 2 of this title in lieu of any other benefits to which the governor may otherwise be entitled under chapters 34-37 of this title;

(9) "State judge" has the meaning set forth in § 8-34-101(41); and

(10) "Teacher" has the meaning set forth in § 8-34-101(46)(B), but does not include any person employed by a public institution of higher education.

(b) Terms used in this part that are not otherwise defined shall have the same meaning ascribed to them in chapters 34-37 of this title.

8-36-903. Persons eligible to participate in hybrid retirement plan — Determination of eligibility — Continuing membership in optional retirement program — Application of provisions of the Tennessee consolidated retirement system. [Effective July 1, 2014.]

(a) Notwithstanding any other law to the contrary and except as provided in this section, any person otherwise eligible to participate in the retirement system

who enters service as a state employee or teacher on or after July 1, 2014, shall participate in the hybrid plan established under this part; provided, however, that any person who enters service with a state-supported institution of higher education on or after July 1, 2014, and who is exempt from the Fair Labor Standards Act, compiled in 29 U.S.C. § 201 et seq., may elect membership in the optional retirement program as provided in § 8-36-923 in lieu of the hybrid plan. In all cases of doubt, the retirement system shall determine whether the person is eligible to participate in the optional retirement program.

(b) Any state employee or teacher who is a member of the retirement system on June 30, 2014, shall continue membership in the retirement system pursuant to the terms of chapters 34-37 of this title that were in effect on June 30, 2014. Any person who reenters service as a state employee or teacher on or after July 1, 2014, having previously served as a state employee or teacher prior to July 1, 2014, and who has not been refunded such previous service pursuant to § 8-37-210, shall continue membership in the retirement system pursuant to the terms of chapters 34-37 of this title that were in effect on June 30, 2014.

(c) Membership in the hybrid plan or the optional retirement program, as applicable, shall not be required for any part-time state employee or part-time teacher who would otherwise be covered under the provisions of this part, or for any state employee who has optional membership in the retirement system pursuant to chapters 34-37 of this title. Any election made by a state employee or teacher to become a participant shall be irrevocable and such employee or teacher shall thereafter be subject to the terms and conditions of the hybrid plan or the optional retirement program, as applicable, which are in effect at the time of the election.

(d) All provisions of chapters 34-37 of this title that are not inconsistent with the provisions of this part shall continue to apply, as applicable, to participants in the hybrid plan or the optional retirement program.

8-36-904. Requirement to make employee contributions to defined benefit component of the plan — Employer to pick up employee contributions. [Effective July 1, 2014.]

(a) Participants in the hybrid plan shall be excluded from the noncontributory provisions of § 8-34-206 and shall be required to make employee contributions to the defined benefit component of the plan equal to five percent (5%) of the participant's earnable compensation.

(b) Each employer shall pick up the employee contributions required under this section. The contributions so picked up shall be treated as employer contributions pursuant to § 414(h) of the Internal Revenue Code in determining tax treatment under said Code. The employee shall not have the option of choosing to receive the contributions in the form of cash or cash equivalents instead of having them paid by the employer into the hybrid plan benefits trust account created pursuant to § 8-36-920.

8-36-905. Establishing service credit under provisions of Tennessee consolidated retirement system. [Effective July 1, 2014.]

Any participant who desires to establish service credit pursuant to the provisions of chapters 34-37 of this title shall pay employee contributions to the defined benefit component of the plan equal to the amount of the employee contributions required under the terms of the hybrid plan as they existed at the

time the service was established, plus interest at the rate provided in § 8-37-214. In the case of refunded service, the amount shall be equal to the total amount that was previously withdrawn, plus interest at the rate provided in § 8-37-124. Any service established or reestablished pursuant to this section shall be credited under the terms of the hybrid plan as they existed at the time the service was established and not at the time the service was rendered.

8-36-906. Eligibility for service retirement allowance from defined benefit component of plan. [Effective July 1, 2014.]

(a)(1) Except as otherwise provided in this section and in § 8-36-921, any participant shall be eligible for a service retirement allowance from the defined benefit component of the plan upon attainment of sixty-five (65) years of age and completion of five (5) years of creditable service, or upon attainment of a combination of age and years of creditable service as to equal ninety (90).

(2) Any participant serving in a position covered by the mandatory retirement provisions of § 8-36-205 shall be eligible for a service retirement allowance from the defined benefit component of the plan upon attainment of sixty (60) years of age and upon completion of five (5) years of creditable service, or at any age upon completion of thirty (30) years of creditable service. Further, any participant who has creditable service in a position covered by the mandatory retirement provisions of § 8-36-205 and who is entitled to the supplemental bridge benefit pursuant to § 8-36-211 shall be eligible for a service retirement allowance from the defined benefit component of the plan upon attainment of fifty-five (55) years of age and upon completion of twenty-five (25) years of creditable service; provided, that the service rendered while the participant was in a position covered by the mandatory retirement provisions shall be independent of all other creditable service for the purpose of calculating the participant's retirement allowance under § 8-36-907.

(b) Any participant serving as the attorney general and reporter, a district attorney general, district public defender, or state judge shall be eligible for a service retirement allowance from the defined benefit component of the plan upon attainment of sixty (60) years of age and upon completion of eight (8) years of creditable service, or upon the attainment of fifty-five (55) years of age and upon completion of twenty-four (24) years of creditable service.

(c) Any participant serving as a member of the general assembly shall be eligible for a service retirement allowance from the defined benefit component of the plan upon attainment of sixty (60) years of age and upon completion of four (4) years of creditable service.

8-36-907. Service retirement allowance as an annuity. [Effective July 1, 2014.]

(a) Except as provided in §§ 8-36-908 and 8-36-909, the service retirement allowance payable to a participant under § 8-36-906 shall consist of a member annuity which shall be the actuarial equivalent of the participant's accumulated contributions in the defined benefit component of the plan at retirement, plus a state annuity which, when added to the member annuity, shall be equal to:

(1) In the case of a participant, other than those participants described in subdivision (a)(2), one percent (1.0%) of the participant's average final compensation, multiplied by the number of years of creditable service, unless

reduced in accordance with § 8-36-921 or § 8-36-922; and

(2) In the case of a participant who is the attorney general and reporter, a district attorney general, district public defender, or state judge, one and six-tenths percent (1.6%) of the participant's average final compensation, multiplied by the number of years of creditable service, unless reduced in accordance with § 8-36-921 or § 8-36-922.

(b) Section 8-36-124 shall not apply in determining the retirement allowance payable under this section.

8-36-908. Determination of the amount of annual service retirement allowance. [Effective July 1, 2014.]

(a) Notwithstanding any provision of the law to the contrary, the base annual service retirement allowance payable to a participant under the defined benefit component of the plan shall not exceed the amount determined and in effect on July 1, 2014, pursuant to § 8-35-256(h); provided, however, that commencing on July 1, 2015, and on each July 1 thereafter, this amount shall be increased or decreased in accordance with the consumer price index as defined in § 8-36-701(c), and the amount of increase or decrease shall be based on the prior calendar year. Such participant's annual pension benefit shall be limited to the base benefit in effect at the time of the participant's retirement, but shall be subject to increase in accordance with the cost-of-living provisions of § 8-36-701(b)(1) and (b)(2).

(b) Notwithstanding subsection (a), the service retirement allowance payable under the provisions of this part shall not exceed ninety percent (90%) of the participant's average final compensation as may be adjusted by the cost-of-living provisions of § 8-36-701(b)(1) and (b)(2).

8-36-909. Minimum service retirement allowance payable under the defined benefit component of the plan. [Effective July 1, 2014.]

(a) Notwithstanding § 8-36-209 or any other law to the contrary, there shall be no minimum service retirement allowance payable under the defined benefit component of the plan except as otherwise provided in subsections (b) and (c) below. Instead, the retirement allowance shall be determined in accordance with § 8-36-907.

(b)(1) The minimum service retirement allowance payable under the defined benefit component of the plan with respect to creditable service established pursuant to § 8-35-226 shall not be less than seven dollars ($7.00) per month for each year of such creditable service, except as provided in subsection (e) below.

(2) Notwithstanding subdivision (b)(1), the chief legislative body of any city, special school district or county may set the minimum service retirement allowance payable with respect to creditable service established pursuant to § 8-35-226 in the amount as determined and in effect pursuant to § 8-36-209(a)(2)(A)(i) or § 8-36-209(a)(2)(A)(ii). Such amount shall be adjusted on each July 1 thereafter pursuant to the cost-of-living provisions in § 8-36-701(b)(1) and (2).

(3) To set the minimum service retirement allowance under either § 8-36-209(a)(2)(A)(i) or (a)(2)(A)(ii), the chief legislative body of the respective city, special school district or county must pass a resolution authorizing the

provisions of either § 8-36-209(a)(2)(A)(i) or (a)(2)(A)(ii) and accepting the liability therefore. Any such resolution shall apply to current and future retirees of the hybrid plan and shall become effective on the first day of any quarter following the filing of the resolution with the retirement system. No retroactive benefits shall be paid under subdivision (b)(2).

(c)(1) The minimum retirement allowance payable under the defined benefit component with respect to creditable service rendered as a member of the general assembly shall not be less than fifty-five dollars ($55.00) per month for each year of creditable service adjusted effective July 1, 2015, and on each July 1 thereafter pursuant to the cost-of-living provisions in § 8-36-701(b)(1) and (2) except as provided in subsection (e).

(2) Any recipient eligible for a benefit pursuant to subdivision (c)(1) may elect to receive an amount less than the amount that the recipient is otherwise eligible to receive; provided, that the election is in writing and irrevocable.

(d) Section 8-36-124 shall not apply in determining the retirement allowance payable under this section.

(e)(1) In no event shall the minimum retirement allowance payable hereunder exceed ninety percent (90%) of the participant's average final compensation as may be adjusted by the cost-of-living provisions of § 8-36-701(b)(1) and (2).

(2) For purposes of determining the limitations on the amount of the retirement allowance as provided in this subsection (e), the average final compensation for service granted under § 8-35-226 shall be independent of the average final compensation calculation on any other creditable service in the retirement system, and the average final compensation for service granted as a member of the general assembly shall be independent of the average final compensation calculation on any other creditable service in the retirement system.

8-36-910. Early service retirement allowance. [Effective July 1, 2014.]

(a) Except as otherwise provided in this section and in § 8-36-921, any participant shall be eligible for an early service retirement allowance from the defined benefit component of the plan upon attainment of sixty (60) years of age and completion of five (5) years of creditable service, or upon attainment of a combination of age and years of creditable service as to equal eighty (80).

(b) Any participant serving in a position covered by the mandatory retirement provisions of § 8-36-205 shall be eligible for an early service retirement allowance from the defined benefit component of the plan upon attainment of fifty-five (55) years of age and upon completion of five (5) years of creditable service, or at any age upon completion of twenty-five (25) years of creditable service.

(c) Any participant serving as the attorney general and reporter, a district attorney general, district public defender, state judge, or as a member of the general assembly shall not be eligible for an early service retirement allowance under the defined benefit component of the plan. Instead, such participants shall be eligible for a retirement allowance from the defined benefit component of the plan upon meeting the applicable conditions set forth in § 8-36-906.

8-36-911. Computation of early service retirement allowance. [Effective July 1, 2014.]

(a) Except as provided in § 8-36-912, the early service retirement allowance payable to a participant under § 8-36-910 shall be computed as a service retirement allowance in accordance with § 8-36-907, but reduced by an actuarially determined factor as set by the board from time to time.

(b) Section 8-36-124 shall not apply in determining the retirement allowance payable under this section. Further, § 8-36-211(a)(2) shall not apply in calculating the supplemental bridge benefit for participants covered by the mandatory retirement provisions of § 8-36-205(a)(1) who retire on an early service retirement allowance pursuant to this section, nor shall § 8-36-211(b)(2) apply in calculating the supplemental bridge benefit for participants covered by the mandatory retirement provisions of § 8-36-205(a)(2) who retire on an early service retirement allowance pursuant to this section and whose employer adopted the provisions of this part. Instead, the supplemental bridge benefit shall be equal to three-fourths of one percent (0.75%) of the participant's average final compensation, multiplied by the participant's years of creditable service when the participant was in a position covered by the mandatory retirement provisions of § 8-36-205, but reduced by an actuarially determined factor as set by the board from time to time.

8-36-912. Computation of minimum early service retirement allowance. [Effective July 1, 2014.]

The minimum early service retirement allowance payable under the defined benefit component of the plan pursuant to § 8-36-911 shall be the minimum service retirement allowance computed in accordance with § 8-36-909 on the basis of the participant's creditable service at the time of early retirement, reduced by an actuarially determined factor as set by the board from time to time. Section 8-36-124 shall not apply in determining the retirement allowance payable under this section.

8-36-913. Applying for a disability retirement benefit. [Effective July 1, 2014.]

Any participant may apply for a disability retirement benefit pursuant to the provisions and criteria set forth in part 5 of this chapter. All of part 5 of this chapter shall be applicable, except that the disability retirement allowance shall be equal to nine-tenths ($^{9}/_{10}$) of a service retirement allowance as computed in § 8-36-907 and as may be further reduced in accordance with part 5 of this chapter. Sections 8-36-124 and 8-36-209 shall not apply in determining any disability retirement benefit allowance payable under this section. The minimum disability retirement allowance, if applicable, shall be computed in accordance with § 8-36-909.

8-36-914. Determining the retirement allowance payable to a deceased participant's surviving spouse. [Effective July 1, 2014.]

Sections 8-36-109(b)(1)(C) and 8-36-123(a)(2) shall not apply in determining the retirement allowance payable under § 8-36-109(b) or under § 8-36-123(a) to a deceased participant's surviving spouse, if any. Instead, the retirement

allowance payable under such sections shall be reduced by an actuarially determined factor as set by the board from time to time.

8-36-915. Administration of the defined benefit component of the hybrid plan and the optional retirement program. [Effective July 1, 2014.]

Except as otherwise provided in this part, administration of the defined benefit component of the hybrid plan and the optional retirement program shall be governed by the provisions of chapters 34-37 of this title; provided, however, that any reference in chapters 34-37 of this title to the eligibility requirements for an early or service retirement allowance under the hybrid plan shall for purposes of this part mean the eligibility requirements set forth in §§ 8-36-906 and 8-36-910. Any reference in chapters 34-37 of this title to the formula for computing an early or service retirement allowance, or for computing a disability retirement allowance under the hybrid plan shall for purposes of this part mean the applicable formula as set out in §§ 8-36-907 — 8-36-909 and §§ 8-36-911 — 8-36-913.

8-36-916. Defined contribution component of the hybrid plan. [Effective July 1, 2014.]

(a) There is established the defined contribution component of the hybrid plan that provides a defined contribution plan within the provisions of the profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title and as supplemented pursuant to this part.

(b)(1) Any person who becomes a participant in the hybrid plan shall have an initial two percent (2%) of that participant's compensation automatically deferred into the defined contribution component of the plan during the initial year of participation, unless such participant files with that participant's employer a notice of that participant's election not to contribute. Any notice of non-election shall be made in such format and through such medium as prescribed by the retirement system and must be filed with that participant's employer by no later than thirty (30) calendar days from the date of the notice of automatic deferral letter.

(2) All contributions made by or on behalf of a participant to the defined contribution component of the plan who does not file a notice of non-election within the prescribed period shall be directed to the default option established by the trustees of the profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title until such time as the participant selects a different investment option or options. Notwithstanding any provision of this section or any other law to the contrary, future deferrals may be cancelled or adjusted at any time by a participant provided the participant notifies that participant's employer in such format and through such medium as may be prescribed by the retirement system at least one (1) month before the payday on which the cancellation or change is to be effective; provided, however, that any adjustment in the deferrals, other than a cancellation, cannot cause the amount of the deferrals to be less than twenty dollars ($20.00) per month, or if the employee is paid twice a month, ten dollars ($10.00) semimonthly, or such other lower amount as may be established under chapter 25, part 3 of this title. In addition, any adjustment in the deferrals cannot cause the amount of the deferrals to exceed the maximum allowed under the Internal

Revenue Code.

(3) Any participant who affirmatively declines to make employee deferrals after the first automatic enrollment contribution was made, may make an election to withdraw that participant's entire automatic enrollment contribution. This election must be submitted no later than ninety (90) calendar days after the payroll date in which the first automatic enrollment contribution is made on behalf of the participant. The amount of the distribution shall be the value of the automatic enrollment contributions plus or minus investment gains or losses as of the date the distribution is processed. Automatic enrollment contributions made after such date shall remain in the defined contribution component of the plan and shall be subject to the plan's regular distribution rules. Further, a participant who has made an election to withdraw and who thereafter leaves employment and is then rehired by the same employer as defined below or, by the same political subdivision in the case of a political subdivision employee, before a twelve (12) continuous month absence shall not be permitted to make another election to withdraw that participant's automatic enrollment contribution. For purposes of this subdivision (b)(3), "same employer" means the employer for which the person last worked prior to separation from covered employment. All departments, agencies and instrumentalities in the executive, legislative and judicial branches of state government, including public institutions of higher education, shall be deemed one and the same employer. All public schools within the Tennessee public school system, except for public institutions of higher education, shall be deemed one and the same employer. Notwithstanding subsection (d) below, the employer matching contributions described in subsection (c) that are attributable to the distribution of the automatic enrollment contributions shall be forfeited and placed in a forfeiture account. Amounts in the forfeiture account shall be used in the manner provided in the plan document established for the profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title. The employer matching contributions described in subsection (c) shall not be made if a permissible withdrawal is taken pursuant to this subsection (b) before the date the matching contribution is allocated.

(4) The initial two percent (2%) automatic enrollment contribution described in this subsection (b) shall be subject to a percentage annual increase thereafter if provided for in the plan document established for the profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title.

(5) The automatic deferrals shall be contributed on a pre-tax basis and shall continue until the participant affirmatively elects otherwise.

(c)(1) Notwithstanding § 8-35-111, each employer shall make a mandatory contribution to the defined contribution component of the plan on behalf of each of its employees participating in the hybrid plan, regardless of whether the employees make any employee contributions pursuant to subsection (b). Employer contributions for kindergarten through twelfth (K-12) grade teachers shall be paid by the respective local education agency for which the teachers are employed. The amount of the contribution shall be five percent (5%) of the respective employee's salary. The mandatory contributions required in this subdivision (c)(1) shall be in addition to any match provided for in § 8-25-303 to participants who otherwise participate in the profit sharing and/or salary reduction plan under chapter 25, part 3 of this title;

provided, that the total combined employer contributions to all defined contribution plans on behalf of a single employee shall not exceed the maximum allowed under the Internal Revenue Code, and shall conform to all applicable laws, rules and regulations of the internal revenue service governing profit sharing and/or salary reduction plans for governmental employees. If the employer contributions to all such plans combined exceed such amount, the employer shall reduce its contributions to any other defined contribution plans such that the contributions to the defined contribution component of the plan and to the other plans do not exceed the limit.

(2) Each participant who affirmatively elects to make employee deferrals shall select the investment option or options in which the contributions made by or on behalf of such participant are to be directed. Should a participant fail to select an investment option, the contributions attributable to the participant shall be directed to the default option established for the defined contribution component of the plan until such time as the person selects a different investment option or options.

(d) The total amount contributed by the employee and employer under this section shall vest to the participant's benefit immediately.

(e) The state treasurer may offer financial educational services for participants in the defined contribution component of the hybrid plan. The services may include, but are not limited to, offering financial planning guidance on matters such as investment diversification, investment risks, investment costs, asset allocation, and other topics regarding investing, generally.

8-36-917. Reemployment in a covered position [Effective July 1, 2014.]

Except as otherwise provided in part 8 of this chapter, any retired participant who returns to service in a position covered by the retirement system shall have such participant's retirement allowance under the defined benefit component of the plan suspended while so employed. The participant shall be subject to the provisions of §§ 8-36-801 — 8-36-804; provided, however, that reemployment in a covered position shall have no effect on a payment under the defined contribution component of the plan.

8-36-918. Forfeiture of retirement benefits due to conviction of felony arising out of employment. [Effective July 1, 2014.]

(a) Notwithstanding § 8-35-124 or any other law to the contrary, an employee or elected or appointed official of this state, an employee or elected or appointed official of any political subdivision thereof, or a teacher employed with a local education agency who is convicted in any state or federal court of a felony arising out of that employee's or official's employment or official capacity constituting malfeasance in office shall forfeit that person's retirement benefits under the defined benefit component of the plan.

(b) Upon initial conviction, or upon a plea of guilty or nolo contendere, any person subject to the provisions of this section shall:

(1) Have the employee's or official's benefit stopped immediately, if the employee or official is receiving a benefit under the defined benefit component of the plan; and

(2) Receive a refund of the employee contributions and interest credited to the employee's or official's account, less any benefits received, unless the person elected to have a monthly retirement allowance paid upon such

person's death in accordance with subsection (e).

(c) The employing agency is responsible for immediately notifying the administrator of the retirement system of the conviction of any person subject to the provisions of this section.

(d) In the event the conviction of such person is later overturned in any court and such person is acquitted, or is granted a full pardon, the person shall be restored to all rights, privileges and benefits as if the conviction had never occurred.

(e) Any person convicted of a felony as provided in this section may elect, within six (6) months of the person's conviction, to have a monthly retirement allowance paid to whomever that person had designated as beneficiary on file with the retirement system at the time of that person's conviction; provided, that such beneficiary must have been that person's spouse or child at the time of that person's conviction. The amount of any allowance payable hereunder shall be equal to the retirement allowance which would have been payable under the defined benefit component of the plan had the person retired under an effective election of Option 1 as provided in part 6 of this chapter. The benefits shall be paid to such beneficiary following the person's death and upon meeting all other eligibility requirements applicable to a beneficiary.

8-36-919. Membership in the hybrid plan for employees of political subdivisions electing to participate. [Effective July 1, 2014.]

(a) A political subdivision that is not otherwise participating under any of the plans afforded under chapters 34-37 of this title may, by resolution legally adopted and approved by its chief governing body and in accordance with the procedure set out in § 8-35-201, authorize its employees in all of its departments or instrumentalities to become eligible to participate in the hybrid plan. Membership in the hybrid plan for employees of political subdivisions that are admitted into the hybrid plan pursuant to this subsection shall be:

(1) Optional for all employees in the service of the political subdivision on the date the approval is given; and

(2) Mandatory for all eligible employees entering the service of the political subdivision thereafter; provided, however, that membership shall not be required for any part-time employee who would otherwise be covered under the provisions of this part, or for any employee who has optional membership in the retirement system pursuant to chapters 34-37 of this title. Any election made by an employee to become a participant shall be irrevocable and such employee shall thereafter be subject to the terms and conditions of the hybrid plan.

(b) Any political subdivision electing to participate in the hybrid plan pursuant to this section shall participate in the provisions of the plan as they exist for state employees on the date of participation or at any other given time pursuant to any changes made pursuant to §§ 8-36-921 and 8-36-922; provided, however, that any subsequent changes that increase the liability of a participating political subdivision within the meaning of Article II, § 24 of the Tennessee Constitution shall not apply to the political subdivision unless the chief governing body of the political subdivision agrees to such changes and accepts the liability therefore. Notwithstanding this subsection (b), the following provisions shall remain optional to political subdivisions:

(1) Part-time, seasonal, or temporary employee service credit in accordance with § 8-34-621; and

(2) Mandatory retirement in accordance with § 8-36-205.

(c) A political subdivision already participating in the retirement system under one of the additional plans afforded under chapters 34-37 of this title may change from that plan to the hybrid plan on a prospective basis by passage of a resolution pursuant to subsection (a) above. Any such resolution shall set forth the effective date of the change; provided, that the date shall be on the first day of any quarter following a minimum of six (6) months' notice to the retirement system. The actuarial value of accrued benefits earned by employees of the political subdivision prior to the effective date of the change shall remain an enforceable right and may not be reduced or otherwise forfeited except by the consent of the employee or in accordance with § 8-35-124.

(d) Any political subdivision that participates in the hybrid plan shall have the right to change from the hybrid plan to any of the additional plans afforded to the political subdivision under chapters 34-37. Any such change shall be in accordance with and subject to the terms and conditions of §§ 8-35-253 — 8-35-256. In addition, any political subdivision that participates in the hybrid plan shall be subject to the withdrawal provisions of §§ 8-35-211 and 8-35-218. Benefits accrued under the hybrid plan or under any of the plans adopted pursuant to §§ 8-35-253 — 8-35-256 shall be in accordance with 26 U.S.C. § 411. Notwithstanding this section or any other law to the contrary, the cost-of-living provisions of § 8-36-701 shall not be deemed an accrued benefit and may be subject to change pursuant to this section and §§ 8-36-921 and 8-36-922.

(e) Notwithstanding this section or any other law to the contrary, a political subdivision may authorize its county judges to participate in the hybrid plan under the same provisions governing state judges as set forth in this part provided the political subdivision authorizes and pays for the cost of an actuarial study to determine the liability associated with such membership and, following review of the cost of such membership, the chief governing body of the political subdivision passes a resolution authorizing the membership and accepting the liability therefor. In addition, a political subdivision may authorize its county judge to participate in the hybrid plan under the provisions of this subsection (e) without extending retirement coverage to its other employees provided the political subdivision authorizes and pays for the cost of an actuarial study to determine the liability associated with such membership and, following review of the cost of such membership, the chief governing body of the political subdivision passes a resolution authorizing the membership and accepting the liability therefor. The retirement system shall not be liable for the payment of retirement allowances or other payments on account of such membership for which reserves have not been previously created from funds contributed by the political division and/or its county judges. It is the legislative intent that the state shall realize no increased cost as a result of this section. All costs associated with retirement coverage, including administrative costs, shall be the responsibility of the political subdivision.

(f) Notwithstanding this part or any law to the contrary, a political subdivision that extends retirement coverage to its employees under this section may elect to provide its own profit sharing and/or salary reduction plan that is authorized under § 401(k) of the Internal Revenue Code in lieu of participating in the state's profit sharing and/or salary reduction plan established under

chapter 25, part 3 of this title; provided, that the political subdivision makes mandatory contributions to such plan on behalf of each of its employees participating in the hybrid plan, regardless of whether the employees make any employee contributions to that plan. The amount of the employer contributions shall be five percent (5%) of the respective employee's salary unless suspended or reduced pursuant to § 8-36-922.

8-36-920. Hybrid plan benefits trust account. [Effective July 1, 2014.]

(a) There shall be established in the retirement system trust fund a hybrid plan benefits trust account into which contributions made to the defined benefit component of the plan shall be deposited.

(b) All interest and dividends earned on the funds of the defined benefit component of the hybrid plan shall be credited to the hybrid plan benefits trust account.

(c) Within the hybrid plan benefits trust account created pursuant to this section, there shall be established a reserve trust account, which shall consist of two (2) subaccounts as follows:

(1)(A) An employer reserve trust account into which shall be deposited:

(i) The employer contributions as determined by the actuary pursuant to § 8-36-922(b) and any payments made to establish service credit in the hybrid plan that result from employer contributions rolled over or otherwise transferred from another qualified plan;

(ii) All amounts transferred from the participants' reserve trust account pursuant to subdivision (c)(2)(B) below;

(iii) Transfers from the stabilization reserve trust account pursuant to subdivision (d)(2) below;

(iv) A pro rata share of the interest and dividends earned on the funds of the defined benefit component of the hybrid plan; and

(v) Any penalties assessed against an employer pursuant to § 8-37-504;

(B) All costs of administering the hybrid plan, and all retirement allowances and other benefits payable under the defined benefit component of the hybrid plan other than those payable from the participants' reserve trust account established in subdivision (c)(2) below shall be paid from the employer reserve trust account.

(2)(A) A participants' reserve trust account shall also be established within the reserve trust account into which shall be deposited:

(i) The contributions deducted from the compensation of participants to provide for their member annuities, together with any contributions of participants and interest thereon to establish service credit in the hybrid plan; and

(ii) All amounts transferred from the employer reserve trust account pursuant to subdivision (c)(2)(C).

(B) The accumulated contributions of a participant that are withdrawn by the participant, or paid to the participant's designated beneficiary or to the participant's estate pursuant to § 8-36-120, shall be paid from the participants' reserve trust account. Upon the retirement of a participant, or if a retirement allowance becomes payable on account of the participant's death prior to retirement, the participant's accumulated contributions shall be transferred from the participants' reserve trust account to the

employer reserve trust account.

(C) The board of trustees shall annually show interest at such rate or rates as it shall determine from time to time on the individual accounts of participants in the participants' reserve trust account and shall transfer such amounts from the employer reserve trust account.

(d)(1) Unless prohibited by an agency of the federal government or contrary to the advice of competent legal counsel or government accounting professionals, there shall be established within the hybrid plan benefits trust account a stabilization reserve trust account into which shall be deposited:

(A) All employer contributions made in excess of the actuarial rate determined pursuant to § 8-36-922(b); and

(B) A pro rata share of the interest and dividends earned on the funds of the defined benefit component of the hybrid plan.

(2) If in any given year the total amount in the employer reserve account is not sufficient to meet the benefit liabilities of the defined benefit component of the plan as determined by the most recent actuarial study, then such amount as may be necessary to fund the benefits shall be transferred from the stabilization reserve trust account to the employer reserve trust account.

(e)(1) For accounting purposes only, the reserve trust account and the stabilization reserve trust account created by this section shall each consist of the following individual separate accounts for the purpose of accounting for:

(A) The benefits payable to state employees other than those described in subdivisions (e)(1)(B) and (C);

(B) The benefits payable to the attorney general and reporter, district attorneys general, district public defenders and state judges;

(C) The supplemental bridge benefits payable to state employees pursuant to § 8-36-211; and

(D) The benefits payable to teachers.

(2) In addition and for accounting purposes only, the reserve trust account and the stabilization reserve trust account shall each consist of individual separate accounts established in the name of each political subdivision participating under the provisions of this part. Each political subdivision shall have the following three (3) separate subaccounts for the purpose of accounting for:

(A) The benefits payable to employees of the political subdivision other than those described in subdivisions (e)(2)(B) and (C);

(B) The benefits payable to its county judges pursuant to § 8-36-919(e); and

(C) The supplemental bridge benefits payable to its employees pursuant to § 8-36-211.

(f) All monies deposited into the hybrid benefits plan trust account shall be used exclusively for the purposes set forth in this section.

8-36-921. Right of legislature to change hybrid plan on prospective basis. [Effective July 1, 2014.]

The general assembly shall have the right to freeze, suspend, or modify benefits, employee and employer contributions, plan terms, and design of the hybrid plan on a prospective basis through amendments to or repeals of chapters 34-37 of this title. Nothing under state law may confer to participants in the hybrid plan an implied right to future retirement benefit arrangements

and such participants may not assert the indefinite continuation of the retirement formulas, contribution rates, eligibility ages, or any other provision of the plan; provided, however, that the actuarial value of accrued benefits earned by participants prior to the effective date of any such amendment or repeal shall remain an enforceable right and may not be reduced or otherwise forfeited except by the consent of the participant or in accordance with § 8-36-918. Notwithstanding this section or any other law to the contrary, the cost-of-living provisions of § 8-36-701 shall not be deemed an accrued benefit and may be subject to change pursuant to this section and § 8-36-922.

8-36-922. Annual employer contributions to the hybrid plan benefits trust account. [Effective July 1, 2014.]

(a)(1) Every employer participating in the hybrid plan shall contribute to the hybrid plan benefits trust account each year a sum equal to the greater of:

(A) The normal contribution rate and the accrued liability contribution rate as determined pursuant to subsection (b), multiplied by the earnable compensation of all its participating employees; or

(B) Four percent (4%) of the earnable compensation of all its participating employees.

(2) Employer contributions for kindergarten through twelfth (K-12) grade teachers shall be paid by the respective local education agency for which the teachers are employed.

(b) The actuary of the retirement system shall compute the normal contribution rate and the accrued liability contribution rate payable to the defined benefit component of the plan for each account described in § 8-36-920(e). The computation shall be made by an actuarial valuation in the manner provided by chapter 37, part 3 of this title; provided, that the entry age actuarial cost method, as defined by the Actuarial Standards Board, shall be used in determining normal costs and contributions for unfunded accrued liabilities. Level dollar amortization of unfunded accrued liabilities shall be used over a period of time as set by the board, but not to exceed twenty (20) years. The asset valuation method shall be based on the market value of plan assets and provide for smoothing of investment gains and losses over a period of time established by the board, but not to exceed ten (10) years. In addition, the actuarial demographic assumptions shall include projections of mortality improvement.

(c)(1) Notwithstanding this part or any other law to the contrary, if the actuarial valuation as of any year establishes a normal contribution rate and an accrued liability contribution rate, combined, that exceeds four percent (4%), the following steps in the order provided below shall automatically take effect the next July 1 immediately following the actuarial valuation as determined by the actuarial valuation process:

(A) Transfer such amounts as may be necessary from the stabilization reserve trust account created in § 8-36-920 to the reserve trust account to fund the increase in the employer contribution rate;

(B) Suspend or reduce, as necessary, the three percent (3%) maximum cost-of-living adjustment as provided for in § 8-36-701(b)(1). Any such suspension or reduction shall begin on the July 1 next following the actuarial valuation;

(C) Suspend or reduce, as necessary, the amount of employer contributions required to the defined contribution component of the plan and redirect such amount to the reserve trust account to fund the increase in the

employer contribution rate;

(D) Increase the employee contributions required in § 8-36-904 from five percent (5%) to six percent (6%) of the participant's earnable compensation;

(E) Reduce the retirement allowance formulas in § 8-36-907 from one percent (1.0%) and one and six-tenths percent (1.6%) to such lesser amount as is necessary to reduce the employer contribution rate to four percent (4%). The reduction in formulas shall only apply to future service accruals; and

(F) If the employer contribution rate still exceeds four percent (4%) after taking the above steps, then the hybrid plan shall be suspended for future service accruals until such time as the employer rate equals four percent (4%) or lower.

(2) If the actuarial valuation as of any year establishes a normal contribution rate and an accrued liability contribution rate, combined, that equals four percent (4%) or lower, the above steps in the reversed order as provided above shall automatically take effect the next July 1 immediately following the actuarial valuation as determined by the actuarial valuation process.

(d)(1) The actuary of the retirement system shall determine the amount of the unfunded accrued liability for the defined benefit component of the hybrid plan. If the unfunded liability exceeds the maximum unfunded liability, the following steps in the order provided in subdivisions (d)(1)(A)-(F) shall automatically apply on the effective date that the maximum unfunded liability has been reached. The unfunded liability shall be determined by the calculation of the net pension liability in accordance with the standards and other pronouncements issued by the governmental accounting standards board. For purposes of this section, "maximum unfunded liability" means with respect to state employees an unfunded liability of no greater than twelve and one-half percent (12.5%) of a five-year moving market average of the general obligation debt of the state of Tennessee, including its commercial paper. With respect to teachers, "maximum unfunded liability" means an unfunded liability of no greater than twelve and one-half percent (12.5%) of a five-year moving market average of the general obligation debt of the state of Tennessee, including its commercial paper. With respect to political subdivision employees, "maximum unfunded liability" means an unfunded liability of no greater than the amount as determined by the employees' respective employer and as shall be set forth in the political subdivision's participation resolution:

(A) Transfer such amounts as may be necessary from the stabilization reserve trust account created in § 8-36-920 to the reserve trust account to fund the increase in the maximum unfunded liability;

(B) Suspend or reduce, as necessary, the three percent (3%) maximum cost-of-living adjustment as provided for in § 8-36-701(b)(1). Any such suspension or reduction shall begin on the July 1 next following the actuarial valuation;

(C) Suspend or reduce, as necessary, the amount of employer contributions required to the defined contribution component of the plan and redirect such amount to the reserve trust account to fund the increase in the maximum unfunded liability;

(D) Increase the employee contributions required in § 8-36-904 from five percent (5%) to six percent (6%) of the participant's earnable compensation;

(E) Reduce the retirement allowance formulas in § 8-36-907 from one percent (1.0%) and one and six-tenths percent (1.6%) to such lesser amount

as is necessary to reduce the unfunded liability to the maximum unfunded liability. The reduction in formulas shall only apply to future service accruals; and

(F) If the maximum unfunded liability is still exceeded, then the hybrid plan shall be suspended for future service accruals until such time as the unfunded liability equals or is less than the maximum unfunded liability.

(2) If the unfunded liability equals or is less than the maximum unfunded liability, the above steps in the reversed order as provided above shall automatically apply on the effective date that the unfunded liability equals or is less than the maximum unfunded liability.

8-36-923. Election to participate in the optional retirement program by persons exempt from the Fair Labor Standards Act. [Effective July 1, 2014.]

(a) Notwithstanding any other law to the contrary and except as otherwise provided in § 8-36-903(c), any person who enters service with a state-supported institution of higher education on or after July 1, 2014, and who is exempt from the Fair Labor Standards Act, compiled in 29 U.S.C. § 201 et seq., may elect membership in the optional retirement program established in chapter 35, part 4 of this title in lieu of the hybrid plan. The election shall be made on election forms as shall be prescribed by the retirement system and shall be filed with the retirement system and with the institution of higher education where the employee is employed. The election shall be made within the time frame described in § 8-36-403. In all cases of doubt, the retirement system shall determine whether the person is eligible to participate in the optional retirement program.

(b) Any employee participating in the optional retirement program as provided in this part who attains either five (5) or more but less than six (6) years of creditable service in the optional retirement program, or five (5) or more but less than six (6) years of creditable service in the retirement system and the optional retirement program combined, shall have the option of transferring membership from the optional retirement program to the hybrid plan under the terms and conditions prescribed in § 8-35-403. The amount paid by the employee pursuant to § 8-35-403 shall be credited to the individual account of the employee in an amount equal to the employee contributions, if any, that were in the employee's optional retirement accounts immediately before the transfer, plus any difference between the amount paid and the employee's account balance in the optional retirement program immediately before the transfer. All other sums shall be credited to the employer reserve trust account established in § 8-36-920.

(c) Any person who elects to participate in the optional retirement program as provided in subsection (a) shall participate in the program under chapter 35, part 4 of this title except as otherwise provided in subsection (d).

(d) The employer and employee contribution provisions of § 8-35-404(b)(1) shall not apply. Instead, the employer shall make employer contributions on behalf of each such eligible employee at the rate of nine percent (9%) of the employee's earnable compensation, or such alternate amount as may be prescribed in the general appropriations act each year. In addition, each such eligible employee shall contribute five percent (5%) of the employee's earnable compensation to the optional retirement program. The contributions made by such employees shall be treated as employer contributions pursuant to

§ 8-36-904(b).

(e) The general assembly shall have the right to freeze, suspend, or modify benefits, employee and employer contributions, plan terms, and design of the optional retirement program on a prospective basis through amendments to or repeals of chapters 34-37 of this title. Nothing under state law may confer to participants in the optional retirement program an implied right to future retirement benefit arrangements and such participants may not assert the indefinite continuation of the retirement formulas, contribution rates and eligibility ages in effect at the time of employment; provided, however, that the actuarial value of accrued benefits earned by participants prior to the effective date of any such amendment or repeal shall remain an enforceable right and may not be reduced or otherwise forfeited except by the consent of the employee.

8-37-104. Power of investment — Restrictions on investments. [Effective until July 1, 2014. See the version effective on July 1, 2014.]

(a) The power of investment shall be subject to approval by the board of trustees, and shall further be subject to all the terms, conditions, limitations and restrictions imposed by laws of the state of Tennessee upon domestic life insurance companies in the making and disposing of their investments, except as follows:

(1) The total sum invested in common and preferred stocks shall not exceed seventy-five percent (75%) of the total of the funds of the retirement system;

(2) The total sum invested in notes and bonds or other fixed income securities exceeding one (1) year in maturity shall not exceed seventy-five percent (75%) of the total funds of the retirement system;

(3) Within the restrictions set forth in subdivisions (a)(1) and (2), the board of trustees may invest in or otherwise acquire stocks, bonds and other securities in such foreign countries as the board may determine with the approval of the council on pensions and insurance. However, any such securities must be substantially of the same kinds, classes, and investment grades as those otherwise eligible for investment by the board and no more than fifteen percent (15%) of the system's total assets may be invested in such securities; provided, however, that such percentage may be increased by the board with the subsequent approval of the council on pensions and insurance;

(4) Subject to the limitations in subdivisions (a)(1) and (2), funds of the retirement system may be invested in Canadian securities which are substantially of the same kinds, classes and investment grades as those otherwise eligible for investment;

(5) The board of trustees shall have the power and authority to engage in forward contracts to hedge the foreign currency exposure of the fund;

(6) The board of trustees shall have the power and authority to enter into securities lending agreements whereby securities are loaned for a fee; provided, that such loans are limited so that the total amount of securities lent does not exceed thirty percent (30%) of the market value of the total assets in the retirement system's portfolio; and provided further, that such loans are secured by collateral. Securities received as collateral hereunder shall have a market value equal to at least one hundred two percent (102%)

of the market value of the loaned securities. Cash received as collateral hereunder shall equal at least one hundred percent (100%) of the market value of the loaned securities; and may be invested by or on behalf of the retirement system in any investment instrument in which the system's assets may be directly invested. Such cash may also be invested in short-term investment funds; provided, that the portfolio of such funds contains only those investment instruments in which the system's assets may be directly invested;

(7) The board of trustees shall have the power and authority to purchase or sell domestic and international stock index futures contracts for the purpose of asset allocation relating to the equity portfolios. Stock index futures contracts shall not be utilized for purposes of speculative leveraging. For purposes of this subdivision (a)(7), "speculative leveraging" is defined as buying financial futures where the amount of the contract obligation is an amount greater than the market value of the system's cash and short-term securities. The total amount of the system's financial futures contract obligation shall not exceed ten percent (10%) of the market value of the system's total assets. The sum total of the domestic and international equity portfolios, together with the value of the stock index futures contract obligation, should be within the asset allocation range for domestic and international equity securities. The board may use cash and obligations of the United States government or any of its agencies to meet the variation margin requirement of such futures contracts;

(8) The board of trustees shall have the power and authority to enter into contracts to serve as a standby note purchaser for the Tennessee state school bond authority, the Tennessee state funding board and the Tennessee local development authority; provided, that:

(A) The retirement fund receives an annual commission which represents a fair market value fee adjusted for any additional cost incurred by the issuer due to the retirement fund serving as the standby note purchaser; and

(B) If called upon to purchase such notes, the retirement fund receives a rate of return exceeding the market rate for short-term investments;

(9) The board of trustees shall have the power and authority to establish an investment policy to authorize the retirement system to acquire, hold and convey real property for investment purposes. Such acquisitions may be direct, with or without partners, or in a commingled pool; provided, that:

(A) No investment may be acquired which would, at the time of the acquisition, cause the aggregate book value of all of the retirement system's holdings and investments in real property to exceed more than ten percent (10%) of the market value of the total assets of the retirement system;

(B) The retirement system cannot acquire real property located in the state of Tennessee, unless such acquisition is in the shares or interests of a regulated investment company, mutual fund, common trust fund, investment partnership, real estate investment trust, or similar organizations in which funds are commingled and investment determinations as to which properties to purchase are made by persons other than the board;

(C) The board shall establish limitations on the percentage of ownership that the retirement system may hold in individual real estate properties; and

(D) The investment policy adopted by the board pursuant to this subdivision (a)(9) shall be approved by the legislative council on pensions and insurance; and

(10)(A)(i) The board of trustees shall have the power and authority to establish an investment policy to permit the retirement system to invest system assets in private equity. Private equity investments may include, but shall not be limited to, strategic lending, domestic and international venture capital, corporate buyouts, mezzanine and distressed debt, special situations and secondary funds. Private equity investment vehicles may include, but are not limited to, limited partnerships, private placements, co-investments, funds-of-funds and commingled funds. No investment may be acquired that would, at the time of the acquisition, cause the aggregate book value of all of the retirement system's holdings and investments in private equity to exceed more than ten percent (10%) of the market value of the total assets of the retirement system. The authority granted under this subdivision to make strategic lending investments shall expire on December 31, 2017; however, such expiration shall not affect commitments to invest in strategic lending entered into prior to December 31, 2017, nor shall it affect investments made subsequent to December 31, 2017, pursuant to those commitments. The private equity investment policy shall address:

(a) Diversification of risk, including, but not limited to, controlling financing stage, investment timing, industry and general partner concentration, appropriate sizes for investments and operational risks. The risks associated with private equity investments shall be viewed within the context of the entire portfolio;

(b) The process for, and factors used in, selection of investments. All private equity investment proposals must meet standards established for the investments by the board of trustees. Prior to the system's consideration of a specific investment proposal, the proposed investment must be determined as complying with the system's standards by an experienced, independent third-party advisor selected by the retirement system;

(c) Types of private equity investments;

(d) Length of contractual obligations;

(e) Roles of retirement system staff, consultants, the investment advisory council and the investment committee of the board of trustees; and

(f) A process for disclosure to the audit committee of the board of trustees the names of any persons or entities that bring specific private equity investment proposals to any retirement system employee or board member who has a role in determining whether retirement system assets should be invested in the private equity investment.

(ii) The investment policy adopted by the board pursuant to subdivision (a)(10)(A)(i) shall be approved by the legislative council on pensions and insurance;

(B) The board of trustees shall invest and manage private equity assets solely in the interest of the beneficiaries of the retirement system in a manner consistent with § 35-14-107, the prudent investor rule pursuant to § 35-14-103, the standard of care pursuant to § 35-14-104, and the exercise of reasonable care in delegation of investment and management

functions pursuant to § 35-14-111;

(C) Records of the retirement system relating to the identity of the name of the private equity investment vehicle used, such as the name of any limited partnership, the name of the funds-of-funds manager and title of the fund, the amount invested in the vehicle, or the present value of the investment shall be open to public inspection pursuant to title 10, chapter 7, part 5; provided, however, that records relating to the retirement system's review of any private equity investment shall not be public to the extent that:

(i) The records contain confidential information provided to the retirement system or analysis or evaluation by the retirement system; or

(ii) Disclosure of the records would have a potentially adverse effect on the retirement system's private equity program, the value of an investment, or the provider of the information.

(b) In determining compliance with the percentage limitations of this section, the funds of the retirement system shall be valued at their market value. Accordingly, an investment may be made on any given day; provided, that such investment does not cause any applicable limitation prescribed in subsection (a) to be exceeded on such day.

(c) Notwithstanding any other law to the contrary, the board of trustees is expressly authorized to contract for investment management services for the retirement system's portfolios. The board shall provide for the powers, duties, functions and compensation of any investment managers so engaged. Any contract for the investment management services shall be procured in the manner prescribed by the board. The board may authorize the system's investment consultant to initially evaluate and make recommendations regarding proposals submitted by investment managers. Personal services, professional services, consultant services, and management of the portfolios may be procured in the manner prescribed by the board without regard to the requirements of former § 12-4-109 [see the Compiler's Notes], if the board determines that the services are necessary or desirable for the efficient administration of the retirement system's investment program. All expenses and fees incidental to the outside investment management shall be charged to and paid from the earnings of the funds.

(d)(1) The treasurer shall report to the members of the council on pensions and insurance any holdings of the Tennessee consolidated retirement system in securities issued by companies that have substantial current operations in nations determined by the United States department of state to be state-sponsors of terrorism. The names of the companies shall be obtained by the treasurer from a publicly available list at no cost to the retirement system formulated by an authoritative entity, which entity may include another public pension system. The disclosures required in this section shall commence no later than as of the quarter ending December 31, 2008, and continue quarterly thereafter.

(2) Notwithstanding any law to the contrary, no person or entity may bring any civil, criminal, or administrative action against this state, its officers, employees, or agents, or against the Tennessee consolidated retirement system, its officers, directors, board members, employees, or agents for any act done in good faith in accordance with this subsection (d).

(3) If a civil action or proceeding is nevertheless commenced by any person or entity against any official or employee of the state, or against any

officers, directors, board members or employees of the Tennessee consolidated retirement system for any act done in good faith in accordance with this subsection (d), the state shall defend, indemnify and hold harmless the person from any costs, damages, awards, judgments or settlements arising from the claim or proceeding.

8-37-104. Power of investment — Restrictions on investments. [Effective on July 1, 2014. See the version effective until July 1, 2014.]

(a) The power of investment shall be subject to approval by the board of trustees, and shall further be subject to all the terms, conditions, limitations and restrictions imposed by laws of the state of Tennessee upon domestic life insurance companies in the making and disposing of their investments, except as follows:

(1) The total sum invested in common and preferred stocks shall not exceed seventy-five percent (75%) of the total of the funds of the retirement system;

(2) The total sum invested in notes and bonds or other fixed income securities exceeding one (1) year in maturity shall not exceed seventy-five percent (75%) of the total funds of the retirement system;

(3) Within the restrictions set forth in subdivisions (a)(1) and (2), the board of trustees may invest in or otherwise acquire stocks, bonds and other securities in such foreign countries as the board may determine with the approval of the council on pensions and insurance. However, any such securities must be substantially of the same kinds, classes, and investment grades as those otherwise eligible for investment by the board and no more than fifteen percent (15%) of the system's total assets may be invested in such securities; provided, however, that such percentage may be increased by the board with the subsequent approval of the council on pensions and insurance;

(4) Subject to the limitations in subdivisions (a)(1) and (2), funds of the retirement system may be invested in Canadian securities which are substantially of the same kinds, classes and investment grades as those otherwise eligible for investment;

(5) The board of trustees shall have the power and authority to engage in forward contracts to hedge the foreign currency exposure of the fund;

(6) The board of trustees shall have the power and authority to enter into securities lending agreements whereby securities are loaned for a fee; provided, that such loans are limited so that the total amount of securities lent does not exceed thirty percent (30%) of the market value of the total assets in the retirement system's portfolio; and provided further, that such loans are secured by collateral. Securities received as collateral hereunder shall have a market value equal to at least one hundred two percent (102%) of the market value of the loaned securities. Cash received as collateral hereunder shall equal at least one hundred percent (100%) of the market value of the loaned securities; and may be invested by or on behalf of the retirement system in any investment instrument in which the system's assets may be directly invested. Such cash may also be invested in short-term investment funds; provided, that the portfolio of such funds contains only those investment instruments in which the system's assets may be directly invested;

(7) The board of trustees shall have the power and authority to purchase or sell domestic and international stock index futures contracts for the purpose

of asset allocation relating to the equity portfolios. Stock index futures contracts shall not be utilized for purposes of speculative leveraging. For purposes of this subdivision (a)(7), "speculative leveraging" is defined as buying financial futures where the amount of the contract obligation is an amount greater than the market value of the system's cash and short-term securities. The total amount of the system's financial futures contract obligation shall not exceed ten percent (10%) of the market value of the system's total assets. The sum total of the domestic and international equity portfolios, together with the value of the stock index futures contract obligation, should be within the asset allocation range for domestic and international equity securities. The board may use cash and obligations of the United States government or any of its agencies to meet the variation margin requirement of such futures contracts;

(8) The board of trustees shall have the power and authority to enter into contracts to serve as a standby note purchaser for the Tennessee state school bond authority, the Tennessee state funding board and the Tennessee local development authority; provided, that:

(A) The retirement fund receives an annual commission which represents a fair market value fee adjusted for any additional cost incurred by the issuer due to the retirement fund serving as the standby note purchaser; and

(B) If called upon to purchase such notes, the retirement fund receives a rate of return exceeding the market rate for short-term investments;

(9) The board of trustees shall have the power and authority to establish an investment policy to authorize the retirement system to acquire, hold and convey real property for investment purposes. Such acquisitions may be direct, with or without partners, or in a commingled pool; provided, that:

(A) No investment may be acquired which would, at the time of the acquisition, cause the aggregate book value of all of the retirement system's holdings and investments in real property to exceed more than ten percent (10%) of the market value of the total assets of the retirement system;

(B) The retirement system cannot acquire real property located in the state of Tennessee, unless such acquisition is in the shares or interests of a regulated investment company, mutual fund, common trust fund, investment partnership, real estate investment trust, or similar organizations in which funds are commingled and investment determinations as to which properties to purchase are made by persons other than the board;

(C) The board shall establish limitations on the percentage of ownership that the retirement system may hold in individual real estate properties; and

(D) The investment policy adopted by the board pursuant to this subdivision (a)(9) shall be approved by the legislative council on pensions and insurance; and

(10)(A)(i) The board of trustees shall have the power and authority to establish an investment policy to permit the retirement system to invest system assets in private equity. Private equity investments may include, but shall not be limited to, strategic lending, domestic and international venture capital, corporate buyouts, mezzanine and distressed debt, special situations and secondary funds. Private equity investment vehicles may include, but are not limited to, limited partnerships, private placements, co-investments, funds-of-funds and commingled funds. No

investment may be acquired that would, at the time of the acquisition, cause the aggregate book value of all of the retirement system's holdings and investments in private equity to exceed more than ten percent (10%) of the market value of the total assets of the retirement system. The authority granted under this subdivision to make strategic lending investments shall expire on December 31, 2017; however, such expiration shall not affect commitments to invest in strategic lending entered into prior to December 31, 2017, nor shall it affect investments made subsequent to December 31, 2017, pursuant to those commitments. The private equity investment policy shall address:

(a) *Diversification of risk, including, but not limited to, controlling financing stage, investment timing, industry and general partner concentration, appropriate sizes for investments and operational risks. The risks associated with private equity investments shall be viewed within the context of the entire portfolio;*

(b) *The process for, and factors used in, selection of investments. All private equity investment proposals must meet standards established for the investments by the board of trustees. Prior to the system's consideration of a specific investment proposal, the proposed investment must be determined as complying with the system's standards by an experienced, independent third-party advisor selected by the retirement system;*

(c) *Types of private equity investments;*

(d) *Length of contractual obligations;*

(e) *Roles of retirement system staff, consultants, the investment advisory council and the investment committee of the board of trustees; and*

(f) *A process for disclosure to the audit committee of the board of trustees the names of any persons or entities that bring specific private equity investment proposals to any retirement system employee or board member who has a role in determining whether retirement system assets should be invested in the private equity investment.*

(ii) The investment policy adopted by the board pursuant to subdivision (a)(10)(A)(i) shall be approved by the legislative council on pensions and insurance;

(B) The board of trustees shall invest and manage private equity assets solely in the interest of the beneficiaries of the retirement system in a manner consistent with § 35-14-107, the prudent investor rule pursuant to § 35-14-103, the standard of care pursuant to § 35-14-104, and the exercise of reasonable care in delegation of investment and management functions pursuant to § 35-14-111;

(C) Records of the retirement system relating to the identity of the name of the private equity investment vehicle used, such as the name of any limited partnership, the name of the funds-of-funds manager and title of the fund, the amount invested in the vehicle, or the present value of the investment shall be open to public inspection pursuant to title 10, chapter 7, part 5; provided, however, that records relating to the retirement system's review of any private equity investment shall not be public to the extent that:

(i) The records contain confidential information provided to the retirement system or analysis or evaluation by the retirement system; or

(ii) Disclosure of the records would have a potentially adverse effect on the retirement system's private equity program, the value of an investment, or the provider of the information.

(b) In determining compliance with the percentage limitations of this section, the funds of the retirement system shall be valued at their market value. Accordingly, an investment may be made on any given day; provided, that such investment does not cause any applicable limitation prescribed in subsection (a) to be exceeded on such day.

(c) Notwithstanding any other law to the contrary, the board of trustees is expressly authorized to contract for investment management services for the retirement system's portfolios. The board shall provide for the powers, duties, functions and compensation of any investment managers so engaged. Any contract for the investment management services shall be procured in the manner prescribed by the board. The board may authorize the system's investment consultant to initially evaluate and make recommendations regarding proposals submitted by investment managers. Personal services, professional services, consultant services, and management of the portfolios may be procured in the manner prescribed by the board without regard to the requirements of former § 12-4-109 [see the Compiler's Notes], if the board determines that the services are necessary or desirable for the efficient administration of the retirement system's investment program. All expenses and fees incidental to the outside investment management shall be charged to and paid from the earnings of the funds.

(d)(1) The treasurer shall report to the members of the council on pensions and insurance any holdings of the Tennessee consolidated retirement system in securities issued by companies that have substantial current operations in nations determined by the United States department of state to be state-sponsors of terrorism. The names of the companies shall be obtained by the treasurer from a publicly available list at no cost to the retirement system formulated by an authoritative entity, which entity may include another public pension system. The disclosures required in this section shall commence no later than as of the quarter ending December 31, 2008, and continue quarterly thereafter.

(2) Notwithstanding any law to the contrary, no person or entity may bring any civil, criminal, or administrative action against this state, its officers, employees, or agents, or against the Tennessee consolidated retirement system, its officers, directors, board members, employees, or agents for any act done in good faith in accordance with this subsection (d).

(3) If a civil action or proceeding is nevertheless commenced by any person or entity against any official or employee of the state, or against any officers, directors, board members or employees of the Tennessee consolidated retirement system for any act done in good faith in accordance with this subsection (d), the state shall defend, indemnify and hold harmless the person from any costs, damages, awards, judgments or settlements arising from the claim or proceeding.

(e) The board may authorize assets of the funds of the retirement system to be pooled for investment purposes with any assets under the custody of the state treasurer.

8-37-108. Investment advisory council.

(a) **Appointment.** The state treasurer shall nominate, with the advice and

consent of the board of trustees, an investment advisory council, consisting of five (5) persons who, at the time of their appointment, shall have at least five (5) years' professional experience as portfolio manager, economist, or as investment advisor in any field for which investments of Tennessee consolidated retirement system funds are authorized.

(b) **Terms of Members.**

(1) The terms of office of the members of the council shall be for five (5) years, except that of the initial appointees, one (1) shall serve for one (1) year, one (1) shall serve for two (2) years, one (1) shall serve for three (3) years, one (1) shall serve for four (4) years, and one (1) shall serve for five (5) years.

(2) The terms of the initial appointees shall begin January 1, 1973.

(c) **Additional Appointments.** In addition to the members nominated pursuant to subsection (a), the treasurer may, at the treasurer's discretion, nominate two (2) additional members to the investment advisory council. One of the additional members shall be of a racial minority and the other shall be female. Both members shall have at least five (5) years' professional experience as a portfolio manager, economist or investment manager in any field for which investments of Tennessee consolidated retirement system funds are authorized or as a university professor in the school of business, finance, investments or economics. Any such nomination shall be with the advice and consent of the board of trustees. The terms of office of the additional members shall be for three (3) years with the terms beginning on July 1 and ending on June 30 of the appropriate years.

(d) **Election of chair and vice chair.** The council shall annually elect a chair and vice chair from its membership.

(e) **Compensation of Members.** Members of the council shall receive no salaries, but shall be reimbursed for the actual expenses incurred by them in the performance of their duties.

(f) **Vacancies.**

(1) Should a vacancy occur on the council, the state treasurer shall appoint a person equally qualified for the remainder of the term.

(2) Members may succeed themselves on the council.

(g) **Meetings — Financial Report.** The council shall meet at least quarterly or more frequently as determined by the state treasurer. At all such meetings, the investment staff shall present a report of the investment portfolio showing all receipts, disbursements, and changes in the assets and liabilities which have occurred since the last meeting.

(h) **Proceedings and Records Open to Public.** All of its proceedings and records shall be open for inspection by the public.

8-37-114. Authorization to contract for investment management services.

(a) Notwithstanding any other provision of the law to the contrary, the board of trustees is expressly authorized to contract for investment management services for the retirement system's foreign portfolios and for the retirement system's real estate portfolios. The board shall provide for the powers, duties, functions and compensation of any investment managers so engaged. Any contract for such investment management services shall be procured in the manner prescribed by the board. The board may authorize the

system's investment consultant to initially evaluate and make recommendations regarding proposals submitted by investment managers. Personal services, professional services, consultant services, management of the foreign portfolios, and management of the real estate portfolios may be procured in such manner as prescribed by the board without regard to the requirements of former § 12-4-109 [see the Compiler's Notes], if the board determines that such services are necessary or desirable for the efficient administration of the retirement system's investment program, and provided such procurement method is approved by the council on pensions and insurance.

(b) All expenses and fees incidental to such outside investment management shall be charged to and paid from the earnings of the funds.

8-37-220. Retirement credit established through monthly installments.

(a) Subject to the conditions set forth in this section, the board of trustees may promulgate substantive and procedural rules to permit members, including retired members, to establish the retirement credit authorized in chapters 34-37 of this title through equal monthly installments over a period not to exceed five (5) years from the date the first monthly installment payment is due and payable. Any rules promulgated under this section shall set forth the date on which the retirement system may begin accepting monthly installment payments pursuant hereto. Nothing in this section shall be construed to allow a member or retired member to establish retirement credit unless such member otherwise meets all the eligibility requirements to establish the credit.

(b) Notwithstanding any provision of the law to the contrary, this section shall have no application to the following code sections: §§ 8-34-605(a), 8-34-612, 8-34-620, 8-34-623, 8-35-317, 8-35-403(f) and 8-36-105. Any payment required to establish retirement credit under such sections must be made in a lump sum and cannot be made in monthly installments.

(c) Any member or retired member electing to purchase retirement credit through monthly installments must make such payments by electronic transfer. Each installment shall be due and payable on the first business day of each calendar month during the payment period or on a date designated by the member. If a member does not designate a date, then the date that each installment shall be due and payable will default to the first business day of each calendar month during the payment period. In the event any member or retired member fails to remit the full amount of an installment within sixty (60) calendar days after its due date, the retirement system is authorized to refund to such member all installment payments made for the retirement credit being established. In that event, the member or retired member shall not be permitted to purchase any retirement credit through monthly installments for a period of three (3) years from the date of the refund.

(d) The right of a member or retired member to establish retirement credit through monthly installments shall cease upon such member's death. In that event, any installment payments made by the member or retired member under an installment payment plan which is incomplete on the date of the member or retired member's death shall be paid in a lump sum to the person or persons nominated by such member pursuant to § 8-36-121, if living, otherwise to such member's estate in accordance with § 8-36-120.

(e) Retirement credit being established through monthly installments can-

not be used in determining any rights or benefits under the retirement system until all payments for the same have been received by the retirement system.

8-38-101. Chapter definitions.

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

(1) "Agreement" means the federal-state agreement between the federal agency and the state of Tennessee entered into on August 16, 1951 as authorized by the Social Security Enabling Act for the purpose of extending coverage under Title II of the Social Security Act.

(2) "Commissioner of social security" includes any individual to whom the commissioner of social security has delegated any of the commissioner's functions under the Social Security Act, compiled in 42 U.S.C. § 301 et seq., with respect to coverage under such act of employees of states and their political subdivisions;

(3) "Employee" includes an officer of a state or political subdivision thereof;

(4) "Employment" means any service performed by an employee in the employ of the state, or any political subdivision thereof, for such employer, except:

(A) Service which, in the absence of an agreement entered into under this chapter, would constitute "employment" as defined in the Social Security Act; or

(B) Service which under the Social Security Act, compiled in 42 U.S.C. § 301 et seq., may not be included in an agreement between the state and the commissioner of social security, entered into under this chapter;

(5) "Employer" means the state, a political subdivision, or a local instrumentality of either;

(6) "Federal Insurance Contributions Act" means chapter 21 of the federal Internal Revenue Code of 1954, compiled in 26 U.S.C. § 3101 et seq., as such code has been and may from time to time be amended or codified;

(7) "Modification" means an amendment to the original federal-state agreement to modify coverage for coverage groups or to extend coverage to additional coverage groups consistent with the provisions of Section 218 of the Social Security Act and this chapter;

(8) "Plan of agreement" means an agreement between the state social security administrator and an employer for the purpose of extending the benefits of the Social Security Act to coverage groups within its employ;

(9) "Political subdivision" includes an instrumentality of a state, or one (1) or more of its political subdivisions, including the Tennessee Municipal League, the Tennessee School Boards Association and the Tennessee County Services Association, or of a state and one (1) or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision;

(10) "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as "The Social Security Act", including regulations and requirements issued pursuant thereto, as such act has been and may from time to time be amended;

(11) "State agency" means the state old age and survivors insurance

agency; and

(12) "Wages" means all remuneration for employment, regardless of the medium in which paid, which would constitute wages within the meaning of the Social Security Act, compiled in 42 U.S.C. § 301 et seq., as amended.

8-38-103. Agreement with federal administrator.

(a) The state agency, with the approval of the governor, is hereby authorized to enter on behalf of the state into an agreement with the commissioner of social security, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of the state or any political subdivision thereof with respect to services specified in such act which constitute "employment" as defined in § 8-38-101.

(b) Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, and modification of the agreement, administration, and other appropriate provisions as the state agency and commissioner of social security shall agree upon, but, except as may be otherwise required by or under the Social Security Act, compiled in 42 U.S.C. § 301 et seq., as to the services to be covered, such agreement shall provide in effect that:

(1) Benefits will be provided for employees whose services are covered by the agreement, and their dependents and survivors, on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act, compiled in 42 U.S.C. § 401 et seq.;

(2) The employer will pay to the internal revenue service, at such time or times as may be prescribed under the Social Security Act, compiled in 42 U.S.C. § 301 et seq., contributions with respect to wages, as defined in § 8-38-101, equal to the sum of the taxes which would be imposed by §§ 3101 and 3111 of the Federal Insurance Contributions Act, codified in 26 U.S.C. §§ 3101 and 3111, if the services covered by the agreement constituted employment within the meaning of that act;

(3) Such agreement or modification of an agreement shall be effective, with respect to services in the employment covered by the agreement or modification thereof, as of the beginning date within the limits provided by paragraph 218(e)(1) of the Social Security Act, codified in 42 U.S.C. § 418(e)(1);

(4) All services which constitute employment as defined in § 8-38-101 and are performed in the employ of the state by employees of the state shall be covered by the agreement; and

(5) All services which:

(A) Constitute employment as defined in § 8-38-101;

(B) Are performed in the employ of a political subdivision of the state; and

(C) Are covered by a plan which is in conformity with the terms of the agreement and which has been approved by the state agency under §§ 8-38-101 — 8-38-110;

shall be covered by the agreement.

8-38-104. Employees of interstate instrumentalities.

(a) Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other

state or states to:

(1) Enter into an agreement with the commissioner of social security whereby the benefits of the federal old-age and survivors' insurance system shall be extended to employees of such instrumentality;

(2) Require its employees to pay, and for that purpose to deduct from their wages, contributions equal to the amounts which they would be required to pay under § 8-38-105 if they were covered by an agreement made pursuant to § 8-38-103; and

(3) Make payments to the internal revenue service in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements.

(b) Such agreements shall, to the extent practicable, be consistent with the terms and provisions of § 8-38-103 and other provisions of this chapter.

8-38-105. Contributions by employees required.

Every employee of the state whose service is covered by an agreement entered into under §§ 8-38-103 and 8-38-104 shall be required to pay for the period of such coverage, contributions, with respect to wages, as defined in § 8-38-101, equal to the amount of the employee's tax which would be imposed by the "Rate of Tax" sections of the Federal Insurance Contributions Act, if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or the employee's entry upon such service, after the enactment of this chapter.

8-38-107. [Repealed.]

8-38-108. Political subdivisions — Terms of plans — Exclusions.

(a) Each political subdivision of the state is hereby authorized to submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision.

(b) Each such plan and any amendment thereof shall be approved by the state agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the state agency, except no such plan shall be approved unless it:

(1) Is in conformity with the requirements of the Social Security Act, and with the agreement entered into under § 8-38-103;

(2) Provides that all services which constitute employment as defined in § 8-38-101 are performed in the employ of the political subdivision by employees thereof shall be covered by the plan, except that it may exclude services performed by individuals to whom § 218(c)(3)(B) or § 218(d) of the Social Security Act, codified in 42 U.S.C. § 418(c)(3)(B) and (d), respectively, is applicable;

(3) Specifies the source or sources from which the funds necessary to make the payments required by §§ 8-38-111 and 8-38-114 [repealed] are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose. Such reasonable assurance shall include a requirement that political subdivisions with no general taxing authority supply a form of financial guarantee within the guidelines established by the

state agency;

(4) Provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) Provides that the political subdivision will make such reports, in such form and containing such information, as the state agency may from time to time require, and comply with such provisions as the state agency or the commissioner of social security may from time to time find necessary to ensure the correctness and verification of such reports; and

(6) Authorizes the state agency to terminate the plan in its entirety in the discretion of the state agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulation of the state agency and may be consistent with the provisions of the Social Security Act, codified in 42 U.S.C. § 301 et seq. No plan may be terminated, either in its entirety or with respect to any coverage group, on or after the effective date of the Social Security Amendments of 1983. In instances where a political subdivision is legally dissolved or ceases to exist, the state agency shall submit a notice to the social security administration with evidence of dissolution.

(c) Social security coverage is required for all political subdivisions as defined by § 8-38-101 which elect to participate in the Tennessee consolidated retirement system.

8-38-111. Payments by political subdivisions.

Each political subdivision that has an approved plan under §§ 8-38-108 — 8-38-110 shall pay to the internal revenue service, at such time or times as may be required by applicable federal law, contributions with respect to wages, equal to the applicable taxes which would be imposed by the "Rate of Tax" sections of the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act.

8-38-112. Deductions from subdivision employees' wages.

Each political subdivision required to make payments under § 8-38-111 is authorized to impose upon each of its employees, as to services which are covered by an approved plan of agreement, a contribution with respect to the employee's wages, not exceeding the amount of the employee's tax which would be imposed by the "Rate of Tax" sections of the Federal Insurance Contributions Act, if such services constituted employment within the meaning of that act. Each political subdivision is authorized to deduct the amount of such contribution from the employee's wages. Failure to deduct such contributions shall not relieve the employee or employer of liability for such contributions.

8-38-113. [Repealed.]

8-38-114. [Repealed.]

8-38-115. [Repealed.]

8-38-116. Appropriations for contributions and administrative costs.

The general assembly shall make appropriations sufficient to provide contributions and administrative costs in accordance with §§ 8-38-105 — 8-38-114 [see the Compiler's Notes] on behalf of state employees and teachers. Effective July 1, 1992, each local education agency shall provide for any increased amounts needed for its teachers, above the amount funded by the state for fiscal year 1991-1992, from funds appropriated for the basic education program.

8-38-117. [Repealed.]

8-38-118. [Repealed.]

8-38-119. [Repealed.]

8-38-120. [Repealed.]

8-38-123. State retirement systems unaffected — Two retirement systems — National guard employees — Regional boards and university — Referendum.

(a) Nothing in this chapter shall apply to the judges' retirement system or the attorneys general retirement system, §§ 17-301 — 17-325 [superseded] inclusive and §§ 8-618 — 8-622 [superseded] inclusive respectively, nor shall it impair existing retirement contracts under title 49, chapter 15 [superseded] or chapters 34-36 of this title as amended, they being the teachers' retirement system and the state retirement system. The state agency is expressly deprived of power to make any agreements voiding or changing any of the terms and conditions of the acts creating and setting up either the teachers' retirement system or the state retirement system, but it may make agreements in conformity with § 218 of the Social Security Act, codified in 42 U.S.C. § 418, with reference to the teachers' retirement system and the state retirement system.

(b) Pursuant to § 218(d)(6) of the Social Security Act, codified in 42 U.S.C. § 418(d)(6), the Tennessee teachers' retirement system and the state employees' retirement system, or such components thereof as may be established by the governor or the governor's agent pursuant to sentence one (1) of such § 218(d)(6), shall, for the purpose of this chapter, each be deemed to constitute two (2) retirement systems, one (1) of which is composed of the members of each such system who have expressed their desire to be covered under the Social Security Act, compiled in 42 U.S.C. § 301 et seq., and all individuals becoming members of each such system after the date such coverage under the Social Security Act, compiled in 42 U.S.C. § 301 et seq., is extended, and the other composed of the members who have not expressed a desire for such coverage. Upon request of the governing body of any political subdivision operating a retirement system, the membership of its retirement system may likewise be divided.

(c) Other public civilian employees, such as those civilians employed by the Tennessee national guard, who are paid out of federal funds or to the extent they are so paid, may be regarded as state employees for the purpose of social security coverage under this section. Regional boards, such as regional

libraries of the state of Tennessee and the University of Tennessee, may be classified as political subdivisions for the purpose of social security coverage under this section.

(d) With respect to any retirement system of the state to which this chapter applies or to any retirement system of a political subdivision, including the University of Tennessee whose governing body so requests, the governor is empowered to authorize a referendum, and shall designate an agency or individual to supervise its conduct, in accordance with the requirements of § 218(d)(3) of the Social Security Act, codified in 42 U.S.C. § 418(d)(3), on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. The notice of referendum required by § 218(d)(3)(C) of the Social Security Act, codified in 42 U.S.C. § 418(d)(3)(C), to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or the individual designated to supervise the referendum shall deem necessary and sufficient to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter. Upon receiving evidence satisfactory to the governor that, with respect to any such referendum, the conditions specified in § 218(d)(3) of the Social Security Act, codified in 42 U.S.C. § 418(d)(3), have been met, the governor or an individual designated by the governor shall so certify to the commissioner of social security.

(e) The governor shall delegate signature authority to the state treasurer, who is the administrator for the state. The governor shall also delegate the authority to designate an agency or individual to supervise the state old age and survivors insurance agency, and shall delegate the authority to supervise referenda to the state treasurer. The state treasurer may designate an individual to administer the state old age and survivors insurance agency and to supervise referenda as needed.

8-38-125. [Repealed.]

8-38-127. Old age and survivors insurance agency attached to department of the treasury.

The old age and survivors' insurance agency shall be attached to the department of the treasury in a division as designated by the state treasurer.

8-38-128. Electronic filing and retention of social security documents.

(a) The state social security administrator may implement procedures for the filing and retention of social security documents by electronic means and may authorize electronic signatures in the signing of such documents.

(b) If a document is filed by electronic means pursuant to this section, the electronic record and the electronic signature of the person who executes the same shall be binding on all persons. The use of an electronic signature shall have the same validity and effect as the use of a signature affixed by hand.

(c) For the purposes of this section, the following definitions shall apply:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(2) "Electronic record" means information which is created, generated, sent, communicated, received, or stored by electronic means;

(3) "Electronic signature" means an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

8-42-101. Chapter definitions.

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

(1) "Attorney general and reporter" means the attorney general and reporter of Tennessee;

(2) "Counsel" means any practicing attorney licensed to practice law in the state; and

(3)(A) "State employee" means any person who is a state official, including members of the general assembly and legislative officials elected by the general assembly, or any person who is employed in the service of and whose compensation is payable by the state, or any person who is employed by the state whose compensation is paid in whole or in part from federal funds, but does not include any person employed on a contractual or percentage basis. "State employee" includes a foster parent under a contract with the state of Tennessee to provide foster home care for children in the care and custody of the state and within the confines of the foster parent-child relationship. Notwithstanding any statute to the contrary, for the purposes of provision of legal representation, "state employee" also includes employees of community service agencies, and for purposes of §§ 9-8-112 and 9-8-307, including, but not limited to, § 9-8-307(a)(1)(K), "state employee" also includes employees of community service agencies. "State employee" also includes a contract security employee working with the department of children's services, solely to the extent that such contract security employee shall be permitted to drive a state vehicle pursuant to the rules and regulations of the department of general services, division of motor vehicle management, if such contract security employee's duties include the transportation of juveniles and, such contract security employee shall not be considered a state employee for any other purpose;

(B) "State employee" also includes any person designated by a department or agency head as a participant in a volunteer program authorized by the department or agency head. "State employee" also includes community service agency volunteers designated by the commissioner of health; provided, that designated volunteers who are medical professionals providing direct health care pursuant to title 37, chapter 5, part 3 shall be considered state employees solely for the category of "professional liability" pursuant to § 9-8-307. Volunteers shall not be eligible for workers' compensation benefits from the state. It is the duty of each agency and department to register with the board of claims the names of all persons participating in a volunteer program authorized by such department or agency head. If an agency or department head fails to register the name of a volunteer with the board of claims, any amounts paid by the state pursuant to this chapter or title 9, chapter 8 as a result of the volunteer's actions shall be funded through the agency's or department's budget. The commissioner of finance and administration is autho-

rized to promulgate rules and regulations to determine who is qualified to be designated as a volunteer. Such rules and regulations may set forth the criteria for qualification of participants in volunteer programs. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(C) "State employee" under this chapter and under title 9, chapter 8, also includes, as a volunteer, a person designated by the district attorney general of each judicial district as a member of a judicial district task force relating to the investigation and prosecution of drug cases. The district attorney general of each judicial district shall register only the names of properly qualified and designated task force members with the board of claims. Any member of such a task force designated by the district attorney general shall meet the criteria for qualifying as such a member pursuant to § 8-7-110 and as set forth in rules and regulations promulgated by the commissioner of finance and administration. The commissioner, after consultation with the department of safety and the Tennessee bureau of investigation, is authorized to promulgate rules and regulations to determine who shall qualify to be designated as a member of such judicial district task forces. Such rules and regulations may set criteria for qualifications of members and may set limits on the numbers of task force members from each district who may be registered. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act. Task force members are not eligible for workers' compensation benefits from the state of Tennessee;

(D) "State employee" also includes persons who are members of community-based screening processes or mandatory pre-screening agents that function under title 33, chapter 6, and who screen individuals to make judgments required by title 33, chapter 6. "State employee" further includes the department of mental health and substance abuse services "medical consultant"; this individual shall be a licensed physician who is designated by the commissioner of mental health and substance abuse services to provide medical consultation and advisory services to and on behalf of the commissioner and to the department of mental health and substance abuse services under title 33. "State employee" further includes any physician, psychologist or designated professional, while acting under § 33-6-404(3)(B)(iii), who is engaged in assessing the need or absence of need for physical restraint or vehicle security during transportation to a hospital or treatment resource. The commissioner shall register only the names of properly qualified and designated persons with the board of claims. Persons designated under this subdivision (3)(D) are not eligible for workers' compensation benefits from the state of Tennessee. For purposes of legal actions resulting from acts or omissions by these properly qualified and designated persons while performing duties referenced in this subdivision (3)(D), the state shall be considered the sole employer of these persons;

(E) "State employee" also includes, solely for purposes of this chapter and under § 9-8-307(a)(1)(A), (D), (E), (F), (M), (N), (Q) and (R), staff of a child advocacy center that meets the requirements for funding under § 9-4-213(a) or that qualifies for start-up funding as a new child advocacy center under § 9-4-213(b), to the extent the person is performing functions authorized by § 9-4-213. "State employee" does not include any person

employed on a contractual or percentage basis. Such staff shall not be eligible for workers' compensation or other benefits from the state, nor shall such staff be members of the Tennessee consolidated retirement system;

(F) "State employee" also includes, solely for purposes of this chapter and under §§ 9-8-112 and 9-8-307, a person directly participating or selected to directly participate in the process of executing a sentence of death as a contractor or volunteer. Such persons shall not be eligible for any other state employee benefits, including, but not limited to, workers' compensation, nor shall they be members of the Tennessee consolidated retirement system; and

(G) "State employee" also includes, solely for purposes of this chapter and under §§ 9-8-112 and 9-8-307, a qualified individual employed pursuant to § 68-115-203(b) to assist ring officials and commission members pursuant to § 68-115-203(b) in the regulation of professional contests under title 68, chapter 115, part 2. Such individuals shall not be eligible for any other state employee benefits, including, but not limited to, workers' compensation, nor shall they be members of the Tennessee consolidated retirement system.

8-42-103. Defense counsel for state employees.

(a) When a civil action for damages is commenced in any court by any person against any state employee as defined in this chapter for any acts or omissions of the state employee within the scope of the employee's employment, except for willful, malicious, or criminal acts or omissions or for acts or omissions done for personal gain, the attorney general and reporter has the discretion to provide representation to the employee. Such representation may be provided by:

(1) The attorney general and reporter's assistants;

(2) Attorneys appointed by the attorney general and reporter; or

(3) Payment of reasonable compensation of counsel approved by the attorney general and reporter. Attorney's compensation, court costs, and other necessary incidental expenses in connection with the action shall be paid from the funds appropriated to the attorney general and reporter pursuant to this chapter. The method of providing representation is within the sole discretion of the attorney general and reporter. Notwithstanding any provision of the law to the contrary, the attorney general and reporter is specifically authorized to appoint attorneys and to determine their compensation to fulfill the purpose of this chapter.

(b) For the exclusive purpose of this section, "state employee" also includes attorneys appointed by a court, or other agency authorized by law to make such appointments, to represent an indigent when a civil action for damages is commenced against such attorney for any act or omission in the course of representing such indigent. Notwithstanding any provision of law to the contrary, such attorney shall not be considered a state employee for any other purpose including, but not limited to, §§ 9-8-112 and 9-8-307.

(c) For the exclusive purpose of this section, "state employee" also includes any person who performs the functions of disciplinary counsel or other investigatory or prosecutorial functions pursuant to title 17, chapter 5 when a civil action for damages is commenced against such person for any act or

omission in the course of performing the duties described in title 17, chapter 5. Notwithstanding any law to the contrary, such person shall not be considered a state employee for any other purpose including, but not limited to, §§ 9-8-112 and 9-8-307.

(d) For the exclusive purpose of this section, "state employee" also includes any expert witness appearing and testifying on behalf of the department of health at any administrative hearing or other similar proceeding held with respect to a disciplinary or other action against any person or entity required to be licensed, permitted, certified, or authorized by any board, council, committee, or agency created pursuant to title 63 and title 68, when a civil action for damages is commenced against such expert witness for any act or omission in the course of appearing and testifying. Notwithstanding any law to the contrary, such witness shall not be considered a state employee for any other purpose including, but not limited to, §§ 9-8-112 and 9-8-307.

8-50-114. Continuing education — Limited waiver of tuition and fees.

(a)(1) Full-time employees of the state of Tennessee are eligible for enrollment in one (1) course per term at any state-supported college or university, college of applied technology or the Tennessee Foreign Language Institute without paying tuition charges, maintenance fees, student activity fees, registration fees or online course fees for courses taken through the regents online degree programs; provided, that availability of waivers of online course fees for courses taken through the regents online degree program shall be limited each year by the amount of funds specifically appropriated for such online course fee waivers in the general appropriations act.

(2) For purposes of this section, current members of the general assembly shall be considered as full-time employees of the state of Tennessee.

(b) Enrollment privileges may be limited or denied by the college, university, college of applied technology or Tennessee Foreign Language Institute on an individual basis according to space availability. Enrollment under this section is on a first-come, first-served basis. No tuition-paying student shall be denied enrollment in a course because of a state employee enrollment pursuant to this section.

(c) Courses taken under this section are governed by the academic rules and regulations of the institution or school offering the course or courses.

(d) The provisions of this section do not diminish or affect in any way the rights provided to full-time employees of the state university and community college system and the University of Tennessee in § 49-7-116.

(e) The Tennessee higher education commission is hereby directed, authorized and empowered to promulgate and adopt such rules and regulations as are necessary to implement the provisions of this section, including rules and regulations for the allocation of appropriations specifically appropriated for the implementation of the provisions of this section.

(f)(1) The number of students permitted to attend classes beyond the limits established in this section or in the general appropriations act for any fiscal year shall be discounted from the effects of the higher education funding formula by the Tennessee higher education commission.

(2) Any reimbursements to the state-supported colleges, universities or area vocational-technical schools for the enrollments provided by this section shall be limited to those funds specifically appropriated for that purpose in the general appropriations act. Such reimbursement shall be limited to

assessed charges and fees of enrollment.

(3) Any reimbursement to the Tennessee Foreign Language Institute for enrollments provided by this section shall be limited to those funds specifically appropriated for the fee waiver and fee discount programs authorized by this section and §§ 8-50-115 and 49-7-119.

8-50-1204. Trust conditions.

(a) Any trust created under this part shall be irrevocable, and the assets thereof shall be preserved, invested and expended solely pursuant to and for the purposes of this part and shall not be loaned or otherwise transferred or used for any other purpose. The assets of the trust shall be expended solely to:

(1) Make payments for other post-employment benefits pursuant to and in accordance with terms of the political subdivision's respective post-employment benefit plan; and

(2) Pay the cost of administering the trust.

(b) Any investment trust so created shall have the powers, privileges and immunities of a corporation; and all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held in trust for the purpose for which received.

(c) Notwithstanding any law to the contrary, all assets, income and distributions of the investment trust shall be protected against the claims of creditors of the political subdivisions, plan administrators, and plan participants, and shall not be subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws or other process whatsoever, nor shall any assignment thereof be enforceable in any court.

9-1-103. Protection of appropriations of state and departmental revenues and state funds and institutional and program revenues by the state's sovereign immunity.

(a) Except to the extent that sovereign immunity is expressly waived by the general assembly, all appropriations of state revenues and departmental revenues previously and hereafter made to the state, its departments, agencies, boards, educational institutions, instrumentalities, and incorporated entities performing the state's governmental functions shall be state funds and shall be protected by the state's sovereign immunity from every court's judgment, decree, attachment, or other legal process.

(b) Except to the extent that sovereign immunity is expressly waived by the general assembly, all appropriations of state funds and institutional and program revenues previously and hereafter made to institutions and programs of higher education shall be state funds and shall be protected by the state's sovereign immunity from any court's judgment, decree, attachment, or other legal process.

9-3-301. Misappropriation of state-shared funds by counties — Withholding of funds — Bond.

(a) In the event that any county official, department, commission or other agency of any county, misappropriates any funds paid to the county from state-shared revenues to the extent that such is in violation of any state law, the comptroller of the treasury, upon determination by a certified audit that such a misappropriation has occurred, shall certify the same to the commis-

sioner of finance and administration.

(b) Upon such certification, the commissioner shall withhold, or cause to be withheld, from state-shared revenues from all other agencies, commissions, departments, or officials of the county, a sum equal to the ratio of the amount misappropriated during the fiscal year to all the state-shared revenues payable to all agencies or departments of the county during the fiscal year, as applied to the amount of state-shared revenues, the individual agency or department was due from state-shared revenues during the fiscal year.

(c) Any county official vested by law with the authority to administer state-shared funds shall furnish a good and sufficient bond in the amount of one hundred thousand dollars ($100,000), or in a greater sum as the county legislative body may determine, payable to the state, to indemnify the county against the loss of any funds occurring as a result of such person's unlawful or dishonest acts. 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.

9-3-406. Establishment of process for confidential reporting of suspected illegal, improper, wasteful or fraudulent activity — Retaliatory activities prohibited.

(a) An audit committee created pursuant to this chapter shall establish a process by which employees, taxpayers, or other citizens may confidentially report suspected illegal, improper, wasteful, or fraudulent activity. If the information provided causes the chair of the audit committee to believe that illegal, improper, wasteful, or fraudulent activity may have occurred, then the chair of the audit committee shall report the information to the office of the comptroller of the treasury pursuant to title 8, chapter 4, part 5. The detailed information received and generated pursuant to a report of suspected illegal, improper, wasteful, or fraudulent activity, shall be considered audit working papers and is therefore not an open record pursuant to title 10, chapter 7.

(b) Section 50-1-304 shall apply to all local government employees. In addition, no local government employees shall suffer any of the prohibited retaliatory actions specified in § 50-1-304 for reporting or cooperating with the audit committee, internal auditors, or auditors from, or approved by, the comptroller of the treasury, or for reporting any facts to the local government to which the audit committee is attached. Any person who knowingly and willingly retaliates or takes adverse action of any kind against any person for reporting alleged wrongdoing pursuant to this chapter commits a Class A misdemeanor.

9-4-103. Eligible collateral.

"Eligible collateral" means:

(1) Bonds of the United States or any of its agencies;

(2) Obligations guaranteed by the United States or any of its agencies, the payments of which are fully guaranteed both as to principal and interest by the United States;

(3) [Deleted by 2013 amendment, effective April 23, 2013.]

(4) Bonds of the state of Tennessee, including any revenue bond issued by any agency of the state specifically including institutions under the control of the state board of regents, the board of trustees of the University of

Tennessee and bonds issued in the name of the state school bond authority;

(5) Bonds of any utility district, county or municipal corporation of the state of Tennessee, including bonds payable from revenues (expressly excluding bonds of any road, levee or drainage district) upon which such bonds there has been no default in the payment of interest more than thirty (30) days upon any one (1) installment of interest, for the five (5) years next preceding the deposit of such bonds;

(6) Loans to students guaranteed one hundred percent (100%) by the Tennessee student assistance corporation, during the dormant period of such loan;

(7) Bonds issued under title 7, chapters 37 and 53, or under title 48, chapter 101, part 3, that are rated "A" or higher by any nationally recognized rating service;

(8) In addition, the state treasurer, with the concurrence of the commissioners of finance and administration and of financial institutions, may accept any other collateral security which is acceptable to the secretary of the treasury to secure the United States for deposits of public money in tax and/or loan accounts; provided, that such collateral shall not include state or municipal bonds from other states or from municipalities in other states;

(9) An irrevocable letter of credit issued by the federal home loan bank; provided, that:

(A) The federal home loan bank is rated investment grade by at least one (1) nationally recognized securities rating service; and

(B) The state treasurer may require the state depository to promptly pledge securities in lieu of the letter of credit if the state treasurer believes it necessary to protect public funds; or

(10) A surety bond issued by an insurance company licensed under the laws of this state that meets the following:

(A)(i) The company has a financial strength rating, also known as claims-paying ability, in one (1) of the two (2) highest categories by at least one (1) nationally recognized statistical rating agency; and

(ii) Any other financial or participation criteria and conditions established by the state funding board;

(B) The company offering the surety bond and the form of the bond is approved by the state funding board;

(C) The amount of surety bond pledged by any one (1) state depository or qualified public depository in lieu of other eligible collateral shall not exceed thirty million dollars ($30,000,000) or fifty percent (50%) of all collateral for that institution required to be pledged to the state treasurer or to the collateral pool, whichever is lower;

(D) The treasurer shall monitor the financial strength rating of a qualified insurance company no less than weekly, and at least annually shall file a report with the state funding board and the collateral pool board on the condition of the qualified insurance company. If the condition of an insurer changes to the extent that the issuer would no longer be qualified under the requirements of subdivision (10)(A), the treasurer shall immediately notify the state funding board and the collateral pool board; and the insurer shall thereafter become disqualified;

(E) In the event an insurer becomes disqualified under subdivision (10)(D), the state depository or qualified public depository using the insurer's surety bond shall be required within thirty (30) days' notice from the treasurer to substitute other eligible collateral or to otherwise meet

the required collateral level;

(F) Notwithstanding the disqualification of an insurer under subdivisions (10)(D) and (E), the surety bond of the insurer shall remain in effect until its expiration, nonrenewal or termination as otherwise permitted by law;

(G) In addition to the authority otherwise provided in this section or by law, the state treasurer may require the state depository or qualified public depository to promptly pledge eligible collateral in lieu of the surety bond if the treasurer makes a finding that additional collateral is necessary to protect public funds;

(H) A surety bond authorized in this subdivision (10) may only be used to secure funds in the custody of the state treasurer or to secure funds covered by the collateral pool created under part 5 of this chapter; and

(I) In the event that an issuer of surety bonds desires to withdraw from the program or to terminate a surety bond, the bond issuer shall give the state treasurer and the insured state depository or qualified public depository no less than sixty (60) days' advance notice of the withdrawal, nonrenewal or cancellation of the bonds.

9-4-206. Impaired drivers trust fund.

(a) There is created in the state treasury a fund to be known as the "impaired drivers trust fund." Moneys shall be deposited in the fund as provided in § 55-10-413(b), and shall be invested for the benefit of the fund pursuant to § 9-4-603. Moneys in the fund shall not revert to the general fund of the state, but shall remain available to be used by the division of vocational rehabilitation in the department of human services exclusively for the purpose specified in subsection (b).

(b)(1) The purpose of the impaired drivers trust fund is to provide financial assistance unavailable through any other source to residents of the state who, as a result of a traumatic brain injury, require such assistance. Moneys in the fund shall, whenever possible, be utilized to match any available federal dollars, and such moneys from the trust fund and the federal match shall be utilized to provide services needed to assist persons suffering from traumatic brain injuries including, but not limited to, day care services, available physical therapy, and any other appropriate developmental programs.

(2) As used in this subsection (b), "traumatic brain injury":

(A) Means an acquired injury to the brain caused by an external physical force resulting in total or partial disability or impairment;

(B) Includes open and closed head injuries that may result in seizures, and/or in mild, moderate, or severe impairments in one (1) or more areas including cognition, language, memory, attention, reasoning, abstract thinking, psychosocial behavior, physical functions, information processing, and speech; and

(C) Does not include brain injuries induced by birth trauma, but may include brain injuries caused by anoxia and other related causes, infectious disease not of a degenerative nature, brain tumor, toxic chemical or drug reactions.

9-4-211. Reserve for revenue fluctuations.

(a)(1) There is hereby created on the books and records of the state treasury a reserve account in the general fund to be known as the "reserve for revenue fluctuations." Amounts which may from time to time be in this reserve shall be available, as hereinafter provided, to meet unexpected shortfalls of revenue or to meet expenditure requirements in excess of budgeted appropriation levels.

(2) Each year, beginning with the budget for the 1998-1999 fiscal year, the governor shall include in the budget document and the general appropriations bill prepared pursuant to § 9-4-5106, an amount to be allocated to this reserve at least equal to ten percent (10%) of the estimated growth in state tax revenues to be allocated to the general fund and the education trust fund. This allocation shall be included in the budget presented each year until the amount in the reserve equals eight percent (8%) of the estimated state tax revenues to be allocated to the general fund and the education trust fund for that year. In subsequent budgets, the governor shall include an allocation to the reserve equal to the lesser of:

(A) An amount equal to ten percent (10%) of the estimated growth in state tax revenues to be allocated to the general fund and the education trust fund; or

(B) An amount sufficient to maintain the reserve at eight percent (8%) of the estimated state tax revenues to be allocated to the general fund and the education trust fund for that year.

(b) Amounts available in the revenue fluctuation reserve may be used by the commissioner of finance and administration to offset shortfalls in state tax revenues which may occur and for which funds are not otherwise available. It is hereby declared to be the legislative intent that to the extent practicable, all revenue shortfalls will be offset by reductions in expenditures before using amounts in the revenue fluctuation reserve.

(c) Upon determining that it is likely that amounts in the revenue fluctuation reserve will be required to be utilized to meet a shortfall of state tax revenue, the commissioner shall report this determination immediately to the chairs of the finance, ways and means committees of the senate and the house of representatives. Upon receipt of such notification, each chair shall, as soon as practicable, call a meeting of the finance, ways and means committees, at which time the commissioner shall report information concerning the need to utilize amounts in the revenue fluctuation reserve. At the discretion of the chairs, the committees may meet jointly to receive the commissioner's report.

(d) Subject to specific provisions of the general appropriations bill, an amount not to exceed the greater of one hundred million dollars ($100,000,000) or one half (½) of the amount available in the reserve may be used by the commissioner to meet expenditure requirements in excess of budgeted appropriation levels. It is hereby declared to be the legislative intent that any such excess expenditure requirements be avoided by reducing such requirements insofar as possible. Prior to using any amounts in the reserve for this purpose, the commissioner shall notify the secretary of the state funding board and the chairs of the finance, ways and means committees of the senate and the house of representatives that the reserve funds are to be used for this purpose. Upon receipt of such notification, each chair shall, as soon as practicable, call a meeting of the finance, ways and means committees, at which time the

commissioner shall report information concerning the need to utilize amounts in the revenue fluctuation reserve. At the discretion of the chairs, the committees may meet jointly to receive the commissioner's report.

9-4-213. State appropriations to child advocacy centers.

(a) Except as otherwise provided in subsection (b), on and after July 1, 1998, no state funds appropriated specifically for child advocacy centers shall be allocated or paid to any such center unless the center clearly demonstrates that it:

(1) Is a nonprofit corporation which has received a determination of exemption from the internal revenue service under 26 U.S.C. § 501(c)(3);

(2) Employs an executive director who is answerable to the board of directors and who is not the salaried employee of any governmental entity signing the memorandum of understanding and working protocol identified in subdivision (a)(3);

(3) Has a signed memorandum of understanding and working protocol executed among:

(A) The department of children's services;

(B) All county and municipal law enforcement agencies within the geographical area served by the center;

(C) All district attorneys general offices within the geographical area served by the center; and

(D) Any other governmental entity which participates in child abuse investigations or offers services to child abuse victims within the geographical area served by the center;

(4) Facilitates the use of a multidisciplinary team (representing prosecution, law enforcement, mental health, medical, child protective and social services professionals and the juvenile court) which jointly:

(A) Assess victims of child abuse and their families; and

(B) Determine the need for services;

(5) Provides a facility, located in a neutral, child-friendly and physically separate space from the day-to-day operations of the governmental entities signing the memorandum of understanding and working protocol identified in subdivision (a)(3), at which facility the multidisciplinary team meets to coordinate the efficient and appropriate disposition of child abuse cases through the civil and criminal justice systems;

(6) Provides for the provision of needed services, referral to such services, and case tracking;

(7) Has written policies and procedures consistent with standards established by the national network of children's advocacy centers; and

(8) Agrees to accurately collect and report key outcome data and information relative to each center's operations to the Tennessee chapter of children's advocacy centers. Such data and information shall be compiled by the Tennessee chapter of children's advocacy centers and shall be reported annually to the chairs of the judiciary committee of the senate, and the civil justice committee of the house of representatives. The data and information collected pursuant to this section shall include, at a minimum, the following:

(A) Number and demographic profiles of cases served by age, gender, race, type of abuse and treatment thereof, including mental health and medical services rendered;

(B) Demographic profiles of perpetrators of abuse by age, gender, race, relationship to victim, and the outcome of any legal action taken against such perpetrators;

(C) The nature of services and support provided by or through the center; and

(D) Data and information relative to community investment in and community support of the center.

(b)(1) On and after July 1, 1998, no state funds appropriated specifically for one-time, start-up assistance for new child advocacy centers shall be allocated or paid to any such center unless the center clearly demonstrates that it:

(A) Has a signed memorandum of understanding and working protocol executed among:

(i) The department of children's services;

(ii) All county and municipal law enforcement agencies within the area served by the center;

(iii) All district attorneys general offices within the area served by the center; and

(iv) Any other governmental entity which participates in child abuse investigations or offers services to child abuse victims within the area served by the center; and

(B) Has formally filed an application for a determination of exemption from the internal revenue service under 26 U.S.C. § 501(c)(3).

(2) After receiving any such start-up assistance, no additional state funds appropriated specifically for child advocacy centers shall be allocated or paid to such center unless the center clearly demonstrates that it complies with the enumerated requirements set forth in subsection (a).

(c) In those geographical areas in which a child advocacy center meets the requirements of subsection (a) or (b), child advocacy center directors or their designees shall be members of the child protective multi-disciplinary teams under title 37, chapter 1, parts 4 and 6, for purposes of provision of services and functions established by this section or delegated pursuant to this section. In such event, child advocacy center directors or their designees may access and generate all necessary information, which shall retain its confidential status, consistent with § 37-1-612.

(d) Notwithstanding any other provision of this section to the contrary, the department of children's services, or any other department administering state funds specially appropriated for child advocacy centers, shall continue to allocate and/or pay such funds to existing child advocacy centers with active applications on file with the department, if such centers demonstrate satisfactory progress in efforts to achieve compliance with this section.

9-4-506. Creation of collateral pool board — Members.

(a)(1) There is hereby created a collateral pool board composed of seven (7) members as follows:

(A) The commissioner of financial institutions;

(B) The state treasurer;

(C) One (1) representative of banks and savings institutions with assets of five hundred million dollars ($500,000,000) or more appointed by the state treasurer, who may be selected from lists of qualified persons submitted by interested banking groups including, but not limited to, the

Tennessee Bankers Association board of directors;

(D) One (1) representative of banks and savings institutions with assets of less than five hundred million dollars ($500,000,000) appointed by the state treasurer, who may be selected from lists of qualified persons submitted by interested banking groups including, but not limited to, the Tennessee Bankers Association board of directors;

(E) Two (2) representatives of banks and savings institutions at-large appointed by the state treasurer, who may be selected from lists of qualified persons submitted by interested banking groups, including, but not limited to, the Tennessee Bankers Association board of directors; and

(F) One (1) representative of local governments who shall have at least two (2) years experience in the field of finance. The local government representative shall be appointed by the state treasurer for a two-year term. The state treasurer may select the local government representative from lists of qualified persons submitted by interested county and municipal organizations including, but not limited to, the Tennessee County Services Association, the Tennessee Municipal League and the Tennessee County Officials Association.

(2) The state treasurer 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)(1) The members shall be appointed for two-year terms. Any member is eligible for reappointment and shall serve until a successor qualifies.

(2) The board shall annually elect from its membership a chair and a vice chair and shall designate a secretary who need not be a member of the board. The secretary shall keep a record of the proceedings of the board and is the custodian of all printed materials filed with or by the board.

(3) Notwithstanding the existence of vacancies on the board, a majority of the members constitutes a quorum and the board may not take official action in the absence of a quorum. The board shall convene as needed.

(c) If a vacancy occurs in the position of any appointed member, a new member shall be appointed in the same manner as such member's predecessor for the remainder of the unexpired term.

(d) A member of the board shall receive no compensation for service on the board, but a member of the board shall be reimbursed for the member's travel expenses in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(e) The secretary of the board shall notify the executive directors of the Tennessee Municipal League, the Tennessee County Officials Association and the Tennessee County Services Association of each meeting of the board. Any documents given in advance of the meeting to board members shall also be supplied to such directors prior to the meeting. The respective directors of the Tennessee Municipal League, the Tennessee County Officials Association and the Tennessee County Services Association may designate another individual to receive the notice and materials required in this subsection (e) in lieu of such director. Failure to provide the notice or materials to such directors or designees shall not invalidate any action taken by the board at the meeting.

(f) The board is attached for administrative purposes to the department of the treasury.

(g) In making appointments to the collateral pool board, the state treasurer

shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older or is female and that at least one (1) person serving on the board is a member of a racial minority.

9-4-601. Disbursements, investments and transfers of funds, generally.

(a)(1) No money shall be drawn from the state treasury except in accordance with appropriations duly authorized by law. Every disbursement from the state treasury, except as hereinafter provided, shall be upon the authorization of the commissioner of finance and administration, which authorization shall be in the form of a warrant, drawn in favor of the payee, and the warrant shall, upon being signed by the commissioner and delivered to the payee, become a draft on the treasury of the state. Electronic transfer of funds, in lieu of a warrant, may be utilized when such use is deemed by the commissioner and the state treasurer to be in the best interest of the state. When this method of disbursement is utilized, the commissioner shall authorize such transfer in writing, and the state treasurer shall accept such written advice in lieu of a warrant.

(2) Notwithstanding title 66, chapter 29, warrants, drafts, and checks drawn on the state treasury that have not been redeemed within twelve (12) months of issue date shall be cancelled and written off the state's books, with the funds reverting to the fund of issue. Subsequent claims by the payee of said instruments shall be honored upon receipt of documentation to substantiate the claim. The commissioner of finance and administration and the state treasurer shall ensure the state's compliance with the unclaimed property law.

(b) The commissioner may, with the approval of the state treasurer and the comptroller of the treasury, authorize warrants as set forth in subsection (a) to be issued on the commissioner's behalf by another state official or by a third party pursuant to contract with the state. In exercising discretion pursuant to this subsection (b), the commissioner shall set out in writing such commissioner's authorization and the limitations and restrictions upon that authorization.

(c) All state money in any depository of the state government shall stand on the books of the depository to the credit of the state treasurer. Transfer of funds between depositories, in order to facilitate a concentration of funds for immediate investment, or payment of state obligations pursuant to subsection (a), shall be made by electronic transfer of funds or in accordance with such other procedures authorized by the state treasurer and approved by the commissioner and the comptroller of the treasury.

(d) The state treasurer is specifically authorized to purchase investments which are otherwise authorized by law or by authority delegated to the state treasurer pursuant to § 9-4-602 by electronic transfer of funds or in accordance with such other procedures authorized by the state treasurer and approved by the commissioner and the comptroller of the treasury.

(e) Whenever electronic transfer of funds is used for the purpose authorized by this section, such electronic funds transfer shall be made through the federal reserve system upon instructions of the state treasurer confirmed by written documentation, or by magnetic tape, disc or other medium designed for electronic communication. Copies of such written documentation or electronic communication shall be furnished immediately to the commissioner and shall contain a full description of the transaction in a form acceptable to the commissioner.

9-4-603. Pooled investment fund.

(a) There is hereby established the "pooled investment fund" for the purpose of receiving and investing any money in the custody of any officer or officers of the state unless prohibited by statute to be invested.

(b) Participants in the fund under this section shall be deemed to be the general fund of the state and any department or agency of the state which is required by court order, contract, state or federal law or federal regulation to receive interest on invested funds and which are authorized by the state treasurer to participate in the fund.

(c) The state treasurer shall administer the pooled investment fund on behalf of the participants in accordance with § 9-4-602 and shall have the authority to establish accounts and different classes of shares within the fund.

(d) All investments purchased belong jointly to the participants in the fund and the participants will share capital gains, income, and losses pro rata.

(e) The state shall keep a separate account, designated by name and number of each participant. Individual transactions and totals of all investments belonging to each participant shall be recorded in the accounts.

(f) The state shall report monthly to every participant having a beneficial interest in the pooled investment fund. The report shall show the changes in investments made during the preceding month.

(g) The state treasurer shall establish a revolving account, under the state treasurer's custody, to defray administrative costs of the pooled investment fund. The state treasurer may deduct from each participant's pro rata earnings through the fund a reasonable charge for administering the fund. In the event that the state treasurer does deduct an administrative fee, it shall be deposited and expended through the revolving account.

(h) As the administrator of the pooled investment fund, the state treasurer is authorized to receive, invest and distribute a participant's funds by means of an electronic transfer or other reasonable methods. The state funding board may establish limits, restrictions or conditions on the acceptance of moneys into the fund and the withdrawal of moneys from the fund.

(i) At any time, a participant in the fund may request the return of its principal investment or investment income or both; however, a redemption of shares does not guarantee that a participant will receive the entire amount of the principal investment or investment income or both.

9-4-608. Intermediate-term investment fund.

(a) The state funding board shall determine whether a need exists for a longer-term investment fund for funds in the custody of the state treasurer. Upon determining that such a need exists, the state funding board may, by resolution duly adopted, create an intermediate-term investment fund as an additional investment vehicle for money in the custody of any department or agency of the state which is required by court order, contract, state or federal law or federal regulation to receive interest on invested funds. The funding board shall establish the terms of participation in the fund, and shall set the minimum and maximum amounts which may be invested in the fund by each participant. The investment fund shall be administered by the state treasurer within the guidelines established by the funding board.

(b) The authorized instruments for investment in the intermediate-term investment fund shall be those instruments contained in § 9-4-602, as well as

the pooled investment fund set forth in § 9-4-603.

(c) Any department or agency of the state which is required by court order, contract, state or federal law or federal regulation to receive interest on invested funds may apply with the state treasurer to participate in the fund. Upon approval of any such application and upon investment of cash in the fund, the respective department or agency shall be deemed a participant in the fund. The general fund of the state may also participate in the fund. A participant may invest its cash for any length of time in the fund; provided, that the funding board may establish restrictions for withdrawal and/or penalties for early withdrawal.

(d) All securities purchased shall belong jointly to the participants in the fund and the participants will share capital gains, income, and losses pro rata.

(e) The state treasurer shall keep a separate account, designated by name and number of each participant. Individual transactions and totals of all investments belonging to each participant shall be recorded in the accounts.

(f) The state treasurer shall report monthly to every participant having a beneficial interest in the intermediate-term investment fund. The report shall show the changes in investments made during the preceding month.

(g) The state treasurer shall establish a revolving account, under the state treasurer's custody, to defray administrative costs of the investment fund. The state treasurer may deduct from each participant's pro rata earnings through the fund, a reasonable charge for administering the fund. In the event that the state treasurer does deduct an administrative fee, it shall be deposited and expended through the revolving account.

(h) The county legislative body shall determine whether a need exists for a longer-term investment for funds in the custody of the county trustee. Upon determining that such a need exists, the county legislative body may, by resolution duly adopted, authorize the county trustee to invest county funds in the state intermediate-term investment fund, notwithstanding § 5-8-301. The resolution shall contain a disclosure statement as the treasurer shall periodically require. County investments in the state intermediate-term investment fund shall be administered by the county trustee within the guidelines established.

(i) Notwithstanding § 5-8-301, any entity that is eligible to participate in the pooled investment fund codified in § 9-4-603 may participate in the state intermediate-term investment fund.

(j) Local governments may invest in the intermediate-term investment fund by having the local government's legislative body, council, commission or other authorizing individual or authorizing governing body submit a duly adopted resolution to the state treasurer demonstrating its authority to participate, along with any other documents required by the state treasurer. The resolution shall contain a disclosure statement as the state treasurer shall periodically require.

(k) As the administrator of the intermediate-term investment fund, the state treasurer is authorized to receive, invest and distribute a participant's funds by means of an electronic transfer or other reasonable methods. The state funding board may establish limits, conditions or restrictions on the acceptance of moneys into the fund and the withdrawal of moneys from the fund.

9-4-610. Tennessee interagency cash flow committee.

(a) There is hereby created the Tennessee interagency cash flow committee, as an interagency committee, for the purpose of establishing, compiling and maintaining an eighteen-month forward rolling cash flow projection that projects on a monthly basis all material sources and all material uses of pooled investment fund cash projected to be received and expended by the state.

(b) The committee shall consist of two (2) members of the treasury department staff designated by the state treasurer, two (2) members of the comptroller of the treasury staff designated by the comptroller, one (1) member of the department of finance and administration staff designated by the commissioner of finance and administration and one (1) member of the department of revenue staff designated by the commissioner of revenue. The state treasurer shall designate the chair from among the membership of the committee. All members of the committee serve at the will and pleasure of the authority designating such member.

(c) The committee shall meet on the call of the chair, but no less often than bi-monthly in such place and such time as the chair shall designate. The presence of a majority of the membership of the committee shall constitute a quorum. All actions of the committee shall be adopted upon a majority vote of the members of the committee who are participating in a meeting.

(d) The committee shall, from time to time, determine the materiality of all items of sources and uses to be furnished by state entities, the materiality of those items to be included in the cash flow projection, the format of the cash flow projection, the categories of sources and uses to be included in such projection and any notes or explanatory statements to be included in the projection. The state tax revenue components of the projection shall be based on the official revenue estimates of the department of finance and administration in monthly units.

(e) All state departments, agencies, boards, commissions, bureaus and instrumentalities, except the Tennessee board of regents and the University of Tennessee, shall promptly furnish to the committee periodically, or as otherwise requested, all requested information relating to sources and uses of pooled investment fund cash (historical and/or projected) in such form and format as the committee shall direct and which the committee deems necessary for the compilation and maintenance of the cash flow and state general fund earnings projections. Such requested information shall include estimates and other items necessary for projecting cash flow and earnings information relative to the various interest-bearing funds and accounts within the pooled investment fund, as well as information relative to the funds and amounts comprising the general fund's share of the pooled investment fund.

(f) Commencing July 1, 2014, the state treasurer shall post monthly on the public web site of the treasury department the latest version of the cash flow projection and any notes or explanatory statements accompanying such projection.

9-4-611. Compensation of members of state boards and commissions.

Notwithstanding any law to the contrary, no member of any state board or commission established by law or pursuant to law, which receives an appropriation, regardless of the source of funding, shall receive any compensation, whether denominated per diem or by whatever name called, except for days in

which such member actually works four (4) or more hours performing duties directly relating to that board's or commission's activities or for time or days spent attending meetings of that board or commission. This section shall not preclude payment of salaries which are set by law in annual or monthly amounts. The chair or head of each board or commission, the department head to which such board or commission is attached administratively, and the commissioner of finance and administration shall prescribe procedures to contain, as a minimum, a certification of time worked by each member claiming compensation

9-4-702. Creation.

A local government investment pool is hereby created consisting of the aggregate of all funds from local governments that are placed in the custody of the state treasurer or the agents of the state treasurer for investment, reinvestment and the administration of the fund.

9-4-704. Commingling with state funds — Interest — Charges — Accounts — Reports.

(a) Funds in the local government investment pool established by this part may be commingled, for investment purposes, with state funds held in the pooled investment fund created under § 9-4-603 or may be maintained in a separate pool that is subject to the provisions set forth in §§ 9-4-602 and 9-4-603. The state funding board shall determine whether the funds shall be commingled with the pooled investment fund or maintained in a separate pool. The local government investment pool funds shall be commingled with the pooled investment fund unless the state funding board decides otherwise. The commingling of the local government investment pool with the pooled investment fund for investment purposes shall not prohibit the funds from being established as two (2) separate funds and accounted for separately with accurate and detailed accounting records. As the administrator of the local government investment pool, the state treasurer is authorized to receive, invest and distribute a participant's funds by means of an electronic transfer or other reasonable methods. The state funding board may establish limits, conditions or restrictions on the acceptance of moneys into the fund and the withdrawal of moneys from the fund.

(b) The state treasurer may deduct from each participant's pro rata earnings through the fund a reasonable charge for administering the fund. In the event that the state treasurer does deduct an administrative fee, it shall be deposited and expended through the revolving account established in § 9-4-603(g).

(c) A separate account designated by name and number for each participant in the fund shall be kept to record individual transactions and totals of all investments belonging to each participant.

(d) A monthly report showing the changes in investments made during the preceding month shall be furnished to each participant having a beneficial interest in the investment pool.

9-4-904. Investments — Administration of fund.

Moneys in the fund shall be invested by the state treasurer for the benefit of the fund pursuant to § 9-4-603. The fund shall be administered by the

commissioner of general services in accordance with policy established by the state building commission.

9-4-907. Lease payments.

Lease payments for space occupied by state agencies, including the legislative and judicial branches, shall be established by policy issued by the commissioner of general services and approved by the state building commission; provided, however, that until such time as a policy shall be issued by the commissioner of general services and approved by the state building commission, the policy formerly issued by the commissioner of finance and administration and approved by the state building commission shall remain effective. The lease payments shall be paid to the fund.

9-4-5101. Items set forth in budget.

(a) The budget of the state government shall present a complete financial plan for the ensuing fiscal year, which plan shall set forth all proposed expenditures for the administration, operation, and maintenance of the several departments, institutions, offices and agencies of the state government, the interest and debt redemption charges during the fiscal year.

(b) The budget shall also present proposals for capital projects to be undertaken or completed during the ensuing year, and the means of financing such projects.

(c) In addition thereto, the budget shall set forth the anticipated revenues of the state government and any other means of financing the expenditures proposed for the ensuing fiscal year.

(d) [Deleted by 2013 amendment, effective April 19, 2013.]

9-4-5102. Performance-based program budgeting.

It is the intent of the general assembly that, to the extent practicable, the budget of the state government shall be prepared using performance data and other relevant program measures. The goals for such budget shall include:

(1) For each budget unit, detailed statements identifying all substantial aspects of agency operations, priorities, and activities, to specifically include:

(A) A description of the objective or objectives of each program;

(B) A description of the activity or activities which are intended to accomplish each objective;

(C) Indicators of quantity and quality of performance of these activities; and

(D) The level of effort required to accomplish each activity in terms of funds and personnel; and

(2) A summary statement incorporating the information in subdivision (1) for the current and one (1) prior fiscal year for each budget unit and detailed statements of the sources of funding for all fiscal years presented.

9-4-5103. Estimates by departments — Classification of expenditures.

(a) On or before December 1 of each year, all departments, offices, and agencies of the state government shall prepare on blanks furnished to them by the commissioner of finance and administration, and submit to such officer, estimates of their expenditure requirements for the next fiscal year compared

with the corresponding figures of the last completed fiscal year and estimated figures for the current fiscal year. The expenditure estimates shall be classified to set forth the data by funds, organization units, character and objects of expenditure; the organization units may be subclassified by function and activities, or in any other manner at the discretion of the commissioner.

(b) Any state agency subject to part 56 of this chapter shall include with its budget request the performance measures and standards required by § 9-4-5606.

9-4-5106. Form and contents of budget document — General appropriations bill.

(a) The budget document, presenting the financial plan of the state government for the next fiscal year, shall be set up in three (3) parts, the nature and contents of which are as follows:

(1)(A) Part 1 shall consist of a budget message by the governor which shall outline the financial policy of the state government for the ensuing fiscal year, describing in connection therewith the important features of the financial plan; it shall also embrace a general budget summary setting forth the aggregate figures of the budget in such manner as to show the balances, relations between the total proposed expenditures and the total anticipated revenues, together with the other means of financing the budget for the next fiscal year, contrasted with the corresponding figures for the last completed fiscal year and for the fiscal year in progress. The general budget summary shall be supported by explanatory schedules or statements, classifying the expenditures contained therein by organization units, objects and funds and the income by organization units, sources, and funds;

(B) Part 1 also shall include a schedule on tax exemptions, identifying, to the extent practicable, all exemptions from state taxes and estimating the amount of revenue which would be collected by the state in the ensuing fiscal year if the exemptions were not to exist. The schedule shall include an estimate for each such exemption. The estimates of such exemptions shall be based upon the revenue estimates included in the budget document;

(2) [Deleted by 2013 amendment, effective April 19, 2013.]

(3) Part 2 shall embrace the detailed budget estimates both of expenditures and revenues as provided in this chapter; it also shall include performance measures and standards required by § 9-4-5606; it shall also include a statement of the bonded indebtedness of the state government, showing the debt redemption requirements scheduled over the fiscal years until the final date of retirement, the net and gross debt of the state, and the condition of the sinking funds; in addition thereto, it shall contain any statements relative to the financial plan which the governor may deem desirable, or which may be required by the general assembly; and

(4) Part 3 shall embrace complete drafts of the budget bills, that is, the legislative measures required to give legal sanction to the financial plan when adopted by the general assembly. These bills shall include an appropriation bill, authorizing, by spending agencies and by funds, all expenditures of the state government for the next fiscal year, and such other bills as may be required to provide the revenues necessary to finance the budget.

The governor shall submit these bills for introduction in both houses of the general assembly no later than fourteen (14) days after the budget document is transmitted or by the general bill cut-off date in the respective houses, whichever is later.

(b) The capital budget, to be included in part 2 of the budget document, shall contain funding for all capital outlay. Funding for all capital improvement projects of whatever amount and funding for each capital maintenance project of one million dollars ($1,000,000) or more shall be specified by project, by affected spending agency, and by funding sources, including state current funds, bonds, and other revenue. Funding for each capital maintenance project of less than one million dollars ($1,000,000) shall be specified in such detail in the budget document as the governor shall determine.

9-4-5110. Work program — Allotments.

(a) Not later than June 1 of each year, the governor shall require the head of each department, office, and agency of the state government to submit to the commissioner of finance and administration a work program for the ensuing fiscal year, such program to include all appropriations made by the general assembly to such department, office, or agency for its operation and maintenance and for capital projects, and to show the requested allotments of the appropriations by quarters for the entire fiscal year. The governor, with the assistance of the commissioner, shall review the requested allotments with respect to the work program of each department, office, or agency, and shall, if the governor deems it necessary, revise, alter, or change such allotments before approving them. The aggregate of such allotments shall not exceed the total appropriations made by the general assembly to the department, office, or agency for the fiscal year in question. The commissioner shall transmit a copy of the allotments as approved by the governor to the head of each department, office, or agency concerned. The commissioner shall thereupon authorize all expenditures to be made from the appropriations on the basis of such allotments and not otherwise.

(b) Notwithstanding subsection (a), the speakers of the senate and the house of representatives or, by joint delegation, their director of legislative administration; the chief justice or, by delegation, the administrative director of the courts; the attorney general and reporter; the secretary of state; the comptroller of the treasury; and state treasurer are authorized to revise their respective budgets and personnel authorizations within the appropriations made in the appropriations act and to submit those revised summaries to the commissioner of finance and administration, who shall approve the work program of those agencies, if within the amounts appropriated.

9-4-5112. Revision of work programs.

(a) The head of any department, office, or agency of the state government, whenever such head deems it necessary by reason of changed conditions, may revise the work program of such head's department, office, or agency at the beginning of any quarter during the fiscal year, and submit such revised program to the commissioner of finance and administration, with such head's request for a revision of the allotments of the remaining quarters of that fiscal year. If, upon such reexamination of the work program, the commissioner, with the approval of the governor, decides to grant the request for the revision of the allotments, the same procedure, so far as it relates to review, approval, and

control, shall be followed as in the making of the original allotments.

(b) Revisions to the work programs of the secretary of state, comptroller of the treasury, and state treasurer shall be approved by the commissioner of finance and administration if submitted in accordance with the appropriations act, if within the amounts appropriated, and if submitted with the concurrence of the speaker of the senate and the speaker of the house of representatives.

9-4-5113. Certification of funds to meet obligations.

(a) No department or officer under such department shall enter into any contract, agreement, or obligation, involving the expenditure of money, unless the commissioner of finance and administration shall first certify that there is a balance in the appropriation from which such obligation is required to be paid, that is not otherwise encumbered to pay obligations previously incurred.

(b) Subsection (a) shall not apply to the general assembly, state court system, district attorneys general, district public defenders, office of the post-conviction defender, secretary of state, comptroller of the treasury, and the state treasurer; provided, however, that the chief administrative officer for each of these agencies shall ensure, before entering into any contract, agreement, or obligation involving the expenditure of money, that there is a balance in the appropriation from which such obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.

(c) All funds appropriated to the secretary of state, comptroller of the treasury, and state treasurer shall be administered in a ministerial capacity by the department of finance and administration in accordance with budgets and any revisions thereto of the respective entities for which such appropriations are made.

9-4-5115. [Repealed.]

9-4-5117. Certification of board fees — Regulatory fees.

(a) Notwithstanding any law to the contrary, upon receiving from the commissioner of finance and administration the approved work program, as provided in § 9-4-5110, for the department of commerce and insurance, division of regulatory boards, and department of health, division of health-related boards, the commissioners of those departments shall certify by October 31 to the commissioner of finance and administration and, as applicable, to the director of the division of regulatory boards, as defined in § 4-3-1304, and to the director of the division of health-related boards, as defined in § 63-1-131, the total amount of board fee revenue required by each board for the current fiscal year, based on the approved work program. The commissioners of commerce and insurance and of health shall include the direct costs allocated to each board for the then-current fiscal year and shall reduce the certified amount by the amount of any excess fees from the immediately preceding two-year period, it being the legislative intent that fees and expenditures should be equal over a two-year period for each board, as provided in § 4-29-121. Such certification shall not preclude the retention of any board fee revenue estimated to be required for support of each board's operation for the then-current two-year period.

(b)(1) The fee established pursuant to the amounts certified as set forth in subsection (a) shall be designated as the board fee.

(2) In addition to the board fee, each regulatory board shall also assess a state regulatory fee in such amount as is set each year in the general appropriations act. The state regulatory fee shall be in lieu of any allocation of indirect costs that would otherwise be allocated to such boards.

(c)(1) Within sixty (60) days after receiving the certification of the amount of fees required by each board, the director of the division of regulatory boards and the director of the division of health-related boards shall provide the commissioner of finance and administration with an official estimate of fees to be collected by each board for the fiscal year.

(2) To the extent the estimate of fees for an individual board is less than the certified amount, the appropriation for that board shall be reduced in the amount of the deficiency, and the commissioner of finance and administration is directed to reduce the budget of the board accordingly.

(3) The general assembly may supplement any board's appropriation from fee revenue by an appropriation of tax revenue by making a specific appropriation of such tax revenue in the general appropriations act.

9-4-5203. Governor's budget document — Appropriations exceeding growth of state's economy — Bills — Index.

(a) The budget document presented by the governor to the general assembly shall include a statement or showing projecting Tennessee personal income as provided in § 9-4-5201, for the ensuing fiscal year, for the calendar year in progress, for the fiscal year in progress, for the latest completed calendar year, and for calendar year 1977.

(b) The budget document presented by the governor shall also include a statement or a summary showing recommended appropriations from state tax revenues for the ensuing fiscal year, such actual appropriations for the fiscal year in progress, and the 1977-1978 fiscal year appropriations from state tax revenues.

(c) When in any budget document the percentage increase of recommended appropriations from state tax revenues exceeds the percentage increase of estimated Tennessee personal income as defined in § 9-4-5201, for the ensuing fiscal year, the governor shall submit a bill or bills for introduction in both houses of the general assembly which shall contain no other subject matter and shall set forth the dollar and percentage by which the estimated growth of the state's economy is exceeded by the appropriations of state tax revenue in accordance with the Constitution of Tennessee, art. II, § 24.

(d) When the percentage increase of appropriations of state tax revenue by the general assembly exceeds the percentage increase of estimated Tennessee personal income as defined in § 9-4-5201, for the ensuing fiscal year, the general assembly shall by law containing no other subject matter, set forth the dollar and the percentage by which the estimated growth of the state's economy is exceeded by the appropriations of state tax revenue in accordance with the article II, § 24 of the Tennessee constitution.

(e)(1) The index of appropriations from state tax revenues for the 2011-2012 fiscal year may exceed the index of estimated growth in the state's economy by two hundred fifty million dollars ($250,000,000) or two and one one-hundredths percent (2.01%).

(2) The index of appropriations from state tax revenues for the 2012-2013 fiscal year may exceed the index of estimated growth in the state's economy

by one hundred thirty-two million five hundred thousand dollars ($132,500,000) or one percent (1.0%).

9-4-5404. Reporting requirements.

Each state agency responsible for making or recommending decisions on block grants and related topics shall issue a written report by February 1 each year to the finance, ways and means committees of the senate; and the finance, ways and means committee of the house of representatives; the health and welfare committee of the senate; the health committee of the house of representatives; the energy, agriculture and natural resources committee of the senate; the agriculture and natural resources committee of the house of representatives; the legislative office of budget analysis; and the governor. This report shall detail block grant and federal devolution decisions made or recommended by the agency and how those decisions made or recommended implement or fail to implement the principles outlined in § 9-4-5403.

9-4-5501. [Repealed.]

9-4-5502. [Repealed.]

9-4-5503. [Repealed.]

9-4-5601. Short title.

This part shall be known and may be cited as the "Tennessee Governmental Accountability Act of 2013."

9-4-5602. Implementation of system of strategic planning, performance measures, and performance review.

The general assembly finds and declares that accountability in program performance is vital to effective and efficient delivery of governmental services, and to maintain public confidence and trust in government. To maximize accountability, a system of strategic planning, program performance measures, and performance audits should be implemented to measure the effectiveness and efficiency of governmental services. It is of paramount public importance that this system encourages full and candid participation by all agencies of state government. This system will generate information necessary to inform the public fully and for the general assembly to make meaningful decisions about the allocation of scarce resources in meeting vital needs.

9-4-5603. Application.

The strategic planning, program performance measures, and performance review requirements of this part shall apply to all agencies unless exempted in this part or exempted by the commissioner of finance and administration.

9-4-5604. Part definitions.

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

(1) "Agency" or "state agency" means any unit organization of the executive department, including any official, department, board, commission, division, bureau, section, district, office, authority, committee, or council or

any other unit of state government, however designated, including, without limitation, higher education. For purposes of this part, "agency" or "state agency" shall not include the governor's office, the judicial department, the comptroller of the treasurer, state treasurer, secretary of state, attorney general and reporter or the legislative department. For purposes of this part, "judicial department" means the court system, district attorneys general conference, district public defenders conference, and the office of post-conviction defender;

(2) "Baseline data" means indicators of a state agency's current performance level, pursuant to guidelines established by the commissioner of finance and administration;

(3) "Commissioner" means the commissioner of finance and administration;

(4) "Outcome" means an indicator of the actual impact or public benefit of a program;

(5) "Output" means the actual service or product delivered by a state agency;

(6) [Deleted by 2013 amendment, effective April 19, 2013.]

(7) "Performance measure" means a quantitative or qualitative indicator used to assess state agency performance, including outcome and output indicators;

(8) "Program" means a set of activities undertaken in accordance with a plan of action organized to realize identifiable goals and objectives. These activities are chosen by department of finance and administration in consultation with the agency or state agency to be measured in order to support the overall goals and objectives of the department; and

(9) "Standard" means the desired level of performance of a program, measured by outcome or output.

9-4-5605. Legislative intent.

(a) It is the legislative intent that the requirements of this part constitute a new approach to measuring the strategic functions and operations of each department in order for the state government to operate more efficiently and effectively.

(b) The comptroller of the treasury shall have authority to employ outside consultants and entities with expertise in governmental finance and performance review for the purpose of conducting performance reviews or otherwise fulfilling the comptroller's duties under this part. The performance reviews required under this part may be conducted by a private entity selected by the comptroller, subject to the competitive bidding requirements of title 12, chapter 4.

9-4-5606. Development of performance measures and standards — Submission of strategic plan and proposed performance measures and standards.

(a) The commissioner of finance and administration shall annually issue instructions for the strategic plans and for the development of performance measures and standards for each program.

(b) By August 15 of each year, each state agency subject to this part is required to submit to the commissioner of finance and administration, in a

form to be specified by the commissioner, a draft strategic plan and proposed performance measures and standards for each program. Such state agencies shall also identify the outputs or outcomes produced by each program, baseline data associated with each performance measure, and performance standards. Performance measures and standards shall be reviewed by the commissioner of finance and administration and revised as deemed necessary by the commissioner of finance and administration.

(c) Each state agency subject to this part shall submit to the commissioner of finance and administration any documentation required by the commissioner regarding the validity, reliability, and appropriateness of each performance measure and standard and regarding how the strategic plan and the performance measures are used in management decision-making and other agency processes.

(d)(1) Annually, at a time to be determined by the commissioner of finance and administration after the general appropriations act becomes law, state agencies may submit to the commissioner any adjustments to their performance measures and standards based on the amounts appropriated for each program by the general assembly. The chairs of the finance, ways and means committees of the senate and the house of representatives may request updated performance measures based on the increase or decrease of appropriations in the given year.

(2) At any time during the fiscal year in which a state agency, by restraining order, injunction, consent decree, settlement, or any final judgment of a court of competent jurisdiction, or by law or executive order, is required to modify its operations, or the state agency receives additional federal or other funding, the state agency may submit to the commissioner of finance and administration any necessary adjustments to its performance measures and standards.

(3) When an adjustment is made pursuant to subdivisions (d)(1) and (2), all performance measures and standards, including any adjustments made, shall be submitted to and reviewed and revised as necessary by the commissioner of finance and administration. The commissioner shall maintain the official record of adjustments to the performance measures and standards and shall update the reports accordingly. Programs that have been eliminated or added from the report in a given year shall be indicated in the annual report or when the report is updated.

9-4-5607. [Repealed.]

9-4-5608. Evaluation of compliance — Report.

(a) The commissioner of finance and administration shall evaluate at least annually each state agency's strategic plan and program performance measures. When necessary the commissioner of finance and administration shall update each state agency's strategic plan and program performance measures. Such updates shall include comments from the state agency when necessary to explain how the program is performing.

(b) The commissioner of finance and administration may make recommendations to the governor and the finance, ways, and means committees of the senate and the house of representatives concerning the following nonexhaustive performance measure incentives or disincentives for potential inclusion in

the appropriations bill:

(1) Incentives may include, but are not limited to:

(A) Additional flexibility in budget management;

(B) Additional flexibility in salary rate and position management, notwithstanding title 8, chapter 23, or any other law to the contrary;

(C) Retention of up to fifty percent (50%) of unexpended and unencumbered balances of appropriations, excluding special categories and grants in aid, that may be used for nonrecurring purposes including, but not limited to, lump-sum bonuses, employee training, or productivity enhancements, including technology and other improvements; and

(D) Additional funds to be used for, but not limited to, lump-sum bonuses, employee training, or productivity enhancements, including technology and other improvements;

(2) Disincentives may include, but are not limited to:

(A) Mandatory quarterly reports to the governor on the agency's progress in meeting performance standards;

(B) Mandatory quarterly appearances before the governor to report on the agency's progress in meeting performance standards;

(C) Elimination or restructuring of the program, which may include, but not be limited to, transfer of the program or outsourcing all or a portion of the program;

(D) Reduction of total positions for a program;

(E) Restriction on or reduction of the appropriation for the program; and

(F) Reduction of managerial salaries, notwithstanding the requirements of title 8, chapter 23, or any other law to the contrary.

9-4-5609. Preparation of strategic plan.

(a)(1) Beginning August 15, 2013, and each year thereafter, each state agency subject to this part, shall submit a draft strategic plan and the agency's programs chosen for the program performance measures to the department of finance and administration for review, modification, and approval. Each strategic plan and program performance plan shall be submitted to the general assembly and the governor not later than September 30 of each year and shall cover the fiscal year in effect as of the date of the report.

(2) The programs report shall include, but not be limited to, the following matters:

(A) A clear statement of the purpose for each program;

(B) A description of the program, when such information is needed to explain the program;

(C) The funding amount of each program, when such information is identifiable by agency;

(D) The outcomes or outputs produced by each program; and

(E) The historical trends of outputs or outcomes of the program, when such information is available.

(b)(1)(A) The Tennessee higher education commission shall submit to the commissioner of finance and administration a single strategic plan, with the advice of the University of Tennessee, the state university and community college system, and the Tennessee student assistance

corporation.

(B) The comptroller of the treasury, state treasurer, secretary of state, and attorney general and reporter shall prepare their strategic plans separately.

(C) The administrative office of the courts shall prepare a strategic plan separately on behalf of the court system. Such plan shall include the court system, the district attorneys general conference, the district public defenders conference, and the office of post-conviction defender.

(D) The joint legislative services committee shall prepare a strategic plan separately on behalf of the legislative department.

(2) Each strategic plan shall be submitted to the general assembly and the governor not later than September 30 of each year and shall cover the fiscal year in effect as of the date of the report.

9-4-5612. Proposed instructions for the development of performance measures for the legislature.

The director of the office of legislative administration shall develop and submit to the joint legislative services committee proposed instructions for the development of performance measures for the legislative department. The joint legislative services committee shall review such proposed instructions, may revise or amend the proposed instructions, and shall adopt final instructions for the development of such performance measures.

9-4-5613. [Repealed.]

9-4-5614. [Repealed.]

9-8-108. Powers and duties.

(a) The board of claims:

(1) Has the authority, but is not required, to investigate and hear claims and make awards when appropriate in cases based on acts or omissions of state officers or employees where a claim does not fall within the jurisdiction of the claims commission under § 9-8-307(a). The board of claims shall not have jurisdiction over any claim arising under § 9-8-307(a), even though the claimant requests punitive damages and/or damages in excess of those set forth in § 9-8-307(e). No award shall be made unless the board determines that the facts would entitle the claimant to a judgment in action at law. Where the board determines to hear a claim, it may refer the claim to a designee for a hearing and written recommendation to the board on whether or not to make an award. If the recommendation by the designee is against an award or less than the amount requested by the claimant, the claimant shall have the right to an appeal to the board. The board may, in its discretion, hold a hearing or decide the claim on the record. All decisions of the board shall be final;

(2) Is authorized to pay final judgments in civil lawsuits against state employees as provided in § 9-8-112;

(3) Shall review and make recommendations to the commissioner of finance and administration and the general assembly regarding the following:

(A) The required funding of the risk management fund;

(B) The required funding of the claims commission administrative costs; and

(C) Appropriate levels of self-insurance, purchased insurance or any combination thereof for the protection of the state and/or its employees and the required funding for such insurance policies. The recommendation made by the board of claims to the general assembly for excess coverage for the ensuing calendar year pursuant to § 9-8-307(e) may include self-insurance, purchased insurance or any combination of the two (2);

(4) Shall review and approve insurance policies designed to pay claims against the state or its employees arising from contract or tort. This responsibility includes the authority to coordinate the purchase of insurance between the various departments, agencies, and institutions, and all other entities created by the state other than counties and municipal corporations in order that adequate protection be given at the least possible cost;

(5) Has jurisdiction to hear disputes between the various departments and agencies of the state involving the assignment of losses to individual departments, as well as general responsibility to establish policies governing the administration of the state's contract and tort insurance program;

(6) Shall retain consultants as necessary to fully discharge the duties assigned to the board;

(7) Shall hear claims for compensation by persons wrongfully imprisoned and granted exoneration pursuant to § 40-27-109. Any award made by the board pursuant to this subdivision (a)(7) shall be subject to the following conditions:

(A) Compensation payable to such persons shall be determined by the board considering all factors the board considers relevant including, but not limited to, the person's physical and mental suffering and loss of earnings; provided, however, that the maximum aggregate total of such compensation shall not exceed one million dollars ($1,000,000);

(B) Any amount awarded shall be payable in equal monthly installments until paid in full, unless the person dies prior to receipt of the full amount. The amount of the monthly installments payable under this subdivision (a)(7) shall be calculated by dividing the noncommuted amount, determined pursuant to subdivision (a)(7)(D), by the estimated number of months the claimant will live based upon the claimant's life expectancy at the time of the award as determined from the mortality tables last adopted by the board of trustees of the Tennessee consolidated retirement system pursuant to § 8-34-503, or based on such shorter period of time as the board, in its discretion, determines appropriate;

(C) If the person dies without leaving a surviving spouse or surviving minor children, the payments shall cease. Upon the death of the claimant, any monthly installments left remaining shall be paid to the claimant's surviving spouse and surviving minor children in equal portions. The amount payable to the surviving spouse, if any, shall be paid until the surviving spouse's death or remarriage. If the surviving spouse dies or remarries, then the amount that was payable to the surviving spouse shall be divided equally among the claimant's surviving minor children. Each child shall receive such child's share until reaching majority status or death, whichever occurs first, at which time the amount shall be redistributed equally among the remaining minor children. For purposes of this subdivision (a)(7)(C), "minor" means any person who has not attained

eighteen (18) years of age;

(D) Upon motion of the claimant or in the discretion of the board, all or a portion of the compensation payable monthly under this subdivision (a)(7) may be commuted to a lump sum payment. In determining whether to commute the compensation, the board shall consider whether there exist special needs warranting such commutation, whether the commutation will be in the best interest of the person and whether that person has the ability to wisely manage and control the commuted award irrespective of whether there exist special needs. The claimant has the burden of proving that a lump sum payment is warranted;

(E)(i) In the event compensation is awarded to a claimant pursuant to this subdivision (a)(7), the board, at the request of the claimant, may fund on behalf of such claimant an annuity contract to be secured by the claimant; provided, however, that:

(a) Such contract shall only be secured from an insurance company licensed under the laws of the state of Tennessee whose claims paying ability is rated as superior or excellent by at least two (2) nationally recognized rating services;

(b) The contract, by its terms, cannot be sold, transferred, assigned, discounted or used as security for a loan; and

(c) The contract provides for survivor benefits;

(ii) The cost of any such annuity contract shall be paid from the compensation awarded to the claimant under this subdivision (a)(7);

(F) Any claim for compensation under this subdivision (a)(7) must be filed with the board no later than one (1) year from the date that the claimant is granted exoneration pursuant to § 40-27-109;

(G) The state of Tennessee shall have a right of subrogation as provided by law for any amount awarded pursuant to this subdivision (a)(7) against any person who willfully and intentionally committed an act or engaged in conduct that directly resulted in or contributed to the wrongful conviction and imprisonment of the claimant; and

(H)(i) Any claimant awarded compensation pursuant to this subdivision (a)(7) that did not involve the funding of an annuity contract pursuant to subdivision (a)(7)(E) may, after three (3) years from the initial award and once every three-year period thereafter, file a petition with the board requesting the board to:

(a) Reconsider the period of time over which the monthly installments shall be paid;

(b) Commute to a lump sum payment all or a portion of the compensation left remaining to be paid monthly under subdivision (a)(7)(B); or

(c) Both subdivisions (a)(7)(H)(i)(*a*) and (*b*).

(ii) In determining whether to grant all or any portion of the claimant's request, the board shall consider whether there exists special needs warranting the request, whether the granting of the request will be in the best interest of the claimant and, if the request involves a commutation to a lump sum, whether the claimant has the ability to wisely manage and control the commuted amount irrespective of whether there exists special needs. The claimant has the burden of proving that the request is warranted;

(8) Shall certify the per occurrence limit to the claims commission;

(9) Has the authority to hear claims and make awards for property damage caused by an escapee from a state correctional facility; provided, that:

(A) The claimant has the burden of proving that the escapee caused the damage, that the proximate cause of the escape was the negligence of a state employee, that the incident giving rise to the loss occurred in the county in which the escape occurred or in a county contiguous to the county in which the escape occurred, that the damage occurred within seventy-two (72) hours of the escape and that the amount requested is not reimbursable from any other source;

(B) No award shall be paid if the state correctional facility from which the individual causing such damage escaped is classified as a community service center, a work release center or a nonsecured juvenile facility;

(C) No award shall be paid to any individual who aided in the escape of the inmate causing such damage;

(D) For purposes of this subdivision (a)(9), negligence shall exist when an employee of the department of correction is disciplined as a result of acts or omissions related to the occurrence of escape; and

(E) Claim awards are limited to five thousand dollars ($5,000) per claimant.

(F) [Deleted by 2013 amendment, effective July 1, 2013.]

(10) Is authorized to establish incentive programs for state departments, agencies and institutions, including public institutions of higher education, for the purpose of reducing liabilities to the risk management fund created pursuant to § 9-8-109. Such incentive programs may include, but are not limited to, differential premium rates based on participation in loss control programs established by the board of claims, increased or decreased deductibles based on participation in loss control programs established by the board, and the imposition of fines and penalties. Any such premiums, deductibles, fines, or penalties shall be paid from the budget of the respective department, agency or institution and deposited into the risk management fund; and

(11) Is authorized to adopt and publish rules and regulations necessary for the proper performance of its duties.

(b) The board of claims may not consider a claim filed more than one (1) year after the occurrence of the incident giving rise to the claim.

(c) Prior to the acquisition of any commercial grade motor vehicle that is to be used primarily for transporting nonstudents by any state department, agency, or institution, including any public institution of higher education, such department, agency or institution shall procure bids for obtaining appropriate levels of insurance on such motor vehicle as shall be determined by the board of claims. This subsection (c) shall only apply to commercial grade motor vehicles that are intended to be used ten percent (10%) or more of the time for travel outside the state of Tennessee. The board of claims shall determine by policy the type motor vehicles that shall be considered commercial grade motor vehicles for purposes of this subsection (c). The department, agency or institution shall maintain such insurance coverage during the time the department, agency or institution owns the motor vehicle. The board of claims is authorized, at its discretion, to review and approve the insurance company from which the insurance shall be procured, the amount of the premiums and the period of the insurance policy. For purposes of this section, “acquisition” means by purchase, devise, gift or otherwise.

9-8-307. Jurisdiction — Claims — Waiver of actions — Standard for tort liability — Damages — Immunities — Definitions — Transfer of claims. [Effective until July 1, 2014. See the version effective on July 1, 2014.]

(a)(1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of "state employees," as defined in § 8-42-101, falling within one (1) or more of the following categories:

(A) The negligent operation or maintenance of any motor vehicle or any other land, air, or sea conveyance. In addition, the state may be held liable pursuant to this subdivision (a)(1)(A) for the negligent operation of state-owned motor vehicles or other conveyances by persons who are not state employees; provided, that such persons operated the vehicle or other conveyance with the permission of a state employee;

(B) Nuisances created or maintained;

(C) Negligently created or maintained dangerous conditions on state controlled real property. The claimant under this subdivision (a)(1)(C) must establish the foreseeability of the risks and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures;

(D) Legal malpractice or health care liability by a state employee; provided, that the state employee has a professional/client relationship with the claimant;

(E) Negligent care, custody and control of persons;

(F) Negligent care, custody or control of personal property;

(G) Negligent care, custody or control of animals. Damages are not recoverable under this section for damages caused by wild animals;

(H) Negligent construction of state sidewalks and buildings;

(I) Negligence in planning and programming for, inspection of, design of, preparation of plans for, approval of plans for, and construction of, public roads, streets, highways, or bridges and similar structures, and negligence in maintenance of highways, and bridges and similar structures, designated by the department of transportation as being on the state system of highways or the state system of interstate highways;

(J) Dangerous conditions on state maintained highways. The claimant under this subdivision (a)(1)(J) must establish the foreseeability of the risk and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures;

(K)(i) Workers' compensation claims by state employees, including injuries incurred by national guard members, Tennessee state guard members, civil air patrol members, civil defense agency personnel and emergency forest firefighters while on active duty and in the course of that duty;

(ii) The commission's payment of these claims shall be in such amount and subject to such limitations as set forth in title 50, chapter 6, except the following provisions shall have no application to workers' compensation claims filed against the state: §§ 50-6-103, 50-6-104, 50-6-106(5), 50-6-117, 50-6-118, 50-6-128, 50-6-203(a)-(e) and (g)-(h), 50-6-205(b)(2), (b)(3), (c) and (d), 50-6-206(a)(1), 50-6-208, 50-6-211, 50-6-213, 50-6-222, 50-6-224(a)(2), 50-6-225(a)-(d), (g) and (k), 50-6-227,

50-6-228, 50-6-229(b), 50-6-233, 50-6-236(a), (b), (e) and (h), 50-6-237(c), 50-6-238, 50-6-244, 50-6-306, 50-6-307, and title 50, chapter 6, part 4. Section 50-6-114 shall apply to workers' compensation claims against the state, except that the state is authorized to give an employee the option to use accrued sick and annual leave in lieu of receiving temporary total disability benefits. In no event shall an employee receive both accrued sick and annual leave and temporary total disability benefits for the period of temporary total disability. Where appropriate, the claims commission shall be considered the court or tribunal to determine claims within title 50, chapter 6. Payments shall be made and accepted without regard to fault as a cause of the injury or death;

(iii) The second injury fund shall have no application to workers' compensation claims against the state of Tennessee. Payment of compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments. Likewise, the acceptance of compensation by the officer or employee is not considered a binding determination of the obligations of the employer as to future compensation payments; nor shall the acceptance of compensation by the officer or employee be considered a binding determination of the employer's rights;

(iv) The interested parties have the right to settle all matters of compensation between themselves, but all settlements, before the settlements are binding on either party, shall be reduced to writing and shall be approved by the claims commissioner before whom the claim for compensation is entitled to be heard, or by the commissioner of labor and workforce development or the commissioner's designee, pursuant to § 50-6-206(c). Any proposed settlement presented to a claims commissioner for approval pursuant to this subdivision (a)(1)(K)(iv) shall be examined by the claims commissioner to determine whether the officer or employee is receiving, substantially, the benefits provided by the Workers' Compensation Law, compiled in title 50, chapter 6. To this end, the commissioner may call and examine witnesses. Upon such settlement being approved, an order shall be rendered by the commissioner and duly entered by the clerk;

(v) In case any officer or employee of the state of Tennessee for whose injury or death compensation is payable under the Workers' Compensation Law shall at the time of injury be employed or paid jointly by two (2) or more employers subject to such law, such employers shall contribute to payment of such compensation in a proportion of their several wage liability to such officer or employee. The state of Tennessee is considered the primary employer and the determination of workers' compensation paid shall be pursuant to the procedures provided for state officers and employees. If one (1) or more, but not all, of such officers and employees are subject to the Workers' Compensation Law and otherwise subject to liability for compensation hereunder, then the liability of such of them as are so subject shall be to pay the proportion of the entire compensation which their portion of the wage liability bears to the wages of the officer or employee; provided, that nothing in this section shall prevent any agreement between the different employers between themselves as to the distribution of the ultimate burden of such compensation. The state of Tennessee shall pay the officer or

employee under the Workers' Compensation Law and seek contribution from other contributing employers. The state of Tennessee has a right of action in the courts against the joint employers;

(vi) Notwithstanding § 9-8-402(d) or any other law to the contrary, upon motion of the employee, the claims commission may, prior to the benefits review conference or any final hearing on the claim, order the state to initiate, continue or reinstate temporary disability benefits or to provide medical benefits to the employee pending a final decision in the case, if the claims commission determines that such an order would be appropriate in light of available information. If the commission determines it appropriate to order the state to provide medical benefits pursuant to this subdivision (a)(1)(K)(vi), the commission's authority shall include, but not be limited to, the authority to order specific medical treatment recommended by the treating physician, and the authority to require the state to provide the appropriate panel of physicians to the employee, including a panel of appropriate specialists. With respect to the determination of whether to order the payment of temporary disability or medical benefits, the claims commission shall decide such issues solely on the basis of the information available to the commission, without favor or presumption for or against either party;

(L) Actions for breach of a written contract between the claimant and the state which was executed by one (1) or more state officers or employees with authority to execute the contract; provided, that the group insurance agreements created pursuant to §§ 8-27-201 and 8-27-302 shall be considered contracts for purposes of this subsection (a) in order for the commission to determine insurance claims which have been previously rejected by the state insurance committee or the local education insurance committee;

(M) Negligent operation of machinery or equipment;

(N) Negligent deprivation of statutory rights created under Tennessee law, except for actions arising out of claims over which the civil service commission has jurisdiction. The claimant must prove under this subdivision (a)(1)(N) that the general assembly expressly conferred a private right of action in favor of the claimant against the state for the state's violation of the particular statute's provisions;

(O) Claims for the recovery of taxes collected or administered by the state, except any tax collected or administered by the commissioner of revenue and any unemployment insurance tax collected or administered by the commissioner of labor and workforce development;

(P) Claims for the loss, damage or destruction of the personal property of state employees based on § 9-8-111;

(Q)(i) Claims for injuries incurred by persons where such injury occurred while the person was a passenger in a motor vehicle operated by a state employee while such employee was acting within the scope of employment. The claimant has the burden of proving the following:

(a) The injuries suffered by the claimant occurred as a result of an accident involving a motor vehicle operated by a non-state employee and a motor vehicle operated by a state employee who, at the time of the accident, was acting within the scope of employment;

(b) The proximate cause of the accident was the negligent operation of the motor vehicle operated by the non-state employee;

(c) The claimant has been unable to recover any damages from the negligent party because the negligent party was uninsured or underinsured at the time of the accident and is otherwise financially incapable of fully compensating the claimant;

(d) The claimant has been unable to recover sufficient amounts under the Workers' Compensation Law or from any other public or private source, including the claimant's uninsured motorist's insurance policy, to fully compensate for the injuries suffered; and

(e) The claimant's presence in the motor vehicle operated by the state employee was for the benefit of the state, except that this requirement shall be waived for persons who are injured while a passenger in a state-owned motor vehicle used in the state employee van pool program authorized in § 4-3-1105(19).

(ii) Notwithstanding subsection (e), awards under this subdivision (a)(1)(Q) are limited to amounts recoverable under subdivision (a)(1)(K). Awards under this subdivision (a)(1)(Q) shall not be considered payments under an uninsured motorists insurance policy as provided for in title 56, chapter 7, part 12;

(R) Claims for libel and/or slander where a state employee is determined to be acting within the scope of employment;

(S)(i) Claims for compensation filed under the Criminal Injuries Compensation Act, compiled in title 29, chapter 13, and § 40-24-107. Claims filed pursuant to this subdivision (a)(1)(S) shall be determined in accordance with title 29, chapter 13;

(ii) Notwithstanding title 29, chapter 13, to the contrary, the claims commission has exclusive jurisdiction to determine all claims filed for compensation under the Criminal Injuries Compensation Act in accordance with title 29, chapter 13; provided, that this exclusive jurisdiction shall apply only to claims for compensation filed on or after January 1, 1987. At the request of the claimant and with the consent of the court, any claim filed prior to January 1, 1987, may be transferred to the claims commission for determination of the claim;

(T) Actions based on § 69-1-201;

(U) Actions based on violations of the requirements of procurement of commodities or services under title 71, chapter 4, part 7; and

(V) Unconstitutional taking of private property, as defined in § 12-1-202, including intentional state governmental action resulting in a taking other than the taking of real property and real property rights for the state's system of highways or the state's system of interstate highways.

(2) No item enumerated in this subsection (a) shall be interpreted to allow any claim against the state on account of the acts or omissions of persons, partnerships, corporations or other entities licensed or regulated by agencies of the state, notwithstanding any negligence committed by the state in the course of performing licensing or regulatory activities. No item enumerated in this subsection (a) shall be interpreted to allow any claims against the state arising out of or resulting from:

(A) The issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization, except as provided for in subdivision (a)(1)(V);

(B) An inspection, or by reason of making an inadequate or negligent

inspection of any property, except as provided for in subdivision (a)(1)(I);

(C) Riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances; except that the claims commission shall have jurisdiction over riots and disturbances occurring on or after January 1, 1985, by persons who are in the care, custody and control of the state where the state's negligence is the proximate cause of the riot or disturbance which, in turn, is the proximate cause of the injury to the claimant or damage to the claimant's personal property;

(D) Acts of a defendant serving a sentence under probation coupled with periodic confinement pursuant to § 40-35-307; work release pursuant to § 40-35-315; on furlough pursuant to § 40-35-316; a community-based alternative to confinement pursuant to title 40, chapter 36; or parole pursuant to § 40-35-504, unless the defendant is in the custody of or under the control or supervision of a jailer, corrections officer, law enforcement officer, or other agent of the state, or unless the state was negligent in its release of the defendant; provided, that the state is liable for reasonable medical care for inmates under work release, furlough, or community-based alternatives to confinement, although the inmates are not physically in the custody and control of and under the direct personal control of a jailer, corrections officer or other law enforcement officer. The state, county, municipality or political subdivision which may employ the inmate but does not have direct supervision and control of the inmate's work release, confinement or community-based alternative to confinement is not liable for the inmate's reasonable medical treatment for injuries incurred while on such work release, community-based alternative, or other work detail. Nothing in this subdivision (a)(2)(D) shall be construed as changing the general law of comparative fault. Nothing in this subdivision (a)(2)(D) shall be construed as changing the liability for injuries caused by a person or agency due to that person's or agency's own negligence. Nothing in this subdivision (a)(2)(D) shall be construed as changing the general law on liability in subdivision (a)(1)(E); or

(E) Any failure or malfunction occurring before January 1, 2005, which is caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times, if, and only if, the failure or malfunction causing the loss was unforeseeable or if the failure or malfunction causing the loss was foreseeable but a reasonable plan or design or both for identifying and preventing the failure or malfunction was adopted and reasonably implemented complying with generally accepted computer and information system design standards. Notwithstanding any other provision of the law, nothing in this subdivision (a)(2)(E) shall in any way limit the liability of a third party, direct or indirect, who is negligent. Further, a person who is injured by the negligence of a third party contractor, direct or indirect, shall have a cause of action against the contractor.

(3) It is the intent of the general assembly that the claims commission shall only hear claims arising on or after January 1, 1985. All claims arising prior to January 1, 1985, are to be governed by the law as it was prior to that date. For purposes of jurisdiction, a claim for recovery of taxes is deemed to arise on the date of the payment under protest. However, for any claim falling within the jurisdiction of the claims commission as determined by

this subdivision (a)(3) and arising before January 1, 1985, the board of claims may authorize the chair of the board to transfer any claim or classes of claims to the claims commission. No claims shall be transferred where the claimant objects. Transferred claims are subject to the same requirements and procedures as claims originally filed with the claims commission. It is the intent of the general assembly that the jurisdiction of the claims commission be liberally construed to implement the remedial purposes of this legislation. It is the intent of the general assembly that no distinctions be made between officers and employees of the state under this legislation. The availability of state records and documents concerning claims is subject to the same discovery defenses as are available to other parties. The portion of the records in possession of the division of claims administration containing the amount of funds reserved for each claim for the risk management fund is confidential and not subject to § 10-7-503, until the final adjudication of the claim.

(b) Claims against the state filed pursuant to subsection (a) shall operate as a waiver of any cause of action, based on the same act or omission, which the claimant has against any state officer or employee. The waiver is void if the commission determines that the act or omission was not within the scope of the officer's or employee's office or employment.

(c) The determination of the state's liability in tort shall be based on the traditional tort concepts of duty and the reasonably prudent person's standard of care.

(d) The state will be liable for actual damages only. No award shall be made unless the facts found by the commission would entitle the claimant to a judgment in an action at law if the state had been a private individual. The state will not be liable for punitive damages and the costs of litigation other than court costs. The state will not be liable for willful, malicious, or criminal acts by state employees, or for acts on the part of state employees done for personal gain. The state may assert any and all defenses, including common law defenses, which would have been available to the officer or employee in an action against such an individual based upon the same occurrence. The state may assert any absolute common law immunities available to the officer or employee, however, good faith common law immunity may not be asserted. If the claimant is successful with any claim filed with the claims commission after January 1, 1985, the state shall pay such interest as the commissioner may determine to be proper, not exceeding the legal rate as provided in § 47-14-121. In contract actions, interest may be awarded, but if the rate of interest is provided in the contract, the award of interest shall be at that rate.

(e) For causes of action arising in tort, the state shall only be liable for damages up to the sum of three hundred thousand dollars ($300,000) per claimant and one million dollars ($1,000,000) per occurrence. The board of claims is authorized to purchase insurance, on a per claimant or per occurrence basis, for any class of claim. Any recovery covered by such a policy may exceed the monetary limits of this subsection (e), but only up to the policy limit.

(f) No language contained in this chapter is intended to be construed as a waiver of the immunity of the state of Tennessee from suit in federal courts guaranteed by the eleventh amendment to the Constitution of the United States.

(g) No language contained in this chapter is intended to be construed to abridge the common law immunities of state officials and employees.

(h) State officers and employees are absolutely immune from liability for

acts or omissions within the scope of the officer's or employee's office or employment, except for willful, malicious, or criminal acts or omissions or for acts or omissions done for personal gain. For purposes of this chapter, "state officer" or "employee" has the meaning set forth in § 8-42-101(3).

(i)(1) Claims that were timely filed against a state employee with a court of competent jurisdiction and that fall within the jurisdiction of the claims commission found in subdivision (a)(1)(A) shall be dismissed as to the state employee and transferred to the division of claims administration to proceed as a claim against the state; provided, that the state employee alleged to have acted negligently was, at the time of the incident giving rise to the claim, operating a private motor vehicle within the scope of the employee's office or employment, and the employee's action or inaction was not willful, malicious, criminal or done for personal gain. When a motion for transfer is made, the court shall require that notice be given the attorney general and reporter and the state shall be permitted to intervene and respond to the motion. Upon such transfer, the claim shall be considered timely filed with the division of claims administration and the claims commission. Such transfer shall be effected upon an order of dismissal and transfer from the court. Any such transfer must be made within one (1) year of the filing of the original complaint with the court or on or after April 22, 1998, whichever is later. Such claims shall be considered by the division of claims administration and the claims commission, as provided by law. This subsection (i) shall be effective for causes of action arising on or after July 1, 1995, pending on or after April 22, 1998, and causes of action arising on or after April 22, 1998.

(2) Claims which are transferred to the division of claims administration pursuant to this subsection (i) shall be investigated by the division of claims administration, acted upon or transferred by the division, and acted upon by the claims commission pursuant to the same statutory requirements and procedures as apply to claims originally filed with the division of claims administration.

9-8-307. Jurisdiction — Claims — Waiver of actions — Standard for tort liability — Damages — Immunities — Definitions — Transfer of claims. [Effective on July 1, 2014. See the version effective until July 1, 2014.]

(a)(1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of "state employees," as defined in § 8-42-101, falling within one (1) or more of the following categories:

(A) The negligent operation or maintenance of any motor vehicle or any other land, air, or sea conveyance. In addition, the state may be held liable pursuant to this subdivision (a)(1)(A) for the negligent operation of state-owned motor vehicles or other conveyances by persons who are not state employees; provided, that such persons operated the vehicle or other conveyance with the permission of a state employee;

(B) Nuisances created or maintained;

(C) Negligently created or maintained dangerous conditions on state controlled real property. The claimant under this subdivision (a)(1)(C) must establish the foreseeability of the risks and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have

taken appropriate measures;

(D) Legal malpractice or health care liability by a state employee; provided, that the state employee has a professional/client relationship with the claimant;

(E) Negligent care, custody and control of persons;

(F) Negligent care, custody or control of personal property;

(G) Negligent care, custody or control of animals. Damages are not recoverable under this section for damages caused by wild animals;

(H) Negligent construction of state sidewalks and buildings;

(I) Negligence in planning and programming for, inspection of, design of, preparation of plans for, approval of plans for, and construction of, public roads, streets, highways, or bridges and similar structures, and negligence in maintenance of highways, and bridges and similar structures, designated by the department of transportation as being on the state system of highways or the state system of interstate highways;

(J) Dangerous conditions on state maintained highways. The claimant under this subdivision (a)(1)(J) must establish the foreseeability of the risk and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures;

(K)(i) Workers' compensation claims by state employees, including injuries incurred by national guard members, Tennessee state guard members, civil air patrol members, civil defense agency personnel and emergency forest firefighters while on active duty and in the course of that duty;

(ii) The commission's payment of these claims shall be in such amount and subject to such limitations as set forth in title 50, chapter 6, except the following provisions shall have no application to workers' compensation claims filed against the state: §§ 50-6-103, 50-6-104, 50-6-106(5), 50-6-118, 50-6-128, 50-6-203(a)-(e) and (g), 50-6-205(b)(2), (b)(3), (c) and (d), 50-6-208, 50-6-210(f), 50-6-211, 50-6-213, 50-6-222, 50-6-225(d), 50-6-229(b), 50-6-233, 50-6-236(c)(2)-(3) and (g), 50-6-237, 50-6-238, 50-6-239, 50-6-244, 50-6-306, 50-6-307, and title 50, chapter 6, part 4. Section 50-6-114 shall apply to workers' compensation claims against the state, except that the state is authorized to give an employee the option to use accrued sick and annual leave in lieu of receiving temporary total disability benefits. In no event shall an employee receive both accrued sick and annual leave and temporary total disability benefits for the period of temporary total disability. Where appropriate, the claims commission shall be considered the court or tribunal to determine claims within title 50, chapter 6. Payments shall be made and accepted without regard to fault as a cause of the injury or death;

(iii) The second injury fund shall have no application to workers' compensation claims against the state of Tennessee. Payment of compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments. Likewise, the acceptance of compensation by the officer or employee is not considered a binding determination of the obligations of the employer as to future compensation payments; nor shall the acceptance of compensation by the officer or employee be considered a binding determination of the employer's rights;

(iv) The interested parties have the right to settle all matters of compensation between themselves, but all settlements, before the settle-

ments are binding on either party, shall be reduced to writing and shall be approved by the claims commissioner before whom the claim for compensation is entitled to be heard, or to a workers' compensation judge pursuant to § 50-6-240. Any proposed settlement presented to a claims commissioner for approval pursuant to this subdivision (a)(1)(K)(iv) shall be examined by the claims commissioner to determine whether the officer or employee is receiving, substantially, the benefits provided by the Workers' Compensation Law, compiled in title 50, chapter 6. To this end, the commissioner may call and examine witnesses. Upon such settlement being approved, an order shall be rendered by the commissioner and duly entered by the clerk;

(v) In case any officer or employee of the state of Tennessee for whose injury or death compensation is payable under the Workers' Compensation Law shall at the time of injury be employed or paid jointly by two (2) or more employers subject to such law, such employers shall contribute to payment of such compensation in a proportion of their several wage liability to such officer or employee. The state of Tennessee is considered the primary employer and the determination of workers' compensation paid shall be pursuant to the procedures provided for state officers and employees. If one (1) or more, but not all, of such officers and employees are subject to the Workers' Compensation Law and otherwise subject to liability for compensation hereunder, then the liability of such of them as are so subject shall be to pay the proportion of the entire compensation which their portion of the wage liability bears to the wages of the officer or employee; provided, that nothing in this section shall prevent any agreement between the different employers between themselves as to the distribution of the ultimate burden of such compensation. The state of Tennessee shall pay the officer or employee under the Workers' Compensation Law and seek contribution from other contributing employers. The state of Tennessee has a right of action in the courts against the joint employers;

(vi) Notwithstanding § 9-8-402(d) or any other law to the contrary, upon motion of the employee, the claims commission may, prior to the benefits review conference or any final hearing on the claim, order the state to initiate, continue or reinstate temporary disability benefits or to provide medical benefits to the employee pending a final decision in the case, if the claims commission determines that such an order would be appropriate in light of available information. If the commission determines it appropriate to order the state to provide medical benefits pursuant to this subdivision (a)(1)(K)(vi), the commission's authority shall include, but not be limited to, the authority to order specific medical treatment recommended by the treating physician, and the authority to require the state to provide the appropriate panel of physicians to the employee, including a panel of appropriate specialists. With respect to the determination of whether to order the payment of temporary disability or medical benefits, the claims commission shall decide such issues solely on the basis of the information available to the commission, without favor or presumption for or against either party;

(L) Actions for breach of a written contract between the claimant and the state which was executed by one (1) or more state officers or employees with authority to execute the contract; provided, that the group insurance

agreements created pursuant to §§ 8-27-201 and 8-27-302 shall be considered contracts for purposes of this subsection (a) in order for the commission to determine insurance claims which have been previously rejected by the state insurance committee or the local education insurance committee;

(M) Negligent operation of machinery or equipment;

(N) Negligent deprivation of statutory rights created under Tennessee law, except for actions arising out of claims over which the civil service commission has jurisdiction. The claimant must prove under this subdivision (a)(1)(N) that the general assembly expressly conferred a private right of action in favor of the claimant against the state for the state's violation of the particular statute's provisions;

(O) Claims for the recovery of taxes collected or administered by the state, except any tax collected or administered by the commissioner of revenue and any unemployment insurance tax collected or administered by the commissioner of labor and workforce development;

(P) Claims for the loss, damage or destruction of the personal property of state employees based on § 9-8-111;

(Q)(i) Claims for injuries incurred by persons where such injury occurred while the person was a passenger in a motor vehicle operated by a state employee while such employee was acting within the scope of employment. The claimant has the burden of proving the following:

***(a)** The injuries suffered by the claimant occurred as a result of an accident involving a motor vehicle operated by a non-state employee and a motor vehicle operated by a state employee who, at the time of the accident, was acting within the scope of employment;*

***(b)** The proximate cause of the accident was the negligent operation of the motor vehicle operated by the nonstate employee;*

***(c)** The claimant has been unable to recover any damages from the negligent party because the negligent party was uninsured or underinsured at the time of the accident and is otherwise financially incapable of fully compensating the claimant;*

***(d)** The claimant has been unable to recover sufficient amounts under the Workers' Compensation Law or from any other public or private source, including the claimant's uninsured motorist's insurance policy, to fully compensate for the injuries suffered; and*

***(e)** The claimant's presence in the motor vehicle operated by the state employee was for the benefit of the state, except that this requirement shall be waived for persons who are injured while a passenger in a state-owned motor vehicle used in the state employee van pool program authorized in § 4-3-1105(19).*

(ii) Notwithstanding subsection (e), awards under this subdivision (a)(1)(Q) are limited to amounts recoverable under subdivision (a)(1)(K). Awards under this subdivision (a)(1)(Q) shall not be considered payments under an uninsured motorists insurance policy as provided for in title 56, chapter 7, part 12;

(R) Claims for libel and/or slander where a state employee is determined to be acting within the scope of employment;

(S)(i) Claims for compensation filed under the Criminal Injuries Compensation Act, compiled in title 29, chapter 13, and § 40-24-107. Claims filed pursuant to this subdivision (a)(1)(S) shall be determined in accordance with title 29, chapter 13;

(ii) Notwithstanding title 29, chapter 13, to the contrary, the claims commission has exclusive jurisdiction to determine all claims filed for compensation under the Criminal Injuries Compensation Act in accordance with title 29, chapter 13; provided, that this exclusive jurisdiction shall apply only to claims for compensation filed on or after January 1, 1987. At the request of the claimant and with the consent of the court, any claim filed prior to January 1, 1987, may be transferred to the claims commission for determination of the claim;

(T) Actions based on § 69-1-201;

(U) Actions based on violations of the requirements of procurement of commodities or services under title 71, chapter 4, part 7; and

(V) Unconstitutional taking of private property, as defined in § 12-1-202, including intentional state governmental action resulting in a taking other than the taking of real property and real property rights for the state's system of highways or the state's system of interstate highways.

(2) No item enumerated in this subsection (a) shall be interpreted to allow any claim against the state on account of the acts or omissions of persons, partnerships, corporations or other entities licensed or regulated by agencies of the state, notwithstanding any negligence committed by the state in the course of performing licensing or regulatory activities. No item enumerated in this subsection (a) shall be interpreted to allow any claims against the state arising out of or resulting from:

(A) The issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization, except as provided for in subdivision (a)(1)(V);

(B) An inspection, or by reason of making an inadequate or negligent inspection of any property, except as provided for in subdivision (a)(1)(I);

(C) Riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances; except that the claims commission shall have jurisdiction over riots and disturbances occurring on or after January 1, 1985, by persons who are in the care, custody and control of the state where the state's negligence is the proximate cause of the riot or disturbance which, in turn, is the proximate cause of the injury to the claimant or damage to the claimant's personal property;

(D) Acts of a defendant serving a sentence under probation coupled with periodic confinement pursuant to § 40-35-307; work release pursuant to § 40-35-315; on furlough pursuant to § 40-35-316; a community-based alternative to confinement pursuant to title 40, chapter 36; or parole pursuant to § 40-35-504, unless the defendant is in the custody of or under the control or supervision of a jailer, corrections officer, law enforcement officer, or other agent of the state, or unless the state was negligent in its release of the defendant; provided, that the state is liable for reasonable medical care for inmates under work release, furlough, or community-based alternatives to confinement, although the inmates are not physically in the custody and control of and under the direct personal control of a jailer, corrections officer or other law enforcement officer. The state, county, municipality or political subdivision which may employ the inmate but does not have direct supervision and control of the inmate's work release, confinement or community-based alternative to confinement is not liable for the inmate's reasonable medical treatment for injuries incurred while on

such work release, community-based alternative, or other work detail. Nothing in this subdivision (a)(2)(D) shall be construed as changing the general law of comparative fault. Nothing in this subdivision (a)(2)(D) shall be construed as changing the liability for injuries caused by a person or agency due to that person's or agency's own negligence. Nothing in this subdivision (a)(2)(D) shall be construed as changing the general law on liability in subdivision (a)(1)(E); or

(E) Any failure or malfunction occurring before January 1, 2005, which is caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times, if, and only if, the failure or malfunction causing the loss was unforeseeable or if the failure or malfunction causing the loss was foreseeable but a reasonable plan or design or both for identifying and preventing the failure or malfunction was adopted and reasonably implemented complying with generally accepted computer and information system design standards. Notwithstanding any other provision of the law, nothing in this subdivision (a)(2)(E) shall in any way limit the liability of a third party, direct or indirect, who is negligent. Further, a person who is injured by the negligence of a third party contractor, direct or indirect, shall have a cause of action against the contractor.

(3) It is the intent of the general assembly that the claims commission shall only hear claims arising on or after January 1, 1985. All claims arising prior to January 1, 1985, are to be governed by the law as it was prior to that date. For purposes of jurisdiction, a claim for recovery of taxes is deemed to arise on the date of the payment under protest. However, for any claim falling within the jurisdiction of the claims commission as determined by this subdivision (a)(3) and arising before January 1, 1985, the board of claims may authorize the chair of the board to transfer any claim or classes of claims to the claims commission. No claims shall be transferred where the claimant objects. Transferred claims are subject to the same requirements and procedures as claims originally filed with the claims commission. It is the intent of the general assembly that the jurisdiction of the claims commission be liberally construed to implement the remedial purposes of this legislation. It is the intent of the general assembly that no distinctions be made between officers and employees of the state under this legislation. The availability of state records and documents concerning claims is subject to the same discovery defenses as are available to other parties. The portion of the records in possession of the division of claims administration containing the amount of funds reserved for each claim for the risk management fund is confidential and not subject to § 10-7-503, until the final adjudication of the claim.

(b) Claims against the state filed pursuant to subsection (a) shall operate as a waiver of any cause of action, based on the same act or omission, which the claimant has against any state officer or employee. The waiver is void if the commission determines that the act or omission was not within the scope of the officer's or employee's office or employment.

(c) The determination of the state's liability in tort shall be based on the traditional tort concepts of duty and the reasonably prudent person's standard of care.

(d) The state will be liable for actual damages only. No award shall be made unless the facts found by the commission would entitle the claimant to a

judgment in an action at law if the state had been a private individual. The state will not be liable for punitive damages and the costs of litigation other than court costs. The state will not be liable for willful, malicious, or criminal acts by state employees, or for acts on the part of state employees done for personal gain. The state may assert any and all defenses, including common law defenses, which would have been available to the officer or employee in an action against such an individual based upon the same occurrence. The state may assert any absolute common law immunities available to the officer or employee, however, good faith common law immunity may not be asserted. If the claimant is successful with any claim filed with the claims commission after January 1, 1985, the state shall pay such interest as the commissioner may determine to be proper, not exceeding the legal rate as provided in § 47-14-121. In contract actions, interest may be awarded, but if the rate of interest is provided in the contract, the award of interest shall be at that rate.

(e) For causes of action arising in tort, the state shall only be liable for damages up to the sum of three hundred thousand dollars ($300,000) per claimant and one million dollars ($1,000,000) per occurrence. The board of claims is authorized to purchase insurance, on a per claimant or per occurrence basis, for any class of claim. Any recovery covered by such a policy may exceed the monetary limits of this subsection (e), but only up to the policy limit.

(f) No language contained in this chapter is intended to be construed as a waiver of the immunity of the state of Tennessee from suit in federal courts guaranteed by the eleventh amendment to the Constitution of the United States.

(g) No language contained in this chapter is intended to be construed to abridge the common law immunities of state officials and employees.

(h) State officers and employees are absolutely immune from liability for acts or omissions within the scope of the officer's or employee's office or employment, except for willful, malicious, or criminal acts or omissions or for acts or omissions done for personal gain. For purposes of this chapter, "state officer" or "employee" has the meaning set forth in § 8-42-101(3).

(i)(1) Claims that were timely filed against a state employee with a court of competent jurisdiction and that fall within the jurisdiction of the claims commission found in subdivision (a)(1)(A) shall be dismissed as to the state employee and transferred to the division of claims administration to proceed as a claim against the state; provided, that the state employee alleged to have acted negligently was, at the time of the incident giving rise to the claim, operating a private motor vehicle within the scope of the employee's office or employment, and the employee's action or inaction was not willful, malicious, criminal or done for personal gain. When a motion for transfer is made, the court shall require that notice be given the attorney general and reporter and the state shall be permitted to intervene and respond to the motion. Upon such transfer, the claim shall be considered timely filed with the division of claims administration and the claims commission. Such transfer shall be effected upon an order of dismissal and transfer from the court. Any such transfer must be made within one (1) year of the filing of the original complaint with the court or on or after April 22, 1998, whichever is later. Such claims shall be considered by the division of claims administration and the claims commission, as provided by law. This subsection (i) shall be effective for causes of action arising on or after July 1, 1995, pending on or after April 22, 1998, and causes of action arising on or after April 22, 1998.

(2) Claims which are transferred to the division of claims administration pursuant to this subsection (i) shall be investigated by the division of claims

administration, acted upon or transferred by the division, and acted upon by the claims commission pursuant to the same statutory requirements and procedures as apply to claims originally filed with the division of claims administration.

9-8-309. Temporary assignment of administrative law judges to commission.

Upon the request of the governor, or of an individual claims commissioner as to claims within that commissioner's grand division, or of a majority of the claims commissioners as to claims within any grand division, the secretary of state may assign administrative law judges from the administrative procedures division of the secretary of state's office to assist in the removal of unacceptable congestion, delay on the claims commission docket or in the event of a claims commissioner's recusal or disability. Upon such assignment, administrative law judges shall have all the powers, duties and immunities as a regularly appointed claims commissioner. Costs associated with the assignment of administrative law judges to hear claims commission matters shall be paid from the risk management fund.

9-8-402. Claims. [Effective until July 1, 2014. See the version effective on July 1, 2014.]

(a)(1) The claimant must give written notice of the claimant's claim to the division of claims administration as a condition precedent to recovery, except claims for recovery of taxes shall be filed directly with the administrative clerk of the claims commission. The filing of a false notice with the division of claims administration is punishable as a Class A misdemeanor.

(2) The notice shall state the circumstances upon which the claim is based, including, but not limited to: the state department, board, institution, agency, commission or other state entity that allegedly caused the injury; the time and place of the incident from which the claim arises; and the nature of the claimant's injury.

(3) The entire disputed amount of tax, penalty and interest must be paid under protest before any action can be filed contesting the assessment of any tax. The claim for recovery of taxes must be filed with the claims commission within six (6) months of the payment under protest. This is the sole and exclusive jurisdiction for determining tax liability, except that any tax collected or administered by the commissioner of revenue shall be contested according to chapter 749 of the Acts of 1986, and any unemployment insurance tax collected or administered by the commissioner of labor and workforce development shall be contested according to title 50, chapter 7.

(4) No writ for the prevention of the collection of any revenue claimed, or to hinder and delay the collection of the same, shall in anywise issue, either injunction, supersedeas, prohibition, or any other writ or process whatever; but in all cases in which, for any reason, any person shall claim that the tax so collected was wrongfully or illegally collected, the remedy for that party shall be as herein provided, and in no other manner.

(5) The notice to the division is deemed to be notice to the employer for workers' compensation purposes. Claims not within the jurisdiction of the claims commission shall be sent to the board of claims. A copy of any claim filed with or transferred to the claims commission must be served on the

attorney general and reporter and the division of claims administration by certified mail, return receipt requested, or by such other method as the attorney general and reporter deems appropriate.

(b) The claim is barred unless the notice is given within the time provided by statutes of limitations applicable by the courts for similar occurrences from which the claim arises; provided, however, that, for workers' compensation purposes, the right to compensation and other benefits under the Workers' Compensation Law, compiled in title 50, chapter 6, shall be barred, unless the notice required by subsection (a) is filed with the division of claims administration within one (1) year after the accident resulting in injury. The filing of the notice by the claimant tolls all statutes of limitations as to other persons potentially liable to the claimant due to the occurrence from which the claim before the commission arises. The applicable statute of limitations for the recovery of taxes shall continue to be six (6) months after the payment of the taxes under protest. Absent prior written consent of the commission, it is mandatory that any claim filed with the claims commission upon which no action is taken by the claimant to advance the case to disposition within any one-year period of time be dismissed with prejudice.

(c) The division of claims administration shall investigate every claim and shall make every effort to honor or deny each claim within ninety (90) days of receipt of the notice. If the claim is denied, the division shall so notify the claimant and inform the claimant of the reasons therefor and of the claimant's right to file a claim with the claims commission within ninety (90) days of the date of the denial notice. If the claim is honored and the damages may be ascertained within the ninety-day settlement period, the division shall so notify the claimant, and inform the claimant of the conditions of the settlement offer, and of the claimant's right to file such claimant's claim with the claims commission within ninety (90) days of the date of the settlement notice if the conditions of the settlement offer are unacceptable. If the claim is honored and the amount of damages may not be ascertained within the ninety-day settlement period because evidence of loss will be obtained after the ninetieth day of the settlement period, the division shall so notify the claimant and inform the claimant of the claimant's right to file a claim with the claims commission within ninety (90) days of the date the division forwards final compensation to the claimant or upon written request for transfer to the commission by the claimant; provided, that final compensation shall be forwarded to the claimant within one (1) year of the date of the settlement notice. If the division fails to honor or deny the claim within the ninety-day settlement period, the division shall automatically transfer the claim to the administrative clerk of the claims commission.

(d)(1) Notwithstanding subsection (c) or any other law to the contrary, if the division denies the compensability of a workers' compensation claim, the division shall so notify the claimant and inform the claimant of the reasons for the denial, and of the claimant's right to request a benefit review conference, pursuant to § 50-6-239, within ninety (90) days from the date of the denial notice. If the division fails to honor or deny the compensability of a workers' compensation claim within the ninety-day settlement period, the division shall submit the dispute to the benefit review conference process, as provided in § 50-6-239.

(2) Where the division of claims administration has paid workers' compensation benefits, either voluntarily or as a result of an order to do so,

within one (1) year following the accident resulting in injury, the claimant must file a request for a benefits review conference, pursuant to § 50-6-239, no later than one (1) year from the latter of the date of the last authorized treatment or the time the division ceased to make payments of compensation to or on behalf of the claimant, in order for the claimant to recover any unpaid or further workers' compensation benefits. For purposes of this section, the issuing date of the last voluntary payment of compensation, not the date of its receipt, shall constitute the time the division ceased making payments and the division shall provide such date on request.

(3) In conducting any benefit review conference pursuant to this subsection (d), the conference shall be held in the county where the employee lives, unless otherwise agreed to between the parties or otherwise directed by the commissioner. A workers' compensation specialist, as defined in § 50-6-102, shall have the authority to continue or reschedule a benefit review conference.

(4) In the event an agreement cannot be reached at the benefit review conference as to all issues related to the claim, the claimant shall have ninety (90) days, after the date a written agreement or a written report regarding the benefit review conference is filed with the commissioner of labor and workforce development, as provided in § 50-6-240, to file a claim with the claims commission. A claim for workers' compensation benefits must be instituted in the claims commission within that ninety (90) days.

(5) No claim for workers' compensation shall be filed with the claims commission until the benefit review conference process, as provided in § 50-6-239, has been exhausted. Notwithstanding this subsection (d), if the parties have mutually agreed to a compromise and settlement of a claim for workers' compensation, the parties shall not be required to exhaust the benefit review conference process before filing a claim and submitting the compromise and settlement to the claims commission for approval, pursuant to § 9-8-307(a)(1)(K), or to the commissioner of labor and workforce development or the commissioner's designee, pursuant to § 50-6-206(c). If the settlement is not approved, the parties shall then exhaust the benefit review conference process.

(6) The right to compensation for an occupational disease, or a claim for death benefits as a result of an occupational disease, must be initiated within the time periods set forth in this section; provided, however, that the applicable time limitation period or periods shall commence as of the date of the beginning of the incapacity for work resulting from an occupational disease, or upon the date death results from the occupational disease; provided, however, that, if, upon the date of the death of the employee, the employee's claim has become barred, the claim of the employee's dependent or dependents shall likewise be barred.

(7) In case of physical or mental incapacity, other than minority, of the injured person or such injured person's dependents to perform or cause to be performed any action required within the time specified in this section, then the period of limitation in such case shall be extended for one (1) year from the date when such incapacity ceases.

9-8-402. Claims. [Effective on July 1, 2014. See the version effective until July 1, 2014.]

(a)(1) The claimant must give written notice of the claimant's claim to the division of claims administration as a condition precedent to recovery, except claims for recovery of taxes shall be filed directly with the administrative clerk of the claims commission. The filing of a false notice with the division of claims administration is punishable as a Class A misdemeanor.

(2) The notice shall state the circumstances upon which the claim is based, including, but not limited to: the state department, board, institution, agency, commission or other state entity that allegedly caused the injury; the time and place of the incident from which the claim arises; and the nature of the claimant's injury.

(3) The entire disputed amount of tax, penalty and interest must be paid under protest before any action can be filed contesting the assessment of any tax. The claim for recovery of taxes must be filed with the claims commission within six (6) months of the payment under protest. This is the sole and exclusive jurisdiction for determining tax liability, except that any tax collected or administered by the commissioner of revenue shall be contested according to chapter 749 of the Acts of 1986, and any unemployment insurance tax collected or administered by the commissioner of labor and workforce development shall be contested according to title 50, chapter 7.

(4) No writ for the prevention of the collection of any revenue claimed, or to hinder and delay the collection of the same, shall in anywise issue, either injunction, supersedeas, prohibition, or any other writ or process whatever; but in all cases in which, for any reason, any person shall claim that the tax so collected was wrongfully or illegally collected, the remedy for that party shall be as herein provided, and in no other manner.

(5) The notice to the division is deemed to be notice to the employer for workers' compensation purposes. Claims not within the jurisdiction of the claims commission shall be sent to the board of claims. A copy of any claim filed with or transferred to the claims commission must be served on the attorney general and reporter and the division of claims administration by certified mail, return receipt requested, or by such other method as the attorney general and reporter deems appropriate.

(b) The claim is barred unless the notice is given within the time provided by statutes of limitations applicable by the courts for similar occurrences from which the claim arises; provided, however, that, for workers' compensation purposes, the right to compensation and other benefits under the Workers' Compensation Law, compiled in title 50, chapter 6, shall be barred, unless the notice required by subsection (a) is filed with the division of claims administration within one (1) year after the accident resulting in injury. The filing of the notice by the claimant tolls all statutes of limitations as to other persons potentially liable to the claimant due to the occurrence from which the claim before the commission arises. The applicable statute of limitations for the recovery of taxes shall continue to be six (6) months after the payment of the taxes under protest. Absent prior written consent of the commission, it is mandatory that any claim filed with the claims commission upon which no action is taken by the claimant to advance the case to disposition within any one-year period of time be dismissed with prejudice.

(c) The division of claims administration shall investigate every claim and

shall make every effort to honor or deny each claim within ninety (90) days of receipt of the notice. If the claim is denied, the division shall so notify the claimant and inform the claimant of the reasons therefor and of the claimant's right to file a claim with the claims commission within ninety (90) days of the date of the denial notice. If the claim is honored and the damages may be ascertained within the ninety-day settlement period, the division shall so notify the claimant, and inform the claimant of the conditions of the settlement offer, and of the claimant's right to file such claimant's claim with the claims commission within ninety (90) days of the date of the settlement notice if the conditions of the settlement offer are unacceptable. If the claim is honored and the amount of damages may not be ascertained within the ninety-day settlement period because evidence of loss will be obtained after the ninetieth day of the settlement period, the division shall so notify the claimant and inform the claimant of the claimant's right to file a claim with the claims commission within ninety (90) days of the date the division forwards final compensation to the claimant or upon written request for transfer to the commission by the claimant; provided, that final compensation shall be forwarded to the claimant within one (1) year of the date of the settlement notice. If the division fails to honor or deny the claim within the ninety-day settlement period, the division shall automatically transfer the claim to the administrative clerk of the claims commission.

(d)(1) Notwithstanding subsection (c) or any other law to the contrary, if the division denies the compensability of a workers' compensation claim, the division shall so notify the claimant and inform the claimant of the reasons for the denial, and of the claimant's right to request an alternative dispute resolution, pursuant to § 50-6-236, within ninety (90) days from the date of the denial notice. If the division fails to honor or deny the compensability of a workers' compensation claim within the ninety-day settlement period, the division shall submit the dispute to the alternative dispute resolution process, as provided in § 50-6-236.

(2) Where the division of claims administration has paid workers' compensation benefits, either voluntarily or as a result of an order to do so, within one (1) year following the accident resulting in injury, the claimant must file a petition for benefit determination, pursuant to § 50-6-236, no later than one (1) year from the latter of the date of the last authorized treatment or the time the division ceased to make payments of compensation to or on behalf of the claimant, in order for the claimant to recover any unpaid or further workers' compensation benefits. For purposes of this section, the issuing date of the last voluntary payment of compensation, not the date of its receipt, shall constitute the time the division ceased making payments and the division shall provide such date on request.

(3) In conducting any alternative dispute resolution pursuant to this subsection (d), the conference shall be held in the county where the employee lives, unless otherwise agreed to between the parties or otherwise directed by the commissioner. A workers' compensation specialist, as defined in § 50-6-102, shall have the authority to continue or reschedule an alternative dispute resolution.

(4) In the event an agreement cannot be reached through alternative dispute resolution as to all issues related to the claim, the claimant shall have ninety (90) days, after the issuance of a dispute certification notice as provided in § 50-6-236, to file a claim with the claims commission. A claim for workers' compensation benefits must be instituted in the claims commis-

sion within that ninety (90) days.

(5) No claim for workers' compensation shall be filed with the claims commission until the alternative dispute resolution process, as provided in § 50-6-236, has been exhausted. Notwithstanding this subsection (d), if the parties have mutually agreed to a compromise and settlement of a claim for workers' compensation, the parties shall not be required to exhaust the alternative dispute resolution process before filing a claim and submitting the compromise and settlement to the claims commission for approval, pursuant to § 9-8-307(a)(1)(K), or to a workers' compensation judge pursuant to § 50-6-240. If the settlement is not approved, the parties shall then exhaust the alternative dispute resolution process.

(6) The right to compensation for an occupational disease, or a claim for death benefits as a result of an occupational disease, must be initiated within the time periods set forth in this section; provided, however, that the applicable time limitation period or periods shall commence as of the date of the beginning of the incapacity for work resulting from an occupational disease, or upon the date death results from the occupational disease; provided, however, that, if, upon the date of the death of the employee, the employee's claim has become barred, the claim of the employee's dependent or dependents shall likewise be barred.

(7) In case of physical or mental incapacity, other than minority, of the injured person or such injured person's dependents to perform or cause to be performed any action required within the time specified in this section, then the period of limitation in such case shall be extended for one (1) year from the date when such incapacity ceases.

9-9-101. State funding board.

(a) The state funding board shall be composed of the governor, the commissioner of finance and administration, the state treasurer, the secretary of state, and the comptroller of the treasury. The governor shall serve as the chair, and the comptroller shall serve as the vice chair and secretary. The board has the power to prescribe its rules and regulations and govern its meetings and procedures as it may deem advisable. A majority of the board constitutes a quorum and the confirming vote of at least three (3) members of the board is required.

(b) [Deleted by 2013 amendment, effective July 1, 2013.]

9-9-102. Maintenance of records on the condition of all debt obligations and payments.

The commissioner of finance and administration shall maintain, or cause to be maintained, records on the condition of all debt obligations described in § 9-9-105(a) and of the payment of the principal of and premium, if any, and interest on such obligations.

9-9-103. Debt service payments.

(a) [Deleted by 2013 amendment, effective July 1, 2013.]

(b) There is hereby appropriated to the state funding board on a direct and continuing basis a sum sufficient for payment of debt service (principal, interest and premium, if any) on outstanding bonds and other debt obligations

(including notes), amounts due on contracts or agreements authorized under this chapter, and necessary related expenses. The state funding board is authorized to make debt service payments on outstanding bonds and other debt obligations (including notes), and make payments due under contracts and agreements authorized under this chapter, and necessary related expenses, as provided in this section from any funds held in the state treasury not otherwise legally restricted, independent of an appropriation bill as contemplated by chapter 4, part 51 of this title.

9-9-104. Pledge of revenues — Covenants for protection of bondholders.

(a) For the payment of the principal of and interest on the bonds of the state of Tennessee issued under this chapter outstanding as of July 1, 2013, there is hereby pledged the annual proceeds of a tax of not less than five cents (5¢) per gallon upon gasoline, the annual proceeds of the special tax on petroleum products provided for by § 67-3-203, one half (½) of the annual proceeds of motor vehicle registration fees now or hereafter required to be paid to the state, and the entire annual proceeds of franchise taxes imposed by the franchise tax law, compiled in title 67, chapter 4, part 21. This pledge shall not extend to any bonds issued under this chapter after July 1, 2013.

(b) As long as any bonds issued under this chapter that were outstanding as of July 1, 2013 remain outstanding, the state of Tennessee hereby covenants with the persons who now or may hereafter hold such bonds that it will not decrease by legislative action any of the fees or taxes that constitute the special revenues pledged by this section, or eliminate from the requirement to pay such fees or taxes any substance, motor vehicle or corporation on account of which the payment of such fees or taxes is now required, and that it will levy a tax of not less than five cents (5¢) per gallon upon gasoline or other motor vehicle fuel, unless the state funding board shall certify that all payments due the state funding board under this chapter have been made in full, that the state is not in default in the payment of any outstanding debt or in the payment of interest thereon, and that such fees and taxes at lower rates to be specified by the state funding board, in such year or years (not exceeding two (2) years), will be sufficient to provide funds adequate to meet all payments required to be made by the state funding board in such year or years, as well as to provide for the other obligations and expenses of the state for such year or years, to be defrayed therefrom, in which event the state of Tennessee shall be under no obligation to charge or levy in such year or years fees or taxes in excess of the rates so certified by the state funding board.

(c) In no event shall the pledge and covenants set forth in this section extend past or be effective after June 30, 2033.

9-9-105. Bonds constitute direct state obligations — Debt obligations constitute a charge and lien — Satisfaction of debt service coverage test.

(a) All bonds issued (and to be issued) under this chapter, all notes issued (and to be issued) in anticipation of such bonds, and all tax revenue anticipation notes issued (and to be issued) under this chapter shall constitute direct general obligations of the state of Tennessee for the payment of the principal of and premium, if any, and interest on which there is also pledged the full

faith and credit of the state of Tennessee. Subject only to § 9-9-104(a), all such debt obligations shall constitute a charge and lien upon the entire fees, taxes and other revenues and funds allocated to the general fund, the debt service fund, and the highway fund; and, if necessary, upon the first such fees, taxes, revenues and funds thereafter received and allocated to such funds, except only such fees, taxes, revenues and funds as may be otherwise legally restricted.

(b) The state of Tennessee hereby covenants with the persons who now or may hereafter hold any debt obligations described in § 9-9-105(a) that it will raise fees, taxes and other revenues sufficient, together with funds on hand derived from all sources, to pay the principal of and premium, if any, and interest on such obligations as and when due and payable.

(c)(1) The state of Tennessee hereby covenants with the persons who now or may hereafter hold any bonds issued under this chapter that no bonds shall be issued under this chapter after July 1, 2013, unless the following debt service coverage test is satisfied: the amount necessary to pay the maximum annual debt service payable in the then current or any future fiscal year, is not greater than ten percent (10%) of the amount of total state tax revenue allocated to the general fund, to the debt service fund, and to the highway fund for the immediately preceding fiscal year.

(2) For purposes of satisfying this test, "state tax revenues" are defined as those taxes, licenses, fees, fines, and permits collected by the department of revenue and allocated to the general fund, the debt service fund, and the highway fund excluding the portion of those taxes shared with local governments.

(3) "Debt service", for this purpose, means and includes principal of and interest on all outstanding bonds issued under this chapter and the bonds then proposed to be issued under this chapter, in the aggregate; provided, that in determining the outstanding bonds, there shall be excluded any outstanding bonds the payment of which has been fully provided for by funds or securities (including expected income therefrom), or both, set aside for that purpose.

9-9-106. Certification of amount necessary for payment of debt obligations.

The state funding board shall certify to the commissioner of finance and administration from time to time, but not less than annually, the amount necessary, together with funds on hand derived from all sources, to enable the board to provide for the payment of the principal of and premium, if any, and interest on all debt obligations described in § 9-9-105(a) as and when the same shall become due and payable.

9-9-107. Payments by state funding board.

The state funding board shall provide for the payment of the principal of and premium, if any, and interest on all bonds issued under this chapter, all notes issued in anticipation of such bonds and all tax revenue anticipation notes issued under this chapter, amounts due on contracts or agreements described in § 9-9-202(g) and (h) or other contracts or agreements relating to such debt obligations, and necessary related expenses incurred under this chapter as the same shall become due, out of the fees, taxes and other revenues and funds available for such purposes.

9-9-111. Vested rights of holders of debt obligations.

The holders of all debt obligations of the state of Tennessee described in § 9-9-105(a) and all persons who may hereafter purchase such obligations shall have, and are hereby declared to have, a vested right in the performance of the covenants and pledges contained in this chapter, and the performance of the duties imposed upon any officer or agency of the state of Tennessee by or pursuant to this chapter may be enforced by the holder of any such obligation by appropriate proceedings; provided, that no such holders or purchasers of debt obligations issued after July 1, 2013, shall have any such rights with respect to § 9-9-104.

9-9-112. Exemption from taxes.

Principal of and interest on debt obligations issued under this chapter shall be exempt from taxation by the state, or by any county, municipality or taxing district of the state, except inheritance, transfer and estate taxes.

9-9-118. [Repealed.]

9-9-119. [Repealed.]

9-9-207. Issuance of refunding bonds.

(a) The funding board may issue general obligation refunding bonds to refund outstanding obligations previously issued under the authority of this chapter, upon the determination by the board that such bonds are necessary:

(1) To accomplish cost savings to the public;

(2) For the administrative convenience of the board;

(3) To pay or discharge all or any part of an issue or series of bonds, including any interest thereon, in arrears or to become due and for the payment of which sufficient funds are not available; or

(4) To eliminate bond covenants that have been determined to be burdensome to the state due to a change in circumstances if such elimination is not otherwise prohibited by law. Such determination shall be clearly stated in any resolution authorizing such refunding bonds and shall be conclusive.

(b) The refunding bonds may be issued to pay or provide for the payment of principal, redemption premium, and accrued interest on the bonds to be refunded, and expenses related to the issuance of the refunding bonds, including discount and costs of issuance.

(c) Refunding bonds may be sold as determined by the funding board, at public or private sale, in accordance with this chapter.

9-9-301. Issuance and sale — Interest — Guidelines.

(a) Pending the receipt of tax revenues during any fiscal year, the state of Tennessee, acting by resolutions of its funding board, is hereby authorized and empowered to issue and sell, either at public or private sale, at not less than par and accrued interest, its interest-bearing revenue anticipation note or notes. Such note or notes shall be authorized by resolution of the funding board, shall bear such date or dates, and shall mature at such time or times, including any renewals thereof, as such resolution or resolutions may provide, but shall mature within the fiscal year of their issuance. Such notes shall bear

interest at such rate or rates, be in such denominations, be in such form, carry such registration privileges, 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 and contain such other terms and provisions, and the state may otherwise provide with respect to the authorization, sale and issuance of such notes, as such resolution or resolutions may provide.

(b) Any resolution or resolutions of the state funding board authorizing the issuance of such tax revenue anticipation note or notes shall provide that the same are issued in anticipation of the tax revenue within the then current fiscal year and shall further provide that the full faith and credit of the state of Tennessee are pledged to the payment of such note or notes. The state funding board shall provide for the payment of the principal of and interest on all notes issued under this section as the same shall become due, out of revenues and funds available for such purposes.

(c) The state funding board is hereby authorized to procure such legal and technical advice, approving opinions and such financial assistance as it may consider necessary in connection with the carrying into effect of this section, and is also authorized to pay all necessary expenses and incidental expenses. All such expenses may be funded by notes issued under this section.

(d) [Deleted by 2013 amendment, effective July 1, 2013.]

(e) [Deleted by 2013 amendment, effective July 1, 2013.]

9-10-101. [Transferred.]

9-21-105. Chapter definitions.

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

(1) "Bondholder," "holder of bonds" or any similar term means any person who shall be the bearer of any outstanding bonds, notes or other obligations registered to bearer or not registered, or the registered owner of any such outstanding bonds, notes or other obligations which shall at the time be registered other than to bearer, or the holder of any interim certificate pending the issuance of definitive bonds or notes;

(2) "Bonds" means bonds or interim certificates issued pending preparation or delivery of definitive bonds of a local government issued pursuant to this chapter;

(3) "Certain unfunded other post-employment benefits" means nonpension benefits paid on behalf of former employees of any local government having a population in excess of one hundred fifty thousand (150,000), according to the 2000 federal census or any subsequent federal census, or the former employees' beneficiaries after separation from service. The benefits may include, but shall not be limited to, medical, prescription drugs, dental, vision, hearing, medicare part B or part D premiums, life insurance, long-term care, and long-term disability. For purposes of this subdivision (3), the value of any "certain unfunded other post-employment benefits" shall be limited to the unfunded actuarial accrued liability as determined pursuant to the Governmental Accounting Standards Board Statement No. 45 and as certified by the actuarial consultant of the local government;

(4)(A) "Certain unfunded pension obligations" means:

(i) Pension benefits for past service of employees of a local government whose employment results from the local government's assump-

tion of governmental responsibilities of another local government;

(ii) Pension benefits for past service of employees of a local government whose pension benefits arise from a defined benefit pension plan that is closed to the enrollment of new employee participants and are funded solely by contributions of the local government to the plan;

(iii) Pension benefits for past service of employees of a local government whose pension benefits arise from a defined benefit pension plan adopted by referendum amendment of a county charter, and that limits enrollment to law enforcement employees of the local government. The maturity of any bonds issued under this subdivision (4)(A)(iii) shall not exceed twenty (20) years from the date of the bonds, and the servicing of such bonds shall be subject to review by the office of the comptroller of the treasury; or

(iv) Pension benefits for past service of employees of a local government which is either:

(a) A metropolitan government with a general obligation rating of at least Aa1 (or its equivalent) from one (1) or more nationally recognized rating agencies; or

(b) A municipality with a general obligation rating of Aaa (or its equivalent) from one (1) or more nationally recognized rating agencies that is located within a county with a general obligation rating of Aaa (or its equivalent) from one (1) or more nationally recognized rating agencies; and

(c) In either case, whose pension benefits arise from a defined benefit plan administered by the local government;

(B) For purposes of this subdivision (4), the value of any "certain unfunded pension obligations" shall be limited to the unfunded portion of the present value of benefits less the present value of future normal costs, as certified by the pension actuarial consultant of the local government;

(C) Subdivisions (4)(A)(ii) and (iii) shall cease to be effective on July 1, 2008; provided, that no bonds issued pursuant to this subdivision (4) prior to July 1, 2008, shall be rendered ineffectual;

(D) Subdivision (4)(A)(iv) shall cease to be effective on July 1, 2015; provided, that no bonds issued pursuant to this subdivision (4) prior to July 1, 2015, shall be rendered ineffectual;

(5) "Construction" means building, reconstruction, erection, replacement, extension, repairing, betterment, equipment, development, embellishment, improvement, acquisition by gift, lease, purchase or the exercise of the right of eminent domain, or any one (1) or more or all of the foregoing, including the acquisition of land and of rights in land, and including acquisition of all of the outstanding capital stock of any corporation whose assets consist entirely of one (1) or more public works projects which together constitute a waterworks, sewer system, natural gas system, electric system, or any combination thereof, including, but not limited to, a water, sewer, natural gas and/or electric distribution system, or any combination thereof, serving a local government and assets related to the operation thereof and whose liabilities consist entirely of those related to the ownership and operation thereof; provided, that upon any such acquisition of stock by a local government, the corporation thus acquired shall be promptly liquidated by the local government, which shall thereupon acquire its assets and assume its liabilities;

(6) "Contract" or "agreement" between a state or federal agency, or both, and a local government or a local government instrumentality includes contracts and agreements in the customary form and also includes an allotment of funds, resolution, unilateral promise or other commitments by such state or federal agency or agencies by which it shall undertake to make a loan or grant or both, upon performance of specified conditions or with rules and regulations theretofore or thereafter promulgated, prescribed or published by such state or federal agency or agencies. In the case of such an allotment of funds, resolution, unilateral promise or other commitment by a state or federal agency, the terms, conditions and restrictions therein set forth and the rules and regulations theretofore or thereafter promulgated, prescribed or published shall, for the purpose of this chapter, constitute covenants of such a contract that are to be performed by the local government, if the local government accepts any money from such state or federal agency;

(7) "Enterprise" means any one (1) of or combination of two (2) or more public works projects, undertakings or projects which the local government is or may hereafter be authorized to construct and from which the local government has heretofore derived or may hereafter derive revenues, and such enterprise includes all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises and structures in connection therewith or incidental thereto;

(8) "Facsimile seal" means the reproduction by engraving, imprinting, stamping, or other means of the seal of the issuer, official or governing body;

(9) "Facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer of a local government;

(10) "Federal agency" includes the United States, the president of the United States, or any agency, instrumentality or corporation of the United States, which has heretofore been or may hereafter be designated, created or authorized by or pursuant to any act or acts or joint resolutions of the congress of the United States, to make loans or grants, or which may be owned or controlled, directly or indirectly, by the United States;

(11) "Federal aid act" means any act or acts or joint resolution of the congress of the United States to reduce and relieve unemployment, or to provide for the construction of public works, or to relieve and rehabilitate veterans of any war, or to subsidize or aid any local government, public works or construction project by grants of money, materials, equipment or otherwise by any federal agency;

(12) "Financial newspaper" means a financial newspaper, financial journal or other financial publication;

(13) "Governing body" means the legislative body of any local government of this state or any other authority charged with the governing of the affairs of any local government in this state;

(14) "Law" means any act or statute, general, special or local, of this state, including, but not limited to, any local government charter;

(15)(A) "Local government" means any county, municipality or metropolitan government in this state; and

(B) "Local government" also means any separate legal or administrative entity duly created by interlocal agreement between two (2) or more political subdivisions of the state acting pursuant to title 12, chapter 9, IF

AND ONLY IF:

(i) Such political subdivisions retain at least secondary liability for the debts of such legal entity;

(ii) The terms of such interlocal agreement authorize the entity to exercise powers actually conferred upon such political subdivisions by this chapter; and

(iii) The terms of such interlocal agreement conform to the restrictions set forth in § 12-9-104(e)(2)(A)(i), (ii) and (iii);

(16) "Local government instrumentality" means any authority created by law on behalf of a county, metropolitan government, municipality or any combination thereof;

(17) "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 cities pursuant to the authority of title 7, chapters 1-3;

(18) "Municipality" means any incorporated city or any incorporated town of this state;

(19) "Notes" means notes or interim certificates issued pending preparation or delivery of definitive notes of a local government issued pursuant to this chapter;

(20) "Obligations" means bonds, notes and any other evidence of indebtedness lawfully issued or assumed by a local government;

(21)(A) "Public works project" includes any one (1) or any combination of the following: abattoirs, acquisitions of land for the purpose of providing or preserving open land, airports, alleys, ambulances, auditoriums, bridges, city and town halls, local government stables or garages, community houses, corrective, detention and penal facilities, including, but not limited to, jails, workhouses and reformatories, courthouses, culverts, curbs, dispensaries, drainage systems, including storm water sewers and drains, electric plants and systems, expositions, facilities for the handicapped, including physically and mentally handicapped, facilities for the indigent, fairgrounds and fairground facilities, fire department equipment and buildings, fire alarm systems, flood control, garbage collection and disposal systems, gas and natural gas systems and storage facilities, heat plants and systems, harbor and riverfront improvements, health centers and clinics, including medical and mental health centers and clinics, highways, major roads, highway and street equipment, hospitals, hotels and supporting or incidental facilities built by local governments which are built adjacent to and as a supporting facility of civic or convention centers located in municipalities which have created a central business improvement district under the Central Business Improvement District Act of 1971, compiled in title 7, chapter 84, improvements made pursuant to a plan of improvement for a central business improvement district created pursuant to the Central Business Improvement District Act of 1971, law enforcement and emergency services equipment, levees, libraries, markets, memorials, museums, nursing homes, parks, parking facilities, parkways, playgrounds, plazas, port facilities, docks and dock facilities, including any terminal storage and transportation facilities incident thereto, public art, public buildings, preserves, railroads, including the extension of railroads, and railway beltlines and switches, reclamation of land, recreation centers and facilities, reservoirs, rights-of-way, river and

navigation improvements, roads, sanitariums, schools, transportation equipment for schools, sewers, sewage and waste water systems, including, but not limited to, collection, drainage, treatment and disposal systems, ship canals, sidewalks, stadiums, streets, swimming pools, thermal transfer generating plants and/or distribution systems, tunnels, viaducts, voting machines, water treatment distribution and storage systems, wharves and zoos;

(B) "Public works project" also includes:

(i) "Business park," which includes lands and rights, easements and franchises relating thereto, and may include roads and streets, water, sewer, electric and other utilities, landscaping and related elements as required for the orderly development and use of corporate or professional office space by one (1) or more commercial, financial or service business, and such appurtenant land for necessary incidental use. "Business park" does not include a retail operation except for an incidental retail use. A "business park" shall contain not less than five (5) acres of land. The building finance committee in the industrial development division of the department of economic and community development is authorized and empowered to determine whether a local government shall have the right to engage in any or all of the rights and privileges accompanying such a public works project. Before a local government may undertake the financing of such a public works project, it shall apply to the committee for a certificate of public purpose and necessity. The committee shall issue such a certificate once it is affirmatively determined that:

(a) There are adequate property values and suitable financial conditions so that the total bonded indebtedness of the local government, solely for this authorized purpose and those other purposes authorized by title 7, chapter 55 and title 13, chapter 16, shall not exceed ten percent (10%) of the total assessed valuation of all the property in the local government ascertained by the last completed assessment at the time of the issuance of such bonds; and

(b) The project is well conceived, has a reasonable prospect of success, will provide economic development and employment, will tend to encourage businesses to locate there and will not become a burden upon the taxpayers of the local government;

(ii) "Industrial park," which includes lands, rights, easements and franchises relating thereto, and may include adequate roads and streets, water and sewer facilities, utilities and docks and terminals. Any of the foregoing improvements which are to be located within the geographic boundaries of the industrial park may only be financed after compliance with title 13, chapter 16, part 2;

(iii) "Urban renewal project" which means the same as such projects which are defined in §§ 13-20-209 — 13-20-215. Any local government is hereby authorized to contribute money, property, and municipal services to any public agency engaged in the development of urban renewal projects in that local government;

(iv) "Urban transit facility" which includes any or all real and personal property needed to provide public passenger transportation by means of street railway, electric railway, incline railroad, trolley coach, bus, motor coach, or any combination thereof, including terminal,

maintenance and storage facility, whether owned and operated by a local government or owned by a local government and leased to private operators, all of which are hereby found and determined to be in the public interest and a proper public purpose;

(v) Facilities for the storage and maintenance of any of the items of equipment which constitute public works projects; and

(vi) Facilities or capital expenditures paid or incurred with respect to property located in a "recovery zone," as defined in § 1400U-1(b) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 1400U-1(b), that are made for a "qualified economic development purpose," as defined in § 1400U-2(c) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 1400U-2(c);

(vii) Facilities or expenditures paid or incurred for "qualified conservation purposes," as defined in § 54D(f) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 54D(f), in connection with the issuance of "qualified energy conservation bonds," as defined in § 54D of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 54D; and

(viii) All property real and personal, appurtenant thereto or connected with any public works project, work or undertaking and the existing public works project, work or undertaking, if any, to which such public works project, work or undertaking is an extension, addition, betterment or improvement;

(C) This enumeration does not exclude any other project for the benefit of the people at large of any local government where any state or federal agency will match the funds of the local government with grants-in-aid or gratuities to subsidize or assist the development of a public works project;

(D) Notwithstanding subdivision (21)(B)(i), a certificate of public purpose and necessity shall not be required for a public works project of a local government with a population of not less than three hundred thousand (300,000), according to the 2000 federal census or any subsequent federal census. The total pledge of full faith and credit of any such local government related to the project shall not exceed ten percent (10%) of the total assessed valuation of all property in the local government, ascertained by the last completed assessment at the time of issuance of the obligations. In any resolution pledging the full faith and credit and unlimited taxing power of any such local government to secure any obligations related to a public works project, the governing body of the local government shall state that the project being considered is well conceived, has a reasonable prospect for success, will provide proper economic development and employment, and will not likely become a burden on the taxpayers of the local government;

(22) "Refinancing" means funding, refunding, paying, or discharging, by means of refunding bonds or the proceeds received from the sale thereof, all or any part of any bonds, notes, or other obligations heretofore or hereafter issued or lawfully assumed and payable solely from all or any part of the revenues of one (1) or more enterprises, or from a combination of such revenues and taxes, except capital outlay notes when retired by bonds in conformance with part 6 of this chapter and notes issued in anticipation of bonds;

(23) "Refunding bonds" means bonds issued to refund all or any part of bonds, notes or other obligations, except capital outlay notes when retired by

bonds in conformance with part 6 of this chapter, and notes issued in anticipation of bonds, heretofore or hereafter issued or lawfully assumed by a local government pursuant to this chapter, or any other provision of this code or any other general or special law;

(24) "Revenues" means all fees, rents, tolls, rates, rentals, interest earnings, or other charges received or receivable by the local government from any public works project or enterprise then existing or thereafter to be constructed, including any revenues derived or to be derived by a local government from a lease, agreement or contract with any other local government, local government instrumentality, the state, or a state or federal agency for the use of or in connection with a public works project or enterprise, or all other charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the local government from the operation of any public works project or enterprise or arising from any public works project or enterprise;

(25) "State" means the state of Tennessee;

(26) "State agency" means any agency of the state created by the general assembly; and

(27) "Taxable property" means all property subject to ad valorem taxation within the local government, or any portion of the local government, if applicable.

9-21-127. Bonds for certain unfunded pension obligations.

(a) Local governments may issue general obligation bonds or revenue bonds under this part and parts 2 and 3 of this chapter for certain unfunded pension obligations or for not greater than fifty percent (50%) of the value of certain unfunded other post-employment benefits if such is approved by the state funding board after receiving a recommendation by the comptroller of the treasury or the comptroller's designee.

(b)(1) A local government that issues bonds for certain unfunded pension obligations pursuant to § 9-21-105(4)(A)(iv) shall not be required to receive a recommendation by the comptroller of the treasury or the comptroller's designee or the approval of the state funding board if:

(A) The principal amount of the bonds is amortized over the term of the bonds such that the bonds are not balloon indebtedness, as defined in subdivision (b)(2); and

(B) The local government has:

(i) Adopted a debt management policy in compliance with guidelines promulgated by the state funding board;

(ii) Available for public inspection its financial statements prepared in compliance with generally accepted accounting principles for state and local governments with an unqualified auditor's opinion for the two (2) most recent fiscal years;

(iii) Presented to its governing body at a public hearing an explanation of the risk exposure associated with such bonds, economic and demographic assumptions used in the funding assumptions, alternative funding options considered, issuance costs associated with the proposed bonds and any conflicts of interest among the professionals involved (if disclosing such conflicts would not violate any rules of professional conduct);

(iv) Engaged or will engage a financial advisor, bond counsel and actuarial consultant in connection with the issuance of such bonds;

(v) A full-time finance staff of at least three (3) persons; and

(vi) An audit committee.

(2) As used in this subsection (b), "balloon indebtedness" means any bond:

(A) Twenty percent (20%) or more of the principal amount of which is payable during any twelve-month period; or

(B) Fifty percent (50%) or more of the principal amount of which is payable in the aggregate twenty (20) years or more after the date of issuance.

(c) Notwithstanding any provisions of this chapter to the contrary, any bonds issued pursuant to this section shall mature at such time or times not exceeding thirty (30) years from their respective dates and the proceeds from any bonds issued for certain unfunded other post-employment benefits shall be invested in accordance with an investment trust established pursuant to title 8, chapter 50, part 12.

10-7-301. Part definitions.

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

(1) "Agency" means any department, division, board, bureau, commission, or other separate unit of government created by law or pursuant to law, including the legislative branch and the judicial branch; provided, however, that for purposes of this part only, "agency" does not include the legislative branch;

(2) "Confidential public record" means any public record which has been designated confidential by statute and includes information or matters or records considered to be privileged and any aspect of which access by the general public has been generally denied;

(3) "Disposition" means preservation of the original records in whole or in part, preservation by photographic or other reproduction processes, or outright destruction of the records;

(4) "Essential records" means any public records essential to the resumption or continuation of operations, to the re-creation of the legal and financial status of government in the state or to the protection and fulfillment of obligations to citizens of the state;

(5) "Permanent records" means those records which have permanent administrative, fiscal, historical or legal value;

(6) "Public record or records" or "state record or records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency;

(7) "Records creation" means the recording of information on paper, printed forms, punched cards, tape, disk, or any information transmitting media. "Records creation" includes preparation of forms, reports, state publications, and correspondence;

(8) "Records disposition authorization" means the official document utilized by an agency head to request authority for the disposition of records. The public records commission shall determine and order the proper disposition of state records through the approval of records disposition authorizations;

(9) "Records management" means the application of management techniques to the creation, utilization, maintenance, retention, preservation, and disposal of records in order to reduce costs and improve efficiency of recordkeeping. "Records management" includes records retention schedule development, essential records protection, files management and information retrieval systems, microfilm information systems, correspondence and word processing management, records center, forms management, analysis, and design, and reports and publications management;

(10) "Records of archival value" means any public record which may promote or contribute toward the preservation and understanding of historical, cultural, or natural resources of the state of Tennessee;

(11) "Records officer" means an individual designated by an agency head to assume responsibility for implementation of the agency's records management program;

(12) "Section" and "division" means the division of records management of the department of state;

(13) "Temporary records" means material which can be disposed of in a short period of time as being without value in documenting the functions of an agency. Temporary records will be scheduled for disposal by requesting approval from the public records commission utilizing a records disposition authorization; and

(14) "Working papers" means those records created to serve as input for final reporting documents, including electronic data processed records, and/or computer output microfilm, and those records which become obsolete immediately after agency use or publication.

10-7-302. Public records commission created — Duties.

A public records commission is hereby created to consist of the state treasurer, the comptroller of the treasury, the secretary of state, the director of legal services for the general assembly, and the commissioner of general services as permanent members, any of whom may designate a deputy with a vote as such person's agent to represent such person, the president of the Tennessee historical society as a nonvoting member, and, when required, one (1) temporary and nonvoting member as provided in § 10-7-303. It is the duty of the commission to determine and order proper disposition of state records. The commission shall direct the department of state to initiate, through the division of records management, by regulation or otherwise, any action it may consider necessary to accomplish more efficient control and regulation of records holdings and management in any agency. Such rules and regulations may authorize centralized microfilming for all departments, etc., or provide for other methods of reproduction for the more efficient disposition of state records. The commission shall elect its chair and shall meet not less often than twice annually. Members shall be reimbursed for actual and necessary expenses when attending meetings, and those members who do not receive a fixed salary from the state also shall be paid a per diem of ten dollars ($10.00)

for each day of actual meeting. 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.

10-7-303. Division of records management — Creation, disposition and preservation of records — Land, legislative and judicial records - Guides.

(a) The division of records management of the department of state shall be the primary records management agency for state government, and as such shall direct the disposition of all records, including electronic processed records and computer output microfilm records.

(b) The division shall cooperate with other agencies in the creation of records, forms, etc., which will eventually be subject to retention and/or disposition scheduling.

(c) Whenever the head of any state department, commission, board or other agency has certified that records created by such person's department, either permanent, temporary or working papers, as defined in § 10-7-301, have reached the end of the retention period established prior to the generation of such records, the public records commission shall then approve or disapprove, by a majority vote, the disposition of such records in a manner specified in the rules and regulations of the commission, and any disposition schedule already in effect may be voided or amended by a majority vote at any time by the commission, upon recommendation of a member of the commission or the head of the appropriate department, commission, board or other agency, in consultation with the staff of the division.

(d) No record or records shall be scheduled for destruction without the unanimous approval of the voting members of the public records commission.

(e) All records concerning private or public lands, with the exception of leases, shall be forever preserved. The microfilm records of leases required to be microfilmed prior to disposition pursuant to § 12-2-108(c) shall be forever preserved.

(f) When the development of a records management system for judicial records or the disposition of judicial records is under consideration, the attorney general and reporter or the attorney general's representative, and the chief justice of the supreme court or the chief justice's representative shall serve as temporary nonvoting members of the commission.

(g) This part applies to judicial records but does not apply to legislative records.

(h)(1)(A) The division is authorized to develop a protocol manual or to adopt a published protocol manual to be adopted by the executive, judicial and legislative branches of state government.

(B) The division is authorized to develop a style manual or guide or to adopt a published style manual or guide to be adopted by the executive, judicial and legislative branches of state government.

(2) A branch of state government may modify an adopted protocol manual or style guide.

10-7-304. Records officer, systems or records analyst.

The head of each department, commission, board or agency shall designate a records officer, systems analyst, or records analyst, etc., who shall be an

employee at the administrative level and who shall be instructed to cooperate with the staff of the division of records management of the department of state and the public records commission in carrying out the purposes of this chapter. It is the duty of the records officer to appear before the public records commission for the purpose of presenting on behalf of such record officer's department, commission, board or agency requests for disposition of records.

10-7-401. County public records commission created — Membership.

In order to provide for the orderly disposition of public records created by agencies of county government, the county legislative body shall create within the county a county public records commission, composed of at least six (6) members. The county mayor shall appoint three (3) members and the county legislative body shall confirm each appointee. Of the three (3) appointees, one (1) shall be a member of the county legislative body, one (1) shall be a judge of one of the courts of record or designee of such judge which holds court in the county and one (1) shall be a genealogist. The county clerk, or the designee of the county clerk, county register, or the designee of the county register, and the county historian shall be ex officio members of the commission. In counties having a duly appointed county archivist, that person shall also serve as an ex officio member of the commission. In counties having a technology department or information technology department, the county legislative body may designate the director of such department as an ex officio member of the commission, and if so designated, the director or designee of the director shall also serve as an ex officio member of the commission. Each elected member of the commission shall hold office during the term for which the member was elected to office. If a vacancy occurs in one (1) of the appointed positions, the county mayor shall appoint a person in the same manner as the original appointment.

10-7-404. Destruction of public records authorized — Conditions prerequisite to destruction — Records manual.

(a) The county public records commission has the right to authorize the destruction of any and all public records as defined in § 10-7-403, which are required by law to be retained, when such records have been photocopied, photostated, filmed, microfilmed, or preserved by microphotographic process, as hereinafter provided; provided, that no record required by law to be permanently retained shall be destroyed without a majority vote of the commission. A county officer or judge of a court of record shall be entitled to prevent the destruction of documents, minutes, or records in the office or court, as appropriate. The requirement to photocopy, photostat, film, microfilm, or preserve by microphotographic process prior to destruction in accordance with this section shall not be required of "temporary records" and/or "working papers" as defined in § 10-7-301. The commission does not have the authority to authorize the destruction of any financial or other record which is determined by the comptroller of the treasury to be required for audit purposes until the pertinent audit has been completed. After the audit, disposition will be determined pursuant to procedures developed by the comptroller of the treasury; provided, that the commission shall not have the authority to authorize the destruction of any other record which is otherwise required by law to be retained.

(b) The county technical assistance service, a unit of the Institute for Public

Service of the University of Tennessee, is authorized to compile and print manuals, in cooperation with the state library and archives, and the division of records management of the department of state, which shall be used as guides by all county public records commissions, county offices, and judges of courts of record, setting out which records shall or may be destroyed, and those which should not be destroyed, after photographing, photostating, filming, microfilming, or other microphotographic process. Until these manuals are available, the Tennessee county records manual compiled by the Tennessee state library and archives shall be used.

(c) Nothing in § 10-7-401 or § 10-7-511 shall be construed to permit or authorize a county public records commission, a court clerk, a county or municipal official or any other person to destroy or authorize the destruction of any original process in a civil action or criminal proceeding.

(d)(1) In addition to the foregoing procedure for the destruction of original public records, the county public records commission may, upon the request of any office or department head of county government having custody of public records, including court records, authorize the destruction or transfer of original public records which have been reproduced onto computer or removable computer storage media, including CD-ROM disks, in accordance with § 10-7-121 and this subsection (d). The secretary of state, as supervisor of the state library and archives, shall promulgate regulations regarding the approved technology, standards and procedures for reproducing public records under this subsection (d), which shall be followed by county officers, department heads and the county public records commission. Additionally, the county public records commission shall not order the destruction of such original public records which have been reproduced pursuant to this subsection (d) unless the county public records commission has complied with §§ 10-7-413 and 10-7-414. Prior to any order of destruction or transfer of any original public records pursuant to this subsection (d), the officer or department head having custody of such records shall advertise in a newspaper of general circulation in the county, and in counties having a population in excess of two hundred thousand (200,000), according to the 1990 federal census or any subsequent federal census, also in a weekly newspaper, that certain records of the office or department, to be described in the advertisement by title and year, have been electronically stored, reproduced and protected and that the office or department has applied for permission to no longer retain such originals. The authority to destroy original public records granted by this subsection (d) is not exclusive and shall not prevent the destruction of original public records where otherwise authorized.

(2) If the county public records commission fails to act upon a request of a county officer or department head having custody of public records to order the destruction or transfer of original public records after the same have been reproduced in accordance with this subsection (d) within six (6) months of receiving such a request in writing, then the county officer or department head may forward the request to the state library and archives, whereupon the state librarian and archivist, or designated representative, shall have authority to authorize the destruction or transfer of the public records instead of the county public records commission. Failure of the state library and archives to respond to the records disposal request of the county officer or department head within nine (9) months of receiving such a request shall authorize the county officer or department head to destroy the original

public records which have been reproduced in accordance with any regulations on this subject promulgated by the secretary of state.

10-7-501. Reproduction of state records on film.

The head of any department, commission, board, or agency of the state government may cause any or all records kept by such head or it to be photographed, microphotographed or reproduced on film; provided, that the microfilm project has been evaluated and approved by the division of records management of the department of state. Such photographic film shall comply with the minimum standards of quality approved for permanent photographic records by the national bureau of standards, and the device used to reproduce such records on film shall be one which accurately reproduces the original thereof in all details.

10-7-504. Confidential records — Exceptions.

(a)(1) The medical records of patients in state, county and municipal hospitals and medical facilities, and the medical records of persons receiving medical treatment, in whole or in part, at the expense of the state, county or municipality, shall be treated as confidential and shall not be open for inspection by members of the public. Any records containing the source of body parts for transplantation or any information concerning persons donating body parts for transplantation shall be treated as confidential and shall not be open for inspection by members of the public.

(2)(A) All investigative records of the Tennessee bureau of investigation, the office of inspector general, all criminal investigative files of the department of agriculture and the department of environment and conservation, all criminal investigative files of the motor vehicle enforcement division of the department of safety relating to stolen vehicles or parts, and all files of the handgun carry permit and driver license issuance divisions of the department of safety relating to bogus handgun carry permits and bogus driver licenses issued to undercover law enforcement agents shall be treated as confidential and shall not be open to inspection by members of the public. The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record; provided, however, that such investigative records of the Tennessee bureau of investigation shall be open to inspection by elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house. Records shall not be available to any member of the executive branch except to the governor and to those directly involved in the investigation in the specified agencies.

(B) The records of the departments of agriculture and environment and conservation referenced in subdivision (a)(2)(A) shall cease to be confidential when the investigation is closed by the department or when the court in which a criminal prosecution is brought has entered an order concluding all proceedings and the opportunity for direct appeal has been exhausted; provided, however, that any identifying information about a confidential informant or undercover law enforcement agent shall remain confidential.

(C) The Tennessee bureau of investigation, upon written request by an authorized person of a state governmental agency, is authorized to furnish

and disclose to the requesting agency the criminal history, records and data from its files, and the files of the federal government and other states to which it may have access, for the limited purpose of determining whether a license or permit should be issued to any person, corporation, partnership or other entity, to engage in an authorized activity affecting the rights, property or interests of the public or segments thereof.

(3) The records, documents and papers in the possession of the military department which involve the security of the United States and/or the state of Tennessee, including, but not restricted to, national guard personnel records, staff studies and investigations, shall be treated as confidential and shall not be open for inspection by members of the public.

(4)(A) The records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or the student's parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel of the institution or to the public or any agency, except those agencies authorized by the educational institution to conduct specific research or otherwise authorized by the governing board of the institution, without the consent of the student involved or the parent or guardian of a minor student attending any institution of elementary or secondary education, except as otherwise provided by law or regulation pursuant thereto, and except in consequence of due legal process or in cases when the safety of persons or property is involved. The governing board of the institution, the department of education, and the Tennessee higher education commission shall have access on a confidential basis to such records as are required to fulfill their lawful functions. Statistical information not identified with a particular student may be released to any person, agency, or the public; and information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed.

(B) Notwithstanding the provisions of subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by the federal Family Educational Rights and Privacy Act (FERPA), codified in 20 U.S.C. § 1232g, an institution of post-secondary education shall disclose to an alleged victim of any crime of violence, as that term is defined in 18 U.S.C. § 16, or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(C) Notwithstanding the provisions of subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by FERPA, an institution of post-secondary education shall disclose the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence, as that term is defined in 18 U.S.C. § 16, or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(D) For the purpose of this section, the final results of any disciplinary proceeding:

(i) Shall include only the name of the student, the violation commit-

ted, and any sanction imposed by the institution on that student;

(ii) May include the name of any other student, such as a victim or witness, only with the written consent of that other student; and

(iii) Shall only apply to disciplinary hearings in which the final results were reached on or after October 7, 1998.

(E) Notwithstanding the provisions of subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by FERPA, an educational institution shall disclose information provided to the institution under former § 40-39-106 [repealed], concerning registered sex offenders who are required to register under former § 40-39-103 [repealed].

(F) Notwithstanding the provisions of subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by FERPA, an institution of higher education shall disclose to a parent or legal guardian of a student information regarding any violation of any federal, state, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol, a controlled substance or a controlled substance analogue, regardless of whether that information is contained in the student's education records, if:

(i) The student is under twenty-one (21) years of age;

(ii) The institution determines that the student has committed a disciplinary violation with respect to such use or possession; and

(iii) The final determination that the student committed such a disciplinary violation was reached on or after October 7, 1998.

(G) Notwithstanding subdivision (a)(4)(A), § 37-5-107 or § 37-1-612, the institution shall release records to the parent or guardian of a victim or alleged victim of child abuse or child sexual abuse pursuant to § 37-1-403(i)(3) or § 37-1-605(d)(2). Any person or entity that is provided access to records under this subdivision (a)(4)(G) shall be required to maintain the records in accordance with state and federal laws and regulations regarding confidentiality.

(5)(A) The following books, records and other materials in the possession of the office of the attorney general and reporter which relate to any pending or contemplated legal or administrative proceeding in which the office of the attorney general and reporter may be involved shall not be open for public inspection:

(i) Books, records or other materials which are confidential or privileged by state law;

(ii) Books, records or other materials relating to investigations conducted by federal law enforcement or federal regulatory agencies, which are confidential or privileged under federal law;

(iii) The work product of the attorney general and reporter or any attorney working under the attorney general and reporter's supervision and control;

(iv) Communications made to or by the attorney general and reporter or any attorney working under the attorney general and reporter's supervision and control in the context of the attorney-client relationship; or

(v) Books, records and other materials in the possession of other departments and agencies which are available for public inspection and copying pursuant to §§ 10-7-503 and 10-7-506. It is the intent of this section to leave subject to public inspection and copying pursuant to

§§ 10-7-503 and 10-7-506 such books, records and other materials in the possession of other departments even though copies of the same books, records and other materials which are also in the possession of the office of the attorney general and reporter are not subject to inspection or copying in the office of the attorney general and reporter; provided, that such records, books and materials are available for copying and inspection in such other departments.

(B) Books, records and other materials made confidential by this subsection (a) which are in the possession of the office of the attorney general and reporter shall be open to inspection by the elected members of the general assembly, if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house and is required for the conduct of legislative business.

(C) Except for the provisions of subdivision (a)(5)(B), the books, records and materials made confidential or privileged by this subdivision (a)(5) shall be disclosed to the public only in the discharge of the duties of the office of the attorney general and reporter.

(6) State agency records containing opinions of value of real and personal property intended to be acquired for a public purpose shall not be open for public inspection until the acquisition thereof has been finalized. This shall not prohibit any party to a condemnation action from making discovery relative to values pursuant to the Rules of Civil Procedure as prescribed by law.

(7) Proposals received pursuant to personal service, professional service, and consultant service contract regulations, and related records, including evaluations and memoranda, shall be available for public inspection only after the completion of evaluation of same by the state. Sealed bids for the purchase of goods and services, and leases of real property, and individual purchase records, including evaluations and memoranda relating to same, shall be available for public inspection only after the completion of evaluation of same by the state.

(8) All investigative records and reports of the internal affairs division of the department of correction or of the department of children's services shall be treated as confidential and shall not be open to inspection by members of the public. However, an employee of the department of correction or of the department of children's services shall be allowed to inspect such investigative records and reports if the records or reports form the basis of an adverse action against the employee. An employee of the department of correction shall also be allowed to inspect such investigative records of the internal affairs division of the department of correction, or relevant portion thereof, prior to a due process hearing at which disciplinary action is considered or issued unless the commissioner of correction specifically denies in writing the employee's request to examine such records prior to the hearing. The release of reports and records shall be in accordance with the Tennessee Rules of Civil Procedure. The court or administrative judge having jurisdiction over the proceedings shall issue appropriate protective orders, when necessary, to ensure that the information is disclosed only to appropriate persons. The information contained in such records and reports shall be disclosed to the public only in compliance with a subpoena or an order of a court of record.

(9)(A) Official health certificates, collected and maintained by the state veterinarian pursuant to rule chapter 0080-2-1 of the department of agriculture, shall be treated as confidential and shall not be open for inspection by members of the public.

(B) Any data or records provided to or collected by the department of agriculture pursuant to the implementation and operation of premise identification or animal tracking programs shall be considered confidential and shall not be open for inspection by members of the public. Likewise, all contingency plans prepared concerning the department's response to agriculture-related homeland security events shall be considered confidential and shall not be open for inspection by members of the public. The department may disclose data or contingency plans to aid the law enforcement process or to protect human or animal health.

(C) Information received by the state that is required by federal law or regulation to be kept confidential shall be exempt from public disclosure and shall not be open for inspection by members of the public.

(10)(A) The capital plans, marketing information, proprietary information and trade secrets submitted to the Tennessee venture capital network at Middle Tennessee State University shall be treated as confidential and shall not be open for inspection by members of the public.

(B) As used in this subdivision (a)(10), unless the context otherwise requires:

(i) "Capital plans" means plans, feasibility studies, and similar research and information that will contribute to the identification of future business sites and capital investments;

(ii) "Marketing information" means marketing studies, marketing analyses, and similar research and information designed to identify potential customers and business relationships;

(iii) "Proprietary information" means commercial or financial information which is used either directly or indirectly in the business of any person or company submitting information to the Tennessee venture capital network at Middle Tennessee State University, and which gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information;

(iv) "Trade secrets" means manufacturing processes, materials used therein, and costs associated with the manufacturing process of a person or company submitting information to the Tennessee venture capital network at Middle Tennessee State University.

(11) Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Tennessee board of regents or the University of Tennessee, when the owner or donor of such records wishes to place restrictions on access to the records shall be treated as confidential and shall not be open for inspection by members of the public. This exemption shall not apply to any records prepared or received in the course of the operation of state or local governments.

(12) Personal information contained in motor vehicle records shall be treated as confidential and shall only be open for inspection in accordance with title 55, chapter 25.

(13)(A) All memoranda, work notes or products, case files and communications related to mental health intervention techniques conducted by

mental health professionals in a group setting to provide job-related critical incident counseling and therapy to law enforcement officers, county and municipal correctional officers, dispatchers, emergency medical technicians, emergency medical technician-paramedics, and firefighters, both volunteer and professional, are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless all parties waive such privilege. In order for such privilege to apply, the incident counseling and/or therapy shall be conducted by a qualified mental health professional as defined in § 33-1-101.

(B) For the purposes of this section, "group setting" means that more than one (1) person is present with the mental health professional when the incident counseling and/or therapy is being conducted.

(C) All memoranda, work notes or products, case files and communications pursuant to this section shall not be construed to be public records pursuant to this chapter.

(D) Nothing in this section shall be construed as limiting a licensed professional's obligation to report suspected child abuse or limiting such professional's duty to warn about dangerous individuals as provided under §§ 33-3-206 — 33-3-209, or other provisions relevant to the mental health professional's license.

(E) Nothing in this section shall be construed as limiting the ability of a patient or client, or such person's survivor, to discover under the Rules of Civil Procedure or to admit in evidence under the Rules of Evidence any memoranda, work notes or products, case files and communications which are privileged by this section and which are relevant to a health care liability action or any other action by a patient against a mental health professional arising out of the professional relationship. In such an action against a mental health professional, neither shall anything in this section be construed as limiting the ability of the mental health professional to so discover or admit in evidence such memoranda, work notes or products, case files and communications.

(14) All riot, escape and emergency transport plans which are incorporated in a policy and procedures manual of county jails and workhouses or prisons operated by the department of correction or under private contract shall be treated as confidential and shall not be open for inspection by members of the public.

(15)(A) As used in this subdivision (a)(15), unless the context otherwise requires:

(i) "Identifying information" means the home and work addresses and telephone numbers, social security number, and any other information that could reasonably be used to locate the whereabouts of an individual;

(ii) "Protection document" means:

(a) An order of protection issued pursuant to title 36, chapter 3, part 6, that has been granted after proper notice and an opportunity to be heard;

(b) A similar order of protection issued by the court of another jurisdiction;

(c) An extension of an ex parte order of protection granted pursuant to § 36-3-605(a);

(d) A similar extension of an ex parte order of protection granted by

a court of competent jurisdiction in another jurisdiction;

(e) A restraining order issued by a court of competent jurisdiction prohibiting violence against the person to whom it is issued;

(f) A court order protecting the confidentiality of certain information issued upon the request of a district attorney general to a victim or witness in a criminal case, whether pending or completed; and

(g) An affidavit from the director of a rape crisis center or domestic violence shelter certifying that an individual is a victim in need of protection; provided, that such affidavit is on a standardized form to be developed and distributed to such centers and shelters by the Tennessee task force against domestic violence; and

(iii) "Utility service provider" means any entity, whether public or private, that provides electricity, natural gas, water, or telephone service to customers on a subscription basis, whether or not regulated by the Tennessee regulatory authority.

(B) If the procedure set out in this subdivision (a)(15) is followed, identifying information compiled and maintained by a utility service provider concerning a person who has obtained a valid protection document shall be treated as confidential and not open for inspection by the public.

(C) For subdivision (a)(15)(B) to be applicable, a copy of the protection document must be presented during regular business hours by the person to whom it was granted to the records custodian of the utility service provider whose records such person seeks to make confidential, and such person must request that all identifying information about such person be maintained as confidential.

(D) The protection document must at the time of presentation be in full force and effect. The records custodian may assume that a protection document is in full force and effect if it is on the proper form and if on its face it has not expired.

(E) Upon being presented with a valid protection document, the records custodian shall accept receipt of it and maintain it in a separate file containing in alphabetical order all protection documents presented to such records custodian pursuant to this subdivision (a)(15). Nothing in this subdivision (a)(15) shall be construed as prohibiting a records custodian from maintaining an electronic file of such protection documents provided the records custodian retains the original document presented.

(F) Identifying information concerning a person that is maintained as confidential pursuant to this subdivision (a)(15) shall remain confidential until the person who requested such confidentiality notifies in person the records custodian of the appropriate utility service provider that there is no longer a need for such information to remain confidential. A records custodian receiving such notification shall remove the protection document concerning such person from the file maintained pursuant to subdivision (a)(15)(E), and the identifying information about such person shall be treated in the same manner as the identifying information concerning any other customer of the utility. Before removing the protection document and releasing any identifying information, the records custodian of the utility service provider shall require that the person requesting release of the identifying information maintained as confidential produce sufficient identification to satisfy such custodian that that person is the same person as the person to whom the document was

originally granted.

(G) After July 1, 1999, if information is requested from a utility service provider about a person other than the requestor and such request is for information that is in whole or in part identifying information, the records custodian of the utility service provider shall check the separate file containing all protection documents that have been presented to such utility. If the person about whom information is being requested has presented a valid protection document to the records custodian in accordance with the procedure set out in this subdivision (a)(15), and has requested that identifying information about such person be maintained as confidential, the records custodian shall redact or refuse to disclose to the requestor any identifying information about such person.

(H) Nothing in this subdivision (a)(15) shall prevent the district attorney general and counsel for the defendant from providing to each other in a pending criminal case, where the constitutional rights of the defendant require it, information which otherwise would be held confidential under this subdivision (a)(15).

(16)(A) As used in this subdivision (a)(16), unless the context otherwise requires:

(i) "Governmental entity" means the state of Tennessee and any county, municipality, city or other political subdivision of the state of Tennessee;

(ii) "Identifying information" means the home and work addresses and telephone numbers, social security number, and any other information that could reasonably be used to locate the whereabouts of an individual;

(iii) "Protection document" means:

(a) An order of protection issued pursuant to title 36, chapter 3, part 6, that has been granted after proper notice and an opportunity to be heard;

(b) A similar order of protection issued by the court of another jurisdiction;

(c) An extension of an ex parte order of protection granted pursuant to § 36-3-605(a);

(d) A similar extension of an ex parte order of protection granted by a court of competent jurisdiction in another jurisdiction;

(e) A restraining order issued by a court of competent jurisdiction prohibiting violence against the person to whom it is issued;

(f) A court order protecting the confidentiality of certain information issued upon the request of a district attorney general to a victim or witness in a criminal case, whether pending or completed; and

(g) An affidavit from the director of a rape crisis center or domestic violence shelter certifying that an individual is a victim in need of protection; provided, that such affidavit is on a standardized form to be developed and distributed to such centers and shelters by the Tennessee task force against domestic violence.

(B) If the procedure set out in this subdivision (a)(16) is followed, identifying information compiled and maintained by a governmental entity concerning a person who has obtained a valid protection document may be treated as confidential and may not be open for inspection by the public.

(C) For subdivision (a)(16)(B) to be applicable, a copy of the protection document must be presented during regular business hours by the person to whom it was granted to the records custodian of the governmental entity whose records such person seeks to make confidential, and such person must request that all identifying information about such person be maintained as confidential.

(D) The protection document presented must at the time of presentation be in full force and effect. The records custodian may assume that a protection document is in full force and effect if it is on the proper form and if on its face it has not expired.

(E) Upon being presented with a valid protection document, the record custodian may accept receipt of it. If the records custodian does not accept receipt of such document, the records custodian shall explain to the person presenting the document why receipt cannot be accepted and that the identifying information concerning such person will not be maintained as confidential. If the records custodian does accept receipt of the protection document, such records custodian shall maintain it in a separate file containing in alphabetical order all protection documents presented to such custodian pursuant to this subdivision (a)(16). Nothing in this subdivision (a)(16) shall be construed as prohibiting a records custodian from maintaining an electronic file of such protection documents; provided, that the custodian retains the original document presented.

(F) Identifying information concerning a person that is maintained as confidential pursuant to this subdivision (a)(16) shall remain confidential until the person requesting such confidentiality notifies in person the appropriate records custodian of the governmental entity that there is no longer a need for such information to remain confidential. A records custodian receiving such notification shall remove the protection document concerning such person from the file maintained pursuant to subdivision (a)(16)(E), and the identifying information about such person shall be treated in the same manner as identifying information maintained by the governmental entity about other persons. Before removing the protection document and releasing any identifying information, the records custodian of the governmental entity shall require that the person requesting release of the identifying information maintained as confidential produce sufficient identification to satisfy such records custodian that that person is the same person as the person to whom the document was originally granted.

(G)(i) After July 1, 1999, if:

(a) Information is requested from a governmental entity about a person other than the person making the request;

(b) Such request is for information that is in whole or in part identifying information; and

(c) The records custodian of the governmental entity to whom the request was made accepts receipt of protection documents and maintains identifying information as confidential;

(ii) then such records custodian shall check the separate file containing all protection documents that have been presented to such entity. If the person about whom information is being requested has presented a valid protection document to the records custodian in accordance with the procedure set out in this subdivision (a)(16), and has requested that

identifying information about such person be maintained as confidential, the records custodian shall redact or refuse to disclose to the requestor any identifying information about such person.

(H) Nothing in this subdivision (a)(16) shall prevent the district attorney general and counsel for the defendant from providing to each other in a pending criminal case, where the constitutional rights of the defendant require it, information which otherwise may be held confidential under this subdivision (a)(16).

(I) In an order of protection case, any document required for filing, other than the forms promulgated by the supreme court pursuant to § 36-3-604(b), shall be treated as confidential and kept under seal except that the clerk may transmit any such document to the Tennessee bureau of investigation, 911 service or emergency response agency or other law enforcement agency.

(17) The telephone number, address and any other information which could be used to locate the whereabouts of a domestic violence shelter, family safety center or rape crisis center may be treated as confidential by a governmental entity, and shall be treated as confidential by a utility service provider as defined in subdivision (a)(15) upon the director of the shelter, family safety center or crisis center giving written notice to the records custodian of the appropriate entity or utility that such shelter, family safety center or crisis center desires that such identifying information be maintained as confidential. The records of family safety centers shall be treated as confidential in the same manner as the records of domestic violence shelters pursuant to § 36-3-623.

(18) Computer programs, software, software manuals, and other types of information manufactured or marketed by persons or entities under legal right and sold, licensed, or donated to Tennessee state boards, agencies, political subdivisions, or higher education institutions shall not be open to public inspection; provided, that computer programs, software, software manuals, and other types of information produced by state or higher education employees at state expense shall be available for inspection as part of an audit or legislative review process.

(19) The credit card numbers of persons doing business with the state or political subdivision thereof and any related personal identification numbers (PIN) or authorization codes are confidential and shall not be open for inspection by members of the public, whether this information is received by the state or political subdivision thereof through electronic means or paper transactions.

(20)(A) For the purposes of this subdivision (a)(20), the following terms shall have the following meaning:

(i) "Consumer" means any person, partnership, limited partnership, corporation, professional corporation, limited liability company, trust, or any other entity, or any user of a utility service;

(ii) "Municipal" and "municipality" means a county, metropolitan government, incorporated city, town of the state, or utility district as created in title 7, chapter 82;

(iii) "Private records" means a credit card number, social security number, tax identification number, financial institution account number, burglar alarm codes, security codes, access codes, and consumer specific energy usage data except for aggregate monthly billing infor-

mation; and

(iv) "Utility" includes any public electric generation system, electric distribution system, water storage or processing system, water distribution system, gas storage system or facilities related thereto, gas distribution system, wastewater system, telecommunications system, or any services similar to any of the foregoing.

(B) The private records of any utility shall be treated as confidential and shall not be open for inspection by members of the public.

(C) Information made confidential by this subsection (a) shall be redacted wherever possible and nothing in this subsection (a) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains confidential information. For purposes of this section only, it shall be presumed that redaction of such information is possible. The entity requesting the records shall pay all reasonable costs associated with redaction of materials.

(D) Nothing in this subsection (a) shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(E) Nothing in this subsection (a) shall be construed to limit access to information made confidential under this subsection (a), when the consumer expressly authorizes the release of such information.

(21)(A) The following records shall be treated as confidential and shall not be open for public inspection:

(i) Records that would allow a person to identify areas of structural or operational vulnerability of a utility service provider or that would permit unlawful disruption to, or interference with, the services provided by a utility service provider;

(ii) All contingency plans of a governmental entity prepared to respond to or prevent any violent incident, bomb threat, ongoing act of violence at a school or business, ongoing act of violence at a place of public gathering, threat involving a weapon of mass destruction, or terrorist incident.

(B) Documents concerning the cost of governmental utility property, the cost of protecting governmental utility property, the cost of identifying areas of structural or operational vulnerability of a governmental utility, the cost of developing contingency plans for a governmental entity, and the identity of vendors providing goods or services to a governmental entity in connection with the foregoing shall not be confidential. However, any documents relating to these subjects shall not be made available to the public unless information that is confidential under this subsection (a) or any other provision of this chapter has been redacted or deleted from the documents.

(C) As used in this subdivision (a)(21):

(i) "Governmental entity" means the state of Tennessee or any county, municipality, city or other political subdivision of the state of Tennessee;

(ii) "Governmental utility" means a utility service provider that is also a governmental entity; and

(iii) "Utility service provider" means any entity, whether public or private, that provides electric, gas, water, sewer or telephone service, or any combination of the foregoing, to citizens of the state of Tennessee, whether or not regulated by the Tennessee regulatory authority.

(D) Nothing in this subdivision (a)(21) shall be construed to limit access to these records by other governmental agencies performing official functions or to preclude any governmental agency from allowing public access to these records in the course of performing official functions.

(22) The following records shall be treated as confidential and shall not be open for public inspection:

(A) The audit working papers of the comptroller of the treasury and state, county and local government internal audit staffs conducting audits as authorized by § 4-3-304. For purposes of this subdivision (a)(22) "audit working papers" includes, but is not limited to, auditee records, intra-agency and interagency communications, draft reports, schedules, notes, memoranda and all other records relating to an audit or investigation; and

(B) All information and records received or generated by the comptroller of the treasury containing allegations of unlawful conduct or fraud, waste or abuse.

(23) All records containing the results of individual teacher evaluations administered pursuant to the policies, guidelines, and criteria adopted by the state board of education under § 49-1-302 shall be treated as confidential and shall not be open to the public. Nothing in this subdivision (a)(23) shall be construed to prevent the LEA, public charter school, state board of education, or department of education from accessing and utilizing such records as required to fulfill their lawful functions.

(b) Any record designated "confidential" shall be so treated by agencies in the maintenance, storage and disposition of such confidential records. These records shall be destroyed in such a manner that they cannot be read, interpreted or reconstructed. The destruction shall be in accordance with an approved records disposition authorization from the public records commission.

(c) Notwithstanding any law to the contrary, any confidential public record in existence more than seventy (70) years shall be open for public inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law or unless the record is a record of services for a person for mental illness or intellectual and developmental disabilities. This section does not apply to a record concerning an adoption or a record maintained by the office of vital records or by the Tennessee bureau of investigation. For the purpose of providing an orderly schedule of availability for access to such confidential public records for public inspection, all records created and designated as confidential prior to January 1, 1901, shall be open for public inspection on January 1, 1985. All other public records created and designated as confidential after January 1, 1901 and which are seventy (70) years of age on January 1, 1985, shall be open for public inspection on January 1, 1986; thereafter all such records shall be open for public inspection pursuant to this part after seventy (70) years from the creation date of such records.

(d) Records of any employee's identity, diagnosis, treatment, or referral for treatment that are maintained by any state or local government employee assistance program shall be confidential; provided, that any such records are maintained separately from personnel and other records regarding such employee that are open for inspection. For purposes of this subsection (d), "employee assistance program" means any program that provides counseling, problem identification, intervention, assessment, or referral for appropriate diagnosis and treatment, and follow-up services to assist employees of such

state or local governmental entity who are impaired by personal concerns including, but not limited to, health, marital, family, financial, alcohol, drug, legal, emotional, stress or other personal concerns which may adversely affect employee job performance.

(e) Unpublished telephone numbers in the possession of emergency communications districts created pursuant to title 7, chapter 86, or the emergency communications board created pursuant to § 7-86-302 or its designated agent shall be treated as confidential and shall not be open for inspection by members of the public until such time as any provision of the service contract between the telephone service provider and the consumer providing otherwise is effectuated; provided, that addresses held with such unpublished telephone numbers, or addresses otherwise collected or compiled, and in the possession of emergency communications districts created pursuant to title 7, part 86, or the emergency communications board created pursuant to § 7-86-302 or its designated agent shall be made available upon written request to any county election commission for the purpose of compiling a voter mailing list for a respective county.

(f)(1) The following records or information of any state, county, municipal or other public employee or former employee, or applicant to such position, or of any law enforcement officer commissioned pursuant to § 49-7-118, in the possession of a governmental entity or any person in its capacity as an employer shall be treated as confidential and shall not be open for inspection by members of the public:

(A) Home telephone and personal cell phone numbers;

(B) Bank account and individual health savings account, retirement account and pension account information; provided, that nothing shall limit access to financial records of a governmental employer that show the amounts and sources of contributions to the accounts or the amount of pension or retirement benefits provided to the employee or former employee by the governmental employer;

(C) Social security number;

(D)(i) Residential information, including the street address, city, state and zip code, for any state employee; and

(ii) Residential street address for any county, municipal or other public employee;

(E) Driver license information except where driving or operating a vehicle is part of the employee's job description or job duties or incidental to the performance of the employee's job;

(F) The information listed in subdivisions (f)(1)(A)-(E) of immediate family members, whether or not the immediate family member resides with the employee, or household members;

(G) Emergency contact information, except for that information open to public inspection in accordance with subdivision (f)(1)(D)(ii); and

(H) Personal, nongovernment issued, email address.

(2) Information made confidential by this subsection (f) shall be redacted wherever possible and nothing in this subsection (f) shall be used to limit or deny access to otherwise public information because a file, a document, or data file contains confidential information.

(3) Nothing in this subsection (f) shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(4) Nothing in this subsection (f) shall be construed to close any personnel records of public officers which are currently open under state law.

(5) Nothing in this subsection (f) shall be construed to limit access to information made confidential under this subsection (f), when the employee expressly authorizes the release of such information.

(g)(1)(A)(i) All law enforcement personnel information in the possession of any entity or agency in its capacity as an employer, including officers commissioned pursuant to § 49-7-118, shall be open for inspection as provided in § 10-7-503(a), except personal information shall be redacted where there is a reason not to disclose as determined by the chief law enforcement officer or the chief law enforcement officer's designee.

(ii) When a request to inspect includes personal information and the request is for a professional, business, or official purpose, the chief law enforcement officer or custodian shall consider the specific circumstances to determine whether there is a reason not to disclose and shall release all information, except information made confidential in subsection (f), if there is not such a reason. In all other circumstances, the officer shall be notified prior to disclosure of the personal information and shall be given a reasonable opportunity to be heard and oppose the release of the information. Nothing in this subdivision (g)(1) shall be construed to limit the requestor's right to judicial review set out in § 10-7-505.

(iii) The chief law enforcement officer shall reserve the right to segregate information that could be used to identify or to locate an officer designated as working undercover.

(B) In addition to the requirements of § 10-7-503(c), the request for a professional, business, or official purpose shall include the person's business address, business telephone number and email address. The request may be made on official or business letterhead and the person making the request shall provide the name and contact number or email address for a supervisor for verification purposes.

(C) If the chief law enforcement official, the chief law enforcement official's designee, or the custodian of the information decides to withhold personal information, a specific reason shall be given to the requestor in writing within two (2) business days, and the file shall be released with the personal information redacted.

(D) For purposes of this subsection (g), personal information shall include the officer's residential address, home and personal cellular telephone number; place of employment; name, work address and telephone numbers of the officer's immediate family; name, location, and telephone number of any educational institution or daycare provider where the officer's spouse or child is enrolled.

(2) Nothing in this subsection (g) shall be used to limit or deny access to otherwise public information because a file, a document, or data file contains some information made confidential by subdivision (g)(1).

(3) Nothing in this subsection (g) shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(4) Except as provided in subdivision (g)(1), nothing in this subsection (g) shall be construed to close personnel records of public officers, which are currently open under state law.

(5) Nothing in this subsection (g) shall be construed to limit access to information made confidential by subdivision (g)(1), when the employee expressly authorizes the release of such information.

(h)(1) Notwithstanding any other law to the contrary, those parts of the record identifying an individual or entity as a person or entity who or that has been or may in the future be directly involved in the process of executing a sentence of death shall be treated as confidential and shall not be open to public inspection. For the purposes of this section "person or entity" includes, but is not limited to, an employee of the state who has training related to direct involvement in the process of executing a sentence of death, a contractor or employee of a contractor, a volunteer who has direct involvement in the process of executing a sentence of death, or a person or entity involved in the procurement or provision of chemicals, equipment, supplies and other items for use in carrying out a sentence of death. Records made confidential by this section include, but are not limited to, records related to remuneration to a person or entity in connection with such person's or entity's participation in or preparation for the execution of a sentence of death. Such payments shall be made in accordance with a memorandum of understanding between the commissioner of correction and the commissioner of finance and administration in a manner that will protect the public identity of the recipients; provided, that, if a contractor is employed to participate in or prepare for the execution of a sentence of death, the amount of the special payment made to such contractor pursuant to the contract shall be reported by the commissioner of correction to the comptroller of the treasury and such amount shall be a public record.

(2) Information made confidential by this subsection (h) shall be redacted wherever possible and nothing in this subsection (h) shall be used to limit or deny access to otherwise public information because a file, a document, or data file contains confidential information.

(i)(1) Information that would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential. For the purpose of this section, "government property" includes electronic information processing systems, telecommunication systems, or other communications systems of a governmental entity subject to this chapter. For the purpose of this section, "governmental entity" means the state of Tennessee and any county, municipality, city or other political subdivision of the state of Tennessee. Such records include:

(A) Plans, security codes, passwords, combinations, or computer programs used to protect electronic information and government property;

(B) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and

(C) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property.

(2) Information made confidential by this subsection (i) shall be redacted wherever possible and nothing in this subsection (i) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains confidential information.

(3) Documents concerning the cost of protecting government property or electronic information, and the identity of vendors providing goods and services used to protect government property or electronic information shall

not be confidential.

(j)(1) Notwithstanding any other law to the contrary, identifying information compiled and maintained by the department of correction and the board of parole concerning any person shall be confidential when the person has been notified or requested that notification be provided to the person regarding the status of criminal proceedings or of a convicted felon incarcerated in a department of correction institution, county jail or workhouse or under state supervised probation or parole pursuant to § 40-28-505, § 40-38-103, § 40-38-110, § 40-38-111, § 41-21-240 or § 41-21-242.

(2) For purposes of subdivision (j)(1), "identifying information" means the name, home and work addresses, telephone numbers and social security number of the person being notified or requesting that notification be provided.

(k) The following information regarding victims who apply for compensation under the Criminal Injuries Compensation Act, compiled in title 29, chapter 13, shall be treated as confidential and shall not be open for inspection by members of the public:

(1) Residential information, including the street address, city, state and zip code;

(2) Home telephone and personal cell phone numbers;

(3) Social security number; and

(4) The criminal offense from which the victim is receiving compensation.

(*l*)(1) All applications, certificates, records, reports, legal documents and petitions made or information received pursuant to title 37 that directly or indirectly identifies a child or family receiving services from the department of children's services or that identifies the person who made a report of harm pursuant to § 37-1-403 or § 37-1-605 shall be confidential and shall not be open for public inspection, except as provided by §§ 37-1-131, 37-1-409, 37-1-612, 37-5-107 and 49-6-3051.

(2) The information made confidential pursuant to subdivision (*l*)(1) includes information contained in applications, certifications, records, reports, legal documents and petitions in the possession of not only the department of children's services but any state or local agency, including, but not limited to, law enforcement and the department of education.

(m)(1) Information and records that are directly related to the security of any government building shall be maintained as confidential and shall not be open to public inspection. For purposes of this subsection (m), "government building" means any building that is owned, leased or controlled, in whole or in part, by the state of Tennessee or any county, municipality, city or other political subdivision of the state of Tennessee. Such information and records include, but are not limited to:

(A) Information and records about alarm and security systems used at the government building, including codes, passwords, wiring diagrams, plans and security procedures and protocols related to the security systems;

(B) Security plans, including security-related contingency planning and emergency response plans;

(C) Assessments of security vulnerability;

(D) Information and records that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity;

and

(E) Surveillance recordings, whether recorded to audio or visual format, or both, except segments of the recordings may be made public when they include an act or incident involving public safety or security or possible criminal activity. In addition, if the recordings are relevant to a civil action or criminal prosecution, then the recordings may be released in compliance with a subpoena or an order of a court of record in accordance with the Tennessee rules of civil or criminal procedure. The court or administrative judge having jurisdiction over the proceedings shall issue appropriate protective orders, when necessary, to ensure that the information is disclosed only to appropriate persons. Release of any segment or segments of the recordings shall not be construed as waiving the confidentiality of the remaining segments of the audio or visual tape.

(2) Information made confidential by this subsection (m) shall be redacted wherever possible and nothing in this subsection (m) shall be used to limit or deny access to otherwise public information because a file or document contains confidential information.

(n)(1) Notwithstanding any law to the contrary, the following documents submitted to the state in response to a request for proposal or other procurement method shall remain confidential after completion of the evaluation period:

(A) Discount, rebate, pricing or other financial arrangements at the individual drug level between pharmaceutical manufacturers, pharmaceutical wholesalers/distributors, and pharmacy benefits managers, as defined in § 56-7-3102, that a proposer:

(i) Submits to the state in response to a request for proposals or other procurement methods for pharmacy-related benefits or services;

(ii) Includes in its cost or price proposal, or provides to the state after the notice of intended award of the contract is issued, where the proposer is the apparent contract awardee; and

(iii) Explicitly marks as confidential and proprietary; and

(B) Discount, rebate, pricing or other financial arrangements at the individual provider level between health care providers and health insurance entities, as defined in § 56-7-109, insurers, insurance arrangements and third party administrators that a proposer:

(i) Submits to the state in response to a request for proposals or other procurement method after the notice of intended award of the contract is issued, where the proposer is the apparent contract awardee, in response to a request by the state for additional information; and

(ii) Explicitly marks as confidential and proprietary.

(2)(A) Information made confidential by subdivision (n)(1) shall be redacted wherever possible; and nothing contained in this subsection (n) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains confidential information. The confidentiality established by subdivision (n)(1)(B) is applicable only to information submitted to the state after completion of the evaluation period; and provision of the notice of intended award of the contract and such information shall only be used to validate the accuracy of the apparent contract awardee's proposal and shall not be used to alter the scope of the information required by the state's procurement document requesting proposals. Any report produced by the state, or on the state's

behalf, utilizing the information made confidential by subdivision (n)(1)(B) shall not be considered confidential hereunder so long as such report is disclosed in an aggregate or summary format without disclosing discount, rebate, pricing or other financial arrangements at the individual provider level.

(B) The comptroller of the treasury, for the purpose of conducting audits or program evaluations, shall have access to the discount, rebate, pricing and descriptions of other financial arrangements cited in this subsection (n) as submitted in a procurement or as a report to the contractor; provided, however, that no official, employee or agent of the state of Tennessee may release or provide for the release, in any form, of information subject to confidential custody under this subsection (n).

(o)(1) Except as provided in subdivisions (o)(2)-(4), the following information and records are confidential, not open or available for public inspection and shall not be released in any manner:

(A) All information contained in any application for a handgun carry permit issued pursuant to § 39-17-1351, a permit renewal application, or contained in any materials required to be submitted in order to obtain such a permit;

(B) All information provided to any state or federal agency, to any county, municipality, or other political subdivision, to any official, agent, or employee of any state or federal agency, or obtained by any state or federal agency in the course of its investigation of an applicant for a handgun carry permit; and

(C) Any and all records maintained relative to an application for a handgun carry permit issued pursuant to § 39-17-1351, a permit renewal application, the issuance, renewal, expiration, suspension, or revocation of a handgun carry permit, or the result of any criminal history record check conducted under this part.

(2) Any information or other records regarding an applicant or permit holder may be released to a law enforcement agency for the purpose of conducting an investigation or prosecution, or for determining the validity of a handgun carry permit, or to a child support enforcement agency for purposes of child support enforcement, but shall not be publicly disclosed except as evidence in a criminal or child support enforcement proceeding.

(3) Any person or entity may request the department of safety to search its handgun permit holder database to determine if a named person has a Tennessee handgun carry permit, as of the date of the request, if the person or entity presents with the request a judgment of conviction, criminal history report, order of protection, or other official government document or record that indicates the named person is not eligible to possess a handgun carry permit under the requirements of § 39-17-1351.

(4) Nothing in this subsection (o) shall prohibit release of the handgun carry permit statistical reports authorized by § 39-17-1351(s).

10-7-508. Access to records — Records of archival value — Retention or disposal of records.

(a) The secretary of state or the secretary of state's designated representative, the state librarian and archivist, and the comptroller of the treasury or the comptroller's designated representative for purposes of audit, shall be

accorded access to and may examine and receive any public records or writings, whether or not they are subject to public inspection. They shall maintain inviolate any privileged or confidential information so acquired and any record or writing so defined by law.

(b) The state librarian and archivist or an archivist designated by the state librarian and archivist and the secretary of state or a records analyst designated by the secretary of state shall be accorded access to and may examine any confidential public records for the purpose of determining, in consultation with the agency head or a representative of the agency which has title to the records, whether such records are records of archival value or whether such records are properly filed or designated as confidential. If the state librarian and archivist or such representative, the secretary of state or such representative and the agency head or such representative should determine that certain administrative or otherwise open public records have been inappropriately filed and designated as confidential public records, then such records shall be removed from the designation of confidential and filed within the appropriate level of access designation. Such access to appraise the archival value of such confidential records shall be provided for in the scheduling of retention periods through appropriate records disposition authorizations which are reviewed and approved by the public records commission.

(c) Records determined to be of archival value shall be retained as provided in rules and regulations for records management of records of archival value of the public records commission, and those confidential records determined not to be of archival value shall be disposed of by authorized means and in accordance with approved records disposition authorizations.

11-1-104. Political activities of officers and employees.

No member, employee or officer of the department of environment and conservation shall use such member's, employee's or officer's official authority or influence for the purpose of interfering with an election or affecting the results thereof, or for the purpose of coercing the political action of any person or body. Failure to comply with the express purpose of this section constitutes grounds for immediate dismissal.

11-1-116. Policy of employing young persons to work in state parks and recreation areas.

It is the policy of the general assembly that young persons should assist in the preservation of state parks and recreation areas. The commissioner of environment and conservation is encouraged to employ persons under nineteen (19) years of age to work in state parks and recreation areas. These persons should be employed in nonhazardous duties that enhance the viability and purpose of Tennessee's pristine parks. The commissioner shall provide an annual report to the energy, agriculture and natural resources committee of the senate and to the agriculture and natural resources committee of the house of representatives on the number of persons under nineteen (19) years of age who are employed to work in state parks and recreation areas, and in which state parks and recreation areas such persons are employed.

11-3-120. Management plan.

(a) The department of environment and conservation is hereby directed to formulate a long-range plan, hereinafter referred to as a "management plan" for each state park. Each such management plan shall include the following:

(1) Funding requirements for state parks and an analysis of whether the revenue-generating facilities on the park are self-sustaining;

(2) Facilities preservation, maintenance and utilization;

(3) Management and personnel staffing, training, compensation and professional development;

(4) Preservation, development and expansion of existing and new park resources and facilities;

(5) Educational programming; and

(6) Land acquisition.

(b) Each management plan shall include goals and projections for state parks for the next ten (10) years and shall be updated every five (5) years by the department. Each management plan shall be posted on the department's web site. Prior to updating each management plan, the department shall conduct public hearings after public notice has been given in accordance with title 8, chapter 44. Public hearings shall be conducted in each park or in the vicinity of each park regarding any update to the management plan. Notice of these public hearings shall be given to any friends groups or other groups with a particular interest in the particular park. The department shall consider all written and oral comments received in these hearings and shall document its responses to such comments. The department shall submit by March 1 of each year, to the agriculture and natural resources committee of the house of representatives and the energy, agriculture and natural resources committee of the senate, a report outlining any major deviations from the management plans in the previous year and the reasons therefore.

(c) The department shall not commence construction on any new capital project which costs in excess of one hundred thousand dollars ($100,000) in any state park if it is not provided for in the park's current management plan and the project has been approved by the state building commission. The construction costs for such new capital projects other than those provided for in the management plan shall not be funded until the management plan is appropriately updated.

11-3-121. Rate discounts.

(a) The commissioner shall offer discounted rates for activities at the state parks to senior citizens, disabled persons, state employees, members of the Tennessee national guard, and any other group that the commissioner deems appropriate for such treatment. The specific activities where these discounts would apply as well as the timing and amount will be left to the commissioner's discretion.

(b)(1) The commissioner shall offer discounted rates for activities at state parks to veterans who are Tennessee residents. The specific activities for which the discounts would apply, as well as the timing and amount, shall be left to the commissioner's discretion; provided, that the discounts shall only be offered to resident veterans during the off season.

(2) For purposes of this subsection (b), "veteran" means a former member of the United States armed forces or a former member of a reserve or

Tennessee national guard unit who was called into active military service of the United States, as defined in § 58-1-102, and who served honorably, as defined in § 49-7-102.

(3) For purposes of this subsection (b), "off season" means a period or periods of time, as determined by the commissioner, during which state park activities and facilities traditionally operate at less than full capacity.

(c) No public official shall be given the right to play golf free for life or for any other extended period of time on courses in state parks, unless such action is authorized by the agriculture and natural resources subcommittee of the house of representatives, and approved by such standing committee of the house of representatives, as well as approved by the energy, agriculture and natural resources committee of the senate. Such prohibition includes green fees, golf carts and free supplies or equipment. Nothing in this subsection (c) shall prohibit the management of a golf course in state parks from occasionally extending free play to such public officials under appropriate circumstances.

11-4-201. Creation — Members — Powers and duties.

(a) There is created within the department a state forestry commission. The commission shall consist of seven (7) members, each of whom shall be a citizen of the state of Tennessee, and be eighteen (18) years of age or older. Each member shall be appointed by the governor. In making appointments to the commission, the governor shall strive to ensure that at least one (1) person serving on the commission is sixty (60) years of age or older and that at least one (1) person appointed to serve on the commission is a member of a racial minority.

(b)(1) The initial appointments of the commission shall be made by the governor in the following manner:

(A) Two (2) of the members shall be the owners of not more than five hundred (500) acres of forests within the state;

(B) One (1) of the members shall be the owner or representative of an owner of five hundred (500) acres or more of forests within the state;

(C) One (1) of the members shall be a representative of a pulp and paper industry operating in this state;

(D) One (1) of the members shall be a representative of the hardwood products industry operating in this state;

(E) One (1) of the members shall be an active member of a statewide conservation organization having as one (1) of its principal objectives the conservation and use of the forest resource; and

(F) The remaining member shall be appointed by the governor from the public at large.

(2) Two (2) members shall be appointed for a period of two (2) years, three (3) members shall be appointed for a period of four (4) years, and two (2) members shall be appointed for a period of six (6) years, as designated by the governor in the governor's appointments. At all times at least three (3) of the members shall hold a forestry degree from an institution accredited by the Society of American Foresters and shall have at least five (5) years' experience in forest related activity.

(c) Upon the expiration of such terms, appointments thereafter shall be for a period of five (5) years and until their respective successors in office have been appointed. A member shall serve no more than two (2) terms. Initial

appointments shall be made and confirmed by March 1, 1985, and members shall serve until July 1 of each year in which their term expires. The position of any member shall become vacant when such member misses, without cause, more than two (2) consecutive meetings of the commission. Cause shall be determined by the commission. Appointments of new members and appointments to fill vacancies shall be confirmed by the general assembly as soon as practical but no later than the end of the first session of the general assembly following the appointment.

(d) If a vacancy occurs, the governor shall appoint a person to fill the remainder of the unexpired term. The commissioners of environment and conservation and agriculture and the executive director of the Tennessee wildlife resources agency shall serve as nonvoting members of the commission.

(e) The commission shall elect from its membership a chair, vice chair and a secretary who shall serve for a period of one (1) year. The commission shall meet at such time and place as designated by the commission or the chair thereof, but the chair shall call a meeting at least four (4) times a year. The first meeting shall be called by the commissioner of agriculture within sixty (60) days after the appointment and confirmation of the members. The division shall provide the commission with suitable meeting space and any necessary clerical and technical assistance.

(f) The commission members shall receive no compensation but shall be reimbursed for their travel expenses while engaged in the work of the commission. 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.

(g)(1) It is declared to be the legislative intent that the commission shall place first and foremost the welfare of the state's forest resources in the commission's planning and decisions, and to encourage the multiple development and use of the state's forest resources to the benefit of all of the citizens of Tennessee, including, but not limited to, the creation of a comprehensive long-range forest resource plan to integrate the division's efforts and to implement and encourage full utilization of Tennessee's forests and other related resources with sound conservation principles.

(2) It is further declared that the commission be given authority by and through this chapter to formulate and recommend state forestry policies to the governor and that the commissioner shall be responsible for administering the state's forestry policies and programs through the division.

(h) The commission shall have and exercise the power, duty and responsibility to formulate and recommend to the governor state forestry programs which shall include the following:

(1) Adequate fire protection for all state and privately owned forests within the state;

(2) The production and distribution of high quality forest tree seedlings to meet the reforestation needs in the state;

(3) Promotion of reforestation;

(4) Forest management assistance to landowners;

(5) Educational programs for the purpose of promoting a better understanding of forest activities' values and benefits to be received from forests by the citizens of the state;

(6) Distribution of information concerning the state's timber and forest resources;

(7) Management of state forests;

(8) Management of trees in urban areas;

(9) Promotion of effective forest products utilization;

(10) Promotion of the development and expansion of markets for forest products;

(11) Cooperative agreements with the federal government with respect to the protection of timbered and forest-producing land from fire, insects and disease; the acquisition of forests to be developed, administered and managed as state forests; the production, procurement and distribution of trees; the implementation of an educational program; the assistance of the owners of farms to establish, improve and renew forests and other valuable forest growths; and the collection and publication of data relative to timber and forest resources or any other program which will assist the commission in fulfilling the purposes of this chapter; and

(12) Protection of forest soil and the quality and quantity of water.

(i) The commission is directed and authorized to perform the following duties and functions:

(1) Submit names for the position of state forester in accordance with § 11-4-301(a).

(2) Approve the annual budget as submitted to the commission by the state forester. The commission shall review the budget proposal and submit its approved budget request to the commissioner for the commissioner's consideration. Any recommended changes made in the budget request by the commissioner must be justified in writing and attached to the commission's budget request when submitted to the department of finance and administration. During the budgetary process, the commission shall have the opportunity to meet with the department of finance and administration and both the house of representatives and senate committees on finance, ways and means relative to the forestry budget proposal as recommended by the commission;

(3) Make an annual report to the governor, the commissioner, the agriculture and natural resources committee of the house of representatives and the energy, agriculture and natural resources committee of the senate or their successor committees concerning the activities and accomplishments of the commission for the preceding year;

(4) Recommend to the general assembly legislation to protect, conserve, and develop resources of the state;

(5) Approve the division's comprehensive long-range plan for the state's forest resources;

(6) Establish state forestry policies which will enable the division to manage and maintain programs of fire protection, forest pest management, reforestation, landowner assistance, utilization, marketing, communications, education and information and management of the state owned forests; and

(7) Include in budget recommendations those goals and objectives to implement the state forestry policies.

(j) The commission shall have access to any governmental data or information necessary to carry out this chapter.

11-7-104. Board of trustees — Annual report — Audit.

(a) There is hereby established the Tennessee heritage conservation trust fund board of trustees. The board shall be attached to the department of environment and conservation for administrative purposes, but shall be independent of the department. Expenditures from the trust fund shall be made only upon authorization of the board.

(b)(1) The board shall consist of eleven (11) members.

(2) Trustees shall be appointed by the governor, subject to confirmation by each house of the general assembly, but appointments shall be effective until adversely acted upon by the general assembly.

(3) Persons appointed to the board shall include persons knowledgeable in the areas of land acquisition, management, conservation and protection.

(4) The membership of the board shall appropriately reflect the racial and geographic diversity of this state. At no time shall the membership of the board be composed of more than four (4) members who reside in any one (1) of the grand divisions of the state, as defined in title 4, chapter 1, part 2.

(5) The commissioner of environment and conservation, the commissioner of agriculture, and the executive director of the wildlife resources agency, or their designees, shall serve as ex officio, nonvoting members of the board.

(6) The governor shall appoint a board chair from the membership of the board. Other officers shall be selected as provided in the bylaws of the fund.

(c) Trustees shall serve four-year, renewable terms; provided, that of the initial trustees appointed:

(1) Three (3) trustees shall be appointed for an initial term of four (4) years;

(2) Three (3) trustees shall be appointed for an initial term of three (3) years;

(3) Three (3) trustees shall be appointed for an initial term of two (2) years; and

(4) Two (2) trustees shall be appointed for an initial term of one (1) year.

(d) Should a board position become vacant through resignation, removal, or other cause, the governor shall appoint a new member to serve the unexpired term, subject to confirmation of each house of the general assembly, as provided in subsection (b). Trustees shall continue to serve on the board after the expiration of the trustee's term until a new trustee is appointed.

(e) A quorum of the board shall be seven (7) trustees.

(f) Trustees shall receive no compensation for their service on the board, but may be reimbursed for those expenses allowed by the comprehensive travel regulations, as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(g) The board shall adopt and implement a policy related to conflicts of interest, to ensure that all trustees avoid any situation that creates an actual or perceived conflict of interest related to the work of the trust fund.

(h) The board shall submit an annual report to the governor, speaker of the house of representatives, speaker of the senate, comptroller of the treasury, chair of the energy, agriculture and natural resources committee of the senate, chair of the agriculture and natural resources committee of the house of representatives, chair of the government operations committee of the senate, and chair of the government operations committee of the house of representatives, by June 30 of each year. Such report shall include detailed information on the operation and financial status of the trust fund and any nonprofit entity

created pursuant to § 11-7-103(f).

(i) The trust fund and any nonprofit entity created pursuant to § 11-7-103(f) shall be subject to an annual audit by the comptroller of the treasury, and the trust fund or entity shall bear the full costs of this audit.

(j) Operating expenses of the board and its staff shall be paid from the fund.

11-11-203. Part definitions.

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

(1) "Adventure tourism" means outdoor recreational opportunities such as equine and motorized trail riding, white water rafting and kayaking, rappelling, road biking, rock climbing, hang-gliding, spelunking, shooting sports, mountain biking, canoeing, paragliding, rowing, zip lining and other such activities;

(2) "Adventure tourism district" means a defined geographic area identified and authorized by a two-thirds (⅔) vote of a local governing body and approved by the department and the department of environment and conservation as an area where the promotion of adventure tourism is encouraged;

(3) "All-terrain vehicle" means either:

(A) A motorized vehicle with no less than four (4) nonhighway tires, but no more than six (6) nonhighway tires, that is limited in engine displacement to one thousand cubic centimeters (1,000 cc) or less, in total dry weight to less than one thousand five hundred pounds (1,500 lbs.), and is fifty inches (50″) or less in width;

(B) A motorized vehicle with not less than four (4) nonhighway tires, nor more than six (6) nonhighway tires, that is limited in engine displacement to one thousand cubic centimeters (1,000 cc) or less and in total dry weight up to two thousand pounds (2,000 lbs.), and is sixty-five inches (65″) or less in width;

(C) A motor vehicle as defined in § 55-1-103, which possesses a four-wheel drive capability and that is designed and suitable for operation off the highway on natural terrain; or

(D) A motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, snow, or other natural terrain and not intended for use on public roads traveling on two (2) wheels and having a seat or saddle designed to be straddled by the operator and handlebars for steering control;

(4) "Best interests of the state" means a determination by the commissioner of revenue, with approval by the commissioner of economic and community development, that:

(A) The qualified business enterprise or enterprises made within an adventure tourism district are a result of the special allocation and tax credits provided for in § 67-4-2109(b)(2)(C);

(B) The adventure tourism district is a result of such qualified business enterprise or enterprises; and

(C) The zone is not structured to create a competitive advantage for one business.

(5) "Canoeing" means the use of canoe for navigation of waterways;

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

(7) "Hang-gliding" means an air sport in which a pilot flies a light and un-motorized aircraft launched by foot;

(8) "Kayaking" means the use of a kayak for navigation of waterways;

(9) "Local governing body" means the elected legislative body of a municipal, metropolitan or county government;

(10) "Motorized trail riding" means the exploration of trails and natural areas by use of all-terrain vehicles;

(11) "Mountain biking" means the exploration of trails and natural areas by the use of bicycles;

(12) "Paragliding" means the air sport in which a pilot flies a light motorized aircraft that uses a parachute to stay airborne;

(13) "Rappelling" is the controlled descent down a rope by climbers used to explore cliffs or slopes that are too steep to descend without protection;

(14) "Road biking" means both noncompetitive and competitive bicycling events that take place on improved roads;

(15) "Rock climbing" means the recreational sport of climbing up or across natural rock formations;

(16) "Rowing" means the propelling of a boat by means of oars;

(17) "Shooting sports" means the recreational sport of firing handguns, rifles or shotguns at moving or fixed targets;

(18) "Spelunking" means the recreational sport of exploring noncommercial cave systems;

(19) "Triathlon" means the recreational activity of sporting contests involving open waters swimming, bicycle riding, and running, whether on trails or improved roads;

(20) "White water rafting" means the recreational activity of using an inflatable raft or kayak to navigate rough water; and

(21) "Zip lining" means the exploration of natural areas by use of above-ground cable systems.

11-11-204. Creation of adventure tourism district.

(a) A local governing body may, by a two-thirds (⅔) vote authorize the creation of a district within the boundaries of such governing body as an adventure tourism district by developing an adventure tourism district plan. Alternatively, one (1) or more counties or one (1) or more municipalities may enter into an intergovernmental agreement pursuant to the Interlocal Cooperation Act, compiled in title 12, chapter 9, to designate jointly an adventure tourism district that contains area within the boundaries of more than one (1) local government.

(b) Adventure tourism professionals may petition local governing bodies to authorize the creation of an adventure tourism district. Such petition shall be accompanied by specific business plans based on quantifiable data demonstrating that the creation of an adventure tourism district would enhance sustainable economic development in the area.

(c) Upon a local governing body or bodies authorizing the creation of an adventure tourism district, the adventure tourism district plan shall be submitted to the department of economic and community development and the department of revenue for joint approval as an adventure tourism district. Such approval shall be granted if the commissioner of economic and community development and the commissioner of revenue determine that the allocation of franchise and excise tax credits are in the best interests of the

state.

(d) Following the approval of the department of economic and community development and the department of revenue for an adventure tourism district pursuant to subsection (c), a local governing body may submit the adventure tourism district plan to:

(1) The department of revenue and the department of economic and community development for approval of tax credits pursuant to § 67-4-2109; and

(2) The department of tourist development for promotional support through use of the department's existing resources.

11-11-205. Liability — Warning notices — Limitations.

(a) Unless an adventure tourism professional or business acts intentionally or with gross negligence or is in violation of this part, or any other laws, ordinances, resolutions, rules or regulations pertaining to adventure tourism, which intentional or grossly negligent act or omission or violation is causal of the injury complained of, no action shall lie against any such professional or business by any adventure tourism activity participant or representative of an adventure tourism activity participant; this prohibition shall not, however, prevent the maintenance of an action against an adventure tourism professional or business for negligent design, construction or operation maintenance.

(b) Each adventure tourism professional or business shall maintain general liability insurance with limits of not less than one million dollars ($1,000,000) per occurrence.

(c) Each adventure tourism professional or business shall post and maintain signs that contain the warning notice specified in subsection (d). The signs shall be placed in clearly visible locations at such businesses. The warning notice specified in subsection (d) shall appear on the sign in black letters, with each letter to be a minimum of one inch (1“) in height. In addition to any other waivers or warnings signed by participants, every written contract entered into by an adventure tourism professional or business for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves activities on or off the location or site of the adventure tourism professional's business, shall contain in clearly readable print the warning notice specified in subsection (d).

(d) The signs and contracts described in subsection (c) shall contain the following warning notice:

Under Tennessee Law, an adventure tourism professional is not liable for an injury to or the death of a participant in adventure tourism activities resulting from the inherent risks of such activities, pursuant to Tennessee Code Annotated, title 11, chapter 11.

The State of Tennessee is held harmless for any act of approval of an adventure tourism business. State approval is limited to determining eligibility for tax credits only.

(e) No action shall be maintained against an adventure tourism professional or business complying with this section unless such action is commenced within one (1) year from the date of injury.

11-14-104. Administration — Report on implementation.

(a) This part shall be administered by the department, in cooperation with the wildlife resources agency, acting as an advisory body.

(b) The commissioner is authorized to make and shall enforce certain regulations necessary for the preservation and enhancement of the values herein protected, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them.

11-14-108. Designation of areas.

(a) The general assembly may designate Class I or Class II areas proposed by the commissioner to become parts of the system. However, designation by the general assembly need not necessarily be restricted to areas proposed by the department.

(b) The following areas are designated natural areas:

(1)

Class I—Scenic-Recreational Areas

(A) **Bays Mountain.** An approximately three thousand five hundred (3,500) acre natural area located in Sullivan and Hawkins counties, plus any of approximately seven hundred (700) acres in private ownership which may be acquired for addition to the natural area. The area includes a lake, interpretive trails, outdoor education and recreation facilities, and areas of great scenic beauty, including Laurel Run Gorge where several of Tennessee's rare plant species occur. The area is managed by the governments and agencies of Kingsport and Hawkins County with cooperation and support from the Tennessee natural areas program;

(B) **Big Cypress Tree.** A bottomland hardwood, partly forested area containing the largest recorded bald cypress (*Taxodium Distichum*) tree on the North American continent with approximately two hundred seventy (270) acres in Weakley County. The Big Cypress Tree State Natural Area composed of approximately three hundred twenty-nine (329) acres with deeds of record in the register of deeds office of Weakley County in deed book 194 page 411, book 154 page 246, and book 154 page 244, is transferred from the jurisdiction of the Tennessee wildlife resources agency to the jurisdiction of the department of environment and conservation; provided, that hunting shall continue to be permitted following the transfer in the entire portion of the area that the agency has allowed hunting in the year preceding June 8, 2007, in the same manner as hunting is permitted in a wildlife management area within the agency designated region such area is located; and provided, that the agency shall have full access to, and use of, any facility in the area. Access and use shall include control of any structure constructed by the agency;

(C) **Burgess Falls.** A cascade-type one-hundred-twenty-foot (120′) falls with included lake and scenic stream, consisting of approximately three hundred fifty (350) acres of land and water in Putnam County;

(D) **Chimneys.** An area of approximately thirty-three (33) acres along Pocket Creek in Marion County that protects an unusual geologic feature and surrounding forested gorge. This area, located within the Cumberland Plateau Physiographic Province, includes two (2) isolated sandstone pinnacles rising out of Pocket Gorge. The pinnacles are connected by a

natural bridge or arch that forms a natural window in their base. In addition to the pinnacles, this area also includes several waterfalls and an "old growth" hemlock forest;

(E) **Devil's Backbone.** A forest of approximately nine hundred fifty (950) acres with a high diversity of upland community types representative of the western Highland Rim. It is located in Lewis County west of the Natchez Trace Parkway. Its prominent topographic features are numerous dry rocky ridges with moderate to steep slopes which form hollows with several perennial streams. The department will develop a plan for the development and management of the additional acreage east of the Natchez Trace in consultation with Lewis County;

(F) **Dunbar Cave.** A well-explored, scenic and historic cave along with a small lake and upland hardwood forest, consisting of approximately one hundred fifteen (115) acres of land and water in Montgomery County;

(G) **Falling Water Falls.** A one-hundred-thirty-foot (130′) falls with view of the Sequatchie Valley, consisting of approximately one hundred thirty-six (136) acres in Hamilton County;

(H) **Frozen Head State Park.** An area of approximately eight thousand six hundred twenty (8,620) acres lying within the twenty-two thousand eight hundred (22,800) acre Frozen Head State Park. The area contains undisturbed forest land of unique configuration and is located in the southeast portion of Morgan County. The state park is comprised of the class I area, the class II area, three hundred thirty (330) acres located along North Prong Flat Fork Creek and Judge Branch below one thousand six hundred feet (1,600′) elevation and one (1) acre on the summit of Frozen Head Mountain, and seven thousand three hundred twenty (7,320) acres known as the Emory tract;

(I) **Ghost River (Section of the Wolf River).** An area of approximately two thousand two hundred twenty (2,220) acres located in Fayette County that supports high quality bottomland hardwood forest and forested wetland communities occurring along scenic meanders of the Wolf River. The Bald Cypress-Tupelo Forest Community is a dominant natural feature established along river, swamp, and lake habitats and is representative of unaltered pristine river systems;

(J) **Grundy Forest.** An area consisting of two hundred thirty-four (234) acres containing unique gorges with outstanding scenic views in Grundy County;

(K) **Hampton Creek Cove.** A six hundred ninety-three (693) acre site in the headwaters of Hampton Creek in Carter County, that supports several rare plants and animals for Tennessee and represents a key tract in the protection of the Roan Mountain Massif;

(L) **House Mountain.** An area of approximately eight hundred fifty (850) acres on the upper slopes and crest of the four thousand (4,000) acre mountain which is a unique synclinal outlier of Clinch Mountain, possessing a combination of scenic views, geological formations and bird and plant life, lying within a major metropolitan area and incorporating the southern terminus of the Trail of the Lonesome Pine, in Knox County. No land for the House Mountain scenic-recreational area shall be acquired by any governmental entity by use of its power of eminent domain;

(M) **John Noel State Natural Area at Bon Aqua.** An area of approximately thirty-five (35) acres in Hickman County protecting a small

remnant mesic white oak forest community of "old growth" characteristics, including a variety of oak and hickory species of considerably larger diameter than those found in similar forest types elsewhere in Middle Tennessee. The forest is also significant because umbrella magnolia, a relatively uncommon species on the Western Highland Rim, is abundant in the understory;

(N) **Natural Bridge.** A twenty-five-foot (25′) natural rock bridge, consisting of approximately three (3) acres in Franklin County;

(O) **Ozone Falls.** A one-hundred-ten-foot (110′) falls and scenic gorge area, consisting of approximately sixteen and five-tenths (16.5) acres in Cumberland County;

(P) **Reelfoot Lake.** A natural, earthquake-formed lake, consisting of approximately eighteen thousand (18,000) acres of land and water owned by the state of Tennessee and the United States in Lake and Obion counties;

(Q) **Rugby.** An area of approximately six hundred sixty-seven (667) acres in Morgan County located adjacent to Historic Rugby. This forested tract protects the watershed of Little Creek and has a rich spring flora;

(R) **Shelby Farms Forest—Lucius E. Burch, Jr. Natural Area.** An area of approximately seven hundred eighty-eight and thirty-three one-hundredths (788.33) acres located within Shelby Farms Forest Park in Shelby County. This coastal plain site includes areas of bottomland hardwood/bald cypress-tupelo forest and forested wetland communities along the northeasterly and northerly sides of the Wolf River and provides habitat for plant and animal species in need of conservation. The seven hundred eighty-eight and thirty-three one-hundreds (788.33) acre natural area includes two (2) separate forest areas: an approximately four hundred thirteen and seventy-five one-hundredths (413.75) acre bottomland hardwood/bald cypress-tupelo swamp forest north of Walnut Grove Road, and an approximately three hundred seventy-four and fifty-eight one-hundredths (374.58) acre mature bottomland hardwood/bald cypress forest south of Walnut Grove Road. Such description is more particularly described in a survey prepared by Dickinson & Bennett, Inc., for Shelby County Government on November 5, 2003;

(S) **Short Mountain — Jim Cummings Natural Area.** An erosional remnant or outlier of the Cumberland Plateau, comprising approximately five hundred (500) acres with scenic rock formations and a thriving population of flora and fauna, in Cannon County;

(T) **Short Springs.** An area of approximately four hundred twenty (420) acres located within Coffee County. The area includes rich woods, forested ravines, low cascades, springs and waterfalls, one (1) of which is sixty feet (60′) in height; in addition it contains a large diversity of wildflowers including two (2) state-listed endangered plant species (Nestronia and Broad-leaved Bunchflower). It is an excellent example of the forested slopes which are transitional between the Highland Rim and the Central Basin; and

(U) **Stillhouse Hollow Falls.** An area of approximately ninety (90) acres in Maury County containing a seventy-five-foot-high waterfall that cascades into a deep plunge pool at the base of a rock amphitheater. The surrounding hardwood forest includes an understory of oakleaf hydrangea and a rich display of spring flora, including the rare grass of Parnassus.

(2)

Class II—Natural-Scientific Areas

(A) **Auntney Hollow.** An area of approximately twenty-seven (27) acres located in Lewis County that supports the federally listed plant, Tennessee yellow-eyed grass (*Xyris tennesseensis*). This Western Highland Rim site protects a significant population of this rare plant, which occurs here in a globally rare xyris seep community. The rare grass of Parnassas (*Parnassia grandifolia*) is a codominant plant species of the xyris seep community;

(B) **Barnett's Woods.** A forty (40) acre site located in Montgomery County which supports the federally threatened Price's potato bean;

(C) **Beaman Park.** An area of approximately one thousand six hundred seventy-eight (1,678) acres located in Davidson County that protects a diversity of high quality forest communities, barrens, and rare plant species, including Eggert's sunflower, Michigan lily, lady's slipper orchids, shortleaf pine, and butternut trees. Its natural features include ridges, narrow moist hollows with steep slopes, springs, streams and waterfalls representative of Western Highland Rim topography;

(D) **Bone Cave.** A cave of extremely significant archaeological, historical, and scenic value consisting of approximately four hundred (400) acres in Warren County;

(E) **Campbell Bend Barrens.** An area of approximately thirty-five (35) acres in Roane County containing an undisturbed example of a Ridge and Valley limestone barrens plant community with exposed limestone. It is comprised of native grasses, other barrens flora, and is surrounded by a mixed hardwood forest;

(F) **Carroll Cabin Barrens.** An area of approximately two hundred fifty (250) acres located in Decatur County. This West Tennessee Uplands site supports a rare glade/barrens community that occurs in association with outcrops of Silurian limestone formations. The Limestone Hill Barrens Community grassland is dominated by little bluestem (*Schizachyrium scoparium*) with rare plant species that include barrens silky aster (*Aster pratensis*), hairy fimbristylis (*Fimbristylis puberula*), and slender blazing star (*Liatris cylindracea*);

(G) **Cedars of Lebanon State Forest Natural Area.** An area consisting of one thousand forty-three (1,043) acres comprising the best examples of the Cedar Glade ecosystem in Tennessee and possibly the entire United States. It is located in Wilson County;

(H) **Colditz Cove.** An area of approximately one hundred sixty-five (165) acres in Fentress County containing the seventy-five foot (75′) Northrup Falls and a scenic gorge with many interesting rock formations;

(I) **Couchville Cedar Glade.** A one hundred twenty-eight (128) acre site in Davidson County adjacent to Long Hunter State Park which supports the largest population of the globally-rare, federally endangered Tennessee coneflower. This site is considered to be one of the best barren and glade sites in Tennessee;

(J) **Crowder Cemetery Barrens.** An area of approximately fifteen (15) acres in Roane County containing a floristically rich example of a Ridge and Valley limestone barrens with several rare plant species, including the tall larkspur, slender blazing star, and white upland aster, as well as an outstanding display of prairie dock;

(K) **Dry Branch.** An area of approximately two thousand one hundred sixty-eight (2,168) acres located in Lewis County that protects one of the largest known populations of the rare plant, Tennessee yellow-eyed grass, as well as the rare seep communities where it grows. This western Highland Rim site also protects a number of other rare plant species, including small-headed rush and large-leaved grass of Parnassus;

(L) **Duck River Complex.** A complex of six (6) separate subunit natural areas totaling approximately two thousand one hundred (2,100) acres within the twelve-thousand (12,000) acre Duck River Wildlife Management Area in Maury County. Located in the Central Basin, these areas support rare species associated with globally rare cedar glades and barrens communities, including the federally listed leafy prairie-clover (*Dalea foliosa*). The areas support diverse forest community types, caves and other karst features, and scenic attributes associated with a segment of the Duck Scenic River that flows through this public land;

(M) **Elsie Quarterman Cedar Glade.** An area of approximately one hundred eighty-five (185) acres in Rutherford County that includes a large expanse of cedar glades and barrens supporting a population of the federally endangered Tennessee coneflower (*Echinacea tennessensis*), and numerous other cedar glade endemic plants and natural communities;

(N) **Fall Creek Falls State Park.** An isolated and rugged portion of the Cumberland Plateau in Van Buren and Bledsoe counties containing sixteen thousand one hundred eighty-one (16,181) acres of the twenty-five thousand four hundred seventeen (25,417) acre state park;

(O) **Fate Sanders Barrens.** An area of approximately two hundred thirty (230) acres located in Rutherford County that includes barrens with small glades interspersed among cedar-hardwood forest. The barrens of this Central Basin site are dominated by native warm season grasses, while the glades support state-listed rare and endemic plant species;

(P) **Flat Rock Cedar Glades and Barrens.** An area approximately eight hundred forty-six (846) acres in Rutherford County that includes a large expanse of cedar glades and barrens supporting populations of the federally and state endangered Pyne's Ground-Plum (*Astragalus bibullatus*) and Leafy Prairie-Clover (*Dalea foliosa*), as well as numerous other rare and endemic species of plants. This biologically rich site is within the Central Basin Physiographic Province and represents one of the largest and most ecologically diverse glade/barren complexes in the Central Basin;

(Q) **Frozen Head State Natural Area.** An area of approximately six thousand five hundred thirty (6,530) acres within the twenty-two thousand eight hundred (22,800) acre Frozen Head State Park located in Morgan County and within the Cumberland Plateau Physiographic Province. The entire area possesses deep hollows and valleys that represent numerous forest types with mixed mesophytic forest being the most prevalent. It contains significant mature forests and rare plants and is one of the least disturbed areas within the Cumberland Mountains;

(R) **Gattinger's Cedar Glade and Barrens.** An area of approximately fifty-seven (57) acres located in Rutherford and Wilson counties. This Central Basin site supports one of the largest known populations of the rare Tennessee coneflower, as well as numerous other rare and endemic cedar glade plants. It is a pristine limestone cedar glade-barrens

complex;

(S) **Hawkins Cove.** A two hundred forty-nine (249) acre site in Franklin County which supports a population of the Cumberland rosinweed, a rare plant for Tennessee;

(T) **Hicks Gap.** An area of approximately three hundred fifty (350) acres located within Prentice Cooper State Forest in Marion County. The area includes a forested slope in the scenic Tennessee River Gorge containing a large population of a federally endangered plant species known as *Scutellaria montana* (large-flowered skullcap);

(U) **Hill Forest.** An area of approximately two hundred twenty-five (225) acres in Davidson County protecting a western mesophytic forest community with "old growth" characteristics located in Metropolitan Nashville. The forest has a high diversity of exceptionally large diameter tree species including oaks, hickories, and tulip poplars and is an exemplary remnant forest within an urban setting;

(V) **Honey Creek.** A wooded area near the Big South Fork River Gorge that includes rock houses, scenic streams, and a waterfall. The area is located in Scott County, and consists of one hundred nine (109) acres;

(W) **Hubbard's Cave.** A fifty (50) acre site located in Warren County. More than two hundred fifty thousand (250,000) federally endangered gray and Indiana bats, more than all other known Tennessee caves combined, hibernate in the cave;

(X) **John and Hester Lane Cedar Glades.** An area of approximately forty-five (45) acres located in Wilson County and within the Central Basin Physiographic Province. This site consists of a complex of pristine limestone cedar glades and mixed cedar-hardwood forests, and protects one of the largest known populations of the rare and endemic federal and state listed Tennessee coneflower, as well as a population of the state and federal listed leafy prairie-clover. This ecologically significant site also protects numerous other species of rare cedar glade flora;

(Y) **Langford Branch.** An area of approximately twenty-three (23) acres in Lewis County that supports the federally listed Tennessee yellow-eyed grass (*Xyris tennesseensis*). Tennessee yellow-eyed grass occurs in an ecologically significant small calcareous seep community with other rare plants that include grass of parnassus (*Parnassia grandifolia*) and short-headed rush (*Juncus brachycephalus*). The seep is nested within an oak-hickory forest with grassland barrens species occurring on steep slopes;

(Z) **Laurel Snow.** A wooded area with three (3) flowing streams, two (2) scenic waterfalls, gorges, and a small stand of virgin timber consisting of two thousand two hundred fifty-nine (2,259) acres in Rhea County;

(AA) **Manus Road Cedar Glade.** An area of approximately twenty-two (22) acres located in Rutherford County. This Central Basin site supports a high quality limestone cedar glade with rare and endemic cedar glade plants including the federally endangered Pyne's ground plum (*Astragalus bibullatus*) and the state listed evolvulus (*Evolvulus nuttallianus*) and Tennessee milk-vetch (*Astragalus tennesseensis*);

(BB) **May Prairie.** A remnant of the prairie that once covered many acres in Middle Tennessee, consisting of approximately three hundred forty-six (346) acres in Coffee County;

(CC) **Meeman-Shelby Forest.** An area of approximately eleven thousand (11,000) acres located within Meeman-Shelby State Park in Shelby

County. This area supports large unfragmented cypress dominated sloughs and bottomland hardwood forests that represent exemplary forest communities of the Mississippi Alluvial Plain in West Tennessee. It also supports significant unfragmented upland hardwood forests occurring along the Chickasaw Bluff;

(DD) **Montgomery Bell.** This area is comprised of a southern tract of approximately three hundred fifty (350) acres and a northern tract, referred to as Wildcat Ridge, of approximately two hundred fifty (250) acres of oak-hickory forests in Dickson County. These tracts are among the best known examples of representative oak-hickory forest ecosystems on the Western Highland Rim in Tennessee;

(EE) **Morril's Cave.** A tract of land containing approximately thirty (30) acres that includes an undisturbed cave with beautiful formations and eight to ten (8-10) miles of passages. The area is located in Sullivan County;

(FF) **Morrison Meadow.** An area of approximately eighteen (18) acres in Warren County on the Eastern Highland Rim containing an excellent example of a once extensive wetland prairie/barrens complex and associated wet flatwoods. Dominated by native warm-season grasses, the native barrens at this site contain a high level of floristic diversity, including at least ten (10) state listed plant species and is regarded as one of the most significant botanical sites in the state;

(GG) **Mount View Glade.** A nine (9) acre site located in Davidson County which supports an important colony of the globally-rare, federally-endangered Tennessee coneflower;

(HH) **Mr. and Mrs. Harry Lee Carter Natural Area.** An area of approximately nine hundred thirty-one (931) acres, located in Franklin County, also known as, and containing, Lost Cove Cave (Buggytop Caves);

(II) **North Chickamauga Creek Gorge.** An area of approximately seven thousand ninety-three (7,093) acres located in Hamilton County that includes the rugged and steep gorge of North Chickamauga Creek. This area provides habitat for the state and federally endangered large-flowered skullcap (*Scutellaria montana*) and the state endangered and federally threatened Virginia spirea (*Spirea virginiana*), as well as numerous other rare species of plants. This Cumberland Plateau site includes a diversity of forest types from rich mixed mesophytic forest in the gorge to xeric oak-hickory-pine forest on the uplands;

(JJ) **Old Forest.** A forested area of approximately one hundred twenty-six (126) acres located in the eastern half of Overton Park in Shelby County. Overton Park was purchased in 1901 as the first city park in Memphis and is listed on the national register of historic places. The park's forest is comprised of upland old growth that has never been cleared or farmed despite its location in the center of a major urban area. The forest contains more than three hundred thirty (330) flowering plant species from eighty-five (85) plant families, including eleven (11) species of oak trees, eight (8) species of grapevines and a wide variety of native wildflowers. The forest is roughly bounded by the Memphis Zoo's perimeter and North Parkway on the north, East Parkway on the east, Poplar Avenue on the south, and Lick Creek on the west;

(KK) **Overbridge.** An area of seventy (70) acres in Rutherford County which supports a pristine cedar glade community including a population of the federally endangered Pyne's Ground Plum and six (6) state listed

plants;

(LL) **Piney Falls.** Two (2) small waterfalls along with a scenic gorge that includes pockets of virgin timber, consisting of approximately four hundred forty (440) acres in Rhea County;

(MM) **Pogue Creek.** An area of approximately three thousand (3,000) acres in Fentress County located adjacent to Pickett State Forest and containing scenic gorges with numerous cliffs, sandstone arches, waterfalls, and rock houses, as well as rich forest communities. It also protects populations of rare species including Cumberland sandwort and Lucy Braun's snakeroot;

(NN) **Powell River Preserve.** A twenty-nine (29) acre site located in Claiborne County which supports the state's largest population of large-leaved grass of Parnassus and showy ladyslipper;

(OO) **Radnor Lake.** A one thousand two hundred (1,200) acre area in Davidson County, containing a seventy (70) acre lake, marshes, streams, and wooded hills;

(PP) **Riverwoods Natural Area.** An area of approximately twenty-one (21) acres, located in Shelby County;

(QQ) **Roundtop Mountain.** An area bordering for one (1) mile on the Great Smoky Mountains National Park and containing an ecosystem very similar to the relatively untouched Appalachian Uplands of the national park. The area is located in Sevier County;

(RR) **Savage Gulf.** A mixed-mesophytic, semi-virgin forest, consisting of approximately fifteen thousand five hundred ninety (15,590) acres in Grundy County;

(SS) **Sequatchie Cave.** An area of approximately ten (10) acres located where Owen Spring Branch flows from the mouth of the cave at Sequatchie Cave Park in Marion County. The cave and its cool spring water support the federally listed royal snail (*Pyrgulopsis ogmorphaphe*) and numerous other rare faunal species. This is also the type locality of a rare cadisfly (*Glyphopsyche sequatchie*);

(TT) **Sneed Road Cedar Glade.** A one (1) acre site located in Williamson County which may be the best remaining site for the federally-endangered leafy prairie-clover;

(UU) **Stinging Fork Falls.** A gorge lying in and along Stinging Fork Creek that includes waterfalls and scenic overlooks. The area consists of seven hundred seventy-six (776) acres and is located in Rhea County;

(VV) **Stones River Cedar Glade and Barrens.** An area of approximately one hundred and eighty-five (185) acres located within Stones River National Battlefield in Rutherford County. This Central Basin site includes rare limestone cedar glades and barrens communities, and is a recovery site for the rare Tennessee coneflower and Pyne's ground-plum. This site also supports numerous other rare and endemic cedar glade plants;

(WW) **Sunk Lake.** An area containing a series of open lakes and swamp forest, and consisting of approximately one thousand six hundred eighty-three (1,683) acres in Lauderdale County;

(XX) **Sunnybell Cedar Glade.** A thirty-six (36) acre site in Rutherford County which supports a large population of rare yellow sunnybells and six (6) other rare plants;

(YY) **Taylor Hollow.** A one hundred sixty-two (162) acre remnant old growth forest in Sumner County which supports the rare blue-eyed Mary

and dwarf trillium;

(ZZ) **Twin Arches.** An area of approximately one thousand five hundred (1,500) acres containing two (2) fifty foot (50′) high natural bridge arches located in Pickett County;

(AAA) **Vesta Cedar Glade.** A one hundred fifty (150) acre cedar glade in Wilson County, which supports one of only five (5) known populations of the endangered Tennessee coneflower plus other rare cedar glade plants;

(BBB) **Vine Cedar Glade.** An area of approximately thirty five (35) acres in Wilson County that includes rare cedar glades and barrens communities and supports a population of the federally endangered Tennessee coneflower (*Echinacea tennesseensis*) as well as numerous other species of rare cedar glade plants. This area is located in the Central Basin physiographic province of middle Tennessee;

(CCC) **Virgin Falls.** A wooded area consisting of one thousand one hundred thirty-three (1,133) acres and containing the unusual Virgin Falls, sinkholes, caves, and portions of the Caney Fork River located in White County;

(DDD) **Walker Branch Dragonfly and Damselfly Preserve.** This is approximately two hundred twenty-five (225) acres in Hardin County near the Tennessee River. This site has forested wetland communities including Tupelo gum (*Nyssa aquatica*) and Bald cypress (*Taxodium distichium*) with surrounding floodplain and upland forest community types. There are upland seeps, which combined with these many other forest communities, provide unique habitat for more than thirty-seven (37) species of dragonflies and damselflies;

(EEE) **Walls of Jericho.** An area of approximately seven hundred fifty (750) acres in Franklin County located within the Bear Hollow Wildlife Management Area. This forested property contains a gorge known as the Walls of Jericho, a large, bowl-shaped natural amphitheater with interesting and unusual rock formations carved by Turkey Creek. In addition to its natural beauty, this property protects a diverse array of plant and animal species, including the rare limerock arrowwood;

(FFF) **Walterhill Floodplain.** A thirty-four (34) acre area located along the Stones River in Rutherford County, and supporting one of the world's largest populations of the Stones River bladderpod, one of Tennessee's rarest plants;

(GGG) **Washmorgan Hollow.** A seventy-three (73) acre site in Jackson County which supports a rare mint population and is a significant neotropical bird habitat;

(HHH) **Watauga River Bluffs.** An area of approximately fifty (50) acres located along the Watauga River in Carter County that includes a mixture of calcareous riverine bluffs and mixed oak/hemlock forest. This site supports a population of the rare Carolina pink (*Silene caroliniana*), and one of the best examples of a rock chestnut oak-eastern red cedar forest in the Ridge and Valley physiographic province;

(III) **William B. Clark Conservation Area.** An area of approximately four hundred twenty-eight (428) acres located in Fayette County that supports high quality bottomland hardwood and forested wetland communities occurring along scenic meanders of the Wolf River. Located in the Coastal Plain physiographic province of west Tennessee, this site contains unaltered river channels and forested flood plains featuring high quality Bald Cypress-Water Tupelo forest communities, and provides habitat for

numerous species of plants and animals in need of conservation;

(JJJ) **William L. Davenport Refuge.** An area of approximately one hundred twenty (120) acres in Polk County that includes a southern Appalachian bog community. This plant community is considered globally rare. It is characterized by an open canopy and is covered by a mat of large cranberry (*Vaccinium macrocarpon*) interspersed with tawny cotton-grass (*Eriophorum virginicum*), and alder (*Alder serrulata*) at the bog's edge; and

(KKK) **Wilson School Road forest and cedar glades.** A predominately forested area of approximately fifty-eight (58) acres in Marshall County in the Central Basin containing small limestone cedar glades and karst topography with wet weather conveyances, and dry woodlands containing eastern red cedar and blue ash trees. There are three (3) rare plant species known on this site, including the globally rare running glade clover (*Trifolium calcaricum*), Carolina anemone (*Anemone caroliniana*), and Tennessee glade cress (*Leavenworthia exigua var. exigua*).

11-14-116. Reelfoot Lake natural area — Administration — Land acquisition.

(a) Notwithstanding any of this part to the contrary, this section is applicable to the Reelfoot Lake natural area, an area designated as a natural area under § 11-14-108 and described therein.

(b) The responsibility for the administration of the Reelfoot Lake natural area under this part is transferred from the department, in cooperation with the wildlife resources agency acting as an advisory body, to the wildlife resources agency, in cooperation with the department acting as an advisory body.

(c) All powers and duties of the commissioner under this part, with respect to the Reelfoot Lake natural area, are transferred to and shall be exercised and performed by the executive director of the wildlife resources agency, except that the power and duty to promulgate regulations are transferred to and shall be exercised by the fish and wildlife commission.

(d) All powers and duties of the department under this part, with respect to the Reelfoot Lake natural area, are transferred to and shall be exercised by the wildlife resources agency.

(e) The fish and wildlife commission, when promulgating regulations applicable to the Reelfoot Lake natural area, and the wildlife resources agency and its executive director, in the administration of the Reelfoot Lake natural area, shall seek the cooperation and advice of the department during the preparation of such regulations and the development of all management plans and policies for the natural area.

(f) The powers and duties of the fish and wildlife commission, the wildlife resources agency and its executive director, with respect to the Reelfoot Lake natural area under this section shall not extend to those properties operated by the division of parks and recreation, as the Reelfoot Lake State Resort Park, including noncontiguous day use areas, and consisting of approximately two hundred seventy-nine and twenty-three hundredths (279.23) acres.

(g) No provision of this part shall prevent the fish and wildlife commission from allowing hunting, fishing or other taking of wildlife on the Reelfoot Lake natural area in accordance with title 70 and the rules, regulations and

proclamations promulgated pursuant to title 70. However, such rules, regulations and proclamations may include restrictions on hunting, fishing or other taking of wildlife in limited areas designated by the fish and wildlife commission as requiring such restrictions for the protection of plant and animal species which are listed by either the department or the fish and wildlife commission as endangered, threatened, deemed in need of management or of special concern.

(h) Annually, not later than January 8, the executive director of the wildlife resources agency shall submit a report to the appropriate standing committees of the senate and the house of representatives of the general assembly. Such report shall outline, in summary form, the agency's activities and accomplishments in administering the Reelfoot Lake natural area during the preceding fiscal year.

(i)(1) The general assembly finds and declares that it is in the general interests of the people of Tennessee to establish a partnership between this state and private, nonprofit corporations, qualifying under § 501(c)(3) of the Internal Revenue Code, compiled in 26 U.S.C. § 501(c)(3), for the purpose of implementing the expeditious acquisition of interest in lands at Reelfoot Lake.

(2) The executive director of the wildlife resources agency shall identify appropriate private, nonprofit corporations to assist with the acquisition of these lands. These corporations shall have the protection of charters of incorporation. The executive director is authorized, with the approval of the commissioner of finance and administration and the state building commission, to enter into agreements with such corporations to permit the corporations to purchase surveys, appraisals, title work, and other services required for the acquisition of interests in lands at Reelfoot Lake; provided, that contractors selected by the corporations for these purposes must be properly licensed in Tennessee for these purposes. The executive director, with the approval of the commissioner of finance and administration and the state building commission, is further authorized to accept such surveys, appraisals, title work, and services on behalf of the state and to enter into agreements with such corporations to acquire options and to preacquire on behalf of the state interests in lands at Reelfoot Lake. The executive director is further authorized, with the approval of the commissioner of finance and administration and the state building commission, to acquire conservation easements from such corporations where such corporations may retain the fee title; provided, that the executive director may not purchase a conservation easement under such circumstances for more than its appraised value. The executive director may, through such agreements, commit the state to reimburse the corporations for their costs of acquisition and for their costs of capital. The commissioner of finance and administration and the state building commission shall establish a form for such agreements.

11-14-308. Reviewing and evaluating projects for possible funding — Development of procedures.

(a) The commissioner of environment and conservation, in consultation with the commissioner of finance and administration, shall develop procedures for the purpose of reviewing and evaluating projects for possible funding, pursuant to § 11-14-307(b)(1) of the natural resources trust fund.

(b) Prior to implementing the procedures, the commissioner of environment

and conservation shall forward the procedures to the agriculture and natural resources committee of the house of representatives and the energy, agriculture and natural resources committee of the senate for review and comment.

(c) Any projects recommended for funding shall be considered through the department of environment and conservation's annual budget request.

(d) Such projects for consideration shall include grants to the municipal recreation systems organized pursuant to chapter 24 of this title, programs from county conservation boards organized pursuant to chapter 21 of this title, and joint parks and recreation systems organized pursuant to such chapters or organized pursuant to title 12, chapter 9.

11-21-104. Powers of board — Executive officer.

The county conservation board has the custody, control and management of all real and personal property heretofore or hereafter acquired by the county for public parks, preserves, parkways, playgrounds, recreation centers, county forests, county wildlife areas, and other county conservation and recreation purposes and is authorized and empowered:

(1) To study and ascertain the county's park, preserve, parkway, and recreation and other conservation facilities, the need for such facilities, and the extent to which such needs are being currently met, and to prepare and adopt a coordinated plan of areas and facilities to meet such needs;

(2) To acquire in the name of the county by gift, purchase, lease, agreement or otherwise in fee or with conditions, suitable real estate within or without the territorial limits of the county areas of land and water for public parks, preserves, parkways, playgrounds, recreation centers, forests, wildlife and other conservation purposes. The commissioner of environment and conservation, the county legislative body, or the governing body of any city or town may, upon request of the board, designate, set apart and transfer to the board for use as parks, preserves, parkways, playgrounds, recreation centers, playfields, tennis courts, skating rinks, swimming pools, gymnasiums, rooms for arts and crafts, camps and meeting places, community forests, wildlife areas and other recreational purposes, any lands and buildings owned or controlled by the state or such county or municipality and not devoted or dedicated to any other inconsistent public use. In acquiring or accepting land, due consideration shall be given to its scenic, historic, archaeologic, recreational or other special features, and no land shall be acquired or accepted which in the opinion of the board is of low value from the standpoint of its proposed use. No existing state parks, playgrounds, or recreation centers shall be transferred to the board without the consent of the county legislative body or, if the area is within the incorporated limits of any city or town, without the consent of the governing body of the city or town;

(3) The board shall file with and obtain approval of the commissioner of environment and conservation on all proposals for acquisition of land, and all general development plans and programs for the improvement and maintenance thereof before any such program is executed;

(4) To plan, develop, preserve, administer and maintain all such areas, places and facilities, and construct, reconstruct, alter and renew buildings and other structures, and equip and maintain the same;

(5) To accept in the name of the county gifts, bequests, contributions and appropriations of money and other personal property for conservation

purposes;

(6) To employ and fix the compensation of an executive officer who shall be responsible to the board for the carrying out of its policies. The executive officer has the power, subject to the approval of the board, to employ and fix the compensation of such assistants and employees as may be deemed necessary for carrying out the purposes and provisions of this chapter, but all such expenditures shall be within the limitation of funds available for that purpose;

(7) To charge a reasonable fee for the use of a park or recreation facility or for participation in a recreation program conducted at a facility operated by a conservation board or sponsored by the board and held at another location. A conservation board may engage in the sale of concessions, food, beverages and the like in conjunction with such programs, facilities or events. A board may contract with a private or nonprofit vendor for such concessions provision. In all cases receipts from such concession operations must be adequately accounted for and profits may not inure to private groups or individuals except as reasonable compensation for contracted service provided; and

(8) To let out and rent privileges in or upon any property under its control upon such terms and conditions as are deemed by it to be in the public interest.

12-2-102. Inventory maintained by governor.

The governor is authorized and directed to maintain a complete inventory of all state-owned property, together with necessary surveys, maps, photographs and appraisals, and one (1) copy thereof shall be filed in the office of the secretary of state, one (1) with the commissioner of general services, one (1) with the governor, and additional copies with such other public officials as the governor may designate so that the same may be made a part of the permanent records of the state. This inventory shall be added to from time to time as additional property is acquired by the state or by any agency thereof.

12-2-103. Inventory by commissioner of general services.

The commissioner of general services shall make and maintain a complete inventory in permanent form of all state-owned real property, together with necessary surveys, maps, photographs and appraisals, and when such inventory has been completed, a copy of the same shall be filed in the office of the governor, state treasurer, secretary of state, and such other public officials and departments as the governor may designate. The original copy of the inventory shall remain in the office of the commissioner of general services for safekeeping and be preserved by the commissioner as other public records. Partial copies shall be filed with each department of the state, covering property occupied or used by such department.

12-2-104. Conveyances and documents transmitted to commissioner of general services.

It is the duty of each state official who acquires real property by deed, lease or otherwise for the state of Tennessee, upon delivery of the instrument by which the property is conveyed, immediately to transmit the same to the

commissioner of general services in order to ensure compliance with § 12-2-105. Each state official, having in such state official's custody any deeds, leases, abstracts of title, or certificates of title, is hereby directed to transmit the same to the commissioner.

12-2-105. Assembly and recording of conveyances.

(a) It is the duty of the commissioner of general services to collect all deeds to state-owned real property, and record each of the deeds in the county or counties in which the property is located. Thereafter, the commissioner shall transmit to the secretary of state the deeds, and they shall be recorded word for word and indexed in a well-bound book similar in design to the books used by the various county registers. In the event the commissioner is unable to locate any deed to state-owned property, the commissioner shall obtain a certified or photostatic copy of the same, if possible, and file it in such commissioner's office in conformity with this section.

(b) The above procedure shall be followed in connection with any property which the state as lessee has under lease.

12-2-106. Payment of registers' fees.

All county registers of this state are required to extend credit to the commissioner of general services for the recordation of various instruments, including deeds and leases, and, after the instruments have been recorded, the county register will submit such county register's bill for services to the commissioner in order to obtain payment of the same.

12-2-108. Permanent records of commissioner of general services — Deeds — Records of leases.

(a) Upon recordation of the deeds by the secretary of state, the secretary of state shall promptly return the same to the commissioner of general services for safekeeping in the commissioner's office as public records, together with abstracts of title, and certificates of title, covering the property.

(b) It is the further duty of the commissioner to keep a permanent record in the commissioner's office of deeds which have come into the commissioner's possession, showing where the property is located, its size, its cost, when acquired, and such other information as the commissioner deems necessary.

(c) Upon recordation of leases by the secretary of state, the secretary of state shall promptly return the same to the commissioner for safekeeping in the commissioner's office. Such leases may be disposed of pursuant to guidelines established by the public records commission; however, such leases must be maintained for a period of no less than seven (7) years from the termination date of the lease. Leases which have been in existence for more than twenty (20) years on June 25, 1991, may be disposed of pursuant to such guidelines established by the public records commission. Prior to disposal of all other leases, the leases shall be microfilmed, and the microfilm shall be preserved pursuant to § 10-7-303(e).

12-2-109. Withdrawal of papers from commissioner's office.

The commissioner of general services shall not permit any deeds, leases, abstracts of title, certificates of title or other instruments on file in the

commissioner's office to be withdrawn or taken therefrom except in instances where it may be necessary to use them in connection with pending or threatened litigation affecting any of the lands, and then the attorney general and reporter may withdraw the papers temporarily from the office of the commissioner of general services for use in connection with such pending or threatened litigation, leaving a descriptive receipt therefor.

12-2-111. Engineer and assistants to commissioner.

The commissioner of general services, on approval of the governor, is empowered to employ a qualified engineer and such other assistants as may be necessary to enable the commissioner to fully perform the duties and to execute the powers conferred by §§ 12-2-103 — 12-2-110.

12-2-112. Disposal of surplus interests in real property and energy resources.

(a) The commissioner of general services, with the approval of the governor and attorney general and reporter, may sell, lease or otherwise convey any interest in surplus state real property according to the following provisions:

(1) Real property shall not be sold in fee, and any interest or rights in minerals, coal, natural gas, oil, timber and any other energy related resources shall not be conveyed if there is any feasible use for the property by any state agency, as determined by the governor, the attorney general and reporter and the commissioner of general services. Should the state agency have an approved use for the property, the commissioner is authorized to transfer jurisdiction to the appropriate agency at no cost;

(2) As to sales in fee, and to any conveyance of any interest or rights in minerals, coal, natural gas, oil, timber and any other energy-related resources, such property shall be appraised by at least two (2) independent, qualified appraisers, wholly disconnected from state government or any other legal governmental entity except as may otherwise be determined by the state building commission;

(3) As to sales in fee, and to any conveyance of any interest or rights in minerals, coal, natural gas, oil, timber and any other energy-related resources, such surplus property having an average appraised value exceeding twenty-five thousand dollars ($25,000) shall be advertised not less than one (1) time in a newspaper which is local with respect to the property to be sold and once in a newspaper in either Nashville, Memphis, Chattanooga or Knoxville, whichever is nearest by air; provided, that if one (1) of these four (4) cities is the situs of the property to be sold, advertisement shall be made twice within a two-week period. Such property shall be sold by the sealed bid method with the condition that the state shall have the right to refuse any or all bids. Upon the approval of the governor, the attorney general and reporter, and the commissioner, the successful bidder will be notified of the intent to award within a period of forty-five (45) days commencing from the date of bid openings;

(4) All interests in real property other than the fee interest, including, but not limited to, leases, easements and rights-of-way, shall be disposed of in accordance with policies established by the state building commission, including advertisement and appraisal where deemed appropriate by the state building commission; provided, however, that, if the property was

acquired by or for the use of the department of transportation for right-of-way, then the department of transportation may convey the interests in the property by negotiated sale or disposal to any legal governmental body for a public use purpose, subject to reversion to the department of transportation for failure to continue public ownership and use, or to the former owner or an adjoining owner for fair market value, in accordance with procedures established in subdivision (a)(8). If approved by the department of transportation, and the federal highway administration where required by federal law, a functional replacement of real property may be considered to continue public ownership and use, and shall not be subject to reversion to the department of transportation, if the replacement property is at least equal in fair market value to the property being replaced. For the purposes of this subdivision (a)(4), a functional replacement of real property means real property that serves the same function as the real property conveyed by the state by providing equivalent utility, as determined by the department of transportation, and the federal highway administration where required by federal law. The fair market value of the replacement property shall be determined in accordance with the procedures for determining the fair market value of the surplus property established in subdivision (a)(8). This subdivision (a)(4) shall not apply to the disposal or conveyance in any manner of any interest or rights in minerals, coal, natural gas, oil, timber and any other energy related resources; provided, that the commission shall have authority to promulgate rules and regulations over the disposal or conveyances pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(5) Subdivisions (a)(2) and (3) may be waived to permit the negotiated sale of any such property to any legal governmental body for a public use purpose, and, further, to permit any other negotiated sale or disposal without advertisement or appraisal as the state building commission may deem in the best interest of the state. Subdivisions (a)(2) and (3) may also be waived to permit the commissioner, with the approval of the attorney general and reporter and the governor, to grant such easements and rights-of-way as are deemed necessary to provide services for the benefit of the state agency, department or institution or of the general public;

(6) The final conveyance of any property shall be effective to vest in the purchaser thereof such title as the state shall have in the premises; the state shall not be liable upon any covenant of warranty or seisin irrespective of whether or not the same is contained in such conveyance;

(7) The funds so collected from the sale and conveyance of such property not otherwise specified shall be paid into the general fund of the state; provided, that all expenses incurred during such sale shall be paid from the proceeds and the balance of such proceeds shall be deposited into the general fund, except where otherwise provided by law. In instances in which other law specifies that the proceeds be deposited into a fund other than the general fund or into a special account in the general fund, the expenses of such sale or conveyance shall be paid from such other fund or special account. The funds so collected from the sale and conveyance of any property which has been deemed surplus right-of-way held for the use or benefit of the department of transportation shall be paid into the highway fund, and all expenses incurred during such sale shall be paid from the highway fund;

(8)(A) If the property was acquired by or for the use of the department of transportation for right-of-way, if its fair market value does not exceed

seventy-five thousand dollars ($75,000) or such amounts in excess of seventy-five thousand dollars ($75,000) as may be approved by the state building commission, and if any adjoining property owner or the former owner of that property wishes to purchase the property, or if a legal governmental body wishes to acquire the property for a public use purpose, then this section shall not apply. Instead, the commissioner of transportation is authorized to declare the property surplus if the commissioner determines that the purpose of its acquisition has been completed and that the property is no longer needed by the department of transportation or another state agency, and may sell it to any adjoining property owner or the former owner of that property, for an amount representing not less than the fair market value, together with costs; provided, however, that the department of transportation may convey the property or any interest in the property by negotiated sale or disposal to any legal governmental body for a public use purpose, subject to reversion to the department of transportation for failure to continue public ownership and use. If approved by the department of transportation, and the federal highway administration where required by federal law, the department of transportation may accept real property in exchange for the surplus real property conveyed if the replacement property is at least equal in fair market value to the surplus property being replaced. The fair market value of the replacement property shall be determined in accordance with the procedures for determining the fair market value of the surplus property established in this subdivision (a)(8). The commissioner of general services shall concur in the fair market value amount or in the negotiated sale or disposal of the property to a legal governmental body for a public use purpose. If in the judgment of the department of transportation a survey of the property is required, the prospective purchaser shall pay the department of transportation in advance for the cost of the survey;

(B) The former property owner's right shall terminate ten (10) years after the date of acquisition by the department of transportation by conveyance or date of taking in condemnation of the subject property by the department. The former property owner's right shall not transfer to the owner's heirs. The former property owner shall have first right of refusal to purchase the right-of-way; provided, however, that the department may convey the property or any interest in the property to a legal governmental body for a public use purpose, subject to reversion to the department of transportation for failure to continue public ownership and use, without offering the former owner a first right of refusal to purchase the property. If the former property owner relinquishes the owner's right or the right has expired, the property may be conveyed to an adjoining property owner. If more than one (1) adjoining property owner is interested in purchasing the right-of-way, the interested adjoining property owners shall submit sealed bids to the department of transportation, with the minimum bid price being the fair market value determined by appraisal, and the property may be conveyed to the adjoining property owner offering the highest responsive bid. The successful bidder shall reimburse any unsuccessful prospective purchaser for survey and appraisal costs incurred in accordance with the requirements of this subdivision (a)(8);

(C) For the purposes of this subdivision (a)(8), the fair market value of surplus right-of-way property shall be determined in accordance with the

following procedures:

(i) The department of transportation shall make a preliminary planning estimate of the fair market value of the property in accordance with procedures that the department may establish;

(ii) If the department of transportation's preliminary planning estimate of the fair market value of the property is ten thousand dollars ($10,000) or less, the property shall be appraised by an appraiser on staff with the department of transportation at no cost to the prospective purchaser;

(iii) If the department of transportation's preliminary planning estimate or subsequent staff appraisal of the fair market value of the property is greater than ten thousand dollars ($10,000), the property shall be appraised by an independent appraiser whose services shall be procured by the department of transportation in accordance with state law. The independent appraiser must be licensed and certified by the Tennessee real estate appraiser commission and shall be selected from a list of prequalified appraisers approved by the department of transportation. The prospective purchaser shall pay the department of transportation in advance for the cost of the independent appraisal;

(iv) The initial appraisal shall be subject to review and approval by the department of transportation in accordance with procedures that the department of transportation may establish. The appraisal review shall be conducted, at the department of transportation's expense, by a review appraiser who is licensed and certified by the Tennessee real estate appraiser commission and who is either employed by or under contract with the department of transportation. The review appraiser shall either approve the initial appraisal or reject the initial appraisal and reappraise the property to determine the fair market value of the property, subject to the approval of the director of the right-of-way division of the department of transportation or the director's designee. If approved by the director or the director's designee, the review appraiser's determination shall be presented to a prospective purchaser as the fair market value of the property;

(v) If a prospective purchaser does not accept the appraised fair market value of the property as determined by the review appraiser, the prospective purchaser may request a final review and reconsideration by the commissioner of transportation or the commissioner's designee. The commissioner or the commissioner's designee shall obtain a final review of the appraisal by a review appraiser who is licensed and certified by the Tennessee real estate appraiser commission and who is either employed by or under contract with the department of transportation; provided, however, that the final review appraiser shall not be the same person who previously reviewed the initial appraisal. The prospective purchaser shall be given the opportunity to present information concerning the value of the property for the consideration of the final review appraiser. The final review appraiser shall consider all relevant information, including any appraisal previously performed by or for the department of transportation, and shall have the authority to reappraise or make adjustments in the appraised fair market value, in accordance with generally accepted professional standards and guidelines. The final review appraiser's determination of the fair market value of the property shall be subject to the approval of the commis-

sioner or the commissioner's designee; and

(vi) The department's final determination of the fair market value of the property is subject to the concurrence of the commissioner of general services;

(9) If property acquired by the department of transportation for a right-of-way through the exercise of eminent domain or otherwise is determined by the commissioner of transportation to be no longer needed by the department of transportation, and the excess property is not transferred to another state agency or conveyed to some other legal governmental body as provided in this section, and the excess property is not disposed of in accordance with subdivision (a)(8), the excess property shall be disposed of by the department of general services in accordance with the following procedures:

(A) The excess property shall be sold to any adjoining property owner or the former owner of that property at fair market value. All funds collected from the sale of the property shall be paid into the highway fund, as provided in subdivision (a)(7);

(B) The costs associated with the conveyance of the land, including, but not limited to, the cost of appraising and surveying the property, shall be reimbursed to the state by the purchaser of the property;

(C) Any conveyance of the property made pursuant to this subsection (a) shall be subject to approval in advance by the state building commission;

(D) If no adjoining property owner or the former owner of that property is able and willing to purchase the excess property at fair market value, then the excess property may be disposed of in accordance with existing statutes;

(E) For the purposes of this subsection (a), the fair market value of the excess property shall initially be determined by the state through procedures established by the state building commission. If such initial determination of fair market value is deemed unacceptable by the intended purchaser, the fair market value of the excess property shall then be determined by averaging the state's initial determination of fair market value with two (2) additional fair market value appraisals of the excess property. The two (2) additional appraisals shall be performed by two (2) nonassociated appraisers from the locality in which the property is located. The two (2) appraisers shall be mutually agreed upon by the parties to the conveyance; none of the appraisers involved shall have any personal or financial interest in the conveyance;

(F) The former property owner's right shall terminate ten (10) years after the date of acquisition by the department of transportation by conveyance or date of taking in condemnation of the subject property by the department. The former property owner's right shall not transfer to such owner's heirs. The former property owner shall have the first right of refusal to purchase the right-of-way. If the former property owner relinquishes such owner's right, the adjoining property owners interested in purchasing the right-of-way shall submit sealed bids with the minimum bid price being the fair market value determined by appraisal;

(G) If approved by the department of transportation, and the federal highway administration where required by federal law, the department of general services may accept real property in exchange for the excess real

property conveyed if the replacement property is at least equal in fair market value to the excess property being replaced. The fair market value of the replacement property shall be determined in accordance with the procedures for determining the fair market value of the excess property established in this subdivision (a)(9);

(10) Notwithstanding any provision to the contrary, any funds collected from the lease of surplus state real property for communications relay apparatus or antennae sites that would otherwise be paid into the general fund of the state pursuant to subdivision (a)(7) shall be specifically earmarked for maintenance of state park facilities, including furniture, fixtures and equipment. Any such funds that are unencumbered or unexpended at the end of any fiscal year shall not revert to the state general fund, but shall be carried forward until expended for the purposes stated in this section;

(11)(A) Notwithstanding subdivision (a)(9) or any other law to the contrary, when and if the state transfers to the local government in which any tract or combination of tracts of property which are contiguous to one another and exceed twenty (20) acres in size and which were acquired by the department of transportation as part of an uncompleted and cancelled interstate and defense highway right-of-way in a county with a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census, is located, the transfer shall be subject to final approval by the state building commission and shall only be used for redevelopment pursuant to subdivision (a)(11)(B).

(B) Any property transferred pursuant to subdivision (a)(11)(A) shall be subject to the following restrictions:

(i) Development by the local government of a flowering-tree landscaped parkway-type roadway in accordance with title 54, chapter 17, part 1;

(ii) Development of the remaining property, with priority given to subdivision (a)(11)(B)(ii)(*a*), for:

(a) Housing; provided, that some of the land is used for development of affordable housing with the needs of the community for affordable housing properly addressed in that use;

(b) School land;

(c) Park land;

(d) Public spaces; and

(e) Associated mixed-use neighborhood uses; and

(iii) The roadway involved herein from the end of Sam Cooper Boulevard to East Parkway and all the land involved herein shall conform to the limitations regulating scenic highways as in § 54-17-109, except for § 54-17-109(11); and

(12) Notwithstanding any provisions of this section to the contrary, if property acquired by or for the use of the department of transportation for right-of-way has not been disposed of in accordance with subdivision (a)(8) or (a)(9) and no person or entity, including the former owner of that property, has been able and willing to purchase the property within five (5) years after the date the property has been offered for sale by the department of transportation, then the property may be sold at public auction pursuant to rules promulgated by the commissioner of transportation.

(b) The commissioner of general services shall notify the house of representatives and senate member or members from the district in which the property to be sold or conveyed is located, and the notification shall be at least twenty

(20) days prior to the agreement of sale or conveyance.

(c) This section and § 4-15-102 do not apply to timber which is harvested and sold pursuant to bona fide timber management practices. For the purpose of harvesting and selling of timber pursuant to bona fide timber management practices, the timber shall be treated as personal property and sold pursuant to rules and regulations of the procurement commission as provided in part 4 of this chapter.

(d) This section and § 4-15-102 do not apply to leasing surplus state real property under crop lease arrangements by the Tennessee wildlife resources agency which shall be responsible for the leasing of such surplus state real property for crop leases, as well as being responsible for the administration of all crop leases; such leasing and administration shall be through procedures reviewed and approved by the state building commission.

12-2-114. State leases — Procedure.

(a) When it becomes necessary for any agency of the state to lease space, the commissioner of general services, through the division of real property management, shall prepare a general statement of such agency's space needs, and shall advertise such needs in a newspaper of general circulation in the city and/or county where the space is needed. The advertisement shall be run on at least one (1) occasion at least two (2) weeks before proposals are opened. The cost of such advertisement shall be borne by the state department or agency requesting the space.

(b) Advertising shall be required in all transactions involving new, succeeding, superseding leases or lease renewals except:

(1) Where the annual rental will be less than an amount to be specified by policy of the state building commission, the amount not to exceed twenty-five thousand dollars ($25,000), or where the term of the lease will be one (1) year or less;

(2) Where property is owned by a governmental agency and leased to another governmental agency;

(3)(A) Where a supplemental agreement is made to an existing lease for additional space at a negotiated price without modifying the original lease term;

(B) If negotiations for a supplemental lease agreement to provide for additional space indicate the lessor will require a modification of the original lease term to cover both the existing space and the additional increment, the transaction is to be treated as a new lease and will require newspaper advertising; or

(4) Where the space required by the state department or agency, including institutions of higher education, has special and unique requirements as determined and approved by the state building commission.

(c) The proposals shall contain the names of any persons who are contemplated to become financially interested in the lease and shall be displayed in such manner as to make them readily available and accessible for public examination.

(d) After receipt of the proposals, the director of the division of real property management may then negotiate with the prospective lessors for leasing of the needed space, taking into account not only the rent offered but the type of space, the location, its suitability for the purpose, services offered by the lessor,

moving costs, and all other relevant factors; provided, that if the lowest rental proposal is not accepted by the director, a statement of justification must be submitted to the commissioner of general services and the state building commission and approval shall be obtained in writing from the commissioner prior to entering into the lease.

12-2-116. Agreements for private development, construction and operation of facilities — Requirements.

(a)(1) Notwithstanding any other provisions of this part, the commissioner of general services, with the approval of the state building commission and subject to the policies and procedures of the commission, may in order to provide utilization of state-owned lands and facilities in the public interest, enter into agreements for the private development, redevelopment, construction and operation of facilities on lands owned by or under the control of the state.

(2) Such agreements may include provisions for the sale, lease or other conveyance of state-owned real property, subject to the approval of the commissioner and the state building commission. The requirements of § 12-2-112 shall not apply to such conveyances.

(b) Any agreements entered into in accordance with this section shall be entered into only after public advertisement and only after proposals have been requested and evaluated pursuant to the policies and procedures of the state building commission.

(c) Any agreements for the sale of state-owned real property entered into under this section shall contain the provision that the state shall have the first right for repurchase of such previously state-owned real property, including all improvements thereof, under any subsequent offer for sale of such real property. The repurchase amount shall be at no more than fair market value as established by appraisal.

12-2-117. Sale or lease of department property — Trust fund.

(a) All property owned or held by mental health facilities and controlled by the department of mental health and substance abuse services which is not in use may be sold or leased in accordance with this part. The procedures for selling or leasing such property shall be those required by law and the state building commission for other state owned real property.

(b)(1) Notwithstanding § 12-2-112(a)(7), the proceeds received from the sale or lease of such land shall be deposited in a special trust fund created by subsection (c).

(2) The interest and principal from such trust shall be used as provided in the general appropriations act for the specific purposes of planning and construction of mental health facilities as well as for the transition of patients from an institutional setting into community programs.

(3) Notwithstanding subdivision (b)(2), on June 30, 2013, the commissioner of finance and administration shall transfer from the special trust fund to the general fund an amount of $1,923,100 in order to recognize the fiscal year 2011-2012 transition costs related to the closure of Lakeshore mental health institute, which were funded by an appropriation from the special trust fund in chapter 1029, § 38 of the Public Acts of 2012, and, if the 2013 general appropriations bill provides for such additional transfer, an

amount not to exceed $2,700,000, relative to an appropriation in the 2013 general appropriations act from the special trust fund for additional transition costs which may be incurred in fiscal years 2012-2013 and 2013-2014. The commissioner of finance and administration shall determine the amount of the additional transfer in accordance with provisions stated in the 2013 general appropriations act.

(4) If the 2014 or future general appropriations acts provide for funding of additional transition costs related to the closure of Lakeshore mental health institute, then the commissioner of finance and administration is authorized to transfer from the special trust fund to the general fund such additional amounts as may be specified in the general appropriations act.

(5) The general assembly expressly declares that the transition costs addressed in subdivisions (b)(3) and (4) may include, without limitation, severance benefits, terminal leave, other pay and benefits costs, build-out costs, transition to community services costs, and other costs of closure of the institute.

(c) There is hereby created within the general fund a special trust fund earmarked for the sole purpose of providing funds to the department for the purposes set forth in subdivision (b)(2).

(d) The department shall not submit a budget that proposes to use funds derived from the sale or lease of property owned or held by the department to supplant its current level of appropriated funding.

(e)(1) All property owned or held by the state developmental centers as defined in § 33-1-101 and controlled by the department of intellectual and developmental disabilities services that is not in use may be sold or leased in accordance with this part. The procedures for selling or leasing such property shall be those required by law and the state building commission for other state-owned real property.

(2) Notwithstanding § 12-2-112(a), the proceeds received from the sale or lease of such land shall be deposited in a special trust fund created by subdivision (e)(4).

(3) The interest and principal from such trust shall be used as provided in the general appropriations act for the specific purposes of planning and developing intellectual disability programs for persons with intellectual disabilities as defined in § 33-1-101, including, but not limited to, the transition of persons from an institutional setting into community services, start-up funding for individuals and agencies, and the purchase of homes.

(4) There is hereby created within the general fund a special trust fund earmarked for the sole purpose of providing funds to the department of intellectual and developmental disabilities for the purposes set forth in subdivision (e)(3).

(5) The department of intellectual and developmental disabilities shall not submit a budget that proposes to use funds derived from the sale or lease of property owned or held by the department of intellectual and developmental disabilities to supplant its current level of appropriated funding.

12-2-119. Disposition of proceeds from sale and conveyance of surplus real property or improvements managed as state office buildings and support facilities revolving fund property.

Notwithstanding any law to the contrary, proceeds from the sale and conveyance of surplus real property or improvements managed as state office

buildings and support facilities revolving fund property shall be deposited in the state office buildings and support facilities revolving fund, created by § 9-4-901, to be used for capital outlay.

12-2-120. Disposition of proceeds from sale and conveyance of surplus real property or improvements used for operation of state prisons.

Notwithstanding any law to the contrary, proceeds from the sale and conveyance of surplus real property or improvements used for operation of state prisons, if not managed as state office buildings and support facilities revolving fund property, shall be deposited in the Sentencing Act of 1985 reserve, created pursuant to § 9-4-210, to be used for purposes authorized by that section

12-2-121. Disposition of proceeds from the sale and conveyance of surplus real property or improvements used for state armories or other operations of the department of military.

Notwithstanding any law to the contrary, proceeds from the sale and conveyance of surplus real property or improvements used for state armories or other operations of the department of military, if not managed as state office buildings and support facilities revolving fund property, shall be deposited in a reserve for military facilities, which hereby is created in the general fund, to be used for capital outlay for replacement facilities of the department and other capital outlay of the department

12-2-418. [Repealed.]

12-2-501. Disposal of real or personal property by private negotiation and sale.

Notwithstanding any rule, regulation or other law to the contrary, any county, metropolitan government, municipality or other political subdivision of this state, upon majority vote of the local legislative body, may dispose of real property or personal property by private negotiation and sale where:

(1) The real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition;

(2) The real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and

(3) A preservation agreement or conservation agreement is placed in the deed conveying the property from the county, metropolitan government, municipality or other political subdivision of this state to the nonprofit corporation or trust. The nonprofit corporation or trust shall only dispose of or use such real or personal property subject to covenants or other legally binding restrictions that will promote the preservation or conservation of the property, and, where appropriate, secure rights of public access.

12-3-101. State requirements to be purchased by the central procurement office.

Except as provided in §§ 12-3-102 and 12-3-103, all goods and services, and all telephone, telegraph, electric light, gas, power, postal services, and the leasing of any equipment required for the use of state government, shall be purchased and contracted for by the central procurement office consistent with the requirements of this chapter and any rules, regulations or policies and procedures approved by the procurement commission.

12-3-102. Exempt agencies and purchases.

(a) Procurements and contracts by and for the following state governmental entities shall be exempt from the operation of this chapter:

(1) The legislative branch;

(2) The judicial branch;

(3) The University of Tennessee system and the Tennessee board of regents system;

(4) Contracts advertised and awarded by the state building commission pursuant to § 4-15-102. If there is a question whether a contract or procurement requires state building commission or central procurement office approval, the chief procurement officer and the state architect shall determine in writing the procurement method or the contract form that is in the best interest of the state. Any such agreement reached by the chief procurement officer and the state architect shall be subject to the approval of the comptroller of the treasury;

(5) Construction and engineering contracts entered into by the department of transportation pursuant to title 54, chapter 5;

(6) Contracts for procurement of services in connection with the issue, sale, purchase, and delivery of bonds, notes and other debt obligations or the administration, safekeeping, and payment after delivery of such debt obligations by the state or any of its agencies;

(7) Contracts for appraisal, relocation or acquisition services related to the acquisition of land that are entered into by the department of transportation pursuant to title 54, chapter 5; and

(8) Administrative contracts for specific service signs pursuant to title 54, chapter 5, part 11, shall be awarded to the vendor who offers the lowest responsible response. The basis of all responses shall be the least cost to the retail user of the signs. All administrative contracts shall be awarded on an objective, competitive basis pursuant to rules and regulations promulgated by the department of transportation.

(b) Notwithstanding subsection (a), any or all state entities exempt from the requirements of this part, as well as any private nonprofit institution of higher education chartered in this state, are authorized to procure goods or services under this chapter through the central procurement office.

12-3-103. Requirements of professional persons or groups providing fiscal agent, financial advisor, advisory or consultant services covered by this part.

(a) Contracts for legal services, fiscal agent, financial advisor or advisory services, educational consultant services, and similar services by professional

persons or groups with high ethical standards, shall not be based upon competitive procurement methods, but shall be awarded on the basis of recognized competence and integrity. The prohibition against competitive procurement in this section shall not prohibit any entity enumerated from interviewing eligible persons or entities to determine the capabilities of such persons or entities.

(b) Any person providing fiscal agent, financial advisor or advisory services covered by this part shall perform such services only pursuant to a written contract specifying the services to be rendered, the costs of the services, and the expenses to be covered under such contract.

(c) Any person providing fiscal agent, financial advisor or advisory services covered by this part who desires to respond, directly or indirectly, on any bonds, notes or other obligations of such entity sold pursuant to public, competitive sale shall receive in writing prior to the sale the permission of such entity to respond either directly or indirectly on the obligations.

(d) For the purposes of this section, "providing fiscal agent, financial advisor or advisory services" means a relationship that exists when a person renders, or enters into an agreement to render, financial advisory or consultant services to or on behalf of an issuer with respect to a new issue or issues of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such issue or issues, for a fee or other compensation or in expectation of such compensation for the rendering of such services.

(e) A financial advisory relationship shall not be deemed to exist when, in the course of acting as an underwriter, a municipal securities dealer renders advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning a new issue of municipal securities.

12-3-104. Transfer of equipment between departments, institutions and agencies.

Whenever any state department or agency applies to the department of general services to lease or rent any equipment, the department of general services shall first ascertain whether or not any such equipment is available for use from any other department, institution, or agency. The department of general services shall have the power to request the transfer of any such equipment from one (1) department, institution, or agency to another with the approval of the head of the transferring department, institution, or agency.

12-3-201. Chapter definitions.

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

(1) "Central procurement office" means the government agency established in § 4-56-104;

(2) "Chief procurement officer" means the person holding the position established in § 4-56-104, as the head of the central procurement office and with the powers and duties set forth in § 4-56-105;

(3) "Committee" means the state protest committee as established in § 4-56-103;

(4) "Contract" means any duly authorized and legally binding written agreement for the procurement of goods and services;

(5) "Council" means the advisory council on state procurement established in § 4-56-106;

(6) "Data" means any recorded information, regardless of its form or characteristic;

(7) "Energy efficiency standard" means a performance standard that prescribes the relationship of the energy use of a product to its useful output of services;

(8)(A) "Goods" means all personal property, including, but not limited to, supplies, equipment, materials, printing, and insurance;

(B) "Goods" does not include real property;

(9)(A) "Grant" means any grant awarded to the state or awarded by the state to any person to support a program authorized by law;

(B) "Grant" does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award;

(10) "Invitation to bid" means all documents, whether attached or incorporated by reference, utilized for soliciting bids for the lowest cost, responsive and responsible bidder;

(11) "Major energy-consuming product" means any article so designated by the chief procurement officer in consultation with the central procurement office staff;

(12) "Political subdivision" means any authority, city, town, municipality, county or instrumentality of any authority, city, town, municipality or county within the state;

(13)(A) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring of any goods or services;

(B) "Procurement" also includes all functions that pertain to the obtaining of goods or services, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration;

(14) "Procurement commission" means the state procurement commission, as established in § 4-56-102;

(15) "Proprietary" means a good or service that is used, produced, or marketed under exclusive legal right of the inventor, maker or service provider that is protected under trade secret, patent, trademark, or copyright law;

(16) "Request for proposal" means a written solicitation for written proposals to provide goods or services to the state or a state governmental entity based upon specified evaluation criteria;

(17) "Respondent" includes a "bidder" or "proposer" that is a natural person or legal entity that has properly registered as required by the state. The terms "bidder" and "proposer" may be used interchangeably as the context requires;

(18) "Response" means a written response to a solicitation for goods and services;

(19) "Responsible" means a person who has the capacity in all respects to perform fully the contract requirements, as well as the integrity and reliability, which will assure good faith performance;

(20) "Responsive" means a person who has submitted a response that conforms in all material respects to the competitive procurement;

(21) "Services" means all services and agreements obligating the state, except services for highway and road improvements governed by title 54 and

design and construction services governed by title 4, chapter 15;

(22) "Solicitation" means any type of document that invites responses and may include, by way of example, an "invitation to bid", a "request for proposal" or a "competitive negotiation";

(23)(A) "Specification" means any description of the physical, functional, performance characteristics, or nature of a supply, service, or construction item;

(B) "Specification" includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery;

(24) "State agency" means any state governmental entity, other than the central procurement office and those state entities exempted by § 12-3-102, that is authorized to enter into contracts by this title or its implementing regulations, or by way of delegation from the chief procurement officer, or that utilizes any goods or services procured under this title;

(25) "State governmental entity" means any agency, authority, board, commission, department, or office within the executive, legislative or judicial branches of state government or any autonomous state agency, authority, board, commission, council, department, office, or institution of higher education; and

(26) "Vendor" means a natural person or legal entity that has been established by the department of finance and administration's division of accounts as a vendor through proper authority for which payment may be made by the state.

12-3-202. Long distance telephone service for students at state universities and colleges.

Subject to the regulations and requirements of the Tennessee regulatory authority and other state or federal bodies, the central procurement office is authorized to extend the use of the state network long distance telephone service to students at state universities and colleges. If the central procurement office extends such service, it shall charge the institution the amount that it costs the state for such service.

12-3-301. Written acquisition plan — Data relating to purchases and purchase estimates — Amendments to acquisition plan.

(a)(1) Before April 1 of each year, each state agency shall compile and submit to the chief procurement officer and the comptroller of the treasury, a written acquisition plan for the upcoming fiscal year forecasting the specific categories and quantities of goods and services anticipated for purchase by the state agency. The chief procurement officer shall develop procedures to ensure uniformity among the various state agencies both in the manner of calculating such forecasts and in the style and format used for submitting such written acquisition plans to the chief procurement officer. The information contained within such forecasts shall be based on good faith estimates and shall not be construed in any way to legally bind or authorize the state agency to make any purchase in conflict with the other requirements of this chapter.

(2) This subsection (a) shall not apply to those entities exempt from this chapter pursuant to § 12-3-102.

(b) Before July 1 of each year, the chief procurement officer shall compile

and publish the written acquisition plans submitted by the various agencies pursuant to subsection (a), within an annual report that shall be entitled "The Forecast of Acquisition Plans for State Departments and Agencies for Fiscal Year _____—_____." A copy of the report shall be posted on the central procurement office's web site.

(c) It is the duty of all state agencies to furnish to the central procurement office, upon request, data relating to purchases and purchase estimates.

(d) An agency is permitted to amend or supplement its written acquisition plan before the end of a given fiscal year for unforeseen circumstances pursuant to rules, regulations and policies approved by the commission.

12-3-302. Bidding not to include statement that bidder willing to meet lowest bid price — Exception where negotiation permitted.

(a) Any statement or agreement in which the respondent is asked to indicate a willingness to meet the low price, if such respondent is not the low respondent, is adverse to the competitive procurement standards and shall not be included in any solicitation to be awarded by any state agencies.

(b) This section applies to divisible contracts.

(c) This section shall not apply when applicable law permits negotiated contracts.

(d) For the purposes of this section, contracts for the administration of specific service signs pursuant to title 54, chapter 5, part 11 shall not be negotiable.

12-3-303. Execution of contracts by executive branch state agencies — Approval by chief procurement officer — Contracts for rendering public relations, advertising or related services — Applicability to various contracts — Posting of contracts on state procurement office's web site.

(a) Any contract for goods or services entered into by an executive branch state agency shall be executed by the head of such state agency and approved by the chief procurement officer. Notwithstanding any other law to the contrary, approval of the chief procurement officer and no other officer of the state government is necessary, except as follows:

(1) Contracts for financial management or accounting services shall also be approved by the commissioner of finance and administration;

(2) Contracts for auditing services shall also be approved by the comptroller of the treasury;

(3) Contracts for engineering or architectural services shall also be approved by the office of the state architect;

(4) Contracts of all state colleges and universities operated by the board of trustees of the University of Tennessee or the state board of regents do not need to be approved by the chief procurement officer; provided, that these contracts shall be subject to applicable provisions of the rules and policies promulgated by the central procurement office and approved by the procurement commission; or

(5) Those procurements, contracts, grants, and other documents subject to approval by the comptroller of the treasury pursuant to § 4-56-108 or otherwise required by law.

(b) All contracts for rendering public relations, advertising or related

services entered into by or on behalf of agencies and departments of the executive branch of state government shall be restricted to provide for only the rendition of media advertising and related design and production services, except as otherwise determined in accordance with policies established by the procurement commission.

(c)(1) This section shall not apply to construction and engineering contracts entered into by the department of transportation pursuant to title 54, chapter 5, or to contracts for projects required by law to be approved by the state building commission.

(2) This section shall not apply to contracts to hire additional counsel for the state or any of its departments, institutions or agencies; provided, that all such contracts shall be made in accordance with § 8-6-106, except for legal counsel employed pursuant to any statute concerning the issuance and sale of bonds, notes, or other obligations.

(3) This section shall not apply to contracts for procurement of services in connection with the issue, sale, purchase, and delivery of bonds, notes and other debt obligations or the administration, safekeeping, and payment after delivery of such debt obligations by the state or any of its agencies.

(d) All contracts for goods and services shall be posted on the state procurement office's web site, at a minimum providing the following information, as applicable, regarding each request for goods or services:

(1) Business unit or agency requesting;
(2) Contract number;
(3) Brief description of the contract;
(4) Type of contract;
(5) Commencement date of the contract;
(6) Ending date of the contract;
(7) Maximum liability; and
(8) Status of the contract.

12-3-304. Unauthorized contracts void — Personal liability of officers and heads of agencies.

(a) When any state agency required by this chapter to purchase goods or services through the central procurement office, contracts for the purchase of goods or services contrary to this chapter or the rules and regulations made hereunder, such contract shall be void and of no effect.

(b) When the central procurement office contracts for the purchase of goods or services contrary to this chapter or the rules and regulations made hereunder, such contract shall also be void and of no effect.

(c) If any state agency, including the central procurement office, purchases any goods or services contrary to this chapter or the rules and regulations made hereunder, then the chief procurement officer or head of such state agency shall be personally liable for the costs thereof, and if such goods or services are so unlawfully purchased and paid for out of state moneys, then the amount thereof may be recovered in the name of the state in an appropriate action instituted by the state.

12-3-305. Responsibility for effective management of contracts — Adoption of regulations or policies that define service contracting fundamentals — Inclusion of the maximum liability or total estimated purchase in solicitations — Certification to state agencies the sources of services and supply and the contract price of the various goods and services covered by contracts.

(a) The central procurement office or the procuring state governmental entity shall be responsible for the effective management of all contracts procured under its authority and shall adopt regulations or policies that define service contracting fundamentals. Such regulations or policies shall include, but are not limited to, contract management and monitoring of vendors, grants and sub-recipient relationships. The regulations for monitoring shall, at a minimum, require the filing of the monitoring plan with the chief procurement officer before any contracts are approved.

(b) Any state agency, when entering into contracts with any organizations that agree to provide services to third parties, shall, subject to approval by the chief procurement officer and the comptroller of the treasury, establish guidelines for such organizations. These guidelines shall define the responsibility and prescribe procedures to be followed by the contracting agencies, including, but not limited to, the use of generally accepted accounting procedures, sound business practices, and compliance with related state and federal regulations regarding the fiscal policies of nonprofit organizations. The guidelines established shall be used as prerequisites for the state's agreement to provide matching or other state funds or federal funds or entering into a third party contract.

(c) Every solicitation issued for the purpose of establishing a contract shall include the maximum liability or total estimated purchase by agencies of state government for the current contract period, if applicable, and for the new contract period. More than one (1) contract may be let for the supply of any given class or type of goods or services and any contract may provide for the cancellation thereof by either party. Contracts executed or proposed to be executed for periods of time of more than twelve (12) months shall be subject to the policies, rules and regulations of the central procurement office, as approved by the procurement commission, and shall meet the following conditions:

(1) Such contracts may contain a provision giving the state the right of cancellation for convenience for periods of time established by the chief procurement officer;

(2) Such contracts shall contain a provision giving the state the right of cancellation at the end of any fiscal year without notice, in the event that funds to support the contract become unavailable; and

(3) No contract may be let for periods of time in excess of sixty (60) months, unless the chief procurement officer determines the contract is in the best interest of the state and approves the contract in accordance with rules and regulations, and policies and procedures approved by the procurement commission, as being in the best interest of the state.

(d) After contracts have been awarded, the chief procurement officer shall certify to state agencies the sources of services and supply and the contract price of the various goods and services covered by the contracts. It is unlawful

for any state agency to purchase any goods or services covered thereby from any sources other than those certified by the chief procurement officer, except as otherwise provided in this chapter.

12-3-306. Registration with the department of revenue to collect and remit sales and use taxes — Development of procedures for compliance.

(a) A state governmental entity shall not contract to acquire goods or services, and no person may contract to supply goods or services to a state governmental entity, unless, prior to, or contemporaneous with, entering into the contract, the person contracting to supply goods or services and its affiliates register with the department of revenue to collect and remit the sales and use tax levied by the Retailers' Sales Tax Act, compiled in title 67, chapter 6. Nothing in this section shall require a person or affiliate to register if the person or affiliate does not make sales to customers in the state of tangible personal property or services, which if the sales occurred wholly within the state, would be taxable under title 67, chapter 6. This section is specifically applicable to foreign persons, notwithstanding the fact that such foreign persons or their affiliates may not otherwise be legally obligated to collect and remit such tax.

(b) For purposes of this section:

(1) "Affiliates" means each and every affiliate of the person contracting with the state or other state entities, as the term "affiliate" is defined in § 48-103-102;

(2) "Other state entities" has the same meaning as in § 12-4-601; and

(3) "Person" or "persons" has the same meaning as in § 67-6-102.

(c) The commissioner of revenue and the chief procurement officer shall develop procedures for compliance with this section with approval by the procurement commission.

12-3-307. Application of procedural and administrative accountability requirements to matching funds.

Contracting state agencies that establish the procedural and administrative accountability requirements shall apply these requirements to all matching funds. The established procedural and administrative requirements shall remain in effect for the entire fiscal year covered by the third party contract, and no contracting agency shall modify or amend these procedures without the state agency's approval.

12-3-308. Contracts through or administered by social services agencies without discrimination — Religious organizations.

(a) Notwithstanding any other law to the contrary, state and local governments shall contract for goods and services provided through, or administered by, the departments of children's services, health, and human services without discrimination against religious organizations or discrimination based on race, age, color, sex, or national origin and shall provide beneficiaries of assistance under the programs established by law with forms of disbursement that are redeemable with these organizations that are awarded a contract. State and local governments may use any state, federal, local or other moneys available

for these purposes.

(b) State and local governments shall allow contracts with religious organizations to provide goods and services provided through, or administered by, the departments of children's services, health, and human services and to accept forms of disbursement under any program established on the same basis as any other nongovernmental provider without impairing the religious character of these organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under these programs. The programs shall be implemented consistent with the first amendment of the United States Constitution. State and local governments shall not discriminate against an organization that is, or applies to be, a contractor to provide assistance or that accepts forms of disbursement on the basis that the organization has a religious character.

(c) A religious organization with a contract described in this section shall retain its independence from federal, state and local governments, including the religious organization's control over the definition, development, practice and expression of its religious beliefs. State and local governments shall not require a religious organization to alter its form of internal governance or to remove religious art, icons, scripture or other symbols in order to be eligible to contract to provide assistance or to accept grants or other forms of disbursement funded under any program or public contract.

(d) If a person, who applies for or receives goods, services or disbursements, objects to the religious character of the organization or institution from which the person receives, or would receive, assistance funded under any program, the state or local government shall provide the person, within a reasonable period of time after the date of the objection, with assistance from an alternative provider that is accessible to the person if an alternative provider is available and the value of which is not less than the value of assistance that the person would have received from the religious organization. Organizations shall provide notice to people receiving assistance of the right to object pursuant to this subsection (d).

(e) A religious organization's exemption provided under § 702 of the Civil Rights Act of 1964, codified in 42 U.S.C. § 2000e-1(a), regarding employment practices is not affected by its participation in, or receipt of, moneys from programs described in this section. Nothing in this section allows religious organizations to discriminate in employment practices on the basis of race, age, color, sex or national origin.

(f) Except as otherwise provided by law, a religious organization shall not discriminate against a person in regard to rendering assistance funded under any program described in this section on the basis of religion, a religious belief or refusal to participate in a religious practice, or on the basis of race, age, color, sex or national origin.

(g) Except as provided in subsection (h), any religious organization that contracts to provide goods, services or assistance funded under any program is subject to audit by the comptroller of the treasury, and is required to comply with the same rules and laws as other contractors to account in accordance with generally accepted auditing principles for the use of the moneys provided under the program.

(h) If a religious organization segregates public moneys provided under these programs into separate accounts, only the programs funded by financial assistance provided with these moneys are subject to audit by the comptroller

of the treasury.

(i) Appeals from the decisions of the head of a state agency, board or commission may be made to the commissioner of finance and administration in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(j) No moneys provided directly to institutions or organizations to provide services and administer programs under this section may be spent for sectarian worship, instruction or proselytization. This subsection (j) does not apply to the contracting for the services of chaplains by state and local governments.

(k) For the purposes of this section, "state and local governments" means state agencies, boards and commissions and political subdivisions of this state.

(*l*) No funds provided by any state or local government for goods and services to religious organizations shall supplant present funding of programs provided by such groups but shall be a supplement to the activities rendered by these groups.

12-3-309. Prohibited contracts.

(a) Prohibited contracts:

(1) No state governmental entity shall contract to acquire goods or services from any person who knowingly utilizes the services of illegal immigrants in the performance of a contract for goods or services entered into with a state governmental entity;

(2) No person may contract to supply goods or services to a state governmental entity if that person knowingly utilizes the services of illegal immigrants in the performance of a contract to supply goods or services entered into with the state or a state entity.

(b) After January 1, 2007, no person may enter into a contract to supply goods or services to a state governmental entity without first attesting in writing that the person will not knowingly utilize the services of illegal immigrants in the performance of the contract, and will not knowingly utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract.

(c) If any person who contracts to supply goods or services to a state governmental entity, or who submits a response to contract to supply goods or services to a state governmental entity, is discovered to have knowingly utilized the services of illegal immigrants in the performance of the contract to supply goods or services to a state governmental entity, the chief procurement officer shall declare that person to be prohibited from contracting for or submitting a response for any contract to supply goods or services to a state governmental entity for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of a contract to supply goods or services to a state governmental entity.

(d) Any person who is prevented from contracting for or submitting a response for a contract to supply goods or services to a state governmental entity for one (1) year pursuant to subsection (c) may appeal the imposition of the one-year prohibition by utilizing an appeals process to be established by the chief procurement officer and approved by the procurement commission.

(e) The chief procurement officer is authorized to promulgate rules and regulations to effectuate the purposes of this section and shall be approved by

the procurement commission. All rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

12-3-310. Definition of "call center" — Contracts for call center services.

(a) As used in this section, "call center" includes a person who performs services, including, but not limited to, data entry services, electronic governmental transfers, or other electronic, telephone and telecommunication services.

(b) The chief procurement officer shall promulgate regulations pursuant to title 4, chapter 56, authorizing a preference in the evaluation of proposals for state contracts requiring vendors of call center services to only employ, use, or contract with citizens of the United States who reside in the United States, or any person authorized to work in the United States pursuant to federal law, including legal resident aliens in the United States to provide call center services.

(c) Any respondent seeking this preference shall supply such supporting documentation as the state may require and shall certify that it will provide services solely by citizens of the United States who reside within the United States, or persons authorized to work in the United States pursuant to federal law, including legal resident aliens in the United States. The certification shall acknowledge and confirm the right of the state to audit and monitor compliance and seek appropriate remedies for noncompliance.

12-3-311. Certain noncompetitive purchases and contracts entered into by the department of transportation are subject to the approval of the comptroller of the treasury — Review by the fiscal review committee.

All noncompetitive purchases and contracts entered into by the department of transportation for non-construction and non-engineering projects or services with a term of more than one (1) year or which are renewable by either party that would extend the contract beyond twelve (12) months and which have a cumulative value of not less than two hundred fifty thousand dollars ($250,000), including all possible renewals, shall be subject to the approval of the comptroller of the treasury. A list of all such purchases and contracts shall be filed with and subject to review by the fiscal review committee.

12-3-401. Procedure for delegated authority.

(a) The chief procurement officer may authorize any or all state agencies to procure all or any specific types and classes of goods or services, without following the procedures relating to the requisitioning of such goods or services through the central procurement office. The comptroller of the treasury shall review and approve such delegations as required by procurement commission policy. The chief procurement officer shall consider the individual state agency's purchasing record in these delegations and shall periodically review purchasing activities of any state agency granted such delegation, and may reduce or revoke such delegated purchasing authority.

(b) It is intended that delegation of purchase authority may be made by

state agency, by type of good or service, by dollar amount of procurement, or by any combination thereof, in order to reduce the procurement time required and to increase the amount of purchases made from any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business, as defined in § 12-3-514.

(c) Upon delegated authority, any procurement not exceeding fifty thousand dollars ($50,000), for which a source of supply has not otherwise been established, shall be made without requisitioning such goods or services through the central procurement office; provided, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

(d) All requisitions and solicitations provided for in this section shall be posted on the state procurement office's web site, at a minimum providing the following information, as applicable, regarding each such procurement:

(1) Procuring agency;
(2) Requisition number;
(3) Vendor;
(4) Total amount of requisition;
(5) Line item of description; and
(6) Line item amount.

12-3-501. Award of contracts by competitive sealed solicitations.

Unless otherwise authorized by law, state contracts shall be awarded by competitive sealed solicitations by the central procurement office in the manner set forth in § 12-3-502, except as provided in § 12-3-401 and §§ 12-3-503 — 12-3-508.

12-3-502. Solicitations — Responses — Rejection of responses — Correction or withdrawal of responses — Cancellation of awards or contracts — Filing of notices of intent to award — Procurement and performance bonds or other security.

(a) The central procurement office shall publicly advertise a copy of the solicitation. All responses received by the central procurement office shall be opened and examined at the time and place specified in the solicitation. Any and all responses may be rejected pursuant to subsection (b).

(b) Whenever the chief procurement officer approves the rejection of all responses for a certain solicitation, the chief procurement officer shall file a notice of such action with the comptroller of the treasury and shall take such action only for one (1) or more of the following reasons:

(1) Unreasonably high prices;
(2) Error in the solicitation;
(3) Cessation of need;
(4) Unavailability of funds; or
(5) Any other reason determined to be in the best interest of the state.

(c) Submission of a response shall not create rights, interests, or claims of entitlement in any respondent, including the lowest apparent respondent in terms of cost.

(d)(1) Correction or withdrawal of inadvertently erroneous responses, before or after award, or cancellation of awards or contracts based on such mistakes, shall be permitted with approval of the chief procurement officer. All cancellation of awards or contracts shall be filed with the comptroller of

the treasury.

(2) After response opening, no changes in prices or other provisions of responses prejudicial to the interest of the state or fair competition shall be permitted.

(3) Except as otherwise provided by regulation or policy of the procurement commission, all decisions to permit the correction or withdrawal of responses, or cancel awards or contracts based on response mistakes, shall be supported by a written determination made by the chief procurement officer and such determination shall be filed with the comptroller of the treasury.

(e) Only criteria or factors set forth in the solicitation may be used in evaluating a response.

(f) After response evaluation and prior to award of the contract, the chief procurement officer shall issue a notice of intent to award to all respondents to the solicitation. Notification by the state of intent to award shall not create rights, interests, or claims of entitlement in any respondent.

(g) Upon issuance of the intent to award, all data relating to the procurement shall be made available for inspection to each respondent of the solicitation, upon request. No contract shall be awarded by the chief procurement officer without providing respondents a reasonable opportunity for inspection. The chief procurement officer shall establish procedures for providing inspection by respondents to solicitations. Such procedures shall be approved by the procurement commission. Notification by the state of intent to award shall not create rights, interests, or claims of entitlement in any respondent.

(h) Each contract shall be awarded in the name of the state, with reasonable promptness by written notice to the respondent to whom a contract will be awarded in accordance with the criteria for award as set forth in the solicitation.

(i) Procurement and performance bonds or other security may be required for any contract. Any such requirement shall be set forth in the solicitation. The chief procurement officer shall promulgate rules establishing the requirements for the use and appropriate amount of such bonds or other security with approval by the procurement commission.

12-3-503. Informal solicitation — Small purchases — Active solicitation of responses from minority-owned, woman-owned, service-disabled veteran-owned, or small business.

(a) The procurement commission may grant the chief procurement officer authority to establish informal solicitation rules, regulations, policies and procedures for procurements. The maximum amount of the procurement shall be determined in accordance with the following:

(1) If all of the members of the procurement commission agree, the amount shall be up to fifty thousand dollars ($50,000) or less; and

(2) Procurement requirements shall not be artificially divided in order to constitute an informal procurement under this section.

(b) The procurement commission may grant the chief procurement officer authority to establish small purchase rules, regulations, policies, and procedures. The maximum amount of the purchases shall be determined in accordance with the following:

(1) If all the members of the procurement commission agree, the amount shall be up to ten thousand dollars ($10,000) or less; and

(2) Purchasing requirements shall not be artificially divided in order to constitute a small purchase under this section.

(c) Notwithstanding subsections (a) and (b), such state agencies shall actively solicit responses from any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business in accordance with part 11 of this chapter.

12-3-504. Sole source procurement — Noncompetitive negotiation.

The chief procurement officer shall identify goods or services that may not be procured by competitive means because of the existence of a single source of supply. The chief procurement officer shall submit to the procurement commission, for approval rules, policies, and procedures prescribing the manner in which such procurements may be accomplished, which may include noncompetitive negotiation. Sole source goods and services shall be purchased only in accordance with these rules, policies, and procedures approved by the procurement commission.

12-3-505. Emergency purchases.

The chief procurement officer is authorized to purchase for a state governmental entity in the open market specific goods or services for immediate delivery to meet emergencies arising from any unforeseen cause, including, but not limited to, delays by contractors, delays in transportation, unanticipated volume of work, and acts of God. The chief procurement officer may delegate this authority to any state agency; provided, that a report on the circumstances of any such emergency and the actions taken by such state agency as a result of the emergency shall be transmitted in writing as soon as possible by such state agency to the chief procurement officer. The report shall set forth the prices at which goods and services were purchased and the total amount of the purchase. The chief procurement officer shall keep each report on file in the permanent records of the central procurement office. All emergency purchases shall be posted on the single public Internet web site in such form as prescribed by the procurement commission. All emergency purchases shall, if practicable, be made on the basis of competitive procurement.

12-3-506. Negotiation with vendors — General services administration price agreement.

In accordance with rules and regulations of the central procurement office approved by the procurement commission and adopted pursuant to title 4, chapter 56, part 1, and chapters 3 and 4 of this title, the chief procurement officer is authorized to negotiate with vendors who maintain a general services administration pricing agreement with the United States or any agency thereof; provided, that no contract executed under this section shall authorize a price higher than is contained in the contract between the general services administration and the affected vendor.

12-3-507. Competitive negotiation.

Except as otherwise provided by law, a contract may be entered into by competitive negotiation when it is determined by the chief procurement officer

that it is in the best interest of the state. Each use of competitive negotiation shall be subject to approval by the chief procurement officer and the comptroller of the treasury in accordance with rules, policies, and procedures of the procurement commission. Notice of such approved competitive negotiations shall be posted on the central procurement office's web site.

12-3-508. Utilities — Service contracts.

Subject to rules of the central procurement office approved by the procurement commission, the central procurement office shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, and other services for which a rate for the use thereof has been established by a public authority, in such manner as the chief procurement officer deems to be in the best interest of the state.

12-3-509. Certification by receiving agent as condition of payment.

When any goods or services are received by a state agency, the state agency's receiving agent shall certify electronically or in writing that the goods or services received were equal in quality and quantity to those requisitioned or ordered. The certification shall accompany the voucher directing the payment. The state shall not remit funds in payment of any voucher unless the voucher is accompanied by the certification.

12-3-510. Records of purchases open to public.

Notwithstanding § 12-3-502, all procurement records of the department and all records of the procurement commission shall be open and accessible to the public during the regular office hours of the central procurement office or state agency, when such inspections do not interfere with the orderly operation of the central procurement office or state agency.

12-3-511. Ascertainment of availability of funds.

The central procurement office shall not honor or act upon any requisitions from any state agency without first having ascertained from the commissioner of finance and administration, or other responsible official, the availability of funds to cover the proposed expenditure.

12-3-512. Cooperative purchasing agreements.

The central procurement office may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of goods or services with one (1) or more other states or local governments in accordance with an agreement entered into between the participants. All cooperative purchasing conducted under this section shall be awarded through full and open competition and pursuant to policies or rules and regulations approved by the procurement commission.

12-3-513. Competitive reverse auction process.

(a) For a purchase of goods and services under this chapter, the central procurement office may purchase goods and services through a competitive reverse auction process that allows responses on specified goods or services

electronically and adjustments to pricing during a specified time period. An award shall be made to the offeror determined to be the lowest responsible and responsive respondent at the close of the specified solicitation period.

(b) Policies and procedures concerning this procurement methodology, including the criteria, and the evaluation process shall be developed by the central procurement office and approved by the procurement commission.

(c) This section shall not apply to:

(1) Construction services; or

(2) Architectural or engineering services.

12-3-514. Protests by aggrieved respondents.

(a) Prior to the commencement of an action in court concerning the controversy, any actual respondent who claims to be aggrieved in connection with a procurement authorized under this chapter may protest to the chief procurement officer. The protest shall be submitted in writing within seven (7) calendar days after such claimant knows or should have known of the facts giving rise to the protest. Any issues raised by the protesting party after the seven-day period shall not be considered as part of the protest. In the case of a pending award, a stay of award in accordance with subsection (e) may be requested.

(b) The signature of an attorney or protesting party on a request for consideration, protest, motion, or other document constitutes a certification by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation. If a request for consideration, protest, pleading, motion, or other document is signed in violation of this subsection (b) before or after appeal to the chief procurement officer and the protest committee, the chief procurement officer or protest committee, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties, including the affected state agency, the amount of the reasonable expenses, including reasonable attorneys' fees incurred because of the filing of the protest, a petition for a stay of award, pleading, motion, or other paper.

(c) Neither a protest nor a stay of award shall proceed under this section unless the protesting party posts a protest bond. The protesting party shall post with the chief procurement officer, at the time of filing a notice of protest, a bond payable to the state in the amount of five percent (5%) of the lowest cost proposal evaluated or, if a protest is filed prior to the opening of cost proposals, the bond payable shall be five percent (5%) of the estimated maximum liability provided in the procurement document. The protest bond shall be in form and substance acceptable to the state and shall be immediately payable to the state conditioned upon a decision by the protest committee that:

(1) A request for consideration, protest, pleading, motion, or other document is signed, before or after appeal to the chief procurement officer or protest committee, in violation of subsection (b);

(2) The protest has been brought or pursued in bad faith; or

(3) The protest does not state on its face a valid basis for protest.

(d) The bond shall be payable to the state for any other reason approved by the protest committee. The state shall hold the protest bond for at least eleven (11) calendar days after the date of the final determination by the chief procurement officer. If the protesting party appeals the chief procurement officer's determination to the protest committee, the chief procurement officer shall hold the protest bond until instructed by the protest committee to either keep the bond or return it to the protesting party.

(1) At the time of filing notice of a protest of a procurement in which the lowest bid or lowest evaluated cost proposal is less than one million dollars ($1,000,000), a minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business protesting party may submit a written petition for exemption from the protest bond requirement of subsection (c). The petition shall include clear evidence of a minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business status. On the day of receipt, the petition shall be given to the chief procurement officer. The chief procurement officer has seven (7) calendar days in which to make a determination. If an exemption from the protest bond requirement is granted, the protest shall proceed as though the bond were posted. Should the chief procurement officer deny an exemption from the requirement, the protesting party shall post the protest bond with the chief procurement officer as required in subsection (c) within five (5) calendar days of the determination.

(2) For purposes of this subdivision (d)(1):

(A) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(i) African American: a person having origins in any of the black racial groups of Africa;

(ii) Hispanic: a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(iii) Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or

(iv) Native American: a person having origins in any of the original peoples of North America;

(B) "Minority-owned business" means a minority-owned business that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background;

(C) "Small business" means a business that is independently owned and operated, has total gross receipts of not more than ten million dollars ($10,000,000) averaged over a three-year period, or employs no more than ninety-nine (99) persons on a full-time basis;

(D) "Tennessee service-disabled veteran-owned business" means a service-disabled veteran-owned business that is a continuing, independent, for-profit business located in this state that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled veterans. In the case of a

business solely owned by one (1) service-disabled veteran and such person's spouse, is at least fifty percent (50%) owned and controlled by the service-disabled veteran or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veterans and whose management and daily business operations are under the control of one (1) or more service-disabled veterans; and

(E) "Woman-owned business" means a woman-owned business that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more women; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women.

(3) The chief procurement officer, in consultation with the head of the state agency, has the authority to resolve the protest. The chief procurement officer shall have no longer than sixty (60) calendar days from receipt of a protest to resolve the protest. The final determination of the chief procurement officer shall be given in writing and submitted to the protestor and the protest committee, and the comptroller of the treasury. If the chief procurement officer fails to resolve the protest within sixty (60) calendar days, the protesting party may request that the protest committee meet to consider the protest.

(4) If a protest is not resolved by mutual agreement within sixty (60) calendar days, the protesting party may request the matter be considered at a meeting with the protest committee. The request for consideration before the protest committee shall be made in writing within seven (7) calendar days from the date of the chief procurement officer's final determination or within seven (7) calendar days following the chief procurement officer's failure to resolve the protest within sixty (60) calendar days after receipt of the protest.

(e) Prior to the award of a contract, respondents who have protested may submit to the chief procurement officer a written petition for stay of award. Such stay shall become effective upon receipt by the state. The state shall not proceed further with the procurement process or with the award of the contract until the protest has been resolved in accordance with this section, unless the protest committee makes a written determination that continuation of the procurement process or the award of the contract without delay is necessary to protect substantial interests of the state. It shall be the responsibility of the chief procurement officer, with the assistance of the procuring agency, to seek such a determination by the protest committee. The chief procurement officer shall provide the minutes of the protest proceedings to each committee member and to the comptroller of the treasury and shall post the final determination within fifteen (15) business days to the single public procurement web site.

(f) Nothing in this section shall be construed to require a contested case hearing as set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The protesting party must exhaust all administrative remedies provided in this section prior to the initiation of any judicial review of the protest.

(g) Should a protest be received by the state subsequent to a contract being

completely executed pursuant to a procurement process, the Tennessee claims commission has exclusive jurisdiction to determine all monetary claims against the state, including, but not limited to, claims for the negligent deprivation of statutory rights pursuant to § 9-8-307(a)(1)(N).

(h) Protests appealed to the chancery court from the protest committee shall be by common law writ of certiorari. The scope of review in the proceedings shall be limited to the record made before the protest committee and shall involve only an inquiry into whether the protest committee exceeded its jurisdiction, followed an unlawful procedure, or acted illegally, fraudulently, or arbitrarily without material evidence to support its action.

12-3-601. Cost or pricing data.

(a) A contractor who makes a contract with the state under this chapter shall, except as provided in subsection (c), submit cost or pricing data, and shall certify that, to the best of its knowledge and belief, the cost of pricing data submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:

(1) The pricing of any contract awarded pursuant to sole source procurement authority pursuant to § 12-3-504, where the total contract price is expected to exceed an amount established by the procurement commission; or

(2) The pricing of any change order or contract modification which is expected to exceed an amount established by the procurement commission.

(b) Any contract, change order, or contract modification under which a certificate is required shall contain a provision that the price to the state, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

(c) The requirements of this section need not be applied to contracts when:

(1) The contract price is based on adequate price competition;

(2) The contract price is based on established catalogue prices or market prices;

(3) Contract prices are set by law or regulation; or

(4) It is determined in writing in accordance with regulations promulgated by the procurement commission that the requirements of this section may be waived, and the reasons for such waiver are stated in writing.

12-3-602. Right to inspect plant or place of business and audit books and records.

(a) The state may, at reasonable times, and subject to regulation of the procurement commission, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the state.

(b) The state may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data are required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment

under the contract, unless a shorter period is otherwise authorized in writing.

(c) The state shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract other than a firm fixed-price contract, to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing. All contracts after July 1, 2013, shall include a provision with this statutory requirement and the provision cannot be amended or removed without the written consent of the comptroller of the treasury.

12-3-603. Regulations regarding cost principles.

The chief procurement officer shall propose regulations for approval by the procurement commission setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs; provided, that if a written determination is made by the chief procurement officer to justify such action, such cost principles may be modified by contract and reported to the comptroller of the treasury.

12-3-701. Procurement of goods and services through a solicitation process in which a limitation of liability is authorized.

(a) The chief procurement officer, pursuant to policies or rules and regulations of the procurement commission, may authorize the procurement of goods and services through a solicitation process in which a limitation of liability is authorized by the chief procurement officer and set forth in the documents initiating the solicitation process. Such procurement may be undertaken only in accordance with rules and regulations describing the circumstances in which such procurement may be permitted and what types of limitations of liability may be allowed.

(b)(1) The rules and regulations, as presented to the procurement commission by the chief procurement officer, may describe the circumstances in which such procurement may be permitted and the types of limitations of liability to be allowed. The chief procurement officer may not authorize limitation of the liability of a contractor to an amount less than two (2) times the value of the contract unless the chief procurement officer determines, and the comptroller of the treasury approves, that:

(A) Allowing the limitation of liability is necessary to prevent harm to the state from failing to obtain the goods or services sought, or from obtaining the goods or services at a higher price, if the state refused to allow a limitation of liability as long as all respondents are offered the same opportunity as provided in the solicitation;

(B) The limitations and any alternative contract language are commercially reasonable in light of the risks to the state created by the type of goods or services purchased and the purposes for which they will be used; and

(C) The state shall not agree to limit the liability of any contractor for intentional torts, criminal acts, or fraudulent conduct.

(2) The rules and regulations shall also allow the chief procurement officer to authorize negotiation of a limitation on a contractor's liability with comptroller of the treasury approval in circumstances when the applicable procurement process has failed to provide a qualified respondent.

(c) Notwithstanding the foregoing or any other law to the contrary, the chief procurement officer and the comptroller of the treasury shall permit a limitation of liability to an amount not less than two (2) times the maximum liability under the contract. The limitation of liability shall not apply to intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death. If the chief procurement officer determines that it is necessary to protect the interests of the state to increase the limitation of liability to an amount greater than that authorized under this subsection (c), the chief procurement officer, comptroller of the treasury and the commissioner of finance and administration may increase the limitation of liability of the contractor to an amount in excess of two (2) times the value of the contract.

(d) The purpose of this section is to limit the monetary damages recoverable by the state in a claim or legal action against its contractor. This section shall not be construed to authorize any further limitation on the legal rights of the state, and shall not constitute a waiver of sovereign immunity of the state, and shall not authorize a cause of action against the state in any jurisdiction.

12-3-801. Specifications and scopes of work to permit open and competitive soliciting.

Whenever possible, all procurement specifications and scopes of work for goods and services to be purchased by the central procurement office or state agencies shall be worded or designed to permit open and competitive soliciting for the supplying of the goods or services to which they apply and all proprietary specifications and scopes of work shall be developed in accordance with rules of the central procurement office approved by the procurement commission.

12-3-802. Adoption and application of standard specifications and scopes of work.

It is the duty of all state agencies to furnish to the chief procurement officer recommended specifications for all goods and services required and to be required by such state agencies. It is the duty of the chief procurement officer to canvas the recommended specifications and either approve or modify the standard specifications and scopes of work so recommended, subject to the policy and criteria of the procurement commission. All standard specifications and scopes of work shall remain on file in the central procurement office and shall be posted on the central procurement office's web site. Each standard specification adopted for any good or service shall fit, insofar as possible, the requirements of the majority of the state agencies that use the same.

12-3-803. Changes and additions to standard specifications.

After the approval and adoption of standard specifications in the manner provided in § 12-3-802, changes in, alterations to, modifications of, or additions to such standard specifications may be made in accordance with rules or

policy of the central procurement office as approved by the procurement commission.

12-3-804. Standard specifications preferred — Procedure for exceptions.

The chief procurement officer shall make use of standard specifications whenever practicable. Goods and services purchased without standard specifications shall be made in accordance with policies and criteria established by the procurement commission.

12-3-805. Requisition of goods and services for which no standard adopted.

Whenever any department, institution, or agency of state government requisitions any goods or services for which a standard specification has not been adopted and approved, it shall be accompanied by or contain a recommended specification for such goods or services.

12-3-806. Specifications for office goods — Biennial report.

(a) Whenever the chief procurement officer determines it to be advantageous, then specifications for office goods to be purchased by the state agencies shall be worded or designed so as to permit remanufactured office goods to be eligible for purchase. Such specifications may provide that remanufactured office materials, supplies and equipment be comparable in use and quality to new or currently manufactured office materials, supplies and equipment.

(b) The chief procurement officer shall prepare and submit to the governor, the speakers of the senate and the house of representatives, the chairs of the committees on government operations, and the procurement commission, a biennial report concerning the purchase of remanufactured office goods. Such report shall include the amount and frequency of such purchases, the cost savings realized by the state as a result of such purchases, and any remaining issues or areas for improvement.

12-3-807. Standard specifications for lubricating motor oil — Authorized purchases — List of businesses distributing re-refined or recycled oil.

(a) Standard specifications adopted for lubricating motor oil for competitive solicitations to be let by the central procurement office, or by the appropriate purchasing agencies for any political subdivision of the state, shall be prescribed to include re-refined or recycled lubricating motor oil. Such specifications may exclude re-refined or recycled lubricating motor oil for circumstances or equipment that require specialized treatment, upon submission of documented evidence to the procurement commission or the appropriate purchasing agency of the political subdivision to substantiate each such claim for exclusion.

(b) Standard specifications adopted for lubricating motor oil for competitive solicitations to be let by any state agency or by any political subdivision of the state, shall be prescribed to include re-refined or recycled lubricating motor oil. Such specifications may exclude re-refined or recycled lubricating motor oil for circumstances or equipment that require specialized treatment, upon submis-

sion of documented evidence to the appropriate departmental, institutional or agency head to substantiate each such claim for exclusion. The requirements of this section shall not be construed to prohibit such state agency from purchasing and contracting for the purchase of such re-refined or recycled lubricating motor oil through the central procurement office or through the appropriate local purchasing agency.

(c) Any nonprofit corporation receiving funding from the state or contracting with any department, institution, or agency of state government or political subdivision of the state to provide services to the public, shall be authorized to purchase and contract for the purchase of such re-refined or recycled lubricating motor oil as provided in this section through the central procurement office under this chapter or through the appropriate local purchasing agency.

(d)(1) The central procurement office shall compile and publish a list of business entities that commercially distribute re-refined or recycled lubricating motor oil that complies with the standard specifications adopted by the central procurement office pursuant to this section. The central procurement office shall make such list available to the various entities and political subdivisions of state government. The central procurement office shall mail such list to the chief executive of each county and each municipality.

(2) Prior to accepting competitive responses for a contract concerning lubricating motor oil, a county or municipality shall notify each business entity on the central procurement office's list of relevant facts concerning such proposed contract.

12-3-808. Specifications for purchases of chemical products.

(a) Specifications for purchases of chemical products pursuant to this chapter shall require that the manufacturer of the chemical products create and maintain a material safety data sheet (MSDS) for such chemical products on the national MSDSSEARCH repository or the manufacturer's web site so that the information can be accessed by means of the Internet. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is freely accessible to the public. In lieu of posting a MSDS on MSDSSEARCH, a respondent shall include the manufacturer's universal resource locator (URL) for their MSDS in the response proposal or purchase order.

(b) The chief procurement officer shall post on the chief procurement officer's web site the URL for MSDSSEARCH.

12-3-901. Short title.

This part shall be known as and may be cited as the "Life Cycle Cost and Procurement Act of 1978."

12-3-902. Part definitions.

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

(1) "Energy efficiency standard" means a performance standard which prescribes the relationship of the energy use of a product to its useful output of services;

(2) "Major energy-consuming product" means any article so designated by the chief procurement officer in consultation with the central procurement

office staff;

(3) "Political subdivision" means any city, town, municipality or county within the state; and

(4) "State procurement commission" means the commission established as set forth in title 4, chapter 56.

12-3-903. Policy of state.

It is hereby declared to be the policy of the state and its political subdivisions to use the life cycle costs of commodities as developed and disseminated by the federal government when purchased by the state or its political subdivisions where feasible as provided in this part.

12-3-904. Purchases to be made according to energy efficiency standards.

The chief procurement officer, to the maximum extent feasible, shall determine which commodities and products purchased by the state may be purchased according to energy efficiency standards based on rules and regulations, policies, and procedures approved by the procurement commission.

12-3-905. Energy efficiency standards to be adopted — Equipment, appliances, lighting and heating and cooling products and systems to be Energy Star qualified — Future contracts — Guidelines.

(a) The chief procurement officer, in consultation with the central procurement office staff, shall adopt rules and regulations approved by the procurement commission relative to energy efficiency standards for major energy-consuming products to be procured by the state.

(b) When federal energy efficiency standards exist, the procurement commission, in consultation with the department of general services, shall, where feasible, adopt standards at least as stringent as the federal standards.

(c) For the purpose of implementing this part only, the central procurement office shall advise and consult with the chief procurement officer as an ex officio member.

(d) All future office equipment, appliances, lighting and heating and cooling products and systems purchased by and for state agencies shall be Energy Star qualified; provided, that such Energy Star qualified products and systems are commercially available.

(e) Existing purchasing contracts for all state agencies that do not provide as options Energy Star qualified office equipment, appliances, lighting and heating and cooling products and systems shall not be renewed upon expiration. All future contracts for state agencies shall provide as options Energy Star qualified office equipment, appliances, lighting and heating and cooling products and systems.

(f) The central procurement office, in consultation with the department of finance and administration, shall establish and publish guidelines providing direction to all state agencies regarding implementation of this section.

12-3-906. Life cycle costs used in purchase of major energy-consuming products.

When energy efficiency standards are established, the procurement commis-

sion shall adopt rules requiring life cycle costs to be used by the chief procurement officer in contracting for major energy-consuming products. In determining life cycle costs, the procurement commission and the chief procurement officer may consider the acquisition cost of the product, the energy consumption and the projected cost of energy over the useful life of the product, and the anticipated resale or salvage value of the product.

12-3-907. Energy efficiency standards and life cycle costs to be used by political subdivisions.

Except when private act or state law prohibits, every political subdivision shall adopt and incorporate in its procurement policies energy efficiency standards and life cycle costing employed by the state in its procurement policies.

12-3-908. Action by aggrieved party to void executory contract for purchase of commodities.

(a) Executory contracts for the purchase of commodities by a political subdivision included in this part shall be voidable by the circuit courts upon the bringing of an action by an aggrieved party.

(b) The court may void the contract upon the showing by the aggrieved party that:

(1) The party is a seller of the commodity;

(2) The party is doing business in the state;

(3) The commodity to be sold has an energy efficiency rating and life cycle cost lower than the commodity contracted for by the purchaser;

(4) The purchaser is a political subdivision, and the standard for the commodity has been adopted for one (1) year by the procurement commission and has not been incorporated or adopted by the political subdivision; and

(5) The aggrieved party is ready, willing and able, without any other legal constraints, to sell the commodity to the purchaser.

12-3-909. Assistance in development of energy efficiency standards.

The chief procurement officer shall provide technical assistance to aid in the development or implementation of energy efficiency standards for procurement policies to political subdivisions that request assistance.

12-3-910. Cooperation among state and local agencies.

The appropriate state agencies shall cooperate and coordinate their efforts in the development and implementation of energy efficiency standards for procurement policies to the fullest extent possible with the Tennessee municipal league, the municipal technical advisory service, the county technical advisory service, the Tennessee county services association, and any other appropriate state or local agency or group.

12-3-911. Adoption of more stringent energy efficiency standards by political subdivisions.

Nothing in this part shall be construed to prohibit the adoption of an energy efficiency standard by a political subdivision when that standard has not been adopted by rules of the procurement commission, or where the standard

proposed to be adopted by the political subdivision is more stringent than the standard adopted by the rules of the procurement commission.

12-3-912. Administrative procedures.

The Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall apply to this part.

12-3-1001. Register — Prerequisite for respondents.

No person, firm or corporation shall be considered for contract award by the central procurement office under this chapter or under the rules and regulations established by the central procurement office, unless and until such person, firm, or corporation makes proper application to the central procurement office, as prescribed by rule or policy approved by the procurement commission, to be placed upon the permanent register of respondents. The central procurement office shall establish and maintain the register under and in compliance with the rules and regulations adopted by the procurement commission.

12-3-1002. Application for qualification as respondents.

All such applications by prospective respondents shall contain:

(1) A verified statement by the applicant disclosing and setting forth the types or classes of goods or services which the applicant desires to furnish and is able to furnish to the state or any state agency;

(2) A statement disclosing whether such applicant will furnish such goods or services as a manufacturer, dealer, agent, distributor, factor, or otherwise; and

(3) Such other information as may be required by the central procurement office to establish the ability of the applicant to perform any future undertaking for the state.

12-3-1003. Permanent mailing list of respondents.

The central procurement office shall establish and maintain from the permanent register of respondents a permanent mailing list, which shall include the names and mailing addresses of all interested respondents.

12-3-1004. Distributing and posting solicitations and responses electronically.

Notwithstanding any provision of law, rule or regulation to the contrary, the central procurement office may satisfy any requirement for mailing by distributing solicitations electronically and posting solicitations to the central procurement office Internet web site. In addition, the central procurement office may receive responses electronically. In order to assure the fullest possible participation of small businesses and minority-owned businesses, the central procurement office shall not require such small businesses and minority-owned businesses to receive or respond to solicitations electronically.

12-3-1101. Short title.

Sections 12-3-1101 — 12-3-1108 shall be known and may be cited as the

"Tennessee Minority-Owned, Woman-Owned and Small Business Procurement and Contracting Act."

12-3-1102. Part definitions.

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

(1) "Department" means the department of general services;

(2) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(A) African American, a person having origins in any of the black racial groups of Africa;

(B) Hispanic, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(C) Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or

(D) Native American, a person having origins in any of the original peoples of North America;

(3) "Minority-owned business" means a minority-owned business that is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background;

(4) "Procurement and contracting" means the procurement of equipment, supplies, personal services, professional services, consulting services, construction contracts, and architectural and engineering services;

(5) "Small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in this state and has total gross receipts of not more than ten million dollars ($10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis;

(6) "State agency" means any department, office, institution of higher education, board, commission, or any other state agency that receives state funds;

(7) "Tennessee service-disabled veteran" means any person who served honorably on active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service-connected, meaning that such disability was incurred or aggravated in the line of duty in the active military, naval or air service;

(8) "Tennessee service-disabled veteran-owned business" means a service-disabled veteran-owned business that is a continuing, independent, for profit business located in this state that performs a commercially useful function, and:

(A) Is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled veterans;

(B) In the case of a business solely owned by one (1) service-disabled veteran and such person's spouse, is at least fifty percent (50%) owned and controlled by the service-disabled veteran; or

(C) In the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veterans and whose management and daily business operations are under the control of one (1) or more service-disabled veterans;

(9) "Tennessee small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars ($10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis; and

(10) "Woman-owned business" means a woman-owned business that is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one or more women; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women.

12-3-1103. Criteria and standards for eligibility.

(a) The procurement commission is authorized to adopt rules and regulations establishing criteria and standards for minority-owned, woman-owned, Tennessee service-disabled veteran-owned and Tennessee small businesses that are eligible to be included under this part. Such rules and regulations shall include methods by which eligibility can be verified and the business deemed certified.

(b) Such criteria and standards for eligibility shall include, but not be limited to, the number of employees, the total gross receipts or annual sales volume, including ownership and control.

(c) The maximum number of employees and the maximum dollar value of a small business under such rules and regulations may vary from industry to industry to the extent necessary to reflect the differing characteristics of any relevant factors of each particular industry.

(d) The governor's office of diversity business enterprises shall implement and administer a certification program and publish a directory of businesses certified as Tennessee small businesses and diversity business enterprises.

(e) Any business desiring to be certified as a Tennessee small business or diversity business enterprise shall make application to the governor's office of diversity business enterprises on an application as prescribed by such office.

12-3-1104. Active solicitation of bids and proposals required.

(a)(1) All state agencies are required to actively solicit bids and proposals for equipment, supplies, personal services, professional services, consulting services, construction contracts, and architectural and engineering services from a minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business in order to strive to obtain a fair proportion of procurements from any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business.

(2) The amount of fair proportion shall be recommended annually by the governor's office of diversity business enterprises to the procurement commission for its review and approval. In annually determining such amount of

fair proportion, the procurement commission shall establish, based on the recommendation of the governor's office of diversity business enterprises a separate amount of fair proportion for each of the four (4) subcategories of minority-owned businesses set forth within § 12-3-1102: woman-owned, Tennessee service-disabled veteran-owned businesses and small businesses. Nothing in this part shall be construed as establishing any mandatory goal or quota with respect to minority-owned business, woman-owned business, service-disabled veteran-owned business, or small businesses.

(b) Procurements shall not be deemed to be from either minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business if the business with which such contracting is done is owned by or is under the controlling interest of another business which exceeds the limitations of § 12-3-1103. No minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business to which a contract has been awarded shall subcontract any portion of such contract with any business which exceeds the limitations of § 12-3-1103 and continue to maintain eligibility under this part without express approval of the chief procurement officer.

(c) As used in subsection (a), "actively solicit bids and proposals" may include contacting the governor's office of diversity business enterprises; reviewing compiled directories of a minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business; purchasing publication of notices within newspapers of general circulation or through electronic media; and inviting any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business to submit bids or to obtain information pertaining to the submission of bids.

12-3-1105. Design and implementation of procedures.

The departments of general services, finance and administration, transportation and economic and community development, and the state building commission shall cooperate with the governor's office of diversity business enterprises in the design and implementation of procedures for the identification of any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business, the selection for bid and proposal lists and the monitoring of procurements from minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business.

12-3-1106. Diversity business program director — Annual goals for contracting with businesses.

(a) The chief procurement officer, as director of the governor's office of diversity business enterprises, shall appoint a diversity business program director to work in conjunction with the departments of general services, finance and administration, transportation, economic and community development and the state building commission to:

(1) Compile and maintain a comprehensive list of any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business by cooperating with both governmental and private sector entities in locating potential sources for various products and services;

(2) Assist any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business in complying with state

procurement and contracting procedures and requirements;

(3) Examine requests from state agencies for the purchase of goods or services to help determine which solicitations may offer increased opportunities for any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business; and

(4) Make recommendations to appropriate state agencies for the simplification of procurement and contract specifications and terms in order to increase the opportunities of participation by any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business.

(b) All state agencies shall fully cooperate with the governor's office of diversity business enterprises and shall provide staff support and any other assistance upon request of the chief procurement officer. This cooperation specifically includes, but is not limited to, establishing and striving to achieve annual state agency level internal goals for minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business contracting. In establishing and striving to achieve these annual goals, each agency shall work closely with the governor's office of diversity business enterprises. Each agency shall provide as requested to the governor's office of diversity business enterprises periodic reports on upcoming procurement and contract opportunities and on the level of participation by minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business in that agency's procurements and contracts.

12-3-1107. Annual report.

(a) The chief procurement officer shall annually report, on or before each December 31, to the governor and to each member of the general assembly concerning the awarding of purchases to minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business and the total value of awards made during the preceding fiscal year under this part. The chief procurement officer shall also include in such annual report:

(1) The number of solicitations of minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business by category;

(2) The number of responses received from minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business by category; and

(3) The dollar amount of purchases awarded to such businesses by category.

(b) In annually reporting the information on any minority-owned business, woman-owned business, service-disabled veteran-owned business, or small business, based upon information provided by vendors, the chief procurement officer shall, in a separate section of the report, indicate the number of businesses solicited within each of the four (4) subcategories enumerated within § 12-3-1102, the number of responses received from each of the four (4) subcategories enumerated within § 12-3-1102, and the total number and dollar amount of all purchases awarded within each of the four (4) subcategories enumerated within § 12-3-1102. For purposes of evaluation, the report shall also indicate the total number and dollar amount of all purchases by all state agencies during the reporting period.

12-3-1108. Preference to in-state meat producers by departments and agencies.

All departments, agencies and institutions of state government that purchase meat, meat food products or meat by-products, as defined in § 53-7-202, with state funds shall give preference to producers located within the boundaries of this state when awarding contracts or agreements for the purchase of such meat or meat products, so long as the terms, conditions and quality associated with the in-state producers' proposals are equal to those obtainable from producers located elsewhere.

12-3-1109. Preference to in-state meat producers by schools.

All public education institutions using state funds to purchase meat, meat food products, or meat by-products, as defined in § 53-7-202, shall give preference in awarding contracts or agreements for the purchase of such meat or meat products to producers located within the boundaries of this state so long as the terms, conditions and quality associated with the in-state producers' proposals are equal to those obtainable from producers located elsewhere.

12-3-1110. Preference to in-state coal mining companies.

Notwithstanding any provision of law to the contrary, all state agencies, departments, boards, commissions, institutions, institutions of higher education, schools and all other state entities shall purchase coal mined in this state if such coal is available at a delivered price that is equal to or less than coal mined outside the state.

12-3-1111. Preference to in-state natural gas producers.

Notwithstanding any provision of law to the contrary, all state agencies, departments, boards, commissions, institutions, institutions of higher education, schools and all other state entities shall purchase natural gas produced from wells located in the state if such gas is available at a price which is equal to or less than natural gas produced from wells located outside the state, transportation costs taken into account.

12-3-1112. Governor's office of diversity business enterprises — Purpose — Small business liaison representative — Study of opportunities.

(a) There is created the governor's office of diversity business enterprises to administer this part. All positions, resources and functions of the governor's office of diversity business enterprises existing within the department of general services shall be transferred to the procurement office on October 1, 2011.

(b) The office of diversity business enterprises shall assist small businesses and businesses owned by minorities and women to develop into viable, successful businesses. This work shall include assisting these businesses to compete successfully for the state's expenditures for goods and services.

(c) Each state agency shall designate a staff person as a small business liaison representative to the governor's office of diversity business enterprises to coordinate the agency's efforts to utilize Tennessee small businesses and diversity business enterprises in their procurement and contracting

opportunities.

(d) After appointment of the chief procurement officer, such officer, in consultation with the department of general services and the department of economic and community development, shall study opportunities available to Tennessee small businesses and diversity business enterprises in state contracting and the potential effect of enhancing such opportunities through utilization of monetary allowances. It is the legislative intent that such study shall, insofar as possible, assess the impact on Tennessee small businesses and diversity business enterprises that would have occurred if monetary allowances of varying amounts had been available. Further, it is the legislative intent that such study shall estimate the costs to the state that would have resulted from such monetary allowances.

(e) The small business advocate within the office of the comptroller of the treasury shall be qualified by training or relevant and recent experience in administering programs to encourage and enhance economic opportunities for small businesses, woman-owned businesses and minority-owned businesses. At least annually, the advocate shall attend training or other specialized instruction to enhance understanding of the particular obstacles impeding woman-owned and minority-owned businesses from normal entry into the economic mainstream. Such training shall be provided by the governor's office of diversity business enterprises in the normal course of business as part of the regular training program for state agencies. When the advocate position is filled by reassigning a current employee, such employee shall receive the requisite training prior to assuming the advocate duties.

12-3-1113. Preference to goods produced or grown in this state, including agricultural products.

(a) Notwithstanding any other law to the contrary, all departments and agencies making purchases of goods, including agricultural products, shall give preference to those produced or grown in this state or offered by Tennessee respondents as follows:

(1) Goods produced in this state or offered by Tennessee respondents shall be given equal preference if the cost to the state and quality are equal; and

(2) Agricultural products grown in this state shall be given first preference and agricultural products offered by Tennessee respondents shall be given second preference, if the cost to the state and quality are equal.

(b) If goods, including agricultural products, produced or grown in this state or offered by Tennessee respondents are not equal in cost and quality to other products, then goods, including agricultural products, produced or grown in other states of the United States shall be given preference over foreign products if the cost to the state and quality are equal.

(c) As used in this section:

(1) "Agricultural products" includes textiles and other similar products; and

(2) "Tennessee respondents" means a business:

(A) Incorporated in this state;

(B) That has its principal place of business in this state; or

(C) That has an established physical presence in this state.

(d) The commission and all state agencies making purchases of vegetation for landscaping purposes, including plants, shall give preference to Tennessee vegetation native to the region if the cost to the state is not greater and the

quality is not inferior.

(e) All departments and agencies procuring services shall give preference to services offered by a Tennessee respondent if:

(1) The services meet state requirements regarding the service to be performed and expected quality; and

(2) The cost of the service does not exceed the cost of other similar services of similar expected quality that are not offered by a Tennessee respondent.

12-3-1201. Purchases for local governmental units.

(a) The central procurement office may, upon request, purchase goods and services for any county, city, municipality, special district, school district, other local governmental unit of the state, or quasi-governmental entity organized under a city, municipality, or county. The purchases shall be made on the same terms and under the same rules and regulations as now provided for the purchase of goods and services by the central procurement office. The cost of any purchase made pursuant to this section shall be borne by the local governmental unit concerned. The central procurement office has the power to promulgate all rules and regulations necessary for the operation of this section, subject to the approval of the procurement commission.

(b) It is the intent of this section that the central procurement office advise local governments of the benefits to be derived from the use of the purchasing procedures authorized herein. Where any local or private act, charter, or general law requires that a local governmental unit purchase by competitive procurement method, the local unit of government may, notwithstanding the local or private act, charter, or general law, purchase, without public advertisement or competitive soliciting, under the provisions of contracts or price agreements entered into by the central procurement office.

(c) To the extent permitted by federal law or regulations, local governments may make purchases of goods, except motor vehicles, or services included in federal general service administration contracts or other applicable federal open purchase contracts either directly or through the appropriate state agency; provided, that no purchase under this section shall be made at a price higher than that which is contained in the contract between the general services administration and the vendor affected.

(d)(1) Except as provided in subdivision (d)(5), when any local or private act, charter, or general law requires that a local governmental unit purchase by competitive soliciting, the local unit of government may, notwithstanding the local or private act, charter, or general law, purchase, without public advertisement or competitive soliciting, any item from local sources if such item is available for purchase under the provisions of contracts or price agreements entered into by the central procurement office, and such item is available at the same or lower cost from such local sources. This subsection (d) shall apply only in cases where the local governmental entity is not permitted to purchase from an existing contract established by the central procurement office. Any item purchased locally must be of equal or better specifications than the item under the competitive contract.

(2) The legislative body of a county by resolution or a municipality by ordinance may establish and adopt a program to encourage participation in government purchasing programs by minority-owned businesses. Such programs may include set-aside provisions which conform to federal law.

(3) This subsection (d) shall be permissive relative to sellers of motor vehicles.

(4) This subsection (d) shall have no effect unless it is approved by a two-thirds (⅔) vote of the local legislative body and such approval is filed with the comptroller of the treasury.

(5) This subsection (d) does not apply in a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), or in a county having a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census.

12-3-1202. Purchase of secondhand articles or equipment by municipalities or counties.

(a) Notwithstanding any charter, private act, or general law requirements, any municipality or any county may purchase used or secondhand articles consisting of goods, equipment, materials, supplies, or commodities from any federal, state, or local governmental unit or agency without public advertisement and competitive soliciting.

(b) Notwithstanding any charter, private act, or general law requirements, any municipality or any county may purchase used or secondhand articles consisting of goods, equipment, materials, supplies, or commodities from any private individual or entity without public advertisement and competitive soliciting as long as the purchasing government documents the general range of value of the purchased item through a listing in a nationally recognized publication or through an appraisal by a licensed appraiser, and the price is not more than five percent (5%) higher than the highest value of the documented range.

12-3-1203. Purchases for other local governmental units.

(a) Any municipality, county, utility district, or other local governmental unit of the state may, upon request, purchase supplies, equipment, and services for any other municipality, county, utility district, or other local governmental unit.

(1) The purchases shall be made on the same terms and under the same rules and regulations as regular purchases of the purchasing entity.

(2) The cost of the purchase shall be borne by the local government for which the purchase was made.

(3) Where the local government making the request is required to advertise and receive bids, it shall be sufficient for those purposes that the purchasing entity comply only with its own purchasing requirements.

(b)(1) Any local education agency (LEA) may purchase equipment under the same terms of a legal bid initiated by any other LEA in Tennessee.

(2)(A) Any LEA may purchase directly from a vendor the same equipment at the same price and under the same terms as provided in a contract for such equipment entered into by any other LEA.

(B) Any LEA which purchases equipment under this subsection (b) shall directly handle payment, refunds, returns, and any other communications or requirements involved in the purchase of the equipment without involving the LEA which originated the contract. The originating LEA shall have no liability or responsibility for any purchases made by another LEA under a contract which the originating LEA negotiated and

consummated.

(c)(1) Any municipality, county, utility district, or other local governmental unit of this state may purchase supplies, goods, equipment, and services under contracts or price agreements entered into by any other local governmental unit of this state. Such purchases shall be made on the same terms and under the same rules and regulations as regular purchases of the purchasing entity. Any local governmental unit that purchases supplies, goods, equipment, or services under this section shall directly handle payment, refunds, returns, and any other communication or requirements involved in the purchase without involving the local governmental unit that originated the contract. The originating local governmental unit shall have no liability or responsibility for any purchases made by another local governmental unit under a contract that the originating local governmental unit negotiated and consummated. Where any local or private act, charter, or general law requires that a local governmental unit purchase by competitive bidding, the local governmental unit may, notwithstanding the local or private act, charter, or general law, purchase without public advertisement or competitive bidding in accordance with this section.

(2) This subsection (c) shall not apply to:

(A) Purchases of new or unused motor vehicles, unless the motor vehicles are manufactured for a special purpose as defined in § 12-3-1208; and

(B) Purchases related to any transportation infrastructure project, including, but not limited to, projects for the construction or improvement of streets, highways, bridges, tunnels, or any roadway related facility.

12-3-1204. Competitive solicitation.

(a) As used in this section, "municipality," "county," and "metropolitan government" apply only to municipalities, counties, and metropolitan governments with a population greater than one hundred fifty thousand (150,000), according to the 1990 federal census or any subsequent federal census.

(b) In any municipality, county, or metropolitan government, notwithstanding any charter provision, private act, or other provision of law, a purchase, lease, or lease-purchase must be preceded by competitive solicitation only if the purchase, lease, or lease-purchase exceeds ten thousand dollars ($10,000).

(c) When the charter of a metropolitan government requires that purchases be made on the basis of competitive bidding, notwithstanding subsection (b), "competitive soliciting" for the metropolitan government means:

Dollar Amount of Purchase	Requirement
$1,000 to $3,999.99	Three (3) verbal (including telephone) quotations when possible.
$4,000 to $9,999.99	Three (3) written (including fax) quotations when possible.
$10,000 and above	Competitive sealed bids or proposals for non-emergency and non-proprietary product purchases.

(d) Any municipality, county, or metropolitan government may retain present competitive soliciting requirements and may retain the right to establish, in accordance with charter amendment or private act, whichever is applicable, different dollar amount thresholds and different requirements for competitive

bids and competitive proposals from those established in this section.

(e) Nothing in this section shall be deemed to expressly or impliedly repeal § 7-52-117, or any part of that section.

(f) This section shall not supersede or be construed to supersede § 12-3-1201.

12-3-1205. Cooperative purchasing agreements.

(a) Any municipality, county, utility district, or other local government of the state may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any supplies, services or construction with one (1) or more other local governments in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between local governments. Where the participants in a joint or multi-party contract are required to advertise and receive bids, it shall be sufficient for those purposes that the purchasing entity comply only with its own purchasing requirements.

(b)(1) Notwithstanding any other law to the contrary, any municipality, county, utility district, or other local government of the state may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any goods, supplies, services, or equipment with one (1) or more other governmental entities outside this state, to the extent the laws of the other state permit the joint exercise of purchasing authority, in accordance with an agreement entered into between or among the participants; provided, such goods, supplies, services, or equipment were procured in a manner that constitutes competitive bidding and were advertised, evaluated, and awarded by a governmental entity and made available for use by other governmental entities.

(2) A municipality, county, utility district, or other local government of the state may participate in a master agreement by adopting a resolution accepting the terms of the master agreement. If a participant in a joint or multi-party agreement is required to advertise and receive bids, then it will be deemed sufficient for those purposes that the purchasing entity or the entity that procured the bid complied with its own purchasing requirements. The participant shall acquire and maintain documentation that the purchasing entity or entities that procured the bid complied with its own purchasing requirements.

(3) The powers conferred by this section are in addition and supplemental to the powers conferred by any other law, and any limitations imposed by this section shall not affect powers conferred by any other law.

(4) This subsection (b) shall not apply to:

(A) Purchases of new or unused motor vehicles, unless the motor vehicles are manufactured for a special purpose as defined in § 12-3-1208; or

(B) Purchases of construction, engineering or architectural services, or construction materials.

(c) The chief procurement officer may collect information from municipalities, counties, utility districts, or any other local government unit concerning the type, cost, quality, and quantity of commonly used goods, supplies, services, or equipment being procured under cooperative purchasing agreements. The chief procurement officer may make available all such information to any

municipality, county, utility district, or other local government unit upon request.

12-3-1206. Transfer of assets for fire protection.

(a) Notwithstanding any other law, a county, municipality and metropolitan government may transfer the ownership of assets for fire protection purchased through or with the proceeds of federal, state or local grants to volunteer fire departments within such county, municipality or metropolitan area; provided, that such volunteer fire departments are registered as non-profit organizations with the office of the secretary of state.

(b) This section shall have no effect in a county, municipality or metropolitan area unless it is approved by the appropriate legislative body.

12-3-1207. Authorization to use competitive sealed proposals.

(a) Any municipality may use competitive sealed proposals to purchase goods and services rather than competitive sealed bids when the municipal governing body, acting under the restrictions and requirements of this section and a procurement code adopted by the governing body, determines that the use of competitive sealed bidding is either not practicable or not advantageous to the municipality. In actual emergencies caused by unforeseen circumstances, such as natural or human-made disasters, delays by contractors, delays in transportation, or unanticipated volume of work, purchases through competitive sealed proposals may be made without specific authorizing action of the municipal governing body. A record of any emergency purchase shall be made by the person or body authorizing the emergency purchase, specifying the amount paid, the items and services purchased, from whom the purchase was made, and the nature of the emergency. A report of the emergency purchase through competitive sealed proposals containing all relevant information shall be made as soon as possible by the person or body authorizing the purchase to the municipal governing body.

(b) In the decision to use competitive sealed proposals, the governing body shall follow a procurement code, which shall be adopted by the municipality by ordinance before purchases may be made under this section. The code shall contain criteria for purchasing through competitive sealed proposals and procedures consistent with this section.

(c) The procurement code shall provide that competitive sealed proposals may be used only when qualifications, experience, or competence are more important than price in making the purchase and:

(1) When there is more than one (1) solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution; or

(2) When there is no readily identifiable solution to a purchasing issue and the competitive sealed proposals will assist in identifying one (1) or more solutions.

(d) The municipal technical advisory service of the University of Tennessee's institute for public service, in conjunction with the comptroller of the treasury's office, shall develop a model procurement code that may be adopted by any municipality to guide the governing body and purchasing agent in making purchases through requests for competitive sealed proposals. The model procurement code shall contain provisions allowing an aggrieved respondent to protest the intended award to another respondent if the protest is filed within seven (7) calendar days after the intended award is announced. The protest

shall be filed with and decided by the municipal governing body.

(e) Adequate public notice of the request for competitive sealed proposals shall be given in the same manner provided for competitive sealed bids.

(f) Competitive sealed proposals shall be opened in a manner that avoids disclosure of contents to competing respondents during the negotiation. The proposals shall be open for public inspection after the intent to award the contract to a particular respondent is announced.

(g) The request for competitive sealed proposals shall state the relative importance of price and other evaluation factors.

(h) As provided in the request for competitive sealed proposals and in the procurement code, discussions may be conducted for clarification to assure full understanding of, and responsiveness to, the solicitation requirements with responsible respondents who submit proposals determined by the purchasing agent to be reasonably susceptible of being selected. These respondents shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before the intent to award to a particular respondent is announced to obtain the best and final offers. In conducting discussions, the purchasing agent and other municipal personnel may make no disclosure to any respondent of any information derived from proposals submitted by competing respondents.

(i) The award shall be made to the responsible respondent whose proposal the governing body determines is the most advantageous to the municipality, taking into consideration price and the evaluation factors set out in the request for competitive sealed proposals. No other factor may be used in the evaluation. The purchasing agent shall place in the contract file a statement containing the basis on which the award was made.

(j)(1) A governmental utility board shall have the same rights and be subject to the same restrictions and requirements as apply to a municipal governing body under this section. The governmental utility board shall adopt a procurement code by resolution before purchases may be made under this section.

(2) For purposes of subdivision (j)(1), a "governmental utility board" includes a board of public utilities created under title 7, chapter 52, and shall also include any other county, metropolitan government or municipal utility board or supervisory body created by private act, home rule charter or local ordinance or resolution.

(3) Nothing in this subsection (j) shall otherwise modify or impair any limitations on the contracting power of the governmental utility boards as the powers may exist under applicable law.

12-3-1208. Reverse auctions by local governmental units.

(a)(1) As used in this section, "local governmental unit" means and includes a county, city, municipality, special district, utility district, school district, authority or any other entity created or appointed by a local governmental unit of the state.

(2) For a purchase of goods or services, any local governmental unit may purchase goods or services through a competitive reverse auction process that allows offerors to bid on specified goods or services electronically and adjust bid pricing during a specified time period.

(3) This section shall not apply to:

(A) Construction services, other than those relating to maintenance, repairs and renovations, the cost of which is less than twenty-five thousand dollars ($25,000);

(B) Architectural or engineering services;

(C) New or unused motor vehicles, unless the motor vehicles are manufactured for a special purpose. "Manufactured for a special purpose" includes, but is not limited to, school buses, buses with capacity exceeding twenty-two (22) passengers used to provide public transportation, garbage trucks, fire trucks or ambulances; or

(D) New or unused construction equipment.

(b) The purchasing agent of the local governmental unit shall solicit bids by public notice inserted at least once in a newspaper of countywide circulation five (5) calendar days prior to the first day bids can be submitted. If the county in question has no newspaper with countywide circulation, the purchasing agent shall post notices on a public bulletin board in the county courthouse. The purchasing agent may also solicit bid requests by mail to prospective bidders or by distributing invitations to bid electronically via email or by posting on the entity's web site. All invitations to bid shall include a general description of the goods or services to be purchased and information related to the time and place of opening bids.

(c) In order to assure the fullest possible participation of small businesses and minority-owned businesses, a local governmental unit shall provide a mechanism either through the local governmental unit itself or through a third party, if a third party source is utilized to conduct the reverse auction, to facilitate participation of small and minority-owned businesses in a reverse auction.

(d) All bid responses received shall be made available publicly at the time and place identified in the invitation to bid. An award shall be made to the offeror determined to be the lowest responsible and responsive bidder at the close of the specified bid period. Each bid, with the name and address of the bidder, shall be recorded and the names of the bidders, the amounts of their bids and the name of the successful bidder shall, after the award, be open to public inspection. All bids should be preserved for a period of sixty (60) months.

(e)(1) Prior to the initial utilization of a reverse auction, the local governmental unit shall file a plan with the comptroller of the treasury. The plan shall indicate the technology to be utilized, whether a third party source will be utilized to conduct a reverse auction or auctions, a description of policies and procedures related to the implementation of the reverse auction process and documentation of internal controls that will ensure the integrity of the process;

(2) The plan shall also indicate whether such a process will be implemented within the existing operating resources of the local governmental unit or indicate prior approval of the governing body of the local governmental unit if additional operating resources are needed.

12-3-1209. Requirements of professional persons or groups providing legal services, fiscal agent, financial advisor, advisory or consultant services covered by this part.

(a) Contracts by counties, cities, metropolitan governments, towns, utility districts and other municipal and public corporations of the state, for legal

services, fiscal agent, financial advisor or advisory services, educational consultant services, and similar services by professional persons or groups of high ethical standards, shall not be based upon competitive solicitations, but shall be awarded on the basis of recognized competence and integrity. The prohibition against competitive soliciting in this section shall not prohibit any entity enumerated from interviewing eligible persons or entities to determine the capabilities of such persons or entities.

(b) Any person providing fiscal agent, financial advisor or advisory services to any county, city, metropolitan government, town, utility district or other municipal or public corporation shall perform such services only pursuant to a written contract, specifying the services to be rendered, the costs therefore, and the expenses to be covered under such contract.

(c) Any person providing fiscal agent, financial advisor or advisory services to any county, city, metropolitan government, town, utility district or other municipal or public corporation of this state who desires to bid, directly or indirectly, on any bonds, notes or other obligations of such entity sold pursuant to public, competitive sale shall receive in writing prior to the sale the permission of such entity to respond either directly or indirectly on the obligations.

(d) For the purposes of this section, "providing fiscal agent, financial advisor or advisory services" means a relationship that exists when a person renders or enters into an agreement to render financial advisory or consultant services to or on behalf of an issuer with respect to a new issue or issues of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such issue or issues, for a fee or other compensation or in expectation of such compensation for the rendering of such services. Notwithstanding the foregoing provisions of this subsection (d), a financial advisory relationship shall not be deemed to exist when, in the course of acting as an underwriter, a municipal securities dealer renders advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning a new issue of municipal securities.

(e)(1) Contracts by counties, cities, metropolitan governments, towns, utility districts and other municipal and public corporations of the state for information management services, including, but not limited to, computer program analyst services shall, upon approval by a two-thirds (⅔) vote of the governing body, be procured through a request for proposals process. The request for proposals process will invite prospective respondents to participate and will indicate the service requirements and the factors used for evaluating the proposals. Such factors shall include cost, the vendor's qualifications and any additional factor or factors deemed relevant by the procuring entity for the procurement of the service. Cost shall not be the sole criterion for evaluation. The contract for such services will be awarded to the best evaluated, responsive respondent.

(2) This subsection (e) shall only apply in counties having a population of not less than four hundred seventy thousand (470,000) nor more than four hundred eighty thousand (480,000), according to the 1980 federal census or any subsequent federal census.

12-3-1210. Authority of the Tennessee board of regents system and the University of Tennessee system.

Notwithstanding any law to the contrary, the Tennessee board of regents

system and the University of Tennessee system are authorized to:

(1) Develop procedures to apply the policy of § 12-3-701 to their constituent institutions, including procedures describing the circumstances in which limitations below two (2) times the value of the contract are permitted and procedures for obtaining permission from the appropriate official of the Tennessee board of regents or the University of Tennessee;

(2) Purchase software for use restricted solely to academic teaching or research upon terms that may limit the contractor's liability or warranties; provided, that in no event, shall the liability of the contractor be limited for intentional torts, criminal acts or fraudulent conduct; and

(3) Acquire software or services, materials, supplies and equipment free or at nominal cost upon terms that may limit the contractor's liability or warranties; provided, that in no event, shall the liability of the contractor be limited for intentional torts, criminal acts or fraudulent conduct.

12-3-1211. Contracts for the purchase of personal computers and related devices by public school teachers.

(a) The central procurement office may establish contracts for the purchase of personal computers and related devices by public school teachers for use outside the classroom. The computers and related devices shall not be purchased with public funds, but shall be paid for and owned by teachers individually. The contracts shall be established in accordance with this chapter.

(b) The central procurement office shall promulgate rules to regulate the purchases authorized in this section. The rules shall be approved by the procurement commission.

12-4-101. Personal interest of officers prohibited.

(a)(1) It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be directly interested in any such contract. "Directly interested" means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling interest" includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation. This subdivision (a)(1) shall not be construed to prohibit any officer, committee person, director, or any person, other than a member of a local governing body of a county or municipality, from voting on the budget, appropriation resolution, or tax rate resolution, or amendments thereto, unless the vote is on a specific amendment to the budget or a specific appropriation or resolution in which such person is directly interested.

(2)(A) Subdivision (a)(1) shall also apply to a member of the board of directors of any not-for-profit corporation authorized by the laws of Tennessee to act for the benefit or on behalf of any one (1) or more counties, cities, towns and local governments pursuant to title 7, chapter 54 or 58.

(B) Subdivision (a)(2)(A) shall not apply to any county with a metropolitan form of government and having a population of four hundred thousand (400,000) or more, according to the 1980 federal census or any

subsequent federal census.

(b) It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges such officer's interest. "Indirectly interested" means any contract in which the officer is interested but not directly so, but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county.

(c)(1) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality and whose employment predates the member's initial election or appointment to the governing body of the county or municipality may vote on matters in which the member has a conflict of interest if the member informs the governing body immediately prior to the vote as follows: "Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents." The vote of any such member having a conflict of interest who does not so inform the governing body of such conflict shall be void if challenged in a timely manner. As used in this subdivision (c)(1), "timely manner" means during the same meeting at which the vote was cast and prior to the transaction of any further business by the body.

(2) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality and whose employment began on or after the date on which the member was initially elected or appointed to serve on the governing body of the county or municipality shall not vote on matters in which the member has a conflict of interest.

(3)(A) In the event a member of a local governing body of a county or a municipality has a conflict of interest in a matter to be voted upon by the body, such member may abstain for cause by announcing such to the presiding officer.

(B)(i) Any member of a local governing body of a municipality who abstains from voting for cause on any issue coming to a vote before the body shall not be counted for the purpose of determining a majority vote.

(ii) This subdivision (c)(3)(B) shall in no way be construed to apply to any county having a metropolitan form of government and having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census.

(d) This section shall apply to a member of the board of directors or officer of any nonprofit corporation required under § 8-44-102 to conduct all meetings of its governing body as open meetings.

12-4-103. Bidding by state employees prohibited.

(a) It is hereby declared unlawful for any state official or employee to bid on, sell, or offer for sale, any merchandise, equipment or material, or similar commodity, to the state of Tennessee during the tenure of such official's or employee's office or employment, or for six (6) months thereafter, or to have any

interest in the selling of the same to the state.

(b) A person violating subsection (a) shall be liable to the state for any and all sums paid out by the state, together with interest at the rate of eight percent (8%) per annum, growing out of any such transaction.

(c) A violation of subsection (a) is a Class E felony.

12-4-104. Penalty for unlawful transactions.

(a) It is an offense for a public employee or former public employee having official responsibility for procurement transactions to accept employment with any respondent to a solicitation or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one (1) year from the cessation of employment by the public body unless the employee or former employee provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that respondent to a solicitation or a contractor.

(b) It is an offense for any person who, for compensation, prepares a solicitation for or on behalf of a public body to:

(1) Submit a response to a solicitation for that procurement or any portion thereof; or

(2) Disclose to any respondent to a solicitation information concerning the procurement that is not available to the public. A public body may permit such person to submit response to a solicitation for that procurement or any portion thereof if the public body determines that the exclusion of the person would limit the number of potential qualified respondents to a solicitation in a manner contrary to the best interest of the public body.

(c)(1) It is an offense for a contractor or subcontractor to demand or receive from any of the contractor's or subcontractor's suppliers or for a contractor to demand or receive from the contractor's subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

(2) It is an offense for a subcontractor or supplier to make or offer to make any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

(3) It is an offense for any person to demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

(4) If a contractor, subcontractor, supplier or any person violates any provision of this subsection (c), the amount thereof shall be conclusively presumed to have been included in the price of the contract, subcontract or order and ultimately borne by the public body and shall be recoverable from both the maker and recipient. Recovery from one (1) offending party shall not preclude recovery from other offending parties.

(d)(1) A contract entered into in violation of this section on or after October 1, 2011, is void. A contract that is otherwise void under this section may continue in effect until an alternative can be arranged when:

(A) Immediate termination would result in harm to the public health or welfare; and

(B) The continuation is approved by the commission.

(2) Approval of continuation of contracts under this subsection (d) shall be given for the minimum period necessary to protect the public health or welfare. The chief procurement officer and the comptroller of the treasury shall be notified immediately upon a determination that a contract violates this subsection (d).

(e)(1) As used in this section, the term "public officer" means an individual who is elected or appointed to serve or represent a public agency, other than an employee or independent contractor of a public agency.

(2) A public officer or employee is involved in administering a contract if the officer or employee oversees the performance of the contract or has authority to make decisions regarding the contract or to interpret the contract.

(3) A public officer or employee is involved in making a contract if such officer or employee participates in the development of specifications or terms or in the preparation or award of the contract. A public officer is also involved in making a contract if the board, commission, or other body of which such officer is a member takes action on the contract, whether or not the public officer actually participates in that action, unless the contract is approved under an exception to this section under which the public officer is allowed to benefit and is prohibited from voting.

(4) A public officer or employee derives a direct benefit from a contract if the person or the person's spouse:

(A) Has more than a ten-percent ownership or other interest in an entity that is a party to the contract;

(B) Derives any income or commission directly from the contract; or

(C) Acquires property under the contract.

(f) A public officer or employee is not involved in making or administering a contract solely because of the performance of ministerial duties related to the contract.

(g) A violation of this section is a Class A misdemeanor.

12-4-106. Prohibition against receiving rebates, gifts, money or anything of value — Conflicts of interest.

(a) No officer or employee of the central procurement office, nor any member of the procurement commission, nor any head of any state department, institution or agency, nor any employee of any state department, institution or agency charged with the responsibility of initiating requisitions, shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract for the purchase of goods or services for the state may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation, or contract for future rewards or compensation.

(b)(1) It is a conflict of interest for any person or any company with whom such person is an officer, a director, or an equity owner having an ownership interest greater than one percent (1%) to bid on any public contract for goods or services for a governmental entity if such person or the immediate family member of such person is a member of a board or commission having responsibility for letting or approving such contract.

(2) As used in this subsection (b):

(A) "Governmental entity" means any state agency, authority, board, commission, department, or office within the executive, legislative or

judicial branch of state government or any autonomous state agency, authority, board, commission, department, office, or institution of higher education; and

(B) "Immediate family" means spouse, dependent children or stepchildren, or relatives related by blood or marriage.

12-4-107. Contracts for professional services.

(a) All contracts for architectural, engineering and construction services procured by any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall meet the following requirements:

(1) In the procurement of architectural and engineering services, the selection committee or procurement official may seek qualifications and experience data from any firm or firms licensed in this state and interview such firm or firms. The selection committee or procurement official shall evaluate statements of qualifications and experience data regarding the procurement of architectural and engineering services, and shall conduct discussions with such firm or firms regarding the furnishing of required services and then shall select the firm deemed to be qualified to provide the services required.

(2) The selection committee or procurement official shall negotiate a contract with the qualified firm for architectural and engineering services at compensation which the selection committee or procurement official determines to be fair and reasonable to the government. In making such determination, the selection committee or procurement official shall take into account the estimated value of the services to be rendered, the scope of work, complexity and professional nature thereof.

(3) Should the selection committee or procurement official be unable to negotiate a satisfactory contract with the firm considered to be qualified, at a price determined to be fair and reasonable, negotiations will continue with other qualified firms until an agreement is reached.

(4) A city, county or utility district having a satisfactory existing working relationship for architectural or engineering services may expand the scope of the services; provided, that they are within the technical competency of the existing firm, without exercising this section.

(b) Construction of correctional facility projects of the state, a county, city, metropolitan government or town shall meet the following requirements:

(1) For construction of local correctional facility projects or additions to existing correctional facility buildings, the state, a county, city, metropolitan government or town may contract for construction management agent or advisor services. Construction management services that are provided for a fee and that involve preconstruction and construction administration and management services shall be deemed as professional services and may be performed by a qualified person licensed under the Contractors Licensing Act of 1994, compiled in title 62, chapter 6. Construction management services are to be procured for each project through a written request for proposals process through advertisement. The procurement and advertisement shall be in accordance with laws, regulations, and ordinances of the county, city, metropolitan government or town. The written request for proposals process shall invite prospective proposers to participate and shall

indicate the service requirements and the factors used for evaluating the proposals. These factors shall include the construction manager's qualifications and experience on similar projects, qualifications of personnel to be assigned to the project, fees and costs or any additional factors deemed relevant by the procuring entity for procurement of the service. Cost shall not be the sole criterion for evaluation. The contract for such services shall be awarded to the best qualified and responsive responder. A construction manager is prohibited from undertaking actual construction work on a project over which the construction manager coordinates or oversees the planning, bid or construction phases of the project, except in instances when bids have been solicited twice and no bids have been submitted. If the construction manager can document that a good faith effort was made in each bid solicitation to obtain bids and no bids were received, then the construction manager may perform the construction work at a price agreed upon by the construction manager, the architect and the owner of the project. A governing body, at its own discretion, may perform work on the project with its own employees and may include the coordination and oversight of this work as part of the services of the construction manager. Sealed bids for actual construction work shall be opened at the bid opening and the names of the contractors and their bid amounts shall be announced.

(2) Construction management agent or advisor services for the construction of local correctional facility projects or additions to existing correctional facility buildings in accordance with subdivision (b)(2)(A) may be performed by:

(A) A general contractor licensed in this state pursuant to the Contractors Licensing Act of 1994, compiled in title 62, chapter 6; provided, that none of such services performed by a general contractor involve any of the services exempt from the requirements of title 62, chapter 6 as "normal architectural and engineering services" under § 62-6-102(4)(B) or (C), unless, with regard to the performance of any services defined as normal architectural and engineering services, the general contractor is also licensed as an architect or engineer under title 62, chapter 2; or

(B) An architect or an engineer licensed pursuant to title 62, chapter 2; provided, that none of such services performed by an architect or engineer involve any of the services required to be performed by a contractor within the definition of "contractor" under § 62-6-102, unless with regard to the performance of any services included within the definition of contractor, the architect or engineer is also licensed as a contractor under the Contractors Licensing Act of 1994, compiled in title 62, chapter 6.

(3) Construction work that is under the coordination and oversight of a construction manager shall be procured through competitive bids.

12-4-109. Preplanning of capital investment projects account.

There is hereby established an account to be known as the capital preplanning account, which shall be the funding source for the preplanning of all capital projects undertaken by the departments and agencies of the state. The account shall be reimbursed for the preplanning cost of a capital investment project from the appropriations allocated to that project. Any funds remaining in the account at the end of any fiscal year shall be carried over to the succeeding fiscal year and expended only for the purpose specified in this section.

12-4-110. Energy-related services.

Contracts by counties, cities, metropolitan governments, towns, utility districts and other municipal and public corporations of this state for energy-related services that include both engineering services and equipment, and have as their purpose the reduction of energy costs in public facilities, shall be awarded on the same basis as contracts for professional services.

12-4-111. Standard prototype design for correctional facilities.

(a) For purposes of this part, "state standard prototype," means a design on which a state correctional facility is based so that the design can be used by the state to construct similar buildings at different sites at a future time. The state building commission may designate state standard prototypes from design documents which were originally prepared for the exclusive use of the state. The state architect shall place the appropriate designation on a document which is determined to be a state standard prototype.

(b) Prior to the re-use of documents for a project in which the original architect or engineer is not also involved, the state shall remove and obliterate from all documents the identification of the original architect or engineer, including name, address, professional seal or stamp, and signature. The architect or engineer who is involved in a state standard prototypical re-use project shall affix such architect's or engineer's seal or stamp to such design, and shall be solely responsible for all documents on which such architect's or engineer's seal or stamp is placed, and shall hold the original architect or engineer harmless from suits by third parties.

(c) The original architect or engineer shall not be liable for injury or damage resulting from re-use of plans, designs, details, specifications or construction documents of a state standard prototype by the state or third parties, if the original architect or engineer is not also involved in the re-use project. It is the intent of this section that the architect or engineer who seals or stamps a prototype is legally responsible only for that set of documents on which such architect's or engineer's seal or stamp is placed.

12-4-112. State agency contract guidelines.

(a) As used in this section, "governmental entity" means any county, municipality, metropolitan government, town, utility district, or other municipal or public corporation of this state.

(b) Notwithstanding any other provision of law or private act to the contrary, a governmental entity may enter into multi-year contracts for painting and other maintenance of water storage tanks and appurtenant facilities procured through a request for proposals process. The request for proposals process shall invite prospective proposers to participate and shall indicate the service requirements and the categories used for evaluating the proposals, together with the relative weight of each category. Such categories shall include such factors as qualifications, experience on similar projects, availability of workers, technical approach, minority participation, cost, and any additional factor or factors deemed relevant by the procuring governmental entity. Cost shall not be the sole criterion for evaluation. Proposers shall be given at least thirty (30) days from public advertisement of the request for proposals to consider the evaluation factors set forth in the solicitation

documents before submitting proposals. The contract shall be awarded to the best proposer who meets the minimum required qualifications, using the evaluation criteria set forth in this subsection (b).

(c) Any governmental entity may, at its option, require such multi-year contracts to be competitively bid.

12-4-113. Deadline for addenda and questions concerning bid documents.

(a) If a statute, ordinance, resolution, rule or regulation mandates the use of competitive bidding of any kind or nature whatsoever, by any state agency, county or municipal corporation, then, notwithstanding such law, ordinance, resolution, rule or regulation, no addenda within less than forty-eight (48) hours of the bid opening date, excluding weekends and legal holidays designated in § 15-1-101, shall be permitted unless the bid deadline is extended for a reasonable time as determined by the purchasing agent, which shall not be less than forty-eight (48) hours excluding weekends and legal holidays designated in § 15-1-101, to allow for any necessary changes to the bid documents and to allow bidders to resubmit their bids accordingly.

(b) Any questions concerning the bid documents must be received by the designer no less than ninety-six (96) hours before bid opening date.

(c) This section shall not apply to the department of transportation contracts or any state or local agency contracts funded in whole or in part with state or federal highway funds.

12-4-114. No conflict of interest allowed.

(a)(1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.

(2) No public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

(A) The employee is contemporaneously employed by a respondent to a solicitation or contractor involved in the procurement transaction;

(B) The employee, the employee's spouse, or any member of the employee's immediate family holds a position with a respondent to a solicitation, a contractor involved in the procurement transaction, such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent (5%);

(C) The employee, the employee's spouse, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or

(D) The employee, the employee's spouse, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a respondent to a solicitation or contractor involved in the procurement transaction.

(3) A public officer or employee who will derive a direct benefit from a contract with the public agency the officer or employee serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the

contract.

(4) No public officer or employee may solicit or receive any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency the officer or employee serves.

(b) As used in this section, "immediate family" means spouse, dependent children or stepchildren, or relatives related by blood or marriage.

12-4-115. [Transferred.]

12-4-116. [Transferred.]

12-4-117. [Repealed.]

12-4-118. [Repealed.]

12-4-119. [Repealed.]

12-4-120. [Transferred.]

12-4-121. [Transferred.]

12-4-122. [Transferred.]

12-4-123. [Transferred.]

12-4-124. [Transferred.]

12-4-125. [Transferred.]

12-4-126. [Transferred.]

12-4-201. Contractors bonds — Securities or cash in lieu of bonds.

(a)(1) No contract shall be let for any public work in this state, by any city, county or state authority, until the contractor shall have first executed a good and solvent bond to the effect that the contractor will pay for all the labor and materials used by the contractor, or any immediate or remote subcontractor under the contractor, in such contract, in lawful money of the United States. The bond to be so given shall be for twenty-five percent (25%) of the contract price on all contracts in excess of one hundred thousand dollars ($100,000). Where advertisement is made, the condition of the bond shall be stated in the advertisement; provided, that §§ 12-4-201 — 12-4-206 shall not apply to contracts of one hundred thousand dollars ($100,000) or less.

(2) A good and solvent bond means a bond written by a surety or insurance company listed on the United States department of the treasury financial management service list of approved bonding companies which is published annually in the federal register at the time the bond is provided in accordance with this part.

(3) No bond shall be deemed to be a good and solvent bond if it is written for an amount which is in excess of the amount indicated as approved for

sureties or insurance companies by the United States department of the treasury financial management service list published at the time the bond is provided.

(4) Any surety bond written for a public work project shall be written by a surety or insurance company that is licensed and authorized to do business as a surety or insurer in this state.

(5) Any bond which is not in accordance with this section shall be null and void as against the public policy of this state and shall be rejected by the building or bidding authority.

(b)(1) No contract let for any public work in this state, by any city, county or state authority, shall require a contractor or subcontractor to obtain any bond including, but not limited to, payment bonds, performance bonds and bid bonds, from a particular surety, agent, broker or producer.

(2) No public officer, whose duty it is to let or award contracts, shall require a contractor or subcontractor to obtain any bond, including, but not limited to, payment bonds, performance bonds and bid bonds, from a particular surety, agent, broker or producer.

(3) This subsection (b) shall not preclude a city, county, or state authority from requiring that a contractor or subcontractor obtain a bond, including payment bonds, performance bonds and bid bonds, from a properly licensed surety, agent, broker or producer.

(c) In lieu of the bond required by subsection (a), the following securities or cash may be substituted at the percentage rate required for such bond:

(1) United States treasury bonds, United States treasury notes and United States treasury bills;

(2) General obligation bonds of the state of Tennessee;

(3) Certificates of deposit or evidence of other deposits irrevocably pledged from:

(A) A state or national bank having its principal office in Tennessee;

(B) A state or federal savings and loan association having its principal office in Tennessee;

(C) Any state or national bank, that has its principal office located outside this state and that maintains one (1) or more branches in this state which are authorized to accept federally insured deposits; or

(D) Any state or federal savings and loan association that has its principal office located outside this state and that maintains one (1) or more branches in this state which are authorized to accept federally insured deposits;

(4) A letter of credit from a state or national bank or state or federal savings and loan association having its principal office in Tennessee; 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 which are authorized to accept federally insured deposits. The terms and conditions of any letter of credit shall be subject to the approval of the public official named in the contract. The form of such letter of credit shall be provided by the bank or savings and loan association and may be based on either the Uniform Commercial Code, title 47, chapter 5, or the ICC Uniform Customs and Practice for Documentary Credits (UCP 500). All letters of credit shall be accompanied by an authorization of the contractor to deliver retained funds to the bank issuing the letter; or

(5) Cash; provided, that, where cash is posted, the contracting authority shall pay to the contractor interest at the same rate that interest is paid on

funds invested in a local government investment pool established pursuant to § 9-4-704, for the contract period.

12-4-320. [Repealed.]

12-4-401. Short title. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

This part shall be known as the "Prevailing Wage Act of 1975."

12-4-402. Part definitions. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

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

(1) "Building contractor" means any contractor engaged in a "state construction project," as herein defined, other than highway contractors;

(2) "Commission" means the prevailing wage commission;

(3) "Contractor" means any contractor, subcontractor, person, firm or corporation in the business of erecting, remodeling, altering, repairing, demolishing, or making any additions to any building or buildings, or any construction project for the purpose of building, rebuilding, locating or relocating or repairing any streets, highways or bridges;

(4) "Highway contractor" means any contractor engaged in a state construction project for the purpose of building, rebuilding, locating, or relocating or repairing any streets, highways or bridges;

(5) "Prevailing wage" means the rate of pay as determined according to this part;

(6) "State construction project" means any construction project in an amount in excess of fifty thousand dollars ($50,000) for the purpose of the erecting, remodeling, altering, repairing, demolishing, or making any additions to any building or buildings, or any other type of building and construction work wherein any state funds may be appropriated or expended for such building or construction work; or, irrespective of contract amount, any construction project for the purpose of building, rebuilding, locating, or relocating or repairing any streets, highways or bridges; and

(7) "State contract" means any contractual agreement, written or oral, entered into by any person, firm or corporation with the state of Tennessee for the performance of work on a state construction project.

12-4-403. Establishment and payment of prevailing wage. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

(a) It is hereby declared to be the policy of this state that the prevailing wage rate be determined by defined standards and that such rate be paid workers on all state construction projects.

(b) Any contractor entering into a state contract for the performance of work on state construction projects shall pay not less than the prevailing wage rate for all types and classifications of such work as determined by this part.

12-4-404. Prevailing wage commission. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

(a) There shall be a prevailing wage commission composed of five (5) members, including the commissioner of labor and workforce development, who shall serve as chair, the state architect, and the commissioner of transportation or the commissioner's designee. Two (2) members shall be appointed by the governor who shall serve terms of two (2) years.

(b) The commission has the duty of determining the prevailing wage rate for state construction.

(c) 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.

12-4-405. Determination of prevailing wage. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

For purposes of this part, the prevailing wage rate shall be determined as follows:

(1) Every contractor, as herein defined, in the state of Tennessee, shall have the right to certify, on contracts entered into, to the commission, on or before October 31 in each year that a determination is to be made, the following:

(A) Copies of payroll records for the immediate preceding calendar quarter by area as defined in subdivision (2); and

(B) The numbers of hours worked and the straight time rate per hour paid for such hours in each of the classifications referred to in this part by area as defined in subdivision (2) for the immediate preceding calendar quarter;

(2)(A) For purposes of calculating the prevailing wage rate for workers employed by building contractors, the state shall be deemed to consist of twelve (12) areas composed as follows: Area 1, Shelby County; Area 2, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, Obion, Tipton and Weakley counties; Area 3, Benton, Carroll, Chester, Decatur, Hardin, Henderson, Henry, Houston, Humphreys, McNairy, Perry, Stewart and Wayne counties; Area 4, Madison County; Area 5, Cheatham, DeKalb, Dickson, Macon, Montgomery, Robertson, Smith, Sumner, Trousdale, Williamson and Wilson counties; Area 6, Bedford, Cannon, Coffee, Franklin, Giles, Grundy, Hickman, Lawrence, Lewis, Lincoln, Marion, Marshall, Maury, Moore, Rutherford and Warren counties; Area 7, Anderson, Campbell, Clay, Cumberland, Fentress, Jackson, Morgan, Overton, Pickett, Putnam, Roane, Scott and White counties; Area 8, Hamilton County; Area 9, Bledsoe, Blount, Bradley, Loudon, McMinn, Meigs, Monroe, Polk, Rhea, Sequatchie, Sevier and Van Buren counties; Area 10, Knox County; Area 11, Carter, Claiborne, Cocke, Hancock, Grainger, Greene, Hamblen, Hawkins, Jefferson, Johnson, Sullivan, Unicoi, Union and Washington counties; and Area 12, Davidson County;

(B) For purposes of calculating the prevailing wage rate for workers employed by highway contractors, the state shall be deemed to consist of one (1) statewide area;

(3)(A) For purposes of determining the prevailing wage rate for workers employed by building contractors, the commission may issue classifica-

tions of crafts of workers and apprentices, including, but not limited to, the following: air conditioning mechanics; air tool operators (jackhammer, vibrator); boilermakers; bricklayers; carpenters; cement finishers; electricians; elevator constructors; glaziers; iron workers, structural; iron workers, ornamental; iron workers, reinforcing; laborers; lathers; marble setters; air compressors; blade graders; bulldozers; cranes, derricks, draglines; distributors; finishing machinists; firefighter oilers; hoists, one (1) drum; hoists, two (2) drum; mixers, 11s and larger; mixers, smaller than 11s; mason tenders; mortar mixers; painters, brush; painters, structural steel; pile driver persons; pipe layers (concrete and clay); plasterers; plasterers' tenders; plumbers; roofers; sheet metal workers; soft-floor layers; steam fitters; stone masons; terrazzo workers; tile setters; welders, receive rate prescribed for craft performing operations to which welding is incidental; truck drivers; motor graders; pile drivers; pumps; rollers; scrapers; shovels; tractors, forty horsepower (40 h.p.) and larger; tractors, less than forty horse power (40 h.p.); and trenching machines;

(B) For purposes of determining the prevailing wage rate for workers employed by highway contractors, the commission may issue classifications of crafts of workers including, but not limited to, the following: bricklayers; iron workers, structural; iron workers, reinforcing; carpenters or leadspersons; cement masons; nozzlepersons or gunpersons (gunite); painters or sandblasters; shovel operators; backhoe operators; crane operators; end loaders; pile driver operators; motor patrols, finish; concrete paver operators; mechanics, Class I; mechanics, Class II; motor patrols (rough); bulldozer or push dozer operators; scraper operators; trenching machine operators; central mixing (asphalt or concrete); tractors, booms and hoists; concrete finishing machines; soil cement machines; asphalt pavers; rollers, high type; spreaders, self propelled; distributors, bituminous; roller, other than finish; tractor, crawler, utility; dozers or loaders, stock piles only; concrete mixers, less than one (1) yard; mulchers or seeders; earth drills; scale operators; tractors, farm; curb machines; ditch pavers; pump operators; concrete saws; guardrail erectors; sign erectors; motor crane drivers; fence erectors; firefighters; asphalt rakers; tract drill operators; concrete edgers; powder persons; form setters, steel rods; air tool operators; mortar mixers; chain saws; pipe layers; concrete rubbers; laborers; flaggers; oilers; welder's helpers; mechanic's helpers; electricians; truck drivers, two (2) and three (3) axles; truck drivers, four (4) and five (5) axles or more or heavy duty off-the-road trucks; welders, receive rate for craft performing operation to which welding is incidental;

(4) The prevailing wage rate for each area specified in subdivisions (2)(A) and (B) shall be determined by calculating the average hourly rate of pay for each classification referred to in subdivisions (3)(A) and (B). The commission shall determine the prevailing wage annually for highway construction and biennially for building construction from the documentation certified to the commission pursuant to subdivision (1). The commission, if it ascertains that current economic conditions warrant, can adjust the final wage determination as developed by the documentation certified to the commission by adding to or subtracting from the determination a percentage factor of not more than six percent (6%), based on the previous year's prevailing wage rates. Such determination shall be effective until the next determination of the prevailing wage rate pursuant to the terms hereof, unless herein

otherwise specifically provided. The prevailing wage rate must be determined pursuant to this part and the failure of any contractor or contractors to provide the documentation referred to in subdivision (1) shall not affect such determination;

(5)(A) The commission shall determine the prevailing wage rate pursuant to the terms of this part and give notice thereof on or before December 1 of each year a determination is to be made. The commission shall give notice of such prevailing wage rate to all contractors who submitted documentation in accordance with subdivision (1) and to any others making written request for such notice. Such notice shall include the time and place of the public hearing required by § 12-4-406. The commission shall take all reasonable steps to verify the survey results submitted to it by contractors pursuant to this part, and may, at any time, after first holding a public hearing thereon, adjust wage rates so that they reflect only survey data which has been verified by the commission;

(B) The prevailing wage commission is urged to continue its efforts to develop an Internet application for the submission of survey forms by contractors and periodically update the general assembly on the progress of such development; and

(6) Until such time as the commission makes a prevailing wage rate determination pursuant to this part, the prevailing wage rate in effect on April 23, 1975, shall be considered to be the prevailing wage rate.

12-4-406. Review of prevailing wage determination. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

(a) The commission shall conduct a public hearing within ten (10) days of the notice required in § 12-4-405. At such public hearing, the commission shall present the documentation provided for in this part other than payroll records, and any other facts upon which the prevailing wage determination was made. Any interested party may present any other facts or documentation material to the determination of the prevailing wage rate at such hearing. Within ten (10) days after such public hearing, the commission shall give notice of its final determination on such prevailing wage rate to all contractors who submitted documentation in accordance with this part and to any others making written request for such notice.

(b) Judicial review of such final determination of the prevailing wage rate shall be in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

12-4-407. Rates set out in specifications. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

Before advertising for bids or entering into any contract for a state construction project, every state agency under whose jurisdiction such work is to be performed shall ascertain from the commission prevailing wage rates for all classifications as herein provided in the areas where the work is to be performed. This schedule of wages shall be attached to and made a part of the specifications for the work, and shall be printed on the bidding blanks and made a part of every contract for the construction of any state construction project.

12-4-408. Wage rates promulgated — Contract provision required. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

After the prevailing wage determination has been made by the commission, the same shall be furnished to all state agencies which may be charged with the responsibility of entering into any state contract, and shall specify what wage rates shall be paid on all classifications of work that may be used by such person, contractor, firm or corporation in carrying out such contractual agreement. In all cases where the commission has established a prevailing rate of wages, the contract executed between any state agency and the successful bidder or contractor shall contain a provision requiring the successful bidder and all of the successful bidder's subcontractors to pay the rate of wages so established. The successful bidder or contractor and all subcontractors shall strictly comply with these provisions of the contract.

12-4-409. Bond for compliance. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

In all cases where any state agency awards a contract for any state construction project under this part, the bond of the contractor or subcontractor shall contain a provision obligating such contractor or subcontractor to a faithful performance of each and every requirement imposed upon such contractor or subcontractor under the terms of this part.

12-4-410. Posting of wage rates. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

Each contractor and subcontractor subject to this part shall post and keep posted in a conspicuous place at the site of the construction work a copy of the prevailing wage rates prescribed in the state contract.

12-4-411. Payroll records of contractors. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

(a) Any person, contractor, firm or corporation who may enter into any state contract shall furnish to the state agency entering into such contractual agreement any necessary forms, papers, payroll copies or any other information that may be required of any such person, contractor, firm or corporation by the state agency to show compliance with this part.

(b) Payroll records shall not be destroyed for one (1) year following the completion of the state construction project.

12-4-412. Breach of contract provisions — Actions against contractors — Advertising and reletting contract. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

The commission or any employee of any contractor or subcontractor whose wages are determined pursuant to this part may maintain an action against any contractor or subcontractor for the breach of any condition of any performance bond given under this part, and, in case of breach of any provision of such bond, the particular state agency which awarded the contract may

advertise the work and relet the contract in the same manner as the original letting.

12-4-413. Delegation of administrative responsibilities. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

The commission may delegate administrative responsibilities conferred hereunder to the department of labor and workforce development.

12-4-414. Inspection of records. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

All records and documentation provided for in this part, other than payroll records, shall be made available for public inspection by the commission and the department of labor and workforce development during normal business hours.

12-4-415. Rules and regulations.

The commission may promulgate such rules and regulations, neither inconsistent nor contradictory with this part, which it deems necessary to effectuate this part.

12-4-401. Short title. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

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

12-4-402. Part definitions. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

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

(1) "Commission" means the prevailing wage commission;

(2) "Highway contractor" means any contractor, subcontractor, person, firm or corporation engaged in a state construction project for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges;

(3) "Prevailing wage" means the rate of pay as determined according to this part;

(4) "State contract" means any contractual agreement, written or oral, entered into by any person, firm or corporation with this state for the performance of work on a state highway construction project; and

(5) "State highway construction project" means any construction project for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges.

12-4-403. Establishment and payment of prevailing wage. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

(a) It is hereby declared to be the policy of this state that the prevailing wage rate be determined by defined standards and that such rate be paid workers on

all state highway construction projects.

(b) Any highway contractor entering into a state contract for the performance of work on state highway construction projects shall pay not less than the prevailing wage rate for all types and classifications of such work as determined by this part.

12-4-404. Prevailing wage commission. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

(a) There shall be a prevailing wage commission composed of five (5) members, including the commissioner of labor and workforce development, who shall serve as chair, the state architect, and the commissioner of transportation or the commissioner's designee. Two (2) members shall be appointed by the governor who shall serve terms of two (2) years.

(b) The commission has the duty of determining the prevailing wage rate for state highway construction.

(c) 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.

12-4-405. Determination of prevailing wage. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

For purposes of this part, the prevailing wage rate shall be determined as follows:

(1) Every highway contractor, as herein defined, in the state of Tennessee, shall have the right to certify, on contracts entered into, to the commission, on or before October 31 in each year that a determination is to be made, the following:

(A) Copies of payroll records for the immediate preceding calendar quarter by area as defined in subdivision (2); and

(B) The numbers of hours worked and the straight time rate per hour paid for such hours in each of the classifications referred to in this part by area as defined in subdivision (2) for the immediate preceding calendar quarter;

(2)(A) [Deleted by 2013 amendment, effective January 1, 2014.]

(B) For purposes of calculating the prevailing wage rate for workers employed by highway contractors, the state shall be deemed to consist of one (1) statewide area;

(3)(A) [Deleted by 2013 amendment, effective January 1, 2014.]

(B) For purposes of determining the prevailing wage rate for workers employed by highway contractors, the commission may issue classifications of crafts of workers including, but not limited to, the following: bricklayers; iron workers, structural; iron workers, reinforcing; carpenters or leadspersons; cement masons; nozzlepersons or gunpersons (gunite); painters or sandblasters; shovel operators; backhoe operators; crane operators; end loaders; pile driver operators; motor patrols, finish; concrete paver operators; mechanics, Class I; mechanics, Class II; motor patrols (rough); bulldozer or push dozer operators; scraper operators; trenching machine operators; central mixing (asphalt or concrete); tractors, booms and hoists; concrete finishing machines; soil cement machines; asphalt pavers; rollers,

high type; spreaders, self propelled; distributors, bituminous; roller, other than finish; tractor, crawler, utility; dozers or loaders, stock piles only; concrete mixers, less than one (1) yard; mulchers or seeders; earth drills; scale operators; tractors, farm; curb machines; ditch pavers; pump operators; concrete saws; guardrail erectors; sign erectors; motor crane drivers; fence erectors; firefighters; asphalt rakers; tract drill operators; concrete edgers; powder persons; form setters, steel rods; air tool operators; mortar mixers; chain saws; pipe layers; concrete rubbers; laborers; flaggers; oilers; welder's helpers; mechanic's helpers; electricians; truck drivers, two (2) and three (3) axles; truck drivers, four (4) and five (5) axles or more or heavy duty off-the-road trucks; welders, receive rate for craft performing operation to which welding is incidental;

(4) The prevailing wage rate for each area specified in subdivisions (2)(A) and (B) shall be determined by calculating the average hourly rate of pay for each classification referred to in subdivisions (3)(A) and (B). The commission shall determine the prevailing wage annually for highway construction from the documentation certified to the commission pursuant to subdivision (1). The commission, if it ascertains that current economic conditions warrant, can adjust the final wage determination as developed by the documentation certified to the commission by adding to or subtracting from the determination a percentage factor of not more than six percent (6%), based on the previous year's prevailing wage rates. Such determination shall be effective until the next determination of the prevailing wage rate pursuant to the terms hereof, unless herein otherwise specifically provided. The prevailing wage rate must be determined pursuant to this part and the failure of any highway contractor or contractors to provide the documentation referred to in subdivision (1) shall not affect such determination;

(5)(A) The commission shall determine the prevailing wage rate pursuant to the terms of this part and give notice thereof on or before December 1 of each year a determination is to be made. The commission shall give notice of such prevailing wage rate to all highway contractors who submitted documentation in accordance with subdivision (1) and to any others making written request for such notice. Such notice shall include the time and place of the public hearing required by § 12-4-406. The commission shall take all reasonable steps to verify the survey results submitted to it by highway contractors pursuant to this part, and may, at any time, after first holding a public hearing thereon, adjust wage rates so that they reflect only survey data which has been verified by the commission;

(B) The prevailing wage commission is urged to continue its efforts to develop an Internet application for the submission of survey forms by highway contractors and periodically update the general assembly on the progress of such development; and

(6) Until such time as the commission makes a prevailing wage rate determination pursuant to this part, the prevailing wage rate in effect on April 23, 1975, shall be considered to be the prevailing wage rate.

12-4-406. Review of prevailing wage determination. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

(a) The commission shall conduct a public hearing within ten (10) days of the notice required in § 12-4-405. At such public hearing, the commission shall

present the documentation provided for in this part other than payroll records, and any other facts upon which the prevailing wage determination was made. Any interested party may present any other facts or documentation material to the determination of the prevailing wage rate at such hearing. Within ten (10) days after such public hearing, the commission shall give notice of its final determination on such prevailing wage rate to all highway contractors who submitted documentation in accordance with this part and to any others making written request for such notice.

(b) Judicial review of such final determination of the prevailing wage rate shall be in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

12-4-407. Rates set out in specifications. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

Before advertising for bids or entering into any contract for a state highway construction project, every state agency under whose jurisdiction such work is to be performed shall ascertain from the commission prevailing wage rates for all classifications as herein provided in the areas where the work is to be performed. This schedule of wages shall be attached to and made a part of the specifications for the work, and shall be printed on the bidding blanks and made a part of every contract for the construction of any state highway construction project.

12-4-408. Wage rates promulgated — Contract provision required. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

After the prevailing wage determination has been made by the commission, the same shall be furnished to all state agencies which may be charged with the responsibility of entering into any state contract, and shall specify what wage rates shall be paid on all classifications of work that may be used by such person, highway contractors, firm or corporation in carrying out such contractual agreement. In all cases where the commission has established a prevailing rate of wages, the contract executed between any state agency and the successful bidder or highway contractors shall contain a provision requiring the successful bidder and all of the successful bidder's subcontractors to pay the rate of wages so established. The successful bidder or highway contractors and all subcontractors shall strictly comply with these provisions of the contract.

12-4-409. Bond for compliance. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

In all cases where any state agency awards a contract for any state highway construction project under this part, the bond of the highway contractor or subcontractor shall contain a provision obligating such highway contractor or subcontractor to a faithful performance of each and every requirement imposed upon such highway contractor or subcontractor under the terms of this part.

12-4-410. Posting of wage rates. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

Each highway contractor and subcontractor subject to this part shall post

and keep posted in a conspicuous place at the site of the construction work a copy of the prevailing wage rates prescribed in the state contract.

12-4-411. Payroll records of contractors. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

(a) Any person, highway contractor, firm or corporation who may enter into any state contract shall furnish to the state agency entering into such contractual agreement any necessary forms, papers, payroll copies or any other information that may be required of any such person, highway contractor, firm or corporation by the state agency to show compliance with this part.

(b) Payroll records shall not be destroyed for one (1) year following the completion of the state highway construction project.

12-4-412. Breach of contract provisions — Actions against contractors — Advertising and reletting contract. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

The commission or any employee of any highway contractor or subcontractor whose wages are determined pursuant to this part may maintain an action against any highway contractor or subcontractor for the breach of any condition of any performance bond given under this part, and, in case of breach of any provision of such bond, the particular state agency which awarded the contract may advertise the work and relet the contract in the same manner as the original letting.

12-4-413. Delegation of administrative responsibilities. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

The commission may delegate administrative responsibilities conferred hereunder to the department of labor and workforce development.

12-4-414. Inspection of records. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

All records and documentation provided for in this part, other than payroll records, shall be made available for public inspection by the commission and the department of labor and workforce development during normal business hours.

12-4-415. Rules and regulations.

The commission may promulgate such rules and regulations, neither inconsistent nor contradictory with this part, which it deems necessary to effectuate this part.

12-4-903. Prohibited provisions in bid specifications, project agreements and other documents. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

The state and its political subdivisions, agencies and instrumentalities thereof, when engaged in procuring products or services or letting contracts to

be funded in part or in whole with state funds, shall ensure that no bid specifications, project agreements and other controlling documents, entered into, required or subject to approval by the state, subdivision, agency or instrumentality:

(1) Require bidders, offerors, contractors or subcontractors to enter into or adhere to agreements with one (1) or more labor organizations on the same or related projects;

(2) Discriminate against bidders, offerors, contractors or subcontractors for refusing to become or remain signatories or otherwise adhere to agreements with one (1) or more labor organizations on the same or related construction projects; or

(3) Require any bidder, offeror, contractor or subcontractor to enter into, adhere to or enforce any agreement that requires its employees as a condition of employment to:

(A) Become members of or become affiliated with a labor organization or employee organization of any kind;

(B) Pay dues or fees to a labor organization or employee organization, over an employee's objection, in excess of the employee's share of labor or employee organization costs relating to collective bargaining, contract administration or grievance adjustment; or

(C) Require any bidder, offeror, contractor or subcontractor to pay:

(i) Wages in excess of the wages established by the prevailing wage commission for state highway construction projects in accordance with part 4 of this chapter or the Tennessee occupational wages prepared annually by the department of labor and workforce development, employment security division, labor market information for state building projects; or

(ii) A specific dollar amount for the provision of fringe benefits for employees.

12-4-903. Prohibited provisions in bid specifications, project agreements and other documents. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

The state and its political subdivisions, agencies and instrumentalities thereof, when engaged in procuring products or services or letting contracts to be funded in part or in whole with state funds, shall ensure that no bid specifications, project agreements and other controlling documents, entered into, required or subject to approval by the state, subdivision, agency or instrumentality:

(1) Require bidders, offerors, contractors or subcontractors to enter into or adhere to agreements with one (1) or more labor organizations on the same or related projects;

(2) Discriminate against bidders, offerors, contractors or subcontractors for refusing to become or remain signatories or otherwise adhere to agreements with one (1) or more labor organizations on the same or related construction projects; or

(3) Require any bidder, offeror, contractor or subcontractor to enter into, adhere to or enforce any agreement that requires its employees as a condition of employment to:

(A) Become members of or become affiliated with a labor organization or

employee organization of any kind;

(B) Pay dues or fees to a labor organization or employee organization, over an employee's objection, in excess of the employee's share of labor or employee organization costs relating to collective bargaining, contract administration or grievance adjustment; or

(C) Require any bidder, offeror, contractor or subcontractor to pay:

(i) Wages that exceed:

***(a)** The state's most current prevailing wage scale established pursuant to part 4 of this chapter if the agreement involves a state highway construction project, as defined by § 12-4-402; or*

***(b)** The Tennessee Occupational Wages Report, as defined by § 12-4-907, if the agreement involves a construction project other than a project described in subdivision (3)(C)(i)(a); or*

(ii) A specific dollar amount for the provision of fringe benefits for employees.

12-4-906. Employer to pay employees a wage necessary to meet the federal requirements to obtain federal funds. [Effective on January 1, 2014.]

If compliance with this part by the state and its political subdivisions, agencies and instrumentalities, relative to a specific contract, project, or program would result in the denial of federal funds that would otherwise be available to the state and its political subdivisions, agencies and instrumentalities, then the state or its political subdivisions, agencies or instrumentalities may require a private employer to pay its employees a wage necessary to meet the federal requirements to obtain the federal funds, but only relative to such contract, project or program.

12-4-907. Meaning of the Tennessee occupational wages report. [Effective on January 1, 2014.]

For purposes of this part, Tennessee occupational wages report means the applicable report that is published by the department of labor and workforce development, employment security division.

12-4-1001. Alternative methods for purchasing insurance.

The state treasurer shall investigate alternative methods, including competitive bidding, for purchasing insurance for the use and benefit of the state and its agencies, departments or divisions. The state treasurer shall prepare a plan for purchasing insurance, and shall submit the plan to the board of claims prior to its implementation.

12-4-1002. Establishment of practices and procedures for purchasing insurance.

The state treasurer shall establish accepted practices and procedures to be followed in purchasing insurance under the plan developed under § 12-4-1001. Such practices and procedures shall be subject to the approval of the board of claims.

12-4-1003. State employees and agents — Insurance sales to state prohibited.

All officers, officials, agents or employees of the state and its divisions, departments and agencies are prohibited from bidding, selling or contracting to sell any policy of insurance to the state or its divisions, departments and agencies.

12-4-1004. Insurance on public buildings — Amount required — Deductibles.

All buildings and building contents owned by the state shall be insured for not less than their actual cash value subject to an aggregate deductible of not less than one million five hundred thousand dollars ($1,500,000) and to such individual claim deductible as may be commercially reasonable.

12-4-1005. Insurance on public buildings — Repair or replacement costs

The repair or replacement of damaged or destroyed buildings and building contents shall include engineering and other services necessary for such an insurance program to be paid from the risk management fund created pursuant to § 9-8-109.

12-4-1006. Establishment of policies and procedures for administration of insurance program.

The state treasurer shall establish appropriate policies and procedures governing the administration of the insurance program provided herein, including the allocation of premium and other costs and the payment of losses from the risk management fund created pursuant to § 9-8-109. Such policies and procedures shall be subject to the approval of the board of claims.

12-4-1007. Procedure for obtaining policies — Reporting.

(a)(1) The policy or policies of insurance provided in this part shall be obtained by the state treasurer subject to the approval of the board of claims. Notwithstanding the Surplus Lines Insurance Act, compiled in title 56, chapter 14, part 1, or any other law to the contrary, the state treasurer, with the approval of the board of claims, shall consider proposals from admitted carriers and nonadmitted surplus lines carriers. In order for nonadmitted carriers to be eligible for consideration under this section, at least two (2) admitted carriers must have declined to submit a proposal, and the nonadmitted carriers shall:

(A) Have a minimum A.M. Best financial strength rating of "A-" and an A.M. Best financial size category of no less than "VI", or such other A.M. Best rating as may be established by the board of claims provided that the financial strength rating shall not be less than "A-" and the A.M. Best financial size category shall not be less than "VI"; and

(B) Be a member of an insurance holding company system, as defined in § 56-11-101(b), that has at least one (1) affiliate carrier admitted in this state as a property or casualty insurer.

(2) Should A.M. Best change or amend its rating methodology, then the board of claims shall adopt a minimum rating requirement that is equiva-

lent to the rating as stated in subdivision (a)(1)(A). The state treasurer shall place the insurance directly with the companies without policies being countersigned notwithstanding § 56-2-409.

(b) The state treasurer shall make periodic reports to the fiscal review committee of the general assembly and to the state building commission concerning the operations of the insurance program.

12-7-103. Approval required.

(a) No publication, coming within the jurisdiction of the commissioner of general services as provided by § 12-7-102, shall be printed unless it has been approved in accordance with rules promulgated by the commissioner of general services. Rules set forth by the commissioner of general services shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The commissioner of general services shall require any publication printed to include the number of copies printed.

(c) The commissioner of general services shall not approve any publication that purports to contain a citation to or a reproduction of a duly promulgated agency rule, as defined by the Uniform Administrative Procedures Act, in § 4-5-102, prior to receiving a written statement from the secretary of state or the secretary of state's representative verifying the fact that the rule so cited or reproduced has been duly promulgated and is currently in effect.

(d) A printing authorization number shall be assigned to each publication that has been approved as required by this section. The printing authorization number shall be affixed to the publication adjacent to the identification of the agency responsible for the publication. No printing facility operated by the state shall print any publication, coming within the jurisdiction of the commissioner of general services as provided by § 12-7-102, unless the printing authorization number has been affixed as required by this subsection (d). No contract shall be entered into, nor requisition issued, nor acted upon, by any state department or agency, including, but not limited to, the division of purchasing, for printing of any publication coming within the jurisdiction of the commissioner of general services as provided by § 12-7-102, at any facility, unless the printing authorization number has been affixed as required by this subsection (d). All state contracts or grant agreements, including, but not limited to, all contracts for personal, professional and consultant services entered into under former §§ 12-4-109 and 12-4-110 [repealed], that involve or may involve the printing of any publication, coming within the jurisdiction of the commissioner of general services as provided by § 12-7-102, shall contain a provision whereby the contractor or grantee agrees that no publication shall be printed unless a printing authorization number has been obtained and affixed as required by this section.

(e) Whenever any department, institution or agency of the state government contracts for the printing of a publication coming within the jurisdiction of the commissioner of general services as provided by § 12-7-102, and the publication has not been approved in accordance with rules promulgated by the commissioner of general services, the contract shall be void and of no effect.

12-9-104. Interlocal agreements.

(a)(1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state, including those provided in

§ 6-54-307 or § 68-221-1107(b), may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency. The authority for joint or cooperative action of political subdivisions shall apply to powers, privileges or authority vested in, funded by, and/or under the control of their governing bodies and relative to which the governing bodies may make other types of contracts. No joint or cooperative agreement shall be entered into affecting or relating to the constitutional or statutory powers, privileges or authority of officers of political subdivisions, or of agencies of political subdivisions with a separate governing board and having powers granted by statute independent of the governing body. Notwithstanding any provision of the law to the contrary, any municipality may enter into an agreement with the sheriff, court of general sessions, and the governing body of any county in which it is located to provide for the enforcement of the municipality's ordinances according to §§ 8-8-201(a)(34) and 16-15-501. The agreement between the municipality and the county governing body shall be limited to provide that the cost of such enforcement will be borne by the municipality where the court costs paid over to the county, as provided by § 16-15-501, are not adequate.

(2) Agencies of political subdivisions that have governing boards separate from the governing bodies of the political subdivisions may make agreements for joint or cooperative action with other such agencies and with other public agencies. The power to make joint or cooperative agreements includes any power, privilege or authority exercised or that may be exercised by each of the agencies that is a party to the agreement. Agreements between agencies of political subdivisions that have separate governing boards and other such agencies and agreements between such agencies and public agencies shall substantially conform to the requirements of this chapter. The governing bodies of such political subdivisions shall require agreements made by their agencies pursuant to this chapter to be submitted to the governing body for approval before the agreements take effect.

(b) Any two (2) or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to this chapter. Appropriate action of the governing bodies of the participating public agencies by resolution or otherwise pursuant to law shall be necessary before any such agreement may enter into force.

(c) Any such agreement shall specify the following:

(1) Its duration;

(2) The precise organization, composition and nature of any separate legal or administrative entity or entities created thereby, which may include, but is not limited to, a corporation not-for-profit, together with the powers delegated to such a corporation;

(3) Its purpose or purposes;

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget for such undertaking;

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of

property upon such partial or complete termination; and

(6) Any other necessary and proper matters.

(d) In the event that the agreement does not establish a separate legal entity or entities to conduct the joint or cooperative undertaking, the agreement shall, in addition to the requirements of subdivisions (c)(1)-(6), contain the following:

(1) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented; and

(2) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking.

(e)(1) No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law, except that, to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity or entities created by an agreement made hereunder, those performances may be offered in satisfaction of the obligation or responsibility.

(2)(A) Notwithstanding the Local Government Public Obligations Act of 1986, compiled in title 9, chapter 21, including § 9-21-105 and § 9-21-107 to the contrary, a separate legal or administrative entity, created by interlocal agreement between two (2) or more political subdivisions of the state acting pursuant to this chapter, is not empowered to:

(i) Assess, levy, or collect ad valorem taxes;

(ii) Issue general obligation bonds; or

(iii) Exercise the power of eminent domain.

(B) However, to the extent that the participating political subdivisions possess such powers, the political subdivisions may exercise such powers on behalf and for the benefit of the separate legal or administrative entity.

(f) Financing of joint projects by agreement shall be as provided by law.

12-11-103. Contracts for joint federal-state programs.

(a) The state of Tennessee may enter into joint contractual arrangements with other states and/or the United States to obtain materials and services to carry out the purposes of a federal-state program.

(b) The state of Tennessee may enter into agreements with another state and/or the United States to purchase materials and services to carry out the purposes of a federal-state program. This agreement may be part of a series of the agreements whereas one (1) state or the United States has agreed to serve as a "lead state" and purchase materials and/or services from one (1) or more contractors, and resell these materials and services to the state of Tennessee and other states.

(c) The state of Tennessee may serve as a "lead state" and thus agree to purchase materials and/or services from one (1) or more contractors, and resell some of these materials and services to one (1) or more other states.

(d) No contract authorized under subsections (a)-(c) may be signed unless the contract is for goods and services necessary for a federal-state program, the procurement is legally acceptable under the laws of the federal government and those of all participating states, and unless the procurement has received federal government authorization.

(e) The contracts authorized under subsections (a)-(c) may be entered into with one (1) or more states or the United States and one (1) or more contractors

as defined in § 12-11-102.

(f) Any contract authorized by this section may be negotiated and entered into without regard to the requirements for competitive bidding of chapter 3 of this title and the requirements of former § 12-4-109 [See the Compiler's Notes]. Such exemptions must be approved in writing by the commissioner of the agency of the state of Tennessee authorized to manage the joint federal-state program, the commissioner of finance and administration and the comptroller of the treasury.

13-3-101. Planning regions — Creation of commissions — Members — Training and continuing education.

(a) The department of economic and community development may create and establish planning regions and define the boundaries respectively of such planning regions. Any such planning region may, in accordance with the boundary definition made by the department, be composed of the territory of a single county or of two (2) or more contiguous whole counties or of a part of a county or of contiguous parts of two (2) or more counties or of one (1) or more counties, together with a part or parts of another county or other counties or any other territory as designated and defined by the department whether the boundaries thereof conform to any existing boundary or boundaries of a county or counties of other political subdivision or subdivisions or do not so conform.

(b) The department may create and establish a regional planning commission of any planning region created and defined under this section, with members selected in accordance with subsections (c)-(h); however, if the planning region consists of a single county, the members of the regional planning commission are to be selected according to provisions of subsection (i).

(c)(1) The number of members of any such commission shall be determined by the commissioner, but shall not be less than five (5) nor more than fifteen (15).

(2) The commissioner may designate, as members of a regional planning commission, persons who are members of county legislative bodies or of boards of aldermen or commissioners or other municipal legislative bodies; provided, that the members of the regional planning commission, so designated from county and municipal legislative bodies shall be less in number than a majority of the commission, and that not less than a majority of the members of the commission shall hold no salaried public office or position whatever, excepting offices or faculty memberships of a university or other educational institution.

(3) Each person shall be nominated in writing by the chief elected officer of any county having a metropolitan form of government, the county mayor of any other county, or the chief elected officer of any municipality lying inside of the boundary of the planning region before being designated by the commissioner.

(4) All nominations must be received by the department within thirty (30) days after the creation of a new regional planning commission or within thirty (30) days after a position is vacated on an existing commission. Notwithstanding any other provision of law to the contrary, a member of any commission is authorized to continue to serve until the member's successor has been nominated and approved as stated herein.

(5) In making such appointments, the commissioner shall strive to ensure that the racial composition of each regional planning commission is at least proportionately reflective of the region's racial minority population.

(d)(1) Except as provided in subdivision (d)(2), the county or municipal legislative body of a local government participating in a regional planning region may establish the compensation for each member nominated by the respective unit of local government. 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.

(2) If members of such commission also serve as the zoning board for any county which has adopted zoning, such members may be compensated in an amount to be fixed by the county legislative body of such county and may be allowed necessary traveling and other expenses while engaged in the work of or for the commission or the zoning board.

(e)(1) The term of any member designated from a county or municipal legislative body shall be coterminous with such member's then term as a member of such county or municipal body.

(2) The terms of appointed members, as distinguished from members designated from a county or municipal legislative body, shall be four (4) years, except that the terms of three (3) of the members first appointed to any regional commission shall be one (1), two (2) and three (3) years respectively.

(f) The commissioner may remove a member of such a commission for cause specified in writing served on the member and after hearing, of which such member shall be given not less than fifteen (15) days' written notice.

(g) Any vacancy in the membership of such a commission shall be filled by the commissioner for the unexpired term, except that if such vacancy is filled by designation from a county or municipal legislative body, the term of the member so designated shall be coterminous with such member's then term as member of such body.

(h) Authority granted under this section to the commissioner or to the department shall be exercised with the approval of the local government planning advisory committee.

(i)(1) In the event the boundaries of an existing planning region, as determined by the department of economic and community development, conform to the existing boundaries of a single county, the members of the regional planning commission for that region shall be appointed by the county mayor, subject to confirmation by the county legislative body.

(2) The number of members of any such commission shall be determined by the county legislative body, but shall not be less than five (5) nor more than fifteen (15).

(3) The composition of such regional planning commission, the compensation of its members and the terms of service are subject to the same restrictions as stated in subdivision (c)(2) and subsections (d) and (e).

(4) Any vacancy in the membership of such regional planning commission shall be filled through appointment by the county mayor, subject to confirmation by the county legislative body.

(5) The county legislative body may remove a member of such a commission for cause specified in writing served on the member and after hearing, of which such member shall be given not less than fifteen (15) days' written

notice.

(6) A member of any such regional planning commission who is serving on the date this provision becomes effective may continue to serve for the term to which that person was appointed.

(7) In the event that a county and a municipality or municipalities lying within such county, pursuant to local agreement, statute, or otherwise, participate jointly in a planning region, then members of the planning commission for such a region shall be selected and governed according to subsections (c)-(h).

(j)(1) Each planning commissioner shall, within one (1) year of initial appointment and each calendar year thereafter, attend a minimum of four (4) hours of training and continuing education in one (1) or more of the subjects listed in subdivision (j)(5). At least one (1) hour of the annual education requirement shall concentrate on the rights of private property owners and the relationship of those rights to the public planning process.

(2) Each full-time or contract professional planner or other administrative official whose duties include advising the planning commission shall, each calendar year, attend a minimum of eight (8) hours of training and continuing education in one (1) or more of the subjects listed in subdivision (j)(5). A professional planner who is a member of the American Institute of Certified Planners (AICP) shall be exempt from this requirement.

(3) Each of the individuals listed in subdivisions (j)(1) and (2) shall certify by December 31 of each calendar year such individual's attendance by a written statement filed with the secretary of such individual's respective planning commission. Each statement shall identify the date of each program attended, its subject matter, location, sponsors, and the time spent in each program. A professional planner who is a member of the AICP shall be exempt from this requirement.

(4) The legislative body of a county in a single county regional planning commission, or the legislative bodies of the counties in a multiple county planning commission, or the legislative bodies of the county and the municipality in a joint municipal and county planning commission shall be responsible for paying the training and continuing education course registration and travel expenses for each planning commissioner and full-time professional planner or other administrative official whose duties include advising the planning commission.

(5) The subjects for the training and continuing education required by subdivisions (j)(1) and (2) shall include, but not be limited to, the following: land use planning; zoning; flood plain management; transportation; community facilities; ethics; public utilities; wireless telecommunications facilities; parliamentary procedure; public hearing procedure; land use law; natural resources and agricultural land conservation; economic development; housing; public buildings; land subdivision; and powers and duties of the planning commission. Other topics reasonably related to the duties of planning commission members or professional planners or other administrative officials whose duties include advising the planning commission may be approved by majority vote of the planning commission prior to December 31 of the year for which credit is sought.

(6) Each local planning commission shall keep its official public record originals of all statements and the written documentation of attendance required to comply with these provisions for three (3) years after the calendar year in which each statement and appurtenant written documen-

tation is filed.

(7) Each planning commissioner and each professional planner or other administrative official whose duties include advising the planning commission shall be responsible for obtaining written documentation signed by a representative of the sponsor of any training and continuing education course for which credit is claimed, acknowledging the fact that the individual attended the program for which credit is claimed. A member of the AICP shall be exempt from this requirement.

(8) If a planning commissioner fails to complete the requisite number of hours of training and continuing education within the time allotted by this subsection (j) or fails to file the statement required by this subsection (j), then this shall constitute a cause for the removal of the planning commission member from the planning commission.

(9) The legislative body of a county in a single county regional planning commission, the legislative bodies of the counties in a multiple county planning commission or the legislative bodies of the county and the municipality in a joint municipal and county planning commission may, at any time, opt out of this subsection (j) by passage of a resolution or ordinance, as appropriate; provided, that for a multiple county planning commission or joint municipal/county planning commission, all governmental entities included in such multiple or joint planning commission must pass the resolution or ordinance in order to opt out of this provision. Further, any such legislative bodies that have opted out may, at a later date, opt in by passage of a resolution or ordinance in the same manner required to opt out.

13-14-111. Financing.

(a) It is the intent of the state to assist financially with the development of regional plans for economic development and for coordination of activities thereunder. The board for the Memphis area association of governments, composed of the Fayette, Lauderdale, Shelby, and Tipton counties and the municipalities located within those counties, has been created as provided in this chapter and when the local governments have indicated a willingness to contribute financially by adopting a budget requiring a certain per capita assessment, the state shall be authorized to match the local contributions according to subdivision (c)(3).

(b) The local contributions to the Memphis area association of governments shall be based upon, in the case of counties, an amount not to exceed twenty-one cents (21¢) per capita based on the latest decennial census, one half (½) of which may be contributed by local incorporated cities or by other private, public or semipublic bodies; provided, that no county shall be required to contribute more than twelve thousand five hundred dollars ($12,500) annually. The aggregate of such funds may also be used for purposes of matching various federal programs of assistance for planning and development. Counties and municipalities may participate independently of each other in financing the activities of the board. Cities and counties are specifically authorized to appropriate and expend funds for carrying out the purposes of this chapter.

(c)(1) It is the intent of the state to assist financially with the development of regional plans for economic development and other regional plans, activities, and programs authorized by this chapter and other statutes and for coordination of activities thereunder. The regional plans, activities and

programs shall be for the benefit of and for the local governments of this state and, as appropriate, the state government and the citizens of Tennessee. The boards of the eight (8) other development districts established as the First Tennessee development district, the East Tennessee development district, the Southeast Tennessee development district, the Upper Cumberland development district, the South Central Tennessee development district, the Southwest Tennessee development district, the Greater Nashville regional council and the Northwest Tennessee development district have been created as provided in this chapter and title 64, chapter 7.

(2) When the local governments have indicated a willingness to contribute financially to the development districts by adopting a budget establishing a certain per capita assessment, the state shall include in its budget under the department of economic and community development, or its state functional equivalent, a separate line item for the funding of the activities of the development districts. Any appropriations of state funds made to the development districts by the general assembly shall not be reduced, except in conjunction with an across the board percentage reduction applicable to multiple state government departments and agencies.

(3) The amount of state funding to each development district shall be based upon the per capita assessment established by the individual development district boards. The per capita assessment and corresponding state funding levels for the nine (9) development districts are as follows:

Per Capita Assessment	Annual State Appropriation
1-5 cents	$40,000
6-10 cents	70,000
11-15 cents	100,000
16-20 cents	150,000
21-30 cents	180,000
31 - to an amount over 31 cents as may be approved by the individual development district board	200,000

(d) For calculating the per capita assessments of the development districts in subsection (c), the board of a development district may utilize either the population counts from the latest yearly population estimates or from the decennial census figures of each city, town, metropolitan government, and county that is located in and is a member government of the development district, as reported by the United States department of commerce, bureau of the census or its federal functional equivalent. The aggregate of the funds generated by the per capita assessment may be used for the purposes of matching various federal and state programs, grants and contracts for planning, programs and activities undertaken by the development districts. The aggregate of state funds appropriated to the development districts may be used for the purpose of matching various federal programs, grants and contracts for planning, programs and activities undertaken by the development districts. Any funds generated by either the per capita assessment or the state appropriation may be utilized by the development districts to pay the operating and administrative costs of the district. Cities, towns, metropolitan governments, and counties may participate in the per capita assessment funding of the development districts in which they are located independently

of each other. In order to promote regional cooperation and planning, counties may pay the per capita assessment of any of the cities or towns within the county's political boundary. Cities, towns, metropolitan governments and counties are specifically authorized to appropriate and expend funds for carrying out the purposes of this chapter.

13-14-114. Bond requirements.

(a) Any board member, executive committee member, employee officer, or any other authorized person of a development district, who receives public funds, has authority to make expenditures from public funds, or has access to any public funds, is hereby required to give bond to be made payable to the state of Tennessee with such sureties as hereinafter provided. Such bond is to be conditioned in all cases in which a different condition is not prescribed, upon the faithful discharge of the duties of such office, employment or other authorized activity in which such person is engaged during the time such person continues therein, or in the discharge of any part of such duties.

(b) Such official bond shall be executed in the same form as that prescribed by § 8-19-101, for county and state officials and employees.

(c)(1) Effective July 1, 2013, the minimum amount of such required bond shall be determined from the amount of revenues handled by the respective development district as reported in the last audit approved by the comptroller of the treasury. The minimum amount of the bond shall be based on revenues as follows:

(A) Four percent (4%) of the revenues up to three million dollars ($3,000,000); and

(B) Two percent (2%) of the excess over three million dollars ($3,000,000) shall be added.

(2) The amounts indicated in subdivisions (c)(1)(A) and (B) shall be cumulative.

(d) All such official bonds shall be signed by authorized individuals of a corporate surety, and such corporation shall be duly licensed to do business in the state of Tennessee as a surety.

(e) The official bonds required under this section are hereby required to be recorded in the office of the register of deeds where the office of the development district is located and transmitted to the office of the county clerk in the same county for safekeeping.

(f) No examination or certification of any of such bonds shall be required in this section.

(g) Provisions for bonds of all state and county officers set forth in title 8, chapter 19, shall also govern the bonds of all persons covered under this section, so far as title 8, chapter 19, is not inconsistent with this section.

(h) The respective development district shall pay the premiums for such bonds.

13-16-301. [Repealed.]

13-16-302. [Repealed.]

13-16-303. [Repealed.]

13-16-304. [Repealed.]

13-16-305. [Repealed.]

13-16-306. [Repealed.]

13-23-107. Appointed members — Qualifications.

(a)(1)(A) The governor shall appoint the following members to the board of directors for the agency, who shall be citizens of the state and shall not hold public office: a total of six (6) persons representing the following groups, with no more than one (1) person representing each group: retail building material supply; manufactured housing; home building; mortgage banking; licensed real estate brokers; local public housing authority; local government; and a qualifying not-for-profit corporation.

(B) After June 30, 2013, the governor shall appoint two (2) persons from the public at large who are knowledgeable about the problems about inadequate housing conditions in the state.

(C) Upon the first term expiration for one (1) of the public at large members, that public at large position shall expire, without reappointment, at the end of the member's term. After this term expiration and thereafter, the governor shall appoint one (1) person from the public at large who is knowledgeable about the problems about inadequate housing conditions in the state.

(D)(i) When making appointments, the governor shall give due consideration to geographic distribution of the members of the agency to ensure that all parts of the state are adequately represented.

(ii) In making appointments to the agency board of directors, 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.

(2) The speaker of the senate and the speaker of the house of representatives shall each appoint one (1) member from the public at large who shall be citizens of the state, shall not hold public office and shall be knowledgeable about the problems of inadequate housing conditions in the state. Any change in the status or profession of an appointed member shall not affect such member's position or term as a member of the agency.

(b) Each member of the agency duly appointed by the governor pursuant to the former provisions of this section shall continue to serve and fill such member's respective membership position until the expiration of the term of office to which such member was appointed and until such member's successor is duly appointed and qualified. At the expiration of the term of office to which a member was appointed pursuant to the former provisions of this section, such member may be reappointed subject to the limitations imposed by this

section and § 13-23-108.

(c) Other individuals may be directors of the agency as may be required by applicable federal law, regulation or agreement, who shall be eligible to vote on matters before the agency to the extent required by federal law, regulation or agreement.

13-23-110. Quorum.

A majority of the members of the agency shall constitute a quorum, and the affirmative vote of eight (8) members at a meeting of the members duly called and held shall be necessary for any action taken by the membership of the agency. No vacancy in the membership of the agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the agency. For the purposes of determining a quorum and the number of affirmative votes at a meeting, persons who have been delegated the right to vote in accordance with § 13-23-106 shall be considered members of the agency.

13-23-112. Officers — Executive director — Secretary — Audit and budget committee.

(a) The agency shall elect or appoint, and prescribe the duties of, such other officers as the agency deems necessary or advisable, including an executive director and a secretary.

(b) The executive director shall be a person of good moral character and shall be professionally qualified to administer the programs and duties of the agency. Such professional qualifications must as a minimum be evidenced by a minimum of three (3) years' experience immediately preceding such professional's appointment or election in the theory and practice of residential housing construction, law, real estate, home mortgage finance, architecture, building materials supply, public administration or urban planning.

(c) The executive director shall administer, manage and direct the affairs and business of the agency subject to the policies, control and direction of the board of directors.

(d) The secretary of the agency shall keep a record of the proceedings of the agency and shall be custodian of all books, documents and papers filed with the agency, the minute book or journal of the agency and its official seal. The secretary shall have authority to cause copies to be made of all minutes and other records and documents of the agency to the effect that such copies are true copies, and all persons dealing with the agency may rely upon such certificates.

(e) 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.

(f) The state treasurer shall be the treasurer of the agency. The treasurer shall be the custodian of the assets of the agency except for those assets required by contracts with bondholders to be in the custody of the trustee. The board of directors shall set the investment policy for agency assets and the treasurer shall be responsible for making investments in accordance with such policy. The treasurer may delegate all or a portion of these duties and responsibilities to the executive director.

(g) The secretary of the bond finance committee shall, subject to the policies

of the board of directors and bond finance committee, be responsible for the execution of all matters relating to the issuance and servicing of the bonds and notes of the agency. The secretary of the bond finance committee may delegate these duties and responsibilities to the executive director.

(h)(1)(A) There is hereby created an audit and budget committee of the agency, which shall be composed of the following:

(i) The chair of the agency;

(ii) The vice chair of the agency;

(iii) The state treasurer;

(iv) The secretary of state; and

(v) Two (2) members appointed annually by the chair from among the appointed members of the board.

(B) The state treasurer shall serve as the chair of the audit and budget committee in even years and the secretary of state shall serve as the chair of the audit and budget committee in odd years beginning in 2013, and alternating thereafter.

(C) The agency's director of internal audit shall serve as the secretary for the committee. The agency's director of internal audit shall serve at the pleasure of the committee. The committee has the authority to employ, terminate and establish the salary of the director of internal audit.

(2) Three (3) or more members of the audit and budget committee shall constitute a quorum and the concurring vote of three (3) members shall be required for the approval of matters coming before the committee. Written minutes of all meetings shall be prepared by the secretary and kept on file, open to public inspection. The audit and budget committee shall be charged with the responsibility of monitoring agency financial and programmatic controls, including potential conflicts of interest of agency members and staff. To carry out these responsibilities, the committee shall review reports from the agency internal audit staff and shall review agency financial and programmatic controls at least annually, and shall review and submit the annual agency budget to the bond finance committee and the board.

13-23-128. Conflicts of interest.

(a)(1) No member or employee of the agency, during such member's or employee's tenure or for six (6) months thereafter, shall be employed by, hold any paid official relation to, or have any financial interest in, any housing sponsor or any housing development financed or assisted by the agency.

(2) No real property to which such member or employee holds legal title or in which such person has any financial interest shall be sold, during such member's or employee's tenure or for six (6) months thereafter, to a housing sponsor for a housing development to be financed by the agency.

(b) If any member or employee of the agency has a direct or indirect interest in any other business or contract with the agency other than those described in subsection (a), or has an ownership interest in any firm, corporation, or other entity having an interest in any business or contracts with the agency other than those described in subsection (a), such interest must be disclosed in writing and set forth in the official minutes of the agency, and such member or employee must refrain from participation in any discussion or activity by the agency in connection with such business or contract.

(c) If any member or employee fails to comply with the foregoing provisions,

such member or employee may, after proper notification and opportunity to be heard, be disqualified from membership with or employment by the agency by a majority vote of the board of directors and may not be reappointed to or reemployed by the agency.

(d) In no event shall any failure to comply with this section affect the validity of the authorization, issuance, or sale of bonds or notes by the agency under this part.

(e) Subsection (a) does not apply to any interest, relation, or sale disclosed by a member or employee prior to January 1, 1979, and made a part of the minutes of the agency in accordance with the then applicable law.

(f)(1) No state officer or employee shall, during such state officer's or employee's term of service or employment, or within a period of six (6) months after ceasing to be a state officer or employee, have any financial interest, directly or indirectly, in any firm, corporation, association or other organization engaged in any way in any housing program under the terms of this part.

(2) Notwithstanding any other provision of this chapter to the contrary, any state officer or employee, except officers and employees of the Tennessee housing development agency, whose financial interest, either directly or indirectly, is with or through a lender as defined in § 13-23-103, is not in violation of this section, except as otherwise specifically prohibited by law. The exception granted by this subsection (f) also applies to a constitutional officer of this state when one is acting as an individual and not in an official capacity, even though such an officer may be a director of the Tennessee housing development agency.

13-23-403. Allocations from housing program fund.

(a) Moneys in the housing program fund shall be allocated by the agency for the following purposes:

(1) To fund the operating and administrative costs of the agency;

(2) To pay certain expenses of bond issues and to support future bond issues by making additions to the loan funds, in order to make loans at a lower interest rate for targeted low income and special need groups, when determined appropriate by the bond finance committee and approved by the board;

(3) To make grants to local housing programs administered by eligible political subdivisions subject to one-to-one matching funds provided by each participant during the initial phase of the allocation process administered by the agency. The agency may prescribe the manner in which such grant funds are to be allocated to local housing programs, considering such factors as population, the adequacy of the existing housing stock to serve very low and low income households, and such other factors as may be deemed reasonable and appropriate by the agency. The agency shall establish a minimum grant amount to ensure that a viable housing program can be established by each eligible local housing program. In counties under one hundred thousand (100,000) in population, the agency may limit participation to one (1) local housing program; and

(4) To the extent that funds still remain in the housing program fund after all eligible political subdivisions applying have been awarded grants, the agency may utilize any such remaining funds for demonstration housing

projects on the basis of such competitive factors as level of income to be served, cost of the housing relative to average costs in the applicable area, amount of leveraging of public and private funds, amount of local match, if any, and innovative aspects of the project, except that funds accruing prior to fiscal year end but not reported to the department of revenue until the beginning of the next fiscal year can be used to fund projects submitted during the fiscal year.

(5) [Deleted by 2013 amendment, effective April 23, 2013.]

(b) Special consideration shall also be given to projects to be administered by qualified not-for-profit corporations in areas of the state which would otherwise go unserved by the state's housing program fund.

(c) It is further provided that grants provided to local programs under subdivisions (a)(3) and (4) shall not be pledged as support for tax exempt borrowing by such local programs, but must be used to directly subsidize the cost of providing housing to very low and low income households.

13-26-110. Bond requirements.

(a) Any board member, policy council member, employee, officer, or any authorized person of a human resource agency who receives public funds, has authority to make expenditures from public funds, or has access to any public funds is hereby required to give bond to be made payable to the state of Tennessee with such sureties as are hereinafter provided. Such bond is to be conditioned in all cases in which a different condition is not prescribed, upon the faithful discharge of the duties of such office, employment, or other authorized activity in which such person is engaged during the time such person continues therein, or in the discharge of any part thereof.

(b) Such official bond shall be executed in the same form as that prescribed by § 8-19-101 for county and state officials and employees.

(c)(1) Effective July 1, 2013, the minimum amount of such required bond shall be determined from the amount of revenues handled by the respective human resource agency as reported in the last audit approved by the comptroller of the treasury. The minimum amount of the bond shall be based on revenues as follows:

(A) Four percent (4%) of the revenues up to three million dollars ($3,000,000); and

(B) Two percent (2%) of the excess over three million dollars ($3,000,000) shall be added.

(2) The amounts indicated in subdivisions (c)(1)(A) and (B) shall be cumulative.

(d) All such official bonds shall be signed by authorized individuals of a corporate surety, and such corporation shall be duly licensed to do business in the state of Tennessee as a surety.

(e) The official bonds required under this section are hereby required to be recorded in the office of the register of deeds where the office of the human resource agency is located and transmitted to the office of the county clerk in the same county for safekeeping.

(f) No examination or certification of any such bonds shall be required in this section.

(g) Provisions for bonds of all state and county officers set forth in title 8, chapter 19, shall also govern the bonds of all persons covered under this

section, so far as title 8, chapter 19, is not inconsistent with this section.

(h) The respective human resource agency shall pay the premium for such bonds.

13-30-119. Monitoring of corporation by comptroller of the treasury.

(a) The comptroller of the treasury shall monitor the actions of the corporation for a period of three (3) years from the date the corporation is created.

(b) No later than March 1st following the end of the third year of the creation of the corporation, the comptroller shall file a report with the governor and the state and local government committee of the senate and the local government committee of the house of representatives with recommendations concerning whether the pilot project should be continued, expanded or discontinued, together with recommended legislative actions based on such decision.

15-2-123. Lymphedema Awareness Week.

The third week of June each year shall be observed as "Lymphedema Awareness Week," to be proclaimed as such by the governor, to encourage all medical facilities in the state to dedicate more time, energy, and funding to the diagnosing and treatment of the disease. This week shall not be a legal holiday as defined in § 15-1-101.

16-1-117. Reporting case statistics — Automated court information system.

(a) It is the duty of the administrative office of the courts to collect, develop, and maintain uniform statistical information relative to court caseloads in Tennessee. To assist the administrative office of the courts in this duty, the clerks of each court shall report case data as set forth below:

(1) Each criminal case shall be assigned a unique docket number. A criminal case in a court of record, except juvenile court, shall be defined and reported as a single charge or set of charges arising out of a single incident involving the same victim or victims concerning a defendant in one (1) court proceeding. An incident shall be all criminal activity occurring within a twenty-four-hour period. A court proceeding refers to a single level of court, such as general sessions, circuit, appeals or supreme court. An appeal, probation revocation, or other post-judgment proceeding shall be considered a separate case. This definition shall not alter the practice in the Tennessee rules of criminal procedure dealing with joinder and severance of criminal cases. Charges of a related nature shall be defined as charges against a single defendant that may have more than one (1) victim and that are similar, such as, but not limited to, burglaries, drug offenses or serial rape. Worthless check cases shall be defined and reported as all worthless checks filed by the same affiant against the same defendant within a twenty-four-hour period with each check counted as a separate charge. District attorneys general shall treat multiple incidents as a single incident for purposes of this subdivision (a)(1) when the charges are of a related nature and it is the district attorney general's intention that all of the charges be handled in the same court proceeding. If a case has more than one (1) charge or count, then the administrative office of the courts shall count the case according to the highest class of charge or count at the time of filing or disposition for the

weighted caseload study based on the formula set out in § 16-2-513(a);

(2) A civil case shall be defined as all motions, petitions, claims, counterclaims or proceedings between the parties resulting from the initial filing until the case is disposed. A unique docket number will be assigned to a civil case upon filing. Until the case is disposed, all subsequent motions, petitions, claims, counterclaims or proceedings between the parties resulting from the initial filing will be handled under the assigned docket number and will not be assigned a new docket number. Once a civil case has been disposed and further actions occur on the case, the original case will be reopened using the same docket number under which it was originally filed and is subject to additional court costs. All subsequent motions, petitions, claims, counterclaims or proceedings relating to the reopened case will be handled under the one reopened case docket number until disposed. Any subsequent reopenings will still use the original docket number, but will be counted by the administrative office of the courts as a new case for case-reporting purposes and are subject to additional court costs. Civil cases in courts of record shall be counted and reported to the administrative office of the courts according to this subdivision (a)(2);

(3) All general sessions courts and municipal courts with general sessions jurisdiction shall collect and provide court data to the administrative office of the courts based on the definitions for criminal and civil cases as provided in subdivisions (a)(1) and (2);

(4) All courts of record, except for juvenile courts, and all general sessions courts and municipal courts with general sessions jurisdiction shall report caseload data to the administrative office of the courts not less than one (1) time each month, so that all cases filed and disposed in one (1) month have been received by the administrative office of the courts by the fifteenth day of the following month in which the case is filed or disposed. The administrative office of the courts shall create forms to be used by each court in reporting the caseload data;

(5) The administrative office of the courts will provide written notification to any responsible party found not to be in compliance with the reporting requirements. Written notification will detail the type of noncompliance and recommend the corrective action to be taken. If compliance is not achieved during the subsequent reporting period following notification, the administrative office of the courts will no longer accept data from the office not in compliance until such time as the errors are corrected. Notification of this action will be sent to all judges, district attorneys general, district public defenders and court clerks within the district where the noncomplying office is located. Notification will also be sent to the district attorneys general conference, the district public defender conference, the administrative office of the courts and the county officials association of Tennessee. Any periods of noncompliance will also be reported in the annual report to the judicial council and to the chairs of the civil justice committee of the house of representatives and the judiciary committee of the senate;

(6)(A) The clerks of those courts wherein commitments to a mental institution, as defined in § 16-10-213, are ordered or persons are adjudicated as a mental defective, as defined in § 16-10-213, shall report information described in § 16-10-213(c) regarding individuals who have been adjudicated as a mental defective or judicially committed to a mental institution. Included in the report pursuant to this subdivision (a)(6)(A) shall be the date in which such information was also reported to the

federal bureau of investigation-NICS index;

(B) The clerks of those courts unable to make direct reports to the federal bureau of investigation-NICS index, pursuant to the reporting requirements of §§ 16-10-213, 16-11-206, 16-15-303 and 16-16-120, shall provide sufficient information to the administrative office of the courts who shall make such reports on behalf of those clerks as soon as practicable, but no later than the third business day following the date of receipt of signed order;

(C) The information reported pursuant to subdivision (a)(6)(A) shall be maintained as confidential and not subject to public inspection, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354;

(D) The administrative office of the courts shall provide written notification to any responsible party found not to be in compliance with the reporting requirements of this subdivision (a)(6) or with the reporting requirements of §§ 16-10-213, 16-11-206, 16-15-303 and 16-16-120. If compliance is not achieved during the subsequent reporting period following notification, the administrative office of the courts will no longer accept data from the office not in compliance. Notification of this action will be sent to all judges, district attorneys general, district public defenders and court clerks within the district where the noncomplying office is located. Notification will also be sent to the district attorneys general conference, the district public defenders conference, the administrative office of the courts and the county officials association of Tennessee. Any periods of noncompliance will also be reported in the annual report to the chair of the judiciary committee of the senate and the chair of the civil justice committee of the house of representatives.

(b) Any automated court information system being used or developed on or after July 1, 2003, including, but not limited to, the Tennessee court information system (TnCIS) being designed pursuant to § 16-3-803(h), shall ensure comparable data will be reported to the administrative office of the courts with respect to courts of record, and criminal cases in general sessions courts and municipal courts with general sessions jurisdiction, using the definitions and standards set forth in subsection (a). Each system shall use the Tennessee code citation on each criminal charge, and have the capability of using this information to classify the type and class of each charge.

16-1-118. Utilization of electronic court filing system provider authorized by the administrative office of the courts.

Unless otherwise provided by law, all courts in this state that implement an electronic court filing system pursuant to Tennessee Supreme Court Rule 46 and Tennessee Rule of Civil Procedure 5B shall utilize only a system provider authorized by the administrative office of the courts. The administrative office of the courts shall establish technical standards with the goals of ensuring integrity of filings, assuring an environment that promotes uniformity and ease of filing, and providing the framework for future compatibility among e-filing solutions implemented by local and state courts. Nothing in this section shall require the administrative office of the courts to begin implementing a statewide e-filing system.

16-2-508. District attorneys general — Powers and duties — Assistant district attorneys general — Criminal investigators — Other positions.

(a) All incumbent district attorneys general shall hold office in and serve the judicial district to which they are assigned by § 16-2-506. The district attorneys general shall exercise and possess the jurisdiction, powers and duties within the judicial districts created by this part as are conferred by law upon district attorneys general. This part shall not be construed to make any reduction in the staff of any district attorney general, and any legislative act that creates assistant district attorney general, criminal investigator or other positions, or that otherwise affects or involves the office of district attorney general in a particular judicial district or attorney's district as it is presently numbered or identified is made applicable to the judicial district to which the present district attorney general is assigned by this part. Nothing in this part shall be construed as affecting a county's authority to provide staff and other resources to the district attorney general of the district in which the county is located.

(b) Except in the judicial districts comprised of the urban counties of Shelby, Davidson, Knox, Hamilton and Sullivan, the district attorney general of each judicial district shall be entitled to at least one (1) assistant district attorney general position for each trial court judge in the judicial district to which the district attorney general is assigned, as well as either one (1) additional assistant district attorney general position if the judicial district is comprised of four (4) or more counties, or two (2) additional assistant district attorney general positions if the judicial district is comprised of more than six (6) counties. If an additional trial court judge is added to a judicial district, and that district does not already have sufficient assistant district attorney general positions to satisfy the formula set out in this subsection (b), an additional assistant district attorney general position shall be created for that district upon the effective date of the creation of the new judicial position.

(c) [Deleted by 2013 amendment, effective March 20, 2013.]

(d) The district attorney general of any judicial district in which an assistant district attorney general position is created by this part shall appoint a suitable person to serve as assistant district attorney general. The person so appointed shall serve at the pleasure of the district attorney general, and shall perform the duties the district attorney general requires. Each person so appointed shall be compensated as provided for by general law.

(e) Except for the assistant district attorney general position created annually by former subsection (c) and those created when, pursuant to § 16-2-506, an additional trial court judge is elected in 1986, 1988 or 1990, the number of such assistant positions set out in § 16-2-506 shall be the total number of positions to which the corresponding district attorney general is entitled, and nothing in this section shall be construed as creating any assistant positions in excess of such number.

(f)(1) The district attorneys general shall appoint suitable individuals to the position of criminal investigator. The individuals so appointed shall perform such duties as the district attorney general may direct, and shall serve at the pleasure of the district attorney general.

(2) In carrying out the duties of the criminal investigator's office, each of the criminal investigators shall possess the same power and authority as

deputies of the county sheriffs or if the judicial district includes a metropolitan form of government then their power and authority shall include all police powers of law enforcement officers in that area metropolitan government. The compensation of such investigators shall be as provided by general law.

16-2-521. Number of criminal investigator positions to which district attorney general entitled pursuant to § 16-2-506.

The number of criminal investigator positions to which the district attorney general of each judicial district is entitled pursuant to § 16-2-506 or any other law shall be the minimum number of positions authorized in each judicial district. No law shall be construed to prohibit the employment of additional criminal investigators in a judicial district as established by § 16-2-506, regardless of whether the positions are funded by a state or non-state source, or whether they are specifically enumerated in any other law.

16-3-803. Administrative director — Powers and duties.

(a) The administrative director of the courts shall work under the supervision and direction of the chief justice and shall, as the chief administrative officer of the state court system, assist the chief justice in the administration of the state court system to the end that litigation may be expedited and the administration of justice improved.

(b) The administrative director of the courts shall serve as secretary to the judicial council, shall perform those duties enumerated in § 16-3-502, and shall attend to other duties that may be assigned by the supreme court or chief justice of the supreme court. As secretary to the judicial council, the administrative director of the courts shall provide staff and secretarial support for all functions of the judicial council.

(c)(1) Acting in accordance with procedures established pursuant to § 9-6-103, the administrative director of the courts shall annually prepare, approve and submit a budget for the maintenance and operation of the state court system. When the budget for the maintenance and operation of the state court system is submitted to the department of finance and administration, the administrative director of the courts shall also submit copies of the budget to the speaker of the senate and the speaker of the house of representatives for referral and consideration by the appropriate standing committees of the general assembly.

(2) The administrative director of the courts shall administer the accounts of the state court system, including all accounts related to the state court system as may be designated by the comptroller of the treasury and the chief justice. The administrative director of the courts shall draw and approve all requisitions for the payment of public moneys appropriated for the maintenance and operation of the state court system, and shall audit claims and prepare vouchers for presentation to the department of finance and administration, including payroll warrants, expense warrants and warrants covering the necessary cost of supplies, materials and other obligations by the various offices with respect to which the administrative director of the courts shall exercise fiscal responsibility.

(d) The administrative director of the courts shall, within budgetary limitations, provide the judges of the trial courts of record with minimum law

libraries, the nature and extent of which shall be determined in every instance by the administrative director on the basis of need. All books furnished shall remain the property of the state, and shall be returned to the custody of the administrative director by each judge upon the retirement or expiration of the official duties of the judge.

(e) All functions performed by the administrative director of the courts that involve expenditures of state funds shall be subject to the same auditing procedures by the commissioner of finance and administration and the comptroller of the treasury as required in connection with the expenditure of all other state funds.

(f)(1) The administrative director of the courts shall, within the limit of appropriated funds, prepare for the supreme court's approval an annual judicial education plan providing for the orientation and continuing training and education of all elected or appointed judges of trial and appellate courts of record of this state.

(2) To the extent practicable, the annual judicial education plan shall provide that the orientation programs approved by the supreme court shall be made available to all newly elected or appointed judges of trial and appellate courts of record within one (1) year from the date of their initial appointment or election. The plan shall also provide, to the extent practicable, that all judges of trial and appellate courts of record whose terms exceed three (3) years shall, within two (2) years of the date of their initial election or appointment, be given the opportunity to attend judicial training programs approved by the supreme court.

(3) For the purpose of implementing the annual judicial education plan, the administrative director of the courts, with the approval of the chief justice, may apply for and expend grant funds from whatever source.

(4) The administrative director of the courts is authorized to recommend to the supreme court a plan whereby judges of trial and appellate courts of record who, on September 1, 1984, have not participated in training programs similar to those included in the annual judicial education plan, may be permitted to attend future orientation and training programs for judges made available through the annual plan.

(5) Nothing in this subsection (f) nor in any annual judicial education plan prepared by the administrative director of the courts and approved by the supreme court shall be construed to require judges whose salaries and other related expenses are not paid by state government to participate in any training or orientation program provided for in this subsection (f). With the agreement of appropriate units of local government to pay for the reasonable costs of the orientation and training programs, the administrative director of the courts may authorize judges whose salaries are paid by units of local government to participate in orientation or training programs made available in accordance with the approved annual plan.

(g) The administrative director of the courts shall continuously survey and study the operation of the state court system, the volume and condition of business in the courts of the state, whether of record or not, the procedures employed by those courts, and the quality and responsiveness of all of the courts with regard to the needs of civil litigants and the needs of the criminal justice system throughout the state. The administrative director of the courts shall also provide liaison and staff support to the judicial council with regard to the responsibilities of the judicial council in the areas described in this

subsection (g).

(h) The administrative director of the courts shall establish criteria, develop procedures and implement a Tennessee court information system (TnCIS). The system shall provide an integrated case management and accounting software system addressing the statutory responsibilities of the clerks of the general sessions, chancery, circuit and juvenile courts. The system shall also provide state-wide reporting and data transfer capabilities for the administrative office of the courts (AOC), department of human services, Tennessee bureau of investigation, department of safety and other state agencies determined by the AOC or as statutorily mandated. To ensure comparable data from all courts, the system shall be designed to report cases according to a standard definition of a case as set forth in § 16-1-117.

(i) It is the duty of the administrative office of the courts to collect, develop and maintain uniform statistical information relative to court caseloads in Tennessee. For the purposes of monitoring the operation of the court system, reducing unnecessary delay and assessing the responsiveness of the court system to the needs of litigants, victims of crime and the citizens of the state, the administrative director of the courts shall have the responsibility for annually collecting, compiling, analyzing and publishing caseload statistics pertaining to the court system. It is the responsibility of the administrative director of the courts to develop, define, update and disseminate standard, uniform measures, definitions and criteria for collecting statistics pertaining to the court system. These standards and reporting requirements shall be used for uniform statistical data collection in all courts throughout the state, as established by statute or by the rules of the supreme court.

(j) The administrative director of the courts shall prepare and distribute an annual report reflecting the operation of the courts of the state and highlighting those changes, innovations, or recommendations made or introduced to enhance the effectiveness of the courts.

(k) The administrative director of the courts shall conduct ongoing internal review, analysis and planning for the future needs of the state court system. The analysis shall be designed to devise ways of simplifying court system procedure, expediting the transaction of court system business and correcting weaknesses in the administration of justice.

(*l*) The administrative director of the courts shall:

(1) File a copy of the supreme court's policies and guidelines governing the reimbursement of expenses for judicial officers with the civil justice committee of the house of representatives, the judiciary committee of the senate, and the finance, ways and means committees of the senate and the house of representatives, the fiscal review committee, the comptroller of the treasury and the commissioner of finance and administration; and

(2) Respond in a timely manner to any appropriate request by these committees or officials for information concerning reimbursements made pursuant to the policies and guidelines.

(m) The administrative director of the courts shall annually prepare and distribute to the judiciary committee of the senate and civil justice committee of the house of representatives:

(1) A report detailing the expenditure of moneys in the civil legal representation of indigents fund; and

(2) A copy of any rules and policies adopted by the supreme court governing the expenditure and application of funds in the civil legal

representation of indigents fund.

(n) The administrative office of the courts shall collect, develop and maintain statistical information relative to sentencing in Tennessee. To assist the administrative office of the courts, the clerks of the circuit and criminal courts shall send a copy of each judgment document for a felony conviction to the administrative office of the courts. These copies shall be forwarded to the administrative office of the courts no less than one (1) time each month so that all judgments rendered in one (1) month have been received by the fifteenth day of the following month. When an electronic transfer system is operational and approved by the administrative office of the courts, the judgment document for all felony convictions shall be electronically transmitted to the administrative office of the courts in the same manner required by this subsection (n) for paper copies.

16-3-811. Tennessee court information system steering committee.

(a)(1) There is created a Tennessee court information system (TnCIS) steering committee. The administrative office of the courts (AOC), in consultation with the steering committee, shall use recommendations from the Tennessee judicial information system advisory committee (TJISAC) to manage and control the scope of the TnCIS software project relative to defining system functionality and determining project timelines, deadlines and system implementation priorities. The steering committee shall consist of thirteen (13) members as follows:

(A) Three (3) court clerk members to be selected by TJISAC;

(B) Two (2) members appointed by the comptroller of the treasury;

(C) Two (2) members appointed by the AOC; and

(D) Six (6) members of the general assembly to be appointed by the respective speakers, as follows:

(i) One (1) member of the finance, ways and means committee of the senate;

(ii) One (1) member of the finance, ways and means committee of the house of representatives;

(iii) One (1) member of the judiciary committee of the senate;

(iv) One (1) member of the civil justice committee of the house of representatives;

(v) The speaker of the senate, or the speaker's designee; and

(vi) The speaker of the house of representatives, or the speaker's designee.

(2) The department of finance and administration, office for information resources, contract software vendors and any other group or organization providing support for the TnCIS software project shall serve as advisors to the steering committee.

(b) Members of the steering committee shall serve without additional compensation; however, any member who is not an employee of state or local government shall be reimbursed for travel expenses incurred as a result of duties with the committee in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and as approved by the attorney general and reporter.

(c) The members of the steering committee shall serve two-year terms and may be reappointed. A member's term shall terminate whenever the steering

committee ceases to exist.

(d) For purposes of administration only, the steering committee shall be attached to the AOC.

(e) The TnCIS steering committee shall elect a chair to coordinate the work of the committee and to preside over steering committee meetings. The chair shall also periodically update TJISAC, the information systems council, the judiciary committee of the senate, the civil justice committee of the house of representatives, the speaker of the senate and the speaker of the house of representatives concerning progress of the TnCIS software project.

(f) The AOC, in consultation with the TnCIS steering committee, shall also select a project manager to oversee assigned staff and to manage the day-to-day operation of the TnCIS software project. The project manager shall perform duties as determined by the AOC, in consultation with the TnCIS steering committee, including, but not limited to, oversight of contracts, software development and installation timelines, software modification and support, system implementation and budget. The project manager shall deliver periodic progress reports to the AOC, the steering committee and to TJISAC. The project manager shall be paid out of the Tennessee judicial information system fund, created pursuant to § 16-3-807.

(g) The steering committee shall meet as necessary to review the progress of the TnCIS system development in terms of the initial project scope as determined by the steering committee.

(h) The steering committee shall remain in existence for a period not to exceed five (5) years from June 30, 1999, or until such time as the TnCIS system has been implemented based on the initial project scope as determined by the TnCIS steering committee.

16-3-812. Providing information regarding case disposition, compliance with reporting information and reports made by AOC regarding auditing compliance and accuracy of required reports.

(a) The administrative office of the courts (AOC) shall be responsible for making available to the Tennessee bureau of investigation in a mutually agreeable form all information the AOC receives from the various courts regarding disposition of cases.

(b) The AOC shall be responsible for making available, upon request, to the Tennessee bureau of investigation in a mutually agreeable form all information the AOC receives from the various courts regarding compliance with the reporting requirements of §§ 16-10-213, 16-11-206, 16-15-303, 16-16-120 and reports made by the AOC pursuant to § 16-1-117(a)(6)(B) for purposes of auditing compliance and accuracy of the required reports.

16-3-815. Creation of the integrated criminal justice steering committee — Purpose.

There is created an integrated criminal justice steering committee, which shall be administratively attached to the administrative office of the courts. The purpose of the integrated criminal justice steering committee is to provide the governmental and technical information systems infrastructure necessary for accomplishing state and local government public safety and justice functions in the most effective manner, by appropriately and efficiently sharing

criminal justice and juvenile justice information among law enforcement agencies, judicial agencies, corrections agencies, executive agencies and political subdivisions.

16-3-818. Membership of steering committee — Advisory committee appointments — Policies and procedures.

(a) The membership of the steering committee shall consist of:

(1) Director of the office of criminal justice programs or a designee;

(2) President of the Tennessee sheriffs association or a designee;

(3) President of the Tennessee association of chiefs of police or a designee;

(4) Executive director of the Tennessee district attorneys general conference or a designee;

(5) Executive director of the Tennessee district public defenders conference or a designee;

(6) Commissioner of correction or a designee;

(7) Chair of the board of parole or a designee;

(8) President of the Tennessee court clerks association or a designee;

(9) One (1) member of each body of the general assembly to be appointed by the respective speakers of the house of representatives and the senate;

(10) Attorney general and reporter or a designee;

(11) Tennessee chief information officer or a designee;

(12) Director of the Tennessee bureau of investigation or a designee;

(13) Commissioner of safety or a designee;

(14) Director of the Tennessee office of homeland security or a designee;

(15) Director of the administrative office of the courts or a designee;

(16) Chief justice of the Tennessee supreme court or a designee;

(17) Deputy commissioner of the juvenile justice division of the department of children's services or a designee;

(18) Director of the Tennessee emergency management agency or a designee; and

(19) Director of the governor's highway safety office or a designee.

(b) The steering committee may appoint advisory council members from time to time. Advisory members may represent entities, including, but not limited to:

(1) Municipal judges conference;

(2) Tennessee bar association;

(3) Tennessee county services association;

(4) Governor's office and lay members appointed by the governor;

(5) Commission on children and youth;

(6) Council of juvenile and family court judges;

(7) Tennessee emergency communications division;

(8) Department of revenue;

(9) Department of commerce and insurance;

(10) Tennessee fireman's association; and

(11) Alcoholic beverage commission.

(c) The steering committee may establish policies and procedures relative to membership and operations of the steering committee on issues, including, but not limited to, election and terms of officers, voting privileges, establishment of subcommittees, cessation of membership on the steering committee and other operational issues as may be necessary to the efficient and effective operation of the steering committee.

16-10-213. Information to be collected and reported to the federal bureau of investigation-NICS index and the department of safety by those circuit courts and criminal courts in which commitments to a mental institution are ordered.

(a) As used in this section:

(1) "Adjudication as a mental defective or adjudicated as a mental defective" means:

(A) A determination by a court in this state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease:

(i) Is a danger to such person or to others; or

(ii) Lacks the ability to contract or manage such person's own affairs due to mental defect;

(B) A finding of insanity by a court in a criminal proceeding; or

(C) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to §§ 50a and 72b of the Uniform Code of Military Justice, codified in 10 U.S.C. §§ 850a, 876b;

(2) "Judicial commitment to a mental institution" means a judicially ordered involuntary admission to a private or state hospital or treatment resource in proceedings conducted pursuant to title 33, chapter 6 or 7;

(3) "Mental institution" means a mental health facility, mental hospital, sanitarium, psychiatric facility and any other facility that provides diagnoses by a licensed professional of mental retardation or mental illness, including, but not limited to, a psychiatric ward in a general hospital; and

(4) "Treatment resource" means any public or private facility, service or program providing treatment or rehabilitation services for mental illness or serious emotional disturbance, including, but not limited to, detoxification centers, hospitals, community mental health centers, clinics or programs, halfway houses and rehabilitation centers.

(b) Those circuit courts and criminal courts wherein commitments to a mental institution are ordered pursuant to title 33, chapter 6 or 7 or persons are adjudicated as a mental defective shall enter a standing and continuing order instructing the clerk to collect and report as soon as practicable, but no later than the third business day following the date of such an order or adjudication, information described in subsection (c) regarding individuals who have been adjudicated as a mental defective or judicially committed to a mental institution for the purposes of complying with the NICS Improvement Amendments Act of 2007, P.L. 110-180.

(c) The following information shall be collected and reported to the federal bureau of investigation-NICS Index and the department of safety, pursuant to subsection (b):

(1) Complete name and all aliases of the individual judicially committed or adjudicated as a mental defective, including, but not limited to, any names that the individual may have had or currently has by reason of marriage or otherwise;

(2) Case or docket number of the judicial commitment or the adjudication as a mental defective;

(3) Date judicial commitment ordered or adjudication as a mental defective was made;

(4) Private or state hospital or treatment resource to which the individual

was judicially committed; and

(5) Date of birth of the individual judicially committed or adjudicated as a mental defective, if such information has been provided to the clerk.

(d) The information in subdivisions (c)(1)-(5), the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

16-11-206. Information to be collected and reported to the federal bureau of investigation-NICS index and the department of safety by those chancery courts in which commitments to a mental institution are ordered.

(a) As used in this section:

(1) "Adjudication as a mental defective or adjudicated as a mental defective" means:

(A) A determination by a court in this state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease:

(i) Is a danger to such person or to others; or

(ii) Lacks the ability to contract or manage such person's own affairs due to mental defect;

(B) A finding of insanity by a court in a criminal proceeding; or

(C) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to §§ 50a and 72b of the Uniform Code of Military Justice, codified in 10 U.S.C. §§ 850a, 876b;

(2) "Judicial commitment to a mental institution" means a judicially ordered involuntary admission to a private or state hospital or treatment resource in proceedings conducted pursuant to title 33, chapter 6 or 7;

(3) "Mental institution" means a mental health facility, mental hospital, sanitarium, psychiatric facility and any other facility that provides diagnoses by a licensed professional of mental retardation or mental illness, including, but not limited to, a psychiatric ward in a general hospital; and

(4) "Treatment resource" means any public or private facility, service or program providing treatment or rehabilitation services for mental illness or serious emotional disturbance, including, but not limited to, detoxification centers, hospitals, community mental health centers, clinics or programs, halfway houses and rehabilitation centers.

(b) Those chancery courts wherein commitments to a mental institution are ordered pursuant to title 33, chapter 6 or chapter 7 or persons are adjudicated as a mental defective shall enter a standing and continuing order instructing the clerk to collect and report as soon as practicable, but no later than the third business day following the date of such an order or adjudication, information described in subsection (c) regarding individuals who have been adjudicated as a mental defective or judicially committed to a mental institution for the purposes of complying with the NICS Improvement Amendments Act of 2007, P.L. 110-180.

(c) The following information shall be collected and reported to the federal bureau of investigation-NICS index and the department of safety, pursuant to subsection (b):

(1) Complete name and all aliases of the individual judicially committed or adjudicated as a mental defective, including, but not limited to, any names that the individual may have had or currently has by reason of marriage or otherwise;

(2) Case or docket number of the judicial commitment or the adjudication as a mental defective;

(3) Date judicial commitment ordered or adjudication as a mental defective was made;

(4) Private or state hospital or treatment resource to which the individual was judicially committed; and

(5) Date of birth of the individual judicially committed or adjudicated as a mental defective, if such information has been provided to the clerk.

(d) The information in subdivisions (c)(1)-(5), the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

16-15-209. Failure of judge to attend — Selection of special judge.

(a) If the judge of a court of general sessions or juvenile court finds it necessary to be absent from holding court, the judge may seek a special judge in accordance with the requirements of and in the numerical sequence designated by this section.

(1) If a special judge is necessary, the judge shall attempt to identify another judge who may serve by interchange, pursuant to § 17-2-208. If another judge cannot serve by interchange, a judge may seek to find any former or retired judge, who will, by mutual agreement, sit as special judge. The special judge shall serve by designation of the chief justice of the supreme court.

(2) If the judge is unable to secure a judge under subdivision (a)(1), the judge may apply to the administrative office of the courts for assistance in finding a judge to sit by designation of the chief justice as a special judge.

(3) Only after exhausting the procedures set out in subdivisions (a)(1) and (2), a judge may appoint a lawyer from a list, on a rotating basis, of lawyers that have been previously approved by the judge or judges of the district or county who are constitutionally qualified, in good standing, and possess sufficient experience and expertise. A lawyer appointed is subject to the following limitations, which shall be made known to persons attending any court proceeding presided over by a lawyer, as evidenced by an entry in the minutes or other permanent record of the court:

(A) The lawyer may preside only if the parties and counsel are notified that the duly elected or appointed judge will be absent and that a practicing lawyer will serve as a special judge;

(B) The parties choose to proceed and not to continue the case pending return of the duly elected or appointed judge;

(C) The lawyer shall not approve the payment of attorney's fees involving an indigent defense claim or any discretionary fees. A special judge shall approve fees only when the exact amount is set by statute; and

(D) At the opening of any court session presided over by a lawyer appointed pursuant to this section, an announcement shall be made to

persons in attendance conveying the information contained in subdivisions (a)(3)(A) and (B). The making of such an announcement constitutes compliance with the notice requirements of this section.

(b) A general sessions or juvenile judge assigned to a court outside the judge's county of residence shall receive reimbursement for travel expenses from the county to which the judge is assigned. Reimbursement shall be in an amount in accordance with the comprehensive travel regulations promulgated by the supreme court.

(c) The county legislative body, by resolution adopted by a two-thirds (⅔) vote, may authorize the payment of compensation to a special judge selected pursuant to subdivision (a)(2). The amount of compensation shall not exceed the rate of compensation for other judges of the general sessions court or juvenile court for the county.

(d) Notwithstanding the provisions of subdivisions (a)(1) and (2), a general sessions or juvenile judge who encounters a sudden and unexpected emergency which causes the judge to be absent from court may forego the requirements of those subdivisions and appoint a lawyer in accordance with subdivision (a)(3). The circumstances requiring the appointment of a lawyer pursuant to this subsection (d) shall be entered upon the minutes or other permanent record of the court in addition to the information required in subdivision (a)(3).

(e)(1) Upon approval of this subsection (e) and subsections (f)-(h) by resolution adopted by a two-thirds (⅔) vote of the county legislative body of any county having a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census, and notwithstanding any other provision of this subsection (e) and subsections (f)-(h) to the contrary, if a judge of a court of general sessions or juvenile court in the county finds it necessary to be absent from holding court, another judge may sit by interchange for the absent judge upon entering an order finding it in the best interest of judicial efficiency. The order shall identify the absent judge and the interchanging judge, and shall be kept on file in the office of the clerk of the court. Upon a finding that interchange is not in the best interest of judicial efficiency, the judge so finding may appoint an attorney as a special judge. The appointments shall be on a rotating basis, from a list of attorneys previously approved by all of the duly elected or appointed general sessions or juvenile court judges, as being constitutionally qualified, in good standing, and possessing sufficient experience and skill. The appointment of a special judge shall be by written order, identifying the absent judge and the special judge, and shall be kept on file in the office of the clerk of the court.

(2) During the month of September each year, the clerk of the court shall prepare, for each division of court governed by subdivision (e)(1), an annual report for the preceding twelve (12) months, setting out the total number of sessions of court presided over by a special judge, or by a judge sitting by interchange. The clerk shall also report the total number of sessions of court that are scheduled in each division of court for that period. The orders and reports required by this subdivision (e)(2) shall be filed, and kept open for public inspection, by the clerk of the court. The clerk of the court shall promptly file a copy of the annual report with the administrative office of the courts, created by § 16-3-801.

(f) All special judges appointed under subsection (e) shall be subject to the following limitations:

(1) All parties and counsel appearing before the special judge shall be notified that the duly elected or appointed judge is absent, and that a practicing attorney is serving as special judge;

(2) If there is no duly elected or appointed judge available to preside over the trial of a contested case, either side shall be entitled to continue the case pending the return of a duly elected or appointed judge;

(3) A special judge shall not preside over a contested cause without a consent form signed by all litigants who are present at the beginning of the proceeding. The consent form shall be kept on file with the clerk of the court as part of the legal record of that cause; and

(4) A special judge shall not approve the payment of attorney fees, involving an indigent defense claim or any discretionary fees; provided, that a special judge may enter a judgment for attorney fees when:

(A) The exact amount is set by statute; or

(B) The party to be charged has executed a written agreement calling for the payment of attorney fees, and the fees shall be the amount specified in the agreement, but in no case more than one third (⅓) of the principal amount of the debt upon which the suit is brought.

(g)(1) Subsections (e) and (f) shall not apply where a judge finds it necessary to be absent from holding court and appoints as a special judge:

(A) A duly elected or appointed judge of any other juvenile or general sessions court, a trial court judge; or

(B) A full-time officer of the judicial system under the judge's supervision whose duty it is to perform judicial functions, such as a juvenile magistrate, a child support magistrate or clerk and master, who is a licensed attorney in good standing with the Tennessee supreme court. The judicial officer shall only serve as special judge in matters related to that officer's duties as a judicial officer.

(2) Notwithstanding subsections (e) and (f), a general sessions or juvenile court judge shall have the authority to appoint a special judge as provided in subdivision (g)(1).

(h)(1) Notwithstanding any other provision of law to the contrary, in any county having a population of more than eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census, the county governing body of that county may appoint a special substitute judge or judges to serve as a judge in the court of general sessions or juvenile court in the county in the absence of any one (1) of such elected judge or judges.

(2) A special substitute judge appointed shall be an attorney licensed to practice law by this state and in good standing with the board of professional responsibility.

(3) The compensation for a special substitute judge pursuant to subsections (e)-(f) and this subsection (h) shall be fixed by the county governing body and shall be paid from any fund appropriated for such purpose by the county governing body.

16-15-303. General sessions court clerk.

(a) A general sessions court clerk shall:

(1) Retain, preserve and file away in order, and properly mark for easy reference all the papers in civil cases before them, unless returned or transmitted, in pursuance of law, to the circuit court upon appeal or

otherwise;

(2) Transmit all the papers relative to the trial of a cause in which an appeal has been taken to the circuit court at least five (5) days before the term to which the appeal is returnable, unless the appeal is taken within the five (5) days, and then on, or by the first day of, the term;

(3) Transmit copies of such papers in the same way, in cases where only a portion of the parties have appealed;

(4) Return such papers, when an execution has been levied on real estate of the defendant, to the circuit court, on or before the second day of the term next after the levy; and

(5) Not issue an alias or pluries execution until the execution previously issued is returned, or affidavit made accounting for its absence, and a showing that it is unsatisfied.

(b) A general sessions court clerk shall keep, in a well-bound book, properly ruled for that purpose, a docket of all judgments rendered by the court, showing in whose favor and against whom each judgment is rendered, the names of the parties in full, and the date and amount of the judgment.

(c)(1) A general sessions court clerk shall also keep, in the same book, an execution docket, showing the amount of each execution, in whose favor and against whom issued, the date of issuance, to whom delivered, the date of return and by whom returned, and the substance of the return, specifying particularly whether satisfied in whole or in part.

(2) The general sessions court clerk shall enter in the execution docket, in continuous order, and in distinct columns, with proper date to each act:

(A) The number of each case;

(B) The date of trial, and of each continuance, if any;

(C) The names of the parties in full;

(D) The amount of the judgment;

(E) The name of the stayor, if any;

(F) The name of the officer who returns the warrant;

(G) The date of the issuance of each execution, and to whom delivered;

(H) The bill of costs, the items written in words, with the amounts in figures; and

(I) The date of the return of the execution, by whom returned, and the substance of the return.

(d) A substantial compliance with the requirements of this section is sufficient to render the proceedings and entries valid for all purposes, so far as the parties are concerned, and all persons claiming under them.

(e) It is a Class C misdemeanor for a clerk to fail to keep the docket of judgments rendered and an execution docket, as required by subsections (b) and (c). Conviction under this section is grounds for removal under title 8, chapter 47. In addition, a person injured by the failure of a general sessions court clerk to preserve and keep the clerk's papers or dockets may recover civil damages pursuant to the Tennessee Governmental Tort Liability Act, compiled in title 29, chapter 20.

(f)(1) Any information required to be kept as a public record by a clerk of a court of general sessions may be maintained on a computer or removable computer storage media in lieu of docket books or other bound books; provided, that the following standards are met:

(A) The information is available for public inspection, unless it is a confidential record according to law;

(B) Due care is taken to maintain the information as a public record during the time required by law for retention;

(C) All daily data generated and stored within the computer system shall be copied to computer storage media daily, and the newly created computer storage media more than one (1) week old shall be stored at a location other than at the building where the original is maintained; and

(D) The clerk can provide a paper copy of the information when needed or when requested by a member of the public.

(2) Nothing in subdivision (f)(1) shall be construed as requiring the clerk to sell the media upon which the information is stored or maintained.

(g)(1) As used in this subsection (g):

(A) "Adjudication as a mental defective or adjudicated as a mental defective" means:

(i) A determination by a court in this state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease:

(a) Is a danger to such person or to others; or

(b) Lacks the ability to contract or manage such person's own affairs due to mental defect;

(ii) A finding of insanity by a court in a criminal proceeding; or

(iii) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to §§ 50a and 72b of the Uniform Code of Military Justice, codified in 10 U.S.C. §§ 850a, 876b;

(B) "Judicial commitment to a mental institution" means a judicially ordered involuntary admission to a private or state hospital or treatment resource in proceedings conducted pursuant to title 33, chapter 6 or 7;

(C) "Mental institution" means a mental health facility, mental hospital, sanitarium, psychiatric facility and any other facility that provides diagnoses by a licensed professional of mental retardation or mental illness, including, but not limited to, a psychiatric ward in a general hospital;

(D) "Treatment resource" means any public or private facility, service or program providing treatment or rehabilitation services for mental illness or serious emotional disturbance, including, but not limited to, detoxification centers, hospitals, community mental health centers, clinics or programs, halfway houses and rehabilitation centers.

(2) In addition to the duties prescribed in this part, the clerks of the general sessions courts wherein commitments to a mental institution are ordered pursuant to title 33, chapter 6 or 7 or persons are adjudicated as a mental defective shall collect and report as soon as practicable, but no later than the third business day following the date of such an order or adjudication, information described in subsection (c) regarding individuals who have been adjudicated as a mental defective or judicially committed to a mental institution after a finding of probable cause pursuant to § 33-6-422 for the purposes of complying with the NICS Improvement Amendments Act of 2007, P.L. 110-180.

(3) The following information shall be collected and reported to the federal bureau of investigation-NICS Index and the department of safety, pursuant to subdivision (g)(2):

(A) Complete name and all aliases of the individual judicially committed or adjudicated as a mental defective, including, but not limited to, any names that the individual may have had or currently has by reason of

marriage or otherwise;

(B) Case or docket number of the judicial commitment or the adjudication as a mental defective;

(C) Date judicial commitment ordered or adjudication as a mental defective was made;

(D) Private or state hospital or treatment resource to which the individual was judicially committed; and

(E) Date of birth of the individual judicially committed or adjudicated as a mental defective, if such information has been provided to the clerk.

(4) The information in subdivisions (g)(3)(A)-(E), the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to the provisions of such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

16-16-120. Information to be collected and reported to the federal bureau of investigation-NICS index and the department of safety by those county and probate courts in which commitments to a mental institution are ordered.

(a) As used in this section:

(1) "Adjudication as a mental defective or adjudicated as a mental defective" means:

(A) A determination by a court in this state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease:

(i) Is a danger to such person or to others; or

(ii) Lacks the ability to contract or manage such person's own affairs due to mental defect;

(B) A finding of insanity by a court in a criminal proceeding; or

(C) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to §§ 50a and 72b of the Uniform Code of Military Justice, codified in 10 U.S.C. §§ 850a, 876b;

(2) "Judicial commitment to a mental institution" means a judicially ordered involuntary admission to a private or state hospital or treatment resource in proceedings conducted pursuant to title 33, chapter 6 or 7;

(3) "Mental institution" means a mental health facility, mental hospital, sanitarium, psychiatric facility and any other facility that provides diagnoses by a licensed professional of mental retardation or mental illness, including, but not limited to, a psychiatric ward in a general hospital;

(4) "Treatment resource" means any public or private facility, service or program providing treatment or rehabilitation services for mental illness or serious emotional disturbance, including, but not limited to, detoxification centers, hospitals, community mental health centers, clinics or programs, halfway houses and rehabilitation centers.

(b) Those county or probate courts wherein commitments to a mental institution are ordered pursuant to title 33, chapter 6 or 7 or persons are adjudicated as a mental defective shall enter a standing and continuing order instructing the clerk to collect and report as soon as practicable, but no later than the third business day following the date of such an order or adjudication,

information described in subsection (c) regarding individuals who have been adjudicated as a mental defective or judicially committed to a mental institution for the purposes of complying with the NICS Improvement Amendments Act of 2007, P.L. 110-180.

(c) The following information shall be collected and reported to the federal bureau of investigation-NICS Index and the department of safety, pursuant to subsection (b):

(1) Complete name and all aliases of the individual judicially committed or adjudicated as a mental defective, including, but not limited to, any names that the individual may have had or currently has by reason of marriage or otherwise;

(2) Case or docket number of the judicial commitment or the adjudication as a mental defective;

(3) Date judicial commitment ordered or adjudication as a mental defective was made;

(4) Private or state hospital or treatment resource to which the individual was judicially committed; and

(5) Date of birth of the individual judicially committed or adjudicated as a mental defective, if such information has been provided to the clerk.

(d) The information in subdivisions (c)(1)-(5), the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

16-18-311. Compliance with the procedures and requirements for concurrent general sessions jurisdiction — Feasibility study committee to determine need of additional court to exercise general sessions jurisdiction.

(a) Notwithstanding any law to the contrary, on or after May 12, 2003, concurrent general sessions jurisdiction shall be newly conferred upon an existing or newly created municipal court only in compliance with the procedures and requirements set forth in this section.

(1) A majority of the total membership of the municipal legislative body must vote in favor of seeking concurrent general sessions jurisdiction for an existing or newly created municipal court.

(2) The municipal legislative body must notify, by petition, the county legislative body of the municipality's intention to seek concurrent general sessions jurisdiction for the municipal court.

(3) The petition must contain the following:

(A) A plan for an adequate and secure courtroom;

(B) Agreement to comply with state mandated technical computer support comparable with the Tennessee court information system (TnCIS) program specifications and requirements;

(C) Agreement to comply with state laws governing general sessions court litigation taxes, costs, fees and assessments and to legally remit such items to the state department of revenue or to the county government, if appropriate; and

(D) Agreement to comply with state laws subjecting the financial transactions of the court to annual public audits.

(4) The municipal legislative body and the county legislative body must appoint a feasibility study committee. The membership of the committee shall consist of the county mayor, the municipal mayor, one (1) member of the municipal legislative body, one (1) member of the county legislative body, the district attorney general who serves the county and the district public defender who serves the county. The membership of the committee shall also consist of three (3) members appointed by the municipal legislative body from the following list: the chief of police, the city recorder/clerk, the city judge, the city attorney, and one (1) citizen member. The membership of the committee shall also consist of three (3) members appointed by the county legislative body from the following list: the sheriff who serves the county, a general sessions judge who serves the county, the general sessions court clerk, the county attorney, and one (1) citizen member.

(5) The feasibility study committee shall determine whether the county requires an additional court to exercise general sessions jurisdiction. In making the determination, the committee shall consider and evaluate the following factors:

(A) The economic, administrative and personnel impact of the proposal upon the existing general sessions court;

(B) The impact of the proposal upon existing judicial services and law enforcement resources;

(C) The extent, if any, to which the proposed plan is necessary to promote and ensure the efficient administration of justice in relation to county and municipal populations, county population density, geographic logistics and distances, caseloads, the number of judges, and the current caseload burden on the existing system;

(D) The plan's provision of adequate secure and comparable courtroom facilities for the hearing of cases in that location;

(E) The extent, if any, to which the proposed plan would unduly burden the existing staffs of the district attorney general or district public defender and the extent, if any, to which the plan proposes adequate funding for additional staff requirements; and

(F) The extent, if any, to which the proposed plan would provide for compliance with state mandated technical computer support.

(6) By majority vote of its total membership, the feasibility study committee must agree upon written findings and recommendations and must submit the findings and recommendations to the municipal legislative body and to the county legislative body. The findings and recommendations must include one of the following alternatives:

(A) There is a clearly demonstrated need for a new general sessions court in the county, and the court would best be administered by the county;

(B) There is a clearly demonstrated need for a new general sessions court in the county, and the court would best be administered by the municipality, either as a new or existing municipal court with concurrent general sessions jurisdiction; or

(C) There is no clearly demonstrated need, at the time, for any of the alternatives set forth in subdivisions (a)(6)(A) and (B).

(7) If the feasibility study committee determines that there is no clearly demonstrated need for any of the alternatives set forth in subdivisions (a)(6)(A) and (B), then for one (1) year thereafter, neither the county nor the

municipality may pursue further implementation of any of the alternatives set forth in subdivision (a)(6)(A) or (a)(6)(B). After passage of one (1) year, if the majority of the total membership of the municipal legislative body again votes in favor of seeking concurrent general sessions jurisdiction for an existing or newly created municipal court, then a petition must again be submitted to the county legislative body and the procedures set forth in this section must again be followed.

(8) If the feasibility study committee recommends any one (1) of the findings set forth in subdivision (a)(6)(A) or (a)(6)(B), and if the county wishes to pursue creation of a new general sessions court in the county or if the municipality wishes to pursue extension of concurrent general sessions jurisdiction to a newly created or existing municipal court, then the county or municipality, as appropriate, shall:

(A) Submit the written findings and recommendations of the feasibility study committee to the judiciary committee of the senate, the civil justice committee of the house of representatives and the judicial council;

(B) Cause legislation to be timely prepared and submitted for review and evaluation by the judicial council in accordance with procedures set forth in § 16-21-107(a)(3) for a judicial district seeking creation of a state trial court; and

(C) Cause legislation to be timely introduced for consideration by the general assembly.

(b) Notwithstanding any law to the contrary, any legislation proposed to create a new general sessions court or to create a new municipal court with concurrent general sessions jurisdiction or to confer concurrent general sessions jurisdiction on an existing municipal court must be approved by a majority of the total membership of the judiciary committee of the senate prior to passage by the senate and must be approved by a majority of the total membership of the civil justice committee of the house of representatives prior to passage by the house of representatives.

(c) Notwithstanding any law to the contrary, if a municipality is located in two (2) or more counties of this state, then, as used in this section, "county" means the county of this state containing the largest geographical portion of the municipality.

16-21-101. Establishment — Membership.

There is established a judicial council, which shall consist of one (1) of the judges of the supreme court, to be selected by a majority vote of the judges of the supreme court; one (1) of the judges of the court of appeals, to be selected by a majority vote of the judges of the court of appeals; one (1) of the judges of the court of criminal appeals to be selected by a majority vote of the judges of the court of criminal appeals; one (1) chancellor, one (1) circuit court judge, and one (1) criminal court judge, to be selected by a majority vote of the judges of the supreme court; one (1) general sessions court judge to be selected by a majority vote of the members of the board of governors of the Tennessee general sessions judges' conference; one (1) juvenile court judge to be selected by a majority vote of the executive committee of the Tennessee council of juvenile and family court judges; one (1) municipal court judge to be selected by majority vote of the board of governors of the Tennessee municipal judges' conference; the speaker of the senate, or the speaker's designee; the speaker of

the house of representatives, or the speaker's designee; the chair of the judiciary committee of the senate; the chair of the civil justice committee of the house of representatives; the attorney general and reporter, ex officio; the administrative director of the courts, ex officio; two (2) laypersons to be selected by the governor; two (2) members of the bar of the state of Tennessee who have each practiced law at least three (3) years in the state, to be selected by the governor; and one (1) clerk of a civil court and one (1) clerk of a criminal court to be appointed by the president of the state court clerks' conference. The appointing authorities shall give due consideration in the appointments to the need for geographic, racial, gender and ethnic diversity on the council.

16-21-102. Terms of members.

The term of each of the members of the council, except the attorney general and reporter, the administrative director of the courts, the speaker of the senate, the speaker of the house of representatives, the chair of the judiciary committee of the senate, and the chair of the civil justice committee of the house of representatives, shall be for a period of four (4) years from the date of their respective appointments. The terms of the attorney general and reporter, the administrative director of the courts, the member who is speaker of the senate and the member who is speaker of the house of representatives, and the members who are chairs of the civil justice committee of the house of representatives and judiciary committee of the senate, respectively, shall be for their respective terms of office. All vacancies shall be filled for the remainder of any term by appointment by the official or officials having the original power of appointment. No member whose term is set at four (4) years shall serve more than two (2) full consecutive terms. Such member shall, however, be eligible for reappointment after an absence from the judicial council of at least one (1) year.

16-21-107. Duties of council.

(a) It is the duty of the council to:

(1) Receive and consider suggestions from judges, chancellors, public officers, members of the bar and others as to remedies for faults in the administration of justice;

(2) Submit from time to time to the general assembly, the courts, the judges or any other officer or department, either upon the request of the general assembly, court, judge, officer or department, or upon the council's own motion, such suggestions or recommendations as it deems advisable for changes in rules, procedure or methods of administration, or upon any other matter pertaining to the judicial system;

(3)(A) Report annually, on or before December 31, to the general assembly, governor and the supreme court on the condition of business in the judicial department. The report shall be a public record, and the council shall file copies of the report with the clerk of the supreme court and make the report accessible to the bar and to the public generally;

(B) In accordance with subdivision (a)(4), the council shall also report its recommendation concerning any legislation proposing creation or reallocation of any judgeship, district attorney general, assistant district attorney general, public defender, assistant public defender or staff for any such offices. The legislation must be filed with the judicial council by

August 12 prior to the legislative session in which a recommendation is required. The August 12 deadline may be waived if the chair of the judicial council, the chair of the judiciary committee of the senate and the chair of the civil justice committee of the house of representatives determine that, due to circumstances beyond the control of the sponsor, the legislation could not reasonably be filed by the deadline and that the legislation is necessitated by an emergency situation of sufficient importance to the judiciary that the interests of justice merit the waiver of the deadline; and

(4)(A) If legislation is introduced in the senate or house of representatives, or both, proposing creation or reallocation of a judgeship, district attorney general, assistant district attorney general, public defender, assistant public defender or staff for any such offices, then the legislation must be properly filed with the judicial council pursuant to subdivision (a)(3)(B) and must be referred to the appropriate standing committee. No action shall be taken on the proposed legislation by the standing committee until the council reports its recommendation as well as its analysis of the cost and impact of the legislation; provided, that if the council fails to comply with the deadline established within subdivision (a)(4)(D), then the standing committee may take action on the legislation without further delay;

(B) Recommendations of the judicial council regarding any bill referral made pursuant to subdivision (a)(4)(A) shall be consistent with the findings of the most recently published weighted caseload report of the comptroller of the treasury; provided, that if the council specifically determines that a particular judicial district possesses unique and material characteristics not evaluated and considered within the weighted caseload report, then the council's recommendations with respect to such district may deviate from the findings of the caseload report. If the council proposes alteration of the weighted caseload formula, then the proposal must be published within the report required by subdivision (a)(3)(A) and must be timely submitted to the speaker of the senate, the speaker of the house of representatives and the comptroller of the treasury in the proper form of a proposed legislative enactment;

(C) If, with respect to any legislation filed with the council pursuant to subdivision (a)(4)(A), the judicial council recommends passage of the legislation only with adoption of an amendment approved by a majority vote of the council, then the council must cause the amendment to be prepared in proper form and filed with the chief clerks of both houses of the general assembly. The chief clerks of both houses shall cause the recommended amendment to be reproduced and placed upon the desk of each member of the appropriate standing committee, and the standing committee shall not recommend the legislation for passage without first considering the amendment; provided, that if the council fails to comply with the deadline established within subdivision (a)(4)(D), then the standing committee may take action on the legislation without further delay;

(D) Recommendations, with regard to any legislation filed with the judicial council pursuant to subdivision (a)(4)(A), must be reported to the appropriate standing committee no later than five (5) weeks after the later of the dates established by the house of representatives or the senate for cutting off the introduction of new bills;

(E) The judicial council may review and comment on any proposed legislation not required to be filed with the council pursuant to subdivision (a)(4)(A), if the proposed legislation is referred to the council by the chair of any standing committee of either house or by either prime sponsor of the proposed legislation. The chair making the referral shall immediately notify the prime sponsors of the referral and the council shall not review and comment on proposed legislation until the prime sponsors have been notified. The comments of the council shall not include recommendations for or against passage of the proposed legislation but shall describe the potential effects of the proposed legislation on the judicial system and its operation and any other information or suggestions that the council may think helpful to the sponsors, the standing committees or the general assembly. The standing committees and the general assembly are not required to delay action on the proposed legislation pending review and comment by the council.

(b)(1) The judicial council is vested with the authority and power to remove for sufficient cause any person from the office of district public defender, assistant district public defender or district investigator after notice and a hearing at which the person shall be entitled to counsel and to testify and present witnesses and other evidence. The council has the power to subpoena and enforce the attendance of witnesses; and

(2) Any order of removal is reviewable by the supreme court of Tennessee by certiorari, and any judge of the supreme court has the right to require by certiorari the removal to that court for review of any case in which the judicial council has made a final order removing an official named in subdivision (b)(1). Upon writ of certiorari being granted, the full proceedings before the council shall be transcribed by the reporter taking the proceedings and certified by the reporter and the council chair and filed in the supreme court, and the transcription shall constitute the entire record to be filed and reviewed by the supreme court.

16-21-111. Personal injury or death cases in chancery or circuit courts — Reports.

(a) The clerks of circuit courts and the clerks and masters of chancery courts shall report, on a monthly basis, to the Tennessee judicial council on a form to be devised and distributed by the judicial council, the following data:

(1) The number of cases filed claiming money damages for personal injury or death;

(2) The number of such cases actually proceeding to trial; and

(3) For each such case actually proceeding to trial, the number of cases in which the plaintiff was awarded some money damages for personal injury or death, the amount of the verdict given in a jury case, the amount of judgment in a case without a jury, and any additur or remittitur awarded in the case by the trial judge.

(b) The presiding judge in each circuit shall verify the trial data reported to the Tennessee judicial council.

(c) The Tennessee judicial council shall compile such data and report the findings of the previous fiscal year, on or before February 1 of each year, to the chair of the senate judiciary committee, the chair of the civil justice committee of the house of representatives and the attorney general and reporter. The

report shall be a public document, available on request from the judicial council.

17-1-107. Uniformly reported caseload statistics.

No additional state trial judge positions shall be created until the Tennessee judicial council has established uniformly reported caseload statistics, which may include a weighted caseload formula and that prioritizes the need for additional positions among the judicial districts. The judicial council shall certify the data to the civil justice committee of the house of representatives and the judiciary committee of the senate.

17-2-309. Consultations regarding appointments — Reports of the administrative director of the courts.

(a) The supreme court shall advise and consult with the chairs of the civil justice and finance, ways and means committees of the house of representatives and the judiciary and finance, ways and means committees of the senate and with the commissioner of finance and administration whenever it has reason to believe that the effective administration of justice requires the appointment of one (1) or more senior justices or judges.

(b) If, following these consultations, the supreme court appoints a senior justice or judge, the administrative director of the courts shall file a report with the commissioner of finance and administration and with the civil justice and finance, ways and means committees of the house of representatives and the judiciary and finance, ways and means committees of the senate stating the number of justices or judges to be appointed, the reasons for the appointment and the circuits or courts expected to be served.

(c) By no later than February 1 of each year, the administrative director of the courts shall file a report concerning the utilization of the senior justices and judges with the civil justice and finance, ways and means committees of the house of representatives and the judiciary and finance, ways and means committees of the senate and with the commissioner of finance and administration. The report shall identify the:

(1) Persons serving as senior justices or judges during the prior calendar year and the date and length of their appointments;

(2) Court or courts on which each justice or judge worked during the prior calendar year;

(3) Number of weeks each justice or judge worked during the prior calendar year; and

(4) Total expenses for the program during the prior calendar year showing the:

(A) Total personnel expenses for the senior justices and judges;

(B) Total expenses for support personnel;

(C) Total expenditures for office space, furniture, books and equipment; and

(D) Total expenditures for travel and related items.

17-5-311. Review by the general assembly.

(a) In the event the supreme court affirms the action of the board of judicial conduct as provided in § 17-5-309, the judgment of the supreme court shall be

final. In the event the supreme court affirms the action of the board of judicial conduct in recommending removal of the judge in accordance with § 17-5-303 or § 17-5-309(a) and § 17-5-301(f)(6), the question of removal shall be transmitted to the general assembly for final determination. However, if the supreme court affirms the board of judicial conduct's action recommending the removal of a judge and its determination that the recommendation is moot as provided in § 17-5-309(c), the matter shall not be transmitted to the general assembly for final determination but shall become final upon the supreme court's action.

(b) The clerk of the supreme court shall send written notice to the speaker of the senate and speaker of the house of representatives of the action of the supreme court in affirming the recommendation of removal. Immediately upon its receipt, and in no event later than ten (10) days, the clerk shall certify the entire record, including the briefs filed in the supreme court and the opinion of that court, to the speaker of the senate with a duplicate certified copy to the speaker of the house of representatives.

(c) On receipt of the entire record, the speaker of the senate and the speaker of the house of representatives shall appoint a special joint committee of ten (10) members, composed of five (5) members each from the judiciary committee of the senate and the civil justice committee of the house of representatives. The speakers shall designate one (1) of the appointees to serve as temporary chair of the special joint committee. The temporary chair shall call a meeting of the committee in Nashville within thirty (30) days from and after the appointment of the committee members, and the chair shall provide the judge in question ten (10) days' written notice of the meeting. The temporary chair shall preside at the committee meeting so called until such time as committee officers are selected. The special joint committee shall hear the appeal de novo and upon the record transmitted to the general assembly. There shall be no presumption of correctness and no witnesses shall be heard. Full argument of counsel shall be permitted at the meeting. The special joint committee shall vote "for recommending removal" or "against recommending removal" as to each charge presented against the judge that was affirmed by the supreme court. The committee may vote "for recommending removal" based on the cumulative effect of all the charges even though they vote "against recommending removal" as to each individual charge. The vote on each charge and the vote on the cumulative charge, if any, shall be made a part of the record transmitted to the general assembly.

(d) Within ten (10) days from and after the hearing, the joint committee shall make and file its report with the respective speakers, who shall forthwith convene a joint convention of the general assembly for the purpose of acting upon the report of the joint committee. Consideration before the joint convention shall be limited to the record, but oral argument will be permitted.

(e) Upon the conclusion of argument, the joint convention shall adjourn and each house shall repair to its respective chamber, and vote separately, in the manner prescribed in article VI, § 6 of the Tennessee Constitution. Each house shall vote "for" or "against" removal of the judge in question as to each charge for which the special joint committee recommended removal. Any member, by a motion properly seconded, may call for a vote of the member's respective house on any charge considered by the joint committee but for which the committee recommended "against" removal. In the event two thirds (⅔) of the members to which one (1) house may be entitled vote to remove the judge in

question for a charge that the special joint committee recommended "against removal," the vote and the charge receiving such two-thirds (⅔) vote shall be transmitted forthwith to the other house, which shall then vote on it as if the charge was one recommended "for removal" by the special joint committee. The general assembly notes the ten (10) day notice provision of article VI, § 6 of the Tennessee Constitution, but proceeds upon the assumption that all due process requirements have been satisfied by the notice provisions of the procedure outlined in this section.

(f) In the event two thirds (⅔) of the members to which each house may be entitled vote to remove the judge for one (1) or more of the charges brought by the board of judicial conduct and affirmed by the supreme court, the names of the members voting for or against removal of the judge, together with the cause or causes of removal, shall be entered on the journals of each house respectively and the judge shall then be removed from office. Such removal shall be effective immediately following the concurrence of each house.

(g)(1) Notwithstanding the provisions of this section to the contrary, if the special joint committee, upon meeting as required by subsection (c), determines that by reason of resignation, death, retirement or otherwise the question of whether a judge should or should not be removed is moot, the appeal de novo shall not be heard by the committee and the committee's report to the respective speakers shall reflect the determination of mootness. If both speakers are in agreement that the matter is moot, the removal procedure shall terminate.

(2) For purposes of subdivision (g)(1), the question of whether a judge should be removed shall be considered moot only if the special joint committee determines that there is no further punitive action the general assembly could take against the judge.

18-2-201. Official bond.

(a) Every clerk of a court except the clerk of the supreme court and chief deputy clerks of the supreme court, before entering upon the duties of the clerk's office, shall enter into an official bond, which shall be prepared in accordance with title 8, chapter 19, to the satisfaction of the clerk's court, in the sum of fifty thousand dollars ($50,000) in counties with a population of less than fifteen thousand (15,000) and one hundred thousand dollars ($100,000) in counties with a population of fifteen thousand (15,000) or more, according to the 2010 federal census or any subsequent federal census, or in a greater sum as the court may determine, payable to the state, and conditioned for the safekeeping of the records and for the faithful discharge of the duties of the clerk's office.

(b) The clerk of the supreme court and chief deputy clerks of the supreme court shall be included within the blanket surety bond required by § 4-4-108.

(c) Unless otherwise clearly indicated by the context in which it is used, "clerk of a court" or "clerk," as used in this part, includes "county clerk."

18-2-205. Entry and filing of bonds.

The bonds required in §§ 18-2-201 — 18-2-204, after being acknowledged before, approved and certified by the court, shall be entered upon the minutes within thirty (30) days, and shall then be recorded in the office of the county register of deeds and transmitted to the office of the county clerk for safekeeping.

23-1-101. Board of law examiners.

(a) A state board of law examiners is created, to consist of not more than five (5) members of the state bar, who shall be appointed from time to time by the supreme court, and shall hold office.

(b)(1) The compensation of each member of the board shall be fixed by the administrative director of the courts, with the approval of the chief justice of the supreme court, and shall include travel expenses. The administrative director of the courts shall notify the chairs of the civil justice and finance, ways and means committees of the house of representatives and the judiciary and finance, ways and means committees of the senate each time the compensation of any member of the board is increased.

(2) All reimbursement for travel expenses shall be pursuant to policies and guidelines promulgated by the supreme court.

(3) From the receipts from fees, the board shall pay its compensation and expenses, and any excess of receipts over disbursements shall be paid over to the state treasurer for the use of the state; it being the purpose that the board and its administration shall not be a charge upon, or an expense to the state, that compensation and expenses shall come only from the board's income, and that any excess of income over compensation and expenses shall go into the state treasury.

24-7-120. Child's testimony—Closed circuit television.

(a) In a criminal case where the victim of any of the offenses listed in subsection (e) was thirteen (13) years of age or younger at the time the offense was committed, the court may order the child's testimony be taken outside the courtroom by means of two-way closed circuit television, hereafter referred to as "CCTV." Prior to entering such an order, the trial judge must make a case-specific finding of necessity that:

(1) The particular child involved would be traumatized;

(2) The source of the trauma is not the courtroom generally, but the presence of the defendant; and

(3) The emotional distress suffered by the child would be more than de minimis, such that the child could not reasonably communicate.

(b) If the testimony of a child is ordered to be taken by two-way CCTV, it shall be taken during the judicial proceeding and the following rules shall apply:

(1) Only the prosecuting attorney, the attorney for the defendant, and the judge may question the child;

(2) The operators of CCTV shall make every effort to be unobtrusive;

(3) Only the following persons shall be permitted in the room with the child while the child testifies by CCTV:

(A) The prosecuting attorney;

(B) The attorney for the defendant;

(C) An interpreter, where necessity dictates;

(D) The operators of CCTV equipment;

(E) Court security personnel, where required;

(F) A parent, counselor or therapist; and

(G) Any person whose presence, in the opinion of the court, contributes to the well being of the child, including a person who has dealt with the child in a therapeutic setting concerning the offense;

(4) The child's testimony shall be memorialized by video taped recording;

(5) During the child's testimony by CCTV, the judge, jury and the defendant shall remain in the courtroom;

(6) The judge and the defendant shall be allowed to communicate with those persons in the room where the child is testifying by any appropriate electronic method; and

(7) The defendant shall not be allowed to enter the room where the child is testifying by way of CCTV, except where the defendant is acting as an attorney pro se.

(c) This section shall not be interpreted to preclude, for the purpose of identification of the defendant, the presence of both the victim and the defendant in the courtroom at the same time.

(d) The provisions of this section shall also apply to a witness who was not the victim of any of the offenses set out in subsection (e) but who was thirteen (13) years of age or younger at the time the offense which gave rise to the criminal case was committed; provided, there is an individual finding of necessity by the trial judge that conforms to the requirements of this section.

(e) The offenses to which this section applies are:

(1) Aggravated sexual battery, as defined in § 39-13-504;

(2) Rape of a child, as defined in § 39-13-522;

(3) Incest, as defined in § 39-15-302;

(4) Aggravated child abuse, as defined in § 39-15-402;

(5) Kidnapping, as defined in § 39-13-303;

(6) Aggravated kidnapping, as defined in § 39-13-304;

(7) Especially aggravated kidnapping, as defined in § 39-13-305;

(8) Criminal attempt, as defined in § 39-12-101, to commit any of the offenses enumerated within this subsection (e);

(9) Trafficking for commercial sex act as defined in § 39-13-309; and

(10) Patronizing prostitution as defined in § 39-13-514.

26-2-225. Notifying judgment creditor of new employment.

(a) A judgment debtor whose salaries, wages or other compensation are subject to a garnishment shall notify the judgment creditor who filed the writ of garnishment within ten (10) days, as computed in § 1-3-102, of obtaining any new employment. Notice to the judgment creditor shall be by certified mail and shall include the name, address and telephone number of the new employer. A judgment debtor who fails to provide notice of new employment in compliance with this section is in contempt of court and, upon the court making a determination of contempt, may be punished the same as contempt of court in a judicial proceeding. For purposes of a determination of contempt the debtor's notification of new employment to the judgment creditor shall be considered timely sent if mailed less than ten (10) days from the date of obtaining new employment.

(b) Any fees imposed by the clerk or any other party on the transfer of garnishment to the debtor's new employment shall be imposed on the debtor by adding the amount to the debt to be collected.

26-4-101. Grounds for complaint on unsatisfied execution — Discovery.

The creditor whose execution has been returned unsatisfied, in whole or in part, may proceed in the court granting the judgment, or may file a complaint

in a court of general jurisdiction against the defendant in the execution and any other person, to compel the discovery of any property, including stocks, choses in action or money due such defendant, or the defendant's interest in property held in a trust for the defendant, except when the trust is exempt from the claims of the defendant's creditors under §§ 35-15-501 — 35-15-509 of the Tennessee Uniform Trust Code.

29-3-101. Definitions — Maintenance and abatement of nuisance — Forfeiture of property — Payment of moneys from forfeiture into general funds.

(a) As used herein:

(1) "Lewdness" includes all matter of lewd sexual conduct or live exhibition, and includes, but is not limited to, possession, sale or exhibition of any:

(A) Obscene films or plate positives;

(B) Films designed to be projected upon a screen for exhibition; or

(C) Films or slides, either in negative or positive form, designed for projection on a screen for exhibition;

(2) "Nuisance" means that which is declared to be a nuisance by other statutes, and, in addition, means:

(A) Any place in or upon which lewdness, prostitution, promotion of prostitution, patronizing prostitution, unlawful sale of intoxicating liquors, unlawful sale of any regulated legend drug, narcotic, other controlled substance or controlled substance analogue, any sale or possession with intent to sell of drug paraphernalia, as defined by § 39-17-402, unlawful gambling, any sale, exhibition or possession of any material determined to be obscene or pornographic with intent to exhibit, sell, deliver or distribute matter or materials in violation of §§ 39-17-901—39-17-908, § 39-17-911, § 39-17-914, § 39-17-918, or §§ 39-17-1003—39-17-1005, quarreling, drunkenness, fighting, breaches of the peace are carried on or permitted, and personal property, contents, furniture, fixtures, equipment and stock used in or in connection with the conducting and maintaining any such place for any such purposes; or

(B) A criminal gang, as defined by § 40-35-121(a), that regularly engages in gang related conduct. "Gang related conduct" occurs when one (1) or more criminal gang member or members, as defined by § 40-35-121(a), regularly engages in the following:

(i) Intimidating, harassing, threatening, stalking, provoking or assaulting any person;

(ii) Possessing weapons prohibited under §§ 39-17-1302 and 39-17-1307, knowingly remaining in the presence of anyone who is in possession of such weapons, or knowingly remaining in the presence of such weapons;

(iii) Unlawfully damaging, defacing or marking any public or private property of another or possessing tools for the purpose of unlawfully damaging, defacing or marking any public or private property of another;

(iv) Selling, possessing, manufacturing or using any controlled substance, drug paraphernalia, as defined in § 39-17-402, or controlled substance analogue, as defined in § 39-17-454, knowingly remaining in the presence of anyone selling, possessing, manufacturing or using any

controlled substance, controlled substance analogue or drug paraphernalia, knowingly remaining in the presence of any controlled substance, controlled substance analogue or drug paraphernalia, driving under the influence of any controlled substance or controlled substance analogue in violation of § 55-10-401, or being under the influence of any controlled substance or controlled substance analogue in public in violation of § 39-17-310;

(v) Using, consuming, possessing or purchasing alcoholic beverages unlawfully, including, but not limited to, public intoxication in violation of § 39-17-310 or driving under the influence of alcohol in violation of § 55-10-401;

(vi) Criminal trespassing in violation of § 39-14-405;

(vii) Taking any action to recruit gang members or making any threats or promises to shoot, stab, strike, hit, assault, injure, disturb the peace or destroy the personal property of anyone as an incentive to join a gang;

(viii) Taking any action to stop a gang member from leaving a gang or making any threats or promises to shoot, stab, strike, hit, assault, injure, disturb the peace or destroy the personal property of anyone as an incentive not to leave a gang;

(ix) Engaging in a criminal gang offense as defined by § 40-35-121(a);

(x) Disorderly conduct in violation of § 39-17-305; or

(xi) Contributing to or encouraging the delinquency or unruly behavior of a minor in violation of § 37-1-156;

(3) "Person" means and includes any individual, corporation, association, partnership, trustee, lessee, agent or assignee; and

(4) "Place" means and includes any building, room enclosure or vehicle, or separate part or portion thereof or the ground itself and all the property on which the nuisance is located that is under the ownership, management or control of the violator.

(b) Any person who uses, occupies, establishes or conducts a nuisance, or aids or abets therein, and the owner, agent or lessee of any interest in any such nuisance, together with the persons employed in or in control of any such nuisance by any such owner, agent or lessee, is guilty of maintaining a nuisance and such nuisance shall be abated as provided hereinafter.

(c) All motor vehicles, furnishings, fixtures, equipment, moneys and stock, used in or in connection with the maintaining or conducting of a nuisance, are subject to seizure, immediately upon detection by any law enforcement officer and are subject to forfeiture to the state by order of a court having jurisdiction upon application by any of the officers or persons authorized by § 29-3-102, to bring action for the abatement of such nuisance; provided, that seizure for the possession of obscene matter shall be in accordance with §§ 39-17-901—39-17-908 and seizure for violations of §§ 39-17-1003—39-17-1005 shall be in accordance with §§ 39-17-1006 and 39-17-1007. Any property so forfeited shall be disposed of by public auction or as otherwise provided by law.

(d) All moneys from such forfeiture and all proceeds realized from the enforcement of this section shall be paid equally into the general funds of the state and the general funds of the political subdivision or other public agency, if any, whose officers made the seizure, except as otherwise provided by law.

(e)(1) Upon a person's second or subsequent conviction for promoting prostitution or patronizing prostitution, any vehicle in which such offense

was committed is subject to seizure and forfeiture in accordance with the procedure established in title 39, chapter 11, part 7; provided, however, that nothing contained within this subsection (e) shall be construed to authorize seizure of such vehicle at any time prior to such conviction.

(2) Subdivision (e)(1) applies only if the violations making the vehicle subject to seizure and forfeiture occur in Tennessee and at least one (1) of the previous violations occurs on or after July 1, 2002, and the second or subsequent offense after July 1, 2002, occurs within five (5) years of the most recent prior offense occurring after July 1, 2002.

29-3-110. Order of abatement.

(a) If, upon the trial, the existence of the nuisance is established under § 29-3-101(a)(2)(A), an order of abatement shall be entered as part of the judgment or decree of the court, which order shall direct the removal from the building or place where the nuisance exists or is maintained of all means, appliances, fixtures, appurtenances, materials, supplies and instrumentalities used for the purpose of conducting, maintaining or carrying on the unlawful business, occupation, game, practice or device constituting the nuisance; and shall direct the sale thereof, or such portion thereof as may be lawfully sold, upon such terms as the court may order, and the payment of the proceeds into court to be applied to costs or paid over to the owner, and the destruction of such portion thereof, if any, as cannot be lawfully sold within this state; and the judgment or decree shall perpetually enjoin the defendant from engaging in, conducting, continuing, or maintaining the nuisance, directly or indirectly, by the defendant or defendant's agents or representatives, and perpetually forbidding the owner of the building from permitting or suffering the nuisance to be done in the building.

(b) If, upon the trial, the existence of the nuisance is established under § 29-3-101(a)(2)(B), an order of abatement shall be entered as part of the judgment or decree of the court, which order shall perpetually enjoin the defendant or defendants from engaging in, conducting or continuing the nuisance, directly or indirectly.

(c) In the order of abatement, the court may also assess costs of public services required to abate or manage the nuisance, including, but not limited to, law enforcement costs, if any, caused by the public nuisance. The governmental entity shall submit evidence of such costs to the court.

29-11-107. Liability for damages in civil action governed by comparative fault — When doctrine of joint and several liability applies — Doctrines of vicarious liability and respondeat superior unaffected — Allocation of fault by trier of fact.

(a) If multiple defendants are found liable in a civil action governed by comparative fault, a defendant shall only be severally liable for the percentage of damages for which fault is attributed to such defendant by the trier of fact, and no defendant shall be held jointly liable for any damages.

(b) Notwithstanding subsection (a), the doctrine of joint and several liability remains in effect:

(1) To apportion financial responsibility in a civil conspiracy among two (2) or more at-fault defendants who, each having the intent and knowledge of the other's intent, accomplish by concert an unlawful purpose, or accomplish by concert a lawful purpose by unlawful means, which results in

damage to the plaintiff; and

(2) Among manufacturers only in a product liability action as defined in § 29-28-102, but only if such action is based upon a theory of strict liability or breach of warranty. Nothing in this subsection (b) eliminates or affects the limitations on product liability actions found in § 29-28-106.

(c) Nothing in this section eliminates or affects the doctrines of vicarious liability or respondeat superior.

(d) Nothing in this section limits the ability of the trier of fact to allocate fault to a nonparty to the suit, including, but not limited to, an immune third party or a settling party, person, or entity. Allocations of fault to nonparties shall be used only to determine the liability of named parties and shall not subject nonparties to liability in the action in which the allocation occurred or in any other action.

(e) Nothing in this section eliminates or diminishes:

(1) The filing of cross-claims or counterclaims against any party or third party under Tennessee Rules of Civil Procedure 13 and 14;

(2) The assertion by a party of rights to contribution or indemnity;

(3) The assertion by a party of comparative fault under Tennessee Rule of Civil Procedure 8.03;

(4) The doctrine of superseding and independent intervening cause; or

(5) Any defenses or immunities that exist as of July 1, 2013.

(f) This section shall not prevent parties from entering into a legally enforceable contract that allocates fault in a civil action among the parties to the contract.

29-13-111. Manner of payment — Exemption from execution or attachment.

(a) Upon acceptance of a settlement offer by a claimant or receipt of an order by the commission, the division shall, without further authorization, and subject to available funds, pay the claimant the amount, and in the manner determined appropriate. Such payment shall be made from the fund as set forth in § 29-13-116.

(b) All payments shall be made in a lump sum, except for those claims involving death or protracted disability, for which periodic payment of compensation may be awarded for the loss of earnings or support.

(c) If the claimant is a minor, or is incompetent, payment shall be ordered to a relative or legal guardian. In such situations, the payee shall submit a plan for the disbursement of all funds for the benefit of the claimant as will best promote the interest of the claimant. Such plan shall be submitted at the time a claim for compensation is filed. Thereafter, should the payee choose to alter or amend the terms of the plan, the payee shall file a petition with the division setting out the nature of the proposed amendment or alteration and the reasons therefor. If the division determines that the requested amendment or alteration is in the best interest of the claimant, the division is authorized to approve such amendment or alteration. If the division is unable to make such a determination, the petition shall be submitted to the commission for its consideration. In the event the payee attempts to alter or amend the terms of the plan without filing such petition, the payee is liable for all amounts expended contrary to the provisions of the approved plan. Notwithstanding the foregoing, the division or the commission has the discretion to turn over

compensation awarded to a minor to the juvenile court pursuant to part 3 of this chapter, to be placed in an interest-bearing account for the benefit of the minor.

(d)(1) Notwithstanding any provision of this part to the contrary, if the claimant has outstanding health care, funeral or burial expenses resulting from the injury or death which was the basis of the claim and if any compensation remains after making provision for the payment of all other eligible losses and expenses to the claimant, the division or commission may, in their discretion, make the remaining compensation payable to the health care or funeral provider.

(2) Where multiple health care or funeral providers exist and the remaining compensation is inadequate to pay the entire indebtedness, the division or commission may divide the remaining compensation equally among the providers or, in the division or commission's discretion, apportion the remaining compensation among the providers in accordance with the claimant's instructions.

(3) Nothing in this subsection (d) shall be construed to increase the maximum amount that may otherwise be awarded under § 29-13-107(7).

(e)(1) Except as provided in subdivisions (e)(2) and (3), no award pursuant to this chapter shall be subject to execution or attachment other than for expenses resulting from the injury or death which is the basis of the claim.

(2) If any claimant is entitled to direct compensation pursuant to this chapter and is in arrears with regard to child support payments, the department of human services shall, without further order by the court, attach a lien to any award of compensation such child support obligor receives from the criminal injuries compensation funds in order to satisfy such arrearage; however, a lien shall not apply to awards made by the division directly to service providers pursuant to subsection (d). The division shall periodically notify the department of human services of claims that have been filed. Upon notice from the division, it shall be the department of human services' responsibility to then notify the division of a lien attaching to a claim for payment of child support arrearage. This subsection (e) shall be effective for decisions made on or after July 1, 2012.

(3) If any minor claimant is entitled to direct compensation pursuant to this chapter and a trust fund has been established for the minor claimant in accordance with part 3 of this chapter, the juvenile court clerk may, without further order of the court, withhold any funds within the trust for the purpose of paying court costs, fines, fees, or restitutions resulting from the minor beneficiary's actions pending in juvenile court.

29-13-308. Termination of trust.

Upon attaining eighteen (18) years of age, the minor may terminate the trust by submitting a written request therefor with the court clerk. The court clerk shall deliver to the minor all funds and interest income remaining in the trust less any outstanding fees, court costs, fines, or restitutions resulting from the minor beneficiary's actions pending in juvenile court within sixty (60) calendar days from the date of the request.

29-20-107. Definition of government employee for tort liability purposes.

(a) Any person who is not an elected or appointed official or a member of a board, agency or commission shall not be considered an employee of a governmental entity for purposes of this chapter unless the court specifically finds that all of the following elements exist:

(1) The governmental entity itself selected and engaged the person in question to perform services;

(2) The governmental entity itself is liable for the payment of compensation for the performance of such services and the person receives all of such person's compensation directly from the payroll department of the governmental entity in question;

(3) The person receives the same benefits as all other employees of the governmental entity in question including retirement benefits and the eligibility to participate in insurance programs;

(4) The person acts under the control and direction of the governmental entity not only as to the result to be accomplished but as to the means and details by which the result is accomplished; and

(5) The person is entitled to the same job protection system and rules, such as civil service or grievance procedures, as are other persons employed by the governmental entity in question.

(b) A governmental entity's reservation of the right to approve employment or terminate employment by any contract, agreement or other means or such entity's ability to control or direct a person not otherwise in the regular employ of such entity shall not operate to make a person an employee of such entity for the purpose of the immunity granted by this chapter unless such person otherwise qualifies as an employee according to this section.

(c) No governmental entity may extend the immunity granted by this chapter to independent contractors or other persons or entities by contract, agreement or other means, nor shall the doctrine of borrowed servants operate to make any person a governmental entity employee for the purpose of immunity who does not otherwise meet all of the elements set out in this section.

(d) A regular member of a voluntary or auxiliary firefighting, police or emergency assistance organization of a governmental entity shall be considered to be an employee of that governmental entity for purposes of this chapter without regard to the elements set forth in subsection (a).

(e) Persons who are employed in part-time, seasonal, or probationary positions by a governmental entity shall not be disqualified by subdivision (a)(3) or (a)(5) from the immunity granted by this chapter if they receive the same benefits or are subject to the same job protection system and rules as other persons employed by that government in comparable part-time, seasonal, or probationary positions.

(f) Agreements between governmental entities entered into pursuant to the Interlocal Cooperation Act, title 12, chapter 9, or as otherwise duly authorized by law, may confer or determine the status of an employee for purposes of this chapter on persons without regard to the elements set forth in subsection (a). Such agreements may provide, but are not, limited to, agreements that an employee of a governmental entity, including, but not limited to, police officers shall be assigned to another governmental entity to serve a particular purpose.

The agreement may provide which of the governmental entities shall be liable for the acts of such person who shall continue to be considered as an employee for purposes of this chapter.

(g)(1)(A) Notwithstanding any provision of this chapter to the contrary, non-governmental independent contractors or other persons or entities that contract with or enter into any agreements with the regional transportation authority, as defined and created in title 64, chapter 8, for the provision of commuter rail transit services, facilities, or functions upon a rail line or rail line right-of-way owned and maintained by a governmental entity shall be granted limited tort exposure under this chapter. This grant of limited tort exposure shall be provided only when the non-governmental independent contractors or other persons or entities are providing by contract or agreement the rail transit services, facilities, or functions that title 64, chapter 8 authorizes the regional transportation authority to perform.

(B) In performing or providing such rail transit services, facilities, or functions, the non-governmental independent contractors or other persons or entities are deemed to be the functional equivalent of the regional transportation authority. They are performing or providing these rail transit services, facilities, or functions in the stead of the regional transportation authority and by such are fulfilling a public purpose that is authorized to be performed by the regional transportation authority. The regional transportation authority shall enter into such contracts or agreements because it has been determined by the board of the regional transportation authority to be more cost effective to contract or enter into an agreement for the rail transit services, facilities, or functions. When the regional transportation authority's independent contractor or other person or entity that provides these rail transit services, facilities, or functions is deemed to be the functional equivalent of the regional transportation authority as provided for in this subsection (g), then the regional transportation authority's contracting party or party to the agreement shall have limited tort exposure as long as the regional transportation authority's contracting party or party to the agreement was performing rail transit services, facilities or functions within the scope of work and during the normal course of work of the contract or agreement when the accident occurred. The regional transportation authority's contracting party or party to the agreement will not be afforded any limits to its tort exposure for gross negligence in the performance of the contract or agreement.

(C) For any rail transit accident, occurrence, or act, the limits of tort exposure for the regional transportation authority's contracting party or party to the agreement shall be two million dollars ($2,000,000) for bodily injury or death of any one (1) person in any one (1) accident, occurrence or act, and thirty million dollars ($30,000,000) for bodily injury or death of all persons in any one (1) accident, occurrence, or act arising or that occurred during that time frame. No tort liability limits shall be granted to the non-governmental contractor or other persons or entities that contract with or enter into any agreement with the regional transportation authority for injury to or destruction of property in any accident, occurrence, or act. The regional transportation authority shall maintain, or cause to be maintained, a self insurance retention fund in a minimum

amount of one million dollars ($1,000,000) up to an amount not to exceed two million dollars ($2,000,000), which shall be utilized as a first fund source for any payment of a tort claim arising from any rail transit accident, occurrence or act that results in bodily injury or death to one (1) or more persons.

(2) The limits of liability prescribed under subdivision (g)(1) shall not apply to any for-profit owners of rail lines or rail line rights-of-way. As a matter of public policy, the general assembly declares and deems the operation of the regional transportation authority's commuter rail train to be a public purpose, a public and governmental function and a matter of public necessity.

29-20-401. Creation of reserve or special fund — Pooling agreements with other governmental entities — Election to self-insurer. [Effective until July 1, 2014. See the version effective on July 1, 2014.]

(a) Any governmental entity may create and maintain a reserve or special fund for the purpose of making payment of claims against it payable pursuant to this chapter or for the purpose of purchasing liability insurance to protect it from any and all risks created by this chapter.

(b)(1) Any two (2) or more governmental entities are hereby granted the power, any provision of law to the contrary notwithstanding, to enter into an agreement or agreements with one another for joint or cooperative action to pool their financial and administrative resources for the purpose of providing to the participating governmental entities risk management, insurance, reinsurance, which is defined to mean reinsurance by an entity created under this section, self-insurance, or any combination thereof for any and all of the areas of liability or insurability, or both, for such governmental entities, including, but not limited to, the liabilities created by this chapter (including general and professional liabilities), liabilities under the workers' compensation law, liabilities under the unemployment compensation law, and motor vehicle insurance. All such agreements shall be made pursuant to title 12, chapter 9.

(2) The power to enter into agreements hereunder specifically includes the power to establish a separate legal or administrative entity or entities to effectuate such agreements or, if no separate legal or administrative entity or entities are established, to designate an administrator of the pooled financial and administrative resources. An entity so established, or an administrator so designated, shall be deemed to have been appointed by the governing body of the governmental entity for the purposes of § 29-20-309, and this appointment shall not be considered as a violation of the provision of § 12-9-104(a) dealing with the powers, privileges or authority of officers of political subdivisions.

(3) Each such agreement shall be approved by appropriate resolution or as otherwise permitted by the laws of the participating governmental entities before any such agreement shall be effective or binding.

(4) In addition to those items included in any such agreement pursuant to § 12-9-104(c), the agreement may specify: the nature and scope of insurance coverage and coverages to be provided; the method and methods by which coverage and coverages are to be extended, contributions (which term shall

include all premiums or assessments) levied and paid, claims administered and defended against; the procedures by which financial reserves shall be established and maintained; and, any other provisions necessary for proper administration of the pooled resources.

(5) Such agreements may provide for the pooling of losses and any other expenses so that any or all of the funds contributed by a participating governmental entity may be used to pay claims against or with respect to any of the other participating governmental entities and any costs or expenses, or both, relative to any entity authorized by this part. The general assembly hereby finds and determines that all contributions of financial and administrative resources made pursuant to an agreement as authorized herein are made for a public and governmental purpose and that all such contributions benefit the contributing governmental entity.

(c)(1) Any governmental entity choosing to create and maintain a special fund, or to enter into an agreement, as authorized in this section for the purpose of insuring against the liabilities created by this chapter, shall be deemed to be electing to self-insure against the liabilities established in this chapter and shall, therefore, have the same limits of liability as if the minimum limits of liability established in § 29-20-403 had been purchased.

(2) Should any governmental entity choose to enter into an agreement for the purpose of insuring for the liabilities of the Workers' Compensation Law, as authorized in this section, it shall be deemed to have accepted the Workers' Compensation Law pursuant to § 50-6-106(5), and it shall be deemed to have insured for such liabilities with an association, organization or corporation authorized to transact the business of workers' compensation insurance pursuant to § 50-6-405(a)(1). Certificates of compliance issued by the legal or administrative entity created by the agreement between the governmental entities for this purpose shall be accepted by the department of labor and workforce development.

(d)(1) No special fund established by an agreement authorized under this section and under title 12, chapter 9, shall be considered as an "insurance company" nor shall any contribution of financial or administrative resources to such a special fund be considered a "premium" or "gross premium" under title 56 for any purpose, including regulation and taxation.

(2) There shall be maintained in any special fund created pursuant to this section such an amount of reserve funds as is deemed adequate by the department in accordance with reserve standards applicable to private insurance companies pursuant to title 56. The department of commerce and insurance is authorized to charge reasonable fees to cover expenses incurred in the course of investigations and audits conducted for the purpose of making this determination, and is authorized to promulgate such rules and regulations necessary to accomplish the purposes of this subsection (d).

(e) Any special fund or legal or administrative entity created pursuant to this part shall have the power to reinsure, in whole or in part, any of the areas of liability or insurability of governmental entities or governmental employees. Notwithstanding any other law to the contrary, this power to reinsure may be exercised through the creation, operation, or ownership, in whole or in part, of reinsuring entities, or by entering into contracts or treaties of reinsurance with reinsuring entities, or by any combination thereof; provided, that the reinsuring entity is lawfully created under the laws of its jurisdiction. Any reinsuring entity created pursuant to this part may be created only by governmental

entities as defined in this chapter or by an entity created by governmental entities pursuant to this part and the Interlocal Cooperation Act, compiled in title 12, chapter 9. Any such reinsuring entity may reinsure only any areas of liability or insurability of governmental entities or governmental employees.

(f)(1) Any legal or administrative entity created by an agreement between governmental entities to pool their resources to provide workers' compensation coverage is entitled to participate in the second injury fund established in § 50-6-208 upon the payment to the department of labor and workforce development of an annual fee. The annual fee shall be a percentage of the total financial contributions for workers' compensation coverage received from participating governmental entities and earned during a calendar year. The percentage shall equal the percentage of insurance company premiums, as measured by the premium tax, allocated and paid out by the second injury fund pursuant to § 50-6-208(c) and (d), during the same year, subject to a maximum of two percent (2%).

(2) If any such legal or administrative entity participates in the second injury fund as provided herein and then ceases participation, either the second injury fund shall remain liable for a claim for injuries to an employee insured by the entity that occurred prior to the termination of participation and for which benefits had not been paid prior to the termination; provided, that the legal or administrative entity shall promptly reimburse the second injury fund for the actual amount of any such benefits subsequently paid by the second injury fund; or, within thirty (30) days of the cessation of such participation, the legal and administrative entity may elect to assume complete liability for such a claim. This assumption shall release the second injury fund from any duty to defend or liability, but in either case, the recovery by any employee shall not be reduced or defeated.

(g)(1)(A) An insurance pool, special fund, reserve fund, or legal or administrative entity administering any such pool or fund created and authorized under this section shall be audited annually in accordance with standards established by the comptroller of the treasury. A copy of the audit shall be filed with the comptroller as soon as practical, but in no event later than one hundred twenty (120) days following the end of the pool's or reserve fund's fiscal year. Notwithstanding this subdivision (g)(1)(A), the operations, books and records of any pool or reserve fund shall be subject to audit and review by the comptroller or any person authorized by the comptroller. The commissioner of commerce and insurance shall assist the comptroller in the audit upon the written request by the comptroller.

(2) The comptroller of the treasury is authorized to charge reasonable fees to cover expenses incurred by the comptroller or the commissioner of commerce and insurance in the course of audits or investigations pursuant to this section.

(3) Any information obtained by or disclosed to the commissioner of commerce and insurance pursuant to an examination, audit or investigation conducted under this chapter shall be confidential and shall not be disclosed to the public. Any information obtained by or disclosed to the comptroller shall be considered working papers of the comptroller and, therefore, are confidential. Furthermore, the commissioner of commerce and insurance shall not disclose any information relating to the reserving of particular claims, if disclosure would likely prejudice the fund in settling the claim; provided, however, that this shall not apply to any examination report, audit

or investigative report prepared by the commissioner of commerce and insurance or the comptroller, or to any rebuttal to such reports submitted by or on behalf of the fund examined. However, nothing contained in this subdivision (g)(3) shall be construed as prohibiting the commissioner of commerce and insurance or the comptroller from disclosing the information listed in this subdivision (g)(3), or any matters relating to that information, to state agencies of this or any other state, or to law enforcement officials of this or any other state or agency of the federal government at any time.

(4) Any person knowingly or willfully testifying falsely in reference to any matter material to the investigation, audit, examination or inquiry commits a Class A misdemeanor.

(5) Any director, trustee, officer, agent, or employee of an insurance pool or reserve fund, or any other person who knowingly or willfully makes any false certificate, entry, or memorandum upon any of the books or papers of any insurance pool or reserve fund upon any statement filed or offered to be filed in the department or used in the course of any examination, inquiry or investigation with the intent to deceive the commissioner of commerce and insurance or any person appointed by the commissioner or the comptroller to make the examination, commits a Class A misdemeanor.

29-20-401. Creation of reserve or special fund — Pooling agreements with other governmental entities — Election to self-insurer. [Effective on July 1, 2014. See the version effective until July 1, 2014.]

(a) Any governmental entity may create and maintain a reserve or special fund for the purpose of making payment of claims against it payable pursuant to this chapter or for the purpose of purchasing liability insurance to protect it from any and all risks created by this chapter.

(b)(1) Any two (2) or more governmental entities are hereby granted the power, any provision of law to the contrary notwithstanding, to enter into an agreement or agreements with one another for joint or cooperative action to pool their financial and administrative resources for the purpose of providing to the participating governmental entities risk management, insurance, reinsurance, which is defined to mean reinsurance by an entity created under this section, self-insurance, or any combination thereof for any and all of the areas of liability or insurability, or both, for such governmental entities, including, but not limited to, the liabilities created by this chapter (including general and professional liabilities), liabilities under the workers' compensation law, liabilities under the unemployment compensation law, and motor vehicle insurance. All such agreements shall be made pursuant to title 12, chapter 9.

(2) The power to enter into agreements hereunder specifically includes the power to establish a separate legal or administrative entity or entities to effectuate such agreements or, if no separate legal or administrative entity or entities are established, to designate an administrator of the pooled financial and administrative resources. An entity so established, or an administrator so designated, shall be deemed to have been appointed by the governing body of the governmental entity for the purposes of § 29-20-309, and this appointment shall not be considered as a violation of the provision of § 12-9-104(a) dealing with the powers, privileges or authority of officers of political

subdivisions.

(3) Each such agreement shall be approved by appropriate resolution or as otherwise permitted by the laws of the participating governmental entities before any such agreement shall be effective or binding.

(4) In addition to those items included in any such agreement pursuant to § 12-9-104(c), the agreement may specify: the nature and scope of insurance coverage and coverages to be provided; the method and methods by which coverage and coverages are to be extended, contributions (which term shall include all premiums or assessments) levied and paid, claims administered and defended against; the procedures by which financial reserves shall be established and maintained; and, any other provisions necessary for proper administration of the pooled resources.

(5) Such agreements may provide for the pooling of losses and any other expenses so that any or all of the funds contributed by a participating governmental entity may be used to pay claims against or with respect to any of the other participating governmental entities and any costs or expenses, or both, relative to any entity authorized by this part. The general assembly hereby finds and determines that all contributions of financial and administrative resources made pursuant to an agreement as authorized herein are made for a public and governmental purpose and that all such contributions benefit the contributing governmental entity.

(c)(1) Any governmental entity choosing to create and maintain a special fund, or to enter into an agreement, as authorized in this section for the purpose of insuring against the liabilities created by this chapter, shall be deemed to be electing to self-insure against the liabilities established in this chapter and shall, therefore, have the same limits of liability as if the minimum limits of liability established in § 29-20-403 had been purchased.

(2) Should any governmental entity choose to enter into an agreement for the purpose of insuring for the liabilities of the Workers' Compensation Law, as authorized in this section, it shall be deemed to have accepted the Workers' Compensation Law pursuant to § 50-6-106(5), and it shall be deemed to have insured for such liabilities with an association, organization or corporation authorized to transact the business of workers' compensation insurance pursuant to § 50-6-405(a)(1). Certificates of compliance issued by the legal or administrative entity created by the agreement between the governmental entities for this purpose shall be accepted by the department of labor and workforce development.

(d)(1) No special fund established by an agreement authorized under this section and under title 12, chapter 9, shall be considered as an "insurance company" nor shall any contribution of financial or administrative resources to such a special fund be considered a "premium" or "gross premium" under title 56 for any purpose, including regulation and taxation.

(2) There shall be maintained in any special fund created pursuant to this section such an amount of reserve funds as is deemed adequate by the department in accordance with reserve standards applicable to private insurance companies pursuant to title 56. The department of commerce and insurance is authorized to charge reasonable fees to cover expenses incurred in the course of investigations and audits conducted for the purpose of making this determination, and is authorized to promulgate such rules and regulations necessary to accomplish the purposes of this subsection (d).

(e) Any special fund or legal or administrative entity created pursuant to this

part shall have the power to reinsure, in whole or in part, any of the areas of liability or insurability of governmental entities or governmental employees. Notwithstanding any other law to the contrary, this power to reinsure may be exercised through the creation, operation, or ownership, in whole or in part, of reinsuring entities, or by entering into contracts or treaties of reinsurance with reinsuring entities, or by any combination thereof; provided, that the reinsuring entity is lawfully created under the laws of its jurisdiction. Any reinsuring entity created pursuant to this part may be created only by governmental entities as defined in this chapter or by an entity created by governmental entities pursuant to this part and the Interlocal Cooperation Act, compiled in title 12, chapter 9. Any such reinsuring entity may reinsure only any areas of liability or insurability of governmental entities or governmental employees.

(f)(1) Any legal or administrative entity created by an agreement between governmental entities to pool their resources to provide workers' compensation coverage is entitled to participate in the second injury fund established in § 50-6-208 upon the payment to the department of labor and workforce development of an annual fee. The annual fee shall be a percentage of the total financial contributions for workers' compensation coverage received from participating governmental entities and earned during a calendar year. The percentage shall equal the percentage of insurance company premiums, as measured by the premium tax, allocated and paid out by the second injury fund pursuant to § 50-6-208(b) and (c), during the same year, subject to a maximum of two percent (2%).

(2) If any such legal or administrative entity participates in the second injury fund as provided herein and then ceases participation, either the second injury fund shall remain liable for a claim for injuries to an employee insured by the entity that occurred prior to the termination of participation and for which benefits had not been paid prior to the termination; provided, that the legal or administrative entity shall promptly reimburse the second injury fund for the actual amount of any such benefits subsequently paid by the second injury fund; or, within thirty (30) days of the cessation of such participation, the legal and administrative entity may elect to assume complete liability for such a claim. This assumption shall release the second injury fund from any duty to defend or liability, but in either case, the recovery by any employee shall not be reduced or defeated.

(g)(1)(A) An insurance pool, special fund, reserve fund, or legal or administrative entity administering any such pool or fund created and authorized under this section shall be audited annually in accordance with standards established by the comptroller of the treasury. A copy of the audit shall be filed with the comptroller as soon as practical, but in no event later than one hundred twenty (120) days following the end of the pool's or reserve fund's fiscal year. Notwithstanding this subdivision (g)(1)(A), the operations, books and records of any pool or reserve fund shall be subject to audit and review by the comptroller or any person authorized by the comptroller. The commissioner of commerce and insurance shall assist the comptroller in the audit upon the written request by the comptroller.

(2) The comptroller of the treasury is authorized to charge reasonable fees to cover expenses incurred by the comptroller or the commissioner of commerce and insurance in the course of audits or investigations pursuant to this section.

(3) Any information obtained by or disclosed to the commissioner of commerce and insurance pursuant to an examination, audit or investigation

conducted under this chapter shall be confidential and shall not be disclosed to the public. Any information obtained by or disclosed to the comptroller shall be considered working papers of the comptroller and, therefore, are confidential. Furthermore, the commissioner of commerce and insurance shall not disclose any information relating to the reserving of particular claims, if disclosure would likely prejudice the fund in settling the claim; provided, however, that this shall not apply to any examination report, audit or investigative report prepared by the commissioner of commerce and insurance or the comptroller, or to any rebuttal to such reports submitted by or on behalf of the fund examined. However, nothing contained in this subdivision (g)(3) shall be construed as prohibiting the commissioner of commerce and insurance or the comptroller from disclosing the information listed in this subdivision (g)(3), or any matters relating to that information, to state agencies of this or any other state, or to law enforcement officials of this or any other state or agency of the federal government at any time.

(4) Any person knowingly or willfully testifying falsely in reference to any matter material to the investigation, audit, examination or inquiry commits a Class A misdemeanor.

(5) Any director, trustee, officer, agent, or employee of an insurance pool or reserve fund, or any other person who knowingly or willfully makes any false certificate, entry, or memorandum upon any of the books or papers of any insurance pool or reserve fund upon any statement filed or offered to be filed in the department or used in the course of any examination, inquiry or investigation with the intent to deceive the commissioner of commerce and insurance or any person appointed by the commissioner or the comptroller to make the examination, commits a Class A misdemeanor.

29-20-408. Catastrophic injuries fund commission created.

(a) There is created a commission to design, develop and propose legislation to the general assembly to enact and implement a catastrophic injuries fund for the purpose of compensating certain specified persons in an amount in excess of the governmental tort liability limits for injuries or death caused by the actions of an employee of a governmental entity and to study other issues relating to governmental tort liability. Such commission shall consist of the following members:

(1) Four (4) members to be appointed jointly by the speaker of the senate and speaker of the house of representatives from a list of eight (8) persons to be submitted jointly by the Tennessee municipal league, the Tennessee county services association, the Tennessee school board association, county-owned hospitals, self-insured municipalities, Tennessee public utilities and the Tennessee municipal league risk management pool by January 1, 2002;

(2) Four (4) members to be appointed jointly by the speaker of the senate and speaker of the house of representatives from a list of eight (8) persons submitted by the Tennessee trial lawyers association by January 1, 2002;

(3) The comptroller of the treasury or the comptroller's designee;

(4) The state treasurer or the treasurer's designee;

(5) The secretary of state or the secretary's designee; and

(6) The chairs of the judiciary, state and local government and finance, ways and means committees of the senate and the civil justice, state government, and finance, ways and means committees of the house of representatives, or such chairs' designees, who shall be ex officio non-voting

members of the commission.

(b) If the speakers are unable to appoint four (4) members from the list of eight (8) submitted pursuant to subsection (a)(1) or (a)(2), the speakers shall notify the association or entities submitting the initial list and they shall have no more than forty-five (45) days to submit a new list of eight (8) persons. The speakers may request no more than two (2) such additional lists in making the respective four (4) member appointments.

(c) If for any reason a vacancy occurs in the commission membership appointed pursuant to subdivision (a)(1) or (a)(2), the association or entities making the original appointment shall have no more than thirty (30) days to submit to the speakers a list of two (2) persons to fill each such vacancy. The speakers shall jointly appoint a member to fill the vacancy in the same manner as the initial appointment.

(d) The commission shall first convene at the call of the state treasurer who shall serve as chair and shall coordinate the work of the commission.

(e) The catastrophic injuries fund commission shall design, develop and propose legislation to the general assembly to enact and implement the catastrophic injuries fund by July 1, 2006. The commission may report on and propose legislation, if necessary, on other issues related to governmental tort liability at any time, but no later than July 1, 2006.

29-26-121. Claim for health care liability — Notice — Evidence of compliance — Limitations — Copies of medical records.

(a)(1) Any person, or that person's authorized agent, asserting a potential claim for health care liability shall give written notice of the potential claim to each health care provider that will be a named defendant at least sixty (60) days before the filing of a complaint based upon health care liability in any court of this state.

(2) The notice shall include:

(A) The full name and date of birth of the patient whose treatment is at issue;

(B) The name and address of the claimant authorizing the notice and the relationship to the patient, if the notice is not sent by the patient;

(C) The name and address of the attorney sending the notice, if applicable;

(D) A list of the name and address of all providers being sent a notice; and

(E) A HIPAA compliant medical authorization permitting the provider receiving the notice to obtain complete medical records from each other provider being sent a notice.

(3) The requirement of service of written notice prior to suit is deemed satisfied if, within the statutes of limitations and statutes of repose applicable to the provider, one of the following occurs, as established by the specified proof of service, which shall be filed with the complaint:

(A) Personal delivery of the notice to the health care provider or an identified individual whose job function includes receptionist for deliveries to the provider or for arrival of the provider's patients at the provider's current practice location. Delivery must be established by an affidavit stating that the notice was personally delivered and the identity of the individual to whom the notice was delivered; or

(B) Mailing of the notice:

(i) To an individual health care provider at both the address listed for the provider on the Tennessee department of health web site and the provider's current business address, if different from the address maintained by the Tennessee department of health; provided, that, if the mailings are returned undelivered from both addresses, then, within five (5) business days after receipt of the second undelivered letter, the notice shall be mailed in the specified manner to the provider's office or business address at the location where the provider last provided a medical service to the patient; or

(ii) To a health care provider that is a corporation or other business entity at both the address for the agent for service of process, and the provider's current business address, if different from that of the agent for service of process; provided, that, if the mailings are returned undelivered from both addresses, then, within five (5) business days after receipt of the second undelivered letter, the notice shall be mailed in the specified manner to the provider's office or business address at the location where the provider last provided a medical service to the patient.

(4) Compliance with subdivision (a)(3)(B) shall be demonstrated by filing a certificate of mailing from the United States postal service stamped with the date of mailing and an affidavit of the party mailing the notice establishing that the specified notice was timely mailed by certified mail, return receipt requested. A copy of the notice sent shall be attached to the affidavit. It is not necessary that the addressee of the notice sign or return the return receipt card that accompanies a letter sent by certified mail for service to be effective.

(b) If a complaint is filed in any court alleging a claim for health care liability, the pleadings shall state whether each party has complied with subsection (a) and shall provide the documentation specified in subdivision (a)(2). The court may require additional evidence of compliance to determine if the provisions of this section have been met. The court has discretion to excuse compliance with this section only for extraordinary cause shown.

(c) When notice is given to a provider as provided in this section, the applicable statutes of limitations and repose shall be extended for a period of one hundred twenty (120) days from the date of expiration of the statute of limitations and statute of repose applicable to that provider. Personal service is effective on the date of that service. Service by mail is effective on the first day that service by mail is made in compliance with subdivision (a)(2)(B). In no event shall this section operate to shorten or otherwise extend the statutes of limitations or repose applicable to any action asserting a claim for health care liability, nor shall more than one (1) extension be applicable to any provider. Once a complaint is filed alleging a claim for health care liability, the notice provisions of this section shall not apply to any person or entity that is made a party to the action thereafter by amendment to the pleadings as a result of a defendant's alleging comparative fault.

(d)(1) All parties in an action covered by this section shall be entitled to obtain complete copies of the claimant's medical records from any other provider receiving notice. A party shall provide a copy of the specified portions of the claimant's medical records as of the date of the receipt of a legally authorized written request for the records within thirty (30) days

thereafter. The claimant complies with this requirement by providing the providers with the authorized HIPAA compliant medical authorization required to accompany the notice. The provider may comply with this section by:

(A) Mailing a copy of the requested portions of the records with a statement for the cost of duplication of the records to the individual requesting the records;

(B) Informing the individual requesting the records that the records will be mailed only upon advance payment for the records for the stated cost of the records, calculated as provided in § 63-2-102. Any request for advance payment must be made in writing twenty (20) days after the receipt of the request for medical records. The provider must send the records within three (3) business days after receipt of payment for the records; or

(C) Fulfilling such other method that the provider and the individual requesting the records agree to in writing.

(2) The records received by the parties shall be treated as confidential, to be used only by the parties, their counsel, and their consultants.

(e) In the event that a complaint is filed in good faith reliance on the extension of the statute of limitations or repose granted by this section and it is later determined that the claim is not a health care liability claim, the extension of the statute of limitations and repose granted by this section is still available to the plaintiff.

(f)(1) Upon the filing of any "healthcare liability action," as defined in § 29-26-101, the named defendant or defendants may petition the court for a qualified protective order allowing the defendant or defendants and their attorneys the right to obtain protected health information during interviews, outside the presence of claimant or claimant's counsel, with the relevant patient's treating "healthcare providers," as defined by § 29-26-101. Such petition shall be granted under the following conditions:

(A) The petition must identify the treating healthcare provider or providers for whom the defendant or defendants seek a qualified protective order to conduct an interview;

(B) The claimant may file an objection seeking to limit or prohibit the defendant or defendants or the defendant's or defendants' counsel from conducting the interviews, which may be granted only upon good cause shown that a treating healthcare provider does not possess relevant information as defined by the Tennessee Rules of Civil Procedure; and

(C)(i) The qualified protective order shall expressly limit the dissemination of any protected health information to the litigation pending before the court and require the defendant or defendants who conducted the interview to return to the healthcare provider or destroy any protected health information obtained in the course of any such interview, including all copies, at the end of the litigation;

(ii) The qualified protective order shall expressly provide that participation in any such interview by a treating healthcare provider is voluntary.

(2) Any disclosure of protected health information by a healthcare provider in response to a court order under this section shall be deemed a permissible disclosure under Tennessee law, any Tennessee statute or rule of common law notwithstanding.

(3) Nothing in this part shall be construed as restricting in any way the right of a defendant or defendant's counsel from conducting interviews outside the presence of claimant or claimant's counsel with the defendant's own present or former employees, partners, or owners concerning a health-care liability action.

29-34-501. Short title.

This part shall be known and may be cited as the "Successor Corporation Asbestos-Related Liability Fairness Act."

29-34-502. Part definitions.

For purposes of this part:

(1) "Asbestos claim" means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

(A) The health effects of exposure to asbestos, including a claim for personal injury or death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance;

(B) Any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child or other relative of the person; and

(C) Any claim for damage or loss caused by the installation, presence, or removal of asbestos;

(2) "Corporation" means a corporation for profit, including a domestic corporation organized under the laws of this state or a foreign corporation organized under laws other than the laws of this state;

(3) "Successor" means a corporation that assumes or incurs or has assumed or incurred successor asbestos-related liabilities that is a successor and became a successor before January 1, 1972, or is any of such successor corporation's successors;

(4)(A) "Successor asbestos-related liabilities" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims and were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation with or into another corporation, or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation.

(B) "Successor asbestos-related liabilities" includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under § 29-34-505, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction; and

(5) "Transferor" means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

29-34-503. Application of limitations.

(a) The limitations in § 29-34-504 shall apply to any successor corporation.

(b) The limitations of § 29-34-504 shall not apply to:

(1) Workers' compensation benefits paid by or on behalf of an employer to an employee under title 50, chapter 6, or a comparable workers' compensation law of another jurisdiction;

(2) Any claim against a corporation that does not constitute a successor asbestos-related liability;

(3) Any obligation under the National Labor Relations Act, compiled in 29 U.S.C. § 151 et seq., as amended or under any collective bargaining agreement; or

(4) A successor that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing, or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor.

29-34-504. Limitations on cumulative successor asbestos-related liabilities.

(a) Except as otherwise provided in subsection (b), the cumulative successor asbestos-related liabilities of a successor corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The successor corporation does not have responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor determined as of the time of the earlier merger or consolidation shall be substituted for the limitation set forth in subsection (a) for purposes of determining the limitation of liability of a successor corporation.

29-34-505. Establishment of fair market value.

(a) A successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under § 29-34-504 through generally accepted accounting principles, including:

(1) By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction; or

(2) In the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) For purposes of this section, total gross assets may include any intangible assets.

(c) To the extent total gross assets include any liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, the applicability, terms, conditions and limits of such insurance shall not be affected by this section, nor shall this section otherwise affect the rights and obligations of an insurer, transferor or successor under any insurance

contract or any related agreements, including, without limitation, preenactment settlements resolving coverage-related disputes, and the rights of an insurer to seek payment for applicable deductibles, retrospective premiums or self-insured retentions or to seek contribution from a successor for uninsured or self-insured periods or periods where insurance is uncollectible or otherwise unavailable. Without limiting the foregoing, to the extent total gross assets include any such liability insurance, a settlement of a dispute concerning any such liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before July 1, 2013, shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

29-34-506. Rate of annual increase of fair market value.

(a) Except as otherwise provided in this section, the fair market value of total gross assets at the time of the merger or consolidation shall increase annually at a rate equal to the sum of:

(1) The prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the year may be used; and

(2) One percent (1%).

(b) The rate determined pursuant to subsection (a) shall not be compounded.

(c) The adjustment of the fair market value of total gross assets shall continue as provided in subsection (a) until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the successor corporation or a predecessor or by or on behalf of a transferor after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(d) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that may be included in total gross assets pursuant to § 29-34-505(c).

29-34-507. Liberal construction of part — Application of part.

(a) The courts of this state shall construe this part liberally with regard to successors.

(b) This part shall apply to all asbestos claims filed against a successor on or after July 1, 2013.

(c) This part shall also apply to any pending asbestos claims against a successor in which trial has not commenced as of July 1, 2013, except that any provisions of these sections which would be unconstitutional if applied retroactively shall be applied prospectively.

29-39-103. Findings by trier of fact.

(a) If liability is found in a civil action, then the trier of fact, in addition to other appropriate findings, shall make separate findings for each claimant specifying the amount of:

(1) Any past damages for each of the following types of damages:
(A) Medical and other costs of health care;
(B) Other economic damages; and
(C) Noneconomic damages; and
(2) Any future damages and the periods over which they will accrue for each of the following types of damages:
(A) Medical and other costs of health care;
(B) Other economic damages; and
(C) Noneconomic damages.

(b) If the plaintiff claims a catastrophic loss or injury has occurred, and if there is a disputed issue of fact regarding whether such loss or injury has occurred, the trier of fact must make a specific finding of fact, by special verdict, that the loss or injury suffered by the plaintiff is catastrophic as defined in § 29-39-102(d).

(c) The calculation of all future medical care and other costs of health care and future noneconomic losses must reflect the costs and losses during the period of time the claimant will sustain those costs and losses. The calculation for other economic loss must be based on the losses during the period of time the claimant would have lived but for the injury upon which the claim is based. All such calculations of future losses shall be adjusted to reflect net present value.

29-39-104. Punitive damages.

(a) In a civil action in which punitive damages are sought:

(1) Punitive damages may only be awarded if the claimant proves by clear and convincing evidence that the defendant against whom punitive damages are sought acted maliciously, intentionally, fraudulently or recklessly;

(2) In an action in which the claimant seeks an award of punitive damages, the trier of fact in a bifurcated proceeding shall first determine whether compensatory damages are to be awarded and in what amount and by special verdict whether each defendant's conduct was malicious, intentional, fraudulent or reckless and whether subdivision (a)(7) applies;

(3) If a jury finds that the defendant engaged in malicious, intentional, fraudulent, or reckless conduct, then the court shall promptly commence an evidentiary hearing in which the jury shall determine the amount of punitive damages, if any;

(4) In all cases involving an award of punitive damages, the trier of fact, in determining the amount of punitive damages, shall consider, to the extent relevant, the following: the defendant's financial condition and net worth; the nature and reprehensibility of the defendant's wrongdoing; the impact of the defendant's conduct on the plaintiff; the relationship of the defendant to the plaintiff; the defendant's awareness of the amount of harm being caused and the defendant's motivation in causing such harm; the duration of the defendant's misconduct and whether the defendant attempted to conceal such misconduct; the expense plaintiff has borne in attempts to recover the losses; whether the defendant profited from the activity, and if defendant did profit, whether the punitive award should be in excess of the profit in order to deter similar future behavior; whether, and the extent to which, defendant has been subjected to previous punitive damage awards based upon the same wrongful act; whether, once the misconduct became known to defen-

dant, defendant took remedial action or attempted to make amends by offering a prompt and fair settlement for actual harm caused; and any other circumstances shown by the evidence that bear on determining a proper amount of punitive damages. The trier of fact shall be instructed that the primary purpose of punitive damages is to punish the wrongdoer and deter similar misconduct in the future by the defendant and others while the purpose of compensatory damages is to make the plaintiff whole;

(5) Punitive or exemplary damages shall not exceed an amount equal to the greater of:

(A) Two (2) times the total amount of compensatory damages awarded; or

(B) Five hundred thousand dollars ($500,000);

(6) The limitation on the amount of punitive damages imposed by subdivision (a)(5) shall not be disclosed to the jury, but shall be applied by the court to any punitive damages verdict;

(7) The limitation on the amount of punitive damages imposed by subdivision (a)(5) shall not apply to actions brought for damages or an injury:

(A) If the defendant had a specific intent to inflict serious physical injury, and the defendant's intentional conduct did, in fact, injure the plaintiff;

(B) If the defendant intentionally falsified, destroyed or concealed records containing material evidence with the purpose of wrongfully evading liability in the case at issue; provided, however, that this subsection (a) does not apply to the good faith withholding of records pursuant to privileges and other laws applicable to discovery, nor does it apply to the management of records in the normal course of business or in compliance with the defendant's document retention policy or state or federal regulations;

(C) If the defendant was under the influence of alcohol, drugs or any other intoxicant or stimulant, resulting in the defendant's judgment being substantially impaired, and causing the injuries or death. For purposes of this subsection (a), a defendant shall not be deemed to be under the influence of drugs or any other intoxicant or stimulant, if the defendant was using lawfully prescribed drugs administered in accordance with a prescription or over-the-counter drugs in accordance with the written instructions of the manufacturer; or

(D) If the defendant's act or omission results in the defendant being convicted of a felony under the laws of this state, another state, or under federal law, and that act or omission caused the damages or injuries;

(8) If there is a disputed issue of fact, the trier of fact, by special verdict, shall determine whether the exceptions set forth in subdivision (a)(7) apply to the defendant and the cause of action;

(9) The culpability of a defendant for punitive damages whose liability is alleged to be vicarious shall be determined separately from that of any alleged agent, employee or representative.

(b) Nothing in this section shall be construed as creating a right to an award of punitive damages or to limit the duty of the court, or the appellate courts, to scrutinize all punitive damage awards, ensure that all punitive damage awards comply with applicable procedural, evidentiary and constitutional requirements, and to order remittitur when appropriate.

(c) The seller of a product other than the manufacturer shall not be liable for

punitive damages, unless the seller exercised substantial control over that aspect of the design, testing, manufacture, packaging or labeling of the product that caused the harm for which recovery of damages is sought; the seller altered or modified the product and the alteration or modification was a substantial factor in causing the harm for which recovery of damages is sought; or the seller had actual knowledge of the defective condition of the product at the time the seller supplied the same.

(d)(1) Except as provided in subdivision (d)(2), punitive damages shall not be awarded in a civil action involving a drug or device if the drug or device which allegedly caused the claimant's harm:

(A) Was manufactured and labeled in relevant and material respects in accordance with the terms of an approval or license issued by the federal food and drug administration under the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040, compiled in 21 U.S.C. §§ 301-392, as amended, or the Public Health Service Act, 53 Stat. 682, compiled in 42 U.S.C. §§ 201-300cc-15; or

(B) Was an over-the-counter drug or device marketed pursuant to federal regulations, was generally recognized as safe and effective and as not being misbranded pursuant to the applicable federal regulations, and satisfied in relevant and material respects each of the conditions contained in the applicable regulations and each of the conditions contained in an applicable monograph.

(2) Subdivision (d)(1) shall not apply in an action against a manufacturer of a drug or device, if, at any time before the event alleged to have caused the harm, the manufacturer, in violation of applicable regulations of the food and drug administration:

(A) Withheld from the food and drug administration information known to be material and relevant to the harm that the claimant allegedly suffered; or

(B) Misrepresented to the food and drug administration information of that type.

(3) For purposes this subsection (d):

(A) "Drug" has the same meaning as in the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040, 1041, codified in 21 U.S.C. § 321(g)(1);

(B) "Device" has the same meaning as in the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040, 1041, codified in 21 U.S.C. § 321(h).

(e) Punitive damages shall not be awarded in any civil action when a defendant demonstrates by a preponderance of the evidence that it was in substantial compliance with applicable federal and state regulations setting forth specific standards applicable to the activity in question and intended to protect a class of persons or entities that includes the plaintiff, if those regulations were in effect at the time the activity occurred.

(f) Nothing contained in this chapter shall be construed to limit a court's authority to enter judgment as a matter of law prior to or during a trial on a claim for punitive damages.

(g)(1) Notwithstanding subdivision (a)(9), punitive damages may be awarded against a defendant based on vicarious liability for the acts or omissions of an agent or employee only if the finder of fact determines by special verdict based on clear and convincing evidence that one or more of the following has occurred:

(A) The act or omission was committed by a person employed in a management capacity while that person was acting within the scope of

employment;

(B) The defendant was reckless in hiring, retaining, supervising or training the agent or employee and that recklessness was the proximate cause of the act or omission that caused the loss or injury; or

(C) The defendant authorized, ratified or approved the act or omission with knowledge or conscious or reckless disregard that the act or omission may result in the loss or injury.

(2) Nothing in this subsection (g) shall be construed to expand or increase the scope of vicarious liability or punitive damages liability under Tennessee law.

(3) For purposes of this subsection (g), "a person employed in a management capacity" means an employee with authority to set policy and exercise control, discretion, and independent judgment over a significant scope of the employer's business.

30-2-601. Accountings — Statement in lieu of accounting.

(a) Within fifteen (15) months from the date of qualification, the personal representative shall make an accounting with the clerk of the court exercising probate jurisdiction in the county of the estate. After the first accounting and until the estate is fully administered, the personal representative shall make further accountings annually from the date of the first accounting. The accountings shall state all receipts, disbursements and distributions of principal and income for the accounting period and the remaining assets held in the estate and shall be verified by the oath of the personal representative before the clerk or any person authorized by law to administer oaths in such cases. The final accounting shall state the personal representative has mailed or delivered notice of the requirement to file claims required by § 30-2-306(d) to the creditors of the decedent who were known to or reasonably ascertainable by the personal representative. For good cause shown to the court, it may extend the time for filing the accountings. However, detailed accountings of solvent estates may be waived if:

(1) The decedent by the decedent's will waived the requirement for the personal representative to make court accountings of the estate; or

(2) All of the distributees of the residue file with the clerk of the court waivers excusing the personal representative from filing all court accountings.

(b) If all court accountings are waived by the decedent's will or by the distributees as above provided and notwithstanding any other provisions of probate law to the contrary, the personal representative and the distributees of the residue of a solvent estate, in which all legitimate claims against the estate have been satisfied, may file separate statements with the clerk of the court at any time after the period for creditors to file claims against the estate has expired, which statement by the personal representative shall state substantially the facts in subdivision (b)(1) and which statement by the distributees of the residue shall state substantially the facts in subdivision (b)(2); except that no statement acknowledging receipt shall be required of a distributee who is also the personal representative:

(1) That the personal representative has properly administered the estate, has paid or settled all claims that were lawfully presented, has paid all expenses of administration, has mailed or delivered notice of the require-

ment to file claims, as prescribed in § 30-2-306(d), to the creditors of the decedent who were known to or reasonably ascertainable by the personal representative, has filed with the clerk of the court exercising probate jurisdiction the final receipt and release from the department of revenue evidencing payment of all Tennessee inheritance and/or estate tax due from the estate, unless waived pursuant to § 67-8-409(g), has distributed the estate according to the will and obtained and filed receipts for specific bequests or has distributed the estate according to the laws of intestate succession; and

(2) That the distributees of the residue acknowledge that the estate has been properly distributed to them.

(c) The filing of this statement, and without the requirement of notice of an accounting by the clerk, relieves the personal representative and all distributees of any requirement of law or rule to file a detailed statement, accounting or receipt of any property, money or other items received from the estate. This section does not apply unless all distributees of the residue of an estate file this statement in lieu of a more detailed accounting that may otherwise be required.

(d) In connection with any accounting, it is not necessary for the receipt or voucher of any legatee or distributee to be sworn or otherwise acknowledged before the clerk or a notary public.

(e) In connection with any accounting, to support the financial information reported, the personal representative shall submit with the accounting the original of each cancelled check written on the estate account unless:

(1) The personal representative is a bank to which § 45-2-1003(c) applies or a savings and loan association to which § 45-2-1003(c) would apply if the savings and loan association were a bank, in which case the personal representative shall comply with § 45-2-1003(c); or

(2) The estate account is maintained in a financial institution, as defined in § 34-11-101, that does not return the cancelled checks but provides a printed statement showing the date the check cleared, the payee and the amount, in which case the personal representative shall submit a printed statement from the financial institution.

30-4-103. Affidavit — Filing fees — Bond — Discharge.

Whenever a decedent leaves a small estate, it may be administered in the following manner:

(1)(A) After the expiration of forty-five (45) days from the date of decedent's death, provided no petition for the appointment of a personal representative of the decedent has been filed in that period of time and decedent's estate is a small estate within the meaning of this chapter, one (1) or more of decedent's competent, adult legatees or devisees or personal representatives named in the decedent's will, if a will was left, or heirs or next of kin, if no will was left, or in either a testate or intestate estate, any creditor proving that creditor's debt on oath before the court, shall file with the clerk of the court an affidavit which shall set forth the following facts:

(i) Whether or not decedent left a will, and if so, the original shall be presented to the court for examination by the clerk. The original will has not been proven and therefore shall not be recorded. A copy of the original will shall be filed to support the affidavit. The original will shall

be deposited with the court for safekeeping;

(ii) A list of unpaid debts left by decedent and the name and address of each creditor and the amount due that creditor;

(iii) An itemized description and the value of all of decedent's property, the names and addresses of all persons known to have possession of any of decedent's property, and a schedule of all insurance on decedent's life payable to the decedent's estate;

(iv) The name, age, address and relationship, if any, of each devisee, legatee or heir entitled to receive any of decedent's property; and

(B) The form of the affidavit required by this section shall disclose that the affiant evidences by signature that, subject to the penalty for perjury, the affidavit is not false or misleading and that the affiant is mindful of all duties imposed upon the affiant by this chapter. No clerk or assistant shall be liable as a result of services rendered to the affiant in good faith in completing the affidavit based upon information furnished by the affiant;

(C) Upon the motion of one (1) or more of the decedent's competent, adult legatees or devisees if a will was left, or the decedent's heirs or next of kin if no will was left, or upon its own motion, the court may, in its discretion for good cause shown, reduce the forty-five day period required by subdivision (1)(A);

(D) A competent adult who is not a legatee or devisee or personal representative named in the decedent's will, or an heir or next of kin of the deceased, may be appointed as the affiant for a small estate by the court, if all competent adult legatees or devisees or personal representatives named in the decedent's will, if a will was left, or heirs or next of kin, if no will was left, consent in writing to the appointment of the competent adult as the affiant; provided, that any person who is appointed as an affiant pursuant to these provisions shall comply with all other provisions of this section, including the bond provisions contained in subdivision (5). The consent shall not be required of any personal representative who is named in the decedent's will and who has renounced the appointment, in order for the court to appoint an affiant for a small estate;

(2) The court shall receive and file the original affidavit as a part of the court's permanent records, shall assign it a number and shall index it as other estates are indexed. The clerk shall deliver to the affiant as many certified copies of the affidavit as are requested, onto which are affixed a clerk's stamp and seal certifying that the affidavit has been filed in the office of the probate court. An affidavit may be amended to the extent that the aggregate amount does not exceed the statutory limitation;

(3) The clerk shall charge and receive such fees for processing a small estate as authorized and provided in §§ 8-21-401 and 32-1-112;

(4) The affiant shall make bond payable to the state for the benefit of those entitled with two (2) or more sufficient sureties or one (1) corporate surety. The amount of the bond shall equal the value of the decedent's estate to be administered under this chapter. However, bond shall not be required of the affiant if § 30-1-201 would not require such from a personal representative;

(5) The affiant and the sureties on the affiant's bond may obtain discharge from liability under the bond in either of two (2) ways:

(A) The court may enter an order discharging the affiant and the sureties on the affiant's bond after the affiant files:

(i) Either the tax receipt issued pursuant to § 67-8-420, or the

certificate issued pursuant to § 67-8-409; and

(ii) An affidavit that each debt of the decedent is paid.

(B) Instead of filing as provided in subdivision (5)(A), the affiant and the sureties on the affiant's bond may wait until the first anniversary of the filing of the affidavit when the court shall automatically discharge them from liability.

33-2-106. Legislative intent — Alleviation of geographical disparities.

(a) It is the intent of the general assembly that the system of care developed to reflect § 33-2-102 provides a comprehensive array of services and supports that are geographically available, equitably and efficiently allocated statewide and in each grand division of the state, that allows people to be in their own community settings, based on the needs and choices of individuals and families served. Services and supports provided to persons generally and as part of the medical assistance program, pursuant to title 71, chapter 5, shall seek to alleviate geographic service and support disparities across the state and its grand divisions. In striving to alleviate the geographic disparities, the state should seek to allocate budget improvements and other new resources in a manner that promotes equitable distribution of services and supports among the grand divisions of the state.

(b)(1) In order to implement subsection (a), the state shall strive to avoid gaps in services and endeavor to achieve a delivery system that ensures that services are available to service recipients on a substantially equitable basis, regardless of place of residence within the state. To that end, the commissioner of finance and administration shall report to the health and welfare committee of the senate and the health committee of the house of representatives, no later than January 15, 2008, and annually thereafter, on the following indicators of equity in the service delivery system:

(A) The extent to which special services and programs such as programs for assertive community treatment (PACT), crisis stabilization units, resiliency and recovery programs, etc. are available on a substantially equitable basis throughout the state;

(B) The extent to which psychiatric and medical services of the same level, intensity, and duration are available on a substantially equitable basis throughout the state; and

(C) The extent to which rates of service utilization by service recipients are substantially equitable throughout the state.

33-3-104. Persons who may consent to disclosure of confidential information.

Information about a service recipient that is confidential under § 33-3-103 may be disclosed with the consent of:

(1) The service recipient who is sixteen (16) years of age or over;

(2) The conservator of the service recipient;

(3) The attorney in fact under a power of attorney who has the right to make disclosures under the power;

(4) The parent, legal guardian, or legal custodian of a service recipient who is a child;

(5) The service recipient's guardian ad litem for the purposes of the litigation in which the guardian ad litem serves;

(6) The treatment review committee for a service recipient who has been involuntarily committed;

(7) The executor, administrator or personal representative on behalf of a deceased service recipient;

(8) The caregiver under title 34, chapter 6, part 3; or

(9) An individual acting as an agent under the Tennessee Health Care Decisions Act, compiled in title 68, chapter 11, part 18 or a person's surrogate as designated under title 68, chapter 11, part 18.

33-3-115. Information to be collected and reported to the federal bureau of investigation-NICS index and the department of safety by any clerk of court that maintains records of an adjudication as a mental defective or a judicial commitment to a mental institution.

(a) Any clerk of court that maintains records of an adjudication as a mental defective or a judicial commitment to a mental institution pursuant to chapter 6 or chapter 7 shall, in accordance with the procedures outlined in title 16, disclose the following information set out in subsection (b) solely for the purposes of complying with §§ 39-17-1316, 39-17-1351, 39-17-1352, 16-1-117(a)(6) and the NICS Improvement Amendments Act of 2007, Public Law 110-180.

(b) The following information shall be collected and reported to the federal bureau of investigation-NICS Index, and the department of safety, pursuant to subsection (b):

(1) Complete name and all aliases of the individual judicially committed or adjudicated as a mental defective, including, but not limited to, any names that the individual may have had or currently has by reason of marriage or otherwise;

(2) Case or docket number of the judicial commitment or the adjudication as a mental defective;

(3) Date judicial commitment ordered or adjudication as a mental defective was made;

(4) Private or state hospital or treatment resource to which the individual was judicially committed; and

(5) Date of birth of the individual judicially committed or adjudicated as a mental defective, if such information has been provided to the clerk.

(c) The information in subdivisions (b)(1) through (b)(5) above, the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to the provisions of such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

(d) For purposes of this section, the following definitions shall apply:

(1) "Judicial commitment to a mental institution" means a judicially ordered involuntary admission to a private or state hospital or treatment resource in proceedings conducted pursuant to title 33, chapter 6 or title 33, chapter 7;

(2) "Adjudication as a mental defective or adjudicated as a mental defective" means:

(A) A determination by a court in this state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or

disease:

(i) Is a danger to such person or to others; or

(ii) Lacks the ability to contract or manage such person's own affairs due to mental defect;

(B) A finding of insanity by a court in a criminal proceeding; or

(C) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to 50a and 72b of the Uniform Code of Military Justice, codified in 10 U.S.C. §§ 850a, 876b.

33-3-117. Reporting to local law enforcement by inpatient treatment facility of involuntary commitment of service recipient.

(a) If a service recipient is involuntarily committed to an inpatient treatment facility under this title, the inpatient treatment facility shall report the service recipient to local law enforcement as soon as practicable, but no later than the third business day following the date of such commitment, who shall report the service recipient to the federal bureau of investigation-NICS Index and the department of safety as soon as practicable, but no later than the third business day following the date of receiving such notification, for the purposes of complying with the NICS Improvement Amendments Act of 2007, Public Law 110-180, as enacted and as may be amended in the future.

(b) If an inpatient treatment facility is required to report pursuant to subsection (a), the facility shall report the following information:

(1) Complete name of the person involuntarily committed;

(2) Date involuntary commitment was ordered;

(3) Private or state hospital or treatment resource to which the individual was involuntarily committed; and

(4) Date of birth of the person involuntarily committed.

(c) The information in subdivisions (b)(1)-(4), the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

33-3-209. Immunity from liability where duty satisfied.

If a professional or an employee has satisfied the person's duty under § 33-3-206, § 33-3-208, or § 33-3-210, no monetary liability and no cause of action may arise against the professional, an employee, or any service provider in whose service the duty arose for the professional or employee not predicting, warning of, or taking precautions to provide protection from violent behavior by the person with mental illness, serious emotional disturbance, or developmental disability.

33-3-210. Reporting to local law enforcement by a qualified mental health professional or behavior analyst of an actual threat of serious bodily harm or death against an identifiable victim.

(a) If a service recipient has communicated to a qualified mental health professional or behavior analyst an actual threat of serious bodily harm or death against a reasonably identifiable victim or victims, the qualified mental

health professional or behavior analyst, using the reasonable skill, knowledge, and care ordinarily possessed and exercised by the professional's specialty under similar circumstances, who has determined or reasonably should have determined that the service recipient has the apparent ability to commit such an act and is likely to carry out the threat unless prevented from doing so, shall immediately report the service recipient to local law enforcement, who shall take appropriate action based upon the information reported.

(b) If a mental health professional or behavior analyst is required to report pursuant to subsection (a), the professional or analyst shall report the following information:

(1) Complete name and all aliases of the service recipient;

(2) Name of the mental health professional or behavior analyst and name of private or state hospital or treatment resource from which the individual may be receiving services; and

(3) Date of birth of the service recipient.

(c) The information in subdivisions (b)(1)-(3), the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

33-3-211. [Reserved.]

33-6-109. Quarterly report on the implementation and impact of available suitable accommodations.

The department shall report quarterly to the health committee of the house of representatives, the health and welfare committee of the senate, and the finance, ways and means committees of both the house of representatives and the senate on the implementation and the impact of available suitable accommodations, including the number and length of any delayed admissions.

33-6-201. Persons who may apply for voluntary admission.

(a) The following persons may apply for admission to a public or private hospital or treatment resource for diagnosis, observation and treatment of a mental illness or serious emotional disturbance:

(1) A person who is sixteen (16) years of age or over and who does not lack capacity to apply under § 33-3-218;

(2) A parent, legal custodian, or legal guardian who is acting on behalf of a child;

(3) A conservator whom the appointing court has expressly granted authority to apply for the person's admission to a hospital or treatment resource for mental illness or serious emotional disturbance;

(4) A qualified mental health professional acting on the basis of the terms of the person's declaration for mental health treatment;

(5) A person's attorney in fact under a durable power of attorney for health care, under title 34, chapter 6, part 2;

(6) A caregiver under title 34, chapter 6, part 3, who is acting on behalf of a child; or

(7) An individual acting as an agent under the Tennessee Health Care Decisions Act, compiled in title 68, chapter 11, part 18 or an individual

designated as a surrogate under § 68-11-1806(a).

(b) An individual's surrogate as designated under § 68-11-1806(c) may also apply for such admission provided no person may be admitted by a surrogate under this subsection for more than twenty-one (21) consecutive days unless a petition has been filed pursuant to part 5 of this chapter, or unless an individual who meets any of the criteria set out in subdivisions (a)(1)-(7) of this section applies for voluntary admission subsequent to an application by a surrogate for voluntary admission under this section.

33-6-206. Request for release.

(a) The following persons may at any time request the service recipient's release by filing a written application with the chief officer:

(1) An adult service recipient;

(2) A service recipient's conservator;

(3) A service recipient's attorney in fact under a durable power of attorney for health care;

(4) The parent, legal custodian, or legal guardian who applied for the admission of a child;

(5) A child who is sixteen (16) years of age or over and who was admitted on the child's own application;

(6) A caregiver under title 34, chapter 6, part 3, who is acting on behalf of a child; or

(7) An individual acting as an agent under the Tennessee Health Care Decisions Act, compiled in title 68, chapter 11, part 18 or a person's surrogate as designated under title 68, chapter 11, part 18.

(b) If a competent service recipient cannot file a written request, a person acting on the service recipient's behalf may file the request with the service recipient's consent.

33-6-407. Examination to determine need for hospitalization.

(a) A hospital or treatment resource that receives a person transported under § 33-6-406 shall have a licensed physician examine the person to determine whether the person is subject to admission under § 33-6-403.

(b) If the person is subject to admission under § 33-6-403, the physician shall complete a certificate of need for the emergency diagnosis, evaluation, and treatment showing the factual foundation for the conclusions on each item of § 33-6-403, and the person who took the service recipient to the hospital or treatment resource may then apply for the admission for the purpose of emergency diagnosis, evaluation and treatment.

(c) If the person is not subject to admission and the sheriff or transportation agent is under a duty to remain at the hospital or treatment resource under § 33-6-406, the sheriff or transportation agent shall return the person to the county.

(d) If the person is not subject to admission and the sheriff or transportation agent is not under a duty to remain at the hospital or treatment resource under § 33-6-406, the hospital or treatment resource shall return the person to the county.

(e) A hospital, treatment resource, or health care provider shall be immune from any civil liability and shall have an affirmative defense to any criminal liability arising either from a determination relative to admission of a person

to a facility or treatment resource or from the transportation of a person to and from the hospital or treatment resource.

33-6-901. Transportation of persons under part 4 or 5 of this chapter by sheriff, secondary transport agent, municipal officer or other authorized person.

(a)(1) The sheriff in a county in which a person with mental illness or serious emotional disturbance is to be transported under part 4 or 5 of this chapter, shall transport the person except for persons who are transported by:

(A) A secondary transportation agent under this section;

(B) A municipal law enforcement agency that meets the requirements for a secondary transportation agent under this section and is designated by the sheriff;

(C) A person authorized under other provisions of this title; or

(D) One or more friends, neighbors, other mental health professionals familiar with the person, relatives of the person, or a member of the clergy.

(2) The sheriff may designate a secondary transportation agent or agents for the county for persons with mental illness or serious emotional disturbance whom a physician or mandatory prescreening authority has evaluated and determined do not require physical restraint or vehicle security. A secondary transportation agent shall be available twenty-four (24) hours per day, provide adequately for the safety and security of the person to be transported, and provide appropriate medical conditions for transporting persons for involuntary hospitalization. The sheriff shall take into account in designating a secondary transportation agent or a municipal law enforcement agency both its funding and the characteristics of the persons who will be transported. The sheriff shall consult with the county mayor before designating a secondary transportation agent. A secondary transportation agent has the same duties and authority under this chapter in the detention or transportation of those persons as the sheriff. The designation of a transportation agent other than the sheriff is a discretionary function under § 29-20-205. If a mandatory prescreening agent, physician, or licensed psychologist with health service provider designation, who is acting under § 33-6-404(3)(B), determines that the person does not require physical restraint or vehicle security, then any person identified in subdivision (a)(1)(D) may, instead of the sheriff, transport the person at the transporter's expense.

(3)(A) If a physician, psychologist, or designated professional, operating under § 33-6-404(3)(B)(iii), determines to a reasonable degree of professional certainty that the person subject to transportation under this part does not require physical restraint or vehicle security and does not pose a reasonable risk of danger to the person's self or others, then the sheriff may permit one (1) or more persons designated under this section, other than the sheriff or secondary transportation agent, to transport the person; provided, that the person or persons provide proof of current automobile insurance. Before a person is transported, the sheriff or other transportation agent designated under subdivision (a)(1) or (a)(2) shall give the notice required by § 33-6-406(b), along with the name or names of the person or persons who will actually transport the person subject to

admission to a hospital or treatment resource. The person or persons designated to transport under this section must comply with the requirements of § 33-6-406(b)(2) and (3), and § 33-6-407(c), and must provide the original of the certificate completed under § 33-6-404(3)(B)(ii) to the hospital or treatment resource.

(B) When making this determination, the physician, psychologist or designated professional operating under § 33-6-404(3)(B)(iii) shall be immune from any civil liability and shall have an affirmative defense to any criminal liability arising from that protected activity.

(C) When making this determination, if the physician, psychologist or designated professional operating under § 33-6-404(3)(B)(iii) is an agent of a hospital, health care facility, or community mental health center, that hospital, health care facility, or community mental health center shall be immune from any civil liability and shall have an affirmative defense to any criminal liability arising from this agent's protected activity and from the transportation of the person to and from the facility.

(b) When a sheriff or secondary transportation agent is required to transport a person to a hospital or treatment resource for screening, evaluation, diagnosis or hospitalization, the county in which the person is initially transported by the sheriff or secondary transportation agent is responsible for the remainder of such person's transportation requirements. The initial transporting county is responsible for the continuing transportation of the person even if the person is assessed, diagnosed, screened or evaluated in a second county before being admitted to a facility, hospital or treatment resource in a third county. If the person is transported to a hospital or treatment resource by the sheriff or secondary transportation agent of a county other than the initial transporting county, the sheriff or secondary transportation agent actually providing transportation may bill the initial transporting county for transportation costs.

(c) The department shall provide training on mental health crisis management for transportation agents and the sheriffs' personnel.

(d) It is the policy of this state that people with mental illness who are determined to be a danger to themselves and in need of physical restraint or vehicular security shall be transported by the sheriff or secondary transportation agents designated by the sheriff. People with a mental illness who do not present themselves as a danger to themselves or are not in need of physical restraint or vehicular security may be transported by one (1) or more friends, neighbors, other mental health professionals familiar with the person, relatives of the person or a member of the clergy; provided, that these persons are willing and able to provide such transport.

33-7-301. Evaluation of accused believed incompetent to stand trial — Judicial hospitalization proceedings — Recovery report.

(a)(1) When a defendant charged with a criminal offense is believed to be incompetent to stand trial, or there is a question about the defendant's mental capacity at the time of the commission of the crime, the criminal, circuit, or general sessions court judge may, upon the judge's own motion or upon petition by the district attorney general or by the attorney for the defendant and after hearing, order the defendant to be evaluated on an outpatient basis. The evaluation shall be done by the community mental

health center or licensed private practitioner designated by the commissioner to serve the court or, if the evaluation cannot be made by the center or the private practitioner, on an outpatient basis by the state hospital or the state-supported hospital designated by the commissioner to serve the court. If, and only if, the outpatient evaluator concludes that further evaluation and treatment are needed, the court may order the defendant hospitalized, and if in a department facility, in the custody of the commissioner for not more than thirty (30) days for further evaluation and treatment for competence to stand trial subject to the availability of suitable accommodations.

(2) At any stage of a felony criminal proceeding, including a pre-trial hearing, trial, sentencing, or post-conviction proceeding, the state may move or petition the court to authorize the district attorney general to designate a qualified expert to examine the defendant if the defendant gives notice that the defendant intends to offer testimony about the defendant's mental condition, whether in support of a defense of insanity or for any other purpose. The court may authorize the district attorney general to designate a qualified expert, who is willing to be appointed, to examine the defendant, if:

(A) An inpatient evaluator under subdivision (a)(1) notifies the court in a pre-trial proceeding that the type or extent of assessment required exceeds the expertise or resources available to the evaluator or exceeds the scope of analysis of the defendant's competence to stand trial, satisfaction of criteria for the insanity defense, or for commitment under chapter 6, part 5, of this title; or

(B) In any other type of felony criminal proceeding, the court determines that examination of the defendant by a qualified expert for the state is necessary to adjudicate fairly the matter before it.

(3) The amount and payment of expert fees shall be determined and paid by the state district attorneys general conference.

(4)(A) Except as provided in subdivision (a)(4)(B), during the post-conviction stage of a criminal proceeding, if it is believed that a defendant is incompetent to assist counsel in preparation for, or otherwise participate in, the post-conviction proceeding, the court may, upon its own motion, order that the defendant be evaluated on either an outpatient or inpatient basis, as may be appropriate. If the defendant is indigent, the amount and payment of the costs for the evaluation shall be determined and paid for by the administrative office of the courts. If the defendant is not indigent, the cost of the evaluation shall be charged as court costs. If the evaluation cannot be done on an outpatient basis and if it is necessary to hospitalize the defendant in a department facility, hospitalization shall not be for more than thirty (30) days and shall be subject to available suitable accommodations. Prior to transporting a defendant for such evaluation and treatment in a department facility, the sheriff or other transportation agent shall determine that the receiving department facility has available suitable accommodations. Any costs incurred by the administrative office of the courts shall be absorbed within the current appropriation for the indigent defense fund.

(B) In a post-conviction proceeding in a capital case, if there is a question on the defendant's mental condition at the time of the commission of the crime when there has been no such prior evaluation or a question as to whether the defendant is intellectually disabled, the court

may, upon its own motion or upon petition by the district attorney general or by the attorney for the defendant, and, if the matter is contested, after a hearing, order that the defendant be evaluated on an outpatient basis. If and only if the outpatient evaluator concludes that an inpatient evaluation is necessary, the court may order the defendant to be hospitalized for not more than thirty (30) days.

(5) Prior to transporting a defendant for such evaluation and treatment in a department facility, the sheriff or other transportation agent shall determine that the receiving department facility has available suitable accommodations.

(b)(1) If the court determines on the basis of the mental health evaluation and other relevant evidence:

(A) That the defendant is incompetent to stand trial because of mental illness; or

(B)(i) That the defendant is competent to stand trial but that the failure to hospitalize would create a likelihood to cause the defendant serious harm by reason of mental illness; and

(ii) The defense attorney agrees with those findings, the district attorney general or the attorney for the defense may petition the criminal court before which the case is pending or that would hear the case, if the defendant were bound over to the grand jury to conduct proceedings for judicial hospitalization under chapter 6, part 5, of this title.

(2) Either party may demand a jury trial on the issues.

(3) The court is vested with jurisdiction to conduct the proceedings.

(4) In the proceedings the court shall determine, in addition to the findings required by chapter 6, part 5 of this title, whether the defendant is substantially likely to injure the defendant or others if the defendant is not treated in a forensic services unit and whether treatment is in the defendant's best interest.

(5) If the court enters an order of judicial hospitalization, the defendant shall be transferred to the custody of the commissioner, and if the court finds in addition that the defendant is substantially likely to injure the defendant or others if the defendant is not treated in a forensic services unit and that treatment in the unit is in the defendant's best interests, the defendant shall be transferred to the custody of the commissioner at a forensic services unit designated by the commissioner. If the court commits a person under this subsection (b), the person comes into the commissioner's custody only if the forensic services unit has available suitable accommodations; provided, that, if there are no suitable available accommodations at the time of the determination, then the commissioner shall expeditiously find a state-owned or operated hospital or treatment resource to accommodate the person upon the availability of suitable available accommodations. Prior to transporting a defendant for such commitment, the sheriff or other transportation agent shall determine that the receiving facility has available suitable accommodations.

(c) When a defendant admitted under subsection (b) has been hospitalized for six (6) months, and at six-month intervals thereafter, the chief officer of the hospital shall file a written report with the clerk of the court by whose order the defendant was confined and shall give a copy of the report to the defendant, the defendant's attorney, the defendant's legal guardian or conservator, if any,

and to the district attorney general. The chief officer shall also send a copy of the report to the defendant's parent, adult child, or spouse, whichever is appropriate, but at least one (1) of the three (3). The report shall detail the chief officer's best judgment as to the defendant's prospects for recovery, the defendant's present condition, the time required for relevant kinds of recovery, and whether there is substantial probability that the defendant will become competent to stand trial in the foreseeable future. This reporting obligation shall cease at the point that misdemeanor charges are retired for defendants with no other charges in accordance with subsection (d).

(d) If a defendant is found to be incompetent to stand trial, any misdemeanor charges pending at the time of the incompetency determination shall be retired no later than eleven (11) months and twenty-nine (29) days after the date of arrest when the misdemeanor charge or charges have not otherwise been disposed of except that no misdemeanor charges shall be retired pursuant to this subsection (d) if the defendant is restored to competency prior to the date on which the misdemeanor charge or charges would have otherwise been retired under this subsection (d).

33-10-104. Powers and duties of department — Abuse prevention pilot programs.

(a) The department, through its commissioner, is vested with all necessary and incidental powers for carrying into effect the purposes and programs set forth in this chapter, including the power to promulgate rules and regulations governing the admission, care and discharge of individuals committed or admitted, or both, for alcohol and drug abuse evaluation or treatment as the commissioner deems necessary or appropriate.

(b)(1) It is the duty of the department to formulate and effect a plan for the prevention of alcohol and drug abuse and for the care, treatment and rehabilitation of alcohol and drug dependent persons.

(2) In formulating and effecting the plan, the department shall:

(A)(i) Furnish such aid to alcohol and drug abusers in such manner as to afford them with the greatest benefit; and

(ii) Have the power in this connection to make suitable arrangements with hospitals or clinics that afford them proper treatment, care or rehabilitation;

(B) Provide services through existing mental health centers, clinics and other appropriate treatment resources, including state hospitals;

(C) Carry on educational and informational programs on alcoholism and drug dependence for the benefit of the general public, consumers, professional persons or others who care for or may be engaged in the delivery of alcohol and drug abuse services;

(D)(i) Cooperate with physicians and treatment resources in making arrangements for the treatment and care of indigents; and

(ii) Have authority to arrange for payment for hospital care on a cost basis for such individuals;

(E)(i) Formulate, undertake and carry out a research and evaluation program on alcoholism and drug dependence; and

(ii) Participate in, cooperate with, and assist, as in its discretion shall be deemed advisable, other properly qualified agencies, including any agency of the federal government, schools of medicine and hospitals or

clinics, in planning and conducting research on the prevention, care, treatment and rehabilitation of alcohol dependence or drug dependence, or both;

(F) Serve as a clearinghouse for information relating to alcohol and drug abuse;

(G) Develop, encourage and foster statewide, regional and local plans and programs in the field of alcoholism and drug dependence;

(H) Review, comment upon and assist public agencies and local governments with applications for grants or other funds for services for alcohol and drug abusers to be submitted to the federal government;

(I) Enlist the assistance of public and voluntary health, education, welfare and rehabilitation agencies in a concerted effort to prevent and treat alcohol and drug abuse and dependence;

(J) Encourage the development of rehabilitation projects for industries in the state; and

(K) Encourage the development of new treatment facilities.

(c)(1) Through direct administration or through contracting with service providers, the department shall establish comprehensive, culturally relevant, drug and alcohol abuse prevention pilot programs. The pilot programs shall be located in those areas of the state that are especially in need of such programs and that will generate sufficient data to thoroughly measure and evaluate the overall efficiency and effectiveness of such programs. The pilot programs shall include, but not necessarily be limited to, the following:

(A) Performance of a minority community needs assessment analysis in order to document specific prevention, treatment and health care needs;

(B) Identification of high risk groups within the minority community;

(C) Arrangement for delivery of needed prevention, treatment and other health care services from among those available to the minority community;

(D) Delivery of a limited number of needed prevention, treatment and health care services not readily available to the minority community;

(E) Utilization of community volunteers and outreach workers to:

(i) Establish rapport;

(ii) Provide individual support and encouragement; and

(iii) Facilitate networking among social, religious, educational and community agencies and program personnel;

(F) Development and implementation of a culturally relevant public awareness campaign specifically designed to target the minority community; and

(G) Serve as models for the establishment of similar programs in other parts of the state.

(2) Each year, on or before December 31, the department shall report to the governor and to each member of the general assembly concerning implementation of the pilot programs and shall include within the report the findings and recommendations of the department regarding the effectiveness and efficiency of the pilot programs.

(3) Implementation of this subsection (c) shall be limited to the level of funding provided for that purpose within the general appropriations act.

(d) In formulating a plan for the prevention of alcohol and drug abuse and for the care, treatment and rehabilitation of alcohol and drug dependent persons, the department shall make appropriate provision for ensuring that all

state and local programs coordinated by the department pursuant to this section and that are targeted at children and youth shall address, through culturally relevant education activities, the hazards of nicotine abuse.

(e)(1) Through grants contracted with community based agencies, the commissioner is authorized to plan, establish and administer pilot projects to develop effective and efficient prevention and treatment services for low-income, pregnant substance abusers. Each of the pilot projects should, to the extent possible within available funding, provide the following:

(A) Public information programs culturally appropriate to the target populations, such information programs to include brochures, public service announcements and other creative and effective means of communication;

(B) Community outreach, interagency liaison, interagency referral mechanisms and specialized training for maternal and child health providers;

(C) Residential beds dedicated exclusively for rehabilitation of low income, pregnant substance abusers;

(D) Intensive, outpatient slots dedicated exclusively for treatment of low income, pregnant substance abusers;

(E) Family intervention services throughout the term of the pregnancy and during a period of postpartum follow-up;

(F) Specialized support services needed to ensure effectiveness of rehabilitation and treatment, including, but not necessarily limited to, transportation services and day care;

(G) Enhanced physician oversight of treatment modalities, to be provided at a level prescribed by the commissioner; and

(H) Documentation and recordkeeping sufficient to enable the commissioner to objectively and systematically evaluate the effectiveness and efficiency of the various components of the pilot projects.

(2) In seeking funding support for the pilot projects, the commissioner is authorized to utilize the resources of the United States alcohol, drug abuse, and mental health administration, the United States office of substance abuse prevention, as well as other public and private funding sources for substance abuse prevention and treatment programs. Implementation of the pilot projects shall be limited to the level of funding and resources obtained and provided for that purpose.

(f)(1) Notwithstanding subsection (e), a pregnant woman referred for drug abuse or drug dependence treatment at any treatment resource that receives public funding shall be a priority user of available treatment. All records and reports regarding such pregnant woman shall be kept confidential. The department of mental health and substance abuse services shall ensure that family-oriented drug abuse or drug dependence treatment is available, as appropriations allow. A treatment resource that receives public funds shall not refuse to treat a person solely because the person is pregnant as long as appropriate services are offered by the treatment resource.

(2)(A) If during prenatal care, the attending obstetrical provider determines no later than the end of the twentieth week of pregnancy that the patient has used prescription drugs which may place the fetus in jeopardy, and drug abuse or drug dependence treatment is indicated, the provider shall encourage counseling, drug abuse or drug dependence treatment and other assistance to the patient.

(B) If the patient initiates drug abuse or drug dependence treatment based upon a clinical assessment prior to her next regularly scheduled prenatal visit and maintains compliance with both drug abuse or drug dependence treatment based on a clinical assessment as well as prenatal care throughout the remaining term of the pregnancy, then the department of children's services shall not file any petition to terminate the mother's parental rights or otherwise seek protection of the newborn solely because of the patient's use of prescription drugs for non-medical purposes during the term of her pregnancy.

(C) Notwithstanding subdivision (f)(2)(B), nothing shall prevent the department of children's services from filing any petition to terminate the mother's parental rights or seek protection of the newborn should the department determine that the newborn's mother, or any other adult caring for the newborn, is unfit to properly care for such child.

(3) Any physician or other health care provider who does not recognize that the pregnant woman has used prescription drugs that place the fetus in jeopardy after a reasonable inquiry, or who complies with the provisions of this subsection, or any physician or facility that initiates substance abuse treatment consistent with community standards of care pursuant to this subsection, shall be presumed to be acting in good faith and shall have immunity from any civil liability that might otherwise result by reason of such actions.

(4) The commissioner of mental health and substance abuse services is authorized to promulgate emergency rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

34-1-101. Chapter 1-3 definitions.

As used in this chapter and chapters 2 and 3 of this title, unless the context otherwise requires:

(1) "Adversary counsel" means a private lawyer hired by a respondent to represent the respondent's interest in any action under this chapter and chapters 2 and 3 of this title;

(2) "Attorney ad litem" means an attorney appointed by the court to act as counsel for the respondent;

(3) "Closest relative" or "closest relatives" means the person or persons who are in the level of intestate heirs nearest to the respondent under the Tennessee laws of intestate succession. If there are two (2) or more closest relatives, all such persons shall be treated equally;

(4)(A) "Conservator" or "co-conservators" means a person or persons or an entity appointed by the court to exercise the decision-making rights and duties of the person with a disability in one or more areas in which the person lacks capacity as determined and required by the orders of the court;

(B) "Conservatorship" is a proceeding in which a court removes the decision-making powers and duties, in whole or in part, in a least restrictive manner, from a person with a disability who lacks capacity to make decisions in one or more important areas and places responsibility for one or more of those decisions in a conservator or co-conservators;

(5) "Corporate surety" means a corporation admitted to do business in the state of Tennessee and licensed under title 56, chapter 2;

(6) "Court" means any court having jurisdiction to hear matters concerning guardians or conservators;

(7) "Fiduciary" means a guardian, coguardian, conservator or co-conservator;

(8) "Financial institution" means a bank as defined by § 45-2-107, a savings and loan association as defined by § 45-3-104, a credit union subject to title 45, chapter 4, or a nonprofit general welfare corporation as defined in § 45-2-105;

(9) "Guardian" or "coguardian" means a person or persons appointed by the court to provide partial or full supervision, protection and assistance of the person or property, or both, of a minor;

(10) "Guardian ad litem" means a person meeting the qualifications set forth in § 34-1-107(c) appointed by the court to investigate the allegations in a petition, perform the duties set forth in § 34-1-107(d) and report to the court with recommendations as to the best interests of the respondent;

(11) "Minor" means any person who has not attained eighteen (18) years of age and who has not otherwise been emancipated;

(12) "Person" means any individual, nonhuman entity or governmental agency;

(13) "Person with a disability" means any person eighteen (18) years of age or older determined by the court to be in need of partial or full supervision, protection, and assistance by reason of mental illness, physical illness or injury, developmental disability, or other mental or physical incapacity;

(14) "Physician" means a medical doctor or doctor of osteopathic medicine who is licensed to practice medicine in the state of Tennessee;

(15) "Property management plan" means the plan submitted by the fiduciary for the investment and management of the property of a minor or person with a disability;

(16) "Psychologist" means a psychologist who is licensed to practice in the state of Tennessee; and

(17) "Respondent" means a person who is a minor or is alleged to be a person with a disability for whom a fiduciary is being sought.

34-1-104. Letters of guardianship or conservatorship — Disposition of funds of minor under $20,000 — Discharge of paying entities — Order of distribution — Distribution of funds.

(a) Except as provided in subsections (b) and (c), no person shall undertake the administration of the estate of a minor or person with a disability until the person has been issued letters of guardianship or letters of conservatorship; provided, that no guardian or conservator shall be appointed if the property of the minor or person with a disability is deposited with the clerk of the court subject to distribution on order of the court. The letters of conservatorship shall either:

(1) Recite the specific powers to be exercised by the conservator and the specific powers retained by the person with a disability; or

(2) Have attached to them the order or orders of the court specifying the powers to be exercised by the conservator and the powers retained by the

person with a disability.

(b) If the total property of a minor or person with a disability does not exceed the sum of twenty thousand dollars ($20,000) and the court determines it is in the best interest of the minor or person with a disability, the court may order any person holding property belonging to the minor or person with a disability to deliver all or any part of the money or property, without the necessity of the appointment of a fiduciary, to the natural guardian or guardians of the minor or to the person with whom the minor or person with a disability resides or to the person with a disability. Notwithstanding any law to the contrary, if the guardians of the minor are the parents of the minor and are divorced or legally separated from each other, the court may order that the funds be delivered, all or in part, to either of the parents if the court finds that such order would best serve the welfare of the minor. The receipt by any of these persons of the money or property discharges the paying entity from further liability. To bring the matter before the court, any person may petition the court for an order of distribution. The petition shall set forth the information required by § 34-2-104 and § 34-3-104, except the petition shall request distribution according to this section instead of the appointment of a fiduciary. The court may appoint a guardian ad litem to assist it in determining the best interest of the minor or person with a disability.

(c) In any judicial proceeding in which any fund or part of the fund is decreed to belong to a minor or person with a disability, or in which there is a recovery in favor of a minor or person with a disability, the court trying the case may retain the fund or recovery or part of the fund or recovery to be disbursed by the clerk and master or clerk of the court for the support, maintenance or education of the minor or person with a disability under the orders of the court; provided, that the fund or part of the fund or the amount of the recovery does not exceed the sum of twenty thousand dollars ($20,000) and the minor is without a legal guardian; and provided further, that the court, in its discretion, may direct the fund to be paid to the natural guardian of the minor or the other person having the care and custody of the minor or person with a disability to be applied for the support, maintenance or education of the minor or person with a disability, subject to such terms and conditions as the court may impose.

34-1-105. Bond.

(a)(1) Except as otherwise provided in subsection (b), bond shall be required of the fiduciary in an amount equal to the sum of the fair market value of all personal property and the amount of the anticipated income from all property, including the real property, for one (1) year. If the surety for the bond is posted by a corporate surety, the amount of the surety shall equal the amount of the bond. If the surety for the bond is posted by pledging property, the value of the unencumbered property posted shall be equal to one hundred fifty percent (150%) of the bond.

(2) If the property pledged to secure the bond is personal property, the property shall be delivered to the clerk for safekeeping. If the property pledged to secure the bond is real property, notice of the pledge shall be recorded in the register's office of the county in which the real property is located.

(3) The bond shall be renewed annually by the fiduciary. The court may adjust the amount of required bond to reflect changes in the value of the

property of the minor or person with a disability. The surety's liability under the bond shall not be cumulative and shall not exceed the amount of the bond in force at the time of default.

(b) In the discretion of the court, bond may be excused if the court makes a finding, which finding shall be stated in the order, that the requirement of bond would be unjust or inappropriate in that case and that one (1) of the following exists:

(1) The fiduciary is a financial institution excused from the requirement of bond under § 45-2-1005;

(2) The total fair market value of the minor's non-real estate property or the person with a disability's non-real estate property does not exceed the sum of ten thousand dollars ($10,000) and the court finds the benefit to the ward by saving the expense outweighs the risks incident to the absence of a bond;

(3) The document naming the suggested or preferred fiduciary excuses the fiduciary from posting bond;

(4) The property of the minor or person with a disability is placed with a financial institution and the fiduciary and the financial institution enter into a written agreement, filed with the court, in which the financial institution agrees it will not permit the fiduciary to withdraw the principal without court approval;

(5) The property of the minor or person with a disability is deposited with the clerk and master or clerk of the court; or

(6) The fiduciary is appointed fiduciary over the person of the minor or person with a disability but has not also been appointed as fiduciary over the person's estate.

34-1-106. Petition for appointment of fiduciary.

(a) The petition for the appointment of a fiduciary shall be served in accordance with the Tennessee Rules of Civil Procedure. The guardian ad litem appointed may serve the petition on the respondent.

(b) Notice by certified mail with return receipt requested shall be given by the clerk of the court to the closest relative or relatives of the respondent required to be named in the petition and to the person, if any, having care or custody of the respondent, institution, or residential provider with whom the respondent is living.

34-1-107. Guardian ad litem.

(a)(1) The court may appoint a guardian ad litem in any proceeding and, except as provided in this section, shall appoint a guardian ad litem on filing of a petition for appointment of a fiduciary. If the respondent is represented by counsel who has made an appearance for the respondent, the court may appoint or continue the services of a guardian ad litem or may waive appointment or terminate the services of a guardian ad litem in the best interests of the respondent.

(2) The court may waive the appointment of a guardian ad litem if the petitioner or at least one (1) of the petitioners for the appointment is:

(A) A parent of the minor for whom a guardian is sought;

(B) A minor who has attained fourteen (14) years of age; or

(C) An adult respondent.

(3) The court may waive the appointment of a guardian ad litem if the court determines the waiver is in the best interests of the minor or person with a disability.

(b) If the guardian ad litem is to be appointed, the appointment shall be made no later than ten (10) days from the date the petition for the appointment of the fiduciary was filed.

(c) The person appointed guardian ad litem shall be a lawyer licensed to practice in the state of Tennessee. If there are insufficient lawyers within the court's jurisdiction for the appointment of a lawyer as guardian ad litem, the court may appoint a nonlawyer.

(d)(1) The guardian ad litem owes a duty to the court to impartially investigate the facts and make a report and recommendations to the court. The guardian ad litem serves as an agent of the court, and is not an advocate for the respondent or any other party.

(2) In each proceeding, the guardian ad litem shall:

(A) Verify that the respondent and each other person required to be served or notified was served or notified;

(B) Consult with the respondent in person as soon as possible after appointment;

(C) If possible, explain in language understandable to the respondent the:

(i) Substance of the petition;

(ii) Nature of the proceedings;

(iii) Respondent's right to protest the petition;

(iv) Identity of the proposed fiduciary; and

(v) Respondent's rights as set forth in § 34-3-106; and

(D) Make a report and recommendations to the court concerning the issues of:

(i) Whether a fiduciary should be appointed for the respondent;

(ii) If a fiduciary should be appointed, whether the proposed fiduciary is the appropriate person to be appointed; and

(iii) Any other matters as directed by the court.

(3) In a proceeding for the appointment of a conservator, the guardian ad litem shall investigate the physical and mental capabilities of the respondent. The guardian ad litem's investigation shall include:

(A) An in-person interview with the respondent; and

(B) A review of the sworn report required by § 34-3-105 to verify that the sworn statement contains:

(i) A detailed description of the respondent's physical or mental conditions or both that may render the respondent a person with a disability; and

(ii) A detailed description of how the respondent's physical or mental conditions or both may impair the respondent's ability to function normally.

(4) In a proceeding seeking the appointment of a fiduciary to manage the respondent's property, the guardian ad litem shall investigate the:

(A) Nature and extent of the respondent's property; and

(B) Financial capabilities and integrity of the proposed fiduciary. In evaluating the financial capabilities of the proposed fiduciary, the guardian ad litem may take such actions as directed by the court and as the guardian ad litem deems necessary, which may include but are not limited

to:

(i) Obtaining and reviewing the proposed fiduciary's credit report;

(ii) Inquiring into whether and to what extent the proposed fiduciary has previous experience in managing assets of the same or similar type and value as the respondent's assets;

(iii) Inquiring into how the proposed fiduciary plans to manage the respondent's assets;

(iv) Inquiring into whether the proposed fiduciary has previously borrowed funds from the respondent or received any financial assistance or benefits from the respondent; and

(v) Interview any persons with knowledge and review any documents pertinent to the financial capabilities and integrity of the proposed fiduciary.

(e) The order appointing the guardian ad litem shall authorize the guardian ad litem access to records of the respondent in any financial institution and to review medical records, and permit the guardian ad litem to discuss the respondent's physical and mental conditions with any physician, psychologist or other health care provider who may have pertinent information.

(f) The guardian ad litem shall make a written report to the court at least three (3) days prior to the date set for hearing the matter, which time period may be waived in the judge's discretion. The written report shall provide the court with the results of the guardian ad litem's investigation. The guardian ad litem's report shall specifically state whether:

(1)(A) The respondent wants to contest:

(i) The need for a fiduciary;

(ii) Merely the person to be the fiduciary; or

(iii) Neither;

(B) If the respondent wants to contest any portion of the proceeding and the guardian ad litem's opinion is that there should be a fiduciary appointed, the guardian ad litem shall identify the adversary counsel or indicate there is none and request the appointment of an attorney ad litem;

(2) A fiduciary should be appointed and, if so, whether:

(A) The proposed fiduciary should be appointed; or

(B) Someone else, identified by the guardian ad litem, should be appointed;

(3) The proposed property management plan should be adopted and, if not, what changes should be considered.

(4) The respondent will attend the hearing and, if, in the opinion of the guardian ad litem, it is not in the respondent's best interest to attend, why.

(g) Unless the court orders otherwise, the guardian ad litem has no continuing duty once an order has been entered disposing of the petition that caused the guardian ad litem's appointment.

(h) When investigating financial records of a respondent, the guardian ad litem shall be the customer within the meaning set forth in title 45, chapter 10, known as the Financial Records Privacy Act.

34-1-108. Hearings on petitions — Notice.

(a) Except as provided in subsection (b), the hearing on a petition shall be held not less than seven (7) nor more than sixty (60) days from the date of

service on the respondent or the date the guardian ad litem was appointed, whichever is later. The hearing date may be extended on motion showing good cause.

(b) If the petition alleges the minor or person with a disability is faced with a life threatening situation, the court may schedule the hearing in less than seven (7) days from the date of service on the respondent; provided, that actual notice of the hearing is given to the closest relative and the respondent.

(c)(1) In a proceeding for the appointment of a conservator, a notice of the hearing shall be served on the respondent and any person, institution or residential provider having care or custody of the respondent by the guardian ad litem or as otherwise authorized under the Tennessee Rules of Civil Procedure. The notice of hearing shall be substantially in the following form:

IN THE _____ COURT OF _____, TENNESSEE
AT _____

IN THE MATTER OF

_____ No. _____
Respondent

NOTICE OF HEARING

TO: _____
SERVICE ADDRESS _____
_____

You are notified that a petition has been filed, a copy of which is attached, in which it is alleged that you are incapable of caring for yourself or disabled from managing your property, or both. The petition seeks the appointment of a conservator for your person or property, or both. The court, being satisfied that there is good cause for the exercise of jurisdiction as to the matters alleged in the petition, has set a hearing on _____ at _____ o'clock in the offices or the courtroom of the Honorable _____, judge of this court.

The court has appointed a guardian ad litem to investigate these matters and make a report to the court. The guardian ad litem is charged with asserting your best interests and making recommendations, consistent with law, as to what action should be taken in your best interests. The name, address and telephone number of the guardian ad litem is:

_____
_____
_____
_____

A list of your rights in connection with the above described hearing is attached or printed on the reverse side of this notice.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the court at my office on _____.

_____
Clerk and Master or Clerk

(2) The notice shall contain on the reverse side or on an attached sheet those rights set out in § 34-3-106.

(3) The notice shall also be served upon the closest relative or relatives of the respondent, as such persons are described in title 31, chapter 2, but not including the petitioner, and upon the person or institution, if any, having care and custody of the respondent or with whom the respondent is living. Service by mail, sent to the last known address of such persons or institution, shall be sufficient for purposes of this subdivision (c)(3).

34-1-109. When fiduciary's appointment becomes effective — Evidence of appointment — Liability — Fiduciary oath.

(a) On the entry of an order appointing the fiduciary, the administration of the oath as provided in subsection (b) and the posting of any required bond, the fiduciary's appointment becomes effective. The only effective evidence of appointment shall be duly issued letters of guardianship or conservatorship. Except for violations of § 39-14-101, the fiduciary shall have no liability for any act done pursuant to the order appointing the fiduciary between the date of the entry of the order and the date of the vacation of the order if the order is set aside on appeal.

(b) Before delivering the letters of guardianship or conservatorship, the clerk shall administer to the fiduciary an oath for the faithful performance of the fiduciary's duties. If the fiduciary is a fiduciary of the minor's or person with a disability's property, the fiduciary's faithful performance oath shall include a promise to timely file each required inventory and accounting and to spend the assets of the minor or person with a disability only as approved by the court. If there is more than one (1) fiduciary and any of the fiduciaries is not a resident of the county in which the court supervising the proceedings is located, the oath of the non-resident fiduciary may be sworn or affirmed in the presence of a notary public and the acknowledgment of the fiduciary's oath, when certified by the notary public, shall be presented to the appropriate clerk. At least one (1) fiduciary's oath shall be taken by the clerk.

(c) The social security number of the respondent shall be given to the duly appointed fiduciary and used in any other manner approved by the court. The court may release the social security number to a third party upon good cause shown and upon conditions that the court may deem appropriate.

34-1-110. Management of property — Inventory — Filing — Failure to file or appear — Revocation of authority.

(a) If the fiduciary is to manage the property of the minor or person with a disability, within sixty (60) days after appointment, the fiduciary shall file a sworn inventory containing a list of the property of the minor or person with a disability, together with the approximate fair market value of each property and a list of the source, amount and frequency of each item of income, pension, social security benefit or other revenue. If the required information was included in the petition but not separately stated as an inventory, the inventory shall repeat the information provided in the petition and add any later discovered property or income sources.

(b) Unless the court has approved an extension of time for filing the inventory, if the fiduciary fails to file the inventory within the required time, the clerk shall promptly notify the fiduciary and the fiduciary's attorney of record. If after notice the inventory has not been filed thirty (30) days thereafter, the clerk shall cite the fiduciary to appear on a date certain and

render the inventory. Upon failure to appear as cited, the fiduciary shall be summoned to appear before the court and show cause why the fiduciary should not be held in contempt.

(c) Unless the court has authorized an extension of time to file the inventory, if a fiduciary who has been summoned does not respond within thirty (30) days of the date the summons was received by the fiduciary, the court may enter an order revoking the fiduciary's authority and appointing a substitute fiduciary.

34-1-111. Accounting with court — Failure to account.

(a) Except as provided in subsection (i), within thirty (30) days after the six-month anniversary of the fiduciary's date of appointment, the fiduciary shall file a sworn accounting with the court.

(b) Except as provided in subsection (i), within sixty (60) days after each anniversary of the accounting required in subsection (a) or any other end of an accounting period selected by the fiduciary after the subsection (a) accounting, the fiduciary shall file a sworn accounting with the court. To select an accounting period end other than the end of the month during which the fiduciary was appointed, the fiduciary shall file a statement with the clerk advising of the accounting period selected. The accounting period shall not exceed twelve (12) months.

(c) For good cause, the court may extend the time for filing the accounting.

(d)(1) The accounting shall itemize the receipts and the expenditures made during the period covered by the accounting. The same or similar items may be reported collectively. The accounting shall also detail the property held by the fiduciary at the end of the accounting period. To support the financial information reported, the fiduciary shall submit with the accounting:

(A) Each bank statement, brokerage statement or other document reporting any financial information;

(B) In connection with any accounting, to support the financial information reported, the fiduciary shall submit with the accounting the original of each cancelled check written on the account unless:

(i) The fiduciary is a bank to which § 45-2-1002(c) would apply or a savings and loan association or credit union to which § 45-2-1002(c) would apply if the savings and loan association or credit union were a bank, in which case the fiduciary shall comply with § 45-2-1002(c); or

(ii) The fiduciary account is maintained in a "financial institution" as defined in § 34-1-101, that does not return the cancelled checks but provides a printed statement showing the date the check cleared, the payee and the amount, in which case the fiduciary shall submit a printed statement from the financial institution.

(C) A copy of any United States and Tennessee income tax returns filed on behalf of the minor or person with a disability. If no United States or Tennessee income tax return is due, the fiduciary shall include a statement in the accounting that no such return is due and shall set forth the gross income of the minor or person with a disability, and include information from the Internal Revenue Code or Tennessee Code Annotated evidencing the availability of the claimed exemption; and

(D) If the bond is secured by a corporate surety, a statement from the corporate surety that the bond is in force for the next annual period. The surety's liability under the bond shall not be cumulative and shall not

exceed the sum of the bond in force at the time of default.

(2) The accounting shall contain a statement concerning the physical or mental condition of the person with a disability, which statement shall demonstrate to the court the need, or lack of need, for the continuation of the fiduciary's services.

(e) When the accounting has been confirmed, the clerk of the court shall return the original documentation required in subsection (c) to the fiduciary.

(f) Unless the court has approved an extension of time for filing the accounting, if the fiduciary fails to file the accounting within the required time, the clerk shall promptly notify the fiduciary and the fiduciary's attorney of record. If after notice the accounting has not been filed thirty (30) days thereafter, the clerk shall cite the fiduciary to appear on a date certain and render the accounting. Upon failure to appear as cited, the fiduciary shall be summoned to appear before the court and show cause why the fiduciary should not be held in contempt.

(g) Unless the court has authorized an extension of time to file the accounting, if a fiduciary who has been summoned does not respond within thirty (30) days of the date the summons was received by the fiduciary, the court may enter an order revoking the fiduciary's authority and appointing a substitute fiduciary.

(h) On the failure of the fiduciary to account, the fiduciary may be charged with the value of the assets at the beginning of the year. The amount shall accrue interest at the prejudgment rate and compound annually until a proper accounting is made and approved. On the issuance of a show cause order and the failure of the fiduciary to appear and explain, the court shall allow the entry of judgment against the fiduciary and the fiduciary's surety for the amount unaccounted for, plus interest. The fiduciary's surety shall be given adequate notice and may appear and make defense.

(i) Financial accountings may be excused in the discretion of the court, if the court makes a finding based on the evidence presented at a hearing that waiver of the accountings would be appropriate, would be in the best interest of the minor or person with a disability and that one (1) of the following exists:

(1) The fiduciary holds no property of the minor or person with a disability and receives only fixed periodic payments, including, but not limited to, social security, veterans benefits or workers' compensation benefits, and the order appointing the fiduciary authorizes the fiduciary to apply the entire periodic payment to the needs of the minor or person with a disability. The fiduciary holds no property of the minor or person with a disability if the property of the minor or person with a disability is:

(A) Deposited with the clerk and master or clerk of the court;

(B) Placed with a financial institution and the fiduciary and the financial institution enter into a written agreement, filed with the court, in which the financial institution agrees it will not permit the fiduciary to withdraw the principal without court approval; or

(2) The cost of the accounting would exceed twenty-five percent (25%) of the income produced by the property held by the fiduciary.

(3) Subdivision (d)(2) requiring a report regarding the physical or mental condition of the person with a disability may not be waived or excused.

(j) This section does not apply to accountings filed pursuant to § 34-5-111, relating to veterans' guardians. The provisions of this section related to financial accountings do not apply to fiduciaries who do not have authority over the property of the person with a disability.

34-1-112. Compensation to fiduciary.

The fiduciary may receive reasonable compensation for services rendered. The court shall set the actual compensation to be paid, taking into account: the complexity of the property of the minor or person with a disability; the amount of time the fiduciary spent in performing fiduciary duties; whether the fiduciary had to take time away from the fiduciary's normal occupation; and whether the services provided the minor or person with a disability are those the fiduciary should normally have provided had there been no need for a fiduciary, and such other matters as the court deems appropriate. No person, other than a person performing temporary fiduciary services while a proceeding is pending, who has not been appointed by the court to serve as a fiduciary shall receive any compensation for fiduciary services; however, this does not preclude payment for the necessary care of the minor or person with a disability. No compensation to the fiduciary shall be paid without prior court approval.

34-1-113. Payments by fiduciary.

(a) The fiduciary is entitled to pay from the property of the minor or person with a disability the costs of any required medical examination, the guardian ad litem fee, bond premium, court costs, attorney fees, fees for income tax preparation and court accountings, investment management fees, taxes or governmental charges for which the minor or person with a disability is obligated and such other expenses as the court determines are necessary for the fiduciary. The fiduciary shall not pay any attorney fee, guardian ad litem fee, fees for income tax preparation and court accountings or investment management fees until the amount of those fees is approved by the court.

(b) Either prior to or after payment, the court may approve payments by the fiduciary from the property of the minor or person with a disability that are reasonable considering all relevant factors, are incurred by the fiduciary in good faith on behalf of the minor or person with a disability, and are intended to benefit or protect the minor or person with a disability or such person's property, whether or not an actual benefit or protection is ultimately in fact attained. Such requests and/or payments shall be reviewed by the court pursuant to fiduciary standards.

(c) All other expenses, including those that do not comply with the requirements of subsection (b), may be approved by the court, either prior to or after payment, upon a determination that they are reasonable and:

(1) They protected or benefited the minor or person with a disability or such person's property; or

(2) That their payment is in the best interest of the minor or person with a disability.

(d) For purposes of subsection (a), attorney fees shall include fees for preparing fiduciary fee applications and other related filings that are required to be submitted to the court including petitions to secure approval or reimbursement for any expenses paid by the fiduciary that meet the requirements of this section, provided that the amount of those fees is determined by the court to be reasonable in view of the services rendered.

(e) Notwithstanding any provisions of law to the contrary, the duty of the fiduciary appointed under this title shall not cease at the death of the person with a disability, but shall continue for the sole purpose of making reasonable

and proper funeral arrangements for the disposition of the remains of the person with a disability, at death. Upon the death of the person with a disability, the fiduciary shall be allowed credits in the accounting for all reasonable expenses of the person with a disability's funeral. If the estate of the person with a disability has assets in an amount less than five thousand dollars ($5,000), the fiduciary may utilize this entire amount for payment of funeral expenses and will be given credit for the same in the final accounting.

34-1-114. Charging of costs of proceedings.

(a) The costs of the proceedings, which are the court costs, the guardian ad litem fee and expenses incurred by the guardian ad litem in conducting the required investigations, the required medical examination costs, and the attorney's fee for the petitioner, may, in the court's discretion, be charged against the property of the respondent to the extent the respondent's property exceeds the supplemental security income eligibility limit, or to the petitioner or any other party, or partially to any one or more of them as determined in the court's discretion. In exercising its discretion to charge some or all of the costs against the respondent's property, the fact a conservator is appointed or would have been appointed but for an event beyond the petitioner's control is to be given special consideration. The guardian ad litem fee and the attorney's fee for the petitioner shall be established by the court. If a fiduciary is cited for failure to file an inventory or accounting, the costs incurred in citing the fiduciary, in the discretion of the court, may be charged to and collected from the cited fiduciary.

(b) If the principal purpose for bringing the petition is to benefit the petitioner and there would otherwise be little, if any, need for the appointment of a fiduciary, the costs of the proceedings may be assessed against the petitioner, in the discretion of the court.

34-1-115. Investments — Management plan — Court approval.

(a) A fiduciary is limited in its investments to the investments permitted by title 35, chapter 3. All funds held by a fiduciary shall be invested within forty-five (45) days of receipt of the funds unless otherwise allowed by the court.

(b) Except as provided in subsection (d), at the hearing for the appointment of a fiduciary, the proposed fiduciary shall present an outline of the proposed property management plan for the respondent's property. If the proposed property management plan cannot be presented at the appointment hearing, the fiduciary shall submit the proposed property management plan to the court for approval before any property is invested. The purpose of the property management plan is to advise the court of the general type of property in which the respondent's property will be invested so the court will be assured the fiduciary will be making approved investments. The plan need not detail the individual asset or assets. For example, if the fiduciary plans to invest in certificates of deposit, the plan need only make that statement. It is not necessary to identify the individual institution or institutions whose certificates will be purchased.

(c) Except as provided in subsection (d), each fiduciary shall request court approval to change the nature of the fiduciary's investment or investments. Compliance with the preceding sentence does not require court approval to

change the same type of investment from one institution to another. For example, changing a certificate of deposit from one institution to another does not require court approval. Changing from one type of investment to another does require court approval. For example, changing from a certificate of deposit to traded stock would require court approval. If the fiduciary's property management plan describes proposed changes the fiduciary would make in response to economic and market conditions, the court may grant advance approval to make changes as described in the plan.

(d) If the fiduciary is a financial institution, it shall not be required to seek court approval to change any investment.

(e)(1) Notwithstanding any provision of law to the contrary, no property management plan shall be required for the property of a minor or person with a disability if such property does not exceed twenty-five thousand dollars ($25,000) in value, unless, on the motion of any interested party, including the guardian ad litem, the court finds such plan would be in the best interest of such minor or person with a disability.

(2) If no plan is filed pursuant to subdivision (e)(1), the fiduciary's first accounting and all subsequent accountings shall state how the funds of the estate are invested and how the fiduciary proposes that the funds will be invested for the coming year.

34-1-116. Sale of property.

(a) Except as provided in subsections (b) and (d), no property of a minor or person with a disability may be sold without prior approval of the court that appointed the fiduciary.

(b) Unless the fiduciary is holding tangible property for the benefit of a minor or person with a disability pursuant to the terms of a will, trust or other written document, the fiduciary has the authority to sell each item of tangible property with a fair market value of less than one thousand dollars ($1,000) or a motor vehicle without specific court approval.

(c) No fiduciary, relative of a fiduciary, employee of a fiduciary, guardian ad litem or attorney for any party shall be a purchaser of property of the minor or person with a disability without court approval.

(d) This section shall not apply to any fiduciary who is not required to file a property management plan or who has had its investment plans approved as part of its property management plan.

(e) When the fiduciary seeks court approval for the sale of property, a copy of the pleading requesting approval of the sale shall be sent to the minor or person with a disability by certified mail with return receipt requested. Although not required, the court may appoint a guardian ad litem.

34-1-117. Resignation of fiduciary — Transfer of fiduciary relationship.

(a) A fiduciary may resign by submitting a written request to the court. If the court approves and the fiduciary submits a final accounting that is approved, the resignation of the fiduciary shall be effective on the date set by the court.

(b) For minors, the court shall permit the transfer of the fiduciary relationship to another county, state or country if the court finds that either:

(1) The minor and the serving Tennessee fiduciary have both moved to another county, state or country and the serving Tennessee fiduciary has

been appointed the fiduciary in the other county, state or country; or

(2) Only the minor has moved to another county, state or country and a fiduciary other than the serving Tennessee fiduciary has been appointed the fiduciary in the other county, state or country.

(c) For minors, the procedure to seek the transfer of the fiduciary relationship jurisdiction to a court other than the Tennessee court currently supervising the fiduciary relationship shall be the following:

(1) The fiduciary, who may be the serving Tennessee fiduciary or the fiduciary appointed in the other jurisdiction, shall file a sworn petition in the Tennessee court currently supervising the fiduciary relationship. The petition shall contain the following:

(A) A brief statement of the reason or reasons for the removal of the minor from the county of the Tennessee court currently supervising the fiduciary relationship;

(B) A certified copy of the document evidencing the appointment of a fiduciary for the minor in the new jurisdiction that is the place of actual residence of the minor;

(C) An accounting of the minor's property up to the date of the filing of the petition. If the petitioning fiduciary is not the serving Tennessee fiduciary, the court may require the serving Tennessee fiduciary to submit the accounting;

(D) A prayer for the removal of the fiduciary proceedings to the new jurisdiction; and

(E) If appropriate, a prayer for the removal of the minor's property to the new jurisdiction;

(2) Upon the hearing of the petition, the petitioning fiduciary shall provide the court with the following:

(A) Satisfactory evidence that the minor and, if applicable, the serving Tennessee fiduciary have moved from the county of the Tennessee court currently supervising the fiduciary relationship and are actually residing in the new jurisdiction;

(B) An accounting of the minor's property up to the date of the hearing. If the petitioning fiduciary is not the serving Tennessee fiduciary, the court may require the serving Tennessee fiduciary to submit the accounting;

(C) A certified copy of the order of the court appointing the fiduciary in the new jurisdiction; and

(D) A copy of the bond given by the fiduciary in the new jurisdiction with a certificate of the clerk of the court that the bond was signed;

(3) If upon the hearing the court is satisfied with the sufficiency of the evidence presented and the court determines that it is in the best interests of the minor the court shall:

(A) Order the removal of the fiduciary proceedings and, if applicable, the minor's property to the jurisdiction of the actual residence of the minor; and

(B) Discharge the Tennessee fiduciary and the fiduciary's surety on the bond in the Tennessee proceedings; and

(4) Upon the granting of the order, the court shall transfer to the appropriate court in the new jurisdiction a copy of the accounting of the serving Tennessee fiduciary and all records pertaining to the fiduciary relationship.

(d) For a disabled adult person, the court shall permit the transfer of the

fiduciary relationship to another county, if the court finds that either:

(1) The disabled adult person and the serving Tennessee fiduciary have both moved to another county, and the serving Tennessee fiduciary has been appointed the fiduciary in the other county; or

(2) Only the disabled adult person has moved to another county, and a fiduciary other than the serving Tennessee fiduciary has been appointed the fiduciary in the other county.

(e) For a disabled adult person, the procedure to seek the transfer of the fiduciary relationship jurisdiction to a court in another county other than the Tennessee court currently supervising the fiduciary relationship shall be the following:

(1) The fiduciary, who may be the serving Tennessee fiduciary or the fiduciary appointed in the other county, shall file a sworn petition in the Tennessee court currently supervising the fiduciary relationship. The petition shall contain the following:

(A) A brief statement of the reason or reasons for the removal of the person with a disability from the county of the Tennessee court currently supervising the fiduciary relationship;

(B) A certified copy of the document evidencing the appointment of a fiduciary for the person with a disability in the new jurisdiction that is the place of actual residence of the minor or person with a disability;

(C) An accounting of the disabled adult person's property up to the date of the filing of the petition. If the petitioning fiduciary is not the serving Tennessee fiduciary, the court may require the serving Tennessee fiduciary to submit the accounting;

(D) A prayer for the removal of the fiduciary proceedings to the new jurisdiction; and

(E) If appropriate, a prayer for the removal of the disabled adult person's property to the new jurisdiction;

(2) Upon the hearing of the petition, the petitioning fiduciary shall provide the court with the following:

(A) Satisfactory evidence that the disabled adult person and, if applicable, the serving Tennessee fiduciary have moved from the county of the Tennessee court currently supervising the fiduciary relationship and are actually residing in the new jurisdiction;

(B) An accounting of the person with a disability's property up to the date of the hearing. If the petitioning fiduciary is not the serving Tennessee fiduciary, the court may require the serving Tennessee fiduciary to submit the accounting;

(C) A certified copy of the order of the court appointing the fiduciary in the new jurisdiction; and

(D) A copy of the bond given by the fiduciary in the new jurisdiction with a certificate of the clerk of the court that the bond was signed;

(3) If upon the hearing the court is satisfied with the sufficiency of the evidence presented and the court determines it is in the best interests of the person with a disability, the court shall:

(A) Order the removal of the fiduciary proceedings and, if applicable, the adult person with a disability's property to the jurisdiction of the actual residence of the adult person with a disability; and

(B) Discharge the Tennessee fiduciary and the fiduciary's surety on the bond in the Tennessee proceedings; and

(4) Upon the granting of the order, the court shall transfer to the appropriate court in the new jurisdiction a copy of the accounting of the serving Tennessee fiduciary and all records pertaining to the fiduciary relationship.

(f) Other issues relating to subject matter jurisdiction of conservatorships, guardianships and protective proceedings shall be governed by chapter 14 of this title.

34-1-118. Persons receiving property — Receipt for property — Filing.

Whenever a fiduciary distributes property of a minor or person with a disability, the person receiving the property of the minor or person with a disability from the fiduciary shall sign a receipt for the property, which receipt shall be filed with the fiduciary's next accounting.

34-1-119. Standby fiduciary.

(a) At the request of the petitioner, the fiduciary, or on the court's own motion, a standby fiduciary may be appointed by the court to take the place of the fiduciary on a temporary or, if necessary, on a permanent basis. The standby fiduciary shall have the same powers, rights and obligations as the fiduciary.

(b) When it is necessary for the standby fiduciary to function, the regular fiduciary shall notify the court or other interested party of the need for the services of the standby fiduciary and the anticipated duration of the need for the services. On receipt of the notice, the court shall enter an order authorizing the standby fiduciary to function in the place of the fiduciary. The order shall state the duration of the standby fiduciary's authority and shall suspend the authority of the fiduciary. If the fiduciary is bonded, the standby fiduciary must also be bonded in the same amount as the fiduciary. Under no circumstance can the fiduciary and standby fiduciary be simultaneously empowered to act.

(c) Although there is no current need for the services of a fiduciary:

(1) The custodial parent or parents or the person designated by the custodial parent or parents of a minor child or children may petition in accordance with chapter 2 of this title; or

(2) Any adult may petition for the adult in accordance with chapter 3 of this title for the appointment of a standby fiduciary. The standby fiduciary authorized by this subsection (c) may be appointed without the necessity of the appointment of a fiduciary. The court shall respond to the petition as though it were a petition for the appointment of a currently active fiduciary so that all questions concerning the appropriateness of the proposed fiduciary or the property management plan are resolved at the hearing on the petition, which action will minimize delay in activating the standby fiduciary when necessary. If appointed, the court shall define in the order of appointment the circumstances under which the standby fiduciary shall become an active fiduciary and the actions that the standby fiduciary shall take to notify the court of the need for the standby fiduciary to become active. If the court determines there is a need for an active fiduciary, the court shall issue an order authorizing the standby fiduciary to function which order shall contain such other authority or restriction, consistent with this chapter, and chapters 2 and 3 of this title, as the court determines is in the best interest of the minor or person with a disability. In considering a

petition for the appointment of a standby fiduciary, the court shall try to minimize the costs to the petitioner to the extent the court determines it is in the best interest of the minor or the person with a potential disability.

34-1-120. When people may be appointed fiduciary — Eligible persons.

No personal representative of an estate, any part of which is distributable to a minor, except a parent, grandparent, sibling of the minor or person named by the testator to be guardian, shall be appointed the fiduciary for the minor until the personal representative has first settled its accounts as personal representative. No personal representative of an estate, any part of which is distributable to a person with a disability, except a parent, spouse, child, grandchild, grandparent or sibling of the person with a disability, shall be appointed the fiduciary for the person with a disability until the personal representative has first settled its accounts as personal representative.

34-1-121. Powers of court — Additional actions — Waiver of requirements — Compromise.

(a) The court has broad discretion to require additional actions not specified in this chapter, and chapters 2 and 3 of this title as the court deems in the best interests of the minor or person with a disability and the property of the minor or the person with a disability. The court also has discretion to waive requirements specified in this chapter, and chapters 2 and 3 of this title if the court finds it is in the best interests of the minor or person with a disability to waive such requirements, particularly in those instances where strict compliance would be too costly or place an undue burden on the fiduciary or the minor or the person with a disability.

(b) In any action, claim, or suit in which a minor or person with a disability is a party or in any case of personal injury to a minor or person with a disability caused by the alleged wrongful act of another, the court in which the action, claim, or suit is pending, or the court supervising the fiduciary relationship if a fiduciary has been appointed, has the power to approve and confirm a compromise of the matters in controversy on behalf of the minor or person with a disability. If the court deems the compromise to be in the best interest of the minor or person with a disability, any order or decree approving and confirming the compromise shall be binding on the minor or person with a disability.

34-1-122. Distributions to persons other than minor — Gift program.

In considering expenditures of income or principal of the property of the minor or person with a disability, the court may authorize distributions to persons other than the minor or person with a disability if the court determines the expenditures are in the best interests of the minor or person with a disability. In making its decision, the court may consider whatever information the court deems relevant to its decision, keeping in mind its primary responsibility is for the care and maintenance of the minor or person with a disability and the person's property. No gift program shall be authorized unless there is evidence the person with a disability established a gift program prior to becoming a person with a disability or, even though the person with a disability had not established a gift program, a gift program would reduce the person with a disability's tax liability and would not jeopardize the person with a disability's care and long-term well-being.

34-1-127. Least restrictive alternative to be imposed.

The court has an affirmative duty to ascertain and impose the least restrictive alternatives upon the person with a disability that are consistent with adequate protection of the person with a disability and the property of the person with a disability.

34-1-129. Letters of conservatorship or guardianship — Limited.

Upon the entry of the order appointing a fiduciary and the submission of a bond consistent with the order, the clerk shall issue letters of conservatorship or letters of guardianship. The letters of conservatorship or guardianship shall either:

(1) Recite the specific powers removed from the minor or person with a disability and transferred to the fiduciary; or

(2) Have attached to them the order or orders of the court specifying the powers removed from the minor or person with a disability and transferred to the fiduciary. If the fiduciary has been granted less than full authority over the person and property of the minor or person with a disability in the order of appointment, the clerk shall mark the letters prominently with the term "LIMITED".

34-1-132. Appointment of emergency guardian or conservator.

(a) If the court finds that compliance with the procedures of this title will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person, including an agent acting under the Health Care Decision Act, compiled in title 68, chapter 11, part 18, or a person acting under the Durable Powers of Attorney for Healthcare Act, compiled in chapter 6, part 2 of this title or a living will pursuant to title 32, chapter 11, appears to have authority to act, willingness to act, and is acting in the best interests of the respondent in the circumstances, then the court, on petition by a person interested in the respondent's welfare, may appoint an emergency guardian or conservator whose authority may not exceed sixty (60) days and who may exercise only the powers specified in the order. Immediately upon receipt of the petition for an emergency guardianship or conservatorship, the court shall appoint an attorney ad litem to represent the respondent in the proceeding. Except as otherwise provided in subsection (b), reasonable notice of the time and place of a hearing on the petition shall be given to the respondent and any other person as the court directs.

(b) An emergency guardian or conservator may be appointed without notice to the respondent and the attorney ad litem only if the court finds upon a sworn petition that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian or conservator without notice to the respondent, the respondent shall be given notice of the appointment within forty-eight (48) hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within five (5) days after the appointment.

(c) Appointment of an emergency guardian or conservator, with or without notice, is not a determination of the respondent's incapacity.

(d) The court may remove an emergency guardian or conservator at any time. The court may appoint a guardian ad litem to investigate the circum-

stances. An emergency guardian or conservator shall make any report the court requires. In other respects, the provisions of this title concerning guardians or conservators apply to an emergency guardian or conservator.

(e) The time periods set forth above in this section are mandatory and not directory. Failure to comply with those provisions shall void any emergency appointment and remove the authority previously granted to an emergency fiduciary.

34-1-133. Expedited limited healthcare fiduciary.

(a) If the respondent is under hospitalization in a hospital as those terms are defined in title 68, chapter 11, part 2, and no other person, including an agent acting under the Healthcare Decision Act, compiled in title 68, chapter 11, part 8, a person acting under the Durable Powers of Attorney for Healthcare Act, compiled in chapter 6, part 2 of this title, or a living will under title 32, chapter 11, part 1 appears to have the authority and willingness to act and is acting in the best interest of the respondent, the court on petition of a person interested in the respondent's welfare may appoint an expedited limited healthcare fiduciary whose authority is for the limited purpose of consenting to discharge, transfer, and admission and consenting to any financial arrangements or medical care necessary to affect such discharge, transfer or admission to another healthcare facility and whose authority may not exceed sixty (60) days. Immediately upon the receipt of the petition for an expedited limited healthcare fiduciary, the court shall appoint an attorney ad litem to represent the respondent in the proceeding. In expediting the appointment of an expedited limited healthcare fiduciary, the court may vary the time periods for hearings including but not limited to the minimum number of days before a hearing under § 34-1-108 or the number of days before appointment of a guardian ad litem under § 34-1-107 or other time periods, but shall not vary requirements as necessary to determine the respondent is in need of a fiduciary.

(b) The court shall hold a hearing on the appropriateness of the appointment within five (5) days of the appointment.

(c) Appointment of an expedited limited healthcare fiduciary is not a determination of the respondent's incapacity.

(d) The court may remove an expedited limited healthcare fiduciary at any time.

(e) The time periods set forth in this section are mandatory and not directory. Failure to comply with those provisions shall void any expedited appointment and remove the authority previously granted to the expedited limited healthcare fiduciary.

34-3-101. Action for appointment of conservator — Where brought.

(a) Actions for the appointment of a conservator may be brought in a court exercising probate jurisdiction or any other court of record of any county in which there is venue.

(b) An action for the appointment of a conservator shall be brought in the county of residence of the alleged person with a disability.

(c) Nothing in this title shall be construed to supersede the Tennessee Adult Protection Act, compiled in title 71, chapter 6, part 1, or the orders of the court pursuant to such act.

34-3-103. Priority of persons to be considered for appointment.

Subject to the court's determination of what is in the best interests of the person with a disability, the court shall consider the following persons in the order listed for appointment of the conservator:

(1) The person or persons designated in a writing signed by the alleged person with a disability;

(2) The spouse of the person with a disability;

(3) Any child of the person with a disability;

(4) Closest relative or relatives of the person with a disability;

(5) A district public guardian as described by § 34-7-104; and

(6) Other person or persons.

34-3-104. Petition for appointment — Sworn — Contents.

The petition for the appointment of a conservator, which shall be sworn, should contain the following:

(1) The name, date of birth, residence and mailing address of the respondent;

(2) A description of the nature of the alleged disability of the respondent;

(3) The name, age, residence and mailing address of the petitioner, a statement of the relationship of the petitioner to the respondent, and a statement of any felony or misdemeanor convictions of the petitioner, if any;

(4) The name, age, mailing address, relationship of the proposed conservator and a statement of any felony or misdemeanor conviction of the proposed conservator and, if the proposed conservator is not the petitioner, a statement signed by the proposed conservator acknowledging awareness of the petition and a willingness to serve;

(5) The name, mailing address and relationship of the closest relative or relatives of the respondent and the name and mailing address of the person or institution, if any, having care and custody of the respondent or with whom the respondent is living. If the respondent has no then living spouse, child, parent or sibling, the petition shall so state and more remote relatives are not to be listed;

(6) A summary of the facts supporting the petitioner's allegation that a conservator is needed;

(7) The name of the respondent's physician or, where appropriate, respondent's psychologist or senior psychological examiner and either:

(A) A sworn examination report described in § 34-3-105(c);

(B) A statement that the respondent has been examined but the sworn examination report has not been received but will be filed before the hearing; or

(C) A statement that the respondent refuses to be examined voluntarily, with a request that the court direct the respondent to submit to medical examination;

(8) The rights of the respondent to be removed from the respondent and transferred to the conservator. The rights the court may remove may include, but are not limited to, the right to vote, dispose of property, execute instruments, make purchases, enter into contractual relationships, hold a valid Tennessee driver license, give or refuse consent to medical and mental examinations and treatment or hospitalization, or do any other act of legal significance the court deems necessary or advisable;

(9) If the petition requests the conservator to manage the property of the respondent, the petition also shall contain:

(A) If the financial information about the respondent is known to the petitioner:

(i) A list of the property of the respondent, together with the approximate fair market value of each item and a statement whether the property listed is all of the respondent's property;

(ii) A list of the source, amount and frequency of each item of income, pension, social security benefit or other revenue received by the respondent;

(iii) A list of the usual monthly expenses of the respondent and an explanation of how these expenditures were met prior to the filing of the petition;

(iv) A description of the proposed plan for the management of the respondent's property if a conservator is appointed; or

(B) If the financial information about the respondent is unknown to the petitioner, a request that the court enter an order authorizing the petitioner to investigate the respondent's property; and

(10) A request for a guardian ad litem, conservator or co-conservator, or attorney ad litem with specific experience or expertise in matters like those faced by the respondent, if warranted under the circumstances.

34-3-105. Examination, physical, psychological or otherwise, of respondent.

(a) If the respondent has been examined by a physician or, where appropriate, a psychologist or senior psychological examiner not more than ninety (90) days prior to the filing of the petition and the examination is pertinent, the report of the examination shall be submitted with the petition. If the respondent has not been examined within ninety (90) days of the filing of the petition, cannot get out to be examined or refuses to be voluntarily examined, the court shall order the respondent to submit to examination by a physician or, where appropriate, a psychologist or senior psychological examiner identified in the petition as the respondent's physician, psychologist or senior psychological examiner or, if the respondent has no physician, psychologist or senior psychological examiner, a physician, psychologist or senior psychological examiner selected by the court. The physician, psychologist or senior psychological examiner, on completing the examination, shall send a sworn written report to the court with copies to the petitioner and the guardian ad litem. The physician's, psychologist's or senior psychological examiner's report shall be made a part of the court record.

(b) On motion by the petitioner, the respondent, the adversary counsel, the guardian ad litem, or on its own initiative, the court may order the respondent to submit to examination by such physicians, psychologists, senior psychological examiners or other specialists who have expertise in the specific disability of the respondent. The examiner shall send a sworn written report to the court with copies to the petitioner, the guardian ad litem and the person requesting the second examination. The court may assess the cost of the second examination against the property of the person with a disability or against the person requesting the examination.

(c) Each physician's, psychologist's or senior psychological examiner's sworn

report shall contain the following:

(1) The respondent's medical history; provided, that this subdivision (c)(1) shall not be construed to expand the examiner's scope of practice;

(2) A description of the nature and type of the respondent's disability;

(3) An opinion as to whether a conservator is needed and the type and scope of the conservator with specific statement of the reasons for the recommendation of conservatorship; and

(4) Any other matters as the court deems necessary or advisable.

(d) The examiner's sworn report shall be prima facie evidence of the respondent's disability and need for the appointment of a fiduciary unless the report is contested and found to be in error.

(e) If upon an additional finding that the person with a disability poses a threat to self or others in accordance with the mental health law, title 33, a court of competent jurisdiction may order a commitment to involuntary care and treatment.

34-3-106. Rights of respondent.

The respondent has the right to:

(1) On demand by respondent or the guardian ad litem, a hearing on the issue of disability;

(2) Present evidence and confront and cross-examine witnesses;

(3) Appeal the final decision on the petition with the assistance of an attorney ad litem or adversary counsel;

(4) Attend any hearing;

(5) Have an attorney ad litem appointed to advocate the interests of the respondent; and

(6) Request a protective order placing under seal the respondent's health and financial information, including reports provided under § 34-3-105(c).

34-3-107. Where conservator needed — Court order.

If the court determines a conservator is needed, the court shall enter an order which shall:

(1) Name the conservator or co-conservators and, in the court's discretion, a standby conservator or co-conservators;

(2) Enumerate the powers removed from the respondent and those to be vested in the conservator. To the extent not specifically removed, the respondent shall retain and shall exercise all of the powers of a person without a disability. The court may consider removing any rights of the person with a disability and vesting some or all in a conservator. Such rights may include, but are not limited to:

(A) The right to give, withhold, or withdraw consent and make other informed decisions relative to medical and mental examinations and treatment;

(B) The right to make end of life decisions:

(i) To consent, withhold, or withdraw consent for the entry of a "do not resuscitate" order or the application of any heroic measures or medical procedures intended solely to sustain life and other medications; and

(ii) To consent or withhold consent concerning the withholding or withdrawal of artificially provided food, water, or other nourishment or fluids;

(C) The right to consent to admission to hospitalization, and to be discharged or transferred to a residential setting, group home, or other facility for additional care and treatment;

(D) The right to consent to participate in activities and therapies which are reasonable and necessary for the habilitation of the respondent;

(E) The right to consent or withhold consent to any residential or custodial placement;

(F) The power to give, receive, release, or authorize disclosures of confidential information;

(G) The right to apply for benefits, public and private, for which the person with a disability may be eligible;

(H) The right to dispose of personal property and real property subject to statutory and judicial constraints;

(I) The right to determine whether or not the respondent may utilize a Tennessee driver license for the purpose of driving;

(J) The right to make purchases;

(K) The right to enter into contractual relationships;

(L) The right to execute instruments of legal significance;

(M) The right to pay the respondent's bills and protect and invest the respondent's income and assets;

(N) The right to prosecute and defend lawsuits; and

(O) The right to execute, on behalf of the respondent, any and all documents to carry out the authority vested above.

(3) If the rights and powers transferred to the conservator include management of the respondent's property, the order shall:

(A) Set the amount of the conservator's bond unless waived as authorized in § 34-1-105;

(B) Set the nature and frequency of each approved expenditure and prohibit the conservator from making other expenditures without court approval;

(C) Set forth the approved management of the property of the person with a disability; and

(D) Prohibit the sale of any property except as permitted by § 34-1-116(b) without prior court approval or as permitted in the property management plan approved by the order; and

(4) Whether a conservator is being appointed from § 34-3-103(6), and if the conservator is being appointed from § 34-3-103(6), the reasons why the court was unable to appoint a conservator from § 34-3-103(1)-(5);

(5) State any other authority or direction as the court determines is appropriate to properly care for the person or property of the person with a disability.

34-3-108. Discharge of conservator — Modification of duties — Termination — Final accountings and distribution of assets.

(a) A conservator appointed under this chapter may be discharged or have its duties modified if the court determines that the respondent is no longer a person with a disability, or that it is in the best interests of the person with a disability that the conservatorship be terminated, or that the conservator has failed to perform its duties and obligations in accordance with the law, or that the conservator has failed to act in the best interest of the person with a

disability so as to warrant modification or termination. The person with a disability or any interested person on the behalf of the person with a disability may petition the court at any time for a termination or modification order under this section.

(b) A petition under subsection (a), if made by the person with a disability, may be communicated to the court by any means including oral communication or informal letter.

(c) The court, upon receipt of the petition filed under this section, shall conduct a hearing. At the hearing, the person with a disability has all the rights set out in § 34-3-106. Prior to the holding of the hearing, the court may require that the person with a disability submit to an examination as required by § 34-3-105 to support the person with a disability's contention that a conservator is no longer needed.

(d) Upon conclusion of the hearing, the court shall enter an order setting forth the court's findings of fact and may do any of the following:

(1) Dismiss the petition;

(2) Remove the conservator and dissolve the original order;

(3) Remove the conservator and appoint a successor;

(4) Modify the original order; or

(5) Grant any other relief the court considers appropriate and in the best interest of the person with a disability.

(e) When the person with a disability dies or the court earlier determines a conservator is no longer needed and issues an order terminating the conservatorship, the conservatorship shall terminate. If the conservator has responsibility for the property of the person with a disability, within one hundred twenty (120) days after the date the conservatorship terminates, the conservator shall file a preliminary final accounting with the court, which shall account for all assets, receipts, and disbursements from the date of the last accounting until the date the conservatorship terminates, and shall detail the amount of the final distribution to close the conservatorship. If no objections have been filed to the clerk's report on the preliminary final accounting within thirty (30) days from the date the clerk's report is filed, the conservator shall distribute the remaining assets. The receipts and final cancelled checks evidencing the final distributions shall be filed with the court by the conservator. When the evidence of the final distribution is filed with the court and on order of the court, the conservatorship proceeding shall be closed.

34-3-109. Support of person with a disability's spouse or minor children.

The appointment of a conservator for a person with a disability does not automatically terminate the duty of the person with a disability to support such spouse or dependent minor children of the person with a disability. The court having jurisdiction over the person with a disability may establish the amount of financial support to which the spouse or dependent minor children are entitled.

34-6-203. Requirements.

(a) An attorney in fact under a durable power of attorney for health care may not make health care decisions unless all of the following requirements are satisfied:

(1) The durable power of attorney for health care specifically authorizes the attorney in the fact to make health care decisions;

(2) The durable power of attorney for health care contains the date of its execution; and

(3) The durable power of attorney for health care must be in writing and signed by the principal. The durable power of attorney for health care is valid if the principal's signature is either attested by a notary public with no witnesses or witnessed by two (2) witnesses without attestation by a notary public. A witness is a competent adult, who is not the agent, and at least one (1) of whom is not related to the principal by blood, marriage, or adoption and would not be entitled to any portion of the estate of the principal upon the death of the principal under any will or codicil made by the principal existing at the time of execution of the durable power of attorney for health care or by operation of law then existing. The durable power of attorney for health care shall contain an attestation clause that attests to the witnesses' compliance with the requirements of this subdivision (a)(3). It is the intent of the general assembly that this subdivision (a)(3) have retroactive application.

(b) Except as provided in subsection (d):

(1) Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a treating health care institution nor an employee of an operator of a treating health care institution may be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care; and

(2) A health care provider or employee of a health care provider may not act as an attorney in fact to make health care decisions if the health care provider becomes the principal's treating health care provider.

(c) A conservator may not be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care executed by a person who is a conservatee under the laws of this state where the conservatee has the power to execute legal documents, unless:

(1) The power of attorney is otherwise valid;

(2) The conservatee is represented by legal counsel; and

(3) The attorney representing the conservatee signs a certificate stating in substance:

"I am an attorney authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning my client's rights in connection with this power of attorney and the applicable law, and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this durable power of attorney for health care."

(d) An employee of the treating health care provider or an employee of an operator of a treating health care institution may be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care if:

(1) The employee so designated is a relative of the principal by blood, marriage or adoption; and

(2) The other requirements of this part are satisfied.

35-5-117. [Repealed.]

35-6-601. Application and construction of chapter 6.

Section 35-15-1101 controls all application and construction of chapter 6.

35-9-108. Information or actions that can not be required.

(a) For the purposes of this section, "private foundation" has the same meaning ascribed to "private foundation" in § 509(a) of the Internal Revenue Code of 1986, as amended.

(b) No private foundation shall be required by a department, agency, board, or other entity of state or local government to:

(1) Disclose the race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, or sexual orientation of:

(A) The foundation's employees, officers, directors, trustees, or contributors, without the prior written consent of the individual or individuals in question; or

(B) Any individual, or of the employees, officers, directors, trustees, members, or owners of any entity, that has received monetary or in-kind contributions or grants from, or contracted with, the foundation, without the prior written consent of the individual or individuals in question;

(2) Hire, appoint, or elect an individual of any particular race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, or sexual orientation as an employee, officer, director, or trustee of the foundation;

(3) Disqualify, remove, or prohibit service of an individual as an officer, director, or trustee of the foundation based upon such individual's familial relationship to other officers, directors, or trustees of the foundation or a contributor to the foundation;

(4) Hire, appoint, or elect an individual as an officer, director, or trustee of the foundation who does not share a familial relationship with the other officers, directors, or trustees of the foundation or with a contributor to the foundation; or

(5) Except as a lawful condition or requirement on the expenditure of particular funds imposed by the contributor or grantor of such funds, distribute the foundation's funds to, or contract with, any individual or entity based upon the:

(A) Race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, or sexual orientation of the individual or of the employees, officers, directors, trustees, members, or owners of the entity; or

(B) Populations, locales, or communities served by the individual or entity.

35-14-102. Chapter definitions.

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

(1) "Governing instrument" means:

(A) A will, deed, trust instrument or agency agreement;

(B) For purposes of subdivision (1)(A), an agency agreement includes but is not limited, to any agreement under which any delegation is made, either pursuant to § 35-15-807 or by anyone holding a power or duty

pursuant to chapter 15, part 12;

(2) "Trust" means any fiduciary relationship created by a governing instrument; and

(3) "Trustee" means any fiduciary as defined in § 35-15-103.

35-15-103. Chapter definitions.

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

(1) "Action" with respect to an act of a trustee, includes a failure to act;

(2) "Another state" or "other state" means any state other than this state;

(3) "Ascertainable standard" means a standard relating to an individual's health, education, support or maintenance within the meaning of § 2041(b)(1)(A) or § 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on July 1, 2004, or as later amended;

(4) "Beneficial interest" means a distribution interest or a remainder interest; provided, however, that a beneficial interest specifically excludes a power of appointment or a power reserved by a settlor;

(5) "Beneficiary" means a person that:

(A) Has a present or future beneficial interest in a trust, vested or contingent; or

(B) [Deleted by 2013 amendment, effective July 1, 2013.]

(6) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in § 35-15-405(a);

(7) "Conservator" has the same meaning as in § 34-1-101;

(8) "Directed trust" means a trust where either through the terms of the trust, an agreement of the qualified beneficiaries or a court order, one or more persons are given the authority to direct or consent to a fiduciary's actual or proposed investment decision, distribution decision, or any other decision of the fiduciary;

(9) "Distribution beneficiary" means a beneficiary who is an eligible distributee or permissible distributee of the income or principal of a trust;

(10) "Distribution interest" means:

(A) An interest, other than a remainder interest, held by a distribution beneficiary under a trust and may be a current distribution interest or a future distribution interest;

(B) Relative to a distribution interest:

(i) Neither the existence of a distribution interest or the provision of services by a spouse in that spouse's capacity as a fiduciary of the trust creating the distribution interest is relevant in the equitable division of marital property;

(ii) None of the factors in subdivision (10)(B)(i) or the exercise or non-exercise of any power or discretion by a spouse in that spouse's capacity as a fiduciary of the trust creating the distribution interest (even if that spouse is also a beneficiary of the trust creating the distribution interest) are relevant to, indicative of or effect the transmutation or other conversion of separate property to community property;

(iii) The expending of any community funds by a spouse in that spouse's capacity as a fiduciary of the trust creating the distribution interest relative to the operation or maintenance of property related to a distribution interest is not relevant to or indicative of, and does not effect a transmutation or other conversion of separate property to

community property;

(iv) Any funds expended pursuant to subdivision (10)(B)(iii) shall be valid debts of the trust and shall be repaid to the community with appropriate interest;

(C) A distribution interest is classified as either a mandatory interest, a support interest or a discretionary interest; and although not the exclusive means to create each such respective distribution interest, absent clear and convincing evidence to the contrary, use of the example language accompanying the following definitions of each such respective distribution interest results in the indicated classification of distribution interest:

(i) A mandatory interest means a distribution interest in which the timing of any distribution must occur within one (1) year from the date the right to the distribution arises and the trustee has no discretion in determining whether a distribution shall be made or the amount of such distribution; example distribution language indicating a mandatory interest includes, but is not limited to:

(a) All income shall be distributed to a named beneficiary; or

(b) One hundred thousand dollars ($100,000) a year shall be distributed to a named beneficiary;

(ii) A support interest means a distribution interest that is not a mandatory interest but still contains mandatory language such as "shall make distributions" and is coupled with a standard capable of judicial interpretation; example distribution language indicating a support interest includes, but is not limited to:

(a) The trustee shall make distributions for health, education, maintenance, and support;

(b) Notwithstanding the distribution language used, if a trust instrument containing such distribution language specifically provides that the trustee exercise discretion in a reasonable manner with regard to a discretionary interest, then notwithstanding any other provision of this subdivision (10) defining distribution interests, the distribution interest shall be classified as a support interest;

(iii) A discretionary interest means any interest that is not a mandatory or a support interest and is any distribution interest where a trustee has any discretion to make or withhold a distribution; example distribution language indicating a discretionary interest includes, but is not limited to:

(a) The trustee may, in the trustee's sole and absolute discretion, make distributions for health, education, maintenance, and support;

(b) The trustee, in the trustee's sole and absolute discretion, shall make distributions for health, education, maintenance, and support;

(c) The trustee may make distributions for health, education, maintenance, and support;

(d) The trustee shall make distributions for health, education, maintenance, and support; provided, however, that the trustee may exclude any of the beneficiaries or may make unequal distributions among them; or

(e) The trustee may make distributions for health, education, maintenance, support, comfort, and general welfare;

(f) A discretionary interest may also be evidenced by:

(1) Permissive distribution language such as "may make

distributions";

(2) Mandatory distribution language that is negated by the discretionary distribution language contained in the trust such as "the trustee shall make distributions in the trustee's sole and absolute discretion";

(g) An interest that includes mandatory distribution language such as "shall" but is subsequently qualified by discretionary distribution language shall be classified as a discretionary interest and not as a support or a mandatory interest;

(D)(i) To the extent a trust contains distribution language indicating the existence of any combination of a mandatory, support and discretionary interest, that combined interest of the trust shall be divided and treated separately as follows:

(a) The trust shall be a mandatory interest only to the extent of the mandatory distribution language;

(b) The trust shall be a support interest only to the extent of such support distribution language; and

(c) The remaining trust property shall be held as a discretionary interest;

(ii) For purposes of this subdivision (10)(D), a support interest that includes mandatory distribution language such as "shall" but is subsequently qualified by discretionary distribution language, shall be classified as a discretionary interest and not as a support interest;

(11) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment;

(12) "Excluded fiduciary" means any trustee, trust advisor, or trust protector to the extent that, under the terms of a trust, an agreement of the qualified beneficiaries, or court order:

(A) The trustee, trust advisor, or trust protector is excluded from exercising a power, or is relieved of a duty; and

(B) The power or duty is granted or reserved to another person;

(13) "Fiduciary" means:

(A) A trustee, conservator, guardian, agent under any agency agreement or other instrument, an executor, personal representative or administrator of a decedent's estate, or any other party, including a trust advisor or a trust protector, who is acting in a fiduciary capacity for any person, trust, or estate;

(B) Fiduciary also means a trustee as defined in § 35-14-102;

(C) For purposes of subdivision (13)(A), an agency agreement includes but is not limited to, any agreement under which any delegation is made, either pursuant to § 35-15-807 or by anyone holding a power or duty pursuant to part 12;

(D) For purposes of the definition of fiduciary in this subdivision (13), fiduciary does not mean any person who is an excluded fiduciary as such is defined in this section;

(14) "Foreign" or "foreign country" means any jurisdiction, subdivision, territory or possession thereof, other than that of the United States of America or of a state;

(15) "Foreign jurisdiction" means any jurisdiction, subdivision, territory or possession thereof, other than this state;

(16) "Guardian" has the same meaning as in § 34-1-101. The term does

not include a guardian ad litem;

(17) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust;

(18) "Internal Revenue Code" means the Internal Revenue Code of 1986, as in effect on July 1, 2004, or as later amended;

(19) "Jurisdiction" with respect to a geographic area, includes a state or country;

(20) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity;

(21) "Power of appointment" means:

(A) An inter vivos or testamentary power to direct the disposition of trust property, other than a distribution decision made by a trustee or other fiduciary to a beneficiary;

(B) Powers of appointment are held by the person to whom such power has been given, and not by a settlor in that person's capacity as settlor;

(22) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

(A) Exercisable by a trustee and limited by an ascertainable standard; or

(B) Exercisable by another person only upon consent of the trustee or a person holding an adverse interest;

(23) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein;

(24) "Qualified beneficiary" means a beneficiary who, assuming the nonexercise of all powers of appointment and the nonoccurrence of any event not reasonably expected to occur, on the date the beneficiary's qualification is determined:

(A) Is a distributee or permissible distributee of trust income or principal;

(B) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subdivision (13)(A) terminated on that date; or

(C) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;

(D) Notwithstanding any other provisions of this subdivision (24), no ultimate beneficiary or potential ultimate beneficiary shall be a qualified beneficiary;

(i) In determining who is or may be an ultimate beneficiary, all of the following shall be taken into consideration:

(a) The terms of the trust naming any ultimate beneficiary or potential ultimate beneficiary and the intention of the settlor relative to any such beneficiary as expressed in such terms; and

(b) Any terms or provisions related to the exercise of any power by any person naming any ultimate beneficiary or potential ultimate beneficiary and the intention of the person exercising such power relative to any such beneficiary as expressed in such terms or provisions;

(ii) Determined as provided in subdivision (24)(D)(i), an ultimate beneficiary or potential ultimate beneficiary is any beneficiary who the

settlor or power holder did not reasonably anticipate would take any interest upon termination of all or any part of a trust absent all other beneficiaries or members of classes of beneficiaries named in the trust instrument or in the exercise of the power, respectively, predeceasing or otherwise not being in existence at the time at which such trust or part thereof terminates;

(iii) By way of example and not in limitation of this subdivision (24)(D), an ultimate beneficiary is a person or persons often included in a trust instrument or under the exercise of a power to take an interest in a trust at the time all or any part of such trust terminates only in a case where all other named beneficiaries or classes of beneficiaries that have or had an affinity through either familial connection or friendship with any of:

(a) The settlor;

(b) The person holding any power; or

(c) Any prior beneficiary or potential beneficiary of the trust;

are predeceased or are otherwise not in existence at the time all or any part of the trust terminates;

(25) "Reach" means, with respect to a distribution interest or any power held by anyone relative to a trust, to subject such distribution interest or such power to a judgment, decree, garnishment, attachment, execution, levy, creditor's bill or other legal, equitable, or administrative process, relief, or control of any court, tribunal, agency, or other entity that, by power of law, is provided with powers or jurisdiction similar to those described in this subdivision (25);

(26) "Remainder interest" means an interest under which a trust beneficiary will receive property held by a trust outright at some time during the future; relative to a remainder interest:

(A) Neither the existence of a remainder interest or the provision of services by a spouse in that spouse's capacity as a fiduciary of the trust creating the remainder interest is relevant in the equitable division of marital property;

(B) None of the factors in subdivision (26)(A) or the exercise or non-exercise of any power or discretion by a spouse in that spouse's capacity as a fiduciary of the trust creating the remainder interest (even if that spouse is also a beneficiary of the trust creating the remainder interest) are relevant to, indicative of or effect the transmutation or other conversion of separate property to community property;

(C) The expending of any community funds by a spouse in that spouse's capacity as a fiduciary of the trust creating the remainder interest relative to the operation or maintenance of property related to a remainder interest is not relevant to or indicative of, and does not effect a transmutation or other conversion of separate property to community property;

(D) Any funds expended pursuant to subdivision (26)(C) shall be valid debts of the trust and shall be repaid to the community with appropriate interest;

(27) "Reserved power" means a power held by a settlor;

(28) "Revocable" as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest;

(29) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one (1) person creates or

contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion;

(30) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest;

(31) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state;

(32) "Successors in interest" means the beneficiaries under the settlor's will, if the settlor has a will, or in the absence of an effective will provision, the settlor's heirs at law;

(33) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding;

(34) "This state" means the state of Tennessee;

(35) "Trust advisor" means any person described in § 35-15-1201(a);

(36) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto;

(37) "Trust protector" means any person described in § 35-15-1201(a); and

(38) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

35-15-105. Default and mandatory rules.

(a) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee or any other fiduciary under this chapter, relations among trustees and such other fiduciaries, and the rights and interests of a beneficiary. The terms of a trust may expand, restrict, eliminate, or otherwise vary the duties and powers of a trustee, any such other fiduciary, relations among any of them, and the rights and interests of a beneficiary; provided, however, that nothing contained in this subsection (a) shall be construed to override or nullify the provisions of subsection (b). The rule of statutory construction that states that statutes in derogation of the common law are to be strictly construed shall have no application to this section. Except as restricted by subsection (b), pursuant to this section, courts shall give maximum effect to the principle of freedom of disposition and to the enforceability of trust instruments.

(b) The terms of a trust prevail over any provision of this chapter except:

(1) The requirements for creating a trust;

(2) The duty of a trustee to act in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries as the interests of such beneficiaries are defined under the terms of the trust, and that the trust has a purpose that is lawful and possible to achieve;

(4) The power to modify or terminate a trust under §§ 35-15-410 — 35-15-416;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in part 5 of this chapter;

(6) The power of the court under § 35-15-702 to require, dispense with, or modify or terminate a bond;

(7) The power of the court under § 35-15-708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) The effect of an exculpatory term under § 35-15-1008;

(9) The rights under §§ 35-15-1010 — 35-15-1013 of a person other than a trustee or beneficiary;

(10) Periods of limitation for commencing a judicial proceeding;

(11) The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(12) The subject matter jurisdiction of the court and venue for commencing a proceeding as provided in §§ 35-15-203 and 35-15-204.

(c) Any purpose enunciated as a material purpose of a trust in that trust's trust instrument shall be treated as a material purpose of that trust for all purposes of this chapter and chapter 16.

35-15-106. Common law of trusts — Principles of equity.

(a) The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this state.

(b) Notwithstanding subsection (a):

(1) No provision in a trust directing or authorizing accumulation of trust income shall be invalid; and

(2) The traditional common law distinction between a discretionary trust and a support trust and the dual judicial review standards related to this distinction shall be maintained. Unless specifically provided otherwise in this chapter, courts shall not consult, rely on or give any persuasive value to the Restatement (Third) of Trusts §§ 50, 56, 58, 59 or 60, nor any of the comments under such sections or related thereto, none of which have any force or effect relative to trusts governed by the laws of this state.

35-15-107. Governing law.

(a) The validity, construction and administration of a trust are determined by the law of the jurisdiction designated in the terms of the trust instrument, which is called a state jurisdiction provision.

(b) When a state jurisdiction provision designates that the law of this state controls:

(1) This state and its courts have jurisdiction over a trust created in a foreign jurisdiction;

(2) The validity, construction, and administration of a trust are determined by the laws of this state, including but not limited to:

(A) The capacity of the settlor;

(B) The powers, obligations, liabilities, and rights of the trustees and other fiduciaries;

(C) The appointment and removal of the trustees and other fiduciaries;

(D) The existence and extent of all powers conferred on a trustee or other fiduciary, including but not limited to, any trustee's or other

fiduciary's discretionary powers, as well as the existence and extent of all powers retained by a settlor and the validity of the exercise of any such power, whether conferred on a trustee or other fiduciary or retained by a settlor;

(3)(A) Neither a trust nor any disposition made subject to the terms of such trust is subject to the laws of any foreign country, nor is any such trust or such disposition void, voidable, liable to be set aside or defective in any manner for any reason including but not limited to:

(i) The law of any foreign country prohibits or does not recognize the concept of a trust; or

(ii) The trust or disposition avoids or defeats any right, claim, or interest conferred by the law of a foreign country upon any person by reason of a personal relationship to the settlor or by way of heirship rights or contravenes any rule or law of a foreign country or any foreign country's judicial or administrative order or action intended to recognize, protect, enforce, or give effect to such right, claim, or interest;

(B) Relative to any foreign country or any interest in property arising or originating under the laws of any foreign country:

(i) No form of forced heirship, legitime, forced share or any similar heirship rights or form of transmission or transfer of property from a decedent or from a living person, or any restrictions on transmission or transfer of property from a decedent or a living person is recognized by this state; or

(ii) No heirship rights described in subdivision (b)(3)(B)(i) conferred under the law of a foreign country shall constitute an obligation or liability, the transfer, conveyance or devise of which, would violate title 66, chapter 3; and

(C) Subdivision (b)(3) shall apply to all realty or other forms of immovable property physically in this state, as well as to all personal or movable property wherever situated if owned by a trust containing a state jurisdiction provision designating that the law of this state controls such trust;

(4) No judgment or other holding of any judicial body of any foreign country, including but not limited to, any court, administrative body or other entity or organization purportedly having the power to make judicial or administrative decisions of any foreign country, shall be recognized or enforced or give rise to any equitable forms of relief, including but not limited to, estoppel, to the extent such judgment or other holding concerns a trust containing a state jurisdiction provision designating that the law of this state controls such trust or to the extent such judgment or other holding concerns property held by such trust;

(5) If, in any action brought against a trustee or other fiduciary of a trust, any judicial body of any foreign country, including but not limited to, any court, administrative body or other entity or organization purportedly having the power to make judicial or administrative decisions of any foreign country, takes any action whereby such judicial body declines to apply the law of this state in determining the validity, construction, or administration of a trust, or the effect of a spendthrift provision or discretionary interest of a trust, the trustee or other fiduciary, as applicable, shall immediately upon the action of the judicial body of the foreign country and without the further order of any court of this state, cease in all respects to be trustee or other fiduciary, as applicable, of the trust and a vacancy in the office of trustee or

other fiduciary, as applicable, shall immediately exist:

(A) Upon the existence of such vacancy, the trustee or other fiduciary, as applicable, has no power or authority other than to convey the trust property to the successor trustee or other fiduciary who fills such vacancy as provided in subdivision (b)(5)(B);

(B) Such vacancy shall be filled in the same manner as would a vacancy in trusteeship that is required to be filled, either as provided by § 35-15-704(c) if the trust is a noncharitable trust, or as provided by § 35-15-704(d) if the trust is a charitable trust; and

(C) Section 35-15-704(e) shall also apply relative to such trustee or other fiduciary, as applicable, in the same manner as § 35-15-704(e) applies to trustees and vacancies in trusteeship in general; provided, however, that when exercising its power provided by § 35-15-704(e), the court shall consider the purposes of this subsection (b) and make any such appointments pursuant to § 35-15-704(e) in a manner designed to give full force and effect to this subsection (b) to the maximum extent allowed by the laws of this state or of the United States.

(c) In the absence of the existence of a state jurisdiction provision, the laws of the jurisdiction where the trust was executed determine the validity of the trust and the laws of descent, while the laws of the principal place of administration determine the administration of the trust.

35-15-108. Place of administration — Sufficient nexus for a state jurisdiction provision — Place of administration.

(a) Without limiting or precluding other means for establishing a sufficient connection with a jurisdiction, the terms of a trust designating that jurisdiction's laws in a state jurisdiction provision are valid and controlling if:

(1) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) All or part of the administration occurs in the designated jurisdiction; which such administration, includes but is not limited to:

(A) Maintenance of some trust records physically in the designated jurisdiction; and

(B) Wholly or partly preparing or arranging for the preparation, either on an exclusive or a nonexclusive basis, in the designated jurisdiction of an income tax return that must be filed by the trust; or

(3) Some or all of the trust assets are deposited in the designated jurisdiction or physical evidence of such assets is held in the designated jurisdiction and the trust is being administered by a person defined in subdivision (a)(1). For purposes of this subdivision (a)(3), "deposited in the designated jurisdiction," includes assets being held in any of a checking account, time deposit, certificate of deposit, brokerage account, trust company fiduciary account, or other similar account or deposit that is located in the designated jurisdiction.

(b) Except as otherwise expressly provided by the terms of a governing instrument specifically addressing the governing law for trust administration or by court order, the laws of this state shall govern the administration of a trust while the trust is administered in this state. Without precluding other means for establishing that a trust is administered in this state, if any of the activities described in subsection (a) occur in this state, the trust is adminis-

tered in this state.

(c) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(d) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (c), may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(e) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty (60) days before initiating the transfer. The notice of proposed transfer must include:

(1) The name of the jurisdiction to which the principal place of administration is to be transferred;

(2) The address and telephone number at the new location at which the trustee can be contacted;

(3) An explanation of the reasons for the proposed transfer;

(4) The date on which the proposed transfer is anticipated to occur; and

(5) The date, not less than sixty (60) days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(f) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a majority of those qualified beneficiaries described in § 35-15-103 notify the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(g) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to § 35-15-704.

35-15-404. Trust purposes.

A trust may be created only to the extent its purposes are lawful and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries as the interests of such beneficiaries are defined under the terms of the trust.

35-15-408. Trust for care of animal.

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one (1) animal alive during the settlor's lifetime, upon the death of the last surviving animal. The trust may not be enforced for more than ninety (90) years.

(b) A trust authorized by this section may be enforced by any of the following who are appointed under the terms of a trust: a trustee, trust advisor, trust protector or other person or, if no person is so appointed, by a person appointed by the court. In addition, a person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the

intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

35-15-409. Noncharitable trust without ascertainable beneficiary.

Except as otherwise provided in § 35-15-408 or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than ninety (90) years;

(2) A trust authorized by this section may be enforced by any of the following who are appointed under the terms of a trust: a trustee, trust advisor, trust protector or other person; or if no person is so appointed, by a person appointed by the court; and

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

35-15-410. Modification or termination of trust — Proceedings for approval or disapproval.

(a) In addition to the methods of termination prescribed by §§ 35-15-411 — 35-15-414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under §§ 35-15-411 — 35-15-416, or trust combination or division under § 35-15-417, may be commenced by a trustee or beneficiary. The settlor of a charitable trust may maintain a proceeding to modify the trust under § 35-15-413.

(c) Nothing in this section or this chapter is intended to create or imply a duty for a trustee to make or seek approval of a modification, termination, combination or division, and a trustee is not liable for not making or seeking approval of a modification, termination, combination or division.

(d) No modification, termination, combination or division may be made pursuant to §§ 35-15-411 — 35-15-417 that:

(1) Results in the trust not qualifying for the federal or state marital or charitable income, gift, estate or inheritance tax deduction if the trust would qualify but for the modification, termination, combination or division;

(2) Results in the trust being subject to the federal or state generation-skipping transfer tax if the trust would not be subject to the generation-skipping transfer tax but for the modification, termination, combination or division; or

(3) Results in an overall increase in federal or state estate, inheritance, gift or generation-skipping transfer taxes.

35-15-413. Cy pres.

(a) Except as otherwise provided in subsection (b), if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, obsolete or ineffective:

(1) The trust does not fail, in whole or in part;

(2) The trust property does not revert to the settlor or the settlor's successors in interest; and

(3) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner that fulfills as nearly as possible the settlor's charitable intent and purposes.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(1) The trust property is to revert to the settlor and the settlor is still living; or

(2) Fewer than twenty-one (21) years have elapsed since the date of the trust's creation.

35-15-501. Application; rights of beneficiary's creditor or assignee.

This part applies to a creditor's or assignee's claims and ability to reach mandatory, support and discretionary interests regardless of whether such interests are subject to a spendthrift provision. To the extent not otherwise prohibited by this part, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's distribution interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

35-15-502. Spendthrift provision.

(a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A spendthrift provision applies to all beneficial interests, including distribution interests and remainder interests.

(d) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and a creditor or assignee of the beneficiary may not reach any of, the interest, or a present, future or prospective distribution at the trust level. Similarly, no creditor or assignee of the beneficiary may force any distribution from the trust. This subsection (d) remains applicable regardless of the beneficiary's potential right to force a distribution under § 35-15-814.

(e) Notwithstanding any other provision of this section to the contrary, regardless of whether a beneficiary has any outstanding creditor, a trustee, cotrustee or other fiduciary of a trust subject to a spendthrift provision may directly pay any expense on behalf of such beneficiary and may exhaust the

income and principal of the trust for the benefit of such beneficiary. No trustee, cotrustee or other fiduciary is liable to any creditor for paying the expenses of a beneficiary under a trust subject to a spendthrift provision. This subsection (e) remains applicable regardless of whether the beneficiary for whom such direct payment was made held a mandatory, support, discretionary or remainder interest.

35-15-504. Discretionary interests — Effect thereof.

(a) A discretionary interest is neither a property interest nor an enforceable right; it is a mere expectancy.

(b) Relative to a discretionary interest, whether or not a trust contains a spendthrift provision:

(1) No creditor or assignee shall force or otherwise reach a distribution with regard to a discretionary interest;

(2) No creditor or assignee shall require a trustee, cotrustee or other fiduciary to exercise the trustee's, cotrustee's or other fiduciary's discretion to make a distribution with regard to a discretionary interest;

(3) Regardless of whether a beneficiary has any outstanding creditors or assignees, a trustee, cotrustee or other fiduciary of a discretionary interest may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary;

(4) No trustee, cotrustee or other fiduciary is liable to any creditor or assignee for paying the expenses of a beneficiary of a discretionary interest;

(5)(A) Regardless of whether a beneficiary holding a discretionary interest is also a trustee, cotrustee or other fiduciary, subdivisions (b)(1)-(4) remain applicable if:

(i) The beneficiary-fiduciary does not have the discretion to make or participate in making distributions to such beneficiary-fiduciary;

(ii) The beneficiary-fiduciary's discretion to make or participate in making distributions to such beneficiary-fiduciary is limited by an ascertainable standard; or

(iii) The beneficiary-fiduciary's discretion to make or participate in making distributions to such beneficiary-fiduciary is exercisable only with the consent of a cotrustee or another person holding an adverse interest.

(B) A creditor or assignee may compel or otherwise reach a distribution only to the extent the creditor or assignee may compel or otherwise reach a distribution if the beneficiary was not acting as a trustee, cotrustee or other fiduciary.

35-15-505. Creditor's claims against settlor.

(a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) Except as provided in chapter 16 of this title regarding investment services trusts and subdivisions (a)(3)-(5) regarding an irrevocable special needs trust, a creditor or assignee of the settlor of an irrevocable trust may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one (1) settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's

interest in the portion of the trust attributable to that settlor's contribution;

(3) For the purposes of this section, "irrevocable special needs trust" means an irrevocable trust established for the benefit of one or more disabled persons, which includes, but is not limited to, any individual who is disabled pursuant to 42 U.S.C. § 1382c(a), as well as any individual who is disabled pursuant to any similar federal, state or other jurisdictional law or regulation, or has a condition that is substantially equivalent to one that qualifies them to be so disabled in accordance with any of the above even if not officially found to be so disabled by a governmental body if one of the purposes of the trust, expressed in the trust instrument or implied from the trust instrument, is to allow the disabled person to qualify or continue to qualify for public, charitable or private benefits that might otherwise be available to the disabled person. The existence of one or more nondisabled remainder beneficiaries of the trust shall not disqualify it as an irrevocable special needs trust for the purposes of this section;

(4) No creditor or assignee of the settlor of an irrevocable special needs trust, as defined in subdivision (a)(3), may reach or compel distributions from such special needs trust, to or for the benefit of the settlor of such special needs trust, or otherwise, regardless of whether or not such irrevocable special needs trust complies with the provisions of, and irrespective of the requirements of, chapter 16 of this title; and

(5) Notwithstanding any law to the contrary, neither a creditor nor any other person shall have any claim or cause of action against the trustee or other fiduciary, or an advisor of an irrevocable special needs trust. For purposes of this subdivision (a)(5), an advisor of an irrevocable special needs trust includes any person involved in the counseling, drafting, preparation, execution or funding of an irrevocable special needs trust.

(6) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable immediately preceding the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate and the expenses of the settlor's funeral and disposal of remains. With respect to claims, expenses, and taxes in connection with the settlement of the settlor's estate, any claim of a creditor that would be barred against the fiduciary of a settlor's estate, the estate of the settlor, or any creditor or beneficiary of the settlor's estate shall be barred against the trust property of a trust that was revocable at the settlor's death, the trustee of the revocable trust, and the creditors and beneficiaries of the trust. The provisions of § 30-2-317(a) detailing the priority of payment of claims, expenses, and taxes from the probate estate of a decedent shall apply to a revocable trust to the extent the assets of the settlor's probate estate are inadequate and the personal representative or creditor or taxing authority of the settlor's estate has perfected its right to collect from the settlor's revocable trust.

(b) For purposes of this section during the period a power of withdrawal may be exercised or upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in § 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 2041(b)(2) or § 2514(e), or § 2503(b) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 2503(b), in each case as in effect on July 1, 2004, or as later amended.

(c) For purposes of subdivision (a)(2), the power of a trustee of an irrevocable

trust, whether arising under the trust agreement or any other provision of the law, to make a distribution to or for the benefit of a settlor for the purpose of reimbursing the settlor in an amount equal to any income taxes payable on any portion of the trust principal and income that are includable in the settlor's personal income under applicable law, as well as distributions made by the trustee pursuant to such authority, shall not be considered an amount that may be distributed to or for the settlor's benefit.

(d) With respect to an irrevocable trust for which the settlor made a qualified election pursuant to 26 U.S.C. § 2523(f), the power of a trustee, and any benefit resulting to the settlor from any exercise of such power, whether arising under the trust agreement or any other provision of the law, to make a distribution to or for the benefit of a settlor or to otherwise permit the settlor to use or benefit from trust property following the death of the settlor's spouse, shall not be considered an amount that may be distributed to or for the settlor's benefit for purposes of subdivision (a)(2). This subsection (d) shall not limit a creditor's remedies under the Uniform Fraudulent Transfer Act, compiled in title 66, chapter 3, part 3, regarding the settlor's transfers to such trust.

(e) For purposes of subdivision (a)(2) and subsection (g), a person who is the holder of a power of withdrawal is not considered a settlor of the trust by failing to exercise that power of withdrawal or letting that power of withdrawal lapse.

(f) For purposes of subdivision (a)(2) and subsection (g), a person who becomes a beneficiary of a trust due to the exercise of a power of appointment by someone other than such person shall not be considered a settlor of the trust.

(g)(1) Notwithstanding § 66-3-310, no person shall bring an action with respect to a transfer of property to a spendthrift trust:

(A) If the person is a creditor when the transfer is made, unless the action is commenced within the later of two (2) years after the transfer is made or six (6) months after the person discovers or reasonably should have discovered the transfer; or

(B) If the person becomes a creditor after the transfer is made, unless the action is commenced within two (2) years after the transfer is made; and

(2) If subdivision (g)(1) applies:

(A) A person shall be deemed to have discovered the existence of a transfer at the time any public record is made of the transfer, including but not limited to, a conveyance of real property that is recorded in the office of the county register of deeds of the county in which the property is located or the filing of a financing statement under title 47, chapter 9, or the equivalent recording or filing of either with the appropriate person or official under the laws of a jurisdiction other than this state;

(B) No creditor shall bring an action with respect to a transfer of property to a spendthrift trust unless that creditor proves by clear and convincing evidence that the settlor's transfer to the trust was made with the intent to defraud that specific creditor; and

(i) Notwithstanding any law to the contrary, neither a creditor nor any other person shall have any claim or cause of action against the trustee or other fiduciary or an advisor of a spendthrift trust if that claim or cause of action is based in any way on any person availing themselves of the benefits of this subsection (g);

(ii) For purposes of subdivision (g)(2)(C), an advisor of a spendthrift trust includes, but is not limited to, any person involved in the counseling, drafting, preparation, execution or funding of a spendthrift trust;

(iii) For purposes of subdivision (g)(2)(C)(i), counseling, drafting, preparation, execution or funding of a spendthrift trust includes the counseling, drafting, preparation, execution and funding of a limited partnership, a limited liability company or any other type of entity if interests in the limited partnership, limited liability company or other entity are subsequently transferred to a spendthrift trust;

(3) Notwithstanding subdivision (g)(2)(C), in the same manner as provided other than by this section to trusts in general, a beneficiary, settlor, cotrustee, trust advisor or trust protector retains the right to bring a claim against a trustee or against another cotrustee, trust advisor, trust protector or any of their predecessors; however, no such claim shall arise solely because a person availed themselves, or attempted to avail themselves, of the benefits of this subsection (g);

(4) If more than one transfer of property is made to a spendthrift trust, the subsequent transfer of property to the spendthrift trust shall be disregarded for the purpose of determining whether a person may bring an action pursuant to this subsection (g) with respect to a prior transfer of property to the spendthrift trust; and any distribution to a beneficiary from the spendthrift trust shall be deemed to have been made from the most recent transfer made to the spendthrift trust;

(5) With the exception of any claim brought pursuant to subdivision (g)(3), notwithstanding any other provision of law, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against the trustee, other fiduciary or advisor of a spendthrift trust if, as of the date such action is brought, an action by a creditor with respect to a transfer of property to the spendthrift trust would be barred pursuant to this subsection (g); and

(6) This subsection (g) shall not abridge the rights of a creditor, to the extent otherwise provided by this section, to reach the maximum amount that can be distributed to or for the settlor's benefit under a spendthrift trust.

35-15-506. Distributions relative to support, mandatory and certain remainder interests.

(a) Relative to a support interest, whether or not a trust contains a spendthrift provision:

(1) Although a beneficiary of a support interest has enforceable rights under § 35-15-814, those rights do not raise the beneficiary's support interest to the level of a property interest;

(2) No creditor or assignee shall reach that support interest until a distribution from the support interest is actually made to the beneficiary;

(3) After all or a portion of a support interest is distributed to the beneficiary, no portion of the distribution made from the support interest shall be reached by a creditor or assignee of the beneficiary except to the extent that the distribution made from the support interest exceeds the amount necessary for the health, education, maintenance and support of the

beneficiary who received the distribution made from the support interest;

(4) In the case of a beneficiary who holds a support interest, the use or enjoyment of property belonging to the trust by that beneficiary shall not be transferred and shall not be reached by creditors or assignees of that beneficiary;

(5) Regardless of whether a beneficiary has any outstanding creditors or assignees, a trustee or other fiduciary of a support interest may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary; and

(6) No trustee or other fiduciary is liable to any creditor or assignee for paying the expenses of a beneficiary of a support interest.

(b) Relative to a mandatory interest, whether or not a trust contains a spendthrift provision:

(1) While a court may order a trustee or other fiduciary to distribute a past due mandatory distribution to its beneficiary, no court shall order a trustee or other fiduciary to distribute such past due mandatory distribution directly to a creditor or assignee;

(2) Regardless of whether a beneficiary has any outstanding creditors or assignees, a trustee or other fiduciary of a mandatory interest may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary;

(3) No trustee or other fiduciary is liable to any creditor or assignee for paying the expenses of a beneficiary of a mandatory interest.

(c) Although a remainder interest may be an enforceable right, where it is not absolutely certain based on the language of the trust that the remainder interest will be distributed within one (1) year, it shall not be classified as a property interest. This subsection (c) does not affect eligibility for any public assistance program administered by the department of human services.

35-15-508. Removal or replacement power over trustee or other fiduciary not reachable by holder's creditors — Interests of beneficiary who is also a trustee or other fiduciary not reachable.

(a) No creditor or assignee of a beneficiary shall have the power to reach an interest of a beneficiary or any other person who holds an unconditional or conditional removal or replacement power over a trustee or other fiduciary. Such power over a trustee or other fiduciary is personal to the holder and shall not be exercised by the holder's creditors. No court shall direct a holder to exercise the power.

(b) Subject to § 35-15-504(b)(3):

(1) No creditor or assignee of a beneficiary may reach an interest of a beneficiary who is also a trustee, cotrustee or other fiduciary, or otherwise compel a distribution because the beneficiary is then serving as a trustee, cotrustee or other fiduciary; and

(2) No court may foreclose against a beneficiary's interest described in subdivision (b)(1).

35-15-509. Judicial foreclosure of beneficial interests, powers of appointment, and reserved powers prohibited — Certain reaches prohibited.

Regardless of whether or not a trust contains a spendthrift provision:

(1) No beneficial interest, power of appointment, or reserved power in a trust shall be judicially foreclosed;

(2) No creditor or assignee shall reach a power of appointment or a remainder interest at the trust level and such creditor or assignee shall wait until any funds are distributed relative to such power of appointment or remainder interest before such creditor or assignee may reach such funds; and

(3) No power of appointment is a property interest.

35-15-703. Cotrustees.

(a) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g), a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

(1) Prevent a cotrustee from committing a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

(i) A trustee shall keep each cotrustee and any other fiduciary reasonably informed about the administration of the trust, to the extent the trustee has knowledge that each such cotrustee or other fiduciary does not have such knowledge of the trustee's actions, or regarding other material information or the availability of such information, related to the administration of the trust that would be reasonably necessary for each such cotrustee or other fiduciary to perform his or her duties as a trustee or other fiduciary of the trust.

35-15-708. Compensation of trustees, trust advisors and trust protectors.

(a) If the terms of a trust do not specify a trustee's, trust advisor's or trust protector's compensation, and if the settlor, if living, or otherwise a majority of the qualified beneficiaries as defined in 35-15-103(24)(A), have not otherwise agreed, a trustee, trust advisor or trust protector is entitled to compensation

that is reasonable under the circumstances.

(b) If the terms of a trust specify a trustee's, trust advisor's or trust protector's compensation, the trustee, trust advisor or trust protector is entitled to be compensated as specified in the trust, but the court may allow more or less compensation if:

(1) The duties of the trustee, trust advisor or trust protector are substantially different from those contemplated when the trust was created; or

(2) The compensation specified by the terms of the trust would be unreasonably low or high.

(c) Factors for the court to consider in deciding upon a trustee's, trust advisor's or trust protector's compensation shall include the size of the trust, the nature and number of the assets, the income produced, the time and responsibility required, the expertise required, any management or sale of real property or closely held business interests, any involvement in litigation to protect trust property, and other relevant factors.

(d) Subject to the court's authority as provided in subsection (b), regardless of its form of entity, the fees set forth in the published fee schedule of a trustee, trust advisor or trust protector that is regulated by the department of financial institutions, the equivalent regulatory agency of another state, the office of the comptroller of the currency or the office of thrift supervision shall be presumed to be reasonable, unless otherwise provided by the terms of the trust.

35-15-709. Reimbursement of expenses.

(a) A trustee, trust advisor or trust protector is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) Expenses that were properly incurred in the administration of the trust; and

(2) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance, either by the trustee, trust advisor or trust protector or by a person named in § 35-15-701(c)(1), of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

35-15-710. Directed trusts.

If the terms of the trust, an agreement of the qualified beneficiaries, or a court order requires a trustee, trust advisor, or trust protector to follow the direction of a trust advisor or trust protector, and the trustee, trust advisor, or trust protector acts in accordance with such direction, then the trustee, trust advisor, or trust protector so directed shall be treated as an excluded fiduciary.

35-15-711. Directed trusts; accepting or declining fiduciary appointment.

(a) A trust advisor, trust protector or other fiduciary other than a cotrustee, such cotrustee already being provided for in § 35-15-701(a), may accept its appointment as such respective fiduciary in a like manner as provided for a trustee under § 35-15-701(a).

(b) A trust advisor, trust protector or other fiduciary other than a cotrustee, such cotrustee already being provided for in § 35-15-701(b), may reject its appointment as such respective fiduciary in a like manner as provided for a

trustee under § 35-15-701(b).

(c) A trust advisor, trust protector or other fiduciary other than a cotrustee, such cotrustee already being provided for in § 35-15-701(c), may, without accepting its appointment as such respective fiduciary, carry out the appropriate activities relative to such respective fiduciary as are provided for a trustee under § 35-15-701(c).

35-15-712. Directed trusts; fiduciary's bond.

(a) Section 35-15-702 applies to trust advisors, trust protectors or other fiduciaries other than cotrustees, such cotrustees already being provided for in § 35-15-702.

(b) When exercising its powers under this section, the court shall consider the powers, duties and liabilities relative to such respective fiduciaries other than a cotrustee and whether any of such respective fiduciaries are excluded fiduciaries.

35-15-713. Vacancy; directed trusts.

(a) Except as otherwise provided by the terms of the trust upon obtaining knowledge of a vacancy in the office of trust advisor or trust protector, the trustee shall be vested with any fiduciary power or duty that otherwise would be vested in the trustee but that by the terms of the trust was vested in the trust advisor or trust protector, until such time that the vacancy in the office of trust advisor or trust protector, as applicable is filled.

(b) Such vacancy shall be filled in the same manner as would a vacancy in trusteeship that is required to be filled, either as provided by § 35-15-704(c) if the trust is a noncharitable trust, or as provided by § 35-15-704(d) if the trust is a charitable trust. Section 35-15-704(e) shall also apply relative to trust advisors and trust protectors in the same manner as that subsection does to trustees and vacancies in trusteeship.

(c) Notwithstanding subsection (a), a trustee shall not be liable for failing to exercise or assume any power or duty held by a trust advisor or trust protector and conferred upon the trustee by subsection (a) for the sixty-day period immediately following the date the trustee obtains knowledge of such vacancy.

35-15-714. Directed trusts; resignation of fiduciary.

(a) A trust advisor, trust protector or other fiduciary other than a cotrustee, such cotrustee's resignation already being provided for in § 35-15-705, may resign its appointment as such respective fiduciary in a like manner as provided for a trustee under § 35-15-705.

(b) When exercising its powers under this section relative to resignation, the court shall consider the powers, duties and liabilities relative to such respective fiduciaries other than a cotrustee and whether any of such respective fiduciaries are excluded fiduciaries.

35-15-715. Directed trusts; removal of fiduciary.

(a) A trust advisor, trust protector or other fiduciary other than a cotrustee, such cotrustee's removal already being provided for in § 35-15-706, may be removed as such respective fiduciary in a like manner as provided for a trustee under § 35-15-706.

(b) When exercising its powers under this section relative to removal of such

respective fiduciary, the court shall consider the powers, duties and liabilities relative to such respective fiduciaries other than a cotrustee and whether any of such respective fiduciaries are excluded fiduciaries.

35-15-802. Duty of loyalty.

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in § 35-15-1012 or as may otherwise be allowed under Tennessee law, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) The transaction was authorized by the terms of the trust;

(2) The transaction was approved by the court;

(3) The beneficiary did not commence a judicial proceeding within the time allowed by § 35-15-1005;

(4) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with § 35-15-1009; or

(5) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests of the trustee if it is entered into by the trustee with:

(1) The trustee's spouse;

(2) The trustee's descendants, siblings, parents, or their spouses;

(3) An agent or attorney of the trustee; or

(4) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

(e) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests of the trustee if the transaction concerns an opportunity properly belonging to the trust.

(f) In addition to all other permissible investments and delegatable duties listed in this title, so long as they are fairly priced and in accordance with the interest of the beneficiaries and the interests of the fiduciary's appointment and otherwise comply with chapter 14 of this title, a fiduciary may purchase, sell, hold or otherwise deal with an affiliate or an interest in an affiliated investment, as well as delegate to an affiliate or other agent associated with the fiduciary and, upon satisfaction of the conditions stated in subsection (h), such fiduciary may receive fiduciary compensation from such account at the same rate as the fiduciary would otherwise be entitled to be compensated. Such activities shall occur without any presumption of a conflict between personal

and fiduciary interests of the trustee or other fiduciary.

(g) As used in this section:

(1) "Affiliate" means any corporation or other entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the fiduciary;

(2) "Affiliated investment" means an investment for which the fiduciary or an affiliate of the fiduciary acts as adviser, administrator, distributor, placement agent, underwriter, broker or in any other capacity for which it receives or has received a fee or commission from such investment or an investment acquired or disposed of in a transaction for which the fiduciary or an affiliate of the fiduciary receives or has received a fee or commission. "Affiliated investment" also means an investment in an insurance contract purchased from an insurance agency owned by, or affiliated with, the fiduciary, or any of its affiliates;

(3) "Delegate to an affiliate or associated agent" means a proper delegation of any duty of the fiduciary to any person or entity that is affiliated with, or associated with, the fiduciary. The action of doing any of the above shall be known as a "delegation to an affiliate or associated agent";

(4) "Fee or commission" means compensation paid to a fiduciary or an affiliate thereof on account of its services to or on behalf of an investment;

(5) For purposes of this section, "fiduciary" means any fiduciary as defined in § 35-15-103, as well as any other fiduciary; and

(6) "Investment" means any security as defined in § 2(a)(1) of the Securities Act of 1933, any contract of sale of a commodity for future delivery within the meaning of § 2(i) of the Commodity Exchange Act, or any other asset permitted for fiduciary accounts pursuant to the terms of chapter 14 of this title or by the terms of the governing instrument, including by way of illustration and not limitation: shares or interests in a public or private investment fund, which shall include, but not be limited to, a public or private investment fund organized as a limited partnership, limited liability company, statutory or common law business trust, real estate investment trust, joint venture or other general or limited partnership; or an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940.

(h) A fiduciary seeking compensation pursuant to subsection (f) shall, as is applicable relative to the fiduciary's particular appointment, disclose either: to those persons entitled to be kept informed about the administration of a trust under § 35-15-813(a)(1), subject to the provisions of § 35-15-813(d) and (e); to each principal in an agency relationship; or to all current recipients of statements of any other fiduciary account not described above; all fees or commissions paid or to be paid by the account, or received or to be received by an affiliate arising from such affiliated investment or delegation to an affiliate or associated agent. The disclosure required under this subsection (h) may be given either in a copy of the prospectus or any other disclosure document prepared for the affiliated investment under federal or state securities laws or in a written summary that includes all fees or commissions received or to be received by the fiduciary or any affiliate of the fiduciary and an explanation of the manner in which such fees or commissions are calculated, either as a percentage of the assets invested or by some other method. Such disclosure shall be made at least annually unless there has been no increase in the rate at which such fees or commissions are calculated since the most recent

disclosure. Notwithstanding this subsection (h), no such disclosure is required if the governing instrument or a court order expressly authorizes the fiduciary to invest the fiduciary account in affiliated investments or to perform the delegation to an affiliate or associated agent.

(i) A fiduciary that has complied with subsection (h), whether by making the applicable disclosure or by relying on the terms of a governing instrument or court order, shall have full authority to administer an affiliated investment, including the authority to vote proxies thereon, without regard to the affiliation between the fiduciary and the investment or the fiduciary and delegatee, as the case may be.

(j) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(k) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) Payment of reasonable compensation to the trustee;

(3) A transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) A deposit of trust money in a regulated financial-service institution operated by the trustee; or

(5) An advance by the trustee of money for the protection of the trust.

(*l*) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

35-15-808. Powers to direct.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust or contrary to the normal practice of the trustee in regard to the action requested.

(b) If the terms of a trust, an agreement of the qualified beneficiaries, or a court order, confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) Unless the terms of a trust provide otherwise, if a person holds a power to perform any act in reliance on §§ 35-3-122 and 35-3-123, and that power holder is other than a beneficiary, that person is a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to perform any act under this subsection (d) is liable for any loss that results from breach of a fiduciary duty. In so following the directions of such person the trustee is protected from liability as provided in §§ 35-3-122 and 35-3-123.

(e) If a person holds a power to direct pursuant to part 12 of this chapter,

that person is a trust advisor, trust protector or both. Such power holder is subject to all the provisions of part 12, including any duties prescribed by part 12 and any provisions that make the power holder a fiduciary. Any trustee or other person that under part 12 is relieved of any duty or any liability, or is otherwise protected under part 12, shall be so relieved and otherwise protected.

(f) Transitional provisions applicable to this section shall be as follows:

(1) Powers to direct or perform any act held in reliance on or that are subject to §§ 35-3-122 and 35-3-123 that are in existence prior to July 1, 2013, remain effective thereafter and remain subject to the provisions of those sections and their protections;

(2) Notwithstanding subdivision (f)(1), should any power that is described in part 12 of this chapter be held under a trust instrument that was in existence or became irrevocable before July 1, 2013, and that power is not held in reliance on nor is it subject to §§ 35-3-122 and 35-3-123, then from July 1, 2013, all law relative to such power shall be controlled by and subject to part 12 of this chapter, along with any amendments made to this chapter in furtherance of the implementation and effectiveness of such part 12; and

(3) For all trust instruments entered into, that become irrevocable or that are amended relative to any power that is described in part 12 of this chapter on or after July 1, 2013, part 12 of this chapter, along with any amendments made to this chapter in furtherance of the implementation and effectiveness of such part 12, shall be the exclusive method to create a directed trust or a provision regarding such and shall control such. Relative to trusts described in this subdivision and subdivision (f)(2), §§ 35-3-122 and 35-3-123 shall be of no further force and effect.

35-15-813. Duty to inform and report.

(a)(1) A trustee shall keep the beneficiaries of the trust who are current mandatory or permissible distributees of trust income or principal, or both, reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests.

(2) Unless unreasonable under the circumstances, a trustee shall respond in a reasonable amount of time to a qualified beneficiary's request for information related to the administration of the trust. Additionally, a qualified beneficiary shall reimburse the trustee for any reasonable expenses incurred in responding to requests for information.

(3) The requirements of subdivisions (a)(1) and (2) shall also apply to the benefit of anyone who, in a capacity other than that of a fiduciary, as defined by § 35-15-103, holds a power of appointment.

(b) The trustee of an irrevocable or non-grantor trust within sixty (60) days after the acceptance and funding of a trust, excluding nominal funding for the trust to have corpus or the depositing of insurance policies on the life of a living person, shall notify each current income beneficiary, each vested ultimate beneficiary of a remainder interest and anyone who, in a capacity other than that of a fiduciary, as defined by § 35-15-103, holds a power of appointment, that the trust has been established.

(1) The required notice shall:

(A) Be sent by first class mail or personal delivery; and

(B) Consist of either a complete copy of the document establishing the trust together with the trustee's name, address and telephone number or an abstract of the trust, whichever the trustee, in the trustee's absolute discretion, may choose.

(2) The abstract shall contain:

(A) The name, address and telephone number of each trustee; and

(B) If for a current income beneficiary:

(i) The number of other current income beneficiaries;

(ii) Whether distributions of income are required or discretionary;

(iii) Whether distributions of principal are permitted and, if so, for what purpose or purposes;

(iv) An estimate of the value of the trust at the date of the notice from which distributions may be made; and

(v) An estimate of the income that may be distributable to the beneficiary; and

(C) If for a remainder beneficiary:

(i) The number of other remainder beneficiaries;

(ii) An estimate of the value of the trust at the date of the notice; and

(iii) The conditions which must be met before the beneficiary's share is distributable.

(D) If for anyone who, in a capacity other than that of a fiduciary, as defined by § 35-15-103, holds a power of appointment, all of the information required by subdivisions (b)(2)(A)-(C) necessary or beneficial for that person to effectively determine whether or not to exercise that power of appointment.

(c) Upon the termination of an interest of any one (1) or more of the current income beneficiaries:

(1) The trustee shall similarly notify the income beneficiaries who are takers of the terminated interest of their interest by sending or delivering them the notice required in subsection (b); and

(2) If at that time the period described in subsection (b) has lapsed, the trustee shall similarly notify anyone who, in a capacity other than that of a fiduciary, as defined by § 35-15-103, holds a power of appointment by sending or delivering to such person the notice required in subsection (b).

(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given. Anyone who, in a capacity other than that of a fiduciary, as defined by § 35-15-103, holds a power of appointment has the same power as provided a beneficiary in this subsection (d) to waive reports and other information and to withdraw a waiver previously given.

(e) Subsections (a) and (b) shall not apply to the extent that the terms of the trust provide otherwise or the settlor of the trust, or a trust protector or trust advisor under part 12 that holds the power to so direct, directs otherwise in a writing delivered to the trustee.

(f) Subdivision (a)(1) and subsection (b) do not apply to a trust created under a trust agreement that became irrevocable before July 1, 2004. Trust law in effect prior to July 1, 2004, regarding the subject matter of subdivision (a)(1) and subsection (b) shall continue to apply to those trusts.

(g) If the trustee of a trust is bound by any written confidentiality restrictions with respect to an asset of a trust, a trustee may require that any

beneficiary who is eligible to receive information pursuant to this or any other section of this title about such asset shall agree in writing to be bound by the confidentiality restrictions that bind the trustee before receiving such information from the trustee.

(h) A trust advisor, trust protector, or other fiduciary designated by the terms of the trust shall keep each excluded fiduciary designated by the terms of the trust reasonably informed about:

(1) The administration of the trust with respect to any specific duty or function being performed by the trust advisor, trust protector, or other fiduciary to the extent that the duty or function would normally be performed by the excluded fiduciary or to the extent that providing such information to the excluded fiduciary is reasonably necessary for the excluded fiduciary to perform its duties; and

(2) Any other material information that the excluded fiduciary would be required to disclose to the specified beneficiaries under subsection (a) regardless of whether the terms of the trust relieve the excluded fiduciary from providing such information to qualified beneficiaries. Neither the performance nor the failure to perform of a trust advisor, trust protector, or other fiduciary designated by the terms of the trust as provided in this subsection (h) shall affect the limitation on the liability of any excluded fiduciary provided by part 12 of this chapter.

35-15-814. Exercise of powers over discretionary and other interests; tax savings.

(a) Relative to exercise of powers over discretionary and other interests:

(1) "Improper motive" means to demonstrate action such as the following:

(A) A trustee refusing to make or limiting distributions to beneficiaries other than the trustee due to the trustee's self interest when the trustee also holds a beneficial interest subject to a discretionary interest; or

(B) A trustee making a distribution in excess of an ascertainable standard to himself or herself as beneficiary when the trustee is restricted by an ascertainable standard in the trust.

(2) Unless otherwise provided in the trust:

(A) If the settlor's spouse is named as a beneficiary, the settlor's spouse is still living and the trust is classified as a support trust, then the trustee shall consider the resources of the settlor's spouse, including the settlor's obligation of support, prior to making a distribution; and

(B) In all other cases, unless otherwise provided in the trust, the trustee need not consider the beneficiary's resources in determining whether a distribution should be made.

(b) The following provisions apply only to discretionary interests:

(1) A discretionary interest is neither a property interest nor an enforceable right; it is a mere expectancy;

(2) A court may review a trustee's distribution discretion only if the trustee acts dishonestly, acts with an improper motive, or fails to act if under a duty to do so;

(3) A reasonableness standard shall not be applied to the exercise of discretion by the trustee with regard to a discretionary interest;

(4) Other than for the three (3) circumstances listed in subdivision (b)(2), a court has no jurisdiction to review the trustee's discretion or to force a

distribution; and

(5) Absent express language in the trust instrument to the contrary, in the event that the distribution language in a discretionary interest permits unequal distributions between beneficiaries or distributions to the exclusion of other beneficiaries, the trustee may distribute all of the accumulated, accrued, or undistributed income and principal to one beneficiary in the trustee's discretion.

(c) The following provisions apply only to mandatory or support interests:

(1) A beneficiary of a mandatory or a support interest has an enforceable right to a distribution pursuant to a court's review;

(2) A trustee's distribution decision may be reviewed for unreasonableness, dishonesty, improper motivation, or failure to act if under a duty to do so; and

(3) In the case of a support interest, nothing in this section shall raise a beneficiary's support interest to the level of a property interest.

(d) Unless otherwise provided in subsection (f), and unless the terms of the trust expressly indicate that a rule in this subsection (d) does not apply:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(e) A power that is limited or prohibited by subsection (d) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(f) Subsection (d) shall not apply to:

(1) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code was previously allowed;

(2) Any trust during any period that the trust may be revoked or amended by its settlor; or

(3) A trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code.

35-15-816. Specific powers of trustee.

(a) Any references contained in a will or trust incorporating by reference the powers enumerated in § 35-50-110 as they relate to a trustee will incorporate by reference the powers contained in this section.

(b) Unless the terms of the instrument expressly provide otherwise and without limiting the authority conferred by § 35-15-815, a trustee may:

(1) Collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) Acquire or sell property, for cash or on credit, at public or private sale;

(3) Exchange, partition, or otherwise change the character of trust property;

(4) Deposit trust money in an account in a regulated financial-service institution;

(5) Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(A) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) Pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) Deposit the securities with a depository or other regulated financial service institution;

(8) With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) With respect to possible liability for violation of environmental law:

(A) Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(B) Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) Compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) Exercise elections with respect to federal, state, and local taxes;

(17) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) Pledge trust property to guarantee loans made by others to the beneficiary;

(20) Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) Paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(B) Paying it to the beneficiary's custodian under the Uniform Transfers to Minors Act, compiled in title 35, chapter 7, part 2, and, for that purpose, creating a custodianship or custodial trust;

(C) If the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(D) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation and basis for income tax purposes;

(23) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;

(26) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it; and

(27) Unless the terms of the instrument expressly provide otherwise:

(A) A trustee who has authority, under the terms of a testamentary instrument or irrevocable inter vivos trust agreement, to invade the principal of a trust to make distributions to, or for the benefit of, one or more proper objects of the exercise of the power, may instead exercise such authority by appointing all or part of the principal of the trust in favor of a trustee of a trust under an instrument other than that under which the power to invade is created or under the same instrument; provided, however, that the exercise of such authority:

(i) Does not reduce any fixed income interest of any income beneficiary of the trust; and

(ii) Is in favor of the proper objects of the exercise of the power;

(B) The exercise of the power to invade the principal of the trust under subdivision (b)(27)(A) shall be by an instrument in writing, signed and acknowledged by the trustee and filed with the records of the trust;

(C) The exercise of the power to invade principal of the trust under subdivision (b)(27)(A) shall not extend the permissible period of the rule against perpetuities that applies to the trust;

(D) The provisions of this section shall not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust that arises under any other statute or under common law;

(E) The exercise of the power to appoint principal under subdivision (b)(27)(A) shall be considered an exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate;

(F) The second trust:

(i) May confer a power of appointment upon a beneficiary of the original trust to whom or for the benefit of whom the trustee has the power to distribute principal of the original trust;

(ii) The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the original or second trust; and

(iii) The power of appointment conferred upon a beneficiary must preclude any exercise that would extend the permissible period of the rule against perpetuities that applies to the trust;

(G) If any contribution to the original trust qualified for the annual exclusion under § 2503(b) of the Internal Revenue Code, the marital deduction under §§ 2056(a) or 2523(a) of the Internal Revenue Code, or the charitable deduction under §§ 170(a), 642(c), 2055(a) or 2522(a) of the Internal Revenue Code, is a direct skip qualifying for treatment under § 2642(c) of the Internal Revenue Code, or qualified for any other specific tax benefit that would be lost by the existence of the authorized trustee's authority under subdivision (b)(27)(A) for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code, then the authorized trustee shall not have the power to distribute the principal of a trust pursuant to subdivision (b)(27)(A) in a manner that would prevent the contribution to the original trust from qualifying for or would reduce the exclusion, deduction, or other tax benefit that was

originally claimed with respect to that contribution;

(H) During any period when the original trust owns stock in a subchapter S corporation as defined in § 1361(a)(1) of the Internal Revenue Code, an authorized trustee shall not exercise a power authorized by subdivision (b)(27)(A) to distribute part or all of the stock of the S corporation to a second trust that is not a permitted shareholder under § 1361(c)(2) of the Internal Revenue Code;

(I) This section applies to any trust that is administered in this state; and

(J) For purposes of this section, the term "original trust" refers to the trust from which principal is being distributed and the phrase "second trust" refers to the trust to which assets are being distributed from the original trust.

35-15-901. Uniform Principal and Income Act and Tennessee Uniform Prudent Investor Act of 2002 incorporated by reference.

Title 35, chapter 6 and chapter 14 are incorporated in this chapter by reference.

35-15-1005. Limitation of action against trustee by a beneficiary — Limitation of action against trustee by a trustee, trust advisor or trust protector.

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one (1) year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(b) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or the beneficiary's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the trustee;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(d) A trustee may not commence a proceeding against a cotrustee or a former trustee for breach of trust more than one (1) year after the date the trustee or a representative of the trustee was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(e) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trustee or the trustee's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(f) If subsection (d) does not apply, a judicial proceeding by a trustee against a cotrustee or former trustee for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the cotrustee or a former trustee;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(g) A trust advisor or trust protector may not commence a proceeding against a trustee or a former trustee for breach of trust more than one (1) year after the date the trust advisor or trust protector or the respective representative of each was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(h) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trust advisor or trust protector or the respective representative of each knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(i) If subsection (g) does not apply, a judicial proceeding by a trust advisor or trust protector against a trustee or former trustee for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the trustee or a former trustee;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(j) Notwithstanding subsections (d)-(i), no trustee, trust advisor or trust protector, may commence a proceeding against a trustee or a former trustee if, under § 35-15-1005(a)-(c), none of the beneficiaries may commence a proceeding against the cotrustee or former trustee for such breach of trust.

35-15-1014. Enforcement of no-contest, in terrorem or forfeiture provisions.

(a) For the purposes of this section, "no-contest provision" includes a "no-contest provision," "in terrorem provision" or "forfeiture provision" of a trust instrument. A "no-contest provision" means a provision that, if given effect, would reduce or eliminate the interest of any beneficiary of such trust who, directly or indirectly, initiates or otherwise pursues:

(1) Any action to contest the validity of the trust or the terms of the trust;

(2) Any action to set aside or vary the terms of the trust;

(3) Any action to challenge the acts of the trustee or other fiduciary of the trust in the performance of the trustee's or other fiduciary's duties as described in the terms of the trust; or

(4) Any other act or proceedings to frustrate or defeat the settlor's intent as expressed in the terms of the trust.

(b) Regardless of whether or not the beneficiary sought, received or relied upon legal counsel, a no-contest provision shall be enforceable according to the express terms of the no-contest provision without regard to the beneficiary's good or bad faith in taking the action that would justify the complete or partial forfeiture of the beneficiary's interest in the trust under the terms of the no-contest provision unless probable cause exists for the beneficiary taking such action on the grounds of:

(1) Fraud;

(2) Duress;

(3) Revocation;

(4) Lack of testamentary capacity;

(5) Undue influence;

(6) Mistake;

(7) Forgery; or

(8) Irregularity in the execution of the trust instrument.

(c) Subsection (b) shall not apply to:

(1) Any action brought solely to challenge the acts of the trustee or other fiduciary of the trust to the extent that the trustee or other fiduciary has committed a breach of fiduciary duties or breach of trust;

(2) Any action brought by the trustee or any other fiduciary serving under the terms of the trust, unless the trustee or other fiduciary is a beneficiary against whom the no-contest provision is otherwise enforceable;

(3) Any agreement among the beneficiaries and any other interested persons in settlement of a dispute or resolution of any other matter relating to the trust, including without limitation any nonjudicial settlement agreement;

(4) Any action to determine whether a proposed or pending motion, petition, or other proceeding constitutes a contest within the meaning of a no-contest provision;

(5) Any action brought by a beneficiary or on behalf of any such beneficiary for a construction or interpretation of the terms of the trust; or

(6) Any action brought by the attorney general and reporter for a construction or interpretation of a charitable trust or a trust containing a charitable interest if a provision exists in a trust purporting to penalize a charity or charitable interest for contesting the trust if probable cause exists for instituting proceedings.

(d) Pursuant to this section, courts shall enforce the settlor's intent as reflected in a no-contest provision to the greatest extent possible.

35-15-1101. No consideration given to need to promote uniformity of application and construction of law.

(a) Numerous provisions of each of the following have been modified extensively relative to their respective uniform acts as such uniform acts were drafted and have been amended by the Uniform Law Commission, also known as the National Conference of Commissioners of Uniform State Laws:

(1) Chapter 6, the Uniform Principal and Income Act;

(2) Chapter 14, the Tennessee Uniform Prudent Investor Act of 2002; and

(3) Chapter 15, the Tennessee Uniform Trust Code.

(b) These modifications were undertaken deliberately and after significant consideration:

(1) Therefore, in applying and construing title 35, no consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states, including any other state that has enacted laws covering the same general subject matter as chapters 9, 14 or 15, either by enacting such respective uniform acts as such uniform acts were originally drafted or as such were originally drafted and subsequently have been amended, or by enacting laws based on or similar to such uniform acts as originally drafted or as such have been amended; and

(2) Unless specifically provided otherwise in this chapter, chapter 6 or chapter 14, courts shall not consult, rely on or give any persuasive value to such uniform acts or any respective other state's acts based on or similar to

such uniform acts, or any comments accompanying any such uniform acts or any respective other state's acts based on or similar to such uniform acts; none of which have any force or effect relative to trusts governed by the laws of this state.

35-15-1104. Alter ego.

(a) Absent clear and convincing evidence, no settlor of an irrevocable trust may be deemed to be the alter ego of a trustee of such trust.

(b) None of the following factors, by themselves or in combination, may be considered sufficient evidence for a court to conclude that the settlor controls a trustee, or is the alter ego of a trustee of such trust:

(1) Any combination of the factors listed in § 35-15-1105 regarding dominion and control over a trust;

(2) Isolated occurrences where the settlor has signed checks, made disbursements, or executed other documents related to such trust as a trustee, a trust advisor or a trust protector, when in fact the settlor was not such a trustee, trust advisor or trust protector;

(3) Making any requests for distributions on behalf of beneficiaries; or

(4) Making any requests to the trustee to hold, purchase, or sell any trust property.

35-15-1105. Dominion and control over a trust.

In the event a person challenges a settlor's or a beneficiary's influence over a trust, none of the following factors, alone or in combination, shall enter into a determination that dominion and control over a trust exists:

(1) The settlor or a beneficiary is serving as a trustee, a trust advisor, a trust protector or other fiduciary as described in § 35-15-508;

(2) The settlor or a beneficiary holds an unrestricted power to remove or replace a trustee, a trust advisor, a trust protector or other fiduciary;

(3) The settlor or a beneficiary is a trust administrator, a general partner of a partnership, a manager of a limited liability company, an officer of a corporation, or holds any other managerial function relative to any type of entity specified in this subdivision, or relative to any other type of entity not so specified, and part or all of the trust property consists of an interest in such entity;

(4) A person related by blood or adoption to the settlor or a beneficiary is appointed as a trustee, a trust advisor, a trust protector or other fiduciary;

(5) The settlor's or a beneficiary's agent, accountant, attorney, financial advisor, or friend is appointed as a trustee, a trust advisor, a trust protector or other fiduciary;

(6) A business associate is appointed as a trustee, a trust advisor, a trust protector or other fiduciary;

(7) A beneficiary holds any power of appointment over any or all of the trust property;

(8) The settlor holds a power to substitute property of equivalent value for property held by the trust, regardless of whether such power is:

(A) Held in a fiduciary or nonfiduciary capacity;

(B) Exercisable with or without the approval of any person in a fiduciary capacity; or

(C) Exercisable with or without the approval of any person having an

interest adverse to such settlor;

(9) A trustee, a trust advisor, a trust protector or other fiduciary has the power to loan trust property to the settlor for less than a full and adequate rate of interest or without adequate security;

(10) Any language relative to the power to make any distribution provides for any discretion relative to such distribution;

(11) The trust has only one beneficiary eligible for current distributions; or

(12) The beneficiary is serving as a cotrustee, or as a trust advisor or trust protector under part 12, or as any other fiduciary.

35-15-1201. Powers of trust advisors and trust protectors.

(a) A trust protector or trust advisor is any person, and may be a committee of more than one person, other than a trustee, who under the terms of the trust, an agreement of the qualified beneficiaries, or a court order has a power or duty with respect to a trust, including but not limited to, one or more of the following powers:

(1) The power to modify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including but not limited to, any rulings, regulations, or other guidance implementing or interpreting such laws;

(2) The power to amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust;

(3) The power to appoint a successor trust protector or trust advisor;

(4) The power to review and approve a trustee's trust reports or accountings;

(5) The power to change the governing law or principal place of administration of the trust;

(6) The power to remove and replace any trust advisor or trust protector for the reasons stated in the trust instrument;

(7) The power to remove a trustee, cotrustee, or successor trustee, for the reasons stated in the trust instrument, and appoint a successor;

(8) The power to consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries;

(9) The power to increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one (1) or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust;

(10) The power to perform a specific duty or function that would normally be required of a trustee or cotrustee;

(11) The power to advise the trustee or cotrustee concerning any beneficiary;

(12) The power to consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets;

(13) The power to direct the acquisition, disposition, or retention of any trust investment;

(14) The power to appoint under § 35-15-816(b)(27);

(15) The power to terminate all or part of a trust;

(16) The power to veto or direct all or part of any trust distribution;

(17) The power to borrow money with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(18) The power to make loans out of trust property, including but not limited to, loans to a beneficiary on terms and conditions, including without interest, considered to be fair and reasonable under the circumstances;

(19) The power to vote proxies and exercise all other rights of ownership relative to securities and business entities held by the trust;

(20) The power to select one (1) or more investment advisors, managers or counselors, including but not limited to, a trustee and delegate to them any of its powers; and

(21) The power to direct the trustee with respect to any additional powers and discretions over investment and management of trust assets provided in the trust instrument.

(b) The exercise of a power by a trust advisor or a trust protector shall be exercised in the sole and absolute discretion of the trust advisor or trust protector and shall be binding on all other persons.

(c) Any power of a trust advisor or trust protector to directly or indirectly modify a trust may be granted notwithstanding the provisions of §§ 35-15-410 — 35-15-412 and 35-15-414.

(d) An excluded fiduciary may continue to follow the direction of a trust protector or trust advisor upon the incapacity or death of the grantor of a trust to the extent provided in the trust instrument.

(e) Notwithstanding anything in this section to the contrary, no modification, amendment or grant of a power of appointment with respect to a trust all of whose beneficiaries are charitable organizations may authorize a trust protector or trust advisor to grant a beneficial interest in such trust to any non-charitable interest or purpose.

35-15-1202. Trust advisors and trust protectors as fiduciaries.

(a) A trust advisor or trust protector, other than a beneficiary, is a fiduciary with respect to each power granted to such trust advisor or trust protector. In exercising any power or refraining from exercising any power, a trust advisor or trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) A trust advisor or trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

35-15-1203. Trust advisor and trust protector subject to court jurisdiction.

By accepting appointment to serve as a trust advisor or trust protector, the trust advisor or the trust protector submits personally to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust advisor or trust protector.

35-15-1204. No duty to review actions of trustee, trust advisor, or trust protector.

(a) Whenever, pursuant to the terms of a trust, an agreement of the qualified beneficiaries, or a court order, an excluded fiduciary is to follow the direction of a trustee, trust advisor, or trust protector with respect to investment decisions, distribution decisions, or other decisions of the non-excluded fiduciary, then, except to the extent that the terms of the trust, the agreement of the qualified beneficiaries, or the court order provide otherwise, the excluded fiduciary shall have no duty to:

(1) Review, evaluate, perform investment reviews, suitability reviews, inquiries, or investigations, or in any other way monitor the conduct of the trustee, trust advisor, or trust protector;

(2) Make recommendations or evaluations or in any way provide advice to the trustee, trust advisor, or trust protector or consult with the trustee, trust advisor, or trust protector; or

(3) Communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trustee, trust advisor, or trust protector.

(b) Absent provisions in the trust instrument to the contrary, the actions of the excluded fiduciary pertaining to matters within the scope of the trustee, trust advisor, or trust protector's authority, including but not limited to, confirming that the trustee, trust advisor, or trust protector's directions have been carried out and recording and reporting actions taken at the trustee, trust advisor, or trust protector's direction or other information pursuant to § 35-15-813, shall be deemed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the terms of the trust, the agreement of the qualified beneficiaries, or the court order; such administrative actions, as well as any communications made by the excluded fiduciary to the trust advisor, trust protector or any of their agents or persons they have selected to provide services to the trust, shall not be deemed to constitute an undertaking by the excluded fiduciary to monitor the trustee, trust advisor, or trust protector or otherwise participate in actions within the scope of the trustee, trust advisor, or trust protector's authority.

35-15-1205. Fiduciary's liability for action or inaction of trustee, trust advisor, and trust protector.

An excluded fiduciary is not liable, either individually or as a fiduciary, for:

(1) Any loss resulting from compliance with a direction of a trustee, trust advisor or trust protector, including but not limited to, any loss from the trustee, trust advisor or trust protector breaching fiduciary responsibilities or acting beyond the trustee's, trust advisor's or trust protector's scope of authority;

(2) Any loss resulting from any action or inaction of a trustee, trust advisor, or trust protector; or

(3) Any loss that results from the failure of a trustee, trust advisor, or trust protector to take any action proposed by the excluded fiduciary where such action requires the authorization of the trustee, trust advisor, or trust protector, provided that an excluded fiduciary who had a duty to propose such action timely sought but failed to obtain the authorization.

35-15-1206. Limitation of action against a trust advisor or trust protector.

(a) A beneficiary may not commence a proceeding against a trust advisor or trust protector for breach of trust more than one (1) year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(b) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or the beneficiary's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a trust advisor or trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the trust advisor or trust protector;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(d) A trustee may not commence a proceeding against a trust advisor or trust protector for breach of trust more than one (1) year after the date the trustee or a representative of the trustee was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(e) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trustee or the trustee's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(f) If subsection (d) does not apply, a judicial proceeding by a trustee against a trust advisor or trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the trust advisor or trust protector;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(g) A trust advisor or trust protector may not commence a proceeding against another trust advisor or another trust protector for breach of trust more than one (1) year after the date the trust advisor or trust protector or the respective representative of each was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(h) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trust advisor or trust protector or the respective representative of each knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(i) If subsection (g) does not apply, a judicial proceeding by a trust advisor or trust protector against another trust advisor or another trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the other trust advisor or other

trust protector;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(j) Notwithstanding subsections (d) — (i), no trustee, trust advisor or trust protector, may commence a proceeding against a trust advisor or trust protector or another trust advisor or another trust protector if, under either subsections (a) — (c) or § 35-15-1005(a) — (c), none of the beneficiaries may commence a proceeding against the trust advisor or trust protector for such breach of trust.

35-16-102. Chapter definitions.

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

(1) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured;

(2) "Creditor" means, with respect to a transferor, a person who has a claim;

(3) "Debt" means liability on a claim;

(4) "Disposition" means a transfer, conveyance or assignment of property, including a change in the legal ownership of property occurring upon the substitution of one (1) trustee for another or the addition of one (1) or more new trustees. "Disposition" also includes the exercise of a power so as to cause a transfer of property to a trustee or trustees, but shall not include the release or relinquishment of an interest in property that, until the release or relinquishment, was the subject of a qualified disposition;

(5) "Investment advisor" means a person given authority by the terms of an investment services trust to direct, consent to or disapprove a transferor's actual or proposed investment decisions, distribution decisions or other decisions of the transferor;

(6) "Investment decision" means the retention, purchase, sale, exchange, tender or other transaction affecting the ownership of or rights in investments;

(7) "Investment services trust" means an instrument appointing a qualified trustee or qualified trustees for the property that is the subject of a disposition, which instrument:

(A) Expressly incorporates the law of this state to govern the validity, construction and administration of the trust;

(B) Is irrevocable; and

(C) Provides that the interest of the transferor or other beneficiary in the trust property or the income from the trust property may not be transferred, assigned, pledged or mortgaged, whether voluntarily or involuntarily, before the qualified trustee or qualified trustees actually distribute the property or income from the property to the beneficiary;

(8) "Person" has the meaning ascribed to it in § 1-3-105;

(9) "Property" includes real property, personal property, and interests in real or personal property;

(10) "Qualified affidavit" means a sworn affidavit signed by the transferor before a disposition of assets to an investment services trust that meets the requirements of § 35-16-103. In the event of a disposition by a transferor who is a trustee, the affidavit shall be signed by the transferor who made the

original disposition to the trustee, or a predecessor trustee, in a form that meets the requirements of subdivisions (7)(B) and (C) and shall state facts as of the time of the original disposition;

(11) "Qualified disposition" means a disposition by or from a transferor with or without consideration, to an investment services trust after the transferor executes a qualified affidavit;

(12) "Qualified trustee" means a person who:

(A) In the case of a natural person, is a resident of this state, or, in all other cases, is authorized by the law of this state to act as a trustee and whose activities are subject to supervision by the Tennessee department of financial institutions, the federal deposit insurance corporation, the comptroller of the currency, or the office of thrift supervision or any successor to them;

(B) Maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition, maintains records for the investment services trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of required income tax returns for the investment services trust, or otherwise materially participates in the administration of the investment services trust; and

(C) Is not the transferor;

(13) "Spouse" or "former spouse" means only persons to whom the transferor was legally married at, or before, the time the qualified disposition is made;

(14) Unless the context or a provision contained in this chapter provides otherwise, throughout this chapter, any form of the word "trustee," whether singular or plural means "trustee, cotrustee or any other fiduciary" as fiduciary is defined at § 35-15-103 relative to any power or duty held by such fiduciary that could otherwise be held by a trustee, to the extent that such fiduciary is holding such a power or duty and is not an excluded fiduciary as defined at § 35-15-103 relative to that power or duty; and

(15) "Transferor" means a person who, directly or indirectly, makes a disposition or causes a disposition to be made in such person's capacity:

(A) As an owner of property;

(B) As a holder of a power of appointment that authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate or the creditors of the holder's estate; or

(C) As a trustee.

35-16-104. Restrictions on actions, remedies and claims.

(a) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition to an investment services trust or for the avoidance of a qualified disposition to an investment services trust, unless the action is brought pursuant to the provisions of the Uniform Fraudulent Transfer Act, compiled in title 66, chapter 3, part 3, and, in the case of a creditor whose claim arose after a qualified disposition, unless the qualified disposition was also made with actual intent to defraud such creditor.

(b)(1) Notwithstanding § 66-3-310, a creditor's claim under subsection (a)

shall be extinguished:

(A) If the person is a creditor when the qualified disposition to an investment services trust is made, unless the action is commenced within the later of two (2) years after the qualified disposition is made or six (6) months after the person discovers or reasonably should have discovered the qualified disposition; or

(B) If the person becomes a creditor after the qualified disposition to an investment services trust is made, unless the action is commenced within two (2) years after the qualified disposition is made;

(2) If subdivision (b)(1) applies:

(A) A person shall be deemed to have discovered the existence of a qualified disposition to an investment services trust at the time any public record is made of any transfer of property relative to such qualified disposition, including but not limited to, the conveyance of real property that is recorded in the office of the county register of deeds of the county in which the property is located or the filing of a financing statement under title 47, chapter 9, or the equivalent recording or filing of either with the appropriate person or official under the laws of a jurisdiction other than this state; and

(B) No creditor shall bring an action with respect to property that is the subject of a qualified disposition unless that creditor proves by clear and convincing evidence that the settlor's transfer of such property was made with the intent to defraud that specific creditor.

(c) For purposes of this chapter, a qualified disposition that is made by means of a disposition by a transferor who is a trustee shall be deemed to have been made as of the time, whether before, on or after July 1, 2007, the property that is the subject of the qualified disposition was originally transferred to the transferor acting in the capacity of trustee, or any predecessor trustee, in a form that meets the requirements of § 35-16-102(7)(B) and (C).

(d) Notwithstanding any law to the contrary, a creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person shall have only the rights with respect to a qualified disposition that are provided in this section and § 35-16-106, and neither a creditor nor any other person shall have any claim or cause of action against the trustee, or an advisor of an investment services trust, or against any person involved in the counseling, drafting, preparation, execution or funding of an investment services trust. For purposes of this section, counseling, drafting, preparation, execution or funding of an investment services trust includes the counseling, drafting, preparation, execution and funding of a limited partnership or a limited liability company if interests in the limited partnership or limited liability company are subsequently transferred to the investment services trust.

(e) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against a trustee or an advisor of an investment services trust, or against any person involved in the counseling, drafting, preparation, execution or funding of an investment services trust, if, as of the date such action is brought, an action by a creditor with respect to the investment services trust would be barred under this section.

(f) In circumstances where more than one (1) qualified disposition is made

by means of the same investment services trust, then:

(1) The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim with respect to a prior qualified disposition is extinguished as provided in subsection (b); and

(2) Any distribution to a beneficiary shall be deemed to have been made from the latest qualified disposition.

(g) If, in any action brought against an investment services trust, a court takes any action whereby the court declines to apply the law of this state in determining the effect of a spendthrift provision of the trust, the trustee of the trust shall immediately upon the court's action and without the further order of any court, cease in all respects to be trustee of the trust and a successor trustee shall succeed as trustee in accordance with the terms of the trust or, if the trust does not provide for a successor trustee and the trust would otherwise be without a trustee, a court of this state, upon the application of any beneficiary of the trust, shall appoint a successor trustee upon the terms and conditions it determines to be consistent with the purposes of the trust and this chapter. Upon the trustee's ceasing to be trustee, the trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust in accordance with this section.

(h) An investment services trust shall be subject to this section whether or not the transferor retains any or all of the powers and rights described in § 35-16-111 or serves as an investment advisor pursuant to § 35-16-109.

(i)(1) Notwithstanding any provisions of subsection (a) or (b) to the contrary, the limitations on actions by creditors in law or equity shall not apply and such creditors' claims shall not be extinguished if the transferor is indebted on account of an agreement, judgment or order of a court for the payment of one (1) of the following:

(A) Past due child support;

(B) Past due alimony in solido of a spouse or former spouse;

(C) Past due alimony or support of a spouse or former spouse; or

(D) A written agreement, judgment or order of a court for division of marital property of a spouse or former spouse, but only to the extent of such debt, legally mandated interest and the reasonable cost of collection.

(2)(A) A claim provided under this subsection (i) shall be asserted against a trustee only:

(i) Upon a final non-appealable determination of a Tennessee court or a fully domesticated, final non-appealable order of a court of another state as defined by § 35-15-103 that such debt is past due; and

(ii) After the court has determined that the claimant has made reasonable attempts to collect the debt from any other sources of the transferor or that such attempts would be futile.

(B) Nothing in this subdivision (i)(2) shall be construed to prohibit the court from making the findings required in subdivisions (i)(2)(A)(i) and (ii) in the same proceeding and order.

(j) Subsection (i) shall not apply to any claim for forced heirship, legitime or elective share.

(k) In addition to the provisions of subsection (j) to the extent subsection (j) applies to the laws of any foreign country:

(1) For all purposes under this chapter, the effect of the laws of any foreign country shall be the same as provided in § 35-15-107(b)(3) and (4); and

(2) Subsection (a) applies in addition to all other provisions of this chapter.

35-16-111. Revocability of trusts.

An investment services trust shall not be deemed revocable on account of its inclusion of one (1) or more of the following:

(1) A transferor's power to veto a distribution from the trust;

(2) A power of appointment, other than a power to appoint to the transferor, the transferor's creditors, the transferor's estate or the creditors of the transferor's estate, either exercisable by written instrument of the transferor during the transferor's life or exercisable by will or other written instrument of the transferor effective upon the transferor's death;

(3) The transferor's potential or actual receipt of income, including rights to the income retained in the trust;

(4) The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as those terms are defined in § 664 of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 664, and any successor provision;

(5) The transferor's receipt each year of an amount specified in the trust, the amount not to exceed five percent (5%) of the initial value of the trust or its value determined from time to time pursuant to the trust;

(6) The transferor's potential or actual receipt or use of principal if the potential or actual receipt or use of principal would be the result of a qualified trustee's or qualified trustees' acting:

(A) In the qualified trustee's or qualified trustees' discretion. For purposes of this section, a qualified trustee is presumed to have discretion with respect to the distribution of principal unless the discretion is expressly denied to the trustee by the terms of the trust;

(B) Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of § 2041(b)(1)(A) or § 2514(c)(1) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 2041(b)(1)(A) or 26 U.S.C. § 2514(c)(1), as in effect on July 1, 2007, or as later amended; or

(C) At the direction of an advisor described in § 35-16-108 who is acting:

(i) In the advisor's discretion; or

(ii) Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade, or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of § 2041(b)(1)(A) or § 2514(c)(1) of the Internal Revenue Code of 1986, 26 U.S.C. § 2041(b)(1)(A) or 26 U.S.C. § 2514(c)(1), as in effect on July 1, 2007, or as later amended;

(7) The transferor's right to remove a trustee or advisor and to appoint a new trustee or advisor; provided, however, that the right shall not include the appointment of a person who is a related or subordinate party with respect to the transferor within the meaning of § 672(c) of the Internal

Revenue Code of 1986, 26 U.S.C. § 672(c), and any successor provision;

(8) The transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of the term as described in § 2702(c) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 2702(c), and any successor provision;

(9) The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if such potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly permits a distribution to the transferor as reimbursement for such taxes and if such distribution would be the result of a qualified trustee's or qualified trustees' acting:

(A) In such qualified trustee's or qualified trustees' discretion or pursuant to a mandatory direction in the trust instrument; or

(B) At the direction of an adviser described in § 35-16-108, who is acting in such adviser's discretion;

(10) The ability, whether pursuant to direction in the investment services trust or discretion of a qualified trustee to pay, after the death of the transferor, all or any part of the debts of the transferor outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate; and

(11) A qualified trustee's or qualified trustees' authority to make distributions to pay taxes in lieu of or in addition to the power to make a distribution for taxes pursuant to subdivision (3), (6), (9), or (10) by direct payment to the taxing authorities.

36-1-113. Termination of parental rights.

(a) The chancery and circuit courts shall have concurrent jurisdiction with the juvenile court to terminate parental or guardianship rights to a child in a separate proceeding, or as a part of the adoption proceeding by utilizing any grounds for termination of parental or guardianship rights permitted in this part or in title 37, chapter 1, part 1 and title 37, chapter 2, part 4.

(b)(1) The prospective adoptive parent or parents, including extended family members caring for a related child, any licensed child-placing agency having custody of the child, the child's guardian ad litem, or the department shall have standing to file a petition pursuant to this part or title 37 to terminate parental or guardianship rights of a person alleged to be a parent or guardian of the child. The child's parent, pursuant to subdivision (g)(11), shall also have standing to file a petition pursuant to this part or title 37 to terminate parental or guardianship rights of a person alleged to be a parent or guardian of the child. The prospective adoptive parents, including extended family members caring for a related child, shall have standing to request termination of parental or guardianship rights in the adoption petition filed by them pursuant to this part.

(2) The court shall notify the petitioning parent that the duty of future child support by the parent who is the subject of the termination petition will be forever terminated by entry of an order terminating parental rights.

(c) Termination of parental or guardianship rights must be based upon:

(1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been

established; and

(2) That termination of the parent's or guardian's rights is in the best interests of the child.

(d)(1) The petition, or allegations in the adoption petition, to terminate parental rights may be made upon information and belief and shall be verified. If a parent whose parental rights are proposed for termination is the legal parent of the child, as defined in § 36-1-102, and if such parent is alleged to be deceased, then diligent efforts must be made by the petitioner to verify the death of such parent.

(2) The petition, or allegations in the adoption petition, shall state:

(A) The child's birth name;

(B) The child's age or date of birth;

(C) The child's current residence address or county of residence or that the child is in the custody of the department or a licensed child-placing agency; and

(D) Any other facts that allege the basis for termination of parental rights and that bring the child and parties within the jurisdiction of the court.

(3)(A) The petition, or allegations in the adoption petition, shall contain a verified statement that:

(i) The putative father registry maintained by the department has been consulted within ten (10) working days of the filing of the petition and shall state whether there exists any claim on the registry to the paternity of the child who is the subject of the termination or adoption petition;

(ii) Indicates if there exists any other claim or potential claim to the paternity of the child;

(iii) Describes whether any other parental or guardianship rights have been terminated by surrender, parental consent, or otherwise, and whether any other such rights must be terminated before the child can be made available for adoption;

(iv) Any notice required pursuant to subdivision (d)(4) has been given; and

(v) The medical and social history of the child and the child's biological family has been completed to the extent possible on the form promulgated by the department pursuant to § 36-1-111(k); provided, however, the absence of such completed information shall not be a barrier to termination of parental rights.

(B) Any person or persons entitled to notice pursuant to the provisions of § 36-1-117 shall be named as defendants in the petition to terminate parental rights or in the adoption petition and shall be served with a copy of the petition as provided by law.

(C) The petition to terminate, or the adoption petition that seeks to terminate parental rights, shall state that:

(i) The petition or request for termination in the adoption petition shall have the effect of forever severing all of the rights, responsibilities, and obligations of the parent(s) or guardian(s) to the child who is the subject of the order, and of the child to those parent(s) or guardian(s);

(ii) The child will be placed in the guardianship of other person, persons or public or private agencies who, or that, as the case may be, shall have the right to adopt the child, or to place the child for adoption

and to consent to the child's adoption; and

(iii) The parent or guardian shall have no further right to notice of proceedings for the adoption of the child by other persons and that the parent or guardian shall have no right to object to the child's adoption or thereafter, at any time, to have any relationship, legal or otherwise, with the child.

(4) The petition, if filed separately from the adoption petition, may be filed as provided in § 36-1-114. If the petition is filed in a court different from the court where there is a pending custody, dependency, neglect or abuse proceeding concerning a person whose parental rights are sought to be terminated in the petition, a notice of the filing of the petition, together with a copy of the petition, shall be sent by the petitioner to the court where the prior proceeding is pending. In addition, the petitioner filing a petition under this section shall comply with the requirements of § 36-1-117(e).

(e) Service of process of the petition shall be made as provided in § 36-1-117.

(f) Before terminating the rights of any parent or guardian who is incarcerated or who was incarcerated at the time of an action or proceeding is initiated, it must be affirmatively shown to the court that such incarcerated parent or guardian received actual notice of the following:

(1) The time and place of the hearing to terminate parental rights;

(2) That the hearing will determine whether the rights of the incarcerated parent or guardian should be terminated;

(3) That the incarcerated parent or guardian has the right to participate in the hearing and contest the allegation that the rights of the incarcerated parent or guardian should be terminated, and, at the discretion of the court, such participation may be achieved through personal appearance, teleconference, telecommunication or other means deemed by the court to be appropriate under the circumstances;

(4) That if the incarcerated parent or guardian wishes to participate in the hearing and contest the allegation, such parent or guardian:

(A) If indigent, will be provided with a court-appointed attorney to assist the parent or guardian in contesting the allegation; and

(B) Shall have the right to perpetuate such person's testimony or that of any witness by means of depositions or interrogatories as provided by the Tennessee Rules of Civil Procedure; and

(5) If, by means of a signed waiver, the court determines that the incarcerated parent or guardian has voluntarily waived the right to participate in the hearing and contest the allegation, or if such parent or guardian takes no action after receiving notice of such rights, the court may proceed with such action without the parent's or guardian's participation.

(g) Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The following grounds are cumulative and non-exclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan pursuant to the provisions of title 37, chapter 2, part 4;

(3) The child has been removed from the home of the parent or guardian

by order of a court for a period of six (6) months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home;

(4) The parent or guardian has been found to have committed severe child abuse as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against the child who is the subject of the petition or against any sibling or half-sibling of such child, or any other child residing temporarily or permanently in the home of such parent or guardian;

(5) The parent or guardian has been sentenced to more than two (2) years' imprisonment for conduct against the child who is the subject of the petition, or for conduct against any sibling or half-sibling of the child or any other child residing temporarily or permanently in the home of such parent or guardian, that has been found under any prior order of a court or that is found by the court hearing the petition to be severe child abuse, as defined in § 37-1-102. Unless otherwise stated, for purposes of this subdivision (g)(5), "sentenced" shall not be construed to mean that the parent or guardian must have actually served more than two (2) years in confinement, but shall only be construed to mean that the court had imposed a sentence of two (2) or more years upon the parent or guardian;

(6) The parent has been confined in a correctional or detention facility of any type, by order of the court as a result of a criminal act, under a sentence of ten (10) or more years, and the child is under eight (8) years of age at the time the sentence is entered by the court;

(7) The parent has been convicted of or found civilly liable for the intentional and wrongful death of the child's other parent or legal guardian;

(8)(A) The chancery and circuit courts shall have jurisdiction in an adoption proceeding, and the chancery, circuit, and juvenile courts shall have jurisdiction in a separate, independent proceeding conducted prior to an adoption proceeding to determine if the parent or guardian is mentally incompetent to provide for the further care and supervision of the child, and to terminate that parent's or guardian's rights to the child;

(B) The court may terminate the parental or guardianship rights of that person if it determines on the basis of clear and convincing evidence that:

(i) The parent or guardian of the child is incompetent to adequately provide for the further care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future; and

(ii) That termination of parental or guardian rights is in the best interest of the child;

(C) In the circumstances described under subdivisions (8)(A) and (B), no willfulness in the failure of the parent or guardian to establish the parent's or guardian's ability to care for the child need be shown to establish that the parental or guardianship rights should be terminated;

(9)(A) The parental rights of any person who, at the time of the filing of a petition to terminate the parental rights of such person or, if no such petition is filed, at the time of the filing of a petition to adopt a child, is not the legal parent or guardian of such child or who is described in § 36-1-117(b) or (c) may also be terminated based upon any one (1) or more of the following additional grounds:

(i) The person has failed, without good cause or excuse, to pay a reasonable share of prenatal, natal, and postnatal expenses involving the birth of the child in accordance with the person's financial means promptly upon the person's receipt of notice of the child's impending birth;

(ii) The person has failed, without good cause or excuse, to make reasonable and consistent payments for the support of the child in accordance with the child support guidelines promulgated by the department pursuant to § 36-5-101;

(iii) The person has failed to seek reasonable visitation with the child, and if visitation has been granted, has failed to visit altogether, or has engaged in only token visitation, as defined in § 36-1-102(1)(C);

(iv) The person has failed to manifest an ability and willingness to assume legal and physical custody of the child;

(v) Placing custody of the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child; or

(vi) The person has failed to file a petition to establish paternity of the child within thirty (30) days after notice of alleged paternity by the child's mother, or as required in § 36-2-318(j), or after making a claim of paternity pursuant to § 36-1-117(c)(3);

(B)(i) For purposes of this subdivision (g)(9), "notice" means the mailing, postage pre-paid, or the sending by, express mail, courier, or other conveyance, to the person charged with notice at such person's address a statement that such person is believed to be the biological parent of a child. Notice shall be deemed received if the statement sent is not returned undelivered or evidence is not otherwise received by the sender that the statement was not delivered; and

(ii) "Notice" also means the oral statement to an alleged biological father from a biological mother that the alleged biological father is believed to be the biological father of the biological mother's child;

(10)(A) The parent has been convicted of aggravated rape pursuant to § 39-13-502, rape pursuant to § 39-13-503, or rape of a child pursuant to § 39-13-522, from which crime the child was conceived. A certified copy of the conviction suffices to prove this ground;

(B) When one (1) of the child's parents has been convicted of one (1) of the offenses specified in subdivision (g)(10)(A), the child's other parent shall have standing to file a petition to terminate the parental rights of the convicted parent. Nothing in this section shall give a parent standing to file a petition to terminate parental rights based on grounds other than those listed in this subdivision (g)(10);

(11)(A)(i) The parent has been found to have committed severe child sexual abuse under any prior order of a criminal court;

(ii) For the purposes of this section, "severe child sexual abuse" means the parent is convicted of any of the following offenses towards a child:

(a) Aggravated rape, pursuant to § 39-13-502;

(b) Aggravated sexual battery, pursuant to § 39-13-504;

(c) Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004;

(d) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005;

(e) Incest, pursuant to § 39-15-302;

(f) Rape, pursuant to § 39-13-503; or

(g) Rape of a child, pursuant to § 39-13-522;

(B) When one (1) of the child's parents has been convicted of one (1) of the offenses specified in subdivision (g)(11)(A)(ii), the child's other parent shall have standing to file a petition to terminate the parental rights of the abusive parent. Nothing in this section shall give a parent standing to file a petition to terminate parental rights based on grounds other than those listed in this subdivision (g)(11); and

(12) The parent or guardian has been convicted of trafficking for commercial sex act under § 39-13-309.

(h)(1) The department shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, under the following circumstances:

(A) In the case of a child who has been in foster care under the responsibility of the department for fifteen (15) of the most recent twenty-two (22) months; or

(B) If a court of competent jurisdiction has determined a child to be an abandoned infant as defined at § 36-1-102; or

(C) If a court of competent jurisdiction has made a determination in a criminal or civil proceeding that the parent has committed murder of any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home, committed voluntary manslaughter of another such child, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter of the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home, or committed a felony assault that has resulted in serious bodily injury or severe child abuse as defined at § 37-1-102 to the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home. For the purposes of this subsection (h), such a determination shall be made by a jury or trial court judge designated by § 16-2-502 through an explicit finding, or by such equivalent courts of other states or of the United States; or

(D) If a juvenile court has made a finding of severe child abuse as defined at § 37-1-102.

(2) At the option of the department, the department may determine that a petition to terminate the parental rights of the child's parents shall not be filed (or, if such a petition has been filed by another party, shall not be required to seek to be joined as a party to the petition), if one of the following exists:

(A) The child is being cared for by a relative;

(B) The department has documented in the permanency plan, which shall be available for court review, a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(C) The department has not made reasonable efforts under § 37-1-166 to provide to the family of the child, consistent with the time period in the department permanency plan, such services as the department deems necessary for the safe return of the child to the child's home.

(i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

(1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;

(2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substance analogues as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

(j) In the hearing on the petition, the circuit, chancery, or juvenile court shall, in addition to the Tennessee Rules of Evidence, admit evidence as permitted under the Tennessee Rules of Juvenile Procedure, and shall recognize the exemptions to privileges as provided pursuant to §§ 37-1-411 and 37-1-614.

(k) The court shall ensure that the hearing on the petition takes place within six (6) months of the date that the petition is filed, unless the court

determines an extension is in the best interests of the child. The court shall enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing. If such a case has not been completed within six (6) months from the date the petition was served, the petitioner or respondent shall have grounds to request that the court of appeals grant an order expediting the case at the trial level.

(*l*)(1) An order terminating parental rights shall have the effect of severing forever all legal rights and obligations of the parent or guardian of the child against whom the order of termination is entered and of the child who is the subject of the petition to that parent or guardian. The parent or guardian shall have no further right to notice of proceedings for the adoption of that child by other persons and shall have no right to object to the child's adoption or thereafter to have any relationship, legal or otherwise, with the child. It shall terminate the responsibilities of that parent or guardian under this section for future child support or other future financial responsibilities even if the child is not ultimately adopted; provided, that the entry of an order terminating the parental rights shall not eliminate the responsibility of such parent or guardian for past child support arrearages or other financial obligations incurred for the care of such child prior to the entry of the order terminating parental rights.

(2) Notwithstanding the provisions of subdivision (*l*)(1), a child who is the subject of the order for termination shall be entitled to inherit from a parent whose rights are terminated until the final order of adoption is entered.

(m) Upon termination of parental or guardian rights, the court may award guardianship or partial guardianship of the child to a licensed child-placing agency or the department. Such guardianship shall include the right to place the child for adoption and the right to consent to the child's adoption. Upon termination of parental or guardian rights, the court may award guardianship or partial guardianship to any prospective adoptive parent or parents with the right to adopt the child, or to any permanent guardian who has been appointed pursuant to title 37, chapter 1, part 8. In any of these cases, such guardianship is subject to the remaining rights, if any, of any other parent or guardian of the child. Before guardianship or partial guardianship can be awarded to a permanent guardian, the court shall find that the department or licensed child-placing agency currently having custody of the child has made reasonable efforts to place the child for adoption and that permanent guardianship is in the best interest of the child.

(n) An order of guardianship or partial guardianship entered by the court pursuant to this section shall supersede prior orders of custody or guardianship of that court and of other courts, except those prior orders of guardianship or partial guardianship of other courts entered as the result of validly executed surrenders or revocations pursuant to § 36-1-111 or § 36-1-112, or except as provided pursuant to § 36-1-111(r)(4)(D) and (E), or except an order of guardianship or partial guardianship of a court entered pursuant to § 36-1-116; provided, that orders terminating parental rights entered by a court under this section prior to the filing of an adoption petition shall be effective to terminate parental rights for all purposes.

(o) If the court terminates parental or guardianship rights, under the provisions of this part or title 37 or a consent is given pursuant to § 36-1-117(f) or (g), or if there have been surrenders of parental or guardianship rights of all other necessary parties, then no further surrender or consent of that parent or

guardian shall be necessary to authorize an adoption; provided, that the adoption court may review and confirm the validity of any denials of parentage made by persons under any statutory provisions from outside the state of Tennessee.

(p) A copy of the order or orders obtained by the prospective adoptive parents terminating parental or guardianship rights under this section shall be filed with the petition for adoption.

(q) After the entry of the order terminating parental rights, no party to the proceeding, nor anyone claiming under such party, may later question the validity of the termination proceeding by reason of any defect or irregularity therein, jurisdictional or otherwise, but shall be fully bound thereby, except based upon a timely appeal of the termination order as may be allowed by law; and in no event, for any reason, shall a termination of parental rights be overturned by any court or collaterally attacked by any person or entity after one (1) year from the date of the entry of the final order of termination. This provision is intended as a statute of repose.

36-1-126. Record kept under seal — Confidential records — Access to certain records — Preservation of records.

(a)(1) After the entry of the final order of adoption;

(2) After entry of the final order dismissing the adoption;

(3) After entry of an order revoking the surrender or parental consent;

(4) After entry of an order dismissing a termination of parental rights proceeding filed in conjunction with an adoption proceeding; or

(5) Upon conclusion of all termination of parental rights proceedings that were filed in conjunction with an adoption proceeding;

all adoption records, court reports, home studies, preliminary home studies, other reports or other documents or papers or other information concerning the placement or attempted placement of a person for adoption, or other information concerning the litigation of the adoption or attempted adoption of a person, which information is in the office of the judge or clerk of the court where the adoption was filed or where the surrender or confirmation of parental consent or revocation of a surrender or parental consent was taken, or any such records, reports, or documents in the offices of a licensed child-placing agency, a licensed clinical social worker, or in the county, regional or state offices of the department of health, or in the county, district, and state offices of the department of children's services, shall be placed and remain under seal, except as provided herein or in § 36-1-118(e)(4), or in title 68, and shall be confidential and shall be disclosed only as provided in this part.

(b)(1) Upon the granting or dismissal of an adoption petition, or after entry of the final order dismissing the adoption or revoking the surrender or the parental consent or upon conclusion of all termination of parental rights proceedings that were filed in conjunction with an adoption proceeding, all records and reports, home studies, and preliminary home studies or other information described in subsection (a) relating to the adoption proceeding and all records, reports and other documents related to the child's placement with the department or the licensed or chartered child-placing agency or licensed clinical social worker and with the adoptive or prospective adoptive family that are in the offices of the department or in the offices of any Tennessee licensed child-placing agency or licensed clinical social worker,

shall be forwarded by the county and district offices of the department's social services division and by the licensed child-placing agency or licensed clinical social worker involved in any such proceedings to the state office of the department, which shall place the records under seal and ensure their safekeeping; provided, that copies of any records that relate to a child who is placed or retained in the custody or guardianship of the department or a licensed child-placing agency after the dismissal of an adoption proceeding without further adoption of the child by any person or pursuant to any guardianship or other order of the court pursuant to this part shall be retained as confidential foster care records pursuant to title 37, chapter 2, part 4 and shall be utilized by the department or licensed child-placing agency for the care, supervision, protection, and treatment of that child as may be necessary.

(2) The licensed child-placing agency, chartered child-placing agency or licensed clinical social worker shall, however, maintain a limited record that indicates the child's date of birth, the date the agency received the child for placement, from whom the child was received and their last known address, with whom the child was placed and their last known address, and the court in which the adoption proceeding was filed and the date the adoption order was entered or the adoption petition dismissed.

(3) The information in the limited record shall be confidential and not open to inspection by any person, except as provided in this part. These records shall be maintained in a locked file or other secure depository by the agency or by the licensed clinical social worker or, if kept in electronic media, shall be maintained in a method that restricts access only to authorized agency personnel or the licensed clinical social worker. The limited record shall only be accessible to authorized agency personnel or the licensed clinical social worker or to authorized personnel of the department in the performance of its duties under this part or for inspection under the department's licensing duties, or as otherwise authorized by this part.

(4) Upon entry of an order of adoption or dismissal of a petition for adoption or dismissal of termination proceedings that were filed in conjunction with an adoption proceeding, or upon revocation of a surrender or parental consent, or modification of an order of guardianship, the clerk of the court where the adoption or surrender proceedings were initiated or filed shall forward a certified copy of the orders to the adoptions unit in the state office of the department in Nashville.

(5)(A) Any licensed child-placing agency or licensed clinical social worker that or who plans to cease conducting its activities related to the adoptive placement of children, the conduct of home studies, or any other such adoption-related services, shall notify the adoptions unit of the state office of the department in Nashville by certified mail, return receipt requested, thirty (30) days in advance, and shall forward all records related to any adoption-related services it has performed to the department.

(B) The department is specifically authorized to file a complaint and seek any necessary court orders, including injunctive relief of any kind, from any chancery or circuit court to preserve those records from loss or destruction and to obtain possession of those records for their preservation.

(C) Upon receipt of the records, reports, home studies and other information, the department shall take any necessary steps to preserve

the records, reports, home studies and other information in accordance with this part. These records, reports, home studies and other information shall be filed as a sealed adoption record or sealed record, and all such records shall be confidential, and shall be otherwise subject to the provisions for access as provided pursuant to this part.

(6)(A) The clerks of the courts of this state are specifically authorized to undertake efforts to locate in any public building in their respective counties any records of adoptions or attempted adoptions of any person by any court, including former county courts or any court that previously had adoption jurisdiction, which records may be in the control or possession of any person or entity. Upon location of these records, if it is determined that the information therein was the result of an adoption that was filed or consummated and the clerk has no prior record of the adoption, the clerk shall record the existence of this adoption record in a special docket book for this purpose, shall maintain the adoption petition, consents or surrenders, and the order in a file for that purpose under the provisions of this part, and shall transmit to the department certified copies of the adoption petition, the surrenders and consents and the order of adoption, and the originals of any remaining documents in the record that have been located.

(B) Upon receipt of the record, the department shall take any necessary steps to preserve the record, and the record shall be treated as sealed adoption records pursuant to this part.

(c)(1) The sealed adoption record shall be registered by the department in such a manner as to record the names of the adopted person, the adopted person's birth name, the person's date of birth and social security number, the names of the adoptive parents, and, if possible, any information concerning the names of birth parents of the child that is readily accessible to the department, the court where the adoption was filed, the docket number of the court proceeding, and the date of the adoption decree or the order of dismissal of the adoption petition, the order revoking the surrender, or the order dismissing the order of guardianship; provided that sealed records may continue to be registered and maintained under prior departmental procedures. The department may record such other information as it shall deem necessary to maintain adequate information concerning the location of the sealed adoption record or sealed record and the means by which to locate such record.

(2) Such registration record shall be maintained in a secure manner so that no unauthorized persons may obtain access to the records. The sealed adoption record shall be placed in a separate sealed folder or in a suitable electronic media format wherein the record can be held under a separate file name, and shall be stored with the division of records management of the department of state, which shall carefully protect and preserve the sealed adoption records or sealed records and shall maintain proper security for the confidentiality of the sealed adoption records or sealed records.

(3) If electronic methods of recording the information contained in the sealed adoption records or sealed records are employed, the departments of children's services and general services shall utilize any necessary methods to ensure the preservation and confidentiality of the electronic records.

(d)(1) The department may open the adoption records, the sealed adoption records, sealed records, or post-adoption records, adoption assistance records, or limited records in subsection (b) in order to perform any duties

required under this part, and any specific provision for access to such records contained herein shall not be construed as a limitation on the ability of the department to access such records for such purposes.

(2) Notwithstanding any law to the contrary, including § 68-3-313, the department shall, upon its request, be granted access to and shall be provided a copy of the original birth certificate or any order or record of adoption of the adopted person in the custody of the division of vital records.

(3) For purposes related to any federal or state audit relative to an adoption assistance program or an adoption assistance grant, the department may open any record for the sole and limited purpose of complying with the audit requirements of the federal or state program.

(4) For purposes related to the determination of eligibility of any child for adoption assistance, the departments of children's services and finance and administration, or any successor agencies responsible for the care of children in state custody or guardianship or for administration of the finances for children in state custody or guardianship, may open any adoption record, sealed adoption record, sealed record, post-adoption record, sealed home study records, or adoption assistance record for that limited purpose and may utilize any information in such records in any manner necessary for eligibility determination or adjudication of a claim for such assistance.

(5)(A) For purposes related to the determination of eligibility of any adopted person or any person placed for adoption for any federal or state benefit or any other benefits to which they may be entitled, or to provide to a Title IV-D child support office information necessary to verify the status of an adoption for purposes of determining a current or past child support obligation or for terminating a future obligation for child support, the departments of children's services and finance and administration, or any successor agencies responsible for the care of children in state custody or guardianship or for administration of the finances for children in state custody or guardianship, may open any adoption record, sealed adoption record, sealed record, post-adoption record, sealed home study records or any adoption assistance record and disclose any information contained in those records that may be necessary to permit determination of:

(i) Eligibility for or correction of payments made to or on behalf of an adopted person; or

(ii) The status of current, past or future child support obligations of child support that are, or may be, due on behalf of any adopted person.

(B) Any information released for any purpose of this subdivision (d)(5) shall be used only for the purposes stated in this subdivision (d)(5), and shall otherwise remain confidential in any agency or court records in which it may appear; and the information shall not be open to the public, except as otherwise provided by this part.

(6) The department may open or utilize for any purpose the adoption record, sealed adoption record, sealed record or the post-adoption record at any time in order to obtain any information concerning any person who may be placed in the custody or guardianship of the department or any other agency of the state or service provider of the state by any court or by the adopted person's parents, or who may be placed with the department or any other agency of the state or service provider of the state due to any re-surrender of the adopted person to the department by the adopted person's adoptive parents or the person's prospective adoptive parents.

(7) The department may open the sealed adoption record or sealed record when a birth certificate in the adopted name was not issued and it becomes necessary to open the sealed adoption record to provide any information to the office of vital records to complete the birth certificate.

(8) The department, the department of general services, or their specifically authorized agents, may open the sealed adoption records, sealed records, or post-adoption records at any time it becomes necessary to perform any tasks related to the preservation of the records, and each department is specifically authorized to utilize any methodology that now exists or that may be developed in the future for the permanent preservation of a sealed adoption record, sealed record or post-adoption record, and they may open the records for the limited purpose of undertaking these preservation methods. This subdivision (d)(8) shall not authorize the release of any information contained in the records to any other person or entity except as specifically authorized by this part, or as may be directly related to the preservation of the records.

(9) After use of the records pursuant to this subsection (d), they shall be re-sealed and returned to storage.

(e) In the event of an appeal from any ruling of the trial court in the adoption proceeding, the clerk shall place the court's record of the adoption proceedings in a sealed file in a locked file or other secure depository or, in the event of the use of electronic storage, the records shall be maintained in a secure method of storage that restricts access only to the clerk and other persons authorized by the court. These records shall remain confidential and shall not be open to inspection by anyone other than the trial or appellate courts, the clerk, the parties to the proceeding, or the licensed child-placing agencies, or the licensed clinical social worker, or the department or other governmental agencies that have been involved in the case, except by order of the court.

36-2-401. Single means of establishing parentage — Legislative intent.

This chapter provides a single means to establish parentage of children born of donated embryo transfer to recipient intended parent. It is intended to promote the interests of children who may be born as a result of donated embryo transfer. It is the intent that no adoption pursuant to chapter 1 of this title or no parentage pursuant to chapter 3 of this title shall be required to create parentage in recipient intended parent pursuant to this part.

36-2-402. Part definitions.

As used in this part:

(1) "Embryo" or "human embryo" means an individual fertilized ovum of the human species from the single-cell stage to eight-week development;

(2) "Embryo parentage" means the acceptance of rights and responsibilities for an embryo by a recipient intended parent;

(3) "Embryo relinquishment" or "legal transfer of rights to an embryo" means the relinquishment of rights and responsibilities by the person or persons who hold the legal rights and responsibilities for an embryo;

(4) "Embryo transfer" means the medical procedure of physically placing an embryo into the uterus of a female recipient intended parent;

(5) "Legal embryo custodian" means the person or entity, including an embryo transfer clinic, who hold the legal rights and responsibilities for a

human embryo and who relinquishes said embryo to another person; and

(6) "Recipient intended parent" means a person or persons who receive a relinquished embryo and who accepts full legal rights and responsibilities for such embryo and any child that may be born as a result of embryo transfer.

36-2-403. Establishing embryo parentage — Relinquishment of rights and responsibilities.

(a)(1) A legal embryo custodian may relinquish all rights and responsibilities for an embryo prior to embryo transfer. A written contract shall be entered into as appropriate when establishing embryo parentage prior to embryo transfer for the legal transfer of rights to an embryo and to any child that may result from the embryo transfer:

(A) Between legal embryo custodians and the embryo transfer clinic; or

(B) Between a legal embryo custodian and each recipient intended parent.

(2) The contract shall be signed, as appropriate, by each legal embryo custodian for such embryo, by the embryo transfer clinic or by each recipient intended parent in the presence of a notary public. Initials or other designations may be used if the individuals desire anonymity.

(b) If the embryo was created using donor gametes, the sperm or oocyte donors who irrevocably relinquished their rights in connection with in vitro fertilization shall not be entitled to any notice of the embryo relinquishment, nor shall their consent to the embryo relinquishment be required.

(c) Upon embryo relinquishment by each legal embryo custodian pursuant to subsection (a), the legal transfer of rights to an embryo shall be considered complete at the time of thawing or to such other time as the parties may agree, and the embryo transfer shall be authorized.

(d) A child born to a recipient intended parent as the result of embryo relinquishment pursuant to subsection (a) shall be presumed to be the legal child of the recipient intended parent; provided, that each legal embryo custodian and each recipient intended parent has entered into a written contract pursuant to this part.

(e) Any and all prior legal embryo custodians whose donation of an embryo has resulted in the birth of a child to a recipient intended parent pursuant to subsection (a) shall have no rights or responsibilities with such child and of the child to them.

36-5-101. Decree for support of children — Modification — Delinquencies — Standing to petition — Court costs and attorneys fees — Means of collection — Scientific parentage tests.

(a)(1) Upon dissolution of a marriage, whether dissolved absolutely or by a perpetual or temporary decree of separation, the court may make an order and decree for the suitable support and maintenance of the children by either spouse or out of such spouse's property, according to the nature of the case and the circumstances of the parties, the order or decree to remain in the court's control.

(2) Courts having jurisdiction of the subject matter and of the parties are hereby expressly authorized to provide for the future support of the children, in proper cases, by fixing some definite amount or amounts to be paid in

monthly, semimonthly, or weekly installments, or otherwise, as circumstances may warrant, and such awards, if not paid, may be enforced by any appropriate process of the court having jurisdiction, including levy of execution.

(3) In interstate cases, jurisdiction to modify, alter or enforce orders or decrees for the support of children shall be determined in accordance with the provisions of parts 20-29 of this chapter. In intrastate cases, jurisdiction to modify, alter or enforce orders or decrees for the support of children shall be determined in accordance with the provisions of parts 30 and 31 of this chapter.

(4) As used in this chapter, "order," where the context requires, includes an order concerning child or medical support issued pursuant to an administrative proceeding in any other state.

(5) In establishing or enforcing any duty of support under this chapter, the court shall give full faith and credit to all paternity determinations of any other state or territory, made pursuant to a voluntary acknowledgment or pursuant to any administrative or judicial process.

(6) A voluntary acknowledgment of paternity that is completed under the provisions of § 68-3-203(g), § 68-3-302, or § 68-3-305(b), or under similar provisions of another state or government, when certified by the state registrar or other governmental or institutional entity maintaining the record of the acknowledgment, shall be a basis for establishing a support order without requiring any further proceedings to establish paternity.

(7) The state of Tennessee, its officers, employees, agents or contractors, any counties, county officials, the clerks of any court, or any Title IV-D child support enforcement agency shall not be liable, in any case, to compensate any person for repayment of child support paid or for any other costs, as a result of the rescission pursuant to § 24-7-113 of any voluntary acknowledgment, or the rescission of any orders of legitimation, paternity, or support.

(8) When a court having jurisdiction determines child support pursuant to the Tennessee child support guidelines, based on either the actual income or the court's findings of an obligor's ability to earn income, the final child support order shall create an inference in any subsequent proceeding that the obligor has the ability to pay the ordered amount until such time as the obligor files an application with the court to modify the ordered amount.

(9) Where the lump sum amount of retirement or pension benefits or of balances in an individual retirement account, §§ 401(k), 403(b), 457, codified in 26 U.S.C. §§ 401(k), 403(b) and 457, respectively, or any other tax qualified account has been considered by the trial court, and determined to be marital property to be divided, the distributions of such lump sum amounts necessary to complete the division of property, whether distributed in a single payment or by periodic payments, shall not be considered income for the purpose of determining a spouse or ex-spouse's right to receive alimony or child support, but the income generated by the investment of such lump sum awards shall be considered income for such purpose.

(b)(1) Notwithstanding any other provision of law to the contrary, neither the department of human services, nor any Title IV-D child support contractor of the department, nor any recipient of public assistance in this or any other state or territory, nor any applicant for either public assistance in this or any other state or territory or for Title IV-D child support services

from the department or any other Title IV-D agency in this or any other state or territory, shall be required to demonstrate to a court or administrative tribunal that the caretaker of the child for whom child support is sought is vested with any more than physical custody of the subject child or children, in order to have standing to petition for child support from the legal parent of the child or children for whom support is sought, or to seek enforcement or modification of any existing orders involving such child or children.

(2) Legal custody of a child to whom a child support obligation is owed shall not be a prerequisite to the initiation of any support action or to the enforcement or modification of any support obligation in such cases, whether or not the obligation has been assigned to this state or any other state or territory by operation of law.

(c)(1) The court shall set a specific amount that is due each month, to be paid in one (1) or more payments as the court directs. In making any decree or order pursuant to this section, the court shall consider the provisions of § 34-1-102(b). Unless the court finds otherwise, each order made under this section shall contain the current address of the parties.

(2)(A) The order or decree of the court may provide that the payments for the support of such child or children shall be paid either to the clerk of the court or directly to the spouse, or other person awarded the custody of the child or children; provided, however, that:

(i) The court shall order that all child support payments based upon an income assignment issued by the clerk be paid to the clerk of the court, except as set forth in subdivision (c)(2)(A)(ii), for child support cases that are subject to the provisions for central collection and disbursement pursuant to § 36-5-116; and

(ii) In all Title IV-D child support cases in which payment of child support is to be made by income assignment, or otherwise, and in all cases where payments made by income assignment based upon support orders entered on or after January 1, 1994, that are not Title IV-D support cases, but must be made to the central collection and disbursement unit as provided by § 36-5-116, and, except as may otherwise be allowed by § 36-5-501(a)(2)(B), the court shall only order that the support payments be made to the central collection and disbursement unit pursuant to § 36-5-116. No agreement by the parties in a parenting plan, either temporary or permanent, entered pursuant to the provisions of chapter 6, part 4 of this title, or any other agreement of the parties or order of the court, except as may otherwise be allowed by § 36-5-501(a)(2)(B), shall alter the requirements for payment to the central collection and disbursement unit as required by § 36-5-116, and any provision of any parenting plan, agreement or court order providing for any other payment procedure contrary to the requirements of § 36-5-116, except as may otherwise be allowed by § 36-5-501(a)(2)(B), whether or not approved by the court, shall be void and of no effect. No credit shall be given by the court, the court clerk or the department of human services, for child support payments required by the support order that are made in contravention of such requirements; provided, however, that the department may make any necessary adjustments to the balances owed to account for changes in the Title IV-D or central collection and disbursement status of the support case.

(B)(i)*(a)* When the court enters an order in which the paternity of a child is determined or support is ordered, enforced or modified for a

child, each individual who is a party to any action pursuant to this part shall be immediately required to file with the court and, if the case is a Title IV-D child support case, shall immediately file with the local Title IV-D child support office, for entry into the state registry of support cases, and shall update, as appropriate, the parties' and, for subdivisions (c)(2)(B)(i)(*a*)(*1*)-(B)(i)(*a*)(*3*), the child's or children's:

(1) Full name and any change in name;

(2) Date and place of birth. This information shall be filed with the court as a separate document containing the parties' and the child's or children's names, dates of birth and social security numbers. The document shall be placed in an eight and one-half inch by eleven inch (8½″ x 11″) envelope containing the style of the case and docket number of the case and the document and envelope shall be file stamped by the clerk, and filed under seal in the case file. The document shall also be provided by the parties to the Title IV-D child support office together with the other information required in subdivisions (c)(2)(B)(i)(*a*)(*1*)-(*8*). The social security numbers and other information filed with the clerk shall be available to the clerk of court for processing of documents and legal actions such as, but not limited to, divorce certificates, garnishments, and income assignments. On request, the sealed information shall be made available to the department of human services and any other agency required by law to have access to the information and to other persons or agencies as ordered by the court.

(3) Residential and mailing addresses;

(4) Home telephone numbers;

(5) Driver license number;

(6) The name, address, and telephone number of the person's employer;

(7) The availability and cost of health insurance for the child; and

(8) Gross annual income.

(b) The requirements of subdivision (c)(2)(B)(i)(*a*) may be included in the court's order.

(ii) Each individual who is a party must update changes in circumstances of the individual for the information required by subdivision (c)(2)(B)(i)(*a*) within ten (10) days of the date of such change. At the time of the entry of the first order pertaining to child support after July 1, 1997, clear written notice shall be given to each party of the requirements of this subsection (c), procedures for complying with this subsection (c), and a description of the effect or failure to comply. Such requirement may be noted in the order of the court.

(iii) In any subsequent child support enforcement action, the delivery of written notice as required by Rule 5 of the Tennessee Rules of Civil Procedure, to the most recent residential or employer address shown in the court's records or the Title IV-D agency's records, as required in subdivision (c)(2)(B)(i)(*a*) shall be deemed to satisfy the due process requirements for notice and service of process with respect to that party, if there is a sufficient showing and the court is satisfied that a diligent effort has been made to ascertain the location and whereabouts of the party.

(iv) Upon motion of either party, upon a showing of domestic violence or the threat of such violence, the court may enter an order to withhold

from public access the address, telephone number, and location of the alleged victim or victims or threatened victims of such circumstances. The clerk of the court shall withhold such information based upon the court's specific order, but may not be held liable for release of such information.

(v) In any subsequent proceeding to modify or enforce support, there shall be a rebuttable presumption that the information provided by the parties, as required by this part, has not changed, unless a party has complied with the provisions of this section by updating the information with the court and, if the case is a Title IV-D child support case, with the local Title IV-D child support office.

(d)(1) All support payments that have been paid to the clerk of the court shall be distributed by the clerk, as provided in the order of the court, within ten (10) days; provided, that the payments made to the clerk of the court in Title IV-D child support cases shall be distributed and deposited pursuant to the operating agreements under subdivision (d)(3) and the provisions of subdivision (d)(6), after implementation of the statewide Title IV-D child support computer system in the clerk's county, and after the appropriate notice to the clerk by the department under subdivisions (d)(3) and (6).

(2) In every child support case being processed through the state's central collection and disbursement unit, if unable to provide the information concerning an order through a computer information transfer, the clerk shall send a copy of any new order or modification of such order, prior to or along with the first payment received pursuant to such order, to the department, or its designee, within ten (10) working days.

(3) Clerks participating in the operation of the statewide Title IV-D child support computer system shall be bound by the terms of the agreement and the laws, regulations, and policies and procedures of the Title IV-D child support program for the term of the agreement, unless the agreement is canceled by the department after notice to the clerk and an opportunity to correct any deficiencies caused by failure of the clerk to comply with federal or state regulations or procedures for operation of the system within thirty (30) days of such notice. While participating in the system, the clerks shall be entitled to receive the statutory fee for the collection and handling of child support obligations under the Title IV-D program. Any child support payment subject to distribution through the state's central collection and disbursement unit that has been received by a clerk shall be sent immediately by the clerk to the department or its designee, without the necessity of a court order.

(4) The clerks of all courts involved in the collection of any child support shall cooperate with and provide any reasonable and necessary assistance to the department or its contractors in the transfer of data concerning child support to the statewide Title IV-D child support computer system.

(5) Whenever the clerk has ceased handling Title IV-D child support payments under the provisions of subdivision (d)(3), and only where the context requires, all provisions in this chapter relating to the duties or actions involving the clerk shall be interpreted to substitute the department or its contractor.

(6) In all cases in which child support payments are subject to processing through the state's central collection and disbursement unit, the clerks shall, upon notice by the department, deposit all receipts of such child

support payments on a daily basis to a bank account from which the state of Tennessee shall electronically debit those payments for the purpose of obtaining funds to distribute the child support obligations to the obligee.

(7) In all Title IV-D child support cases, child support payments shall be made by the obligor to the department. No credit shall be given to an obligor for any payments made by the obligor or by another person on behalf of the obligor, directly to an obligee or the obligor's child or children, unless the obligee remits the payment to the department. In the event that a Title IV-D case is instituted subsequent to the establishment of an order of child support, the department shall notify the obligor and obligee and the appropriate clerk of this fact, and all payments of child support in Title IV-D cases shall be made by the obligor to the department, without further order of the court.

(8) When an order provides for the support of two (2) or more children in a case that is subject to enforcement under Title IV-D, and at least one (1) child is a public charge, based upon receipt of temporary assistance pursuant to title 71, chapter 3, part 1, TennCare-medicaid, or foster care or other custodial services from the state of Tennessee, the child support order shall be prorated by the department for purposes of distribution of the child support to the appropriate person or agency providing care or support for the child, without the need for modification of the child support order by the court.

(e)(1)(A) In making the court's determination concerning the amount of support of any minor child or children of the parties, the court shall apply, as a rebuttable presumption, the child support guidelines, as provided in this subsection (e). If the court finds that evidence is sufficient to rebut this presumption, the court shall make a written finding that the application of the child support guidelines would be unjust or inappropriate in that particular case, in order to provide for the best interest of the child or children, or the equity between the parties. Findings that the application of the guidelines would be unjust or inappropriate shall state the amount of support that would have been ordered under the child support guidelines and a justification for the variance from the guidelines.

(B) Notwithstanding any provision of this section or any other law or rule to the contrary, if the net income of the obligor exceeds ten thousand dollars ($10,000) per month, then the custodial parent must prove, by a preponderance of the evidence, that child support in excess of the amount provided for in the child support guidelines is reasonably necessary to provide for the needs of the minor child or children of the parties. In making the court's determination, the court shall consider all available income of the obligor, as required by this chapter, and shall make a written finding that child support in excess of the amount so calculated is or is not reasonably necessary to provide for the needs of the minor child or children of the parties. In determining each party's income for the purpose of applying the child support guidelines, the court shall deduct each party's capital losses from that party's capital gains in each year.

(C) When making retroactive support awards, pursuant to the child support guidelines established pursuant to this subsection (e), in cases where the parents of the minor child are separated or divorced, but where the court has not entered an order of child support, the court shall consider the following factors as a basis for deviation from the presumption in the

child support guidelines that child and medical support for the benefit of the child shall be awarded retroactively to the date of the parents' separation or divorce:

(i) Whether the remaining spouse knew or could have known of the location of the child or children who had been removed from the marital home by the abandoning spouse; or

(ii) Whether the abandoning spouse, or other caretaker of the child, intentionally, and without good cause, failed or refused to notify the remaining spouse of the location of the child following removal of the child from the marital home by the abandoning spouse; and

(iii) The attempts, if any, by the abandoning spouse, or other caretaker of the child, to notify the remaining spouse of the location of the child following removal of the child from the marital home by the abandoning spouse.

(D) In cases in which the presumption of the application of the guidelines is rebutted by clear and convincing evidence, the court shall deviate from the child support guidelines to reduce, in whole or in part, any retroactive support. The court must make a written finding that application of the guidelines would be unjust or inappropriate, in order to provide for the best interests of the child or children or the equity between the parties.

(E) Deviations shall not be granted in circumstances where, based upon clear and convincing evidence:

(i) The remaining spouse has a demonstrated history of violence or domestic violence toward the abandoning spouse, the child's caretaker or the child;

(ii) The child is the product of rape or incest of the mother by the father of the child;

(iii) The abandoning spouse has a reasonable apprehension of harm from the remaining spouse, or those acting on the remaining spouse's behalf, toward the abandoning spouse or the child; or

(iv) The remaining spouse, or those acting on the remaining spouse's behalf, has abused or neglected the child.

(F) In making any deviations from awarding child and medical support retroactively to the date of separation or divorce of the parties, the court shall make written findings of fact and conclusions of law to support the basis for the deviation, and shall include in the order the total amount of retroactive child and medical support that would have been paid retroactively to the date of separation or divorce of the parties, had a deviation not been made by the court.

(G) Nothing in this subdivision (e)(1) shall limit the right of the state of Tennessee to recover from the father or the remaining spouse expenditures made by the state for the benefit of the child, or the right, or obligation, of the Title IV-D child support agency to pursue retroactive support for the custodial parent or caretaker of the child, where appropriate.

(H) Any amounts of retroactive support ordered that have been assigned to the state of Tennessee, pursuant to § 71-3-124, shall be subject to the child support distribution requirements of 42 U.S.C. § 657. In such cases, the court order shall contain any language necessary to allow the state to recover the assigned support amounts.

(2) Beginning October 13, 1989, the child support guidelines promulgated by the department, pursuant to the rulemaking provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall be the guidelines that courts shall apply as a rebuttable presumption in child support cases.

(3) Child support guidelines shall be reviewed by the department of human services every three (3) years from the date of promulgation. The department shall make recommendations to the supreme court of any revisions needed in order to maintain compliance with the Family Support Act of 1988, and to ensure that application of the guidelines results in determinations of appropriate child support awards. A copy of the recommendations shall also be sent to the civil justice committee of the house of representatives and the health and welfare committee of the senate.

(4)(A) In addition to any other subtractions, calculations of net income under the guidelines shall take into consideration the support of any other children the obligor is legally responsible to provide. The court shall consider children of the obligor who are not included in a decree of child support, but for whom the obligor is legally responsible to provide support and is supporting, for the purposes of reducing the obligor's net income, in calculating the guideline amount, or as a reason for deviation from the guidelines.

(B) In calculating amounts of support for children under the guidelines, the court shall allocate an obligor's financial child support responsibility from the obligor's income among all children of the obligor for whom the obligor is legally responsible to provide support and is supporting, in a manner that gives equitable consideration as defined by the department's child support guidelines, to the children for whom support is being set in the case before the court and to any other children for whom the obligor is legally responsible and is supporting. The court shall require that payments, made out of that allocation for all children of the obligor for whom the obligor is legally responsible and is supporting, be made upon such consideration. Guidelines promulgated by the department shall be consistent with the provisions of this subdivision (e)(4)(B).

(f)(1) Any order for child support shall be a judgment entitled to be enforced as any other judgment of a court of this state, and shall be entitled to full faith and credit in this state and in any other state. Such judgment shall not be subject to modification as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties. If the full amount of child support is not paid by the date when the ordered support is due, the unpaid amount is in arrears, shall become a judgment for the unpaid amounts, and shall accrue interest from the date of the arrearage, at the rate of twelve percent (12%) per year. All interest that accumulates on arrearages shall be considered child support. Computation of interest shall not be the responsibility of the clerk.

(2) In addition to the remedies provided in part 5 of this chapter, but not as an alternative to those provisions, if a parent is more than thirty (30) days in arrears, the clerk of the court may, upon written application of the obligee parent, a guardian or custodian of the children, or the department of human services or its contractors in Title IV-D support cases, issue a summons or, in the discretion of the court, an attachment for such parent, setting a bond of

not less than two hundred fifty dollars ($250) or, in the discretion of the court, up to the amount of the arrears, for such other proceedings as may be held in the matter. In addition, the court may, at any time, require an obligor parent to give security by bond, with sufficient sureties approved by the court, or, alternatively, in the absence of the judge from the court, approved by the clerk of the court, for payment of past, present, and future support due under the order of support. If the obligor parent thereafter fails to appear or fails without good cause to comply with the order of support, such bonds may be forfeited and the proceeds from the bonds paid to the court clerk and applied to the order of support.

(3) Absent a court order to the contrary, if an arrearage for child support or fees due as court costs exists at the time an order for child support would otherwise terminate, the order of support, or any then existing income withholding arrangement, and all amounts ordered for payment of current support or arrears, including any arrears due for court costs, shall continue in effect in an amount equal to the then existing support order or income withholding arrangement, until the arrearage and costs due are satisfied, and the court may enforce all orders for such arrearages by contempt.

(4) The order of any court or administrative tribunal directing that an obligor pay a sum certain to reduce any support arrearage shall not preclude the use, by the department of human services or its contractors in the Title IV-D child support program, of any other administrative means of collecting the remaining balance of the outstanding arrearage, including, but not limited to, income tax refund intercepts, financial institution collections, enforcement of liens, or any other method authorized by law. The use of any additional administrative means of collection by the department or its contractors in the Title IV-D child support program is expressly authorized to reduce any portion, or all, of the outstanding balance of support as shown by the department's records, and any order of the court or administrative tribunal to the contrary is without any effect whatsoever, except for such appeal as may lie from the implementation of the administrative procedure that is used to reduce the arrearage.

(5)(A) In enforcing any provision of child support, if an obligee, or the department or its contractor in Title IV-D cases, specifically prays for revocation of a license because an obligor is alleged to be in noncompliance with an order of support, or if the court determines on its own motion, or on motion of a party, that any individual party has failed to comply with a subpoena or a warrant in connection with the establishment or enforcement of an order of support, the court may find, specifically, in its order that the obligor is not in compliance with an order of support as defined by part 7 of this chapter, or it may find that an individual party has failed to comply with a subpoena or warrant in connection with the establishment or enforcement of an order of support, and may direct that any or all of the obligor's or individual party's licenses be subject to revocation, denial or suspension by the appropriate licensing authority, pursuant to part 7 of this chapter. The court shall direct the clerk to send a copy of that order to the department of human services to be sent by the department to each licensing authority specified in the order for processing and suspension, denial or revocation pursuant to § 36-5-706 and any other applicable provisions of part 7 of this chapter. Costs related to such order shall be taxed to the obligor or individual party.

(B) If the obligor whose license has been subject to the provisions of subdivision (f)(5)(A) complies with the order of support, or if the individual party complies with the subpoena or warrant, the court shall enter an order making such a finding, and the clerk shall send an order immediately to the department of human services to be transmitted to each licensing authority specified in the order, which shall then immediately issue, renew or reinstate the obligor's or individual party's license, in accordance with the provisions of § 36-5-707. Costs related to such order shall be taxed to the obligor or individual party, as the case may be, and shall be paid by the obligor or the individual party prior to sending the order to the department for transmission to the licensing authority.

(C) The department shall provide available information to the obligee, party or the court in actions under this subdivision (f)(5), concerning the name and address of the licensing authority or authorities of the obligor or individual party, in order to enable the enforcement of the provisions of this subdivision (f)(5). The obligee or individual party, as the case may be, seeking such information shall pay a fee, as established by the department for the provision of such service. These fees may be taxed as costs to the obligor whose license has been revoked pursuant to this subdivision (f)(5), or to the individual party who has failed to comply with the warrant or subpoena.

(D) If the licensing authority fails to take appropriate action pursuant to the orders of the court under this subdivision (f)(5), the party may seek a further order from the court to direct the licensing authority to take such action, and the party may seek any appropriate court sanctions against the licensing authority.

(E) For purposes of this subdivision (f)(5), "individual party" means a party to the support action who is a person, but does not include a governmental agency, or the contractor or agent of such governmental agency, that is enforcing an order of support. "Party" may include, where the context requires, an individual person, or it may include a governmental agency or contractor or agent of such governmental agency.

(g)(1) Upon application of either party, the court shall decree an increase or decrease of support when there is found to be a significant variance, as defined in the child support guidelines established by subsection (e), between the guidelines and the amount of support currently ordered, unless the variance has resulted from a previously court-ordered deviation from the guidelines and the circumstances that caused the deviation have not changed. Any support order subject to enforcement under Title IV-D may be modified in accordance with § 36-5-103(f).

(2) The necessity to provide for the child's health care needs shall also be a basis for modification of the amount of the order, regardless of whether a modification in the amount of child support is necessary.

(3) The court shall not refuse to consider a modification of a prior order and decree as it relates to future payments of child support because the party is in arrears under that order and decree, unless the arrearage is a result of intentional action by the party.

(4)(A) Notwithstanding the provisions of subdivision (g)(4)(B) and § 36-5-103(f), for the purposes of this chapter, the birth or adoption of another child for whom an obligor is legally responsible to support and is supporting shall constitute a substantial and material change of circum-

stances for seeking a review of the existing order to determine if the addition of such child, and any credits applicable for the addition of such child under the department's child support guidelines, would result in a significant variance under such guidelines. If the significant variance is demonstrated by the review, the amount of an existing child support order may be modified by the court.

(B) For purposes of this chapter, the significant variance established by the department of human services pursuant to the child support guidelines shall provide a lower threshold for modification of child support orders for persons whose adjusted gross incomes are within low income categories established by the department's child support guidelines. The significant variance involving low income persons shall be established by rule of the department at no more than seven and one half percent (7 ½ %) of the difference between the current child support order and the amount of the proposed child support order.

(5)(A) In Title IV-D child support cases that the department of human services is enforcing, the department shall provide a child support obligor notice ninety (90) days prior to the eighteenth birthday of a child or children for whom the obligor is paying child support, as such birthday is indicated by the department's records.

(B) If the following conditions are met, then the obligor may seek termination of the order of support and may also request that the department, as required by federal law, assist in seeking termination of the order:

(i) The department's records demonstrate that the child for whom an order of support in a Title IV-D child support case has been entered has reached eighteen (18) years of age and has graduated from high school, or that the class of which the child is a member when the child reached eighteen (18) years of age has graduated from high school, the obligor has otherwise provided the department with written documentation of such facts, or the obligor has provided the department with written documentation that a child for whom the obligor is required to pay support has died or has married;

(ii) No other special circumstances exist, including, but not limited to, the circumstances provided for in subsection (k) regarding disabled children, that require the obligation to continue;

(iii) The obligor does not owe arrearages to the obligee parent, any guardian or custodian of the child, the department of human services, any other agency of the state of Tennessee, or any other Title IV-D agency of any state;

(iv) The costs of court have been paid; and

(v) There are no other children for whom the obligor is required to pay child support.

(C)(i) If the conditions of subdivisions (g)(5)(B)(i)-(v) exist in the Title IV-D case, as shown by the department's records, or such conditions exist based upon the written documentation provided by the obligor and verified by the department, then the department shall immediately temporarily suspend the order of support for the child who has reached majority. If the existing court order was the result of a deviation from the child support guidelines, the department shall immediately seek from the court termination of the support order for such child, and shall provide the obligee with notice of the filing of the petition to terminate

such order.

(ii) If the existing order was not the result of a deviation from the child support guidelines, the department shall give notice to the obligee, and to the other obligor, of the temporary suspension of the order, based upon verification of the status of the case pursuant to subdivision (g)(5)(B), of its intent to permanently terminate the support order by an administrative order, which the department may issue for such purpose, and of the opportunity for a hearing upon the issue of permanent termination of the order.

(iii) If the obligee contests the temporary suspension of the order of support under the circumstances of subdivisions (g)(5)(B)(i)-(v) and prevails following entry of the court or administrative order, the obligor shall pay the support amounts and any other arrearages or court costs not paid as a result of the temporary suspension of the order. The administrative order shall be filed with the clerk of the court having jurisdiction of the case.

(D)(i) If the conditions of subdivisions (g)(5)(B)(i)-(iv) are met in the Title IV-D case, but there are other children for whom the obligor is still obligated to support, the department shall immediately conduct a review of the support order and shall seek the support order's adjustment, if appropriate under the child support guidelines for such children. The obligor shall continue to make child support payments, in accordance with the existing order, until the court or department modifies the order pursuant to this subdivision (g)(5)(D).

(ii) If the existing court order was the result of a deviation from the child support guidelines, the department shall seek modification of the support order from the court, and shall provide the obligee and the obligor with notice of the filing of the petition to modify such order.

(iii) If the existing order was not the result of a deviation from the child support guidelines, and the department reviews the order and determines that the order should be modified pursuant to such guidelines, then the department shall notify the parties of the department's intent to modify the support order by an administrative order, which the department may issue for such purpose, and shall notify the parties of the opportunity for a hearing on the issue of modification of the order.

(iv) The support order shall be modified as established by order of the court or the department, as required pursuant to the child support guidelines. If the modified payment amount is lower than the payment amount required prior to the modification, then the obligor shall be given credit for such amount against future payments of support for the remaining children under the order. If the modified payment amount is higher than the payment amount required prior to the modification, then the obligor shall pay the higher ordered amount from the date of entry of the order. The administrative order shall be filed with the clerk of the court having jurisdiction of the case.

(E) The department's review and adjustment process, and the administrative hearing process outlined in this subdivision (g)(5), shall comply with any other due process requirements for notice to the obligor and obligee as may otherwise be required by this chapter.

(h)(1) The court may direct the acquisition or maintenance of health insurance covering each child of the marriage and may order either party to

pay all, or each party to pay a pro rata share of, the health care costs not paid by insurance proceeds. In no event shall eligibility for or receipt of medicaid or TennCare-Medicaid by the custodial parent be considered to meet the need to provide for the child's health care needs in the order, if reasonable and affordable health insurance is available.

(2) In any case in which the court enters an order of support enforced under Title IV-D of the Social Security Act, the court shall enter an order providing for health care coverage to be provided for the child or children.

(3) The provisions of § 36-5-501(a)(3) shall apply with respect to enrollment of a child in the noncustodial parent's employer-based health care plan.

(i) The court may direct either or both parties to designate the children as beneficiaries under any existing policies insuring the life of either party, and maintenance of existing policies insuring the life of either party, or the purchase and maintenance of life insurance and designation of beneficiaries.

(j) Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties as to child support. In any such agreement, the parties must affirmatively acknowledge that no action by the parties shall be effective to reduce child support after the due date of each payment, and that they understand that court approval must be obtained before child support may be reduced, unless such payments are automatically reduced or terminated under the terms of the agreement.

(k)(1) Except as provided in subdivision (k)(2), the court may continue child support beyond a child's minority for the benefit of a child who is handicapped or disabled, as defined by the Americans with Disabilities Act, until such child reaches twenty-one (21) years of age.

(2) Provided, that such age limitation shall not apply if such child is severely disabled and living under the care and supervision of a parent, and the court determines that it is in the child's best interest to remain under such care and supervision and that the obligor is financially able to continue to pay child support. In such cases, the court may require the obligor to continue to pay child support for such period as it deems in the best interest of the child; provided, however, that, if the severely disabled child living with a parent was disabled prior to this child attaining eighteen (18) years of age and if the child remains severely disabled at the time of entry of a final decree of divorce or legal separation, then the court may order child support regardless of the age of the child at the time of entry of the decree.

(3) In so doing, the court may use the child support guidelines.

(*l*)(1) The court may, in its discretion, at any time pending the suit, upon motion and after notice and hearing, make any order that may be proper to compel a spouse to pay any sums necessary to enable the other spouse to prosecute or defend the suit and to provide for the custody and support of the minor children of the parties during the pendency of the suit, and to make other orders as it deems appropriate. In making any order under this subsection (*l*), the court shall consider the financial needs of each spouse and the children, and the financial ability of each spouse to meet those needs and to prosecute or defend the suit.

(2) In any Title IV-D case, if the court grants relief, whether in whole or in part, to the department of human services or the department's Title IV-D contractor, or to any applicant for Title IV-D child support services, the court shall not tax any court costs against the department, the Title IV-D

contractor or any applicant for child support services. The court shall not award attorney fees against the department, the Title IV-D contractor or any applicant for child support services, unless there is a clearly established violation of Rule 11 of the Tennessee Rules of Civil Procedure or for other contemptuous or other sanctionable conduct. The provisions of this subdivision (*l*)(2) are not intended to limit the discretion of the courts to tax costs to the individual parties on non-Title IV-D issues, such as custody or visitation.

(m) No provision, finding of fact or conclusion of law in a final decree of divorce or annulment or other declaration of invalidity of a marriage that provides that the husband is not the father of a child born to the wife during the marriage or within three hundred (300) days of the entry of the final decree, or that names another person as the father of such child, shall be given preclusive effect, unless scientific tests to determine parentage are first performed and the results of the test that exclude the husband from parentage of the child or children, or that establish paternity in another person, are admitted into evidence. The results of such parentage testing shall only be admitted into evidence in accordance with the procedures established in § 24-7-112.

36-5-112. Responsible teen parent pilot project.

(a) Notwithstanding the provisions of title 71, chapter 3, part 1, or any other law to the contrary, the department shall establish and implement the responsible teen parent pilot project. The pilot project shall be established in at least one (1) county within each of the three (3) grand divisions. Acting in consultation with the department of education and department of labor and workforce development, the council of juvenile and family court judges, the district attorneys general conference, the department of human services shall develop policies and procedures whereby child support obligations of project participants may be adjusted or deferred; provided, that the participants engage in one (1) or more of the following activities:

(1) Attending school and making satisfactory progress toward high school graduation;

(2) Attending preparatory classes and making satisfactory progress toward receipt of a general equivalency diploma;

(3) Participating in approved job training programs and making satisfactory progress toward job placement; or

(4) Participating in approved parenting skills training courses and making satisfactory progress toward mastery of the subject matter of such courses.

(b) Participation in the responsible teen parent pilot program shall be restricted to persons who:

(1) Are under twenty-one (21) years of age;

(2) Are non-custodial parents of children who are receiving, or who have recently received, aid to families with dependent children benefits;

(3) Are unable to provide adequate support for such children due to unemployment or underemployment;

(4) Pay a minimum, specified amount of child support; and

(5) Visit their children at least once each week unless such visitation is restricted by court order.

(c) In accordance with the provisions of the Uniform Administrative Proce-

dures Act, compiled in title 4, chapter 5, the department of human services, acting in consultation with the department of education, department of labor and workforce development, the council of juvenile and family court judges, and the district attorneys general conference, shall promulgate such rules as may be necessary to implement the responsible teen parent pilot project in an efficient and effective manner. Such rules shall include, but shall not be limited to, policies and procedures for:

(1) Identifying teen parents who would be eligible to participate in these programs in the pilot counties;

(2) Pursuing the establishment of paternity in all cases involving teen parenthood within the pilot counties;

(3) Pursuing the establishment and enforcement of support orders in such cases;

(4) Selecting project participants;

(5) Monitoring project participants;

(6) Determining adjustments or deferral of child support obligations for project participants;

(7) Selecting approved job training programs; and

(8) Determining the minimum amount of child support that must be paid by project participants throughout their enrollment in the pilot project.

(d) The department of human services shall gather and compile data to evaluate the efficiency and effectiveness of the pilot project in promoting responsible parenting and in encouraging near- and long-term fulfillment of child support obligations. On or before December 31 each year, the department of human services, acting in consultation with the department of education, department of labor and workforce development, the council of juvenile and family court judges, and the district attorneys general conference, shall report to the judiciary committee of the senate and the civil justice committee of the house of representatives concerning implementation of the pilot project and shall include any recommendations pertaining thereto.

(e) Within each of the pilot counties, the department of human services and the juvenile court or the district attorney general shall jointly undertake a public awareness campaign to periodically inform and remind teens that:

(1) Teen parents have a legal obligation to financially support their children, and that such obligation continues for eighteen (18) years following the birth of a child;

(2) The legal obligation of support exists regardless of a teen parent's gender or marital status; and

(3) The legal obligation of support will be enforced and the means with which the department may enforce the obligation.

(f) The provisions of this section shall not be construed or applied in any manner that jeopardizes or reduces the availability of federal funding resources for state administered public assistance programs.

36-5-114. Federally required state collection and disbursement unit for child and spousal support.

(a)(1) The provisions of this section are intended to outline a flexible waiver application procedure for the federally required centralized collection and disbursement of child and spousal support established pursuant to 42 U.S.C. § 654b. Wherever the terminology "collection and disbursement" is used in

this section, or in other sections of law using that terminology, it is the legislative intent that the use of such term in the conjunctive shall not be construed to prevent the department of human services from seeking waivers and the state of Tennessee from implementing any procedures, permitted by federal law, regulations, or interpretations of such law or regulations or such waivers, that may allow for alternate methods or processes for either collection or disbursement of child and spousal support by the clerks of the courts of this state.

(2)(A) If the federal law, or regulations or the interpretation of such law or regulations, are repealed or modified so that centralized collection and disbursement are no longer mandated by federal law, and such repeal or modification occurs before the implementation of the centralized collection system, either directly by department itself or before the execution of a contract by the department with a contractor for the operation of such system, the provisions of state law addressing such a centralized system for the collection and disbursement of child and spousal support shall be null and void.

(B) Should the federal requirement of a centralized system be repealed or modified after implementation by the department of the federally required centralized collection and disbursement system, either directly by the department or by the department through a contractor, the provisions of law relative to the federally required centralized collection and disbursement system shall remain in effect, but the commissioner of human services shall, at the request of and in conjunction with the clerks of the court, develop a plan for transition of the collection and disbursement functions to the clerks of the court, which shall include proposed legislation that may be necessary to return the collection and disbursement process to the clerks of court. The plan shall be submitted to the chairs of the civil justice committee of the house of representatives and the judiciary committee of the senate prior to the beginning of the next session of the general assembly after the repeal or modification of the federal requirements, but in no event later than ninety (90) days after the repeal or modification of the federal requirements.

(3) Nothing herein shall impair the validity of a contract that has been executed by the state of Tennessee or the department with any person or entity for the operation of the federally required centralized collection and disbursement system before the repeal or modification of the federal centralized collection and disbursement requirement.

(b)(1) If a waiver is available under federal law or regulations that would enable the clerks of the court to continue to collect or disburse child and spousal support, the commissioner shall, at the request of the state court clerks conference, consult with the clerks of the court to determine the feasibility of implementing the provisions of such a waiver, and shall make application to the United States department of health and human services for such a waiver; provided, that if the department has contracted for the operation of the central collection and disbursement system at the time federal law and regulations, or the interpretation of such, have changed, then the provisions of this subdivision (b)(1) shall be subject to the contract terms.

(2) In the event the waiver is granted that permits the clerks of court to perform services in the central collection and disbursement system, the

clerks of court may enter into a contract, as permitted by state and federal law, with a third party to perform any of the functions required by federal law or required under such a waiver. If such a contract is appropriate, the president of the state court clerks conference, upon authorization of the board of directors of the state court clerks conference, shall have authority to bind the members of the conference to the terms of the contract. The contract may provide for any contractor to retain or distribute all or part of the clerks' fees authorized by § 8-21-403, if permitted by federal regulations. Under any plan, the collection and disbursement of child and spousal support shall be conducted in such a manner as will not adversely affect either compliance with federal regulations or federal funding for the Title IV-A block grant program and the Title IV-D child support program.

36-6-106. Child custody.

(a) In a suit for annulment, divorce, separate maintenance, or in any other proceeding requiring the court to make a custody determination regarding a minor child, the determination shall be made on the basis of the best interest of the child. In taking into account the child's best interest, the court shall order a custody arrangement that permits both parents to enjoy the maximum participation possible in the life of the child consistent with the factors set out in subdivisions (a)(1)-(10), the location of the residences of the parents, the child's need for stability and all other relevant factors. The court shall consider all relevant factors, including the following, where applicable:

(1) The love, affection and emotional ties existing between the parents or caregivers and the child;

(2) The disposition of the parents or caregivers to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent or caregiver has been the primary caregiver;

(3) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment; provided, that, where there is a finding, under subdivision (a)(8), of child abuse, as defined in § 39-15-401 or § 39-15-402, or child sexual abuse, as defined in § 37-1-602, by one (1) parent, and that a nonperpetrating parent or caregiver has relocated in order to flee the perpetrating parent, that the relocation shall not weigh against an award of custody;

(4) The stability of the family unit of the parents or caregivers;

(5) The mental and physical health of the parents or caregivers. The court may, when it deems appropriate, order an examination of a party pursuant to Rule 35 of the Tennessee Rules of Civil Procedure and, if necessary for the conduct of the proceedings, order the disclosure of confidential mental health information of a party pursuant to § 33-3-105(3). The court order required by § 33-3-105(3) shall contain a qualified protective order that, at a minimum, expressly limits the dissemination of confidential protected mental health information for the purpose of the litigation pending before the court and provides for the return or destruction of the confidential protected mental health information at the conclusion of the proceedings;

(6) The home, school and community record of the child;

(7)(A) The reasonable preference of the child, if twelve (12) years of age or older;

(B) The court may hear the preference of a younger child on request. The preferences of older children should normally be given greater weight

than those of younger children;

(8) Evidence of physical or emotional abuse to the child, to the other parent or to any other person; provided, that, where there are allegations that one (1) parent has committed child abuse, as defined in § 39-15-401 or § 39-15-402, or child sexual abuse, as defined in § 37-1-602, against a family member, the court shall consider all evidence relevant to the physical and emotional safety of the child, and determine, by a clear preponderance of the evidence, whether such abuse has occurred. The court shall include in its decision a written finding of all evidence, and all findings of facts connected to the evidence. In addition, the court shall, where appropriate, refer any issues of abuse to the juvenile court for further proceedings;

(9) The character and behavior of any other person who resides in or frequents the home of a parent or caregiver and the person's interactions with the child; and

(10) Each parent's or caregiver's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child. In determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights, and the court shall further consider any history of either parent or any caregiver denying parenting time to either parent in violation of a court order.

(b) Notwithstanding the provisions of any law to the contrary, the court has jurisdiction to make an initial custody determination regarding a minor child or may modify a prior order of child custody upon finding that the custodial parent has been convicted of or found civilly liable for the intentional and wrongful death of the child's other parent or legal guardian.

(c) As used in this section, "caregiver" has the meaning ascribed to that term in § 37-5-501.

(d) Nothing in subsections (a) and (c) shall be construed to affect or diminish the constitutional rights of parents that may arise during and are inherent in custody proceedings.

(e) The disability of a parent seeking custody shall not create a presumption for or against awarding custody to such a party but may be a factor to be considered by the court.

36-6-108. Parental relocation.

(a) If a parent who is spending intervals of time with a child desires to relocate outside the state or more than fifty (50) miles from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail. Unless excused by the court for exigent circumstances, the notice shall be mailed not later than sixty (60) days prior to the move. The notice shall contain the following:

(1) Statement of intent to move;

(2) Location of proposed new residence;

(3) Reasons for proposed relocation; and

(4) Statement that the other parent may file a petition in opposition to the move within thirty (30) days of receipt of the notice.

(b) Unless the parents can agree on a new visitation schedule, the relocating parent shall file a petition seeking to alter visitation. The court shall consider all relevant factors, including those factors enumerated within subsection (d). The court shall also consider the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent. The court shall assess the costs of transporting the child for visitation and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.

(c) If the parents are actually spending substantially equal intervals of time with the child and the relocating parent seeks to move with the child, the other parent may, within thirty (30) days of receipt of notice, file a petition in opposition to removal of the child. No presumption in favor of or against the request to relocate with the child shall arise. The court shall determine whether or not to permit relocation of the child based upon the best interests of the child. The court shall consider all relevant factors including the following where applicable:

(1) The extent to which visitation rights have been allowed and exercised;

(2) Whether the primary residential parent, once out of the jurisdiction, is likely to comply with any new visitation arrangement;

(3) The love, affection and emotional ties existing between the parents and child;

(4) The disposition of the parents to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent has been the primary caregiver;

(5) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

(6) The stability of the family unit of the parents;

(7) The mental and physical health of the parents;

(8) The home, school and community record of the child;

(9)(A) The reasonable preference of the child if twelve (12) years of age or older;

(B) The court may hear the preference of a younger child upon request. The preferences of older children should normally be given greater weight than those of younger children;

(10) Evidence of physical or emotional abuse to the child, to the other parent or to any other person; and

(11) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child.

(d)(1) If the parents are not actually spending substantially equal intervals of time with the child and the parent spending the greater amount of time with the child proposes to relocate with the child, the other parent may, within thirty (30) days of receipt of the notice, file a petition in opposition to removal of the child. The other parent may not attempt to relocate with the child unless expressly authorized to do so by the court pursuant to a change of custody or primary custodial responsibility. The parent spending the greater amount of time with the child shall be permitted to relocate with the child unless the court finds:

(A) The relocation does not have a reasonable purpose;

(B) The relocation would pose a threat of specific and serious harm to the child that outweighs the threat of harm to the child of a change of custody; or

(C) The parent's motive for relocating with the child is vindictive in that it is intended to defeat or deter visitation rights of the non-custodial parent or the parent spending less time with the child.

(2) Specific and serious harm to the child includes, but is not limited to, the following:

(A) If a parent wishes to take a child with a serious medical problem to an area where no adequate treatment is readily available;

(B) If a parent wishes to take a child with specific educational requirements to an area with no acceptable education facilities;

(C) If a parent wishes to relocate and take up residence with a person with a history of child or domestic abuse or who is currently abusing alcohol or other drugs;

(D) If the child relies on the parent not relocating who provides emotional support, nurturing and development such that removal would result in severe emotional detriment to the child;

(E) If the custodial parent is emotionally disturbed or dependent such that the custodial parent is not capable of adequately parenting the child in the absence of support systems currently in place in this state, and such support system is not available at the proposed relocation site; or

(F) If the proposed relocation is to a foreign country whose public policy does not normally enforce the visitation rights of non-custodial parents, that does not have an adequately functioning legal system or that otherwise presents a substantial risk of specific and serious harm to the child.

(e) If the court finds one (1) or more of the grounds designated in subsection (d), the court shall determine whether or not to permit relocation of the child based on the best interest of the child. If the court finds it is not in the best interests of the child to relocate as defined herein, but the parent with whom the child resides the majority of the time elects to relocate, the court shall make a custody determination and shall consider all relevant factors including the following where applicable:

(1) The extent to which visitation rights have been allowed and exercised;

(2) Whether the primary residential parent, once out of the jurisdiction, is likely to comply with any new visitation arrangement;

(3) The love, affection and emotional ties existing between the parents and child;

(4) The disposition of the parents to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent has been the primary caregiver;

(5) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

(6) The stability of the family unit of the parents;

(7) The mental and physical health of the parents;

(8) The home, school and community record of the child;

(9)(A) The reasonable preference of the child if twelve (12) years of age or older;

(B) The court may hear the preference of a younger child upon request. The preferences of older children should normally be given greater weight

than those of younger children;

(10) Evidence of physical or emotional abuse to the child, to the other parent or to any other person; and

(11) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child.

(f) The court shall consider the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent. The court shall assess the costs of transporting the child for visitation, and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.

(g) Nothing in this section shall prohibit either parent from petitioning the court at any time to address issues, such as, but not limited to, visitation, other than a change of custody related to the move. In the event no petition in opposition to a proposed relocation is filed within thirty (30) days of receipt of the notice, the parent proposing to relocate with the child shall be permitted to do so.

(h) It is the legislative intent that the gender of the parent who seeks to relocate for the reason of career, educational, professional, or job opportunity, or otherwise, shall not be a factor in favor or against the relocation of such parent with the child.

(i) Either parent in a parental relocation matter may recover reasonable attorney fees and other litigation expenses from the other parent in the discretion of the court.

37-1-114. Detention or shelter care of child prior to hearing on petition.

(a) A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless there is probable cause to believe that the child:

(1) Has committed the delinquent or unruly act with which the child is charged; or

(2) Is a neglected, dependent or abused child, and in either case the child's detention or shelter care is required because the child is subject to an immediate threat to the child's health or safety to the extent that delay for a hearing would be likely to result in severe or irreparable harm, or the child may abscond or be removed from the jurisdiction of the court, and in either case, there is no less drastic alternative to removal of the child from the custody of the child's parent, guardian, legal custodian or the person who physically possesses or controls the child available that would reasonably and adequately protect the child's health or safety or prevent the child's removal from the jurisdiction of the court pending a hearing.

(b) Children alleged to be unruly shall not be detained for more than twenty-four (24) hours, excluding nonjudicial days unless there has been a detention hearing and a judicial determination that there is probable cause to believe the child has violated a valid court order, and in no event shall such a child be detained for more than seventy-two (72) hours exclusive of nonjudicial days prior to an adjudicatory hearing. Nothing herein prohibits the court from ordering the placement of children in shelter care where appropriate, and such placement shall not be considered detention within the meaning of this section.

(c) A child shall not be detained in any secure facility or secure portion of

any facility unless:

(1) There is probable cause to believe the child has committed a delinquent offense constituting:

(A) A crime against a person resulting in the serious injury or death of the victim or involving the likelihood of serious injury or death to such victim; or

(B) The unlawful possession of a handgun or carrying of a weapon, as prohibited by title 39, chapter 17, part 13;

(2) There is probable cause to believe the child has committed any other delinquent offense involving the likelihood of serious physical injury or death, or an offense constituting a felony, violation of probation or violation of aftercare, and the child:

(A) Is currently on probation;

(B) Is currently awaiting court action on a previous alleged delinquent offense;

(C) Is alleged to be an escapee or absconder from a juvenile facility, institution or other court-ordered placement; or

(D) Has, within the previous twelve (12) months, willfully failed to appear at any juvenile court hearing, engaged in violent conduct resulting in serious injury to another person or involving the likelihood of serious injury or death, or been adjudicated delinquent by virtue of an offense constituting a felony if committed by an adult;

(3) There is probable cause to believe the child has committed a delinquent offense, and special circumstances in accordance with the provisions of subsection (a) indicate the child should be detained; however, in any such case, the judge shall, within twenty-four (24) hours of the actual detention, excluding nonjudicial days, issue a written order on a form prescribed by the Tennessee council of juvenile and family court judges setting forth the specific reasons necessitating such detention. Nothing in this subdivision (c)(3) shall be construed as requiring a hearing or formal finding of fact, except as otherwise required by § 37-1-117;

(4) The child is alleged to be an escapee from a secure juvenile facility or institution;

(5) The child is wanted in another jurisdiction for an offense that, if committed by an adult, would be a felony in that jurisdiction;

(6) There is probable cause to believe the child is an unruly child who has violated a valid court order or who is a runaway from another jurisdiction. Any detention of such a child shall be in compliance with subsection (b);

(7) In addition to any of the conditions listed in subdivisions (c)(1)-(6), there is no less restrictive alternative that will reduce the risk of flight or of serious physical harm to the child or to others, including placement of the child with a parent, guardian, legal custodian or relative; use of any of the alternatives listed in § 37-1-116(g); or the setting of bail; and

(8) For the purposes of this subsection (c), "serious physical injury" includes conduct that would constitute the offenses of aggravated rape, rape and aggravated sexual battery.

37-1-128. Investigations — Emergency temporary care and custody — Physical and mental examinations — Evaluation and commitment for mental illness or developmental disability.

(a)(1) When a child alleged to be delinquent or unruly is brought before the court, the court may notify a probation officer attached to the court or any such person, persons or agencies available to the court, or to the department of children's services, and it shall be their duty to:

(A) Make an investigation of the case;

(B) Be present in court to report when the case is heard;

(C) Furnish such information and assistance as the court may require; and

(D) Take charge of any child before or after the hearing as may be directed by the court.

(2) A probation officer shall have, as to any child committed to such officer's care, the powers of a law enforcement officer. At any time, the probation officer may bring such child before the court committing the child to the officer's care for further action as the court may deem fit and proper.

(b)(1) When a petition is filed in the juvenile court alleging a child to be either an abandoned child or a dependent and neglected child, it is the function of the juvenile court, when necessary, to give the child emergency temporary care, and the court shall forthwith refer the case to the county director of public welfare to investigate the social conditions of the child and to report the findings to the court to aid the court in its disposition of the child. The director shall submit such director's findings pursuant to an order from the court. If the child who is the subject of the petition is in the custody of a licensed child-placing agency, or, if the petition is filed by a licensed child-placing agency, the referral may be made to the licensed child-placing agency having custody of the child or filing the petition in lieu of a referral to the director. The court may make informal adjustment of such cases as is provided by § 37-1-110.

(2) When the court finds, based upon a sworn petition or sworn testimony containing specific factual allegations, that there is probable cause to believe that the conditions specified in § 37-1-114(a)(2) exist and the child is in need of the immediate protection of the court, the court may order that the child be removed from the custody of the child's parent, guardian, legal custodian or the person who physically possesses or controls the child, pending further investigation and hearing for a period not to exceed three (3) days, excluding Saturdays, Sundays and legal holidays. In no case shall such order remain in effect for more than two (2) days, excluding Saturdays, Sundays and legal holidays, unless a petition is filed within the two-day period. If the child is not returned to the parent, guardian or legal custodian within such three-day period, a hearing shall be conducted pursuant to § 37-1-117(c). The provisions of the preceding sentence may be waived by express and knowing waiver, by the parties to an action, including the parents, guardian or legal custodian, and the child or guardian ad litem for the child, if the child is of tender years. Any such waiver may be revoked at any time, at which time the provisions of this section shall apply. In lieu of any disposition of the child authorized by the preceding sentence, the court may, in its discretion, authorize a representative of the department to remain in the child's home with the child until a parent, legal guardian or relative of the child enters the

home and expresses a willingness and apparent ability to resume permanent charge of the child, or, in the case of a relative, to assume charge of the child until a parent or legal guardian enters the home and expresses such willingness and apparent ability.

(c)(1) At any time prior to a child being adjudicated unruly or dependent and neglected, or before the disposition of a child who has been adjudicated delinquent, unruly or dependent and neglected, the court may order that the department make an assessment of the child and report the findings and recommendations to the court. Such order of referral shall confer authority to the department or its designees to transport the child and to obtain any necessary evaluations of the child without further consent of the parent(s), legal custodian or guardian.

(2) If, during the evaluation or assessment, the department determines that there is a need for treatment for either the mental or physical well being of the child, consent of the parent(s), guardian or current legal custodian shall be obtained. If such consent cannot be obtained, the department may apply to the court for authorization to provide consent on behalf of the child. If a child is suspected of being in need of or is eligible for special education services, then state and federal laws governing evaluation and placement must be followed.

(3) A report to the court of the department's recommendations shall be made within fifteen (15) days, which may be extended up to thirty (30) days for good cause following the court's order of referral. The department shall include in the report a review of the child's previous records including, but not limited to, health and education records, a review of the child's family history and current family status, and a written recommendation concerning the child's status.

(4) Any order of the court that places custody of a child with the department shall empower the department to select any specific residential or treatment placements or programs for the child according to the determination made by the department, its employees, agents or contractors.

(d) During the pendency of any proceeding, the court may order the child examined at a suitable place by a physician regarding the child's medical condition, and may order medical or surgical treatment of a child who is suffering from a serious physical condition or illness that requires prompt treatment, even if the parent, guardian or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of such person's refusal to consent to treatment.

(e)(1)(A) If, during the pendency of any proceeding under this chapter, there is reason to believe that the child may be suffering from mental illness, the court may order the child to be evaluated on an outpatient basis by a mental health agency or a licensed private practitioner designated by the commissioner of mental health and substance abuse services to serve the court. If, during the pendency of any proceeding under this chapter, there is reason to believe that the child may be suffering from a developmental disability, the court may order the child to be evaluated on an outpatient basis by a mental health agency, developmental center or a licensed private practitioner designated by the commissioner of mental health and substance abuse services to serve the court. The outpatient evaluation shall be completed no more than thirty (30) days after receipt of the order by the examining professional.

(B) If, and only if, in either of the circumstances described in subdivision (e)(1)(A) the outpatient evaluator concludes that further evaluation and treatment are needed, the court may order the child hospitalized. If the court orders the child to be hospitalized in a department of mental health and substance abuse services facility, hospital or treatment resource, the child shall be placed into the custody of the commissioner of mental health and substance abuse services at the expense of the county for not more than thirty (30) days at a facility, hospital or treatment resource with available, suitable accommodations. Prior to transporting a defendant for such evaluation and treatment in a department facility, the sheriff or other transportation agent shall determine that the receiving department facility has available, suitable accommodations.

(2) If an evaluation is ordered under this subsection (e), the evaluator shall file a complete report with the court, which shall include:

(A) Whether the child is mentally ill or developmentally disabled;

(B) Identification of the care, training or treatment required to address conditions of mental illness or developmental disability that are found, and recommendations as to resources that may be able to provide such services;

(C) Whether the child is subject to voluntary or involuntary admission or commitment for inpatient or residential services or for commitment to the custody of the department of mental health and substance abuse services for such conditions under title 33; and

(D) Any other information requested by the court that is within the competence of the evaluator.

(3) If it appears from the evaluation report and other information before the court that the child is in need of care, training or treatment for mental illness or developmental disability, the court may proceed in accordance with other provisions of this chapter or may order that proceedings be initiated before the court under § 37-1-175, § 33-5-402 or title 33, chapter 6, part 5.

(4) When transportation of the child is necessary to obtain evaluations under this subsection (e), the court may order the child transported with the cost of the transportation borne by the county from which the child is sent.

(5) If a community mental health center receives grants or contracts from the department of mental health and substance abuse services for services for mental illness or developmental disability and the commissioner has not designated another provider of outpatient evaluation for the court, the department shall contract with the center for evaluation services under this subsection (e), and the center shall provide such services ordered under this subsection (e) by courts in the center's catchment area.

(6) If a child who is alleged to be delinquent or unruly is brought before the court, and if the court determines that there is reason to believe that the child is experiencing a behavioral health emergency, then the court may request the services of a crisis response provider designated by the commissioner of mental health and substance abuse services to perform such services under title 33. For purposes of this subdivision (e)(6), "behavioral health emergency" means an acute onset of a behavioral health condition that manifests itself by an immediate substantial likelihood of serious harm as defined in § 33-6-501. If the crisis provider is unable to respond within two (2) hours of contact by the court, the crisis provider shall immediately notify the court and provide instructions for examination of the child under

title 33, chapter 6, part 1.

(f) After adjudication, but prior to the disposition of a child found to be dependent and neglected, delinquent, unruly or in need of services under § 37-1-175, the court may place the child in custody of the department of children's services for the purpose of evaluation and assessment if the department has a suitable placement available for such purpose. If the department determines that there is no suitable placement available, the court shall not order the department to take custody of the child for the purpose of evaluation and assessment. Such pre-disposition custody shall last for a maximum of thirty (30) days and the court shall have a hearing to determine the appropriate disposition before the expiration of the thirty (30) days.

37-1-130. Dependent or neglected child — Disposition.

(a) If the child is found to be dependent or neglected, the court may make any of the following orders of disposition best suited to the protection and physical, mental and moral welfare of the child:

(1) Subject to the restrictions of § 37-1-129(e), permit the child to remain with the child's parents, guardian or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child;

(2) Subject to the restrictions of § 37-1-129(e), and subject to conditions and limitations as the court prescribes, transfer temporary legal custody to or grant permanent guardianship in accordance with part 8 of this chapter to any of the following:

(A) Any individual who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;

(B) The department of children's services:

(i) Any child placed in the custody of the department of children's services shall become a resident of the county in which such child is placed by the department. The board of education of each local school system shall assign the student to a public school pursuant to § 49-6-3102;

(ii) In order to assure appropriate placement for students with handicaps, the procedures required by the state board of education must be followed;

(iii) If a student is determined to be handicapped as defined by state and federal laws and regulations and, therefore, entitled to special education and related services, a multi-disciplinary team of the receiving school system must be convened prior to the placement of the child in the school system for the purpose of developing an appropriate educational program. The department shall notify the receiving school system as far in advance of the intended placement as possible. A representative from the department must be present at the multi-disciplinary team meeting;

(iv) Placements in educational programs not following the requirements set forth in this section shall be the financial responsibility of the department of education;

(v) Any financial responsibility required under the provisions of this section for the education of handicapped children whose parents are not

residents of the county in which the children are placed shall be borne by the department of education and not by any local government. This provision shall not act to reduce federal funds for handicapped children or special education going to any local education agency;

(C) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child; or

(D) An individual in another state with or without supervision by an appropriate officer under § 37-1-142;

(3) In those counties having a county department of children's services, commit the child to the custody of such county department; or

(4) Without making any of the foregoing orders, transfer custody of the child to the juvenile court of another state if authorized by and in accordance with § 37-1-141 if the child is or is about to become a resident of that state.

(b) Unless a child found to be dependent or neglected is found also to be delinquent, the child shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children. Any disposition under this section shall be implemented as soon as possible after entry of the court's order. A disposition under subdivision (a)(2) or (3) shall, in no event, result in the child's detention in shelter care, as defined in § 37-1-116, or other temporary placement, without provision of necessary services consistent with the child's assessments or evaluations, in excess of thirty (30) days after entry of the court's order.

(c) [Deleted by 2011 amendment.]

(d) No child who has been found to be a victim of severe child abuse shall be returned to the custody or residence of any person who engaged in or knowingly failed to protect the child from the brutality or abuse unless the court finds on the basis of clear and convincing evidence that the child will be provided a safe home free from further such brutality and abuse. The court shall file written findings of fact that are the basis of its conclusions on that issue within thirty (30) days of the close of the hearing or, if an appeal or petition for certiorari is filed, within five (5) days thereafter, excluding Sundays. No such child shall be returned to such custody on the basis of the court's order until five (5) days after entry of the order without the consent of the department and the petitioner.

(e)(1) When the department determines that a child who has been committed to the department under this section is ready to return home, the department shall notify the court in writing of its intention to place the child at home on a trial home visit. If the court objects to the trial home visit, it must notify the department of its objection in writing or set a hearing within fifteen (15) days of the date of the notice, with such hearing to be held at the earliest possible date. If the hearing is not set nor a written objection received within fifteen (15) days of the date of the notice, the department may place the child on a trial home visit. The notice shall include the provision that the department's legal custody of the child shall terminate in ninety (90) days.

(2) If during the ninety-day period the department determines that the trial home visit is not in the child's best interest and removes the child on an emergency basis or seeks to remove the child on a non-emergency basis, the department shall file a motion for review by the court of the trial home visit and shall provide notice to the parent(s), guardian or other custodian. The court shall hold a hearing on such motion within three (3) days of an

emergency removal and shall set a hearing within fifteen (15) days to be held at the earliest possible date if the motion seeks the court's permission to make a non-emergency removal.

(3) During the ninety-day trial home visit, the court may periodically review the child's status and may make any orders that the best interest of the child may require.

37-1-131. Delinquent child — Disposition — Restitution.

(a) If the child is found to be a delinquent child, the court may make any of the following orders of disposition best suited to the child's treatment, rehabilitation and welfare:

(1) Any order authorized by § 37-1-130 for the disposition of a dependent or neglected child;

(2)(A) Placing the child on probation under the supervision of the probation officer of the court or the department of children's services, any person, or persons or agencies designated by the court, or the court of another state as provided in § 37-1-143, under conditions and limitations the court prescribes;

(B) The court shall make a finding that the child's school shall be notified, if:

(i) The adjudication of delinquency was for an offense involving:

(a) First degree murder;

(b) Second degree murder;

(c) Rape;

(d) Aggravated rape;

(e) Rape of a child;

(f) Aggravated rape of a child;

(g) Aggravated robbery;

(h) Especially aggravated robbery;

(i) Kidnapping;

(j) Aggravated kidnapping;

(k) Especially aggravated kidnapping;

(l) Aggravated assault;

(m) Felony reckless endangerment; or

(n) Aggravated sexual battery; or

(ii) The adjudication of delinquency was for a violation of:

(a) Voluntary manslaughter, as defined in § 39-13-211;

(b) Criminally negligent homicide, as defined in § 39-13-212;

(c) Sexual battery by an authority figure, as defined in § 39-13-527;

(d) Statutory rape by an authority figure, as defined in § 39-13-532;

(e) Prohibited weapon, as defined in § 39-17-1302;

(f) Unlawful carrying or possession of a firearm, as defined in § 39-17-1307;

(g) Carrying weapons on school property, as defined in § 39-17-1309;

(h) Carrying weapons on public parks, playgrounds, civic centers, and other public recreational buildings and grounds, as defined in § 39-17-1311;

(i) Handgun possession, as defined in § 39-17-1319;

(j) Providing handguns to juveniles, as defined in § 39-17-1320; or

(k) Any violation of § 39-17-417 that constitutes a Class A or Class B felony; and

(iii) School attendance is a condition of probation, or if the child is to be placed in the custody of a state agency and is to be placed in school by a state agency or by a contractor of the state agency;

(C) The court may make a finding that the child's school shall be notified based on the circumstances surrounding the offense if the adjudication of delinquency is for an offense not listed in this subsection (a);

(D) The court shall then enter an order directing the youth service officer, probation officer, or the state agency, if the child has been committed to the custody of the state agency, to notify the school principal in writing of the nature of the offense and probation requirements, if any, related to school attendance, within five (5) days of the order or before the child resumes or begins school attendance, whichever occurs first. In individual cases when the court deems it appropriate, the court may also include in the order a requirement to notify county and municipal law enforcement agencies having jurisdiction over the school in which the child will be enrolled;

(E) When the principal of a school is notified, the principal of the child's school, or the principal's designee, shall convene a meeting to develop a plan within five (5) days of the notification. Reasonable notice shall be given of the date and time of the meeting. The child, the department of children's services if the child is in state custody, the child's parent/guardian/legal caretaker if not in state custody, and other appropriate parties identified by the child, the department of children's services or parent/guardian/legal caretaker shall be invited to the meeting. The plan shall set out a list of goals to provide the child an opportunity to succeed in school and provide for school safety, a schedule for completion of the goals and the personnel who will be responsible for working with the child to complete the goals;

(F) The information shall be shared only with the employees of the school having responsibility for classroom instruction of the child and the school counselor, social worker or psychologist who is involved in developing a plan for the child while in the school, and with the school resource officer, and any other person notified pursuant to the provisions of this section. The information is otherwise confidential and shall not be shared by school personnel with any other person or agency, except as may otherwise be required by law. Notification in writing of the nature of the offense committed by the child and any probation requirements and the plan shall not become a part of the child's student record;

(G) In no event shall a child be delayed from attending school for more than five (5) school days from the date of notice;

(H) Notwithstanding any other state law to the contrary, the department of children's services shall develop a written policy consistent with federal law detailing the information to be shared by the department with the school for children in its legal custody when notification is required;

(I) Upon the subsequent enrollment of any such student in any other LEA, the parents or custodians of the student, and the administrator of any school having previously received the same or similar notice pursuant to this section, shall notify the school in the manner specified in

§ 49-6-3051;

(J) A violation of the confidentiality provisions of subdivision (a)(2)(F) is a Class C misdemeanor;

(K)(i) If the court does not place the child in state custody, but orders the child to complete an inpatient mental health treatment program at a hospital or treatment resource as defined in § 33-1-101, upon leaving that hospital or treatment resource, the principal of the child's school shall be notified and the principal of the child's school or the principal's designee shall convene a meeting to develop a transition plan within five (5) days of the notification. Reasonable notice shall be given of the date and time of the meeting. The child, child's parent/guardian/legal caretaker, other relevant service providers, and other appropriate parties identified by the child and parent/guardian/legal caretaker shall be invited to the meeting;

(ii) If an information release is executed in compliance with § 33-3-109 that provides the principal or other designated school personnel access to certain information concerning the child, the principal or other designated school personnel may work with the child's mental health provider to develop this plan. The transition plan shall set out a list of goals to provide the child an opportunity to succeed in school and provide for school safety, a schedule for completion of the goals and the personnel who will be responsible for working with the child to complete the goals. The information shall be shared only with employees of the school having responsibility for classroom instruction of the child, but the information is otherwise confidential and shall not be shared by school personnel with any other person or agency, except as may be otherwise required by law. The notification in writing of the nature of the offense committed by the child, any probation requirements, and the transition plan developed pursuant to this subdivision (a)(2)(K)(ii) shall not become a part of the child's student record;

(iii) In no event shall a child be delayed from attending school for more than five (5) school days;

(iv) A violation of the confidentiality provisions of subdivision (a)(2)(K)(ii) is a Class C misdemeanor;

(3) Placing the child in an institution, camp or other facility for delinquent children operated under the direction of the court or other local public authority;

(4) Subject to the restrictions of § 37-1-129(e), commit the child to the department of children's services, which commitment shall not extend past the child's nineteenth birthday;

(5) Assessing a fine not to exceed fifty dollars ($50.00) for each offense that constitutes a violation of a state law or municipal ordinance;

(6) Committing the child to the custody of the county department of children's services in those counties having such a department;

(7)(A) Ordering the child to perform community service work with such work being in compliance with federal and state child labor laws. For first-time delinquent acts involving alcohol or beer, in its order for community service work, the court may require the juvenile to spend a portion of such time in the emergency room of a hospital, only if, and to the extent, the hospital agrees with such action;

(B) No charitable organization, municipality, county or political subdivision thereof utilizing juveniles performing community service work

pursuant to this chapter shall be liable for any injury sustained by the juvenile or other person, proximately caused by the juvenile, while the juvenile is performing a work project for such organization or governmental entity, if the organization or governmental entity exercised due care in the supervision of the juvenile;

(C) No charitable organization, municipality, county or political subdivision thereof, nor any employee or officer thereof, shall be liable to any person for any act of a juvenile while the juvenile is on a community work project for such organization or governmental entity, if the organization or governmental entity exercised due care in the supervision of the juvenile;

(D) No charitable organization, municipality, county or political subdivision thereof, nor any employee or officer thereof, shall be liable to any juvenile or the juvenile's family for death or injuries received, proximately caused by the juvenile, while the juvenile is on a community work project for such organization or governmental entity, if the organization or governmental entity exercised due care in the supervision of the juvenile;

(E) The authority and protection from liability provided by this section is supplemental and in addition to any other authority and protection provided by law; and

(8)(A) In lieu of committing a child to the custody of the department of children's services and subject to the requirements of subdivision (a)(8)(B), the court may order any of the following if the child is found to be a delinquent child:

(i) Assign a long-term mentor to such child; or

(ii) Require that the delinquent child or any of the child's family members receive counseling services from any counseling service provided through or approved by the juvenile court;

(B) An order may be issued under subdivision (a)(8)(A) only if the funding necessary to implement such order is appropriated by the legislative body of the county in which the court is located or is provided by grants from public or private sources.

(b)(1) If the child is found to be delinquent, the court shall determine if any monetary damages actually resulted from the child's delinquent conduct. Upon a determination that monetary damages resulted from such conduct, the court shall order the child to make restitution for such damages unless the court further determines that the specific circumstances of the individual case render such restitution, or a specified portion thereof, inappropriate.

(2)(A) IF restitution is ordered pursuant to this subsection (b) in those cases where the court has made a finding that:

(i) A specified amount is owed;

(ii) Such amount is ordered to be paid pursuant to a specific payment schedule; and

(iii) The total amount of such ordered restitution is not paid by the time the juvenile court no longer has jurisdiction over the child;

THEN notwithstanding the provisions of § 37-1-133(b) or any other provision of law to the contrary, the recipient of such restitution may convert the unpaid balance of the restitution ordered by the court into a civil judgment in accordance with the procedure set out in this subsection (b). The payment of such civil judgment shall be at the same payment schedule as that as when the offender was a juvenile.

(B) Under such judgment, payments shall be continued to be made under the specific payment schedule ordered by the juvenile court until the judgment has been satisfied.

(3) The restitution recipient shall file a certified copy of the juvenile court's restitution order with any court having jurisdiction over the total amount of restitution ordered.

(4) Upon receipt of such a restitution order, the court shall take proof as to the amount of ordered restitution actually paid. If the court finds that the amount of restitution actually paid is less than the total amount of restitution ordered by the juvenile court, it shall enter a judgment in favor of the restitution recipient and against the offender for the amount of the unpaid balance of such restitution.

(5) A judgment entered pursuant to this subsection (b) shall remain in effect for a period of ten (10) years from the date of entry and shall be enforceable by the restitution recipient in the same manner and to the same extent as other civil judgments.

37-1-166. Orders committing or retaining a child within the custody of the department of children's services — Required determinations.

(a) At any proceeding of a juvenile court, prior to ordering a child committed to or retained within the custody of the department of children's services, the court shall first determine whether reasonable efforts have been made to:

(1) Prevent the need for removal of the child from such child's family; or

(2) Make it possible for the child to return home.

(b) Whenever a juvenile court is making the determination required by subsection (a), the department has the burden of demonstrating that reasonable efforts have been made to prevent the need for removal of the child or to make it possible for the child to return home.

(c) To enable the court to determine whether such reasonable efforts have been made, the department, in a written affidavit to the court in each proceeding where the child's placement is at issue, shall answer each of the following questions:

(1) Is removal of the child from such child's family necessary in order to protect the child, and, if so, then what is the specific risk or risks to the child or family that necessitates removal of the child?;

(2) What specific services are necessary to allow the child to remain in the home or to be returned to the home?;

(3) What services have been provided to assist the family and the child so as to prevent removal or to reunify the family?; and

(4) Has the department had the opportunity to provide services to the family and the child, and, if not, then what are the specific reasons why services could not have been provided?

(d) Whenever a juvenile court is making a determination required by subsection (a), based on all the facts and circumstances presented, the court must find whether:

(1) There is no less drastic alternative to removal;

(2) Reasonable efforts have been made to prevent the need for removal of the child from such child's family or to make it possible for the child to return home; and

(3) Continuation of the child's custody with the parent or legal guardian is contrary to the best interests of the child.

(e) All parties involved in each proceeding shall receive a copy of the department's affidavit and shall have an opportunity to respond as allowed by law.

(f) Unless emergency removal is necessary, the department shall be provided no more than thirty (30) days to investigate or offer services to the family and child in cases where the petition is not filed by the department.

(g)(1) As used in this section, "reasonable efforts" means the exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family. In determining reasonable efforts to be made with respect to a child, as described in this subdivision (g)(1), and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

(2) Except as provided in subdivision (g)(4), reasonable efforts shall be made to preserve and reunify families:

(A) Prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(B) To make it possible for a child to safely return to the child's home.

(3) If continuation of reasonable efforts of the type described in subdivision (g)(2) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) Reasonable efforts of the type described in subdivision (g)(2) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that:

(A) The parent has subjected the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home to aggravated circumstances as defined in § 36-1-102;

(B) As set out in § 36-1-113, the parent has:

(i) Committed murder of any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home;

(ii) Committed voluntary manslaughter of any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home;

(iii) Aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter of the child or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home; or

(iv) Committed a felony assault that results in serious bodily injury to the child or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home; or

(C) The parental rights of the parent to a sibling or half-sibling have been terminated involuntarily.

(5) If reasonable efforts of the type described in subdivision (g)(2) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subdivision (g)(4):

(A) A permanency hearing shall be held for the child within thirty (30) days after the determination; and

(B) Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subdivision (g)(2).

(h) In determining whether to continue or restore custody to a parent is in the best interest of a child, the department shall not require a parent to:

(1) Obtain employment if such parent has sufficient resources from other means to care for the child; or

(2) Provide the child with the child's own bedroom, unless there are specific safety or medical reasons that would make placement of the child with another child unsafe.

37-1-182. Juvenile records task force.

(a)(1) There is established a task force on the submission of juvenile fingerprints and reporting of juvenile court dispositions, which shall be named the juvenile records task force.

(2) The task force shall have the following members:

(A) The director of the Tennessee bureau of investigation (TBI) or the director's designee, who shall be a member of the director's staff;

(B) A juvenile court judge or magistrate from each grand division of the state, who shall be appointed by the director of the administrative office of the courts;

(C) A clerk or deputy clerk whose primary duties include the maintenance of juvenile court records, to be appointed by the president of the state court clerks' conference;

(D) The commissioner of children's services or the commissioner's designee;

(E) The attorney general and reporter or attorney general and reporter's designee, who shall be an ex officio member of the task force;

(F) The chair of the judiciary committee of the senate and the chair of the civil justice committee of the house of representatives or their designees, who shall be members of the task force;

(G) [Deleted by 2011 amendment.]

(H) The executive director of the Tennessee commission on children and youth or the executive director's designee.

(3) Appointments shall be made within sixty (60) days after July 1, 2007. The governor shall designate the chair of the task force, who shall set the date of the first meeting. At the organizational meeting, a secretary shall be elected from the task force's membership.

(b)(1) The task force is authorized to request and receive assistance from any department, agency or entity of state government, upon request from the chair.

(2) Members of the task force are volunteers and shall serve without pay, except that nonlegislative members may be reimbursed for travel expenses in accordance with travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter. Members of the general assembly shall be compensated in accor-

dance with the provisions of § 3-1-106.

(c) The task force is directed to assess and examine:

(1) The process of the submission of juvenile fingerprints to the TBI and to the federal bureau of investigation;

(2) The maintenance of juvenile fingerprint cards;

(3) The reporting of dispositions of juvenile offenses;

(4) The disclosure or nondisclosure of juvenile offenses for employment or volunteer purposes;

(5) Whether a juvenile offender repository is needed;

(6) Whether any of the statutes referring to juvenile records and/or juvenile fingerprints are in direct conflict with other statutes and, if so, to determine how to correct any ambiguities; and

(7) Any other relevant issues that concern juvenile fingerprint submissions, dispositions, and disclosures of juvenile records.

(d) The task force is directed to submit a report of its findings and recommendations, including any suggested legislation, to the general assembly and the governor no later than February 15, 2008.

37-1-403. Reporting of brutality, abuse, neglect or child sexual abuse — Notification to parents of abuse on school grounds or under school supervision — Confidentiality of records.

(a)(1) Any person who has knowledge of or is called upon to render aid to any child who is suffering from or has sustained any wound, injury, disability, or physical or mental condition shall report such harm immediately if the harm is of such a nature as to reasonably indicate that it has been caused by brutality, abuse or neglect or that, on the basis of available information, reasonably appears to have been caused by brutality, abuse or neglect.

(2) Any such person with knowledge of the type of harm described in this subsection (a) shall report it, by telephone or otherwise, to the:

(A) Judge having juvenile jurisdiction over the child;

(B) Department, in a manner specified by the department, either by contacting a local representative of the department or by utilizing the department's centralized intake procedure, where applicable;

(C) Sheriff of the county where the child resides; or

(D) Chief law enforcement official of the municipality where the child resides.

(3) If any such person knows or has reasonable cause to suspect that a child has been sexually abused, the person shall report such information in accordance with § 37-1-605, relative to the sexual abuse of children, regardless of whether such person knows or believes that the child has sustained any apparent injury as a result of such abuse.

(b) The report shall include, to the extent known by the reporter, the name, address, telephone number and age of the child, the name, address, and telephone number of the person responsible for the care of the child, and the facts requiring the report. The report may include any other pertinent information.

(c)(1) If a law enforcement official or judge becomes aware of known or suspected child abuse, through personal knowledge, receipt of a report, or otherwise, such information shall be reported to the department immedi-

ately upon the receipt of such information, and, where appropriate, the child protective team shall be notified to investigate the report for the protection of the child in accordance with this part. Further criminal investigation by such official shall be appropriately conducted in coordination with the team or department to the maximum extent possible.

(2) A law enforcement official or judge who knows or becomes aware of a person who is convicted of a violation of § 55-10-401 and sentenced under § 55-10-402(b), because such person was at the time of the offense accompanied by a child under eighteen (18) years of age, shall report such information, as provided in subdivision (c)(1), and the department shall consider such information to be appropriate for investigation in the same manner as other reports of suspected child abuse or neglect.

(3)(A) If the department receives information containing references to alleged human trafficking or child pornography which does or does not result in an investigation by the department, the department shall notify the appropriate law enforcement agency immediately upon receipt of such information.

(B) If the department initiates an investigation of severe child abuse, including, but not limited to, child sexual abuse, the department shall notify the appropriate local law enforcement agency immediately upon assignment of such case to a department child protective services worker.

(C) Both the department and law enforcement shall maintain a log of all such reports of such information received and confirmation that the information was sent to the appropriate party, pursuant to this subdivision (c)(3).

(d) Any person required to report or investigate cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report such suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report the medical examiner's findings, in writing, to the local law enforcement agency, the appropriate district attorney general, and the department. Autopsy reports maintained by the medical examiner shall not be subject to the confidentiality requirements provided for in § 37-1-409.

(e) Reports involving known or suspected institutional child sexual abuse shall be made and received in the same manner as all other reports made pursuant to Acts 1985, ch. 478, relative to the sexual abuse of children. Investigations of institutional child sexual abuse shall be conducted in accordance with § 37-1-606.

(f) Every physician or other person who makes a diagnosis of, or treats, or prescribes for any sexually transmitted disease set out in § 68-10-112, or venereal herpes and chlamydia, in children thirteen (13) years of age or younger, and every superintendent or manager of a clinic, dispensary or charitable or penal institution, in which there is a case of any of the diseases, as set out in this subsection (f), in children thirteen (13) years of age or younger shall report the case immediately, in writing on a form supplied by the department of health to that department. If the reported cases are confirmed and if sexual abuse is suspected, the department of health will report the case to the department of children's services. The department of children's services will be responsible for any necessary follow-up.

(g) Every physician or other person who makes an initial diagnosis of pregnancy to an unemancipated minor, and every superintendent or manager

of a clinic, dispensary or charitable or penal institution in which there is a case of an unemancipated minor who is determined to be pregnant, shall provide to the minor's parent, if the parent is present, and the minor consents, any readily available written information on how to report to the department of children's services an occurrence of sex abuse that may have resulted in the minor's pregnancy, unless disclosure to the parent would violate the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d et seq., or the regulations promulgated pursuant to the act.

(1) Failure to provide the written information shall not subject a person to the penalty provided by § 37-1-412.

(2) The department of children's services shall provide to the department of health the relevant written information. The department of health shall distribute copies of the written information to all licensees of the appropriate health-related boards through the boards' routinely issued newsletters. At the time of initial licensure, these boards shall also provide new licensees a copy of the relevant written information for distribution pursuant to this subsection (g).

(h) Nothing in this section shall be construed to prohibit any hospital, clinic, school, or other organization responsible for the care of children, from developing a specific procedure for internally tracking, reporting, or otherwise monitoring a report made by a member of the organization's staff pursuant to this section, including requiring a member of the organization's staff who makes a report to provide a copy of or notice concerning the report to the organization, so long as the procedure does not inhibit, interfere with, or otherwise affect the duty of a person to make a report as required by subsection (a). Nothing in this section shall prevent staff of a hospital or clinic from gathering sufficient information, as determined by the hospital or clinic, in order to make an appropriate medical diagnosis or to provide and document care that is medically indicated, and is needed to determine whether to report an incident as defined in this part. Those activities shall not interfere with nor serve as a substitute for any investigation by law enforcement officials or the department; provided, that, if any hospital, clinic, school or other organization responsible for the care of children develops a procedure for internally tracking, reporting or otherwise monitoring a report pursuant to this section, the identity of the person who made a report of harm pursuant to this section or § 37-1-605 shall be kept confidential.

(i)(1) Any school official, personnel, employee or member of the board of education who is aware of a report or investigation of employee misconduct on the part of any employee of the school system that in any way involves known or alleged child abuse, including, but not limited to, child physical or sexual abuse or neglect, shall immediately upon knowledge of such information notify the department of children's services or anyone listed in subdivision (a)(2) of the abuse or alleged abuse.

(2) Notwithstanding § 37-5-107 or § 37-1-612 or any other law to the contrary, if a school teacher, school official or any other school personnel has knowledge or reasonable cause to suspect that a child who attends such school may be a victim of child abuse or child sexual abuse sufficient to require reporting pursuant to this section and that the abuse occurred on school grounds or while the child was under the supervision or care of the school, then the principal or other person designated by the school shall verbally notify the parent or legal guardian of the child that a report

pursuant to this section has been made and shall provide other information relevant to the future wellbeing of the child while under the supervision or care of the school. The verbal notice shall be made in coordination with the department of children's services to the parent or legal guardian within twenty-four (24) hours from the time the school, school teacher, school official or other school personnel reports the abuse to the department of children's services, judge or law enforcement; provided, that in no event may the notice be later than twenty-four (24) hours from the time the report was made. The notice shall not be given to any parent or legal guardian if there is reasonable cause to believe that the parent or legal guardian may be the perpetrator or in any way responsible for the child abuse or child sexual abuse.

(3) Once notice is given pursuant to subdivision (i)(2), the principal or other designated person shall provide to the parent or legal guardian all school information and records relevant to the alleged abuse or sexual abuse, if requested by the parent or legal guardian; provided, that the information is edited to protect the confidentiality of the identity of the person who made the report, any other person whose life or safety may be endangered by the disclosure and any information made confidential pursuant to federal law or § 10-7-504(a)(4). The information and records described in this subdivision (i)(3) shall not include records of other agencies or departments.

(4) For purposes of this subsection (i), "school" means any public or privately operated child care agency, as defined in § 71-3-501, preschool, nursery school, kindergarten, elementary school or secondary school.

37-1-406. Availability for receiving reports — Commencement of investigations — Examination and observation of child — Reports — Services provided — Investigators.

(a) The department shall be capable of receiving and investigating reports of child abuse twenty-four (24) hours a day, seven (7) days a week. The county office shall make a thorough investigation promptly after receiving either an oral or written report of harm. All representatives of the child protective services agency shall, at the initial time of contact with the individual who is subject to a child abuse and neglect investigation, advise the individual of the complaints or allegations made against the individual consistent with laws protecting the rights of the informant. If it appears that the immediate safety or well being of a child is endangered, that the family may flee or the child will be unavailable, or that the facts otherwise warrant, the department shall commence an investigation immediately, regardless of the time of day or night. In the event the report involves child sexual abuse, the department shall follow the procedures outlined in subsection (b).

(b) In cases involving child sexual abuse, the investigation shall be conducted by a child protective investigation team as defined in § 37-1-602 relative to child sexual abuse pursuant to the provisions of § 37-1-606. In the event an immediate investigation has been initiated, the department shall notify the child protection team as soon as possible and the team shall proceed with the investigation in accordance with the provisions of Acts 1985, ch. 478. Other cases of child abuse may be investigated by the team in the discretion of each individual team.

(c) All private schools, as defined by § 49-6-3001, church-related schools, as

defined by § 49-50-801, and state, county and local agencies shall give the team access to records in their custody pertaining to the child and shall otherwise cooperate fully with the investigation.

(d) The investigation shall include:

(1) The nature, extent and cause of the harm, including a determination of whether there exists a threat of harm, and the nature and extent of any present or prior injuries or abuse;

(2) The identity of the person responsible for it;

(3) The names and conditions of the other children in the home;

(4) An evaluation of the parents or persons responsible for the care of the child, the home environment, and the relationship of each child to the parents or persons responsible for such child's care;

(5) The identity of any other persons in the same household;

(6) The identity of any other children in the care of any adult residing in the household; and

(7) All other pertinent data.

(e) The investigation shall include a visit to the child's home, an interview with and physical observation of the child, and an interview with the parent(s) or other custodian of the child and any other persons in the child's home. If the investigator deems it necessary, the investigation shall also include medical, psychological or psychiatric examinations of the child and any other children in the child's home or under the care of any person alleged to have permitted or caused abuse, neglect or sexual abuse to the child. If the investigator determines, based on a visit to the child's home, observation of and interview with the subject child, and interview with other persons in the child's home, that the report of harm was wholly without substance, the investigator may determine that physical and psychological examinations of the subject child are unnecessary, in which case they will not be required. If admission to the home, school, or any place where the child may be, or permission of the parents or persons responsible for the child's care for the physical and psychological or psychiatric examinations cannot be obtained, the juvenile court, upon cause shown, shall order the parents or person responsible for the care of the child or the person in charge of any place where the child may be, to allow entrance for the interview, examination, and investigation. If the report of harm indicates that the abuse, neglect or sexual abuse occurred in a place other than the child's home, then, in the discretion of the investigator, the investigation may include a visit to the location where the incident occurred or a personal interview with the child and the parents or other custodians in another location instead of a visit to the child's home.

(f) Any person required to investigate cases of child abuse may take or cause to be taken photographs of the areas of trauma visible on a child who is the subject of a report and of any objects or conditions in the child's home or surroundings that could have caused or contributed to the harm to the child. If the nature of the child's injuries indicate a need for immediate medical examination or treatment, the investigator may take or cause the child to be taken for diagnosis to a licensed physician or an emergency department in a hospital without the consent of the child's parents, legal guardian or legal custodian. Any licensed physician who, based on information furnished by the investigator, the parents or other persons having knowledge of the situation, or the child, or on personal observation of the child, suspects that an injury was the result of child abuse, may authorize appropriate examinations to be performed on the child without the consent of the child's parent, legal guardian

or legal custodian.

(g) At the initial investigation of child abuse and at any subsequent investigation as deemed appropriate by the investigator, audio or videotape recording may be taken of the traumatized victim. Such tape shall be admissible as evidence in cases of child sexual abuse if it meets the standards established in title 24 for the use of recorded statements. Regardless of whether such recording is used in evidence, it shall be made available for use as provided in § 37-1-405(b)(2).

(h) The investigator shall interview the child outside the presence of the parent(s) or other persons allegedly responsible for the harm and, wherever possible, shall interview the child in a neutral setting other than the location where the alleged abuse occurred.

(i) No later than sixty (60) days after receiving the initial report, the department or team in cases of child sexual abuse or the department in all other cases shall determine whether the reported abuse was indicated or unfounded and report its findings to the department's abuse registry. Each member of the team shall be provided with a copy of the report in any case investigated by the team. In any case investigated solely by the department, the department shall make a complete written investigation report, including its recommendation, to the juvenile court. The district attorney general shall also be provided a copy of any report in all cases where the investigation determines that the report was indicated. Further proceedings shall be conducted pursuant to part 1 of this chapter, as appropriate.

(j) If the department or team in cases of child sexual abuse or the department in all other cases determines that the protection of the child so requires, the department shall provide or arrange for services necessary to prevent further abuse, to safeguard and enhance the welfare of children, and to preserve family life. Such services may include provision for protective shelter, to include room and board; medical and remedial care; day care; homemaker; caretaker; transportation; counseling and therapy; training courses for the parents or legal guardian; and arranging for the provision of other appropriate services. All such services shall be provided when appropriate within the limits of available resources. These services shall first be offered for the voluntary acceptance by the parent or other person responsible for the care of the child, unless immediate removal is needed to protect the child. At any point if the department or team in cases of child sexual abuse or the department in all other cases deems that the child's need for protection so requires, it may proceed with appropriate action under part 1 of this chapter.

(k) If the investigator, as a result of the investigation, determines that there is cause to classify the report of severe abuse as indicated rather than unfounded, the team in cases of child sexual abuse or the department in all other cases may recommend that criminal charges be filed against the alleged offender. Any interested person who has information regarding the offenses may forward a statement to the district attorney general as to whether such person believes prosecution is justified and appropriate. Within fifteen (15) days of the completion of the district attorney general's investigation of a report of severe abuse, the district attorney general shall advise the department or team whether or not prosecution is justified and appropriate, in the district attorney general's opinion, in view of the circumstances of the specific case.

(*l*) The legislative intent of this section is to protect the legal rights of the

family in an investigation and to ensure that no activity occurs that compromises the department's child abuse investigation or any ongoing concurrent criminal investigation conducted by law enforcement.

(m)(1) In jurisdictions that have implemented the multi-level response system, in addition to other investigative procedures under this section, local law enforcement officers and district attorneys general having jurisdiction shall assist the department, on request in writing, if the department determines that it is likely that the case may result in criminal prosecution or that a child protective services worker may be at risk of harm while investigating the following reports of harm:

(A) Any report of harm alleging facts that, if proved, would constitute severe child abuse as defined in § 37-1-102;

(B) Any report of harm alleging facts that, if proved, would constitute child sexual abuse as defined in § 37-1-602;

(C) Any report of harm alleging facts that, if proved, would constitute the following physical injuries to a child:

(i) Head trauma;

(ii) Broken bones;

(iii) Inflicted burns;

(iv) Organic functional impairment, as defined by the department;

(v) Broken skin;

(vi) Shaken baby syndrome;

(vii) Defensive injuries;

(viii) Injuries related to physical confinement; or

(ix) Infants exposed to illegal narcotics, including methamphetamine;

(D) Any report of harm alleging facts that, if proved, would constitute the following types of neglect:

(i) A child left without supervision in a dangerous environment;

(ii) Lack of food or nurturance resulting in a failure to thrive;

(iii) Abandonment of a child under the age of eight (8);

(iv) Lack of care that results in a life-threatening condition or hospitalization; or

(v) Inaction of the parent resulting in serious physical injury;

(E) Any report of harm alleging facts that would result in the removal of a child from the home pursuant to department policy or rule;

(F) Any report of harm alleging facts that involve a caretaker at any institution, including, but not limited to, any licensed day care center, public or private school, or hospital; or

(G) Any report of harm alleging facts that, if proved, would constitute any other class of injury identified by the department through policy or rule as necessitating investigation.

(2) If a local law enforcement agency or district attorney general assisting the department under this subsection (m) decides not to proceed with prosecution or terminates prosecution after undertaking it, the agency or district attorney general shall make a written report on a standardized check-off form developed by the department and the Tennessee district attorneys general conference to the department and the juvenile court on the basis for its decision. The department shall compile such reports and present them to the judiciary committee of the senate and the civil justice committee of the house of representatives as part of its report pursuant to the multi-level response system for children and families, compiled in chapter 5,

part 6 of this title. The department shall make quarterly reports to local law enforcement agencies and district attorneys general as to the number and types of cases the department is handling in their jurisdictions on the basis of reports of harm or sexual abuse or of children at risk of being so harmed or sexually abused.

(n) If the report of child abuse alleges physical abuse, it shall be in the best interest of the child that the child be referred to a child advocacy center or that the investigation be conducted by a child protective services investigator who is adequately trained in investigating physical abuse reports. Under no circumstances shall the investigation be performed by a probation officer previously assigned to the child.

37-1-607. Child protective teams — Investigations — Services.

(a)(1)(A) The department shall coordinate the services of child protective teams. At least one (1) child protective team shall be organized in each county. The district attorney general of each judicial district shall, by January 15 of each year, report to the judiciary committee of the senate and the civil justice committee of the house of representatives on the status of the teams in the district attorney general's district as required by this section, and the progress of the child protective teams that have been organized in the district attorney general's district. The department shall, with the cooperation of all statutorily authorized members of the child protective team, establish a procedure and format for data collection. The procedure and format developed shall include at a minimum the following information:

(i) The number of reports received for investigation by type (i.e., sexual abuse, serious physical abuse, life-threatening neglect);

(ii) The number of investigations initiated by type;

(iii) The number of final dispositions of cases obtained in the current reporting year by type of disposition as follows:

(a) Unsubstantiated, closed, no service;

(b) Unsubstantiated, referred for non-custodial support services;

(c) Substantiated, closed, no service;

(d) Substantiated, service provided, no prosecution;

(e) Substantiated, service provided, prosecution, acquittal; or

(f) Substantiated, service provided, prosecution, conviction;

(iv) Age, race, gender, and relationship to the victim of perpetrators identified in cases that are included in subdivisions (a)(1)(A)(iii)(*c*)-(*f*); and

(v) The type and amount of community-based support received by child protective teams through linkages with other local agencies and organizations and through monetary or in-kind, or both, donations.

(B) Such data shall be reported by January 15 of each year to the judiciary committee of the senate and the civil justice committee of the house of representatives, along with a progress report on the teams and any recommendations for enhancement of the child sexual abuse plan and program.

(2) Each team shall be composed of one (1) person from the department, one (1) representative from the office of the district attorney general, one (1) juvenile court officer or investigator from a court of competent jurisdiction,

and one (1) properly trained law enforcement officer with countywide jurisdiction from the county where the child resides or where the alleged offense occurred. The team may also include a representative from one (1) of the mental health disciplines. It is in the best interest of the child that, whenever possible, an initial investigation shall not be commenced unless all four (4) disciplines are represented. An initial investigation may, however, be commenced if at least two (2) of the team members are present at the initial investigation. In those geographical areas in which a child advocacy center meets the requirements of § 9-4-213(a) or (b), child advocacy center directors, or their designees, shall be members of the teams under this part and part 4 of this chapter for the purposes of provision of services and functions established by § 9-4-213 or delegated pursuant to that section. In such event, child advocacy center directors, or their designees, may access and generate all necessary information, which shall retain its confidential status, consistent with § 37-1-612.

(3) It is the intent of the general assembly that the child protective investigations be conducted by the team members in a manner that not only protects the child but that also preserves any evidence for future criminal prosecutions. It is essential, therefore, that all phases of the child protective investigation be appropriately conducted and that further investigations, as appropriate, be properly conducted and coordinated.

(b)(1) The department shall convene the appropriate team when a report of child sexual abuse has been received. Nothing in this section shall be construed to remove or reduce the duty and responsibility of any person to report all suspected or actual cases of child sexual abuse. The role of the teams shall be to conduct child protective investigations of reported child sexual abuse and to support and provide services to sexually abused children upon referral as deemed by the teams to be necessary and appropriate for such children.

(2)(A) For each child sexual abuse report it receives, the department shall immediately notify the child protection investigation team, which shall commence an on-site child protective investigation. The team shall:

(i) Determine the composition of the family or household, including the name, address, age, sex and race of each child named in the report; any siblings or other children in the same household or in the care of the same adults; the parents or other persons responsible for the child's welfare; and any other adults in the same household;

(ii) Determine whether there is any indication that any child in the family or household is sexually abused, including a determination of harm or threatened harm to each child; the nature and extent of present or prior injuries, or abuse, and any evidence thereof; and a determination as to the person or persons apparently responsible for the abuse;

(iii) Determine the immediate and long-term risk to each child if the child remains in the existing home environment; and

(iv) Determine the protective, treatment and ameliorative services necessary to safeguard and ensure the child's well-being and development and, if possible, to preserve and stabilize family life.

(B) The team shall seek to interview the child in a neutral setting, other than where the alleged abuse occurred, whenever possible.

(3) Immediately upon receipt of a report alleging, or immediately upon learning during the course of an investigation, that:

(A) Child sexual abuse has occurred; or

(B) An observable injury or medically diagnosed internal injury occurred as a result of the sexual abuse;

the department shall orally notify the team, the appropriate district attorney general and the appropriate law enforcement agency whose criminal investigations shall be coordinated, whenever possible, with the child protective team investigation. In all cases, the team and the department shall make a full written report to the district attorney general within three (3) days of the oral report. If, as a result of an investigation, there is cause to believe a violation of title 39, chapter 17, part 10 has occurred, an appropriate report shall be filed by the district attorney general requesting an investigation by the Tennessee bureau of investigation. If independent criminal investigations are made, interviews with the victimized child shall be kept to an absolute minimum and, whenever possible, reference to the videotape or tapes made by the child protective teams should be utilized.

(4) In addition to the requirements of this part, the provisions of § 37-1-406 shall apply to any investigation conducted hereunder.

(5) As a result of its investigation, the team may recommend that criminal charges be filed against the alleged offender. Any interested person who has information regarding the offenses described in this subsection (b) may forward a statement to the district attorney general as to whether prosecution is warranted and appropriate. Within fifteen (15) days of the completion of the district attorney general's investigation, the district attorney general shall advise the department and the team whether or not prosecution is justified and appropriate in the district attorney general's opinion in view of the circumstances of the specific case.

(c)(1) The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that the team shall be capable of providing, to the extent funds are specifically appropriated therefor, or by referral shall be capable of obtaining for the protection of the child, include, but are not limited to, the following:

(A) Telephone consultation services in emergencies and in other situations;

(B) Medical evaluation related to the sexual abuse;

(C) Such psychological and psychiatric diagnosis and evaluation services for the child, siblings, parent or parents, guardian or guardians, or other care givers, or any other individual involved in a child sexual abuse case, as a child protection team may determine to be needed;

(D) Short-term psychological treatment. It is the intent of the general assembly that the department provide or refer a child whose case has been validated by the department, and the child's family, for short-term psychological treatment before the department may close its case. Such short-term treatment shall be limited to no more than six (6) months' duration after treatment is initiated, except that the commissioner may authorize such treatment for individual children beyond this limitation if the commissioner deems it appropriate;

(E) Expert medical, psychological and related professional testimony in court cases;

(F) Case staffings to develop, implement and monitor treatment plans for a child whose case has been validated by the department. In all such case staffings, consultations, or staff activities involving a child, at least

one (1) member of the team involved in the initial investigation shall continue to monitor the progress and status of the child whenever possible and within the same geographic area; and

(G) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.

(2) In all instances where a child protection team is providing or has obtained by referral certain services to sexually abused children, other offices and units of the department shall avoid duplicating the provision of those services.

37-2-205. Commitment of dependent and neglected, delinquent or unruly children — Contracts for per diem allowance — Records — Minimum qualifications and standards.

(a) In addition to the dispositional alternatives provided by §§ 37-1-130 — 37-1-132, concerning dependent and neglected, delinquent or unruly children, the juvenile court judge of any county within the provisions of this part is hereby authorized and empowered to commit a child to the custody of such county department of children's services. Upon such commitment by the juvenile court judge, guardianship of the person of such child shall immediately transfer to the director of the county department.

(b) When any child is committed to a county department, the state, from available budgetary funds of any state department through which federal or other funds may be provided by law for the purchase of child care, may contract with the county department to pay a per diem allowance for each child so committed for the period of time each such child is in custody of the county department. The per diem allowance shall be determined by negotiation and contract between the county and state department through which such funds are available.

(c) The director of the county department shall keep or cause to be kept all records and reports required to be kept by a comparable state agency. Such records shall include the quarterly review of each child's treatment, rehabilitation and progress, and the procedures for such review prescribed by the director. Failure of the director to keep or maintain any such records and reports required to be kept by law shall relieve the state from its obligation to pay the county department the per diem allowance for any child upon whom inadequate records have been kept.

(d) The county department shall ensure that services provided to children in its care and facilities provided for that purpose shall meet all minimum qualifications and standards established by contract with the contracting department, but in no event shall such qualifications or standards be less stringent than those mandated by applicable state or federal law or regulation for the children in the care of the department. Failure to meet such qualifications and standards shall entitle the contracting department to withhold funds payable to the county pursuant to the contract. In all cases, the contracting state department shall have the authority to conduct such monitoring and inspection as may be necessary to enforce this provision.

(e) The department of children's services is authorized to enter into an agreement to pay a per diem allowance to a county for each delinquent child placed in a local facility for delinquent children operated under the direction of

the court or other local public authority. As a condition of such payment, the agreement may require that the county pay to the department of children's services a per diem allowance in the same amount for each child committed from the county to the department of children's services. The per diem allowance shall be as agreed upon, but not less than seventy-five percent (75%) of the current actual cost of maintaining a child in a state correctional institution.

(f)(1)(A) In order to enhance communication between the department of children's services and juvenile court judges across the state, the department shall provide to the juvenile court judge(s) for each county a report which includes:

(i) The number of commitments to state custody for dependent and neglected children, unruly children, and delinquent children for the previous twelve-month period by county; and

(ii) The statewide average commitment rate per thousand youth based on the latest county population data as provided by the department of health.

(B) The report shall be provided to judges on a semiannual basis and shall also be made available on the department's web site.

(2) The department may initiate a collaborative planning process at the time a county's commitment rate is believed to be likely to exceed two hundred percent (200%) of the statewide average commitment rate. Upon request of the court, the department shall partner with the court to develop and implement strategies to address any factors contributing to higher commitment rates in such county.

(3) On or before February 1 of each year, the department of children's services shall provide to the judiciary committee of the senate and the civil justice committee of the house of representatives a report of county commitment data for the previous calendar year and a description of actions taken as part of the collaborative planning process.

37-2-403. Contents of permanency plan — Statement of responsibilities — Collection of information on biological parents.

(a)(1)(A) Within thirty (30) days of the date of foster care placement, an agency shall prepare a plan for each child in its foster care. Such plan shall include a goal for each child of:

(i) Return of the child to parent;

(ii) Permanent placement of the child with a fit and willing relative or relatives of the child;

(iii) Adoption, giving appropriate consideration to § 36-1-115(g) when applicable;

(iv) Permanent guardianship; or

(v) A planned permanent living arrangement.

(B) Such plans are subject to modification and shall be reevaluated and updated at least annually, except when a long-term agreement has been made in accordance with this part.

(2)(A) The permanency plan for any child in foster care shall include a statement of responsibilities between the parents, the agency and the caseworker of such agency. Such statements shall include the responsibilities of each party in specific terms and shall be reasonably related to

the achievement of the goal specified in subdivision (a)(1). The statement shall include the definitions of "abandonment" and "abandonment of an infant" contained in § 36-1-102 and the criteria and procedures for termination of parental rights. Each party shall sign the statement and be given a copy of it. The court must review the proposed plan, make any necessary modifications and ratify or approve the plan within sixty (60) days of the foster care placement. The department of children's services shall, by rules promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2, determine the required elements or contents of the permanency plan.

(B)(i) The parents or legal guardians of the child shall receive notice to appear at the court review of the permanency plan and the court shall explain on the record the law relating to abandonment contained in § 36-1-102, and shall explain that the consequences of failure to visit or support the child will be termination of the parents' or guardians' rights to the child, and the court will further explain that the parents or guardians may seek an attorney to represent the parents or guardians in any termination proceeding. If the parents or legal guardians are not at the hearing to review the permanency plan, the court shall explain to the parents or guardians at any subsequent hearing regarding the child held thereafter, that the consequences of failure to visit or support the child will be termination of the parents' or guardians' rights to the child and that they may seek an attorney to represent the parents or guardians in a termination proceeding.

(ii) If the parents or guardians of the child cannot be given notice to appear at the court review of the permanency plan, or if they refuse or fail to appear at the court review of the permanency plan, or cannot be found to provide notice for the court review of the permanency plan, any agency that holds custody of the child in foster care or in any other type of care and that seeks to terminate parental or guardian rights based upon abandonment of that child under § 36-1-102, shall not be precluded from proceeding with the termination based upon the grounds of abandonment, if the agency demonstrates at the time of the termination proceeding:

(a) That the court record shows, or the petitioning party presents to the court a copy of the permanency plan that shows that the defendant parents or legal guardians, subsequent to the court review in subdivision (a)(2)(B)(i), has signed the portion of the permanency plan that describes the criteria for establishing abandonment under § 36-1-102, or that the court record shows that, at a subsequent hearing regarding the child, the court made the statements to the parents or legal guardians required by subdivision (a)(2)(B)(i);

(b) By an affidavit, that the child's permanency plan containing language that describes the criteria for establishing abandonment under § 36-1-102 was presented by the agency party to the parents or guardians at any time prior to filing the termination petition, or that there was an attempt at any time to present the plan that describes the criteria for establishing abandonment under § 36-1-102 to the parents or guardians at any time by the agency party, and that such attempt was refused by the parents or guardians; and

(c) That, if the court record does not contain a signed copy of the permanency plan, or if the petitioning agency cannot present evidence

of a permanency plan showing evidence of such notice having been given or an affidavit showing that the plan was given or that the plan was attempted to be given to the parents or guardians by the agency and was refused by the parents or guardians, and, in this circumstance, if there is no other court record of the explanation by the court of the consequences of abandonment and the right to seek an attorney at any time, then the petitioning agency shall file with the court an affidavit in the termination proceeding that describes in detail the party's diligent efforts to bring such notice required by subdivision (a)(2)(B)(i) to such parent or guardian at any time prior to filing the agency's filing of the termination petition.

(C) Substantial noncompliance by the parent with the statement of responsibilities provides grounds for the termination of parental rights, notwithstanding other statutory provisions for termination of parental rights, and notwithstanding the failure of the parent to sign or to agree to such statement if the court finds the parent was informed of its contents, and that the requirements of the statement are reasonable and are related to remedying the conditions that necessitate foster care placement. The permanency plan shall not require the parent to obtain employment if such parent has sufficient resources from other means to care for the child, and shall not require the parent to provide the child with the child's own bedroom unless specific safety or medical reasons exist that would make bedroom placement of the child with another child unsafe.

(3) At any hearing in which a court orders a child to be placed in foster care, the judge shall determine whether a permanency plan has been prepared and whether the statement of responsibilities has been agreed upon by the parties. If a statement has been agreed upon by the parties, the court shall review it and approve it if the court finds it to be in the best interest of the child. If a plan had not been prepared or parties have not agreed to a statement of responsibilities, the court may continue the hearing for such time, not to exceed thirty (30) days, as may be necessary to give the parties an opportunity to attempt to agree on a suitable plan, which may then be approved by the court without a further hearing if the court finds the plan to be in the best interest of the child, but no longer than sixty (60) days after the foster care placement, except as provided in § 37-1-166.

(4)(A) If the parties are unable to agree on a statement of responsibilities during this period of time, the court shall hold a further informal hearing to decide on a statement of responsibilities. At such hearing, all relevant evidence, including oral and written reports, may be received by the court and relied upon to the extent of its probative value. The parties or their counsel shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making the reports.

(B) In determining the terms of the statement, the court shall, insofar as possible, in accordance with the best interest of the child, seek to:

(i) Return the child to the parent;

(ii) Permanently place the child with a fit and willing relative or relatives of the child;

(iii) Pursue adoptive placement;

(iv) Pursue permanent guardianship; or

(v) Provide a planned permanent living arrangement for the child.

(C) The court shall take such action as may be necessary to develop and approve a plan that it finds to be in the best interest of the child. The plan shall be approved within sixty (60) days of the foster care placement, except as provided in § 37-1-166.

(5) In cases involving child abuse or child neglect, with such child being placed in foster care, the statement of responsibilities shall stipulate that the abusing or neglecting parent shall receive appropriate rehabilitative assistance through mental health consultation if so ordered by the court.

(6) The plan for a child who remains in foster care for one (1) year may be modified to a long-term agreement between a foster parent and the agency charged with the caring and custody of the child. Such agreements with foster parents shall include:

(A) Appropriate arrangements for the child; and

(B) Procedures for the termination of the agreement by either party when in the best interests of the child. When the department of children's services is a party to the agreement, such agreement must include provisions permitting variation in monetary allowances from fiscal year to fiscal year depending upon appropriations by the general assembly.

(b)(1) In lieu of the provisions of subsection (a), in the event a child is in foster care as a result of a surrender or termination of parental rights, the agency having guardianship of the child shall prepare and submit to the foster care advisory review board or court in the county in which the child is in foster care a plan for each such child.

(2) Such plan shall include a goal for each child of:

(A) Permanent placement of the child with a fit and willing relative or relatives of the child;

(B) Adoption, giving appropriate consideration to § 36-1-115(g) when applicable;

(C) Permanent guardianship; or

(D) A planned permanent living arrangement.

(3) Specific reasons must be included in the plan for any goal other than placement of the child with a relative of the child or adoption. Such plan shall also include a statement of specific responsibilities of the agency and the caseworker of such agency designed to achieve the stated goal.

(c) The statement of responsibilities on a permanency plan that is ordered by the court shall empower the state agency to select any specific residential or treatment placement or programs for the child according to the determination made by that state agency, its employees, agents or contractors.

(d) Whenever a child is removed from such child's home and placed in the department's custody, the department shall seek to place the child with a fit and willing relative if such placement provides for the safety and is in the best interest of the child. Notwithstanding any provision of this section or any other law to the contrary, whenever return of a child to such child's parent is determined not to be in the best interest of the child, then such relative with whom the child has been placed shall be given priority for permanent placement or adoption of the child prior to pursuing adoptive placement of such child with a non-relative.

(e) In addition to completing the permanency plan, within thirty (30) days of the date of foster care placement, the placement agency shall collect as much information as possible in order to complete a medical and social history on the child and the child's biological family on the form promulgated by the department pursuant to § 36-1-111(k).

37-2-601. Establishment of post-custody services advisory council.

(a)(1) The executive director of the Tennessee commission on children and youth shall establish a non-funded, voluntary, post-custody services advisory council, which shall be responsible for:

(A) Identifying strategies to assess and track effectiveness of post-custody services and the operation of resources centers authorized by this part; and

(B) Identifying the following:

(i) Strategies for maintaining accurate numbers of children served by post-custody services;

(ii) The number of services provided by the department of children's services;

(iii) The number of children who accept these services;

(iv) Reasons why children do not accept these services; and

(v) The number of children who continue their education and the number who do not.

(2) The advisory council shall report no later than October 31 of each year to the Tennessee commission on children and youth, the civil justice committee and health committee of the house of representatives and the health and welfare committee of the senate, making recommendations for the continuing operation of the system of post-custody services and supports.

(b) The department of children's services and other state agencies that provide services or supports to youth transitioning out of state custody shall participate fully in the council and shall respond to the recommendations put forth by the council as appropriate.

37-3-115. Report, plan and budget.

(a)(1) No later than February 1, 2009, the council shall submit a report regarding the status of the development of a plan for a statewide system of care for children's mental health. The report shall include, but not be limited to:

(A) The timeline for development of the overall plan;

(B) Barriers to implementation of such a plan, if any;

(C) A list of all programs currently in place to serve and support children's mental health needs and whether those programs are evidence-based, research-based or theory-based;

(D) The status of interagency cooperation relative to a system of children's mental health care throughout the state; and

(E) A financial resource map of all current federal and state funded programs that support or serve children with mental health needs in the state.

(2) The report shall also include cost analysis information produced in accordance with § 37-3-112(d) and shall provide recommendations for improving efficiency in the use of existing state and federal funds by increasing coordination of children's mental health care with other child-focused service delivery systems.

(b) No later than July 1, 2010, the council shall submit a plan prepared in accordance with § 37-3-112 and a budget for implementing the plan. The plan shall provide for demonstration sites in at least three (3) areas of the state, with at least one (1) area to be in each grand division. If the plan submitted by

July 1, 2010, is approved and funded by the legislature no later than July 1, 2012, the council shall submit a plan and budget for extending the demonstration sites to a total of no less than ten (10) areas of the state selected by the council. If the plan submitted by July 1, 2012, is approved and funded by the legislature, no later than July 1, 2013, the council shall submit a plan that will accomplish implementation of the system of children's mental health care statewide. The council shall create and submit with each plan current financial resource maps and cost analysis, and the information shall be required to accompany any recommendations the council makes regarding the continued development of a statewide system of children's mental health care.

(c) The plan, budget and report required by subsections (a) and (b) shall be submitted to the governor, the judiciary, education, and health and welfare committees of the senate and the civil justice, education and health committees of the house of representatives.

37-3-116. Resource mapping of funding sources — Report.

(a) The commission shall design and oversee a resource mapping of all federal and state funding sources and funding streams that support the health, safety, permanence, growth, development and education of children in this state from conception through the age of majority or so long as they may remain in the custody of the state. The resource mapping shall include, but not be limited to:

(1) An inventory of all federal and state funding sources that support children in this state;

(2) An inventory of all state, federal or government subsidized services and programs offered to children in this state, set out by program, target population, geographical region, agency or any other grouping that would assist the general assembly in determining whether there are overlapping programs that lead to duplication within the state, gaps in service delivery and any administrative inefficiencies generally;

(3) A description of the manner in which the funds are being used within the agencies or organizations, the performance measures in place to assess the use of such funding and the intended outcomes of the programs and services;

(4) Government mandates for the use of the funds, if any; and

(5) An inventory of the funds for which the state may be eligible, but is currently not receiving or using, and the reasons why the funds are not being used.

(b) The commission shall update the report each year and shall subsequently assure that the resource map is periodically and timely updated, so as to maintain a current resource map of the funds used to support children in the state.

(c) The comptroller of the treasury and each department of state government or agency in this state shall provide assistance upon request to the commission in effectuating the purpose of this section.

(d) On or before February 15, 2009, a preliminary report shall be provided by the commission; and on or before April 15, 2010, and each successive year thereafter, the commission shall provide a full report to the judiciary, education, and health and welfare committees of the senate and the civil justice, education and health committees of the house of representatives. The full

report shall include, but not be limited to, the resource map and any recommendations, including proposed legislation, for improving the efficiency and effectiveness of programs offered to children in this state.

37-3-501. Informational clearinghouse — Toll-free telephone service for inquiries — Promotional activities — Annual report.

(a) There shall be created, within the Nashville office of the department of health, the Tennessee informational clearinghouse on teenage pregnancy.

(b) The department shall obtain and operate a toll-free telephone line for the express purpose of receiving and encouraging inquiries for informational services. The department shall assist callers by providing informational services needed to plan programs and presentations, to organize teen pregnancy prevention activities, to organize parenting education and assistance programs for teen parents, and to undertake other activities and programs to address problems associated with teenage pregnancy.

(c) The department shall regularly undertake appropriate activities to inform and remind the citizens of this state of the services provided by the clearinghouse and of the availability of the toll-free telephone line. Such promotional activities shall regularly include, but not necessarily be limited to, press releases, posters, speeches, and public service announcements on radio and television. The department shall undertake special activities to improve public awareness of the clearinghouse within those counties and areas of the state in which teenage pregnancy rates are highest.

(d) In preparing for and responding to requests for information collected and maintained within the clearinghouse, the department shall provide a level of service that is at least comparable to the level of service so provided by the children's services commission prior to July 1, 1988.

(e) The department of health and each department of state government that administers services to children and families shall jointly report at least once annually, on or before December 31, to the judiciary committee of the senate and the civil justice committee of the house of representatives concerning administration of the Tennessee informational clearinghouse on teenage pregnancy.

37-3-604. Evaluation of family preservation services — Joint report — Contents.

The department shall conduct ongoing evaluations of family preservation and support services and shall file a report, on or before December 31 of each year, with the governor, the chair of the health and welfare committee of the senate, the chair of the civil justice committee of the house of representatives, and the chair of the judiciary committee of the senate. The report shall include the following information for the preceding fiscal year:

(1) The number of families receiving services through the program;

(2) The number of children at imminent risk of placement prior to initiation of service in families receiving services and the number of foster care children and their parents or primary caregiver who are receiving time-limited family reunification services;

(3) Among those children identified in subdivision (2), the number of children placed in foster care, in group homes and in other facilities outside the home;

(4) The average cost of services provided under the program;

(5) The estimated cost of out-of-home placement, through foster care, group homes or other facilities, that would otherwise have been expended on behalf of those children who successfully remain united or have been reunited with their families as a result of the program, based on average lengths of stay and average cost of such out-of-home placements;

(6) The number of children who remain unified with their families for one (1), two (2) and three (3) years, respectively, after receiving services; and

(7) An overall statement of the achievements and progress of the program during the preceding year, together with recommendations for improvement.

37-3-703. Healthy start pilot project established — Objectives — Evaluation — Required disclosures.

(a) The state of Tennessee shall develop, coordinate, and implement a healthy start pilot project within ten (10) or more counties of the state. The healthy start pilot project shall be based upon the nationally recognized model, shall focus on home visitation and counseling services, and shall improve family functioning and eliminate abuse and neglect of infants and young children within families identified as high risk. Healthy start services for participating families shall extend at least through a child's first three (3) years of life. However, family participation shall be voluntary; and, if a family refuses healthy start services, then such refusal shall not be admissible in evidence for any subsequent cause of action.

(b) Healthy start pilot projects shall ensure that:

(1) Families are educated about child health and child development;

(2) Families receive services to meet child health and development needs;

(3) Families receive services as identified and prioritized by the family and the project; and

(4) Services focus on empowering the family and strengthening life-coping and parenting skills.

(c) Specific objectives for healthy start pilot projects shall include that:

(1) Family stress is reduced and family functioning is improved;

(2) All of the children receive immunizations by two (2) years of age;

(3) All of the children receive developmental screening and follow-up services;

(4) All of the children are free from abuse and neglect; and

(5) Mothers are enrolled in prenatal care by the end of the first trimester of any subsequent pregnancy.

(d) The state of Tennessee shall conduct ongoing evaluations of the healthy start pilot project and shall file a joint report, on or before December 31 of each year, with the governor and the chairs of the health and welfare committee of the senate and health committee of the house of representatives. All state agencies that provide services to children shall make available nonidentifying information about healthy start participants for the purpose of conducting the evaluation. The report shall include the following information for the preceding fiscal year:

(1) The number of families receiving services through the pilot project;

(2) The number of children at risk of abuse and neglect prior to initiative of service to families participating in the pilot project;

(3) Among those children identified in subdivision (2), the number of

children who have been the subjects of abuse and neglect reports;

(4) The average cost of services provided under the pilot project;

(5) The estimated cost of out-of-home placement, through foster care, group homes or other facilities, that reasonably would have otherwise been expended on behalf of children who successfully remain united with their families as a direct result of the project, based on average lengths of stay and average costs of such out-of-home placements;

(6) The number of children who remain unified with their families and free from abuse and neglect for one (1), two (2), three (3), and four (4) years, respectively, while receiving project services; and

(7) An overall statement of the achievements and progress of the pilot project during the preceding fiscal year, along with recommendations for improvement or expansion.

(e)(1) When offering healthy start services to a family, the state or its contractor shall provide that family with a written statement and oral explanation. Both the statement and explanation shall describe the following information:

(A) The purpose of the healthy start project;

(B) Project services that may be offered;

(C) The voluntary nature of participation and the family's right to decline services at any time;

(D) The project records to be maintained with respect to participating families; and

(E) The family's right to review project records pertaining to that family.

(2) After providing the oral explanation, the state or its contractor shall, on the written statement, obtain signed consent from the parents or caretakers of a child. The parents or caretakers shall receive a copy of the signed statement and a copy will be maintained in the family's record.

(3) Each participating family shall have the right to review project records pertaining to that family. The state or its contractor shall make such record available for review during regular office hours.

37-3-803. Creation — Findings and recommendations — Duties — Reports.

(a) There is created the Tennessee second look commission. The commission shall review an appropriate sampling of cases involving a second or subsequent incident of severe child abuse in order to provide recommendations and findings to the general assembly regarding whether or not severe child abuse cases are handled in a manner that provides adequate protection to the children of this state.

(b) The commission's findings and recommendations shall address all stages of investigating and attempting to remedy severe child abuse, including but not limited to:

(1) The reporting, investigating and referring of alleged severe child abuse cases by state agencies and others;

(2) The risk of severe child abuse victims being returned to the custody of the child's abuser or placed by the state in an environment where the child is at risk of being abused a second or subsequent time;

(3) The procedures used by juvenile courts and courts exercising jurisdic-

tion over criminal and civil child abuse, neglect and endangerment cases;

(4) The laws, rules, or guidelines used to determine whether or not an alleged perpetrator of severe child abuse is to be prosecuted;

(5) The causes of severe child abuse in Tennessee and any preventative measures that would reduce the number of severe child abuse cases in this state;

(6) The manner in which severe child abuse data is collected and used by multiple agencies within the state; and

(7) The representation provided to severe child abuse victims, including but not limited to, representation provided by attorneys, guardians and advocates.

(c) The commission may:

(1) Promulgate bylaws to provide for the election of commission officers, establishment of committees, meetings, and other matters relating to commission functions;

(2) Request and receive the cooperation of other state departments and agencies in carrying out the duties of this part; and

(3) Hold hearings, hear testimony, and conduct research and other appropriate activities.

(d)(1) The commission shall provide a report to the general assembly on the commission's progress in fulfilling its duties set out in this section no later than January 1, 2011.

(2) The commission shall provide a report detailing the commission's findings and recommendations from a review of the appropriate sampling no later than January 1, 2012, and annually thereafter, to the general assembly. Such report shall be submitted to the governor, the judiciary and health and welfare committees of the senate and the civil justice committee of the house of representatives.

37-5-105. Powers and duties of commissioner.

The commissioner, or the commissioner's designee, has the following powers and duties in addition to such other powers and duties as may be specifically provided by law in this title or as otherwise provided by law:

(1) Select and recommend to the appropriate state officials the employment or transfer of all personnel required for the operation of the department, except, however, the transfer of any employees pursuant to this chapter or the initial organization of the new department pursuant to this chapter shall not result in any impairment, interruption or diminution of employee rights, privileges, salary, benefits, leave accumulation or employment; and further, such transfer of employees pursuant to this chapter or initial organization of the new department pursuant to this chapter shall not result in a contract employee supervising a preferred service employee or conducting a job performance evaluation for a preferred service employee;

(2) Recommend to the appropriate state officials the salaries and compensation of all officers and employees of the department;

(3) Make and adopt rules, regulations and policies for the government, management and supervision of state children's service agencies or facilities, and children's services; prescribe the powers and duties of the officers and employees thereof; and provide for the care of children served by the department; provided, however, that such rules shall be consistent with and

subject to licensing approval authority of any other state agency that has responsibility for licensing or approval of any portion of program services or facilities provided by the department;

(4)(A) Publish, in accordance with the rules, regulations, policies and procedures of the state publication committee, an annual report on the operation of the department and the services and programs under its supervision by January 31 and furnish the report to the governor, members of the general assembly, other persons and relevant entities that may request the report such as the Tennessee council of juvenile and family court judges and the Tennessee commission on children and youth, and others as the governor may consider appropriate;

(B) Such annual report shall contain information regarding foster care services, including definitions, racial composition, and statutory or regulatory authority where appropriate as to the following:

(i) **Placement Information.** Total number of children in foster care by region and segmented by:

(a) Level of placement (I-IV);

(b) Placement type (department of children's services foster home, continuum contracts, pre-adoptive or adoptive, diagnostic shelter, emergency shelter, medical or surgical hospital, miscellaneous, specialized residential school, trial home visit);

(c) Average length of custody; and

(d) Number of department of children's services foster care placements currently available;

(ii) **Social Services Caseload Information.** Total social services case managers by region and segmented by:

(a) Case manager slots;

(b) Actual filled slots;

(c) Average salary;

(d) Average social services caseload; and

(e) Range of social services caseload;

(iii) **Legal Support by Region.** Total number of attorneys and paralegal staff:

(a) Number of attorney slots;

(b) Number of attorney filled slots;

(c) Number of paralegal slots; and

(d) Number of paralegal filled slots;

(5) Direct the placement of children in appropriate state programs or facilities, or contract programs or facilities, in conformity with constitutional, statutory or regulatory requirements;

(6) Assume general responsibility for the proper and efficient operation of the department, its services and programs. The commissioner may establish such divisions and units within the department as necessary for its efficient operation;

(7) Promulgate necessary rules and regulations to govern administrative searches and inspections of employees of the department, juveniles in the custody of the department and visitors to facilities of the department. Such rules shall provide guidelines and standards for the manner in which the searches authorized by this subdivision (7) shall be conducted;

(8) Promulgate rules and regulations concerning drug testing that are not inconsistent with the provisions of § 41-1-121;

(9)(A) Conduct investigations as deemed necessary to the performance of the commissioner's duties, and to that end, the commissioner shall have the same power as a judge of the court of general sessions to administer oaths and to enforce the attendance and testimony of witnesses and the production of books and papers;

(B) The commissioner shall keep a record of such investigations, stating the time, place, nature or subject, witnesses summoned and examined, and the commissioner's conclusions;

(C) In matters involving the conduct of an office, a stenographic report of the evidence may be taken and a copy thereof with all documents introduced kept on file at the office of the department;

(D) The fees of witnesses for attendance and travel shall be the same as in the circuit court, but no officer or employee of the institution under investigation shall be entitled thereto;

(E) Any judge of the circuit or chancery court, either in term time or in vacation, upon application of the commissioner, may compel the attendance of witnesses, the production of books or papers and the giving of testimony before the commissioner, by a judgment for contempt or otherwise, in the same manner as in the cases before a circuit or chancery court;

(10)(A) The commissioner shall have the authority to conduct or cause to be conducted any administrative hearings relating to any factual determinations that the department is authorized or required to make pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, or pursuant to any other hearing procedures required by law or that may be necessary to provide due process procedures for individuals affected by the programs administered by the department;

(B) The commissioner, or any officer or employee of the department upon written authorization from the commissioner, has the power to administer oath and affirmations, take depositions, issue subpoenas and require the production of documents and any books and records that may be necessary in the conduct of such hearings;

(11) Perform all duties and exercise all authority set forth in part 3 of this chapter, regarding community services agencies;

(12)(A) Establish a children's services advisory council having fifteen (15) members appointed by the commissioner to act in an advisory capacity on any matter within the jurisdiction of the department. Appointees to the council shall include, but not be limited to, representatives of local law enforcement, mental health professionals, local education agencies, juvenile court officials, social workers, health care providers, consumers of services such as parents, foster parents or family members of children who are or have been recipients of services from the department, child advocates, persons having specialized knowledge or experience and public and private agencies that provide services to children. The members of the council shall be appointed with a conscious intention of reflecting a diverse mixture with respect to race and gender. Each community services agency region shall be represented by at least one (1) individual on the council;

(B) The term of a member of the children's services advisory council shall be three (3) years with the terms staggered so as to replace no more than one third (⅓) of the members each year. Members of the council may be reappointed after their terms expire. Members of the council shall

continue in office until the expiration of the terms for which they were respectively appointed and until such time as their successors are appointed. Vacancies occurring on the council by reasons of death or resignation shall be filled in the same manner as a regular appointment for the remainder of the unexpired term;

(C) Members shall be reimbursed for their actual expenses for attending meetings of the council. 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;

(D) The duties of the council shall be to advise the commissioner regarding issues pertaining to the purpose of the department and its work when requested by the commissioner. Annually, the council shall elect one (1) of its members to serve as chair of the council and one (1) member to serve as secretary. Minutes of each meeting shall be kept and sent to the commissioner. Any officer may be elected to consecutive terms;

(13) Establish, from time to time, committees composed of representatives from the public or private sectors, or both, for such purposes and durations as may be deemed appropriate or required by the commissioner. Members of such committees shall be reimbursed for their actual expenses for attending meetings of their respective committees. 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;

(14)(A) Establish and administer, jointly with the state treasurer, a scholarship program for the sole purpose of providing financial assistance to foster children wishing to pursue opportunities in higher education;

(B) The scholarship program established and administered pursuant to subdivision (14)(A) shall be funded from state appropriations and from such individual and corporate grants, donations and contributions as the commissioner shall solicit and receive specifically for such purpose;

(15) In consultation with the child sexual abuse task force established by § 37-1-603(b)(1), the child advocacy centers, the Tennessee council of juvenile and family court judges, the Tennessee commission on children and youth, the Tennessee supreme court administrative office of the court, the district attorneys general conference and the juvenile and criminal court clerks, develop a plan and recommendations regarding requirements for extensive, detailed information regarding all reports of child maltreatment and the criminal, civil or administrative disposition of all allegations, by type, of child maltreatment and, by type, of disposition, including data regarding the victims and the perpetrators, to be collected by the department and submit the plan and recommendations to the judiciary committee of the senate and the civil justice committee of the house of representatives. Any child-specific information shall be confidential, except as otherwise provided by statute; and

(16) Promote collaboration and accountability among local, public, and private programs to improve the lives of children and families, including continuing accreditation with the Council on Accreditation for Children and Family Services, Inc. or its equivalent, to develop strategies consistent with best practice standards for delivery of services. If the department fails to maintain accreditation, a report shall be provided to the general assembly outlining the reasons the department is no longer accredited.

37-5-115. Review.

The department shall be reviewed pursuant to the requirements set out in the Tennessee Governmental Entity Review Law set out in title 4, chapter 29. Further, the department shall respond to requests for information from any other legislative committees including, but not limited to, the fiscal review committee, the health and welfare committee of the senate, the health committee of the house of representatives, and the government operations committees of the senate and house of representatives, to insure that thorough review and oversight of the department is accomplished.

37-5-117. Youth service officers — Qualifications.

After July 1, 1989, any person employed as a youth service officer by the department of children's services shall:

(1) Be at least eighteen (18) years of age;

(2) Be a citizen of the United States;

(3) Have such person's fingerprints on file with the Tennessee bureau of investigation for criminal identification;

(4) Have passed a physical examination by a licensed physician;

(5) Have a good moral character as determined by investigation; and

(6) Have been certified by a Tennessee licensed health care provider qualified in the psychiatric or psychological field as being free from any impairment, as set forth in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association at the time of the examination, that would, in the professional judgment of the examiner, affect the applicant's ability to perform an essential function of the job, with or without a reasonable accommodation.

37-5-125. Model programs for adolescents at risk.

(a) Through contract with nonprofit corporations, community organizations, volunteer groups, churches, schools and family resource centers, the department of children's services is authorized to establish in each grand division two (2) model after school or summer programs, or both, for young adolescents at risk of placement in the custody of the state. An entity may contract with the department to operate more than one (1) program. Each such model program shall serve not more than twenty-five (25) adolescents and shall strive to improve self-esteem, motivation, responsibility, achievement and goal setting through a variety of activities including, but not necessarily limited to, counseling, tutoring, mentoring, field trips, cultural enrichment experiences, team sports and team projects and problem solving. State funding for each such model program shall not exceed eight thousand two hundred fifty dollars ($8,250) per program.

(b) The department shall promulgate policies and guidelines defining:

(1) The phrase "young adolescents at risk of placement in the custody of the state;" and

(2) The minimum requirements and components for programs established and funded pursuant to subsection (a).

(c) On or before January 15 of each year, the department shall evaluate the success of such programs and shall report findings and recommendations to the judiciary committee of the senate and the civil justice committee of the house of representatives.

37-5-127. License, certification or registration — Notifications — Prerequisites — Web site — Electronic notices.

(a) The department and each board, commission, agency or other governmental entity created pursuant to this title shall notify each applicant for a professional or occupational license, certification or registration from the department, board, commission, agency or other governmental entity where to obtain a copy of any statutes, rules, guidelines, and policies 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, guidelines, and policies.

(b) The department and each board, commission, agency or other governmental entity created pursuant to this title shall notify each holder of a professional or occupational 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 a holder's license, certification or registration.

(c) The department and 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 professional or occupational license, certification, or registration from the entity.

(d)(1) The department and each board, commission, agency, or other governmental entity created pursuant to this title shall allow each holder of a professional or occupational license, certification or registration from the department, 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) The department and 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.

37-5-128. Review of department policies and attached protocol and procedures that affect children the department serves — Uniformity of applicability.

Before March 1 of each year, the department shall appear before the judiciary committee of the senate and the civil justice committee of the house of representatives for a review of the policies of the department and attached

protocol and procedures for these policies and any provisions that affect the children the department serves. During the review, the committees shall consider the uniformity of applicability across the state of the department's policies and attached protocol and procedures for these policies and any provisions that affect the children the department serves.

37-5-129. Review of new departmental policies.

The department shall submit for review by the judiciary committee of the senate and the civil justice committee of the house of representatives any new departmental policies within sixty (60) days of adoption of the policies.

37-5-603. Establishment of demonstration program — State advisory committee — Reporting.

(a)(1) No later than July 1, 2006, the department shall establish a demonstration program that conforms to the requirements of this part and carries out its purposes in at least three (3) but no more than five (5) areas of the state selected by the department. The multi-level response system shall be designed to protect children from maltreatment, through the effective use of available community-based public and private services. The program should be staffed by case managers and other personnel and child protective services investigators, as called for in this part. There shall be at least one (1) area in each grand division of the state. Areas may be composed of any combination of one (1) or more counties. No later than July 1, 2007, the demonstration program shall be expanded to include a total of no less than ten (10) areas of the state selected by the department. No later than July 1, 2010, the program shall be implemented in all areas of the state.

(2) To facilitate accomplishment of the purposes of this part, the department shall establish a state advisory committee composed of representatives from the offices of the commissioners of correction, education, health, human services, mental health and substance abuse services, and intellectual and developmental disabilities, the commission on children and youth, and any other state or community-based public or private agency or office that the department determines serves children or families in ways that might be used in the demonstration program. The department shall pursue the creation of such interagency agreements permitted by law as will enable the department to accomplish the purposes of this part.

(b) The department shall advise the governor, the judiciary committee of the senate, the civil justice committee of the house of representatives and the health and welfare committee of the senate of the progress the department is making toward implementation of the program by providing them with a summary progress report highlighting key implementation activities, including, but not limited to, site selection, timelines, barriers to implementation, identification of needed resources, interagency cooperation, and progress in establishing local advisory committees, on October 1, 2005, and every six (6) months thereafter, until statewide implementation is achieved. After the first year of operation of the program, the department shall include in its report any recommendations for changes in the law, including whether there are any kinds of cases investigated under chapter 1, parts 4 and 6 of this title, that the experience of the department shows can be safely excluded from mandatory investigation under those parts.

37-5-605. Annual report — Collection and maintenance of data.

(a) No later than October 1, 2007, the department shall submit to the governor, the health and welfare committee of the senate, the civil justice committee of the house of representatives, and the judiciary committee of the senate a report on the first full year of the demonstration program. No later than October 1, 2008, and each year thereafter until this part is implemented in all areas of the state, the department shall provide an annual report evaluating the demonstration project to the same parties. Upon request, all persons and groups to whom the annual report is distributed shall be entitled to receive a detailed explanation of the procedures used to evaluate the system and shall be given the raw data used to support the report. Outcomes to be evaluated in each of these reports shall include, but not be limited to, the following:

(1) The safety of children under the program compared with children served under chapter 1, part 4 or part 6 of this title, in light of the following and other factors that may provide useful information about the effectiveness of the program for its purposes:

(A) The number of cases processed under the program, by types of risks and needs addressed;

(B) The number of cases referred for proceedings under chapter 1 of this title, by type;

(C) The number of final dispositions of cases in the current reporting year by disposition as follows:

(i) Closed on initial review;

(ii) Closed after assessment;

(iii) Closed after assessment and referral for available community-based public or private services;

(iv) Numbers and types of cases in which the department proceeded under chapter 1 of this title, after the initial review; and

(v) Numbers and types of cases in which there were reports of harm or sexual abuse under chapter 1, part 4 or part 6 of this title, with respect to children in a family considered or served under this part;

(D) The extent to which the program has reduced the incidence of children who are subjected to harm or sexual abuse that would require a report under chapter 1, part 4 or part 6 of this title, or who otherwise would become eligible for services under chapter 1 of this title;

(E) To whom reports of harm or sexual abuse were determined to show that there had been no harm or sexual abuse or that those reports were invalid; and

(F) The type and amount of community-based public or private services received by families;

(2) The timeliness of response by the department under the program;

(3) The timeliness of services provided to children and families under the program;

(4) The level of coordination with public and private community-based service providers to ensure community-based services are available to the public through the program;

(5) The cost effectiveness of the program with respect to the department, available community-based public and private service resources, and law enforcement and judiciary resources that might otherwise have become

involved in the cases; and

(6) The effectiveness of the program in enhancing the welfare of children and keeping families together.

(b) Upon implementation of the multi-level response system in any area, the department shall ensure that all data necessary for compliance with this section is collected and maintained.

37-10-401. Responsibility of parents to have children immunized — Specific vaccines — Immunization registry.

(a) It is the responsibility of each parent or legal guardian to ensure that such person's child or children receive the vaccines as are recommended by guidelines of the Center for Disease Control or the American Academy of Pediatrics to be administered to a child. The parent or legal guardian is encouraged to obtain the recommended immunizations within the first two (2) years of the child's life. Such vaccines include, without limitation, the following specific vaccines:

(1) Diphtheria-tetanus-pertussis (DTP);

(2) Polio: oral polio vaccine (OPV) or inactivated polio vaccine (IPV);

(3) Measles-mumps-rubella (MMR);

(4) Haemophilus influenzae type b conjugate vaccines (Hib);

(5) Hepatitis B vaccine (Hep B);

(6) Pneumoccocal vaccine, when medically indicated;

(7) Influenza vaccine, when medically indicated; and

(8) Varicella, when available.

(b) Subject to availability of funding for such purpose, the department of health is authorized to provide free vaccine, through the first twenty-four (24) months of life, for Tennessee children born after January 1, 1996. If an administration fee is charged by a health provider receiving this vaccine, such fee may not exceed the administration fee established by the health care financing administration under the Vaccines for Children Program established in the Omnibus Budget Reconciliation Act of 1993. No immunization may be withheld due to a family's inability to pay the fee.

(c) The department shall establish and maintain an immunization registry for children. By January 1, 1996, the department shall incrementally require all local public health departments to report, in a designated format, the record of each immunization given. Other health care providers or any third party payor or health insurance entity regulated by the department of commerce and insurance doing business in Tennessee, or any entity that has elected, organized and qualified as a self-insured entity may likewise report such records. Information from the registry shall be available to parents and legal guardians; health care providers; any third party payor or health insurance entity regulated by the department of commerce and insurance doing business in Tennessee; any entity that has elected, organized and qualified as a self-insured entity; and schools, child care facilities, and other institutions having care or custody of children.

(d) The commissioner of health shall report to the members of the health committee of the house of representatives, and the health and welfare committee of the senate, by March 1 of each year, on the immunization rates in each county and improvements or changes made during the preceding year.

38-5-118. Disposition of body of decedent.

After the inquisition, the coroner or medical investigator may deliver the body of the deceased to the deceased's relatives, if there are any; but if not, the coroner or the medical investigator shall cause the deceased to be decently buried or cremated in accordance with § 68-4-113, and the expense to be paid from the property found with the body, or, if there is none, from the county treasury, by certifying an account of the expenses to the county mayor, who shall allow and pay the expenses, if deemed reasonable, as other claims on the county.

38-6-102. Criminal investigation division — Criminal intelligence unit — Investigations into domestic terrorism — Emergency situation traffic stops.

(a) The criminal investigation division shall consist of not less than six (6) persons who shall be experienced in the detection of crime and in criminal work generally. The director, with the approval of the governor, however, may increase the number of persons employed in the criminal investigation division, to such number as may be found to be feasible and necessary. At least two (2) of the criminal investigators shall be normally detailed to service in each grand division of the state, but the director shall have power to detail any and all of the investigators to service in grand divisions in case of emergency. The director, upon the request of the district attorney general of any judicial district, may assign the criminal investigators to aid that district attorney general in the investigation of any crime committed in the district attorney general's judicial district, but only when the district attorney general requests such aid. When detailed by the director to aid the district attorney general, the criminal investigators shall have full power to issue subpoenas for witnesses, serve the subpoenas, administer oaths to witnesses as they may summon, to take written statements from them and, when so detailed, shall have the same powers with reference to the execution of criminal process, making arrests, and the like, as does the sheriff of the county in which the investigators are at work.

(b)(1) Investigators of the bureau of investigation are authorized, without a request from the district attorney general, to make investigations in connection with any matters pertaining to:

(A) Fugitives from justice;

(B) Commission of any offense prohibited by title 39, chapter 16, part 4, or any other offense involving corruption of or misconduct by a public official;

(C) Employees or prospective employees of the bureau or the department of safety;

(D) Organized crime activities;

(E) Fraudulent conduct involving social security administration Title II and Title XVI disability programs; provided, however, that the authority conferred upon the bureau by this subdivision (b)(1)(E) shall automatically terminate upon discontinuation of federal funding for reimbursement of bureau costs associated with investigations of fraudulent conduct involving Title II and Title XVI disability programs; or

(F) Victimization of children by means of a computer or other electronic communications device.

(2)(A) For the purposes of subsection (b), "organized crime" is defined as the unlawful activities of the members of an organized, disciplined

association engaged in supplying illegal goods and services, including, but not limited to, gambling, prostitution, loan sharking, narcotics, labor racketeering, and other unlawful activities of members of such organizations.

(B) The bureau is authorized to investigate allegations of felonious conduct resulting in serious bodily injury to a state inmate who is housed in a county or private correctional facility where the alleged perpetrator is an official, employee or trustee of the county or a private vendor if, after the district attorney general is notified by the department of correction of such felonious conduct, the district attorney general refuses to request the bureau to make an investigation. The bureau shall forward the results of any such investigation to the department of correction and the district attorney general.

(C) The bureau also is authorized, upon the request of the governor, the attorney general and reporter, any member of the board, the commissioner of correction or a district attorney general to conduct investigations into allegations of fraud, corruption, or dishonesty involving the granting, revoking or denying of paroles, release classification status or executive clemency of any type. The governor, a district attorney general, the attorney general and reporter, or the board of parole acting at the request of the governor, may request the assistance of the bureau to determine whether any recipient of executive clemency of any type has been or is presently abiding by the terms and conditions imposed upon the governor's granting of executive clemency of any type.

(D) The bureau shall coordinate its activities whenever possible with municipal, county, and federal police agencies with emphasis toward providing strike force capabilities to high crime areas within the state.

(E) The bureau shall continue to utilize the communications systems of the department of safety.

(c) Whenever a district attorney general refuses or neglects to present the results of any investigation undertaken under this section to a grand jury, the director, or the director's designated representative, may appear before the grand jury and seek a presentment, and the grand jury shall have the power to issue compulsory process for the appearance of witnesses. In the event the grand jury returns a presentment and the district attorney general refuses to prosecute, the director may petition for the appointment of a district attorney general pro tempore as provided for in § 8-7-106.

(d) The director shall cause to be established within the criminal investigation division a criminal intelligence unit (CIU). It shall be the responsibility of the CIU, through the automated criminal intelligence system of Tennessee (ACIST), as well as through criminal investigators assigned to each of the bureau's four regional offices, to gather and maintain criminal intelligence on criminal gang activity. Intelligence collected pursuant to this section shall be reviewed for compliance with 28 CFR Part 23.20 and shall be disseminated to local, state, and federal law enforcement agencies pursuant to 28 CFR Part 23.20. The bureau shall analyze all criminal intelligence collected, and shall compile statistical information for dissemination through the national incident-based reporting system (NIBRS) and the bureau's annual report.

(e)(1) Investigators of the bureau of investigation are authorized, without a request from the district attorney general, to make investigations based upon intelligence information pertaining to domestic terrorism that the

bureau received under a government information security classification. Investigators may make investigations based upon intelligence information pertaining to domestic terrorism that the bureau received from nonclassified sources upon the request of the district attorney general.

(2) Investigators of the bureau of investigation are authorized, without a request from the district attorney general, to make traffic stops in emergency situations in which the safety of the public is in jeopardy and no officer from the appropriate law enforcement agency is immediately available to make the stop. For purposes of this subdivision (e)(2), "emergency situations" is limited to driving under the influence of an intoxicant pursuant to § 55-10-401, and reckless endangerment pursuant to § 39-13-103 involving the traffic stop. Investigators may also assist stranded motorists.

38-6-103. Forensic services division — Purchase of breathalyzer tests by local governments.

(a) The forensic services division shall consist of experts in the scientific detection of crime. The director is empowered to employ, either upon a temporary or permanent basis, but is not limited to, ballistics experts, pathologists, toxicologists, experts in the detection of human bloodstains and fingerprint experts and such other persons of expert knowledge in the detection of crime as may be found feasible. It shall be the duty of the forensic services division to keep a complete record of fingerprints obtained by it through exchange with the federal bureau of investigation, with similar bureaus in other states and from fingerprints obtained in this state. Each peace officer of this state, upon fingerprinting any person arrested, shall furnish a copy of the fingerprints to the forensic services division of the bureau. Likewise, such fingerprints as are now on file at the state penitentiary shall be transferred from the penitentiary to the bureau and maintained by it. Each person received at the state penitentiary shall be fingerprinted and a copy of the fingerprints furnished to the bureau. The bureau is authorized to exchange with the federal bureau of investigation any and all information obtained by the bureau in the course of its work and to request of the federal bureau of investigation such information as the bureau may desire.

(b) The services of the forensic services division may be made available by the director to any district attorney general of this state, the chief medical examiner and all county medical examiners in the performance of their duties under the post-mortem examination law or to any peace officer upon the approval of the district attorney general of the district in which such peace officer is located. The forensic services division likewise is authorized to avail itself of the services of any and all other departments of the state where the same may be of benefit to it, including, but not limited to, the state chemists and other expert personnel.

(c) The Tennessee crime laboratory and all regional crime laboratories shall be under the supervision of the director of the bureau or the director's designated representatives.

(d)(1)(A) The following fees shall be adjudged as a part of the costs in each case upon conviction of the following offenses:

(i) Controlled substances, controlled substance analogues, narcotics, drugs $20.00

(ii) Driving a motor vehicle, or operating a boat

while under the influence of intoxicants
and/or drugs, except as provided in § 55-10-413(d) 17.50

(iii) Certification of criminal histories and records ..... Amount fixed by the federal bureau of investigation

(iv) Upon the forfeiture of a cash bond or other surety entered as a result of a municipal traffic citation, whether considered a fine, a bond or a tax.....13.75.

(B) Such fees shall be in addition to and not in substitution for any and all fines and penalties otherwise provided for by law.

(C) Except when and as provided in this subdivision (d)(1) and subdivision (e)(2), the appropriate clerk, after deducting five percent (5%) as compensation when applicable, shall identify those fees set out in subdivision (d)(1)(A) to the Tennessee bureau of investigation and remit the fees to the state treasury to be expended by the Tennessee bureau of investigation as appropriated by the general assembly. These fees shall be transmitted by the clerk of the court to the state treasurer for deposit in a fund to be used by the Tennessee bureau of investigation for the purpose of employing personnel; for the purchase of equipment and supplies; to pay for the education, training and scientific development of employees; or for any other purpose to allow the bureau's business to be done in a more efficient and expeditious manner. The moneys received in the fund shall be invested for the benefit of the fund by the state treasurer pursuant to § 9-4-603. Amounts in the fund shall not revert to the general fund of the state, but shall, together with interest income credited to the fund, remain available for expenditure in subsequent fiscal years.

(2) Upon approval of the director, local governing bodies which have the responsibility for providing funding for sheriffs' offices and police departments are authorized to purchase from state contracts approved for bureau purchases, scientific instruments designed to examine a person's breath and measure the alcohol content of a person's breath, for use as evidence in the trial of cases; provided, that prior to use of the scientific instruments, such instruments must be delivered to the forensic services division for testing and certification pursuant to subsection (g). The bureau shall continue to maintain and certify the instruments and operating personnel, pursuant to subsection (g), and furnish expert testimony in support of the use of the scientific instruments when required.

(e)(1) Any fees authorized for services rendered by the bureau that are not incident to a court case shall be paid to the Tennessee bureau of investigation for deposit with the state treasurer for expenditure as provided for by this section.

(2) Every local governing body purchasing the instruments pursuant to subsection (d) shall report the use of the instrument to the clerk of the court, for inclusion of the service fee as a part of the court costs, which service fee shall be disbursed to the local governing body until the purchase price is recovered. Thereafter, the service fee shall be disbursed by the clerk to the bureau, for payment to the state treasurer as required by subsection (f).

(f) All revenue resulting from fines, forfeitures and services rendered by the bureau shall be paid to the state treasurer and used only as appropriated by the general assembly.

(g) The bureau, through its forensic services division, shall establish,

authorize, approve and certify techniques, methods, procedures and instruments for the scientific examination and analysis of evidence, including blood, urine, breath or other bodily substances, and teach and certify qualifying personnel in the operation of such instruments to meet the requirements of the law for the admissibility of evidence. When examinations, tests and analyses have been performed in compliance with these standards and procedures, the results shall be prima facie admissible into evidence in any judicial or quasi-judicial proceeding, subject to the rules of evidence as administered by the courts.

(h)(1) Effective July 1, 2006, there is created within the Tennessee bureau of investigation's serology/DNA unit, six (6) additional special agent/forensic scientist positions to perform DNA analysis in criminal investigations. The positions shall be in addition to any position that was created and funded prior to July 1, 2006, or that may be created in the future. The director shall determine to which of the bureau's forensic laboratories each of the six (6) special agents/forensic scientists employed pursuant to this subsection (h) shall be assigned. The assignments shall be based upon the number of criminal investigations requiring DNA analysis in each of the laboratories, the DNA analysis backlog and such other factors as the director determines will most quickly and efficiently reduce the backlog of DNA samples awaiting analysis.

(2) When the backlog of criminal investigations awaiting DNA analysis becomes current, the director shall continue to utilize these six (6) positions in the various bureau laboratories, as needed to prevent any future backlog of analysis requests and to expedite the analysis of future requests.

38-6-207. Presentation of written report to the general assembly.

The director of the Tennessee bureau of investigation and the assistant director of the narcotics investigation division shall present a written report each year to the criminal justice committee of the house of representatives and the judiciary committee of the senate. The report shall include, but shall not be limited to, the number of investigations currently under way by the division, investigations that resulted in arrests during the previous year, the number of such arrests that resulted in convictions, the class of felony or misdemeanor convictions resulting from such arrests, and the schedule of drug or drugs involved in such arrests and convictions. The report shall also include information regarding the levels of cooperation encountered among the various agencies, internally and otherwise, and other related information regarding the activities of the narcotics investigation division. The purpose of the report shall be to inform the general assembly as to the effectiveness and needs of the division. The above information shall be reported by race or ethnicity where available.

38-7-105. Facility for performance of autopsies — Deadline for accreditation in certain counties.

(a) All autopsies must be performed at a facility accredited by the National Association of Medical Examiners (NAME). A facility must receive accreditation from NAME within one (1) year of July 1, 2012, maintain accreditation and operate pursuant to NAME guidelines unless the facility operates in county which qualifies for an extension under subsection (b).

(b) A facility must receive accreditation from NAME within one (1) year of

July 1, 2014, maintain accreditation and operate pursuant to NAME guidelines if the facility is located in any county having a population of not less than three hundred thirty-six thousand four hundred (336,400) nor more than three hundred thirty-six thousand five hundred (336,500), according to the 2010 federal census or any subsequent federal census.

38-8-104. Powers and duties of commission.

(a) The commission shall:

(1) Develop, plan and implement law enforcement training programs for all local law enforcement officers in Tennessee;

(2) Function as a clearing house for training programs related to local law enforcement;

(3) Receive, administer and expend local, state, federal, and other monetary assistance in the form of grants or otherwise, in order to further any of the commission's purposes pursuant to this chapter;

(4) Establish uniform standards for the employment and training of police officers, including preemployment qualifications and requirements for officer certification;

(5) Establish minimum standards and curriculum requirements for the courses of study offered by or for any municipality, the state of Tennessee or any political subdivision of the state, for the specific purpose of training police recruits or police officers;

(6) Consult and cooperate with municipalities, the state of Tennessee or any political subdivision of the state, for the specific purpose of training police recruits or police officers;

(7) Consult and cooperate with municipalities, the state of Tennessee or any political subdivision of the state and with universities, colleges, junior colleges and other educational institutions concerning the development of police training schools and programs limited to education and training in the area of police science, police administration and all allied and supporting fields;

(8) Approve facilities for school operation by or for any municipality, the state or any political subdivision of the state for the specific purpose of training police recruits and police officers;

(9) Issue certification to persons who, by reason of experience and completion of in-service, advanced education or specialized training, are especially qualified for particular aspects or classes of police work;

(10) Make or encourage studies on any aspect of police education, training and recruitment; and

(11) Administer income supplements for police officers.

(b) The commission, in addition to all the powers and duties vested in it by law, is vested with the power and is charged with the duty of observing, administering, and enforcing all the provisions of this chapter.

(c) The commission is authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this chapter.

(d) The commission shall have the authority to establish criteria for determining whether to grant an exception to or waive the qualifications of minimum standards as provided in § 38-8-106, based on a person's previous law enforcement experience and training.

(e) The commission shall establish criteria for determining whether to grant

an exception to or to waive the qualifications of § 38-8-106, for a person hired as a police officer after July 1, 1987, except that no waiver or exception shall be granted for dishonorable discharge from the military, mental impairment which affects the person's ability to perform an essential function of the job with or without a reasonable accommodation, or a narcotics violation that could result in a felony charge. The commission's decisions with regard to exceptions or waivers granted under this subsection (e) shall be appealable to the chancery court. The commission shall adopt rules and regulations in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement this subsection (e).

(f) The commission shall establish standards for the certification of railroad police officers commissioned pursuant to § 65-6-133.

38-8-106. Qualifications of police officers.

Any person employed as a full-time police officer, and any person employed or utilized as a part-time, temporary, reserve or auxiliary police officer or as a special deputy, shall:

(1) Be at least eighteen (18) years of age;

(2) Be a citizen of the United States;

(3) Be a high school graduate or possess its equivalent, which shall include a general educational development (GED®) certificate;

(4) Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor, controlled substances or controlled substance analogues;

(5) Not have been released or discharged under any other than honorable discharge from any of the armed forces of the United States;

(6) Have the person's fingerprints on file with the Tennessee bureau of investigation;

(7) Have passed a physical examination by a licensed physician or a nurse practitioner or physician assistant, so long as the task is expressly included in the written protocol developed jointly by the supervising physician and the nurse practitioner or physician assistant, whichever is applicable, setting forth the range of services that may be performed by the nurse practitioner or physician assistant;

(8) Have a good moral character as determined by a thorough investigation conducted by the employing agency; and

(9) Have been certified by a Tennessee licensed health care provider qualified in the psychiatric or psychological field as being free from any impairment, as set forth in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association at the time of the examination, that would, in the professional judgment of the examiner, affect the applicant's ability to perform an essential function of the job, with or without a reasonable accommodation.

38-11-206. Annual report.

Each participating county shall by January 15 of each year send to the comptroller of the treasury and the speakers of each house the results of its determinations, together with the amount of financial incentives pursuant to § 38-11-204(d). The comptroller of the treasury shall compile the data con-

tained in the information the comptroller of the treasury receives and report the results of the comptroller of the treasury's findings to the state and local government committee of the senate and the local government committee of the house of representatives detailing the affirmative actions taken in those participating counties to aggressively pursue illegal drug trafficking.

38-12-103. Membership. The coordinating council shall consist of the following or their representatives: the commissioner of labor and workforce development; attorney general and reporter; director of the administrative office of the courts; executive director of the district public defenders conference; executive director of the Tennessee association of criminal defense lawyers; executive director of the district attorneys general conference; president of the Tennessee sheriffs' association; president of the state court clerks conference; president of the Tennessee chiefs of police association; executive director of the Tennessee task force against domestic violence; executive director of the peace officers standards and training commission; four (4) judges; provided, that at least one (1) judge shall be from each grand division of the state; two (2) members of the general assembly; four (4) members to be appointed by the Tennessee task force against domestic violence; one (1) legal services attorney; one (1) victim witness coordinator; chair of the board of parole; and one (1) probation and parole officer. The domestic violence state coordinating council may add additional members, not to exceed nine (9) members, if such council determines that additional members would assist the council in fulfilling its duties. In adding new members, no more than one (1) member shall be from the same congressional representative district. Each of the nine (9) congressional representative districts shall be represented by at least one (1) member of the coordinating council who resides in such district.

38-12-110. Regulation of intervention programs for perpetrators of domestic abuse.

(a) The state coordinating council shall promulgate regulations for batterers' intervention programs for perpetrators of domestic abuse as defined in § 36-3-601, and shall certify compliance with the regulations. In formulating the regulations, the council shall conduct public hearings and shall consult with the following persons or groups:

(1) Public and private agencies that provide batterers' intervention programs for perpetrators of domestic abuse;

(2) Public and private agencies that provide programs for victims of domestic abuse;

(3) Victims advocates;

(4) Survivors of domestic abuse; and

(5) Other persons who have demonstrated expertise and experience in the area of domestic abuse.

(b) The regulations required by this section shall include, but not be limited to, the following topics:

(1) Minimum standards for batterers' intervention programs; and

(2) Monitoring and certification criteria for batterers' intervention programs.

(c) The council may prescribe fees, not to exceed three hundred dollars ($300), for the certification of such programs.

38-13-101. [Repealed.]

38-13-102. [Repealed.]

38-13-103. [Repealed.]

38-13-104. [Repealed.]

39-11-118. Restitution to victims of crime.

(a) In addition to the punishment authorized by the specific statute prohibiting the conduct, it is a part of the punishment for any offense committed in this state that the person committing the offense may be sentenced by the court to pay restitution to the victim or victims of the offense in accordance with the provisions of §§ 40-35-104(c)(2) and 40-35-304.

(b) In addition to the punishment authorized by the specific statute prohibiting the conduct, it is a part of the punishment for the offenses named in this subsection (b) that the defendant be sentenced by the court to pay restitution to the victim or victims of §§ 39-13-309, 39-13-514, 39-17-1005(a), 39-13-528(a), and 39-13-529(a) in accordance with the provisions of §§ 40-35-104(c)(2) and 40-35-304.

39-11-502. Ignorance or mistake of fact.

(a) Except in prosecutions for violations of §§ 39-13-504(a)(4) and 39-13-522, ignorance or mistake of fact is a defense to prosecution if the ignorance or mistake negates the culpable mental state of the charged offense.

(b) Although a person's ignorance or mistake of fact may constitute a defense to the offense charged, the person may be convicted of the offense for which the person would be guilty if the fact were as the person believed.

(c) It shall not be a defense to prosecution for a violation of § 39-13-514 or § 39-13-529(a), (b)(1) or (b)(2) that the person charged was ignorant or mistaken as to the age of a minor.

39-12-203. Part definitions.

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

(1)(A) "Beneficial interest" means either of the following:

(i) The interest of a person as a beneficiary under any trust arrangement pursuant to which a trustee or any other person holds legal or record title to personal or real property for the benefit of the person; or

(ii) The interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real or personal property for the benefit of the person;

(B) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or a limited partnership;

(2) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phono record, magnetic tape, computer print-out, or other data compilation from which information can be obtained or from which information can be translated into usable form or other tangible item;

(3) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact, although not a legal entity, and it includes illicit as well as licit enterprises and governmental, as well as other entities, including criminal gangs, as defined in § 40-35-121(a);

(4) "Innocent person" includes bona fide purchasers and victims;

(5) "Investigative agency" means the office of the attorney general and reporter;

(6) "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents; provided, that at least one (1) of such incidents occurred after July 1, 1986, and that the last of the incidents occurred within two (2) years after a prior incident of racketeering conduct;

(7) "Person" means any individual or entity holding or capable of holding a legal or beneficial interest in property;

(8) "Personal property" includes any personal property, or any interest in personal property, or any right, including bank accounts, debts, corporate stocks, patents or copyrights. Personal property and beneficial interest in personal property are deemed located where the trustee is, the personal property is, or the instrument evidencing the right is;

(9) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit an act for financial gain that is a criminal offense involving controlled substances, and the amount of controlled substances involved in the offense is included under § 39-17-417(i) and (j) and its subdivisions or involving aggravated sexual exploitation of a minor, especially aggravated sexual exploitation of a minor under §§ 39-17-1004(b)(1)(A) and 39-17-1005(a)(1) or to commit, attempt to commit, conspire to commit, or to solicit, coerce, or intimidate another person to commit a criminal gang offense, as defined in § 40-35-121(a);

(10) "Real property" means any real property situated in this state or any interest in the real property, including, but not limited to, any lease of or mortgage upon such real property. Real property and beneficial interest in real property are deemed to be located where the real property is located;

(11) "RICO lien notice" means the notice described in § 39-12-207;

(12)(A) "Trustee" means any of the following:

(i) Any person who holds legal or record title to real or personal property in which any other person has a beneficial interest; or

(ii) Any successor trustee to one (1) of the persons in subdivision (12)(A)(i);

(B) "Trustee" does not include any person serving as a fiduciary appointed by a court to administer an estate or acting as a trustee of any testamentary trust or as a trustee of any indenture of trust under which any bonds have been or are to be issued; and

(13) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part, because the debt was incurred or contracted in violation of:

(A) Chapter 17, part 4 of this title, and the amount of controlled substances involved in the violation is included under § 39-17-417(i) or (j);

(B) Sections 39-17-1004(b)(1)(A) and 39-17-1005(a)(1), involving especially aggravated sexual exploitation of a minor;

(C) Section 39-13-309, involving trafficking for commercial sex acts;

(D) Section 39-13-515, involving promoting prostitution;

(E) Section 39-13-514(b)(4)(A), involving patronizing prostitution;

(F) Section 39-13-528(a), involving solicitation of a minor; or

(G) Section 39-13-529, involving soliciting sexual exploitation of a minor, exploitation of a minor by electronic means.

39-13-101. Assault.

(a) A person commits assault who:

(1) Intentionally, knowingly or recklessly causes bodily injury to another;

(2) Intentionally or knowingly causes another to reasonably fear imminent bodily injury; or

(3) Intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative.

(b)(1) Assault is a Class A misdemeanor unless the offense is committed under subdivision (a)(3), in which event assault is a Class B misdemeanor; provided, that, if the offense is committed against a law enforcement officer or a health care provider acting in the discharge of the provider's duty, then the maximum fine shall be five thousand dollars ($5,000).

(2) In addition to any other punishment that may be imposed for a violation of this section, if the relationship between the defendant and the victim of the assault is such that the victim is a victim as defined in § 36-3-601(5), and if, as determined by the court, the defendant possesses the ability to pay a fine in an amount not in excess of two hundred dollars ($200), then the court shall impose a fine at the level of the defendant's ability to pay, but not in excess of two hundred dollars ($200). The additional fine shall be paid to the clerk of the court imposing sentence, who shall transfer it to the state treasurer, who shall credit the fine to the general fund. All fines so credited to the general fund shall be subject to appropriation by the general assembly for the exclusive purpose of funding family violence shelters and shelter services. Such appropriation shall be in addition to any amount appropriated pursuant to § 67-4-411.

(c) For purposes of this section and § 39-13-102, "health care provider" means a person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business in the practicing of a profession.

39-13-102. Aggravated assault.

(a)(1) A person commits aggravated assault who:

(A) Intentionally or knowingly commits an assault as defined in § 39-13-101, and the assault:

(i) Results in serious bodily injury to another;

(ii) Results in the death of another;

(iii) Involved the use or display of a deadly weapon; or

(iv) Was intended to cause bodily injury to another by strangulation

or bodily injury by strangulation was attempted; or

(B) Recklessly commits an assault as defined in § 39-13-101(a)(1), and the assault:

(i) Results in serious bodily injury to another;

(ii) Results in the death of another; or

(iii) Involved the use or display of a deadly weapon.

(2) For purposes of subdivision (a)(1)(A)(iii) "strangulation" means intentionally impeding normal breathing or circulation of the blood by applying pressure to the throat or neck or by blocking the nose and mouth of another person.

(b) A person commits aggravated assault who, being the parent or custodian of a child or the custodian of an adult, intentionally or knowingly fails or refuses to protect the child or adult from an aggravated assault as defined in subdivision (a)(1) or aggravated child abuse as defined in § 39-15-402.

(c) A person commits aggravated assault who, after having been enjoined or restrained by an order, diversion or probation agreement of a court of competent jurisdiction from in any way causing or attempting to cause bodily injury or in any way committing or attempting to commit an assault against an individual or individuals, intentionally or knowingly attempts to cause or causes bodily injury or commits or attempts to commit an assault against the individual or individuals.

(d) A person commits aggravated assault who, with intent to cause physical injury to any public employee or an employee of a transportation system, public or private, whose operation is authorized by title 7, chapter 56, causes physical injury to the employee while the public employee is performing a duty within the scope of the public employee's employment or while the transportation system employee is performing an assigned duty on, or directly related to, the operation of a transit vehicle.

(e)(1)(A) Aggravated assault under:

(i) Subsection (d) is a Class A misdemeanor;

(ii) Subdivision (a)(1)(A)(i), (iii), or (iv) is a Class C felony;

(iii) Subdivision (a)(1)(A)(ii) is a Class C felony;

(iv) Subdivision (b) or (c) is a Class C felony;

(v) Subdivision (a)(1)(B)(i) or (iii) is a Class D felony;

(vi) Subdivision (a)(1)(B)(ii) is a Class D felony.

(B) However, the maximum fine shall be fifteen thousand dollars ($15,000) for an offense under subdivision (a)(1)(A), subdivision (a)(1)(B), subsection (c), or subsection (d) committed against any of the following persons who are discharging or attempting to discharge their official duties:

(A) Law enforcement officer;

(B) Firefighter;

(C) Medical fire responder;

(D) Paramedic;

(E) Emergency medical technician;

(F) Health care provider; or;

(G) Any other first responder.

(2) In addition to any other punishment that may be imposed for a violation of this section, if the relationship between the defendant and the victim of the assault is such that the victim is a victim as defined in § 36-3-601(5), and if, as determined by the court, the defendant possesses

the ability to pay a fine in an amount not in excess of two hundred dollars ($200), then the court shall impose a fine at the level of the defendant's ability to pay, but not in excess of two hundred dollars ($200). The additional fine shall be paid to the clerk of the court imposing sentence, who shall transfer it to the state treasurer, who shall credit the fine to the general fund. All fines so credited to the general fund shall be subject to appropriation by the general assembly for the exclusive purpose of funding family violence shelters and shelter services. Such appropriation shall be in addition to any amount appropriated pursuant to § 67-4-411.

39-13-103. Reckless endangerment.

(a) A person commits an offense who recklessly engages in conduct that places or may place another person in imminent danger of death or serious bodily injury.

(b)(1) Reckless endangerment is a Class A misdemeanor;

(2) Reckless endangerment committed with a deadly weapon is a Class E felony;

(3) Reckless endangerment by discharging a firearm into a habitation, as defined under § 39-14-401, is a Class C felony, unless the habitation was unoccupied at the time of the offense, in which event it is a Class D felony;

(4) In addition to the penalty authorized by this subsection (b), the court shall assess a fine of fifty dollars ($50.00) to be collected as provided in § 55-10-412(b) and distributed as provided in § 55-10-412(c).

39-13-106. Vehicular assault.

(a) A person commits vehicular assault who, as the proximate result of the person's intoxication as set forth in § 55-10-401, recklessly causes serious bodily injury to another person by the operation of a motor vehicle. For the purposes of this section, "intoxication" includes alcohol intoxication as defined by § 55-10-411(a), drug intoxication, or both.

(b) A violation of this section is a Class D felony.

(c) Upon the conviction of a person for the first offense of vehicular assault, the court shall prohibit the convicted person from driving a vehicle in this state for a period of one (1) year. For the second such conviction, the court shall prohibit the convicted person from driving a vehicle in this state for a period of two (2) years. For the third such conviction, the court shall prohibit the convicted person from driving a vehicle in this state for a period of three (3) years. For fourth and subsequent convictions, the court shall prohibit the person from driving a vehicle in this state for a period of five (5) years.

39-13-114. Communicating a threat concerning a school employee.

(a) For purposes of this section, "school" means any:

(1) Elementary school, middle school or high school;

(2) College of applied technology or postsecondary vocational or technical school; or

(3) Two-year or four-year college or university.

(b) A person commits the offense of communicating a threat concerning a school employee if:

(1) The person communicates to another a threat to cause the death of or serious bodily injury to a school employee and the threat is directly related

to the employee's scope of employment;

(2) The threat involves the use of a firearm or other deadly weapon;

(3) The person to whom the threat is made reasonably believes that the person making the threat intends to carry out the threat; and

(4) The person making the threat intentionally engages in conduct that constitutes a substantial step in the commission of the threatened act and the threatened act and the substantial step when taken together:

(A) Are corroborative of the person's intent to commit the threatened act; and

(B) Occur close enough in time to evidence an intent and ability to commit the threatened act.

(c) Communicating a death threat concerning a school employee is a Class B misdemeanor punishable by a maximum term of imprisonment of thirty (30) days.

39-13-213. Vehicular homicide.

(a) Vehicular homicide is the reckless killing of another by the operation of an automobile, airplane, motorboat or other motor vehicle, as the proximate result of:

(1) Conduct creating a substantial risk of death or serious bodily injury to a person;

(2) The driver's intoxication, as set forth in § 55-10-401. For the purposes of this section, "intoxication" includes alcohol intoxication as defined by § 55-10-411(a), drug intoxication, or both;

(3) As the proximate result of conduct constituting the offense of drag racing as prohibited by title 55, chapter 10, part 5; or

(4) The driver's conduct in a posted construction zone where the person killed was an employee of the department of transportation or a highway construction worker.

(b)(1) Vehicular homicide under subdivision (a)(1) or (a)(3) is a Class C felony.

(2) Vehicular homicide under subdivision (a)(2) is a Class B felony.

(3) Vehicular homicide under subdivision (a)(4) is a Class D felony.

(c) The court shall prohibit a defendant convicted of vehicular homicide from driving a vehicle in this state for a period of time not less than three (3) years nor more than ten (10) years.

39-13-301. Part definitions.

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

(1) "Advertisement" means a notice or an announcement in a public medium promoting a product, service, or event, or publicizing a job vacancy;

(2) "Blackmail" means threatening to expose or reveal the identity of another or any material, document, secret or other information that might subject a person to hatred, contempt, ridicule, loss of employment, social status or economic harm;

(3) "Coercion" means:

(A) Causing or threatening to cause bodily harm to any person, physically restraining or confining any person or threatening to physically restrain or confine any person;

(B) Exposing or threatening to expose any fact or information that, if revealed, would tend to subject a person to criminal or immigration

proceedings, hatred, contempt or ridicule;

(C) Destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person; or

(D) Providing a controlled substance, as defined in § 39-17-402, or a controlled substance analogue, as defined in § 39-17-454, to a person;

(4) "Commercial sex act" means:

(A) Any sexually explicit conduct for which anything of value is directly or indirectly given, promised to or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age; or

(B) Any sexually explicit conduct that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age;

(5) "Deception" means:

(A) Creating or confirming another person's impression of an existing fact or past event that is false and that the accused knows or believes to be false;

(B) Maintaining the status or condition of a person arising from a pledge by that person of personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing a person from acquiring information pertinent to the disposition of the debt; or

(C) Promising benefits or the performance of services that the accused does not intend to deliver or perform or knows will not be delivered or performed. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this part;

(6) "Financial harm" includes extortion as defined by § 39-14-112, criminal violation of the usury laws as defined by § 47-14-112 or employment contracts that violate the statute of frauds as defined by § 29-2-101(b);

(7) "Forced labor or services" means labor or services that are performed or provided by another person and are obtained or maintained through the defendant's:

(A) Causing or threatening to cause serious harm to any person;

(B) Physically restraining or threatening to physically restrain another person;

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

(D) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person;

(E) Blackmail; or

(F) Causing or threatening to cause financial harm to in order to exercise financial control over any person;

(8) "Involuntary servitude" means the condition of a person who is compelled by force, coercion or imprisonment and against the person's will to labor for another, whether paid or not;

(9) "Labor" means work of economic or financial value;

(10) "Maintain" means, in relation to labor or services, to secure continued performance of labor or services, regardless of any initial agreement on the part of the victim to perform such type of service;

(11) "Minor" means an individual who is less than eighteen (18) years of age;

(12) "Obtain" means, in relation to labor or services, to secure performance of labor or services;

(13) "Services" means an ongoing relationship between a person and the defendant in which the person performs activities under the supervision of or for the defendant;

(14) "Sexually explicit conduct" means actual or simulated:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's unclothed genitals, pubic area or buttocks or with a female's nude breasts;

(H) Defecation or urination for the purpose of sexual stimulation of the viewer; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure; and

(15) [Deleted by 2013 amendment, effective July 1, 2013.]

(16) "Unlawful" means, with respect to removal or confinement, one that is accomplished by force, threat or fraud, or, in the case of a person who is under the age of thirteen (13) or incompetent, accomplished without the consent of a parent, guardian or other person responsible for the general supervision of the minor's or incompetent's welfare.

39-13-309. Trafficking for commercial sex act.

(a) A person commits the offense of trafficking a person for a commercial sex act who:

(1) Knowingly subjects, attempts to subject, benefits from or attempts to benefit from another person's provision of a commercial sex act; or

(2) Recruits, entices, harbors, transports, provides, purchases, or obtains by any other means, another person for the purpose of providing a commercial sex act.

(b) For purposes of subdivision (a)(2), such means may include, but are not limited to:

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

(2) Physically restraining or threatening to physically restrain the person;

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

(4) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of the person;

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

(6) Facilitating or controlling a person's access to a controlled substance.

(c) A violation of subsection (a) is a Class B felony, except where the victim of the offense is a child under fifteen (15) years of age, or where the offense occurs on the grounds or facilities or within one thousand feet (1,000′) of a public or private school, secondary school, preschool, child care agency, public library, recreational center, or public park, a violation of subsection (a) is a Class A felony.

39-13-501. Definitions.

As used in §§ 39-13-501 — 39-13-511, except as specifically provided in § 39-13-505, unless the context otherwise requires:

(1) "Coercion" means threat of kidnapping, extortion, force or violence to be performed immediately or in the future or the use of parental, custodial, or official authority over a child less than fifteen (15) years of age;

(2) "Intimate parts" includes semen, vaginal fluid, the primary genital area, groin, inner thigh, buttock or breast of a human being;

(3) "Mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of the person's conduct;

(4) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without the person's consent, or due to any other act committed upon that person without the person's consent;

(5) "Physically helpless" means that a person is unconscious, asleep or for any other reason physically or verbally unable to communicate unwillingness to do an act;

(6) "Sexual contact" includes the intentional touching of the victim's, the defendant's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the victim's, the defendant's, or any other person's intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification;

(7) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the victim's, the defendant's, or any other person's body, but emission of semen is not required; and

(8) "Victim" means the person alleged to have been subjected to criminal sexual conduct and includes the spouse of the defendant.

39-13-515. Promoting prostitution.

(a) A person commits an offense under this section who promotes prostitution.

(b) Except as provided in subsection (c), promoting prostitution is a Class E felony.

(c) Promoting prostitution of a minor is punishable as trafficking for a commercial sex act under § 39-13-309.

39-13-528. Offense of solicitation of a minor.

(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

(1) Rape of a child, pursuant to § 39-13-522;

(2) Aggravated rape, pursuant to § 39-13-502;

(3) Rape, pursuant to § 39-13-503;

(4) Aggravated sexual battery, pursuant to § 39-13-504;

(5) Sexual battery by an authority figure, pursuant to § 39-13-527;

(6) Sexual battery, pursuant to § 39-13-505;

(7) Statutory rape, pursuant to § 39-13-506;

(8) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005;

(9) Sexual activity involving a minor, pursuant to § 39-13-529;

(10) Trafficking for commercial sex acts, pursuant to § 39-13-309;

(11) Patronizing prostitution, pursuant to § 39-13-514;

(12) Promoting prostitution, pursuant to § 39-13-515; or

(13) Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004.

(b) It is no defense that the solicitation was unsuccessful, that the conduct solicited was not engaged in, or that the law enforcement officer could not engage in the solicited offense. It is no defense that the minor solicited was unaware of the criminal nature of the conduct solicited.

(c) A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.

(d) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person solicited the conduct of a minor located in this state, or solicited a law enforcement officer posing as a minor located within this state.

39-13-529. Offense of soliciting sexual exploitation of a minor — Exploitation of a minor by electronic means.

(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet service, including webcam communications, directly or through another, to intentionally command, hire, persuade, induce or cause a minor to engage in simulated sexual activity that is patently offensive or in sexual activity, where such simulated sexual activity or sexual activity is observed by that person or by another.

(b) It is unlawful for any person eighteen (18) years of age or older, directly or by means of electronic communication, electronic mail or Internet service, including webcam communications, to intentionally:

(1) Engage in simulated sexual activity that is patently offensive or in sexual activity for the purpose of having the minor view the simulated

sexual activity or sexual activity, including circumstances where the minor is in the presence of the person, or where the minor views such activity via electronic communication, including electronic mail, Internet service and webcam communications;

(2) Display to a minor, or expose a minor to, any material containing simulated sexual activity that is patently offensive or sexual activity if the purpose of the display can reasonably be construed as being for the sexual arousal or gratification of the minor or the person displaying the material; or

(3) Display to a law enforcement officer posing as a minor, and whom the person making the display reasonably believes to be less than eighteen (18) years of age, any material containing simulated sexual activity that is patently offensive or sexual activity, if the purpose of the display can reasonably be construed as being for the sexual arousal or gratification of the intended minor or the person displaying the material.

(4)(A) Except as provided in subdivision (b)(4)(B), it is an exception to the application of this subsection (b) that the victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is no more than four (4) years older than the victim.

(B) Subdivision (b)(4)(A) shall not apply or be an exception to the application of subdivision (b)(4)(A), if the defendant intentionally commanded, hired, induced or caused the victim to violate this subsection (b).

(c) [Deleted by 2013 amendment, effective July 1, 2013.]

(d) A person is subject to prosecution in this state under this statute for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the conduct involved a minor located in this state or the solicitation of a law enforcement officer posing as a minor located in this state.

(e) As used in this section:

(1) "Community" means the judicial district, as defined by § 16-2-506, in which a violation is alleged to have occurred;

(2) "Material" means:

(A) Any picture, drawing, photograph, undeveloped film or film negative, motion picture film, videocassette tape or other pictorial representation;

(B) Any statue, figure, theatrical production or electrical reproduction;

(C) Any image stored on a computer hard drive, a computer disk of any type, or any other medium designed to store information for later retrieval; or

(D) Any image transmitted to a computer or other electronic media or video screen, by telephone line, cable, satellite transmission, or other method that is capable of further transmission, manipulation, storage or accessing, even if not stored or saved at the time of transmission;

(3) "Patently offensive" means that which goes substantially beyond customary limits of candor in describing or representing such matters; and

(4) "Sexual activity" means any of the following acts:

(A) Vaginal, anal or oral intercourse, whether done with another person or an animal;

(B) Masturbation, whether done alone or with another human or an animal;

(C) Patently offensive, as determined by contemporary community standards, physical contact with or touching of a person's clothed or unclothed genitals, pubic area, buttocks or breasts in an act of apparent

sexual stimulation or sexual abuse;

(D) Sadomasochistic abuse, including flagellation, torture, physical restraint, domination or subordination by or upon a person for the purpose of sexual gratification of any person;

(E) The insertion of any part of a person's body or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure by a licensed professional;

(F) Patently offensive, as determined by contemporary community standards, conduct, representations, depictions or descriptions of excretory functions; or

(G) Lascivious exhibition of the female breast or the genitals, buttocks, anus or pubic or rectal area of any person.

(f)(1) A violation of subsection (a) is a Class B felony.

(2) A violation of subsection (b) is a Class E felony; provided, that, if the minor is less than thirteen (13) years of age, the violation is a Class C felony.

(g) It shall not be a defense to a violation of this section that a minor victim of the offense consented to the conduct that constituted the offense.

39-13-530. Forfeiture of any conveyance or real or personal property used in a sexual offense committed against minors — Child abuse fund.

(a)(1) Any conveyance or real or personal property used in the commission of an offense under this part, is subject to judicial forfeiture under chapter 11, part 7 of this title; provided, however, that the offense is committed against a person under eighteen (18) years of age and was committed on or after July 1, 2006.

(2) Any conveyance or personal property used in the commission of a violation of § 40-39-211 committed on or after July 1, 2012, by a sexual offender or violent sex offender, as defined in § 40-39-202, whose victim was a minor, is, upon conviction, subject to judicial forfeiture as provided in chapter 11, part 7 of this title.

(b) The proceeds from all forfeitures made pursuant to this section shall be transmitted to the general fund, where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the child abuse fund. Moneys from the fund shall be expended to fund activities authorized by this section. Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this section, and shall not revert to the general fund at the end of the fiscal year. Any excess revenues or interest earned by the revenues shall not revert at the end of the fiscal year, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from the reserve shall not revert to the general fund at the end of the fiscal year, but shall remain available for expenditure in subsequent fiscal years.

(c) The general assembly shall appropriate, through the general appropriations act, fifty percent (50%) of the moneys from the child abuse fund to the department of finance and administration for the child advocacy center fund to be used for child advocacy centers. The appropriations shall be specifically earmarked for the purposes set out in subsection (d).

(d) All moneys appropriated from the child advocacy center fund shall be used exclusively by the department to provide grants to child advocacy centers

that are incorporated as a not-for-profit organization, are tax-exempt under § 501 of the Internal Revenue Code, and that have provided child advocacy services for at least six (6) months prior to the application for funds under this subsection (d). The commissioner of finance and administration shall promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the distribution and use of the grant funds provided by it. The grants shall be for the purpose of providing funding for the continuation of existing programs and services, the creation of new programs and services and the training of personnel in child advocacy centers.

(e) The general assembly shall appropriate, through the general appropriations act, twenty-five percent (25%) of the moneys from the child abuse fund to the department of finance and administration for the court appointed special advocate (CASA) fund. The appropriations shall be specifically earmarked for the purposes set out in subsection (f).

(f) All moneys appropriated from the CASA fund shall be used exclusively by the department to provide grants to CASA programs that are incorporated as a not-for-profit organization, are tax-exempt under § 501 of the Internal Revenue Code and that have provided CASA services for at least six (6) months prior to the application for funds under this subsection (f). The commissioner of finance and administration shall promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the distribution and use of the grant funds provided by it. The grants shall be for the purpose of providing funding for the continuation of existing programs and services, the creation of new programs and services and the training of personnel and volunteers in CASA programs.

(g) The general assembly shall appropriate, through the general appropriations act, twenty-five percent (25%) of the moneys from the child abuse fund to the department of finance and administration for the child abuse prevention fund. The appropriations shall be specifically earmarked for the purposes set out in subsection (h).

(h) All moneys appropriated from the child abuse prevention fund shall be used exclusively by the department to provide a grant to Prevent Child Abuse Tennessee; provided, that it is incorporated as a not-for-profit organization, is tax-exempt under § 501 of the Internal Revenue Code and that it has provided child abuse prevention services for at least six (6) months prior to the application for funds under this subsection (h). The commissioner of finance and administration shall promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the distribution and use of the grant funds provided by it. The grants shall be for the purpose of providing funding for the continuation of existing programs and services, the creation of new programs and services and the training of personnel to plan and carry out a comprehensive statewide child abuse prevention program that includes emphasis on primary and secondary prevention strategies and includes evaluation strategies to assess the effectiveness of prevention activities.

(i) All recipients of funding from the child abuse fund and its subsidiary funds, the child advocacy centers fund, the CASA fund and the child abuse prevention fund, shall collaborate with each other and also with the department of children's services, the department of children's services' child abuse prevention advisory committee, the child sexual abuse task force established

by § 37-1-603(b)(1), the commission on children and youth, the governor's office of children's care coordination, and other appropriate state and local service providers in the planning and implementation of multi-disciplinary, multi-agency approaches to address child abuse, including primary, secondary and tertiary child abuse prevention, investigation and intervention in child abuse cases, and needed treatment and timely permanency for victims of child abuse.

(j) All recipients of funding from the child abuse fund and its subsidiary funds, the child advocacy centers fund, the CASA fund and the child abuse prevention fund, shall report annually to the health and welfare committee of the senate and the civil justice committee of the house of representatives, the judiciary committee of the senate, and the fiscal review committee, regarding their use of child abuse fund moneys, their collaborative efforts to address the spectrum of child abuse issues, and their recommendations for additional improvements in the child abuse prevention and response system in Tennessee.

39-13-533. Offense of promoting travel for prostitution.

(a) A person commits the offense of promoting travel for prostitution if the person sells or offers to sell travel services that the person knows to include travel for the purpose of engaging in what would be prostitution if occurring in the state.

(b) "Travel services" means, but is not limited to, transportation by air, sea, road or rail, related ground transportation, hotel accommodations, or package tours, whether offered on a wholesale or retail basis.

(c) Promoting travel for prostitution is a Class D felony.

(d) Nothing in this section shall be construed to prohibit prosecution under any other law.

39-13-609. Freedom from Unwarranted Surveillance Act — Use of drones to gather evidence or information — Standing to initiate civil action against law enforcement agency.

(a) This section shall be known and may be cited as the "Freedom from Unwarranted Surveillance Act".

(b) As used in this section:

(1) "Drone" means a powered, aerial vehicle that:

(A) Does not carry a human operator and is operated without the possibility of direct human intervention from within or on the aircraft;

(B) Uses aerodynamic forces to provide vehicle lift;

(C) Can fly autonomously or be piloted remotely; and

(D) Can be expendable or recoverable;

(2) "Law enforcement agency" means a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

(c) Except as provided in subsection (d), no law enforcement agency shall use a drone to gather evidence or other information.

(d) This section shall not prohibit the use of a drone:

(1) To counter a high risk of a terrorist attack by a specific individual or organization if the United States secretary of homeland security determines

that credible intelligence indicates that there is such a risk;

(2) If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a drone;

(3) If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life;

(4) To provide continuous aerial coverage when law enforcement is searching for a fugitive or escapee or is monitoring a hostage situation; or

(5) To provide more expansive aerial coverage when deployed for the purpose of searching for a missing person.

(e) An aggrieved party may initiate a civil action against a law enforcement agency to obtain all appropriate relief, as determined by the court, in order to prevent or remedy a violation of this section.

(f) No data collected on an individual, home, or areas other than the target that justified deployment may be used, copied or disclosed for any purpose. Such data must be deleted as soon as possible, and in no event later than twenty-four (24) hours after collection.

(g)(1) The use of a drone to gather evidence or information shall constitute a search. Any law enforcement agency that uses a drone, or other substantially similar device to gather evidence or obtain information, shall comply in all respects with the fourth amendment to the Constitution of the United States and article I, § 7, of the Constitution of Tennessee.

(2) Absent exigent circumstances or another authorized exception to the warrant requirement, evidence obtained or collected in violation of this section shall not be admissible as evidence in a criminal prosecution in any court of law in this state.

39-13-704. Sex offender treatment board — Creation — Membership — Term — Duties — Immunity from liability.

(a) There is created, in the department of correction, a sex offender treatment board, which shall consist of thirteen (13) members. The membership of the board shall consist of the following persons:

(1) One (1) member representing the judicial branch, appointed by the chief justice of the supreme court;

(2) Two (2) members representing the department of correction, appointed by the commissioner of correction;

(3) One (1) member representing the Tennessee bureau of investigation, appointed by the director;

(4) One (1) member representing the department of children's services, appointed by the commissioner of children's services;

(5) One (1) member, appointed by the commissioner of correction, who is a licensed mental health professional with recognizable expertise in the treatment of sex offenders;

(6) One (1) member, appointed by the commissioner of correction, who is a district attorney general;

(7) One (1) member, appointed by the commissioner of correction, who is a member of a community corrections advisory board;

(8) One (1) member, appointed by the commissioner of correction, who is a public defender;

(9) One (1) member, appointed by the commissioner of correction, who is

representative of law enforcement;

(10) Two (2) members, appointed by the commissioner who are recognized experts in the field of sex abuse, and who can represent sex abuse victims and victims' rights organizations; and

(11) One (1) member, appointed by the presiding officer of the sex offender treatment board, who is a representative of the board of parole.

(b) The commissioner of correction shall appoint a presiding officer for the board from among the board members appointed pursuant to subsection (a). The presiding officer shall serve as such at the pleasure of the commissioner.

(c)(1) Any member of the board who is appointed pursuant to subdivisions (a)(1)-(4) shall serve at the pleasure of the official who appointed that member, for a term that shall not exceed four (4) years. Those members shall serve without additional compensation.

(2) Any member of the board created in subsection (a) who is appointed pursuant to subdivisions (a)(5)-(10) shall serve for a term of four (4) years. Those members shall serve without compensation.

(d) The board shall carry out the following duties:

(1) The board shall develop and prescribe a standardized procedure for the evaluation and identification of sex offenders. The procedure shall provide for an evaluation and identification of the offender and recommend behavior management monitoring and treatment based upon the knowledge that sex offenders are extremely habituated and that there is no known cure for the propensity to commit sex abuse. The board shall develop and implement measures of success based upon a no-cure policy for intervention. The board shall develop and implement methods of intervention for sex offenders that have as a priority the physical and psychological safety of victims and potential victims and that are appropriate to the needs of the particular offender; provided, that there is no reduction of the safety of victims and potential victims;

(2) The board shall develop guidelines and standards for a system of programs for the treatment of sex offenders that can be utilized by offenders who are placed on probation, incarcerated with the department of correction, placed on parole, or placed in community corrections. The programs developed shall be as flexible as possible, so that such programs may be utilized by each offender to prevent the offender from harming victims and potential victims. The programs shall be structured in a manner that the programs provide a continuing monitoring process, as well as a continuum of treatment programs for each offender as that offender proceeds through the criminal justice system, and may include, but shall not be limited to, polygraph examinations by therapists and probation and parole officers, group counseling, individual counseling, outpatient treatment, inpatient treatment, or treatment in a therapeutic community. The programs shall be developed in a manner that, to the extent possible, the programs may be accessed by all offenders in the criminal justice system. The procedures for evaluation, identification, treatment, and continued monitoring required to be developed shall be implemented only to the extent that funds are available in the sex offender treatment fund created in § 39-13-709;

(3) The board shall develop a plan for the allocation of moneys deposited in the sex offender treatment fund created pursuant to § 39-13-709, among the judicial branch, the department of correction, and the department of children's services. In addition, the board shall coordinate the expenditure of

funds from the sex offender treatment fund with any funds expended by any of the departments listed in this subdivision (d)(3) for the identification, evaluation, and treatment of sex offenders; and

(4) The board shall research and analyze the effectiveness of the evaluation, identification, and treatment procedures and programs developed pursuant to this part. The board shall also develop and prescribe a system for tracking offenders who have been subjected to evaluation, identification, and treatment pursuant to this part. In addition, the board shall develop a system for monitoring offender behaviors and offender adherence to prescribed behavioral changes. The results of the tracking and behavioral monitoring shall be a part of any analysis made pursuant to this subdivision (d)(4).

(e) The board and the individual members of the board shall be immune from any liability, whether civil or criminal, for the good faith performance of the duties of the board.

39-13-706. Treatment and monitoring of offenders.

(a) Each sex offender sentenced by the court for an offense committed on or after January 1, 1996, is required, as a part of any sentence to probation, community corrections, or incarceration with the department of correction, to undergo treatment to the extent appropriate to the offender based upon the recommendations of the evaluation and identification made pursuant to § 39-13-705, or based upon any subsequent recommendations by the department of correction, the judicial branch or the department of children's services, whichever is appropriate. Any treatment and monitoring shall be at the person's own expense, based upon the person's ability to pay for the treatment.

(b) Each sex offender placed on parole by the state board of parole on or after January 1, 1996, is required, as a condition of parole, to undergo treatment to the extent appropriate to the offender based upon the recommendations of the evaluation and identification pursuant to § 39-13-705 or any evaluation or subsequent reevaluation regarding the person during the person's incarceration or any period of parole. Any treatment shall be at the person's expense, based upon the person's ability to pay for such treatment.

39-14-150. Identity theft victims' rights.

(a) This section shall be known and may be cited as the "Identity Theft Victims' Rights Act of 2004."

(b)(1) A person commits the offense of identity theft who knowingly obtains, possesses, buys, or uses, the personal identifying information of another:

(A) With the intent to commit any unlawful act including, but not limited to, obtaining or attempting to obtain credit, goods, services or medical information in the name of such other person; and

(B)(i) Without the consent of such other person;

(ii) Without the lawful authority to obtain, possess, buy or use that identifying information; or

(iii) To commit a violation of § 53-11-402 or § 53-11-416 by using a prescription for a controlled substance represented as having been issued by a physician, nurse practitioner, or other health care provider.

(2) For purposes of the offense of identity theft, an activity involving a possession, use or transfer that is permitted by the Tennessee Financial

Records Privacy Act, compiled in title 45, chapter 10; Title V of the Gramm-Leach-Bliley Act, Pub. L. No. 106-102; or the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactional Act, (15 U.S.C. § 1681 et seq.) shall not be considered an "unlawful act".

(c)(1) A person commits the offense of identity theft trafficking who knowingly sells, transfers, gives, trades, loans or delivers, or possesses with the intent to sell, transfer, give, trade, loan or deliver, the personal identifying information of another:

(A) With the intent that the information be used by someone else to commit any unlawful act including, but not limited to, obtaining or attempting to obtain credit, goods, services or medical information in the name of the other person; or

(B) Under circumstances such that the person should have known that the identifying information would be used by someone else to commit any unlawful act including, but not limited to, obtaining or attempting to obtain credit, goods, services or medical information in the name of the other person; and

(C) The person does not have the consent of the person who is identified by the information to sell, transfer, give, trade, loan or deliver, or possess with the intent to sell, transfer, give, trade, loan or deliver, that information; and

(D) The person does not have lawful authority to sell, transfer, give, trade, loan or deliver, or possess with the intent to sell, transfer, give, loan or deliver, the personal identifying information.

(2) For purposes of the offense of identity theft trafficking, an activity involving a possession, use or transfer that is permitted by the Tennessee Financial Records Privacy Act, compiled in title 45, chapter 10; Title V of the Gramm-Leach-Bliley Act, Pub. L. No. 106-102; or the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactional Act, (15 U.S.C. § 1681 et seq.) shall not be considered an "unlawful act".

(d) In a prosecution under subsection (c), the trier of fact may infer from the defendant's simultaneous possession of the personal identifying information of five (5) or more different individuals that the defendant possessed the personal identifying information with the intent to sell, transfer, give, trade, loan or deliver the information. However, if the defendant had the consent of one (1) or more of the individuals to possess the personal identifying information of that individual, the consenting individual shall not be counted in determining whether an inference of possession for sale may be drawn by the trier of fact.

(e) As used in this section, "personal identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including:

(1) Name, social security number, date of birth, official state or government issued driver license or identification number, alien registration number, passport number, employer or taxpayer identification number;

(2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(3) Unique electronic identification number, address, routing code or other personal identifying data which enables an individual to obtain merchandise or service or to otherwise financially encumber the legitimate possessor of the identifying data;

(4) Telecommunication identifying information or access device; or

(5) Any name, number, information, medical prescribing pad, electronic message, or form used by a physician, nurse practitioner, or other health care provider for prescribing a controlled substance.

(f)(1) The general assembly recognizes that an offense under this section may result in more than one (1) victim. While a company or business that loses money, merchandise, or other things of value as a result of the offense is a victim, it is equally true that the person whose identity is stolen is also a victim. The person whose identity is stolen suffers definite and measurable losses including expenses necessary to cancel, stop payment on, or replace stolen items such as credit cards, checks, driver licenses, and other documents, costs incurred in discovering the extent of the identity theft, in repairing damage from the theft such as credit ratings and reports and preventing further damages from the theft, long distance telephone charges to law enforcement officials, government offices, and businesses in regard to the theft, and lost wages from the time away from work required to obtain new personal identifying information and complete all of the tasks set out in this subdivision (f)(1). In addition to measurable losses, the person whose identity is stolen also suffers immeasurable damages such as stress and anxiety as well as possible health problems resulting from or aggravated by the offense.

(2) For the reasons set out in subdivision (f)(1), the general assembly declares that any person whose identity is unlawfully obtained in violation of subsection (b) or (c) is a victim of crime within the meaning of Tenn. Const., art. I, § 35 and title 40, chapter 38.

(g)(1) Notwithstanding any other provision of law to the contrary, if a private entity or business maintains a record that contains any of the personal identifying information set out in subdivision (g)(2) concerning one of its customers, and the entity, by law, practice or policy discards such records after a specified period of time, any record containing the personal identifying information shall not be discarded unless the business:

(A) Shreds or burns the customer's record before discarding the record;

(B) Erases the personal identifying information contained in the customer's record before discarding the record;

(C) Modifies the customer's record to make the personal identifying information unreadable before discarding the record; or

(D) Takes action to destroy the customer's personal identifying information in a manner that it reasonably believes will ensure that no unauthorized persons have access to the personal identifying information contained in the customer's record for the period of time between the record's disposal and the record's destruction.

(2) As used in this subsection (g), "personal identifying information" means a customer's:

(A) Social security number;

(B) Driver license identification number;

(C) Savings account number;

(D) Checking account number;

(E) PIN (personal identification number) or password;

(F) Complete credit or debit card number;

(G) Demand deposit account number;

(H) Health insurance identification number; or

(I) Unique biometric data.

(3)(A) A violation of this subsection (g) shall be considered a violation of the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, and may be punishable by a civil penalty in the amount of five hundred dollars ($500) for each record containing a customer's personal identifying information that is wrongfully disposed of or discarded; provided, however, that no total penalty may exceed ten thousand dollars ($10,000) for any one (1) customer.

(B) It is an affirmative defense to any civil penalty imposed pursuant to this subsection (g) that the business used due diligence in its attempt to properly dispose of or discard the records.

(4) The methods of destroying the personal identifying information of a customer set out in this subsection (g) shall be considered the minimum standards. If a private entity or business by law, practice or policy currently is required to have or otherwise has in place more stringent methods and procedures for destroying the personal identifying information in a customer's record than are required by this subsection (g), the private entity or business may continue to destroy the identifying information in the more stringent manner.

(5) To the extent that the provisions of this subsection (g) conflict with applicable federal law, this subsection (g) shall not apply to an entity that is subject to the enforcement authority of the federal banking agencies, the national credit union administration, the federal trade commission or the securities and exchange commission. For any such entity, the provisions of applicable federal law shall govern the proper disposition of records containing consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose.

(6) Notwithstanding subdivision (g)(5), the provisions of this subsection (g) shall not apply to any financial institution that is subject to the privacy and security provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, et. seq., as amended, and as it existed on January 31, 2002.

(h)(1) The following property shall be subject to seizure and judicial forfeiture to the state in the manner provided:

(A) Any property, real or personal, directly or indirectly acquired by or received in violation of this section;

(B) Any property, real or personal, received as an inducement to violate this section;

(C) Any property, real or personal, traceable to the proceeds from the violation;

(D) Any property, real or personal, used in connection with or to facilitate a violation of this section; and

(E) All conveyances, including aircraft, vehicles or vessels, which are used, or are intended for use, in the commission of or escape from a violation of this section and any money, merchandise or other property contained in those conveyances.

(2) Property seized pursuant to this subsection (h) shall be seized and forfeited pursuant to the procedure set out in chapter 11, part 7 of this title.

(3) Notwithstanding the provisions of § 39-11-713, property seized pursuant to this subsection (h) shall be disposed of as follows:

(A) All property ordered forfeited shall be sold at public auction. The proceeds from all property forfeited and sold at public auction shall be disposed of by the court as directed by this section. The attorney general

shall first be compensated for all expenses incident to the litigation, as approved by the court. Any costs for appeals shall be provided for by the trial court upon conclusion of the litigation. The attorney general shall then direct that any public agency be reimbursed for out-of-pocket expenses resulting from the investigation, seizure and storage of the forfeited property;

(B) Out of the proceeds remaining, the court shall order restitution be made to the person or persons whose identity was stolen for any identifiable losses resulting from the offense; and

(C) The court shall then award the remainder of the funds as follows:

(i) In the event that the investigating and seizing agency was a state agency, then ten percent (10%) of the funds shall be distributed to the state treasurer who shall deposit the funds in a designated account for the agency to be used in its identity theft operations;

(ii) In the event that the investigating and seizing agency is the Tennessee bureau of investigation, then ten (10%) of the funds shall be distributed to the state treasurer who shall deposit the funds in a designated account for the agency to be used in its identity theft operations;

(iii) In the event that the investigating and seizing agency is a local public agency, then twenty-five percent (25%) of the funds shall be distributed to its local government for distribution to the law enforcement agency for use in the enforcement of this section. When more than one (1) local public agency participated in the investigation and seizure of forfeited property as certified by the attorney general, then the court shall order a distribution of ten percent (10%) of the funds according to the participation of each local public agency. Accounting procedures for the financial administration of the funds shall be in keeping with those prescribed by the comptroller of the treasury; and

(iv) The remainder of the funds shall be distributed to the state treasurer who shall deposit the funds in the general fund to defray the incarceration costs associated with the offense of identity theft trafficking defined in subsection (c).

(4) For purposes of this subsection (h), a "local public agency" includes any county or municipal law enforcement agency or commission, the district attorney general, or any department or agency of local government authorized by the attorney general to participate in the investigation.

(5) Funds awarded under this section may not be used to supplement salaries of any public employee or law enforcement officer. Funds awarded under this section may not supplant other local or state funds.

(i)(1) Identity theft as prohibited by subsection (b) is a Class D felony.

(2) Identity theft trafficking as prohibited by subsection (c) is a Class C felony.

(j)(1) For purposes of this subsection (j), "victim" means the person whose personal identifying information was obtained, possessed, bought or used in violation of subsection (b), or sold, transferred, given, traded, loaned, delivered or possessed in violation of subsection (c).

(2) Identity theft is a continuing offense because the offense involves an unlawful taking and use of personal identifying information that remains in the lawful possession of a victim wherever the victim currently resides or is found. As provided in this section, such unlawful taking and use are elements of the offense of identity theft and occur wherever the victim

resides or is found.

(3) Pursuant to § 39-11-103 and subdivision (j)(2), if a victim of identity theft resides or is found in this state, an essential element of the offense is committed in this state and a defendant is subject to prosecution in this state, regardless of whether the defendant was ever actually in this state.

(4) Venue for the offense of identity theft shall be in any county where an essential element of the offense was committed, including but not limited to, in any county where the victim resides or is found, regardless of whether the defendant was ever actually in such county.

39-14-210. Societies for prevention of cruelty to animals — Power of governmental agencies working with victimized animals.

(a) The agents of any society which is incorporated for the prevention of cruelty to animals, upon being appointed thereto by the president of such a society in any county, may, within that county, make arrests, and bring before any court thereof offenders found violating the provisions of this part with regard to non-livestock animals.

(b) Any officers, agents, or members of such society may lawfully interfere to prevent the perpetration of any act of cruelty upon any animal in that person's presence. Any person who interferes with or obstructs any officer, agent, or member in the discharge of this duty commits a Class C misdemeanor.

(c) Any agent or officer of a society may lawfully destroy, or cause to be destroyed, any animal found abandoned or otherwise:

(1) Which is not properly cared for, appearing, in the judgment of two (2) reputable citizens, who are experts, called to view the same in the agent's or officer's presence, to be glandered, injured or diseased past humane recovery; or

(2) After a holding period of not less than seventy-two (72) hours and after having made a reasonable effort to locate and notify the owners, for the purpose of animal population control.

(d) All fines, penalties and forfeitures imposed and collected in any county, under provisions relating to or in any way affecting animals, shall inure to the society in aid of the purpose for which it was incorporated, and no injunction shall be granted against the society or attorney or its officers or agents, except upon motion, after due notice and hearing.

(e) Any humane society chartered by the state, into whose custody shall lawfully come any animal, shall have a lien on that animal for the reasonable value of the goods and services necessarily rendered by, or at the instance of, the society to that animal.

(f) Upon seizure by law enforcement, custody of any animal victimized under this part shall be placed with any governmental animal control agency, law enforcement agency, or their designee. The governmental animal control agency, law enforcement agency, or their designee shall assist the animal and preserve evidence for prosecution.

(g)(1)(A) Any governmental animal control agency, law enforcement agency, or their designee into whose custody any animal victimized under this part is placed, may petition the court requesting that the person from whom the animal is seized, or the owner of the seized animal, be ordered to post security.

(B) The security shall be in an amount sufficient to secure payment of all reasonable expenses expected to be incurred by the governmental animal control agency, law enforcement agency, or their designee in caring and providing for the animal pending disposition of the criminal charges.

(C) Reasonable expenses include, but are not necessarily limited to, the estimated costs of veterinary care and treatment for the animal as well as the estimated costs of boarding and otherwise caring for the animal.

(D) The amount of security shall be determined by the court after taking into consideration all of the facts and circumstances of the case. If the posting of security is ordered pursuant to this subsection (g), then the governmental animal control agency, law enforcement agency, or their designee may draw from the security the actual costs incurred in caring and providing for the seized animal pending disposition of criminal charges.

(2) If the person from whom the animal is seized is the owner of the animal and the person has not posted the security ordered pursuant to subdivision (g)(1) within ten (10) business days following the issuance of a security order, the animal shall be deemed to have been abandoned and shall be forfeited to the governmental animal control agency, law enforcement agency, or their designee for disposition in accordance with reasonable practices for the humane treatment of animals. However, if the person from whom the animal was seized is not the owner of the animal and the person has not posted the court-ordered security within fifteen (15) days, the court shall order the governmental animal control agency, law enforcement agency, or their designee to make all reasonable efforts to determine who the owner of the animal is and to notify the owner of the pending proceeding.

(3) No animal shall be deemed to have been abandoned and forfeited to the governmental animal control agency, law enforcement agency, or their designee until reasonable attempts to determine and notify the owner have been made. If the owner of the animal cannot be located after reasonable efforts or the owner is located and notified but does not post, within ten (10) business days, the court-ordered security plus the costs reasonably incurred by the governmental animal control agency, law enforcement agency, or their designee for housing and caring for the animal since its seizure, the animal shall be deemed to have been abandoned and shall be forfeited to the governmental animal control agency, law enforcement agency, or their designee for disposition in accordance with reasonable practices for the humane treatment of animals.

(4) Nothing in this subsection (g) shall be construed to prevent the voluntary, permanent relinquishment of any animal by its owner to a governmental animal control agency, law enforcement agency, or their designee in lieu of posting security. The voluntary relinquishment has no effect on the outcome of the criminal charges.

39-15-301. Bigamy.

(a) A person commits bigamy who:

(1) Is married and purports to marry or be married to a person other than the person's spouse in this state under circumstances that would, but for the person's existing marriage, constitute a marriage; or

(2) Knows that a person other than the person's spouse is married and purports to marry or be married to the person in this state under circumstances that would, but for the person's existing marriage, constitute a marriage.

(b) It is a defense to prosecution under subdivision (a)(1) that the person reasonably believed that the person's marriage had been dissolved by death, divorce or annulment.

(c) For purposes of determining when prosecution for this offense must begin under § 40-2-101:

(1) A violation of this section is a continuing offense; and

(2) Nothing in this section shall be construed as limiting the applicability of § 40-2-103.

(d) Bigamy is a Class A misdemeanor and, in addition to the authorized term of imprisonment, shall be punishable by a fine not to exceed five thousand dollars ($5,000).

39-15-413. Law enforcement efforts.

(a)(1) It is not a violation of §§ 39-15-404, 39-15-410, 39-17-401 — 39-17-427, 39-17-602, 39-17-603, 39-17-901 — 39-17-908, 39-17-911, 39-17-914, 39-17-918, 39-17-1003 — 39-17-1005, 39-17-1501 — 39-17-1508, or any other offense providing a prohibition for use of or sales to a minor, for a law enforcement officer to use or send a minor, or in the case of alcohol a person under twenty-one (21) years of age, to purchase smoking material, smoking paraphernalia, any smokeless tobacco product, alcohol, illegal drugs, state lottery ticket or share, or any other prohibited material for the purpose of aiding in the enforcement of laws prohibiting sales to or use of minors so long as the law enforcement officer has obtained the prior written approval of the minor's parent or legal guardian. The consent of the minor's parent or legal guardian shall not be required where the person is eighteen (18) years of age or older.

(2) It is not a violation of § 39-15-404, § 39-15-410, or §§ 39-17-1501 — 39-17-1508, or any other statute prohibiting the use, possession or sales of alcohol, beer, lottery tickets, tobacco products, smokeless tobacco or smoking material or paraphernalia to a minor or a person under twenty-one (21) years of age, for a merchant in the business of selling alcohol, beer, lottery tickets, tobacco products, smokeless tobacco or smoking material or paraphernalia, to use or send a minor, or in the case of alcohol or beer, a person under twenty-one (21) years of age, to purchase any such product for the purpose of aiding in the enforcement of laws and policies prohibiting sales by the merchant at the merchant's place of business and preventing sales of such products to or use by individuals under age from occurring.

(b) Prior to using a minor to perform illegal or delinquent acts for the purposes of aiding in the enforcement of the laws of this state as permitted by this section, the law enforcement officer or merchant shall obtain the written approval of the minor's parent or legal guardian; provided, however, that the consent of the minor's parent or legal guardian shall not be required if the person used to make any such purchase is eighteen (18) years of age or older.

(c) In order to use a minor, or in the case of alcohol or beer, a person under twenty-one (21) years of age, for any of the purposes permitted by this section, the requirements of this subsection (c) shall apply.

(1) The minor or person under twenty-one (21) years of age shall not:

(A) Purposely disguise the person's appearance so as to misrepresent the person's actual age; and

(B) Make statements designed to trick, mislead, encourage or confuse the employee.

(2) The minor or person under twenty-one (21) years of age shall:

(A) Be photographed, both before and after the law enforcement or merchant-initiated use of the person, for the purpose of creating a record of the person's appearance during the time of the permitted use of the person;

(B) Except only for those questions relating to the person's employment or purpose for engaging in the conduct, respond truthfully to all questions posed by the location employee, including, but not limited to, inquiries concerning the person's age; and

(C) If identification is demanded by the location employee, produce only a valid state-issued card, which indicates the person's actual date of birth.

(d) No prosecution for the violation of any statute prohibiting the sale of beer for off-premises consumption to a person under twenty-one (21) years of age shall be commenced, if the prosecution is based upon the use of a person under twenty-one (21) years of age, as authorized by this section, unless the person or the law enforcement officer supervising the person obtains the name of the permit holder and the employee of the permit holder from whom the beer was purchased or attempted to be purchased. All "stings" shall be conducted in accordance to state law in order to be valid. In addition, within ten (10) days of the date the action occurred, the law enforcement officer shall notify the permit holder in writing, either by mail or hand delivery, indicating:

(1) That an action recently occurred in which a person under twenty-one (21) years of age was used to purchase or attempt to purchase beer for off-premises consumption;

(2) The date and location of the action;

(3) The name of the permit holder and the employee from whom the beer was purchased or attempted to be purchased; and

(4) Whether the person was successful in making the purchase.

39-17-116. Unlawful to draw property transfer documents without interest in property.

(a)(1) It is an offense of any person to knowingly cause to be prepared, sign, or file records of any property transfer document when the transferor, grantor or person applying for registration knows or should know by an examination of the public records, that the transferor or grantor has no legal nor equitable interest to convey, or when there is no reasonable basis for assumption that the transferor or grantor has any interest in the property.

(2) As used in this subsection (a), "person" includes any individual, corporation, firm, company, partnership, or association.

(b) Upon a final conviction for an offense pursuant to this section, any court having or exercising circuit court jurisdiction may order the filing of an order of said court declaring the offending transfer document or documents to be void and of no legal effect and removing any cloud on the title that may have arisen because of said documents.

(c) This section shall not be applicable to any licensed attorney who, in good faith, prepares such a transfer document in the course of representation of a

client.

(d) A violation of subsection (a) shall be a Class E felony.

39-17-117. Unlawful to draw a lien against real or personal property without legal basis.

(a)(1) It is an offense for any person to knowingly prepare, sign, or file any lien or other document with the intent to encumber any real or personal property when such person has no reasonable basis or any legal cause to place such lien or encumbrance on such real or personal property.

(2) As used in this subsection (a), "person" includes any individual or entity.

(b) Upon conviction for an offense pursuant to this section, any court having or exercising circuit court jurisdiction may order the removal from any record the lien or document evidencing an encumbrance, and order that the document be void and of no legal effect, and, if so ordered, the court shall cause the removal of any cloud on a title that may have arisen because of the document.

(c) This section shall not apply to:

(1) A licensed attorney who prepares a document in the course of representation of a client;

(2) A financial institution regulated by the Tennessee department of financial institutions, the federal reserve board, the office of the comptroller of the currency, the farm credit administration, or the national credit union administration, qualified commercial financing entity, as defined in § 67-4-2004, or an employee or agent of any of those entities, who prepares, signs or files a lien or other document in the ordinary course of business;

(3) A title insurance company or agent who prepares, signs, or files a lien or other document in the ordinary course of business; or

(4) A real estate licensee operating in compliance with the Tennessee Real Estate Broker License Act of 1973, compiled in title 62, chapter 13.

(d) A violation of subsection (a) is a Class E felony.

39-17-414. Controlled substances in Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients means any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams; or

(6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Stimulants, unless specifically exempted or excluded, or unless listed in another schedule, means any material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Pyrovalerone.

(d) Depressants, unless specifically exempted or excluded or unless listed in another schedule, means any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]; or

(2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

39-17-431. Immediate methamphetamine precursor — Prohibitions.

(a) Except as provided in this section, any product that contains any immediate methamphetamine precursor may be dispensed only by a licensed pharmacy.

(b)(1) A product or category of products that contains any immediate methamphetamine precursor shall be exempt from the requirements of this section if the ingredients are not in a form that can be used in the manufacture of methamphetamine.

(2) The board of pharmacy, in consultation with the Tennessee bureau of investigation (TBI), shall determine whether a product or category of products that contain any immediate methamphetamine precursor is not in a form that can be used in the manufacture of methamphetamine. In making such a determination, the board shall solicit the written opinion of the bureau and work with the bureau to develop procedures that consider, among other factors:

(A) The ease with which the product can be converted to methamphetamine, including the presence or absence of a "molecular lock" completely preventing a product's use in methamphetamine manufacture;

(B) The ease with which pseudoephedrine can be extracted from a product and whether it forms a salt, emulsion, or other form; and

(C) Any other pertinent data that can be used to determine the risk of a product being viable in the illegal manufacture of methamphetamine.

(3) The board of pharmacy shall maintain a public list of the exempted products or categories of products. Any person may request that a product or category of products be included on the exemption list.

(c)(1) A pharmacy shall not sell to the same person products containing more than three and six tenths (3.6) grams per day, or more than nine (9) grams per thirty-day period, of ephedrine or pseudoephedrine base, or their salts, isomers or salts of isomers. The limits shall apply to the total amount of base ephedrine and pseudoephedrine contained in the products, and not the overall weight of the products. The prohibition contained in this subsection (c) shall not apply to a person who obtains the product or products pursuant to a valid prescription issued by a licensed healthcare practitioner authorized to prescribe by the law of this state.

(2) A person shall not purchase products containing more than three and six tenths (3.6) grams per day, or more than nine (9) grams per thirty-day period, of ephedrine or pseudoephedrine base, or their salts, isomers or salts of isomers. The limits in this subsection (c) apply whether one form of ID is used to make the purchase or if two (2) or more are used to purchase the products. The limits shall apply to the total amount of base ephedrine and pseudoephedrine contained in the products, and not the overall weight of the products. The prohibition contained in this subsection (c) shall not apply to a person who obtains the product or products pursuant to a valid prescription issued by a licensed healthcare practitioner authorized to prescribe by the law of the state.

(3) This subsection (c) also shall apply to pharmacist-generated prescription orders of the product pursuant to § 63-10-206. The provision of the patient education and counseling as a part of the practice of pharmacy shall be required when product is issued under this subsection (c).

(4) There shall be no protocol or procedure mandated by any individual or corporate entity that interferes with the pharmacist's professional duty to counsel and evaluate the patient's appropriate pharmaceutical needs and the exercise of the pharmacist's professional judgment as to whether it is appropriate to dispense medication as set forth in subsection (d) or otherwise.

(d) The pharmacist or pharmacy intern under the supervision of the pharmacist shall require any person purchasing an over-the-counter product containing pseudoephedrine or ephedrine to present valid government issued photo identification at the point of sale. The pharmacist or pharmacy intern shall counsel with the person seeking to purchase the product as to the reasons for needing the product and may decline the sale if the pharmacist or pharmacy intern believes the sale is not for a legitimate medical purpose. The pharmacist, pharmacy technician, or pharmacy intern shall maintain an electronic record of the sale under this subsection (d) and the record may be maintained in the form of a pharmacist prescription order as provided by § 63-10-206(c). The electronic record shall include the name and address of purchaser; name and quantity of product purchased; date and time purchased; purchaser identification type and number, such as driver license state and number; and the identity, such as name, initials or identification code, of the dispensing pharmacist or pharmacy intern. If a system is not able to record the identification type and number, the pharmacist, pharmacy technician, or pharmacy intern shall write the identification type and number on the prescription order. The electronic record shall also be maintained in a manner that allows for the determination of the equivalent number of packages purchased and total quantity of base ephedrine or pseudoephedrine purchased.

(e)(1) By January 1, 2012, each pharmacy in this state shall have in place and operational all equipment necessary to access and use the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI). The NPLEx system shall be available for access and use free of charge to the pharmacies and this state.

(2) Beginning January 1, 2012, before completing a sale of an over-the-counter product containing pseudoephedrine or ephedrine not otherwise excluded from the record keeping requirement, a pharmacy shall electronically submit the required information to the NPLEx administered by the NADDI. Except as provided in subsection (j), the seller shall not complete

the sale if the system generates a stop sale alert.

(3) Absent negligence, wantonness, recklessness, or deliberate misconduct, any pharmacy utilizing the electronic sales tracking system in accordance with this subsection (e) shall not be civilly liable as a result of any act or omission in carrying out the duties required by this subsection (e) and shall be immune from liability to any third party unless the retailer has violated this subsection (e) in relation to a claim brought for such violation. This subsection (e) shall not apply to a person who obtains the product or products pursuant to a valid prescription.

(4) The data entered into, stored and maintained by the NPLEx may only be used by law enforcement officials, healthcare professionals and pharmacists and only for controlling the sale of methamphetamine precursors.

(5) If, for any reason, the NPLEx administered by the NADDI is no longer the system used in this state to track the sale of methamphetamine precursors, whether because the system no longer functions, is no longer in existence, is no longer offered to the state without cost, or is otherwise no longer available, each pharmacy shall switch to and commence using the Tennessee Methamphetamine Information System (TMIS), as soon as the equipment necessary to access and use the system is made available at no charge to the pharmacy. TMIS shall be available for access and use free of charge to the pharmacies.

(f) If a pharmacy selling an over-the-counter product containing pseudoephedrine or ephedrine experiences mechanical or electronic failure of the tracking system and is unable to comply with the electronic sales tracking requirement, the pharmacy or retail establishment shall maintain a written log until such time as the pharmacy or retail establishment is able to comply with the electronic sales tracking requirement.

(g) A pharmacy selling an over-the-counter product containing pseudoephedrine or ephedrine may seek an exemption from submitting transactions to the electronic sales tracking system in writing to the board of pharmacy stating the reasons therefore. The board of pharmacy may grant an exemption for good cause shown, but in no event shall such exemption exceed one hundred eighty (180) days. Any pharmacy or retail establishment that receives an exemption shall maintain a hardcopy logbook and must still require the purchaser to provide the information required under this section before completion of any sale. The logbook shall be maintained as a record of each sale for inspection by any law enforcement officer or inspector of the board of pharmacy during normal business hours.

(h) Nonexempt products containing an immediate methamphetamine precursor shall be maintained behind-the-counter of the pharmacy or in a locked case within view of and within twenty-five feet (25′) of the counter.

(i) All data that is collected from Tennessee pharmacies and stored in the NPLEx will be downloaded and exported by electronic means to the TMIS at least every twenty-four (24) hours. This export of data will be in a version in compliance with the National Information Exchange Standard and agreed to by both the TBI and the NADDI. The export will be executed without a charge to TMIS or any agency of this state. Any and all data exported to, obtained by, gathered by, transmitted to and/or stored by TMIS or its designee, once received from NADDI, is the property of this state. TMIS has the authority to control, administer, and disseminate, at its discretion, this transaction data for the purpose of enforcing federal and state laws. In addition to the exporting of data to TMIS, real time access to NPLEx information through the NPLEx

online portal shall be provided to law enforcement in the state free of charge.

(j) The NPLEx shall generate a stop sale alert, if completion of a sale would result in the seller or purchaser violating the quantity limits set forth in this section. The system shall contain an override function that may be used by a dispenser of ephedrine or pseudoephedrine who has a reasonable fear of imminent bodily harm if the sale is not completed. Each instance in which the override function is utilized shall be logged by the system.

(k) A violation of subsections (a)-(j) is a Class A misdemeanor, punishable by fine only. If the person in violation is a licensed pharmacy or pharmacist, the violation shall be reported to the board of pharmacy for review and appropriate action. If a product is dispensed in violation of subsection (a), the owner or operator of the wholesale or retail establishment dispensing the product shall be in violation of subsection (a).

(*l*)(1) [Deleted by 2012 amendment.]

(2) The TBI, in cooperation with the NADDI which administers the NPLEx, shall devise a method to electronically notify NADDI at least every seven (7) days of any person placed on the methamphetamine registry pursuant to § 39-17-436(b). The notification shall include the first, middle and last names of the person, the person's date of birth and the person's driver license number or any other state or federal identification number. The NPLEx shall be designed to generate a stop-sale alert for any purchaser whose name has been submitted to the registry. Such person shall be prohibited from purchasing nonexempt products at the point-of-sale using the NPLEx.

(3) The bureau shall also notify NADDI when a person is removed from the methamphetamine registry pursuant to § 39-17-436(e). When notified, the person shall be removed from NPLEx and is permitted to purchase nonexempt products.

(4)(A) Any person who sells or delivers a nonexempt substance to a person known to be on the methamphetamine registry commits a Class A misdemeanor.

(B) Any person who purchases or attempts to purchase a nonexempt substance while such person is on the methamphetamine registry commits a Class A misdemeanor.

(m)(1) It is an offense for a person not authorized to do so to knowingly engage in any of the following conduct with respect to a nonexempt product containing an immediate methamphetamine precursor and required to be maintained behind-the-counter of the pharmacy as specified in subsection (h):

(A) Attempt to sell the product knowing that it will be used to produce methamphetamine, or with reckless disregard of its intended use;

(B) Attempt to purchase the product with the intent to manufacture methamphetamine or deliver the product to another person whom they know intends to manufacture methamphetamine, or with reckless disregard of the other person's intent;

(C) Purchase the product at different times or locations for the purpose of circumventing the maximum allowable quantity of the product that may lawfully be purchased during a one-day or thirty-day period; or

(D) Use a false identification to purchase the product for the purpose of circumventing the maximum allowable quantity of the product that may lawfully be purchased during a one-day period or thirty-day period.

(2)(A) A violation of this subsection (m) shall be a Class A misdemeanor. All proceeds from fines imposed pursuant to this subsection (m) shall be used by the jurisdiction making the arrest for methamphetamine clean-up activities in that jurisdiction.

(B) [Deleted by 2012 amendment.]

(n) This section shall supersede any local laws or ordinances currently regulating sales of products containing any immediate methamphetamine precursor.

(o)(1) The office of the comptroller of the treasury shall conduct a study of methamphetamine use in this state. The study shall include: a review of existing literature; a review of available information on programs in other states, particularly those states that require a prescription for methamphetamine precursor purchase; and analysis of data and information from the Tennessee methamphetamine task force, the TBI, and other state or local agencies.

(2) The comptroller shall complete its study by no later than January 1, 2013, and report the findings to the health committee of the house of representatives and the health and welfare committee of the senate.

(p) For the purposes of this section, "pharmacy" means only a pharmacy operating under title 63, chapter 10, which sells any immediate methamphetamine precursor at retail to the public.

39-17-438. Production, manufacture, distribution or possession of salvia divinorum A.

(a)(1) It is an offense to knowingly produce, manufacture, distribute, possess or possess with intent to produce, manufacture or distribute the active chemical ingredient in the hallucinogenic plant salvia divinorum or the following synthetic cannabinoids:

(A) (6a,10a)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2methyloctan-2-yl)-6a, 7,10,10a-tetrahydrobenzo[c]chromen-1-ol; including, but not limited to HU 210 or HU 211;

(B) Naphthoylindoles being any compound structurally derived from 3-(1-naphthoyl) indole with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent; including, but not limited to JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, AM-1220, MAM-2201 or AM-2201;

(C) Naphthylmethylindoles being any compound structurally derived from a 1 H-indole-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent; including, but not limited to JWH-175, JWH-184 or JWH-199;

(D) Naphthoylpyrroles, being any compound structurally derived from 3-(1-naphthoyl) pyrrole with substitution at the nitrogen atom of the pyrrole ring whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent; including, but not limited to JWH-307;

(E) Naphthylmethylindenes, being any compound structurally derived from 1-(1-naphthylmethyl) indene with substitution at the 3-position of

the indene ring whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent; including, but not limited to JWH-176;

(F) Phenylacetylindoles, being any compound structurally derived from 3-phenylacetylindole with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent; including but not limited to JWH-167, JWH-201, JWH-203, JWH-250, JWH-251, JWH-302 or RCS-8;

(G) Cyclohexylphenols, being any compound structurally derived from 2-(3-hydroxycyclohexyl) phenol with substitution at the 5-position of the phenolic ring whether or not further substituted in the whether or not substituted in the cyclohexyl ring to any extent; including, but not limited to CP 47,497 or the dimethylhexyl, dimethyloctyl or dimethylnonyl homologues of CP 47,497;

(H) Tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabiniol or of its tetrahydro derivatives, except where contained in cannabis or cannabis resin;

(I) Benzoylindoles, being any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent; including, but not limited to AM-694, Pravadoline (WIN 48, 098), RCS-4, AM-1241 or AM-2233;

(J) WIN-55, 212-2 or 2, 3-Dihydro-5-methyl-3-(4 Morpholinylmethyl) pyrrolo [1,2,3-de]-1, 4-benzoxazin-6-yl]-1-napthalenylmethanone;

(K) Cyclopropanoylindoles, being any compound structurally derived from a 3-(cyclopropylmethanoyl)indole structure with substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent and whether or not substituted in the cyclopropyl ring to any extent; including, but not limited to UR-144, XLR-11 or A-796,260;

(L) Adamantoylindoles, being any compound structurally derived from a 3-(1-adamantoyl)indole structure with substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantly ring to any extent; including, but not limited to AM-1248 or AB-001;

(M) Adamantoylindolecarboxamides, being any compound structurally derived from a N-adamantyl-1-indole-3-carboxamide with substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantyl ring to any extent; including but not limited to STS-135, 2NE1;

(N) Adamantylindazolecarboxamides, being any compound structurally derived from a N-adamantyl-1-indazole-3-carboxamide with substitution at the nitrogen atom of the indazole ring, whether or not further substituted in the indazole ring to any extent and whether or not substituted in the adamantly ring to any extent; including, but not limited to AKB-48; and

(O) Naphthoylnaphthalene, being any compound structurally derived from naphthalene-1-yl-(naphthalene-1-yl) methanone with substitutions on either of the naphthalene rings to any extent; including, but not limited to CB-13.

(2) Subdivision (a)(1) concerning synthetic cannabinoids shall not apply to drugs or substances lawfully prescribed or to drugs or substances which have been approved or approved for study by the federal food and drug administration.

(b) This section shall not apply to the possession, planting, cultivation, growing, or harvesting of the hallucinogenic plant strictly for aesthetic, landscaping, or decorative purposes.

(c) This section shall not apply to any dosage form that is legally obtainable from a retail establishment without a prescription and is recognized by the federal food and drug administration as a homeopathic drug.

(d)(1) A first violation of this section is a Class D felony.

(2) A second or subsequent violation of this section is a Class C felony.

(3) If the violation of this section involved the delivery, dispensing or sale of a controlled substance analogue to a minor, the person shall be punished one (1) classification higher than the punishment provided by this subsection (d) for delivering, dispensing or selling to an adult.

39-17-452. Synthetic derivatives or analogues of methcathinone.

(a)(1) It is an offense to knowingly produce, manufacture, distribute, sell, offer for sale or possess any capsule, pill, or other product composed of or containing any amount of any compound, other than bupropion, that is structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the following ways:

(A) Substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

(B) Substitution at the 3-position with an alkyl substituent; or

(C) Substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure.

(2) Compounds recognized under subdivision (a)(1) include, but are not limited to:

(A) 3,4-methylenedioxymethcathinone (Methylone);

(B) 3,4-methylenedioxypyrovalerone (MDPV);

(C) 4-methylmethcathinone (Mephedrone, Methpadrone, 4-MMC);

(D) 4-methoxymethcathinone (Methedrone);

(E) 3-methoxymethcathinone (HMMC);

(F) [Deleted by 2013 amendment, effective July 1, 2013.]

(G) 4-fluoromethcathinone (Flephedrone);

(H) 3-fluoromethcathinone (3-FMC);

(I) 4-methyl-alpha-pyrrolidinobutyrophenone (MPBP);

(J) 2-(methylamino)-1-phenylpropan-1-one (Ephedrone);

(K) 4-ethylmethcathinone (4-EMC);

(L) 3,4-Dimethylmethcathinone (3,4-DMMC);

(M) alpha-Pyrrolidinopentiophenone (alpha-PVP);

(N) Naphthylpyrovalerone (Naphyrone);

(O) beta-Keto-N-methylbenzodioxolylpropylamine (Butylone);

(P) beta-Keto-N-methylbenzodioxolylpentanamine (Pentylone);

(Q) beta-Keto-Ethylbenzodioxolylbutanamine (Eutylone);

(R) 3,4-methylenedioxy-N-ethylcathinone (Ethylone);

(S) Mitragynine and hydroxymitragynine;
(T) Desoxypipradol;
(U) URB 754; and
(V) URB602.

(b) Subsection (a) shall not apply to drugs or substances lawfully prescribed or to drugs or substances which have been approved by the federal food and drug administration.

(c) A violation of subsection (a) is a Class A misdemeanor.

39-17-453. Imitation controlled substances.

(a) It is an offense to knowingly manufacture, deliver, sell, or possess with the intent to sell, deliver or manufacture an imitation controlled substance.

(b) No person shall, for the purpose of causing a condition of intoxication, inebriation, elation, dizziness, excitement, stupefaction, paralysis, or the dulling of the brain or nervous system, or disturbing or distorting of the audio or visual processes, intentionally smell, inhale, inject, ingest or consume in any manner whatsoever an imitation controlled substance.

(c) No person shall, for the purpose of violating subsection (b), use, or possess for the purpose of so using, an imitation controlled substance.

(d) For purposes of this section:

(1)(A) "Imitation controlled substance" means a pill, capsule, tablet, or substance in any form whatsoever if it:

(i) Is not a controlled substance enumerated in this part;

(ii) Is subject to abuse;

(iii) Purports, by express or implied representations, to act like a controlled substance that is a stimulant or depressant of the central nervous system; and

(iv) Is not commonly used or recognized for use in that particular formulation for any purpose other than as a stimulant or depressant of the central nervous system; or

(B)(i) The chemical structure of the substance is a derivative or analogue of the chemical structure of a controlled substance; and

(ii) The substance is not commonly used or recognized for use in that particular formulation for any purpose other than as a stimulant or depressant of the central nervous system.

(2) "Imitation controlled substance" does not include a pill, capsule, tablet, or substance in any form whatsoever if it is marketed or promoted, or sold as permitted by the United States food and drug administration.

(e)(1) In determining whether a pill, capsule, tablet, or substance in any other form whatsoever, is an imitation controlled substance, there shall be considered, in addition to all other relevant factors, comparisons with accepted methods of marketing for legitimate nonprescription drugs for medicinal purposes rather than for drug abuse or any similar nonmedicinal use, including consideration of the packaging of the drug and its appearance in overall finished dosage form, promotional materials or representations, oral or written, concerning the drug, and the methods of distribution of the drug and where and how it is sold to the public.

(2) In determining whether any person intends to manufacture, sell, give or distribute an imitation controlled substance, it may be inferred from, in addition to all other relevant evidence, whether any distribution or at-

tempted distribution of such pill, capsule, tablet or substance in any other form whatsoever included an exchange of or a demand for money or other property as consideration, and, if so, whether the amount of such consideration was substantially greater than the reasonable value of such pill, capsule, tablet or substance in any other form whatsoever, considering the actual chemical composition of such pill, capsule, tablet or substance in any other form whatsoever and, where applicable, the price at which over-the-counter substances of like chemical composition sell. Such inference shall be transmitted to the jury by the trial judge's charge.

(f)(1) A violation of subsection (a) is a Class E felony. In addition to any period of incarceration imposed, there shall be imposed a fine of not less than two thousand dollars ($2,000) and not more than five thousand dollars ($5,000).

(2) A violation of subsection (b) or (c) is a Class A misdemeanor. In addition to any period of incarceration imposed, there shall be imposed a fine of not less than two hundred fifty dollars ($250) and not more than two thousand five hundred dollars ($2,500).

(g) The building and premises of any business in or upon which a violation of this section is committed by an employee, agent or owner of such business is declared to be a public nuisance and shall be subject to abatement as provided in title 29, chapter 3.

39-17-454. Controlled substance analogues.

(a)(1) As used in this section, "controlled substance analogue" means a capsule, pill, powder, product or other substance, however constituted, that has the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance; and

(A) Has a chemical structure which is a derivative or structural analogue of the chemical structure of a controlled substance; provided, that as used in this subdivision, "analogue" means the structure of the tested item differs in no more than two (2) atoms, one (1) functional group, or one (1) double bond, from the structure of a controlled substance; or

(B) Is prohibited by § 39-17-452.

(2) "Controlled substance analogue" does not include:

(A) A controlled substance;

(B) Any substance for which there is an approved use or new drug application by the federal food and drug administration;

(C) Any compound, mixture, or preparation that contains any controlled substance that is not for administration to a human being or animal, and that is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse; or

(D) Any substance to which an investigational exemption applies under § 505 of the Food, Drug and Cosmetic Act, codified in 21 U.S.C. § 355, but only to the extent that conduct with respect to the substance is pursuant to such exemption.

(b)(1) In determining whether a substance is a controlled substance analogue, the following factors shall be considered, along with any other relevant factors:

(A) The difference between the price at which the substance is sold and the price at which the substance it is purported to be or advertised as is

normally sold;

(B) Its diversion from legitimate channels, and its clandestine importation, manufacture, or distribution;

(C) The defendant's prior convictions, if any, for a violation of any state or federal statute prohibiting controlled substances or controlled substance analogues; and

(D) Comparisons with accepted methods of marketing a legitimate nonprescription drug for medicinal purposes rather than for the purpose of drug abuse or any similar nonmedical use, including:

(i) The packaging of the substance and its appearance in overall finished dosage form;

(ii) Oral or written statements or representations concerning the substance;

(iii) The methods by which the substance is distributed; and

(iv) The manner in which the substance is sold to the public.

(2) In determining whether a substance is a controlled substance analogue, the following scientific or pharmacological factors may be considered, along with any other relevant factors:

(A) Its actual or relative potential for abuse;

(B) Scientific evidence of its pharmacological effect, if known;

(C) The state of current scientific knowledge regarding the substance;

(D) The history of the substance and its current pattern of abuse;

(E) The scope, duration and significance of abuse;

(F) What, if any, risk there is to the public health;

(G) Its psychic or physiological dependence liability; and

(H) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

(c) It is an offense to knowingly manufacture, deliver, dispense or sell a controlled substance analogue or to possess a controlled substance analogue with the intent to manufacture, deliver, dispense or sell such substance.

(d) It is an offense to knowingly possess or casually exchange a small amount of a controlled substance analogue not in excess of one (1) gram.

(e) It may be inferred from the amount of controlled substance analogue possessed by an offender, along with other relevant facts surrounding the arrest, that the controlled substance analogue was possessed with the purpose of selling or otherwise dispensing in violation of subsection (c). It may be inferred from circumstances indicating a casual exchange among individuals of a controlled substance analogue that the controlled substance analogue so exchanged was possessed not with the purpose of selling or otherwise dispensing in violation of subsection (c). The inferences shall be transmitted to the jury by the trial judge's charge, and the jury will consider the inferences along with the nature of the substance possessed when affixing the penalty.

(f)(1) It is an offense for a person to represent, orally or in writing, advertise, infer or intend that a controlled substance analogue has the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance; and

(A) Has a chemical structure which is a derivative or structural analogue of the chemical structure of a controlled substance; provided, that as used in this subdivision, "analogue" means the structure of the tested item differs in no more than two (2) atoms, one (1) functional group, or one (1) double bond, from the structure of a controlled substance; or

(B) Is prohibited by § 39-17-452.

(2) It is not a defense to prosecution under this subsection (f) that the controlled substance analogue:

(A) Is not a derivative of a controlled substance;

(B) Does not have a chemical structure which is a derivative or analogue, as defined in subdivision (f)(1)(A), of the chemical structure of a controlled substance;

(C) Does not have a stimulant, depressant, hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance; or

(D) Is not listed in § 39-17-452.

(g)(1) A first violation of subsection (c) is a Class D felony.

(2) A second or subsequent violation of subsection (c) is a Class C felony.

(3) If the violation of subsection (c) involved the delivery, dispensing or sale of a controlled substance analogue to a minor, the person shall be punished one (1) classification higher than the punishment provided by this subsection (g) for delivering, dispensing or selling to an adult.

(4) A violation of subsection (d) or (f) is a Class A misdemeanor.

(h)(1) Nothing in this section shall preclude a violation of § 39-17-453, involving an imitation controlled substance, or § 39-17-452 from being prosecuted and punished as a violation of this section if the substance in question meets the definition of an analogue controlled substance under subsection (a).

(2) Nothing in this section shall preclude a violation of this section involving a controlled substance analogue from being prosecuted and punished under § 39-17-452 or § 39-17-453 if the controlled substance analogue in question also meets the definitions found in such sections.

(3) If the chemical analysis of a controlled substance analogue determines that it also contains a hazardous substance as defined by § 68-131-102, nothing in this section shall preclude a violation of this section from also being prosecuted and punished under title 68, chapter 131, part 1.

(i) Any disability, disqualification, forfeiture, suspension, revocation, prohibition, tax or other adverse consequence provided by law that may result from a conviction for an offense involving a controlled substance shall also apply if the conviction involves a controlled substance analogue in violation of subsection (c).

(j) The building and premises of any business in or upon which a violation of subsection (c) or (f) is committed by an employee, agent or owner of such business is declared to be a public nuisance and shall be subject to abatement as provided in title 29, chapter 3.

39-17-907. Restrictions on showings.

(a) It is unlawful for any person to exhibit for public consumption, whether or not the exhibition is for compensation, any motion picture, film, movie, or videotape that depicts sexual conduct as defined in § 39-17-901, unless the exhibition is within a theater auditorium or other enclosed area that effectively removes the exhibition from the view of members of the public who are not voluntarily engaged in viewing the motion picture, film, movie, or videotape.

(b) No minor under the age of eighteen (18) years old may be admitted to a

movie theatre if the movie has been found to be "harmful to minors" pursuant to § 39-17-901. It is a deceptive practice under title 47, chapter 18, part 1, to advertise or promote a motion picture as having a rating other than the rating that has been assigned to it.

(c) A violation of this section is a Class A misdemeanor.

39-17-1003. Offense of sexual exploitation of a minor.

(a) It is unlawful for any person to knowingly possess material that includes a minor engaged in:

(1) Sexual activity; or

(2) Simulated sexual activity that is patently offensive.

(b) A person possessing material that violates subsection (a) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials possessed is greater than fifty (50), the person may be charged in a single count to enhance the class of offense under subsection (d).

(c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly possessed the material, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(d) A violation of this section is a Class D felony; however, if the number of individual images, materials, or combination of images and materials, that are possessed is more than fifty (50), then the offense shall be a Class C felony. If the number of individual images, materials, or combination of images and materials, exceeds one hundred (100), the offense shall be a Class B felony.

(e) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.

(f) It shall not be a defense to a violation of this section that a minor victim of the offense consented to the conduct that constituted the offense.

39-17-1004. Offense of aggravated sexual exploitation of a minor.

(a)(1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material, that includes a minor engaged in:

(A) Sexual activity; or

(B) Simulated sexual activity that is patently offensive.

(2) A person who violates subdivision (a)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (a)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (a)(4).

(3) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a

person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(4) A violation of this section is a Class C felony; however, if the number of individual images, materials, or combination of images and materials that are promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony.

(b)(1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material that is obscene, as defined in § 39-17-901, or possess material that is obscene, with the intent to promote, sell, distribute, transport, purchase or exchange the material, which includes a minor engaged in:

(A) Sexual activity; or

(B) Simulated sexual activity that is patently offensive.

(2) A person who violates subdivision (b)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (b)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (b)(4).

(3) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(4) A violation of this section is a Class C felony; however, if the number of individual images, materials, or combination of images and materials, that are promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony.

(c) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.

(d) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange material within this state.

(e) It shall not be a defense to a violation of subsection (a) that the minor victim of the offense consented to the conduct that constituted the offense.

39-17-1005. Offense of especially aggravated sexual exploitation of a minor.

(a) It is unlawful for a person to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance of, or in the

production of, acts or material that includes the minor engaging in:

(1) Sexual activity; or

(2) Simulated sexual activity that is patently offensive.

(b) A person violating subsection (a) may be charged in a separate count for each individual performance, image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation.

(c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, employed, used, assisted, transported or permitted a minor to participate in the performance of or in the production of acts or material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(d) A violation of this section is a Class B felony. Nothing in this section shall be construed as limiting prosecution for any other sexual offense under this chapter, nor shall a joint conviction under this section and any other related sexual offense, even if arising out of the same conduct, be construed as limiting any applicable punishment, including consecutive sentencing under § 40-35-115, or the enhancement of sentence under § 40-35-114.

(e) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.

(f) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person promoted, employed, assisted, transported or permitted a minor to engage in the performance of, or production of, acts or material within this state.

(g) It shall not be a defense to a violation of subsection (a) that the minor victim of the offense consented to the conduct that constituted the offense.

39-17-1313. Transporting and storing a firearm or firearm ammunition in permit holder's privately owned motor vehicle.

(a) Notwithstanding § 39-17-1309, § 39-17-1311, or § 39-17-1359, unless expressly prohibited by federal law, the holder of a valid handgun carry permit recognized in Tennessee may transport and store a firearm or firearm ammunition in the permit holder's privately owned motor vehicle, as defined in § 55-1-103, while on or utilizing any public or private parking area if:

(1) The permit holder's vehicle is parked in a location where it is permitted to be; and

(2) The firearm or ammunition being transported or stored in the vehicle:

(A) Is kept from ordinary observation if the permit holder is in the motor vehicle; or

(B) Is kept from ordinary observation and locked within the trunk, glove box, or interior of the person's privately owned motor vehicle or a container securely affixed to such vehicle if the permit holder is not in the vehicle.

(b) No business entity, public or private employer, or the owner, manager, or legal possessor of the property shall be held liable in any civil action for damages, injuries or death resulting from or arising out of another's actions involving a firearm or ammunition transported or stored by the holder of a

valid handgun carry permit in the permit holder's privately owned motor vehicle unless the business entity, public or private employer, or the owner, manager, or legal possessor of the property commits an offense involving the use of the stored firearm or ammunition or intentionally solicits or procures the conduct resulting in the damage, injury or death. Nor shall a business entity, public or private employer, or the owner, manager, or legal possessor of the property be responsible for the theft of a firearm or ammunition stored by the holder of a valid handgun carry permit in the permit holder's privately owned motor vehicle.

(c) For purposes of this section:

(1) "Parking area" means any property provided by a business entity, public or private employer, or the owner, manager, or legal possessor of the property for the purpose of permitting its invitees, customers, clients or employees to park privately owned motor vehicles; and

(2) "Parking area" does not include the grounds or property of an owner-occupied, single-family detached residence, or a tenant-occupied single-family detached residence.

39-17-1314. Local regulation of firearms and ammunition and knives preempted by state regulation — Actions against firearms or ammunition manufacturers, trade associations or dealers.

(a) Except as provided in § 39-17-1311(d), which allows counties and municipalities to prohibit the possession of handguns while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway or other similar public place that is owned or operated by a county, a municipality or instrumentality thereof, no city, county, or metropolitan government shall occupy any part of the field of regulation of the transfer, ownership, possession or transportation of firearms, ammunition or components of firearms or combinations thereof; provided, that this section shall be prospective only and shall not affect the validity of any ordinance or resolution lawfully enacted before April 8, 1986.

(b) The general assembly declares that the lawful design, marketing, manufacture and sale of firearms and ammunition to the public are not unreasonably dangerous activities and do not constitute a nuisance per se.

(c)(1) The authority to bring suit and right to recover against any firearms or ammunition manufacturer, trade association or dealer by or on behalf of any state entity, county, municipality or metropolitan government for damages, abatement or injunctive relief resulting from or relating to the lawful design, manufacture, marketing or sale of firearms or ammunition to the public shall be reserved exclusively to the state.

(2) Nothing in this subsection (c) shall be construed to prohibit a county, municipality, or metropolitan government from bringing an action against a firearms or ammunition manufacturer or dealer for breach of contract or warranty as to firearms or ammunition purchased by such county, municipality, or metropolitan government.

(3) Nothing in this subsection (c) shall preclude an individual from bringing a cause of action for breach of a written contract, breach of an express warranty, or for injuries resulting from defects in the materials or

workmanship in the manufacture of the firearm.

(d) The provisions of subsections (b) and (c) shall not apply in any litigation brought by an individual against a firearms or ammunition manufacturer, trade association or dealer.

(e) It is the intent of the general assembly that this part is preemptive with respect to the transfer, ownership, possession or transportation of knives and no city, county, or metropolitan government shall occupy any part of the field of regulation of the transfer, ownership, possession or transportation of knives.

39-17-1316. Sales of dangerous weapons — Certification of purchaser — Exceptions — Licensing of dealers — Definitions.

(a)(1) Any person appropriately licensed by the federal government may stock and sell firearms to persons desiring firearms; however, sales to persons who have been convicted of the offense of stalking, as prohibited by § 39-17-315, who are addicted to alcohol, who are ineligible to receive firearms under 18 U.S.C. § 922, or who have been judicially committed to a mental institution pursuant to title 33 or adjudicated as a mental defective are prohibited. For purposes of this subdivision (a)(1), the offense of violation of a protective order as prohibited by § 39-13-113 shall be considered a "misdemeanor crime of domestic violence" for purposes of 18 U.S.C. § 921.

(2) The provisions of this subsection (a) prohibiting the sale of a firearm to a person convicted of a felony shall not apply if:

(A) The person was pardoned for the offense;

(B) The conviction has been expunged or set aside; or

(C) The person's civil rights have been restored pursuant to title 40, chapter 29; and

(D) The person is not prohibited from possessing a firearm by the provisions of § 39-17-1307.

(b)(1) As used in this section, "firearm" has the meaning as defined in § 39-11-106, including handguns, long guns, and all other weapons that meet the definition except "antique firearms" as defined in 18 U.S.C. § 921.

(2) As used in this section, "gun dealer" means a person engaged in the business, as defined in 18 U.S.C. § 921, of selling, leasing, or otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker, or otherwise.

(c) Except with respect to transactions between persons licensed as dealers under 18 U.S.C. § 923, a gun dealer shall comply with the following before a firearm is delivered to a purchaser:

(1) The purchaser shall present to the dealer current identification meeting the requirements of subsection (f);

(2) The gun dealer shall complete a firearms transaction record as required by 18 U.S.C. §§ 921-929, and obtain the signature of the purchaser on the record;

(3) The gun dealer shall request by means designated by the bureau that the Tennessee bureau of investigation conduct a criminal history record check on the purchaser and shall provide the following information to the bureau:

(A) The federal firearms license number of the gun dealer;

(B) The business name of the gun dealer;

(C) The place of transfer;

(D) The name of the person making the transfer;

(E) The make, model, caliber and manufacturer's number of the firearm being transferred;

(F) The name, gender, race, and date of birth of the purchaser;

(G) The social security number of the purchaser, if one has been assigned; and

(H) The type, issuer and identification number of the identification presented by the purchaser; and

(4) The gun dealer shall receive a unique approval number for the transfer from the bureau and record the approval number on the firearms transaction record.

(d) Upon receipt of a request of the gun dealer for a criminal history record check, the Tennessee bureau of investigation shall immediately, during the gun dealer's telephone call or by return call:

(1) Determine, from criminal records and other information available to it, whether the purchaser is disqualified under the provisions of subdivision (a)(1) from completing the purchase; and

(2) Notify the dealer when a purchaser is disqualified from completing the transfer or provide the dealer with a unique approval number indicating that the purchaser is qualified to complete the transfer.

(e)(1) The Tennessee bureau of investigation may charge a reasonable fee, not to exceed ten dollars ($10.00), for conducting background checks and other costs incurred under the provisions of this section, and shall be empowered to bill gun dealers for checks run.

(2) Funds collected by the Tennessee bureau of investigation pursuant to this section shall be deposited in a continuing deferred interest-bearing revenue fund that is created in the state treasury. This fund will not revert to the general fund on June 30 of any year. This fund shall be used to offset the costs associated with conducting background checks. By February 1 of each year the Tennessee bureau of investigation shall report to the judiciary committee of the senate and the criminal justice committee of the house of representatives the amount of money collected pursuant to this section in excess of the costs associated with conducting background checks as required by this section. The excess money shall be appropriated by the general assembly to the Tennessee bureau of investigation for other law enforcement related purposes as it deems appropriate and necessary.

(f)(1) Identification required of the purchaser under subsection (c) shall include one (1) piece of current, valid identification bearing a photograph and the date of birth of the purchaser that:

(A) Is issued under the authority of the United States government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization or an international quasi-governmental organization; and

(B) Is intended to be used for identification of an individual or is commonly accepted for the purpose of identification of an individual.

(2) If the identification presented by the purchaser under subdivision (f)(1)(A) does not include the current address of the purchaser, the purchaser shall present a second piece of current identification that contains the current address of the purchaser.

(g) The Tennessee bureau of investigation may require that the dealer verify the identification of the purchaser if that identity is in question by sending the

thumbprints of the purchaser to the bureau.

(h) The Tennessee bureau of investigation shall establish a telephone number that shall be operational seven (7) days a week between the hours of eight o'clock a.m. and ten o'clock p.m. Central Standard Time (8:00 a.m.-10:00 p.m. (CST)), except Christmas Day, Thanksgiving Day, and Independence Day, for the purpose of responding to inquiries from dealers for a criminal history record check under this section.

(i) No public employee, official or agency shall be held criminally or civilly liable for performing the investigations required by this section; provided the employee, official or agency acts in good faith and without malice.

(j) Upon the determination that receipt of a firearm by a particular individual would not violate this section, and after the issuance of a unique identifying number for the transaction, the Tennessee bureau of investigation shall destroy all records (except the unique identifying number and the date that it was assigned) associating a particular individual with a particular purchase of firearms.

(k) A law enforcement agency may inspect the records of a gun dealer relating to transfers of firearms in the course of a reasonable inquiry during a criminal investigation or under the authority of a properly authorized subpoena or search warrant.

(*l*)(1) The background check does not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, or licensed collectors who meet the requirements of subsection (b) and certify prior to the transaction the legal and licensed status of both parties. The burden shall fall upon the transferor to determine the legality of the transaction in progress.

(2) The background check does not apply to transactions or transfers between a licensed importer, licensed manufacturer, or licensed dealer and a bona fide law enforcement agency or such agency's personnel. However, all other provisions and requirements of subsection (b) must be observed. The burden of proof of the legality of the transactions or transfers shall rest upon the transferor.

(3) The background check does not apply to any person eligible to purchase a firearm as set out in this section who wishes to make an occasional sale of a used or second-hand firearm legally purchased by the seller.

(m) The director of the Tennessee bureau of investigation is authorized to make and issue all rules and regulations necessary to carry out the provisions of this section.

(n) In addition to the other grounds for denial, the bureau shall deny the transfer of a firearm if the background check reveals information indicating that the purchaser has been charged with a crime for which the purchaser, if convicted, would be prohibited under state or federal law from purchasing, receiving, or possessing a firearm; and, either there has been no final disposition of the case, or the final disposition is not noted.

(o) Upon receipt of the criminal history challenge form indicating a purchaser's request for review of the denial, the bureau shall proceed with efforts to obtain the final disposition information. The purchaser may attempt to assist the bureau in obtaining the final disposition information. If neither the purchaser nor the bureau is able to obtain the final disposition information within fifteen (15) calendar days of the bureau's receipt of the criminal history

challenge form, the bureau shall immediately notify the federal firearms licensee that the transaction that was initially denied is now a "conditional proceed." A "conditional proceed" means that the federal firearms licensee may lawfully transfer the firearm to the purchaser.

(p) In any case in which the transfer has been denied pursuant to subsection (n), the inability of the bureau to obtain the final disposition of a case shall not constitute the basis for the continued denial of the transfer as long as the bureau receives written notice, signed and verified by the clerk of the court or the clerk's designee, that indicates that no final disposition information is available. Upon receipt of the letter by the bureau, the bureau shall immediately reverse the denial.

(q)(1) It is an offense for a person to purchase or attempt to purchase a firearm knowing that the person is prohibited by state or federal law from owning, possessing or purchasing a firearm.

(2) It is an offense to sell or offer to sell a firearm to a person knowing that the person is prohibited by state or federal law from owning, possessing or purchasing a firearm.

(3) A violation of this subsection (q) is a Class A misdemeanor.

39-17-1351. Handgun carry permits.

(a) The citizens of this state have a right to keep and bear arms for their common defense; but the general assembly has the power, by law, to regulate the wearing of arms with a view to prevent crime.

(b) Except as provided in subsection (r), any resident of Tennessee who is a United States citizen or permanent lawful resident, as defined by § 55-50-102, who has reached twenty-one (21) years of age, may apply to the department of safety for a handgun carry permit. If the applicant is not prohibited from purchasing or possessing a firearm in this state pursuant to § 39-17-1316 or § 39-17-1307(b), 18 U.S.C. § 922(g), or any other state or federal law, and the applicant otherwise meets all of the requirements of this section, the department shall issue a permit to the applicant.

(c) The application for a permit shall be on a standard form developed by the department. The application shall clearly state in bold face type directly above the signature line that an applicant who, with intent to deceive, makes any false statement on the application commits the felony offense of perjury pursuant to § 39-16-702. The following are eligibility requirements for obtaining a handgun carry permit and the application shall require the applicant to disclose and confirm compliance with, under oath, the following information concerning the applicant and the eligibility requirements:

(1) Full legal name and any aliases;

(2) Addresses for the last five (5) years;

(3) Date of birth;

(4) Social security number;

(5) Physical description (height, weight, race, sex, hair color and eye color);

(6) That the applicant has not been convicted of a criminal offense that is designated as a felony, or that is one of the disqualifying misdemeanors set out in subdivisions (c)(11), (c)(16), or (c)(18), with the exception of any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulations of

business practices;

(7) That the applicant is not currently under indictment or information for any criminal offense that is designated as a felony, or that is one of the disqualifying misdemeanors set out in subdivisions (c)(11), (c)(16), or (c)(18), with the exception of any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulations of business practices;

(8) That the applicant is not currently subject to any order of protection and, if so, the applicant shall provide a copy of the order;

(9) That the applicant is not a fugitive from justice;

(10) That the applicant is not an unlawful user of or addicted to alcohol, any controlled substance or controlled substance analogue, and the applicant has not been either:

(A) A patient in a rehabilitation program pursuant to a court order or hospitalized for alcohol, controlled substance or controlled substance analogue abuse or addiction pursuant to a court order within ten (10) years from the date of application; or

(B) A voluntary patient in a rehabilitation program or voluntarily hospitalized for alcohol, controlled substance or controlled substance analogue abuse or addiction within three (3) years from the date of application;

(11) That the applicant has not been convicted of the offense of driving under the influence of an intoxicant in this or any other state two (2) or more times within ten (10) years from the date of the application and that none of the convictions has occurred within five (5) years from the date of application or renewal;

(12) That the applicant has not been adjudicated as a mental defective, has not been judicially committed to or hospitalized in a mental institution pursuant to title 33, has not had a court appoint a conservator for the applicant by reason of a mental defect, has not been judicially determined to be disabled by reason of mental illness, developmental disability or other mental incapacity, and has not, within seven (7) years from the date of application, been found by a court to pose an immediate substantial likelihood of serious harm, as defined in title 33, chapter 6, part 5, because of mental illness;

(13) That the applicant is not an alien and is not illegally or unlawfully in the United States;

(14) That the applicant has not been discharged from the armed forces under dishonorable conditions;

(15) That the applicant has not renounced the applicant's United States citizenship;

(16) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(33);

(17) That the applicant is not receiving social security disability benefits by reason of alcohol dependence, drug dependence or mental disability; and

(18) That the applicant has not been convicted of the offense of stalking.

(d)(1) In addition to the information required under subsection (c), the applicant shall be required to provide two (2) full sets of classifiable fingerprints at the time the application is filed with the department. The applicant's fingerprints may be taken by the department at the time the application is submitted or the applicant may have the fingerprints taken at

any sheriff's office and submit the fingerprints to the department along with the application and other supporting documents. The sheriff may charge a fee not to exceed five dollars ($5.00) for taking the applicant's fingerprints. At the time an applicant's fingerprints are taken either by the department or a sheriff's office, the applicant shall be required to present a photo identification. If the person requesting fingerprinting is not the same person as the person whose picture appears on the photo identification, the department or sheriff shall refuse to take the fingerprints. The department shall also be required to photograph the applicant in a manner that is suitable for use on the permit.

(2) An applicant shall also be required to present a photo identification to the department at the time of filing the application. If the name on the photo identification, name on the application and name on the fingerprint card, if taken by a sheriff, are not the same, the department shall refuse to accept the application. If the person whose picture appears on the photo identification is not the same as the applicant, the department shall refuse to accept the application.

(e) The department shall also require an applicant to submit proof of the successful completion of a department approved handgun safety course. Any form created by the department to show proof of the successful completion of a department approved handgun safety course shall not require the applicant to provide the applicant's social security number. Any instructor of a department approved handgun safety course shall not withhold proof of the successful completion of the course solely on the fact the applicant did not disclose the applicant's social security number. The course shall include both classroom hours and firing range hours. Beginning September 1, 2010, and thereafter, a component of the classroom portion of all department-approved handgun safety courses shall be instruction on alcohol and drugs, the effects of those substances on a person's reflexes, judgment and ability to safely handle a firearm, and the provisions of § 39-17-1321. An applicant shall not be required to comply with the firing range and classroom hours requirements of this subsection (e) if the applicant submits proof to the department that within five (5) years from the date the application for a handgun carry permit is filed the applicant has:

(1) Been certified by the peace officer standards and training commission;

(2) Successfully completed training at the law enforcement training academy;

(3) Successfully completed the firearms training course required for armed security guard/officer registration, pursuant to § 62-35-118(b); or

(4) Successfully completed all handgun training of not less than four (4) hours as required by any branch of the military.

(f) The department shall make applications for permits available for distribution at any location where the department conducts driver license examinations.

(g)(1) Upon receipt of a permit application, the department shall:

(A) Forward two (2) full sets of fingerprints of the applicant to the Tennessee bureau of investigation; and

(B) Send a copy of the application to the sheriff of the county in which the applicant resides.

(2) Within thirty (30) days of receiving an application, the sheriff shall provide the department with any information concerning the truthfulness of the applicant's answers to the eligibility requirements of subsection (c) that

is within the knowledge of the sheriff.

(h) Upon receipt of the fingerprints from the department, the Tennessee bureau of investigation shall:

(1) Within thirty (30) days from receipt of the fingerprints, conduct computer searches to determine the applicant's eligibility for a permit under subsection (c) as are available to the bureau based solely upon the applicant's name, date of birth and social security number and send the results of the searches to the department;

(2) Conduct a criminal history record check based upon one (1) set of the fingerprints received and send the results to the department; and

(3) Send one (1) set of the fingerprints received from the department to the federal bureau of investigation, request a federal criminal history record check based upon the fingerprints, as long as the service is available, and send the results of the check to the department.

(i) The department shall deny a permit application if it determines from information contained in the criminal history record checks conducted by the Tennessee and federal bureaus of investigation pursuant to subsection (h), from information received from the clerks of court regarding individuals adjudicated as a mental defective or judicially committed to a mental institution pursuant to title 33, or from other information that comes to the attention of the department, that the applicant does not meet the eligibility requirements of this section. The department shall not be required to confirm the applicant's eligibility for a permit beyond the information received from the Tennessee and federal bureaus of investigation, the clerks of court and the sheriffs, if any.

(j) The department shall not deny a permit application if:

(1) The existence of any arrest or other records concerning the applicant for any indictment, charge or warrant have been judicially or administratively expunged; or

(2) An applicant's conviction has been set aside by a court of competent jurisdiction; or

(3) The applicant, who was rendered infamous or deprived of the rights of citizenship by judgment of any state or federal court, has had the applicant's full rights of citizenship duly restored pursuant to procedures set forth within title 40, chapter 29, or other federal or state law; provided, however, that this subdivision (j)(3) shall not apply to any person who has been convicted of burglary, any felony offense involving violence or use of a firearm or any felony drug offense involving a Schedule I, II, III, IV or V controlled substance or a controlled substance analogue. If the applicant has been convicted of a felony drug offense involving a Schedule VI controlled substance, this subdivision (j)(3) shall not apply if the offense occurred within ten (10) years of the date of application or renewal.

(k) If the department denies an application, the department shall notify the applicant in writing within ten (10) days of the denial. The written notice shall state the specific factual basis for the denial. It shall include a copy of any reports, records or inquiries reviewed or relied upon by the department.

(*l*) The department shall issue a permit to an applicant not prohibited from obtaining a permit under this section no later than ninety (90) days after the date the department receives the application. A permit issued prior to the department's receipt of the Tennessee and federal bureaus of investigation's criminal history record checks based upon the applicant's fingerprints shall be subject to immediate revocation if either record check reveals that the

applicant is not eligible for a permit pursuant to the provisions of this section.

(m) A permit holder shall not be required to complete a handgun safety course to maintain or renew a handgun carry permit. No permit holder shall be required to complete any additional handgun safety course after obtaining a handgun carry permit. No person shall be required to complete any additional handgun safety course if the person applies for a renewal of a handgun carry permit within six (6) months from the date of expiration.

(n)(1) Except as provided in subdivision (n)(2), a permit issued pursuant to this section shall be good for four (4) years and shall entitle the permit holder to carry any handgun or handguns that the permit holder legally owns or possesses. The permit holder shall have the permit in the holder's immediate possession at all times when carrying a handgun and shall display the permit on demand of a law enforcement officer.

(2) A Tennessee permit issued pursuant to this section to a person who is in or who enters into the United States armed forces shall continue in effect for so long as the person's service continues and the person is stationed outside this state, notwithstanding the fact that the person may be temporarily in this state on furlough, leave, or delay en route, and for a period not to exceed sixty (60) days following the date on which the person is honorably discharged or separated from service or returns to this state on reassignment to a duty station in this state, unless the permit is sooner suspended, cancelled or revoked for cause as provided by law. The permit is valid only when in the immediate possession of the permit holder and the permit holder has in the holder's immediate possession the holder's discharge or separation papers, if the permit holder has been discharged or separated from the service.

(o) The permit shall be issued on a wallet-sized laminated card of the same approximate size as is used by the state of Tennessee for driver licenses and shall contain only the following information concerning the permit holder:

(1) The permit holder's name, address and date of birth;

(2) A description of the permit holder by sex, height, weight and eye color;

(3) A color photograph of the permit holder; and

(4) The permit number and expiration date.

(p)(1) The department shall charge an application and processing fee of one hundred fifteen dollars ($115). The fee shall cover all aspects of processing the application and issuing a permit. In addition to any other portion of the permit application fee that goes to the Tennessee bureau of investigation, fifteen dollars ($15.00) of the fee shall go to the bureau for the sole purpose of updating and maintaining its fingerprint criminal history data base. On an annual basis, the comptroller of the treasury shall audit the bureau to ensure that the extra fifteen dollars ($15.00) received from each handgun permit application fee is being used exclusively for the purpose set forth in this subsection (p). By February 1 of each year the bureau shall provide documentation to the judiciary committee of the senate and the criminal justice committee of the house of representatives that the extra fifteen dollars ($15.00) is being used exclusively for the intended purposes. The documentation shall state in detail how the money earmarked for fingerprint data base updating and maintenance was spent, the number and job descriptions of any employees hired and the type and purpose of any equipment purchased.

(2) The provisions of subdivision (p)(1) increasing each permit application fee by fifteen dollars ($15.00) for the purpose of fingerprint data base

updating and maintenance shall not take effect if the general appropriation act provides a specific appropriation in the amount of two hundred fifty thousand dollars ($250,000), to defray the expenses contemplated in subdivision (p)(1). If the appropriation is not included in the general appropriations act, the fifteen dollar ($15.00) permit fee increase imposed by subdivision (p)(1) shall take effect on July 1, 1997, the public welfare requiring it.

(3) Beginning July 1, 2008, fifteen dollars ($15.00) of the fee established in subdivision (p)(1) shall be submitted to the sheriff of the county where the applicant resides for the purpose of verifying the truthfulness of the applicant's answers as provided in subdivision (g)(1).

(q)(1) Prior to the expiration of a permit, a permit holder may apply to the department for the renewal of the permit by submitting, under oath, a renewal application with a renewal fee of fifty dollars ($50.00). The renewal application shall be on a standard form developed by the department of safety and shall require the applicant to disclose, under oath, the information concerning the applicant as set forth in subsection (c), and shall require the applicant to certify that the applicant still satisfies all the eligibility requirements of this section for the issuance of a permit. In the event the permit expires prior to the department's approval or issuance of notice of denial regarding the renewal application, the permit holder shall be entitled to continue to use the expired permit; provided, however, that the permit holder shall also be required to prove by displaying a receipt for the renewal application fee that the renewal application was delivered to the department prior to the expiration date of the permit.

(2) Any person whose handgun carry permit expires and who applies for a renewal of the handgun carry permit within six (6) months from the date of expiration shall only be required to comply with the renewal provisions of subdivision (q)(1). If the renewal application is filed six (6) months or more from the date of expiration, the person shall, for all purposes, be considered a new applicant.

(3) If a person whose handgun carry permit remained valid pursuant to subdivision (n)(2) because the person was in the United States armed forces applies for a renewal of the permit within six (6) months of the expiration of the sixty (60) day period following discharge, separation, or return to this state on reassignment to a duty station in this state as provided in subdivision (n)(2), the person shall only be required to comply with the renewal provisions of subdivision (q)(1). If the renewal application is filed six (6) months or more from expiration of the sixty (60) day period following the date of honorable discharge, separation, or return to this state on reassignment to a duty station in this state, the person shall, for all purposes, be considered a new applicant.

(r)(1) A facially valid handgun permit, firearms permit, weapons permit or license issued by another state shall be valid in this state according to its terms and shall be treated as if it is a handgun permit issued by this state; provided, however, the provisions of this subsection (r) shall not be construed to authorize the holder of any out-of-state permit or license to carry, in this state, any firearm or weapon other than a handgun.

(2) For a person to lawfully carry a handgun in this state based upon a permit or license issued in another state, the person must be in possession of the permit or license at all times the person carries a handgun in this state.

(3)(A) The commissioner of safety shall enter into written reciprocity agreements with other states that require the execution of the agreements. The commissioner of safety shall prepare and publicly publish a current list of states honoring permits issued by the state of Tennessee and shall make the list available to anyone upon request. The commissioner of safety shall also prepare and publicly publish a current list of states who, after inquiry by the commissioner, refuse to enter into a reciprocity agreement with this state or honor handgun carry permits issued by this state. To the extent that any state may impose conditions in the reciprocity agreements, the commissioner of safety shall publish those conditions as part of the list. If another state imposes conditions on Tennessee permit holders in a reciprocity agreement, the conditions shall also become a part of the agreement and apply to the other state's permit holders when they carry a handgun in this state.

(B) If a person with a handgun permit from another state decides to become a resident of Tennessee, the person must obtain a Tennessee handgun permit within six (6) months of establishing residency in Tennessee. The permit may be issued based on the person having a permit from another state provided the other state has substantially similar permit eligibility requirements as this state. However, if during the six-month period the person applies for a handgun permit in this state and the application is denied, the person shall not be allowed to carry a handgun in this state based upon the other state's permit.

(C)(i) If a person who is a resident of and handgun permit holder in another state is employed in this state on a regular basis and desires to carry a handgun in this state, the person shall have six (6) months from the last day of the sixth month of regular employment in this state to obtain a Tennessee handgun carry permit. The permit may be issued based on the person having a permit from another state provided the other state has substantially similar permit eligibility requirements as this state. However, if during the six-month period the person applies for a handgun permit in this state and the application is denied, the person shall not be allowed to carry a handgun in this state based upon the other state's permit.

(ii) The provisions of this subdivision (r)(3)(C) shall not apply if the state of residence of the person employed in Tennessee has entered into a handgun permit reciprocity agreement with this state pursuant to this subsection (r).

(iii) As used in this subdivision (r)(3)(C), "employed in this state on a regular basis" means a person has been gainfully employed in this state for at least thirty (30) hours a week for six (6) consecutive months not counting any absence from employment caused by the employee's use of sick leave, annual leave, administrative leave or compensatory time.

(s)(1) The department shall make available, on request and payment of a reasonable fee to cover the costs of copying, a statistical report that includes the number of permits issued, denied, revoked, or suspended by the department during the preceding month, listed by age, gender and zip code of the applicant or permit holder and the reason for any permit revocation or suspension. The report shall also include the cost of the program, the revenues derived from fees, the number of violations of the provisions of the handgun carry permit law, and the average time for issuance of a handgun

carry permit. By January 1 of each year, a copy of the statistical reports for the preceding calendar year shall be provided to each member of the general assembly.

(2)(A) The department shall maintain statistics related to responses by law enforcement agencies to incidents in which a person who has a permit to carry a handgun under this section is arrested and booked for any offense.

(B) The department by rule promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5 shall adopt procedures for state and local law enforcement officials to report the information required by subdivision (s)(2)(A) to the department.

(t) Any law enforcement officer of this state or of any county or municipality may, within the realm of the officer's lawful jurisdiction and when the officer is acting in the lawful discharge of the officer's official duties, disarm a permit holder at any time when the officer reasonably believes it is necessary for the protection of the permit holder, officer or other individual or individuals. The officer shall return the handgun to the permit holder before discharging the permit holder from the scene when the officer has determined that the permit holder is not a threat to the officer, to the permit holder, or other individual or individuals provided that the permit holder has not violated any provision of this section and provided the permit holder has not committed any other violation that results in the arrest of the permit holder.

(u) Substantial compliance with the requirements of this section shall provide the department and any political subdivision thereof with immunity from civil liability alleging liability for issuance of the permit.

(v) Any permit issued pursuant to this section shall be deemed a "license" within the meaning of title 36, chapter 5, part 7, dealing with the enforcement of child support obligations through license denial and revocation.

(w)(1) Notwithstanding any other law or rule to the contrary, neither the department nor an instructor or employee of a department approved handgun safety course is authorized to require any applicant for a handgun carry permit to furnish or reveal identifying information concerning any handgun the applicant owns, possesses or uses during the safety course in order to apply for or be issued the permit.

(2) For purposes of subdivision (w)(1), "identifying information concerning any handgun" includes, but is not limited to, the serial number, model number, make of gun or manufacturer, type of gun, such as revolver or semi-automatic, caliber or whether the applicant owns the handgun used for the safety course.

39-17-1359. Prohibition at certain meetings — Posting notice.

(a)(1) Except as provided in § 39-17-1313, an individual, corporation, business entity or local, state or federal government entity or agent thereof is authorized to prohibit the possession of weapons by any person who is at a meeting conducted by, or on property owned, operated, or managed or under the control of the individual, corporation, business entity or government entity.

(2) The prohibition in subdivision (a)(1) shall apply to any person who is authorized to carry a firearm by authority of § 39-17-1351.

(b)(1) Notice of the prohibition permitted by subsection (a) shall be accomplished by displaying one (1) or both of the notices described in subdivision

(b)(3) in prominent locations, including all entrances primarily used by persons entering the property, building, or portion of the property or building where weapon possession is prohibited. Either form of notice used shall be of a size that is plainly visible to the average person entering the building, property, or portion of the building or property, posted.

(2) The notice required by this section shall be in English, but a duplicate notice may also be posted in any language used by patrons, customers or persons who frequent the place where weapon possession is prohibited.

(3)(A) If a sign is used as the method of posting, it shall contain language substantially similar to the following:

AS AUTHORIZED BY T.C.A. § 39-17-1359, POSSESSION OF A WEAPON ON POSTED PROPERTY OR IN A POSTED BUILDING IS PROHIBITED AND IS A CRIMINAL OFFENSE.

(B) As used in this section, "language substantially similar to" means the sign contains language plainly stating that:

(i) The property is posted under authority of Tennessee law;

(ii) Weapons or firearms are prohibited on the property, in the building, or on the portion of the property or building that is posted; and

(iii) Possessing a weapon in an area that has been posted is a criminal offense.

(C) A building, property or a portion of a building or property, shall be considered properly posted in accordance with this section if one (1) or both of the following is displayed in prominent locations, including all entrances primarily used by persons entering the property, building, or portion of the property or building where weapon possession is prohibited:

(i) The international circle and slash symbolizing the prohibition of the item within the circle; or

(ii) The posting sign described in this subdivision (b)(3).

(c)(1) It is an offense to possess a weapon in a building or on property that is properly posted in accordance with this section.

(2) Possession of a weapon on posted property in violation of this section is a Class B misdemeanor punishable by fine only of five hundred dollars ($500).

(d) Nothing in this section shall be construed to alter, reduce or eliminate any civil or criminal liability that a property owner or manager may have for injuries arising on their property.

(e) The provisions of this section shall not apply to title 70 regarding wildlife laws, rules and regulations.

(f) This section shall not apply to the grounds of any public park, natural area, historic park, nature trail, campground, forest, greenway, waterway or other similar public place that is owned or operated by the state, a county, a municipality or instrumentality thereof. The carrying of firearms in those areas shall be governed by § 39-17-1311.

39-17-1504. Sale or distribution to minors unlawful — Proof of age requirement.

(a) It is unlawful for any person to sell or distribute any tobacco product to another person who has not attained eighteen (18) years of age or to purchase a tobacco product on behalf of such person under eighteen (18) years of age.

(b) It is unlawful for any person to persuade, entice, send or assist a person

who has not attained eighteen (18) years of age to purchase, acquire, receive or attempt to purchase, acquire or receive a tobacco product. This section and § 39-17-1505 shall not be deemed to preclude law enforcement efforts involving the use of individuals under eighteen (18) years of age if the minor's parent or legal guardian has consented to this action.

(c) No person shall distribute tobacco product samples in or on any public street, sidewalk, or park.

(d) A person engaged in the sale or distribution of tobacco products shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under twenty-seven (27) years of age. In the case of distribution by mail, the distributor of tobacco products shall obtain from the addressee an affirmative statement that the person is eighteen (18) years of age or older, and shall inform the recipient that the person is strictly prohibited from distributing any tobacco product, as defined by this part, to any person under eighteen (18) years of age.

(e) It is unlawful for any person to sell or distribute any electronic cigarette to another person who has not attained eighteen (18) years of age or to purchase an electronic cigarette on behalf of such person under eighteen (18) years of age.

39-17-1511. Maintenance of smoking paraphernalia in area inaccessible to customers.

(a) For the purpose of this section:

(1) "Counter" means the point of purchase at a retail establishment;

(2) "Retail establishment" means a place of business open to the general public for the sale of goods or services; and

(3) "Smoking paraphernalia" means:

(A) A cigarette holder;

(B) A smoking pipe made of metal, wood, acrylic, glass, stone, or plastic with or without screens, permanent screens, hashish heads or punctured metal bowls;

(C) A water pipe; or

(D) Rose and pen combinations; and

(4) "Smoking paraphernalia" does not include a smoking pipe or smoking device when sold at retail, if the smoking pipe or smoking device is primarily made of briar, meerschaum, clay or corn cob.

(b) All smoking paraphernalia shall be maintained behind the counter of a retail establishment in an area inaccessible to a customer or in a locked display case that makes the products unavailable to a customer without the assistance of an employee.

(c)(1) A violation of this section is punishable as provided in § 39-17-1509.

(2) If smoking paraphernalia is sold in violation of this section by an employee, the owner or operator of the retail establishment where the employee sold the products shall be in violation of this section.

40-1-111. Appointment of judicial commissioners or magistrates — Duties — Terms — Compensation — Continuing education.

(a)(1)(A) The chief legislative body of any county having a population of less than two hundred thousand (200,000) or a population of not less than two

hundred seventy-six thousand (276,000) nor more than two hundred seventy-seven thousand (277,000), according to the 1970 federal census or any subsequent federal census may appoint, and the chief legislative body of any county having a population of over seven hundred thousand (700,000), according to the 1970 federal census or any subsequent federal census, may initially appoint one (1) or more judicial commissioners whose duty or duties shall include, but not be limited to, the following:

(i) Issuance of search warrants and felony arrest warrants upon a finding of probable cause and pursuant to requests from on-duty law enforcement officers and in accordance with the procedures outlined in chapters 5 and 6 of this title;

(ii) Issuance of mittimus following compliance with the procedures prescribed by § 40-5-103;

(iii) The appointing of attorneys for indigent defendants in accordance with applicable law and guidelines established by the presiding general sessions judge of the county;

(iv) The setting and approving of bonds and the release on recognizance of defendants in accordance with applicable law and guidelines established by the presiding general sessions judge of the county; and

(v) Issuance of injunctions and other appropriate orders as designated by the general sessions judges in cases of alleged domestic violence.

(B)(i) This subdivision (a)(1)(B)(i) applies to any county having a population of less than two hundred thousand (200,000) or a population of not less than two hundred seventy-six thousand (276,000) nor more than two hundred seventy-seven thousand (277,000), according to the 1970 federal census or any subsequent federal census. The term or terms of the officers shall be established by the chief legislative body of the county to which this subdivision (a)(1)(B)(i) applies but shall not exceed a four-year term. No member of the county legislative body of any county to which this subdivision (a)(1)(B)(i) applies shall be eligible for appointment as a judicial commissioner. Notwithstanding the provisions of this subdivision (a)(1)(B)(i) to the contrary, the presiding general sessions criminal judge of a county to which this subdivision (a)(1)(B)(i) applies may appoint a temporary or part-time judicial commissioner to serve at the pleasure of the presiding judge in case of absence, emergency or other need. The legislative body of any county to which this subdivision (a)(1)(B)(i) applies, in appointing, evaluating and making decisions relative to retention and reappointment, shall take into consideration views, comments and suggestions of the judges of the courts in which the judicial commissioners are appointed to serve.

(ii) Any subsequent term of a judicial commissioner initially appointed by the chief legislative body of any county having a population of over seven hundred thousand (700,000), according to the 1970 federal census or any subsequent federal census, shall be by the general sessions judges of that county. The term or terms of the officers shall be established by the general sessions criminal court judges of the county but shall not exceed a four-year term. No member of the county legislative body of the county shall be eligible for appointment as a judicial commissioner. Notwithstanding the provisions of this subdivision (a)(1)(B)(ii) to the contrary, the presiding general sessions criminal

court judge of the county may appoint a temporary, or part-time, judicial commissioner to serve at the pleasure of the presiding judge in case of absence, emergency or other need. The general sessions judges of the county in appointing, evaluating and making decisions relative to retention and reappointment shall take into consideration views, comments and suggestions of the judges of the courts in which the judicial commissioners are appointed to serve.

(iii) Any subsequent term of a judicial commissioner initially appointed by the chief legislative body of any county having a population of not less than one hundred eighty-three thousand one hundred (183,100) nor more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 federal census or any subsequent federal census, shall be by the general sessions judges of that county. In the event that the general sessions judges are unable to agree on the appointment of a judicial commissioner, the appointment shall be made by the chief legislative body of the county; provided, that any appointment made by the chief legislative body of the county shall not be construed to divest the general sessions judges of the supervisory authority over the judicial commissioner.

(C) In any county having a population greater than seven hundred thousand (700,000), according to the 1970 federal census or any subsequent federal census, to be eligible for appointment and service as a judicial commissioner a person must be licensed to practice law in the state of Tennessee.

(D)(i) Any county, having a population greater than seven hundred thousand (700,000), according to the 1970 federal census or any subsequent federal census, which appoints and makes use of judicial commissioners shall maintain records sufficient to allow an annual determination of whether the use of judicial commissioners is accomplishing the purposes intended.

(ii) On an annual basis the county legislative body shall conduct a public hearing to examine and evaluate the program of judicial commissioners and to determine if the program is being conducted in accordance with law and is contributing to the orderly, effective and fair administration of justice. As a part of the public hearing the county legislative body shall examine the effectiveness of the system of judicial commissioners and hear the opinions of the public concerning the system. The county legislative body shall give notice of the public hearing at least thirty (30) days prior to the meeting.

(iii) Following the hearing and not later than April 1 of each year, the county legislative body shall cause to be submitted to the judges of the general sessions criminal court of the county, the chair of the judiciary committee of the senate and the chair of the criminal justice committee of the house of representatives a written report setting forth findings and the overall evaluation of the use of judicial commissioners.

(2) The judicial commissioner or commissioners shall be compensated from the general fund of the county in an amount to be determined by the chief legislative body. Fees established and authorized by § 8-21-401 shall be paid to the county general fund upon the services detailed in § 8-21-401 being performed by a judicial commissioner.

(b)(1) Notwithstanding any provision of this section to the contrary, a judge of a court of general sessions in a county having a population of not less than

fourteen thousand seven hundred (14,700) nor more than fourteen thousand eight hundred (14,800), according to the 1970 federal census or any subsequent federal census, may appoint one (1) or more judicial commissioners whose duties shall be the same as those prescribed for judicial commissioners in subsection (a). The judge may appoint a commissioner if the county legislative body of the counties noted in subsection (a) does not appoint a judicial commissioner before May 1, 1980. The term of the judicial officer shall be for one (1) year or until the county legislative body appoints a judicial commissioner as provided by subsection (a).

(2) A judicial commissioner who is appointed by a general sessions judge as outlined in subdivision (b)(1) shall serve without compensation unless an amount of compensation is specifically established by the county legislative body.

(c) Notwithstanding any provision of this section to the contrary, in any county having a population of not less than two hundred seventy-six thousand (276,000) nor more than two hundred seventy-seven thousand (277,000), according to the 1970 federal census or any subsequent federal census, any appointment of a judicial commissioner pursuant to subsection (a) shall be subject to the approval of a majority of the general sessions judges in the county.

(d)(1) Notwithstanding subsections (a)-(c), the legislative body of any county having a population of not less than forty-one thousand four hundred (41,400) nor more than forty-one thousand six hundred (41,600), according to the 1990 federal census or any subsequent federal census, may, by resolution, create the position of one (1) or more judicial commissioners.

(2) The duties of a commissioner shall include, but are not limited to, the following:

(A) The issuance of arrest warrants upon a finding of probable cause;

(B) The setting of bonds and recognizance in accordance with the procedures outlined in chapters 5 and 6 of this title;

(C) The issuance of search warrants where authorized by the general sessions judge or a judge of a court of record; and

(D) The issuance of mittimus following compliance with the procedures prescribed by § 40-5-103.

(3) The term of a judicial commissioner shall be established by the general sessions judge of the county, but in no event shall the term exceed four (4) years.

(4) A judicial commissioner shall be compensated from the general fund of the county in an amount to be determined by the general sessions judge of the county and subject to the approval of the county legislative body. Fees established and authorized by § 8-21-401 shall be paid to the general fund upon the services detailed in § 8-21-401 being performed by a judicial commissioner.

(5) A judicial commissioner shall be selected and appointed by the general sessions judge in the county, and shall serve at the pleasure of such general sessions judge, but not longer than the term specified in subdivision (d)(3).

(e)(1) Notwithstanding subsections (a)-(d), any county having a population of not less than three hundred seven thousand (307,000) nor more than three hundred eight thousand (308,000), according to the 2000 federal census or any subsequent federal census, may elect to establish judicial commissioners to assist the general sessions court in accordance with this subdivision (e)(1).

The county legislative body may appoint one (1) or more attorneys to serve as judicial commissioners. The duties of a judicial commissioner shall include, but not be limited to the following:

(A) Issuance of arrest and search warrants upon a finding of probable cause in accordance with the procedures outlined in chapters 5 and 6 of this title;

(B) Issuance of mittimus following compliance with the procedures prescribed by § 40-5-103;

(C) Appointing attorneys for indigent defendants in accordance with applicable law and guidelines established by the presiding general sessions judge of the county;

(D) Setting and approving bonds and the release on recognizance of defendants in accordance with chapter 11 of this title; and

(E) Setting bond for the circuit court judges and chancellors in cases involving violations of orders of protection between the hours of nine o'clock p.m. (9:00 p.m.) and seven o'clock a.m. (7:00 a.m.) on weekdays, and on weekends, holidays and at any other time when the judge or chancellor is unavailable to set bond.

(2) The term of office for a judicial commissioner shall be established by the county legislative body, but such term shall not exceed four (4) years. A member of the county legislative body is not eligible for appointment as a judicial commissioner.

(3) A judicial commissioner shall be compensated from the general fund of the county in an amount to be determined by the county legislative body. Fees established and authorized by § 8-21-401 shall be paid to the county general fund upon the services detailed therein being performed by a judicial commissioner.

(f)(1) Beginning January 1, 2010, each judicial commissioner who is appointed to serve pursuant to this section must complete twelve (12) hours of continuing education each calendar year, ten (10) hours of which must be completed by attendance at conferences or courses sponsored or approved by the Judicial Commissioners Association of Tennessee. The remaining two (2) hours may be completed by attendance at classes sponsored by either the Judicial Commissioners Association of Tennessee or the Tennessee Court Clerks Association, or by local in-service education. At least six (6) hours of the total twelve (12) hours must be taught by a person who is licensed to practice law in this state.

(2) Any judicial commissioner who is licensed to practice law in this state is authorized to use continuing legal education credits toward completion of the ten (10) hours, which otherwise must be completed by attendance at conferences or courses sponsored or approved by the Judicial Commissioners Association of Tennessee.

(3) All judicial commissioners must complete, as part of the twelve (12) required hours, the following classes:

(A) At least two (2) hours concerning domestic violence or child abuse;

(B) At least one (1) hour concerning bail and bonds; and

(C) At least one (1) hour concerning ethics.

(4) All counties for which judicial commissioners are appointed to serve pursuant to this section shall provide all necessary funding for their respective judicial commissioners to complete the continuing education required by this subsection (f).

(5) All records indicating satisfaction of the continuing education requirements for judicial commissioners shall be maintained by each county and kept on the file for at least seven (7) years.

(6) Notwithstanding this subsection (f), in any county in which the judicial commissioner is selected by the general sessions judge or judges, the county legislative body of such county may elect, by a two-thirds (⅔) majority, to allow each judicial commissioner to receive twelve (12) hours of appropriate continuing education each calendar year under the supervision of the appointing general sessions judge or judges rather than the Judicial Commissioners Association of Tennessee or the Tennessee Court Clerks Association.

(7)(A) Subject to appropriation, funds from the judicial commissioner continuing education account, created in § 67-4-602(k), shall be used by the judicial commissioners association of Tennessee for the development and presentation of continuing education programs, courses and conferences for judicial commissioners in this state.

(B) Subdivision (f)(7)(A) shall not apply in counties 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.

(g) Judicial commissioners duly appointed pursuant to this section in any county with a population not less than two hundred seventy-six thousand (276,000) nor more than two hundred seventy-seven thousand (277,000), according to the 1970 federal census or any subsequent federal census, shall be known as "magistrates."

40-2-101. Felonies.

(a) A person may be prosecuted, tried and punished for an offense punishable with death or by imprisonment in the penitentiary during life, at any time after the offense is committed.

(b) Prosecution for a felony offense shall begin within:

(1) Fifteen (15) years for a Class A felony;

(2) Eight (8) years for a Class B felony;

(3) Four (4) years for a Class C or Class D felony; and

(4) Two (2) years for a Class E felony.

(c) Notwithstanding subsections (a) and (b), offenses arising under the revenue laws of the state shall be commenced within the three (3) years following the commission of the offense, except that the period of limitation of prosecution shall be six (6) years in the following instances:

(1) Offenses involving the defrauding or attempting to defraud the state of Tennessee or any agency of the state, whether by conspiracy or not, and in any manner;

(2) The offense of willfully attempting in any manner to evade or defeat any tax or the payment of a tax;

(3) The offense of willfully aiding or abetting, or procuring, counseling or advising, the preparation or presentation under, or in connection with, any matter arising under the revenue laws of the state, or a false or fraudulent return, affidavit, claim or document, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim or document; and

(4) The offense of willfully failing to pay any tax, or make any return at the time or times required by law or regulation.

(d) Notwithstanding the provisions of subdivision (b)(3) to the contrary, prosecution for the offense of arson as prohibited by § 39-14-301 shall commence within eight (8) years from the date the offense occurs.

(e) Prosecutions for any offense committed against a child prior to July 1, 1997, that constitutes a criminal offense under § 39-2-601 [repealed], § 39-2-603 [repealed], § 39-2-604 [repealed], § 39-2-606 [repealed], § 39-2-607 [repealed], § 39-2-608 [repealed], § 39-2-612 [repealed], § 39-4-306 [repealed], § 39-4-307 [repealed], § 39-6-1137 [repealed], or § 39-6-1138 [repealed], or under §§ 39-13-502 — 39-13-505, § 39-15-302 or § 39-17-902 shall commence no later than the date the child attains the age of majority or within four (4) years after the commission of the offense, whichever occurs later; provided, that pursuant to subsection (a), an offense punishable by life imprisonment may be prosecuted at any time after the offense has been committed.

(f) For offenses committed prior to November 1, 1989, the limitation of prosecution in effect at that time shall govern.

(g) Prosecutions for any offense committed against a child on or after July 1, 1997, that constitutes a criminal offense under §§ 39-13-502 — 39-13-505, § 39-13-522, § 39-15-302 or § 39-17-902 shall commence no later than the date the child reaches twenty-one (21) years of age; provided, that if subsection (a) or (b) provides a longer period of time within which prosecution may be brought than this subsection (g), the applicable provision of subsection (a) or (b) shall prevail.

(h) A person may be prosecuted, tried and punished for any offense committed against a child on or after June 20, 2006, that constitutes a criminal offense under §§ 39-13-502 — 39-13-505, § 39-13-522, § 39-13-527 or § 39-15-302, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

(i) A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2007, that constitutes a criminal offense under § 39-13-531 or § 39-13-532, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

(j) A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2012, that constitutes a criminal offense under § 39-17-902, § 39-17-1003, § 39-17-1004, or § 39-17-1005, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

(k)(1) A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2013, that constitutes a criminal offense under § 39-13-309 or § 39-13-529, no later than fifteen (15) years from the date the child becomes eighteen (18) years of age.

(2) A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2013, that constitutes a criminal offense under § 39-13-514 or § 39-13-515 no later than ten (10) years from the date the child becomes eighteen (18) years of age.

40-2-104. Commencement of prosecution.

A prosecution is commenced, within the meaning of this chapter, by finding an indictment or presentment, the issuing of a warrant, the issuing of a

juvenile petition alleging a delinquent act, binding over the offender, by the filing of an information as provided for in chapter 3 of this title, or by making an appearance in person or through counsel in general sessions or any municipal court for the purpose of continuing the matter or any other appearance in either court for any purpose involving the offense. A prosecution is also commenced, within the meaning of this chapter, by finding an indictment or presentment or the issuing of a warrant identifying the offender by a deoxyribonucleic acid (DNA) profile.

40-11-125. Approval of bondsmen withheld, withdrawn or suspended.

(a) In addition to the requirements of part 3 of this chapter regulating professional bondsmen, approval of a professional bondsman or other surety may be withheld, withdrawn or suspended by any court if, after investigation, it appears that a bondsman:

(1) Has been guilty of violating any of the laws of this state relating to bail bonds;

(2) Has a final judgment of forfeiture entered against the bondsman which remains unsatisfied;

(3) Is guilty of professional misconduct as described in § 40-11-126; or

(4) If applying for approval as a professional bondsman, has been convicted in any state of the United States of two (2) or more misdemeanors which are equivalent to Tennessee Class A or Class B misdemeanors; provided, however, that the misdemeanor convictions shall have occurred within five (5) years of the date the application for approval is filed.

(b) Any court withholding, withdrawing or suspending a bondsman or other surety under this section shall notify the bondsman in writing of the action taken, accompanied by a copy of the charges resulting in the court's action. If, within twenty (20) days after notice, the bail bondsman or surety files a written answer denying the charges or setting forth extenuating circumstances, the court shall call a hearing within a reasonable time for the purpose of taking testimony and evidence on any issues of fact made by the charges and answer. The court shall give notice to the bail bondsman, or to the insurer represented by the bondsman, of the time and place of the hearing. The parties shall have the right to produce witnesses, and to appear personally with or without representation by counsel. If, upon a hearing, the court determines that the bail bondsman is guilty as alleged in the charges, the court shall thereupon withhold, withdraw or suspend the bondsman from the approved list, or suspend the bondsman for a definite period of time to be fixed in the order of suspension.

(c) The clerk of the court and the sheriff of the county shall be notified of the action of the court and the offending bondsman stricken from the approved list.

(d) Any applicant for approval whose application has been denied, withheld, suspended or revoked shall have the right of appeal to the next highest court having criminal jurisdiction, and the appeal shall be heard de novo.

40-11-138. Release of bail bondsmen or sureties from obligations.

(a) If the conditions of the bail bond have been performed and the defendant has been discharged from the defendant's obligations in the cause, the clerk of the court shall return to the bondsman the deposit of any cash. If the bail has been secured by real estate, the clerk of the court shall immediately prepare and forward to the register a written release of the deed of trust on the real

estate. The costs of the release shall be paid by the defendant.

(b) In addition to any other provisions releasing sureties from their obligations, a bail bondsman or surety shall also be released from an obligation under a bail bond upon the disposition of the charge against the surety's principal. A disposition shall include, but shall not be necessarily limited to, conviction, acquittal, a plea of guilty, agreement with the state, whether designated diversion or otherwise, or retirement.

40-11-139. Forfeiture of bail security — Notice to defendant and sureties.

(a) If the defendant whose release is secured under § 40-11-122 does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of the order of forfeiture shall be immediately sent by certified mail, restricted delivery, return receipt requested, by the clerk of the court to the defendant at the defendant's last known address. The defendant's surety will be served with scire facias upon the forfeiture entered and a capias shall be issued for the defendant.

(b) After the expiration of one hundred eighty (180) days from the date surety is served with scire facias or scire facias is returned to the clerk unserved or undelivered, the court may enter judgment for the state against the defendant and the defendant's sureties for the amount of the bail and costs of the proceedings.

(c) No execution shall issue upon a final forfeit, nor shall proceedings be taken for its enforcement until the expiration of thirty (30) days after its entry.

40-11-152. Global positioning monitoring system as a condition of bail.

(a)(1) For the purposes of this part, "global positioning monitoring system" means a system that electronically determines and reports the location of an individual through the use of a transmitter or similar device carried or worn by the individual that transmits latitude and longitude data to a monitoring entity through global positioning satellite technology.

(2) "Global positioning monitoring system" does not include a system that contains or operates global positioning system technology, radio frequency identification technology or any other similar technology that is implanted in or otherwise invades or violates the individual's body.

(b) Pursuant to § 40-11-150, the magistrate may order any defendant who is arrested for the offense of stalking, aggravated stalking or especially aggravated stalking, as defined in § 39-17-315, any criminal offense defined in title 39, chapter 13, in which the alleged victim of the offense is a victim as defined in § 36-3-601(5), (10) or (11), or is in violation of an order of protection as authorized by title 36, chapter 3, part 6, to do the following as a condition of bail:

(1) Carry or wear a global positioning monitoring system device and, except as provided by subsection (h), pay the costs associated with operating that system in relation to the defendant; or

(2) If the alleged victim of the offense consents after receiving the information described by subsection (d) and, except as provided by subsection (h), pay the costs associated with providing the victim with an electronic receptor device that:

(A) Is capable of receiving the global positioning monitoring system

information from the device carried or worn by the defendant; and

(B) Notifies the victim if the defendant is at or near a location that the defendant has been ordered to refrain from going to or near under § 40-11-150.

(c) Before imposing a condition described by subsection (b), the magistrate must afford an alleged victim an opportunity to provide the magistrate with a list of areas from which the victim would like the defendant excluded and shall consider the victim's request, if any, in determining the locations the defendant will be ordered to refrain from going to or near. If the magistrate imposes a condition described by subsection (b), the magistrate shall specifically describe the locations that the defendant has been ordered to refrain from going to or near and the minimum distances, if any, that the defendant must maintain from those locations.

(d) Before imposing a condition described by subdivision (b)(2), the magistrate must provide to an alleged victim information regarding:

(1) The victim's right to participate in a global positioning monitoring system or to refuse to participate in that system and the procedure for requesting that the magistrate terminate the victim's participation;

(2) The manner in which the global positioning monitoring system technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim's location and movements;

(3) Any locations that the defendant is ordered to refrain from going to or near and the minimum distances, if any, that the defendant must maintain from those locations;

(4) Any sanctions that the magistrate may impose on the defendant for violating a condition of bond imposed under this section;

(5) The procedure that the victim is to follow, and support services available to assist the victim, if the defendant violates a condition of bond or if the global positioning monitoring system equipment fails;

(6) Community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other assistance available to address the consequences of domestic violence; and

(7) The fact that the victim's communications with the magistrate concerning the global positioning monitoring system and any restrictions to be imposed on the defendant's movements are not confidential.

(e) In addition to the information described by subsection (d), the magistrate shall provide to an alleged victim who participates in a global positioning monitoring system under this section the name and telephone number of an appropriate person employed by a local law enforcement agency who the victim may call to request immediate assistance if the defendant violates a condition of bond imposed under this section.

(f) In determining whether to order a defendant's participation in a global positioning monitoring system under this section, the magistrate shall consider the likelihood that the defendant's participation will deter the defendant from seeking to kill, physically injure, stalk, or otherwise threaten the alleged victim before trial.

(g) An alleged victim may request that the magistrate terminate the victim's participation in a global positioning monitoring system at any time. The magistrate may not impose sanctions on the victim for requesting termination of the victim's participation in or refusing to participate in a global

positioning monitoring system under this section.

(h) The magistrate may allow a defendant to perform community service in lieu of paying the costs required by subsection (b) if the magistrate determines that the defendant is indigent.

(i) The magistrate that imposes a condition described by subsection (b) shall order the entity that operates the global positioning monitoring system to notify the magistrate and the appropriate local law enforcement agency if a defendant violates a condition of bond imposed under this section.

(j) This section shall not limit the authority of the magistrate to impose any other reasonable conditions of bond or enter any orders of protection under other applicable statutes.

(k) The global positioning monitoring of any defendant ordered pursuant to this section shall be provided by the county or municipality in which the court ordering the monitoring is located and shall not be provided by the board of parole.

40-17-125. Subpoena requiring production of documentation and testimony in investigations of offenses of sexual exploitation of a minor.

(a) In any investigation relating to the offenses of sexual exploitation of a minor, as defined in § 39-17-1003, aggravated sexual exploitation of a minor, as defined in § 39-17-1004, or especially aggravated sexual exploitation of a minor, as defined in § 39-17-1005, and upon reasonable cause to believe that an Internet service account has been used in the exploitation or attempted exploitation of a minor, the district attorney general or an assistant district attorney general may issue in writing and cause to be served a subpoena requiring the production and testimony described in subsection (b).

(b) Except as provided in subsection (c), a subpoena issued under this section is authorized to require the production of any records or other documentation relevant to the investigation including:

(1) Name;

(2) Address;

(3) Local and long distance telephone connection records, or records of session times and durations;

(4) Length of service, including start date, and types of service utilized;

(5) Telephone or instrument number or other subscriber number of identity, including any temporarily assigned network address; and

(6) Means and source of payment for such service, including any credit card or bank account number.

(c) The provider of electronic communication service or remote computing service shall not disclose the following pursuant to a subpoena but may only do so pursuant to a warrant issued by a court of competent jurisdiction:

(1) In-transit electronic communications;

(2) Account memberships related to internet groups, newsgroups, mailing lists or specific areas of interest;

(3) Account passwords; and

(4) Account content to include:

(A) Electronic mail in any form;

(B) Address books, contact lists, or buddy lists;

(C) Financial records;

(D) Internet proxy content or internet history; and

(E) Files or other digital documents stored within the account or pursuant to use of the account.

(d) At any time before the return date specified on the subpoena, the person summoned may, in the general sessions court of the county in which the person resides or does business, petition for an order modifying or quashing the subpoena, or a prohibition of disclosure by a court.

(e) A subpoena under this section shall describe the objects required to be produced and shall prescribe a return date within a reasonable period of time within which the objects can be assembled and made available.

(f) If no case or proceeding arises from the production of records or other documentation pursuant to this section within a reasonable time after those records or documentation are produced, the district attorney general shall either destroy the records and documentation or return them to the person who produced them.

(g) A subpoena issued under this section may be served by any person who is authorized to serve process under the Tennessee Rules of Civil Procedure and such subpoena shall be served in accordance with such rules.

(h) Each district attorney general shall annually report the following information to the judiciary committee of the senate and the criminal justice committee of the house of representatives no later than February 1 for the preceding calendar year:

(1) The number of requests for administrative subpoenas made under this section;

(2) The number of administrative subpoenas issued under this section;

(3) The number of administrative subpoenas issued under this section that were contested;

(4) The number of administrative subpoenas issued under this section that were quashed or modified;

(5) The number of search warrants that were issued as a consequence of the issuance of an administrative subpoena under this section; and

(6) The number of individuals who were prosecuted under §§ 39-17-1003, 39-17-1004, and 39-17-1005 following the issuance of an administrative subpoena under this section.

(i) Except as provided in subsection (h), any information, records or data reported or obtained pursuant to a subpoena issued pursuant to this section shall remain confidential and shall not be further disclosed unless in connection with a criminal case related to the subpoenaed materials.

40-18-107. Boarding jurors.

(a) When, in the judgment of the court trying criminal cases, wholesome food and proper lodging cannot be provided for the petit jurors for a lesser sum, the court shall have the power to make arrangements to provide the jurors with proper board and lodging while serving on the jury, and to pay for board and lodging daily a sum not to exceed one thousand dollars ($1,000) per jury per day of service.

(b) Notwithstanding subsection (a), if a judicial proceeding is transferred from one jurisdiction to another for trial on a defendant's motion for change of venue, then the limitation of one thousand dollars ($1,000) for the board and lodging of the jury shall not apply; provided, that the comptroller of the

treasury, on the advice of the attorney general and reporter, determines that additional funds for boarding and lodging of the jury are necessary.

40-20-110. Sentence for separate offenses — Parole considerations.

(a) If a person is sentenced for two (2) or more separate offenses, sentence shall be pronounced for each offense, and imprisonment may equal, but shall not exceed, the total of the maximum terms provided by law for the offenses, which total shall, for the purpose of §§ 40-20-107 — 40-20-110, be construed as one (1) continuous term of imprisonment.

(b)(1) The department of correction shall notify the board of parole when inmates sentenced to consecutive sentences which require custodial parole consideration reach parole eligibility on their initial sentences.

(2) The board shall determine when the inmate will begin service of the inmate's consecutive sentence.

(3) No parole certificate shall be required, and the inmate shall be heard for parole when eligible on the inmate's consecutive sentence.

(4) The board has the authority to begin custodial parole effective on any date on or after the custodial parole eligibility date.

(5) A bona fide offer of employment shall not be required for custodial parole.

40-20-115. Disqualification from fiduciary office.

The effect of a sentence of imprisonment in the penitentiary is to put an end to the right of the inmate to execute the office of executor, administrator or guardian, fiduciary or conservator, and operates as a removal from office.

40-22-103. Transmittal of documents and recommendations to commissioner.

It is the duty of the presiding judge, where the execution of sentence and judgment has been suspended, as provided by § 40-22-102, to immediately transmit to the commissioner of correction and the board of parole a copy of the indictment or presentment, together with the judge's reasons for suspending the sentence and judgment, and any other recommendations as the judge may think proper to make.

40-22-104. Prisoner placed under commissioner.

The presiding judge shall also cause to be entered on the minutes of the trial court an order reciting the reasons for the suspension of the sentence and judgment, and providing that the prisoner whose sentence has been so suspended shall, from the date of suspension, be subject to be placed under the control of the commissioner of correction, and, when so placed, shall be subject to all laws, rules and regulations pertaining to convicts on parole. The board of parole shall consider a person so committed to the custody of the department of correction using the procedures and criteria established in chapter 28 of this title.

40-22-106. Execution of sentence in absence of parole or pardon.

In case the governor does not act by pardoning the prisoner, or the board of parole by paroling the prisoner, by the first day of the next term of court, then

it is the duty of the judge to put into execution the sentence and judgment of the court, by delivering, or causing to be delivered, the prisoner to the proper authorities for the execution of the sentence.

40-22-109. Parole or recommendation of pardon.

When it satisfactorily appears to the board of parole that a prisoner, whose sentence has been suspended as provided in § 40-22-102, has led an exemplary life and behaved in a manner and for a period of time that leads the board to believe that the prisoner is reliable and trustworthy and that the prisoner will probably remain at liberty without violating the law, and the prisoner's final release is not incompatible with the welfare of society, the board may, in its discretion, parole the prisoner for a period of time as it deems best, or it may recommend to the governor that the governor grant the prisoner a pardon and final discharge.

40-22-110. Maximum term of parole — Power to pardon unaffected.

Where the prisoner is granted a parole by the board of parole, the parole shall not be in length of time beyond the minimum penalty of the prisoner, and shall not affect the power of the governor to pardon the prisoner.

40-22-111. Notice of grant of parole.

In case the board of parole grants the prisoner a parole, as provided in §§ 40-22-109 and 40-22-110, it shall at once communicate with and transmit to the judge of the court where the case against the prisoner is pending its action and the reasons for granting the prisoner a parole.

40-22-112. Duties of probation and parole officer.

It is the duty of the parole officer to perform all of the duties imposed upon the officer by law and by the rules and regulations of the board of parole.

40-22-114. Transmittal of papers and recommendations to governor.

In case the board of parole recommends to the governor that the prisoner be pardoned and finally discharged, it shall file the papers received from the trial judge, together with its recommendation attached thereto, with the governor, a sufficient time before the next term of court at which the prisoner is required to appear, to enable the governor to take action on the recommendation.

40-22-115. Notice of governor's action.

When the governor acts on the application, the governor shall communicate the governor's action to the board of parole, which shall at once transmit to the judge of the court where the case against the prisoner is pending the action of the governor.

40-22-117. Construction of chapter.

This chapter shall be liberally construed, and nothing in it shall be construed as seeking to impair the pardoning power of the governor, or the duties of the board of parole in regard to the paroling of prisoners not inconsistent with the spirit of the chapter.

40-27-104. Remission of imprisonment.

The governor has the discretion to remit a portion of the imprisonment of a convict in the penitentiary upon the written recommendation of the board of parole.

40-28-103. Board of parole.

(a) There is created a full-time, autonomous board of parole that is composed of seven (7) members who shall be appointed by the governor, and that shall be autonomous in structure and shall have the authority to perform all administrative functions necessary to carry out its duties, including the submission of a budget request to the commissioner of finance and administration and the submission of personnel actions to the commissioner of personnel. In all respects the board shall be separate functionally and administratively from any other agency. In performing the administrative and financial functions necessary to its operations, the board and its employees shall be subject to the budgetary, accounting, personnel, purchasing and audit requirements, as well as other administrative requirements, applicable to all state departments and agencies pursuant to title 4, chapters 3 and 4.

(b) In the initial appointments made under this section, the speaker of the senate and the speaker of the house of representatives shall jointly appoint one (1) member to a term expiring on January 1, 1986. The governor shall appoint two (2) members to terms expiring on January 1, 1984, and two (2) members to terms expiring on January 1, 1982. On June 2, 1989, the governor shall appoint two (2) additional members to terms expiring on January 1, 1992. Thereafter, all members shall serve six-year terms and shall be eligible for reappointment.

(c) In considering persons for appointment, the appointing authority shall give preference to candidates with training, education or experience in the criminal justice system, law, medicine, education, social work or the behavioral sciences. No member of the board shall hold any other salaried public office, whether elective or appointive, nor shall any member engage for pay in any other business or profession.

(d) Vacancies occurring in an office of a member of the board before the expiration of a term by reason of death, resignation, removal or any other reason shall be filled by the governor in the same manner as a regular appointment for the remainder of the unexpired term.

(e) The governor shall appoint one (1) member of the board to serve as its chair for a term of two (2) years, beginning July 1 of the appropriate year. The chair shall direct the operation of the board and shall fulfill the functions established by statute, unless duties and responsibilities are otherwise assigned under this chapter. The board may designate one (1) of its members to act as chair during the absence or incapacity of the chair, and when so acting, the member so designated shall have and perform all the powers and duties of the chair of the board.

40-28-105. Permanent office of board — Meetings — Compensation — Removal of members.

(a) The permanent office of the board shall be at Nashville.

(b) The board shall prescribe the times and places of its meetings and shall

schedule hearings at each correctional institution or facility at times as may be necessary to discharge its duties. All votes taken by the board shall be by public ballot or public roll call. No secret ballots or secret roll calls shall be permitted.

(c) The salaries of the members of the board shall be established by the governor at not more than eighty-five percent (85%) and not less than sixty percent (60%) of those established for Class 2 state officials under § 8-23-101; provided, that a member's salary shall not be diminished during the term to which appointed. The salaries of the members of the board shall be equal except that of the chair, whose salary shall be set by the governor at a level commensurate with the increased duties and responsibilities. The salaries of employees of the board shall be set by the board. The requirements of § 40-28-103(a) regarding personnel procedures shall apply to all actions under this subsection (c).

(d)(1) A majority of members of the board shall constitute a quorum for official administrative business.

(2) The chair of the board may designate individual members of the board of parole and appoint hearing officers who shall be authorized to conduct hearings, take testimony and make proposed findings of fact and recommendations to the board regarding a grant, denial, revocation or rescission of parole. The findings and recommendations shall be reduced to writing and reviewed by board members who shall adopt, modify or reject the recommendations.

(3) The grant of parole shall require the concurrence of three (3) board members except as set out in subdivision (d)(4).

(4) The grant of parole involving the following offenses shall require the concurrence of four (4) board members:

(A) First degree murder;

(B) Aggravated arson;

(C) Aggravated child abuse and neglect (child six (6) years of age or less);

(D) Aggravated rape;

(E) Aggravated vehicular homicide;

(F) Attempted first degree murder;

(G) Conspiracy to commit first degree murder;

(H) Especially aggravated kidnapping;

(I) Especially aggravated robbery;

(J) Rape of a child;

(K) Second degree murder;

(L) Adulteration of foods, liquids, or pharmaceuticals (serious bodily injury or death);

(M) Aggravated child abuse or neglect (child six (6) years of age or above);

(N) Aggravated kidnapping;

(O) Aggravated sexual battery;

(P) Aggravated sexual exploitation of a minor (obscene);

(Q) Especially aggravated burglary;

(R) Especially aggravated sexual exploitation of a minor;

(S) Rape;

(T) Solicitation to commit first degree murder;

(U) Vehicular homicide by intoxication;

(V) Aggravated assault;

(W) Spousal rape;
(X) Vehicular homicide;
(Y) Voluntary manslaughter;
(Z) Vehicular assault; and
(AA) Any other offense for which punishment is life imprisonment.

(5) Subdivision (d)(4) shall also apply to persons convicted of offenses repealed November 1, 1989, which would have constituted a conviction for one (1) of the enumerated offenses in subdivision (d)(4) had it been committed after November 1, 1989.

(6) The denial of parole shall require the concurrence of three (3) board members, except the denial of parole involving the offenses as set out in subdivision (d)(4), shall require the concurrence of four (4) board members.

(7) The recision of a parole grant shall require the concurrence of two (2) board members.

(8) The revocation of a parole grant shall require the concurrence of two (2) board members.

(9) No board action shall be invalid because it is based upon the recommendation of a hearing officer.

(10) The administrative continuance of a case will not require board approval.

(11) Inmates whose parole has been revoked or rescinded, or who have been denied parole, or whose grant of parole has been rescinded, may request an appellate review by the board. The board shall establish a reasonable time limit for filing of the request. If the time limit is not met, the request for an appellate review will be denied. An appellate request will be screened by a board member or designee and a review will be conducted if there is new evidence or information that was not available at the time of the hearing, or if there are allegations of misconduct by the hearing official that are substantiated by the record or if there were significant procedural errors by a hearing official. The appellate review will be conducted from the record of the first hearing and the appearance of the inmate will not be necessary. If a board member decides that an appearance hearing is necessary, it will be scheduled before a board member or hearing officer who did not conduct the hearing that is the subject of the appeal. A summary of the appellate hearing will be prepared and the board will vote after a review of the summary and the record of the first hearing. The decision after an appellate review will require the concurrence of three (3) board members. The decision rendered after an appellate review will be final.

(e) When appropriate, the members of the board and the board's employees shall be reimbursed for their reasonable and necessary travel expenses in accordance with the state comprehensive travel regulations.

(f) The governor or the attorney general and reporter may seek the removal of a member of the board for knowing or willful misconduct in office or for knowing or willful neglect or failure to perform any duty enjoined upon a member of the board by any of the laws of this state or for the conviction of any crime which constitutes a felony under the laws of the state. This removal shall be accomplished through the removal procedure provided in title 8, chapter 47.

40-28-127. Cooperation of prison officials. The warden of each prison and all officers and employees of each prison and of the board of parole and all other public officials shall at all times cooperate with the board and shall

furnish to the board, its officers and employees, information as may be necessary to enable it to perform its functions, and the wardens and other employees shall at all times give the members of the board, its officers and employees, free access to all prisoners confined in the prisons, workhouses and jails of the state.

40-28-502. Applicable requirements.

(a) The following requirements apply to parole board hearings:

(1) In accordance with title 8, chapter 44, part 1, parole hearings and parole revocation hearings shall be open to the public, except as provided in subsection (b); and

(2) The vote of each board member on each formal action shall be recorded. Formal actions include, but are not limited to, the granting or denial of parole, the revocation of parole or any action taken under subsection (b).

(b) The following exceptions and limitations apply:

(1) The board of parole may restrict the number of individuals allowed to attend parole or parole revocation hearings in accordance with physical limitations or security requirements of the hearing facilities; and

(2) The board may deny admission or continued attendance at parole or parole revocation hearings to individuals who:

(A) Threaten or present a danger to the security of the institution in which the hearing is being held;

(B) Threaten or present a danger to other attendees or participants; or

(C) Disrupt the hearing.

40-28-505. Parole.

(a) Within ninety (90) days of receipt by the department of correction of a valid judgment of conviction, the department shall notify the victim witness coordinator of the county of conviction of the currently scheduled parole hearing date when the inmate will be eligible for parole consideration.

(b) At least thirty (30) days prior to a scheduled parole hearing and three (3) days prior to a parole revocation hearing conducted pursuant to § 40-28-122, the board of parole shall send a notice of the date and place of the hearing to the following individuals:

(1) The trial judge for the court in which the conviction occurred, or the trial judge's successor;

(2) The district attorney general in the county in which the crime was prosecuted;

(3) The sheriff of the county in which the crime was committed; and

(4) The victim or the victim's representative who has requested notification of the date and place of the scheduled hearing or notice of the board's final decision. However, at any time the victim or victim's representative may withdraw the request for notice by sending the board a written certified statement that the request for notice is withdrawn. Electronic notification may be used, in addition to, but not in lieu of, written notification to a victim or a victim's representative.

(c) No later than thirty (30) days after a parole or parole revocation decision has been finalized, the board shall send notice of its decision to those required to receive notice under subsection (b), together with notice that any victim

whom the board failed to notify as required in subsection (b) has the opportunity to have a written victim impact statement considered by the board, pursuant to subsection (d).

(d) The following remedies apply if there is a failure to provide the required advance notice:

(1) Prior to a parole or parole revocation hearing, a party to whom the board failed to provide the notice required in subsection (b) may request the board to postpone the scheduled hearing. Upon that request, the board may, for just cause, postpone the scheduled parole or parole revocation hearing in order to provide a reasonable opportunity for the party to attend the hearing and, if that party is a victim, to submit a victim statement; and

(2) If within fifteen (15) days after a parole or a parole revocation decision has been finalized, the board receives a written victim impact statement from a party to whom the board failed to provide the notice required in subsection (b), the board shall consider the statement. If the board finds that the victim impact statement warrants a new hearing, it shall schedule the hearing, subject to all notification requirements under subsection (b).

(e) Any notice required to be provided to the victim or victim's representative by this section shall be mailed to the last known address of the victim or victim's representative. It is the responsibility of the victim or victim's representative to provide the board a current mailing address.

(f) This section shall apply only to an inmate who has received a sentence of two (2) or more years.

(g) Any notice of an inmate's release on parole required to be provided to the victim or the victim's representative shall include the proposed county of residence of the inmate.

(h)(1) Any identifying information concerning a crime victim or a crime victim's representative who has been notified or requested that notification be provided to the victim or the victim's representative pursuant to this section shall be confidential.

(2) For purposes of subdivision (h)(1), "identifying information" means the name, home and work addresses, telephone numbers and social security number of the person being notified or requesting that notification be provided.

40-29-105. Felons convicted of infamous crimes after July 1, 1986, but before July 1, 1996 — Felons convicted of infamous crimes on or after July 1, 1996.

(a) The provisions and procedures provided for in §§ 40-29-101 — 40-29-104 shall apply to all persons convicted of an infamous crime after July 1, 1986, but before July 1, 1996.

(b) For all persons convicted of infamous crimes after July 1, 1986, but before July 1, 1996, the following procedures shall apply:

(1) A person rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court may have full rights of citizenship restored upon:

(A) Receiving a pardon, except where the pardon contains special conditions pertaining to the right to suffrage;

(B) Service or expiration of the maximum sentence imposed for the infamous crime; or

(C) Being granted final release from incarceration or supervision by the board of parole, or county correction authority;

(2) A person rendered infamous after July 1, 1986, by virtue of being convicted of one (1) of the following crimes shall never be eligible to register and vote in this state:

(A) First degree murder;

(B) Aggravated rape;

(C) Treason; or

(D) Voter fraud.

(3) Any person eligible for restoration of citizenship pursuant to subdivision (b)(1) may request, and then shall be issued, a certificate of restoration upon a form prescribed by the coordinator of elections, by:

(A) The pardoning authority; or

(B) An agent or officer of the supervising or incarcerating authority;

(4) Any authority issuing a certificate of restoration shall forward a copy of the certificate to the coordinator of elections;

(5) Any person issued a certificate of restoration shall submit, to the administrator of elections of the county in which the person is eligible to vote, the certificate and upon verification of the certificate with the coordinator of elections be issued a voter registration card entitling the person to vote; and

(6) A certificate of restoration issued pursuant to subdivision (b)(3) shall be sufficient proof to the administrator of elections that the person fulfills the requirements provided in subdivision (b)(1); however, before allowing a person convicted of an infamous crime to become a registered voter, it is the duty of the administrator of elections in each county to verify with the coordinator of elections that the person is eligible to register under this section.

(c) The following procedure shall apply to a person rendered infamous by virtue of being convicted of a felony on or after July 1, 1996:

(1) Except as provided in subdivision (c)(2)(B), a person rendered infamous or whose rights of citizenship have been deprived by the judgment of a state or federal court may seek restoration of full rights of citizenship by petitioning the circuit court of the county where the petitioner resides or where the conviction for the infamous crime occurred;

(2)(A) A person receiving a pardon that restores full rights of citizenship may petition for restoration immediately upon receiving the pardon. However, the court shall not have the authority or jurisdiction to alter, delete or render void special conditions pertaining to the right of suffrage that may be contained in the pardon;

(B) A person convicted of an infamous crime may petition for restoration upon the expiration of the maximum sentence imposed by the court for the infamous crime; provided, that a person convicted of murder, rape, treason or voter fraud shall never be eligible to register and vote in this state;

(3) The petition shall set forth the basis for the petitioner's eligibility for restoration and shall state the reasons the petitioner believes that petitioner's full citizenship rights should be restored. The petition shall be accompanied by the certified records, statements and other documents or information necessary to demonstrate to the court that the petitioner is both eligible for and merits having full rights of citizenship restored. The court may

require any additional proof as it deems necessary to reach a just decision on the petition. There is a presumption that a petition filed pursuant to this subsection (c) shall be granted and that the full citizenship rights of the petitioner shall be restored. This presumption may only be overcome upon proof by a preponderance of the evidence that either the petitioner is not eligible for restoration or there is otherwise good cause to deny the petition;

(4)(A) Prior to acting on any petition filed pursuant to this subsection (c), the court shall notify the district attorney general in whose county the petitioner resides and the district attorney general of the county in which the conviction occurred that a petition for restoration of citizenship has been filed by the petitioner. The notice shall be sent at least thirty (30) days prior to any hearing on or disposition of the petition. Each district attorney general so notified may object to the restoration of the petitioner's citizenship rights either in person or in writing;

(B) If the petitioner was rendered infamous or deprived of citizenship rights by judgment of a federal court, the circuit court shall give the notice required in subdivision (c)(2)(A) to the United States attorney and the district attorney general in whose district the petitioner is currently residing. Each such official shall have the same right to object to the petition as is provided in subdivision (c)(2)(A);

(5) If, upon the face of the petition or after conducting a hearing, the court finds that the petitioner's full citizenship rights should be restored, it shall so order and send a copy of the order to the state coordinator of elections;

(6) All costs for a proceeding under this subsection (c) to restore a person's citizenship rights shall be paid by the petitioner unless the court specifically orders otherwise; and

(7) Any person whose citizenship rights have been restored by order of the court pursuant to this subsection (c) shall submit a certified copy of the order to the administrator of elections of the county in which the person is eligible to vote. The administrator of elections shall verify with the coordinator of elections that the order was issued and, upon receiving the verification, shall issue the person a voter registration card entitling the person to vote.

40-29-106. Explanation of procedure for restoration of citizenship rights.

(a) When any nonviolent offender who was convicted of an infamous crime is granted final release from incarceration or discharged from parole, probation, pretrial or judicial diversion or community correction supervision, the sentencing court, department of correction and board of parole are urged to have the official charged with processing and effectuating the person's release or discharge provide the person with information explaining the restoration of citizenship rights procedure.

(b) For purposes of this section, "nonviolent offender" means a person convicted of a felony that is not defined as a "violent offense" by § 40-35-120(b).

40-29-202. Application for voter registration card.

(a) A person rendered infamous and deprived of the right of suffrage by the judgment of any state or federal court is eligible to apply for a voter registration card and have the right of suffrage restored upon:

(1) Receiving a pardon, except where the pardon contains special condi-

tions pertaining to the right of suffrage;

(2) The discharge from custody by reason of service or expiration of the maximum sentence imposed by the court for the infamous crime; or

(3) Being granted a certificate of final discharge from supervision by the board of parole pursuant to § 40-28-105, or any equivalent discharge by another state, the federal government, or county correction authority.

(b) Notwithstanding subsection (a), a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored, unless the person:

(1) Has paid all restitution to the victim or victims of the offense ordered by the court as part of the sentence; and

(2) Beginning September 1, 2010, notwithstanding subsection (a), a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored, unless the person has paid all court costs assessed against the person at the conclusion of the person's trial, except where the court has made a finding at an evidentiary hearing that the applicant is indigent at the time of application.

(c) Notwithstanding subsection (a), a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored, unless the person is current in all child support obligations.

40-29-203. Certificate of voting rights restoration.

(a) A person eligible to apply for a voter registration card and have the right of suffrage restored, pursuant to § 40-29-202, may request, and then shall be issued, a certificate of voting rights restoration upon a form prescribed by the coordinator of elections, by:

(1) The pardoning authority;

(2) The warden or an agent or officer of the incarcerating authority; or

(3) A parole officer or another agent or officer of the supervising authority.

(b)(1) [Deleted by 2013 amendment, effective July 1, 2013.]

(2) The issuing authority shall supply the person being released with a written statement explaining the purpose and effect of the certificate of voting rights restoration and explaining the procedure by which the person may use the certificate to apply for and receive a voter registration card and become eligible to vote.

(c) A certificate of voting rights restoration issued pursuant to subsection (a) shall be sufficient proof that the person named on the certificate is no longer disqualified from voting by reason of having been convicted of an infamous crime.

(d) Any person issued a certificate of voting rights restoration pursuant to this section shall submit the certificate to the administrator of elections of the county in which the person is eligible to vote. The administrator of elections shall send the certificate to the coordinator of elections who shall verify that the certificate was issued in compliance with this section. Upon determining that the certificate complies with this section, the coordinator shall notify the appropriate administrator of elections and, after determining that the person is qualified to vote in that county by using the same verification procedure used for any applicant, the administrator shall grant the application for a voter registration card. The administrator shall issue a voter registration card and the card shall be mailed to the applicant in the same manner as provided for any newly issued card.

40-29-205. Certificate of voting rights restoration form.

The coordinator of elections shall prepare a certificate of voting rights restoration form and the written statement explaining the form and the procedure by which a person can apply for a voter registration card and become eligible to vote as required by this part. The coordinator shall be responsible for printing and distributing a sufficient number of the forms to the department of correction, the board of parole and any other authority that may discharge a person to whom this part applies.

40-30-111. Final disposition of petitions — Compliance reports.

(a) If the court finds that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable, including a finding that trial counsel was ineffective on direct appeal, the court shall vacate and set aside the judgment or order a delayed appeal as provided in this part and shall enter an appropriate order and any supplementary orders that may be necessary and proper. Costs shall be taxed as in criminal cases.

(b) Upon the final disposition of every petition, the court shall enter a final order, and except where proceedings for delayed appeal are allowed, shall set forth in the order or a written memorandum of the case all grounds presented, and shall state the findings of fact and conclusions of law with regard to each ground.

(c) Where the petitioner has court-appointed counsel, the court may require petitioner's counsel to file a verified statement of dates and times counsel has consulted with petitioner, and this statement shall become a part of the record.

(d) The court shall rule within sixty (60) days of conclusion of the proof. The deadline shall not be extended by agreement, and the deadline may be extended only by order of the court based upon a finding that unforeseeable circumstances render a continuance a manifest necessity. An extension shall not exceed thirty (30) days. Final disposition of a capital case must be made within one (1) year of the filing of the petition. Copies of all orders extending deadlines in capital cases shall be sent to the administrative office of the courts. The administrative office of the courts shall report annually to the general assembly on the compliance by the courts within the time limits established for capital cases and the reason for noncompliance, if any.

(e)(1) By December 1, 2009, and every December 1 thereafter, the administrative office of the courts shall complete the compliance report required by subsection (d) and submit the report to the chief clerks of the house of representatives and the senate and the chairs of the criminal justice committee of the house of representatives and the judiciary committee of the senate.

(2) The administrative office of the courts, in consultation with the district attorneys general conference, the office of the post-conviction defender and the district public defenders conference, shall review the annual compliance report to determine if the time period for the final disposition of post-conviction petitions in capital cases set out in subsection (d) is a realistic time period for providing a thorough and meaningful review of the claims and making a final disposition of them. If it is determined that the statutory period for final disposition of the petitions is not realistic, the administrative office of the courts shall determine a realistic and attainable time period and submit it to the legislature as provided in subdivision (e)(1).

(3) The review and determination of a realistic time period for the conclusion of post-convictions petitions required by subdivision (e)(2) shall be made by December 1, 2009, and every December 1 thereafter.

40-30-203. Establishment — Composition.

(a) On July 1, 2011, there is created a post-conviction defender oversight commission. The members of the commission appointed under this section shall have a commitment to the constitutional rights of all individuals. In making these appointments, the appointing authorities shall strive to ensure that the membership of the commission appropriately reflects the racial and geographic diversity of the state. Members of the commission are not required to be attorneys, but any member who is an attorney may not be a current district attorney general or assistant district attorney general, a current public defender or assistant public defender, or a sitting judge. The commission is composed of the following nine (9) members:

(1) Three (3) members appointed by the governor;

(2) Three (3) members appointed by the speaker of the senate; and

(3) Three (3) members appointed by the speaker of the house of representatives.

(b) The term of office of each member of the commission is four (4) years. A vacancy occurring among the members of the commission before the expiration of a term shall be filled in the same manner as the original appointments. An appointment to fill a vacancy occurring before the expiration of a term is for the remainder of the unexpired term.

(c) To stagger the terms of the commission members, the initial term shall be as follows:

(1) The initial term of the members appointed by the governor shall be two (2) years;

(2) The initial term of the members appointed by the speaker of the senate shall be three (3) years; and

(3) The initial term of the members appointed by the speaker of the house of representatives shall be four (4) years.

40-30-206. Duties.

(a) It is the primary responsibility of the post-conviction defender to represent, without additional compensation, any person convicted and sentenced to death in this state who is without counsel and who is unable to secure counsel due to indigency or determined by a state court with competent jurisdiction to be indigent, for the purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against that person in state court, and who the court determines requires the appointment of counsel.

(b) Under limited circumstance where the post-conviction defender determines that it is in the interest of justice, the post-conviction defender may represent, without additional compensation, any person on a direct appellate review of the conviction of a capital crime if that person is without counsel and is unable to secure counsel due to indigency, or is determined by a state court with competent jurisdiction to be indigent and where that state court has determined competent counsel is unavailable.

(c) The post-conviction defender shall represent, without additional com-

pensation, any person convicted and sentenced to death in this state who is without counsel and who is unable to secure counsel due to that person's indigency or is determined by a state court of competent jurisdiction to be indigent for the purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against the person in the federal courts in this state, the United States court of appeals for the sixth circuit, and the United States supreme court, only to the extent that compensation for representation and reimbursement for expenses is provided by 18 U.S.C. § 3006A or any other non-state funded source.

(d) The post-conviction defender shall also:

(1) Maintain a clearinghouse of materials and a repository of briefs prepared by the post-conviction defender to be made available to public defenders and private counsel who represent indigents charged with or convicted of capital crimes;

(2) Provide continuing legal education training to public defenders, assistant post-conviction defenders and to private counsel representing indigents in capital cases, as resources are available;

(3) Provide consulting services to all attorneys representing defendants in capital cases on a non-case-specific basis; and

(4) Recruit qualified members of the private bar who are willing to provide representation in state death penalty proceedings.

(e) Where the post-conviction defender determines that it is in the interest of justice, the post-conviction defender may represent, without additional compensation, a death sentenced inmate, who, at the completion of both state post-conviction proceedings and federal collateral review, remains under a sentence of death, if the individual is presently represented by the post-conviction defender or if the individual is not currently represented by the post-conviction defender but is unable to secure counsel due to indigency, during clemency proceedings before the Tennessee board of parole and the governor and in proceedings to determine whether the death sentenced inmate is competent to be executed.

40-31-107. Central administrator and information agent — Designation — Report.

(a) The governor is empowered to designate the officer who will serve as central administrator of, and information agent for, the agreement on detainers, pursuant to article VII of § 40-31-101.

(b) The officer designated shall make a written report to the speakers of the senate and the house of representatives, and the chairs of the judiciary committee of the senate and the criminal justice committee of the house of representatives, at least once each year. This report shall be made no later than February 1. The report shall advise the speakers and committee chairs on the number of participants in the compact.

40-32-101. Destruction or release of records.

(a)(1)(A) All public records of a person who has been charged with a misdemeanor or a felony shall, upon petition by that person to the court having jurisdiction in the previous action, be removed and destroyed without cost to the person, if:

(i) The charge has been dismissed;

(ii) A no true bill was returned by a grand jury; or

(iii) The person was arrested and released without being charged.

(B) A person applying for the expunction of records because the charge or warrant was dismissed in any court as a result of the successful completion of a pretrial diversion program pursuant to §§ 40-15-102 — 40-15-107, shall be charged the appropriate court clerk's fee pursuant to § 8-21-401 for destroying such records.

(C) [Deleted by 2012 amendment.]

(D) Notwithstanding subdivision (a)(1)(B) or (a)(6), the records of a person who successfully completes a pretrial diversion program pursuant to §§ 40-15-102 — 40-15-107, or a judicial diversion program pursuant to § 40-35-313, shall not be expunged pursuant to this section, if the offense for which the person was diverted was a sexual offense as defined by § 40-39-202, or a violent sexual offense as defined by § 40-39-202.

(E) A person is not entitled to the expunction of such person's records if:

(i) The person is charged with an offense, is not convicted of the charged offense, but is convicted of an offense relating to the same criminal conduct or episode as the charged offense, including a lesser included offense; or

(ii) The person is charged with multiple offenses or multiple counts in a single indictment and is convicted of:

(a) One (1) or more of the charged offenses or counts in the indictment; or

(b) An offense relating to the same criminal conduct or episode as one (1) of the offenses charged in the indictment, including a lesser included offense.

(F) Upon a verdict of not guilty being returned, whether by a judge following a bench trial or by a jury, on all charges for which the defendant was accused, the judge shall inquire of the person acquitted whether such person requests that all public records associated with the charges for which such person was acquitted be removed and destroyed without cost to the person and without the requirement that the person petition for destruction of such records. If the person requests that the public records related to such charges be removed and destroyed, the court shall so order. If the person acquitted does not request that such records be destroyed at the time the judge inquires pursuant to this subdivision (a)(1)(F), but subsequently requests that such records be destroyed, the person shall be required to follow the petition procedure set out in this section.

(2) All public records of a person required to post bond under § 38-3-109 or § 38-4-106 [repealed] shall be removed and destroyed as required by this chapter upon the expiration of any bond required, if no surety on the bond is required to fulfill the obligations of the bond.

(3) Upon petition by a defendant in the court that entered a nolle prosequi in the defendant's case, the court shall order all public records expunged.

(4) For purposes of this section, "court" includes any court exercising juvenile jurisdiction.

(5) All public records concerning an order of protection authorized by title 36, chapter 3, part 6, which was successfully defended and denied by the court following a hearing conducted pursuant to § 36-3-605, shall, upon petition by that person to the court denying the order, be removed and destroyed without cost to the person.

(6) Except as provided in subsection (f), it is the intent of this section that a person is entitled to the expunction of public records in a criminal case only if the person successfully completes a pretrial diversion program pursuant to §§ 40-15-102 — 40-15-107 or a judicial diversion program pursuant to § 40-35-313, the charges against such person are dismissed, or the person is entitled to have all public records removed and destroyed by reason of one (1) of the results specified in this section.

(b)(1) "Public records," for the purpose of expunction only, does not include arrest histories, investigative reports, intelligence information of law enforcement agencies, or files of district attorneys general that are maintained as confidential records for law enforcement purposes and are not open for inspection by members of the public and shall also not include records of the department of children's services or department of human services that are confidential under state or federal law and that are required to be maintained by state or federal law for audit or other purposes. Whenever an order of expunction issues under this section directed to the department of children's services or department of human services, the department shall notify the defendant if there are records required to be maintained as directed above and the basis therefor. The department shall delete identifying information in these records whenever permitted by state or federal law. These records are to be expunged whenever their maintenance is no longer required by state or federal law.

(2) "Public records", for the purpose of expunction only, does not include appellate court records or appellate court opinions.

(c)(1) Release of confidential records or information contained therein other than to law enforcement agencies for law enforcement purposes shall be a Class A misdemeanor.

(2) This section shall not be construed to deny access to any record to the comptroller of the treasury or the comptroller of the treasury's agent for purposes of audit investigation; the comptroller of the treasury or the comptroller of the treasury's agent having this access shall protect the confidential nature of the records that are not otherwise public under other statutes.

(3) Release of arrest histories of a defendant or potential witness in a criminal proceeding to an attorney of record in the proceeding shall be made to the attorney upon request.

(d)(1) Any court ordering the expunction of a person's public records of a criminal offense, including orders issued as a result of the successful completion of a diversion program pursuant to §§ 40-15-105 and 40-15-106 or judicial diversion program, shall send or cause to be sent a copy of the expunction order to the Tennessee bureau of investigation for entry into its expunged offender and pretrial diversion database. The order shall contain the name of the person seeking expunction, the person's date of birth and social security number, the offense that was dismissed, the date and cause of the dismissal and the date the order of expunction is entered.

(2)(A) Beginning July 1, 2012, defendant petitioning a court for expunction of records because the charge against the person was dismissed as a result of the successful completion of a diversion program pursuant to §§ 40-15-102 — 40-15-106 shall be assessed a three-hundred-fifty-dollar ($350) fee. The fee shall be transmitted by the clerk of the court for deposit in a special fund and shall be used by the bureau for the following

purposes:

(i) Employing personnel;

(ii) Purchasing equipment and supplies;

(iii) Funding education, training and development of employees;

(iv) Maintaining the expunged criminal offender and pretrial diversion database;

(v) Computer system support;

(vi) Maintenance expenses; and

(vii) Any other purpose to allow the bureau's business to be done in a more efficient manner.

(B) The moneys received in the fund shall be invested for the benefit of the fund by the state treasurer pursuant to § 9-4-603. Amounts in the fund shall not revert to the general fund of the state, but shall together with interest income credited to the fund remain available for expenditure in subsequent fiscal years.

(C) The three-hundred-fifty-dollar ($350) fee under subdivision (d)(2)(A) shall not apply to any case where there has been an acquittal, nolle prosequi, or dismissal for failure to prosecute or where the law does not require a copy of the expunction order be sent to the Tennessee bureau of investigation.

(e) It is the intent of the general assembly that no fee ever be charged a person who is petitioning a court for expunction of records because:

(1) The charge against the person was dismissed for a reason other than the successful completion of a diversion program pursuant to §§ 40-15-102 — 40-15-106 or § 40-35-313;

(2) A no true bill was returned by a grand jury;

(3) A verdict of not guilty was returned, whether by the judge following a bench trial or by a jury; or

(4) The person was arrested and released without being charged.

(f)(1) All public records of a person who has been charged and convicted with a misdemeanor or felony while protesting or challenging a state law or municipal ordinance whose purpose was to maintain or enforce racial segregation or racial discrimination shall, upon petition by that person to the court having jurisdiction in the previous action, be removed and destroyed without cost to the person, if:

(A) The charge has been dismissed;

(B) A no true bill was returned by a grand jury;

(C) A verdict of not guilty was returned, whether by the judge following a bench trial or by a jury;

(D) The person was arrested and released, without being charged; or

(E)(i) Thirty-seven (37) years or more have elapsed since the date of conviction for the offense being expunged and the petitioner has not been convicted of any other offense, excluding minor traffic violations, during that period of time;

(ii) Any period of supervision due to conviction has been completed;

(iii) The offense was a misdemeanor, Class C, D or E felony not otherwise excluded pursuant to subdivision (f)(1)(E)(iv), or, if committed prior to November 1, 1989, would be an included Class C, D, or E felony if committed after November 1, 1989;

(iv) The offense was not a Class A or Class B felony or a Class C felony described in § 40-15-105(a)(1)(B)(iii), a sexual offense described in

§ 40-15-105(a)(1)(B)(ii), or an offense prohibited by title 55, chapter 10, part 4, vehicular assault as prohibited by § 39-13-106, or if committed prior to November 1, 1989, would not be an excluded offense if committed after November 1, 1989; and

(v) The district attorney general is served a copy of the petition for expunction by certified mail, return receipt requested, and the district attorney general does not file an objection with the court within twenty (20) calendar days of receipt of the petition.

(2) All public records of a person required to post bond under § 38-3-109 shall be removed and destroyed as required by this section upon the expiration of any bond required, if no surety on the bond is required to fulfill the obligations of the bond.

(3) Upon petition by a defendant in the court that entered a nolle prosequi in the defendant's case, the court shall order all public records expunged.

(4) For purposes of this subsection (f), "court" includes any court exercising juvenile jurisdiction.

(5) If the person charged or convicted is deceased, the petition may be filed by a person who is able to establish legal authority to act on the behalf of the deceased person.

(6) Notwithstanding any law to the contrary, upon request of the petitioner, records or documents subject to the destruction requirement of this subsection (f) that are utilized exclusively for education purposes and are displayed in public museums, libraries, and buildings are exempt from the destruction requirement.

(g)(1) For purpose of this subsection (g), "eligible petitioner" means:

(A) A person who was convicted of one of the following Class E felonies and sentenced to imprisonment for a term of three (3) years or less for an offense committed on or after November 1, 1989:

(i) Section 39-11-411 — Accessory after the fact;

(ii) Section 39-13-306 — Custodial interference where person not voluntarily returned by defendant;

(iii) Section 39-13-604(c)(2) — Knowing dissemination of illegally recorded cellular communication;

(iv) Section 39-14-105(a)(2) — Theft ($501-$999);

(v) Section 39-14-114(c) — Forgery (up to $1,000);

(vi) Section 39-14-115 — Criminal simulation (up to $1,000);

(vii) Section 39-14-116(c) — Hindering secured creditors;

(viii) Section 39-14-117(b) — Fraud in insolvency;

(ix) Section 39-14-118 — Fraudulent use of credit card or debit card ($501-$999);

(x) Section 39-14-121 — Worthless checks ($501-$999);

(xi) Section 39-14-130 — Destruction of valuable papers ($501-$999);

(xii) Section 39-14-131 — Destruction or concealment of will;

(xiii) Section 39-14-133 — Fraudulent or false insurance claim ($501-$999);

(xiv) Section 39-14-137(b) — Fraudulent qualifying for set aside programs ($501-$999);

(xv) Section 39-14-138 — Theft of trade secrets ($501-$999);

(xvi) Section 39-14-139 — Sale of recorded live performances without consent ($501-$999);

(xvii) Section 39-14-143 — Unauthorized solicitation for police, judi-

cial or safety associations;

(xviii) Section 39-14-147(f) — Fraudulent transfer of motor vehicle with value of less than $20,000;

(xix) Section 39-14-149 — Communication theft ($501-$999 (fine only));

(xx) Section 39-14-153 — Home improvement fraud ($500-$1,000);

(xxi) Section 39-14-402 — Burglary of an auto;

(xxii) Section 39-14-408 — Vandalism ($501-$999);

(xxiii) Section 39-14-411 — Utility service interruption or property damage;

(xxiv) Section 39-14-505 — Aggravated criminal littering (2nd and 3rd offenses involving certain weight or volume);

(xxv) Section 39-14-602 — Violation of Tennessee Personal and Commercial Computer Act ($501-$999);

(xxvi) Section 39-14-603 — Unsolicited bulk electronic mail ($500-$999);

(xxvii) Section 39-16-201 — Taking telecommunication device into penal institution;

(xxviii) Section 39-16-302 — Impersonation of licensed professional;

(xxix) Section 39-16-603 — Evading arrest in motor vehicle where no risk to bystanders;

(xxx) Section 39-16-609(e) — Failure to appear (felony);

(xxxi) Section 39-17-106 — Gifts of adulterated candy or food;

(xxxii) Section 39-17-417(f) — Manufacture, delivery, sale or possession of Schedule V drug (fine not greater than $5,000);

(xxxiii) Section 39-17-417(g)(1) — Manufacture, delivery, sale or possession of not less than ½ ounce and not more than 10 pounds of Schedule VI drug marijuana (fine not greater than $1,000);

(xxxiv) Section 39-17-417(h) — Manufacture, delivery, sale or possession of Schedule VII drug (fine not greater than $1,000);

(xxxv) Section 39-17-418(e) — Simple possession or casual exchange (3rd offense);

(xxxvi) Section 39-17-422(c) — Selling glue for unlawful purpose;

(xxxvii) Section 39-17-423(c) — Counterfeit controlled substance;

(xxxviii) Section 39-17-425(b)(1), (2), (3) — Unlawful drug paraphernalia uses and activities;

(B) Except as provided in this subdivision (g)(1)(B), a person who was convicted of a misdemeanor offense committed on or after November 1, 1989. Misdemeanors excluded from consideration are:

(i) Section 39-13-101(a)(1) and (2) — Assault;

(ii) Section 39-13-102 — Aggravated assault of public employee;

(iii) Section 39-13-111 — Domestic assault;

(iv) Section 39-13-113(g) — Violation of protective or restraining order;

(v) Section 39-13-113(h) — Possession of firearm while order of protection in effect;

(vi) Section 39-13-511 — Public indecency 3rd or subsequent offense;

(vii) Section 39-13-511 — Indecent exposure (victim under 13 years of age) or by person in penal institution exposing to a guard;

(viii) Section 39-13-526(b)(1) and (2) — Violation of community supervision by sex offender not constituting offense or constituting

misdemeanor;

(ix) Section 39-13-528 — Soliciting minor to engage in Class E sexual offense;

(x) Section 39-13-533 — Unlawful sexual contact by authority figure;

(xi) Section 39-14-118 — Fraudulent use of credit/debit card (up to $500);

(xii) Section 39-14-304 — Reckless burning;

(xiii) Section 39-14-406 — Aggravated criminal trespass of a habitation, hospital, or on the campus of any public or private school, or on railroad property;

(xiv) Section 39-15-201(b)(3) — Coercion — abortion;

(xv) Section 39-15-210 — Third or subsequent violation of Child Rape Protection Act of 2006;

(xvi) Section 39-15-401(a) — Child abuse (where child is between ages 7-17);

(xvii) Section 39-15-401(b) — Child neglect and endangerment (where child is between ages 7-13);

(xviii) Section 39-15-404 — Enticing a child to purchase intoxicating liquor - purchasing alcoholic beverage for child;

(xix) Section 39-15-404 — Allowing person ages 18-21 to consume alcohol on person's premises;

(xx) Section 39-15-414 — Harboring or hiding a runaway child;

(xxi) Section 39-17-315 — Stalking;

(xxii) Section 39-17-431 — Unlawful dispensing of immediate methamphetamine precursor, sale of meth precursor to person on methamphetamine registry or purchase by someone on registry, possess meth precursor with intent to sell to another for unlawful use, purchase meth precursor for another for unlawful use, purchase meth precursor at different times and places to circumvent limits, and use false ID to purchase meth precursor for purpose of circumventing limits;

(xxiii) Section 39-17-437 — Using substance or device to falsify drug test results and selling synthetic urine;

(xxiv) Section 39-17-438 — Possession of the hallucinogenic plant *Salvia Divinorum* or the synthetic cannabinoids;

(xxv) Section 39-17-452 — Sale or possession of synthetic derivatives or analogues of methcathinone;

(xxvi) Section 39-17-902(a) — Importing, preparing, distributing, processing, or appearing in obscene material or Class A misdemeanors;

(xxvii) Section 39-17-907 — Unlawful exhibition of obscene material;

(xxviii) Section 39-17-911 — Sale or loan to minors of harmful materials;

(xxix) Section 39-17-918 — Unlawful massage or exposure of erogenous areas;

(xxx) Section 39-17-1307(f)(1)(A) — Possession of firearm after being convicted of misdemeanor crime of domestic violence;

(xxxi) Section 39-17-1307(f)(1)(B) — Possession of firearm while order of protection is in effect;

(xxxii) Section 39-17-1307(f)(1)(C) — Possession of firearm while prohibited by state or federal law;

(xxxiii) Section 39-17-1312 — Failure of adult to report juvenile carrying gun in school;

(xxxiv) Section 39-17-1320(a) — Nonparent providing handgun to a juvenile;

(xxxv) Section 39-17-1352 — Failure to surrender handgun carry permit upon suspension;

(xxxvi) Section 39-17-1363 — Violent felon owning or possessing vicious dog;

(xxxvii) Section 39-13-101(a)(3) — Assault (offensive or provocative physical contact);

(xxxviii) Section 39-13-511(a) — Public indecency — first or second offense (punishable by $500 fine only);

(xxxix) Section 39-13-511(b)(2) — Indecent exposure (victim 13 years old or older);

(xl) Section 39-15-412(b) — Disseminating smoking paraphernalia to minor after 3 prior violations;

(xli) Section 39-16-404 — Misuse of official information by public servant;

(xlii) Section 39-17-317 — Disorderly conduct at funerals;

(xliii) Section 39-17-715 — Possession of or consuming alcoholic beverages on K-12 school premises;

(xliv) Section 39-17-914 — Display for sale or rental of material harmful to minors; and

(xlv) Section 55-10-401 — Driving under the influence of an intoxicant; or

(C) A person who was convicted of a felony or misdemeanor committed prior to November 1, 1989, if:

(i) The person was sentenced to a determinate sentence of three (3) years or less;

(ii) The person was sentenced to an indeterminate sentence for which the person served three (3) years or less;

(iii) The person has never had a previous conviction expunged as the result of the successful completion of a diversion program pursuant to §§ 40-15-102 — 40-15-106 or § 40-35-313; and

(iv) The offense for which the person was convicted:

(A) Did not have as an element the use, attempted use, or threatened use of physical force against the person of another;

(B) Did not involve, by its nature, a substantial risk that physical force against the person of another would be used in the course of committing the offense;

(C) Did not involve the use or possession of a deadly weapon;

(D) Was not a sex offense for which the offender is required to register as a sexual offender or violent sexual offender under chapter 39, part 2 of this title; or any sex offense involving a minor;

(E) Did not result in the death, serious bodily injury or bodily injury to a person;

(F) Did not involve the use of alcohol or drugs and a motor vehicle;

(G) Did not involve the sale or distribution of a Schedule I, II, III, or IV controlled substance;

(H) Did not involve a minor as the victim of the offense; or

(I) Did not result in causing the victim or victims to sustain a loss of twenty-five thousand dollars ($25,000) or more.

(2) Notwithstanding the provisions of this section, effective July 1, 2012, an eligible petitioner may file a petition for expunction of that person's public

records involving a criminal offense if:

(A) At the time of filing, the person has never been convicted of any criminal offense, including federal offenses and offenses in other states, other than the offense committed for which the petition for expunction is filed;

(B) At the time of the filing of the petition for expunction at least five (5) years have elapsed since the completion of the sentence imposed for the offense;

(C) The person has fulfilled all the requirements of the sentence imposed by the court in which the individual was convicted of the offense, including:

(i) Payment of all fines, restitution, court costs and other assessments;

(ii) Completion of any term of imprisonment or probation;

(iii) Meeting all conditions of supervised or unsupervised release; and

(iv) If so required by the conditions of the sentence imposed, remaining free from dependency on or abuse of alcohol or a controlled substance or other prohibited substance for a period of not less than one (1) year.

(3) A person seeking expunction shall petition the court in which the petitioner was convicted of the offense sought to be expunged is filed. Upon filing of the petition, the clerk shall serve the petition on the district attorney general for that judicial district. Not later than sixty (60) days after service of the petition, the district attorney may submit recommendations to the court and provide a copy of such recommendations to the petitioner.

(4) Both the petitioner and the district attorney general may file evidence with the court relating to the petition.

(5) In making a decision on the petition, the court shall consider all evidence and weigh the interests of the petitioner against the best interests of justice and public safety.

(6) If the court denies the petition, the petitioner may not file another such petition until at least two (2) years from the date of the denial.

(7) The district attorneys general conference shall, by September 1, 2012, create a simple form to enable a lay person to petition the court for expunction under this subsection (g).

(8) The petition and proposed order shall be prepared by the office of the district attorney general and given to the petitioner to be filed with the clerk of the court. A petitioner shall be entitled to a copy of the order of expunction and such copy shall be sufficient proof that the person named in the order is no longer under any disability, disqualification or other adverse consequence resulting from the expunged conviction.

(9) The district public defender of each judicial district shall annually conduct at least one (1) educational program providing information and assistance with the expunction process generally and the expunction process established pursuant to this subsection (g). The district public defenders conference shall maintain a video of the educational program on the conference's web site, if available.

(10) Except as provided in subdivision (g)(17), the petitioner shall pay to the clerk of the court a fee of three hundred fifty dollars ($350.00) upon the filing of the petition. Fifty dollars ($50.00) of the fee shall be transmitted to the Tennessee bureau of investigation for the purpose of defraying the costs incurred from the additional expunction petitions filed and granted as the

result of this subsection (g) or subsection (h). The clerk shall retain ten dollars ($10.00) of the fee and shall remit the remainder to the trustee to be allocated in the following manner:

(A) Five percent (5%) to the public defenders expunction fund;

(B) Forty percent (40%) to the district attorneys expunction fund for the fiscal year 2012-2013; provided, however, that for all fiscal years following 2012-2013 this percent shall be forty-five percent (45%); and

(C) Fifty-five percent (55%) to the state general fund for fiscal year 2012-2013; provided, however, that for all fiscal years following 2012-2013 this percent shall be fifty percent (50%).

(11) There is created within the district attorneys general conference a district attorneys expunction fund. Moneys in the district attorneys expunction fund shall be used to defray the expense incurred for the required record search and preparation of the petition and the proposed order of expunction under this subsection (g) or subsection (h). Any remaining moneys in the district attorneys expunction fund may be used by the district attorneys generals for law enforcement purposes, including, but not limited to, the hiring of expert witnesses, training, matching federal grants directly related to prosecutorial duties, the purchase of equipment and supplies necessary to carry out prosecutorial functions, the expenses of travel in the performance of official duties of the office, provided 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, salaries and salary supplements, which may only be paid through the district attorneys general conference for support staff. Such payments shall be subject to the limitation of § 40-3-209(b) on the use of any funds to supplement the salary of any assistant district attorney. Moneys in the district attorneys expunction fund shall not revert to the general fund but shall be carried forward into the subsequent fiscal year. All funds in the district attorneys expunction fund shall be subject to annual audit by the comptroller of the treasury.

(12) There is created within the state treasury a public defenders expunction fund. Moneys in the public defenders expunction fund shall be used to defray the expense incurred by conducting the educational activities required pursuant to this subsection (g). Subject to annual appropriation, any remaining moneys in the public defenders expunction fund may be used in furtherance of the services and programs provided by public defenders for each judicial district. Moneys in the public defenders expunction fund shall not revert to the general fund but shall be carried forward into the subsequent fiscal year.

(13) Beginning on July 1, 2013, the department of finance and administration shall review the number of expunction petitions pursuant to this subsection (g), the cost of processing each petition and the amount of money paid in expunction fees to determine if the amount allotted to the state under subdivision (g)(10)(C) to implement this subsection (g) is adequate and if some portion of such funds could be used for other criminal justice purposes such as the criminal injuries compensation fund or drug court funding. The department shall report its findings to the general assembly in January of 2014.

(14) Beginning on July 1, 2013, the Tennessee bureau of investigation shall review the number of expunction petitions pursuant to this subsection

(g), the cost of processing each petition and the amount of money paid in expunction fees to determine if the amount allotted the bureau to implement this subsection (g) is adequate and if some portion of such funds could be used for other criminal justice purposes such as the criminal injuries compensation fund or drug court funding. The bureau shall report its findings to the general assembly in January of 2014.

(15)(A) Notwithstanding any other law to the contrary, an order of expunction granted pursuant to this subsection (g) or subsection (h) entitles the petitioner to have all public records of the expunged conviction destroyed in the manner set forth in this section.

(B) Additionally, such an expunction has the legal effect of restoring the petitioner, in the contemplation of the law, to the same status occupied before the arrest, indictment, information, trial and conviction. Once the expunction order is granted and the petitioner pays the fee required by this subsection (g) or subsection (h), no direct or indirect collateral consequences that are generally or specifically attendant to the petitioner's conviction by any law shall be imposed or continued.

(C) A petitioner with respect to whom an order has been granted under this subsection (g) or subsection (h) shall not be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge the arrest, indictment, information, trial or conviction in response to any inquiry made of the petitioner for any purpose.

(D) Expunction under this subsection (g) or subsection (h) means, in contemplation of law, the conviction for the expunged offense never occurred and the person shall not suffer any adverse affects or direct disabilities by virtue of the criminal offense that was expunged.

(E) Notwithstanding § 39-17-1307(b)(1)(B) and (c), a petitioner whose petition is granted pursuant to this subsection (g) or subsection (h), and who is otherwise eligible under state or federal law to possess a firearm, shall be eligible to purchase a firearm pursuant to § 39-16-1316 and apply for and be granted a handgun carry permit pursuant to § 39-17-1351.

(16) The clerk of the court maintaining records expunged pursuant to this subsection (g) or subsection (h) shall keep such records confidential. These records shall not be public and can only be used to enhance a sentence if the petitioner is subsequently charged and convicted of another crime. This confidential record is only accessible to the district attorney general, the defendant, the defendant's attorney and the circuit or criminal court judge.

(17) If the petitioner is unable to pay the fee required by subdivision (g)(10), the petitioner may enter into a payment plan with the clerk in order to pay the fee in installment payments; provided, however, that no order of expunction shall be granted pursuant to this subdivision (g)(17) until the total amount of the fee is paid. Once the petitioner has paid to the clerk of the court a total of three hundred fifty dollars ($350.00) the fee shall be allocated by the clerk in the same manner set forth for the disposition of the three hundred fifty dollar ($350.00) fee under subdivision (g)(10).

(h)(1) For purposes of this subsection (h), "eligible petitioner" means a person who was convicted of a nonviolent crime after January 1, 1980, if the person:

(A) Petitioned the court in which the petitioner was convicted of the offense and the judge finds that the offense was a nonviolent crime;

(B) Petitioned for and received a positive vote from the board of parole

to receive a pardon; and

(C) Received a pardon by the governor.

(2) Notwithstanding the provisions of this section, effective July 1, 2013, an eligible petitioner under subdivision (h)(1) may file a petition for expunction of that person's public records involving the crime. The procedures in subdivisions (g)(3)-(6), (8), (10), (15) and (16) will apply to a petitioner under this subsection (h).

40-33-101. Conveyances subject to forfeiture.

(a) Except as provided in subsection (b), where there is a final judgment of conviction, in the discretion of the court, conveyances, including vehicles, aircraft or vessels, are subject to forfeiture if used in the commission of:

(1) Any offense under title 39, chapter 13, part 5;

(2) Any robbery offense under title 39, chapter 13, part 4;

(3) A burglary, aggravated burglary, or especially aggravated burglary offense under title 39, chapter 14, part 4; or

(4) A felony theft offense under title 39, chapter 14, part 1.

(b)(1) 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 part, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to any of the offenses listed in subdivisions (a)(2)-(4).

(2) No conveyance is subject to forfeiture under this part by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent; provided, that if the conveyance belongs to an automobile or truck rental company, the burden of proof shall be on the state to prove that the automobile or truck rental company knew, or had reason to know, that the conveyance was or would be used in the commission of an offense for which this part provides for forfeiture of the conveyance.

(3) 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.

40-33-201. Application.

All personal property, including conveyances, subject to forfeiture under § 39-14-307, § 47-25-1105, § 53-11-451, § 55-50-504(h), § 55-10-414, § 57-3-411, § 57-5-409, § 57-9-201, § 67-4-1020 or § 70-6-202, shall be seized and forfeited in accordance with the procedure set out in this part.

40-33-203. Seizure. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

(a) Upon effecting a seizure, the seizing officer shall prepare a receipt titled a "Notice of Seizure." The notice of seizure shall be a standard form promulgated by the applicable agency. The applicable agency may adopt an existing notice of seizure form.

(b)(1) Upon seizure of a conveyance, the seizing officer shall make reasonable efforts to determine the owner or owners of the property seized as reflected by public records of titles, registrations and other recorded

documents.

(2) If the conveyance seized is a commercial vehicle or common or contract carrier and the person in possession of the vehicle at the time of seizure does not have an ownership interest in the vehicle, the seizing officer shall, from the vehicle's manifest, bill of lading or public records of titles, registrations and other recorded documents, make reasonable efforts to determine the owner of the conveyance and notify the owner thereof of the seizure. Unless the cargo of the commercial vehicle or common or contract carrier is contraband or subject to forfeiture under some other provision of state or federal law, the cargo is not subject to forfeiture under this part and, upon the request of the owner of the conveyance, shall immediately be released by the seizing agency to the owner or transporting agent.

(3) If the conveyance seized is a commercial vehicle or common or contract carrier and the person in possession of the vehicle at the time of seizure has an ownership interest in the vehicle, the seizing officer shall, from the vehicle's manifest or bill of lading, make reasonable efforts to determine the common or contract carrier responsible for conveying the cargo and notify the carrier of the seizure. Unless the cargo of the commercial vehicle or common or contract carrier is contraband or subject to forfeiture under some other provision of state or federal law, the cargo is not subject to forfeiture under this part and, upon the request of the owner of the cargo, shall immediately be released by the seizing agency to the owner or transporting agent.

(4) If the conveyance seized is a commercial vehicle or common or contract carrier and the person in possession of the vehicle at the time of seizure does not have an ownership interest in the vehicle, the seizing officer shall, from the vehicle's manifest, bill of lading or public records of titles, registrations and other recorded documents, make reasonable efforts to determine the owner of the conveyance and notify the owner of the conveyance of the seizure. Unless the interest of the owner of the commercial vehicle or common or contract carrier is subject to forfeiture under § 40-33-210(a)(2), the vehicle or carrier is not subject to forfeiture under this part, the seizing officer shall not seek a forfeiture warrant and, upon the request of the owner of the vehicle or carrier, shall immediately be released by the seizing agency to the owner or transporting agent. For purposes of this subsection (b), "commercial vehicle" includes a private passenger motor vehicle that is used for retail rental for periods of thirty-one (31) days or less.

(c) Upon the seizure of any personal property subject to forfeiture pursuant to § 40-33-201, the seizing officer shall provide the person found in possession of the property, if known, a receipt titled a "Notice of Seizure." The notice of seizure shall contain the following:

(1) A general description of the property seized and, if the property is money, the amount seized;

(2) The date the property was seized and the date the notice of seizure was given to the person in possession of the seized property;

(3) The vehicle identification number (VIN) if the property seized is a motor vehicle;

(4) The reason the seizing officer believes the property is subject to seizure and forfeiture;

(5) The procedure by which recovery of the property may be sought, including any time periods during which a claim for recovery must be

submitted; and

(6) The consequences that will attach if no claim for recovery is filed within the applicable time period.

40-33-203. Seizure. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

(a) Upon effecting a seizure, the seizing officer shall prepare a receipt titled a "Notice of Seizure." The notice of seizure shall be a standard form promulgated by the applicable agency. The applicable agency may adopt an existing notice of seizure form.

(b)(1) Upon seizure of a conveyance, the seizing officer shall make reasonable efforts to determine the owner or owners of the property seized as reflected by public records of titles, registrations and other recorded documents.

(2) If the conveyance seized is a commercial vehicle or common or contract carrier and the person in possession of the vehicle at the time of seizure does not have an ownership interest in the vehicle, the seizing officer shall, from the vehicle's manifest, bill of lading or public records of titles, registrations and other recorded documents, make reasonable efforts to determine the owner of the conveyance and notify the owner thereof of the seizure. Unless the cargo of the commercial vehicle or common or contract carrier is contraband or subject to forfeiture under some other provision of state or federal law, the cargo is not subject to forfeiture under this part and, upon the request of the owner of the conveyance, shall immediately be released by the seizing agency to the owner or transporting agent.

(3) If the conveyance seized is a commercial vehicle or common or contract carrier and the person in possession of the vehicle at the time of seizure has an ownership interest in the vehicle, the seizing officer shall, from the vehicle's manifest or bill of lading, make reasonable efforts to determine the common or contract carrier responsible for conveying the cargo and notify the carrier of the seizure. Unless the cargo of the commercial vehicle or common or contract carrier is contraband or subject to forfeiture under some other provision of state or federal law, the cargo is not subject to forfeiture under this part and, upon the request of the owner of the cargo, shall immediately be released by the seizing agency to the owner or transporting agent.

(4) If the conveyance seized is a commercial vehicle or common or contract carrier and the person in possession of the vehicle at the time of seizure does not have an ownership interest in the vehicle, the seizing officer shall, from the vehicle's manifest, bill of lading or public records of titles, registrations and other recorded documents, make reasonable efforts to determine the owner of the conveyance and notify the owner of the conveyance of the seizure. Unless the interest of the owner of the commercial vehicle or common or contract carrier is subject to forfeiture under § 40-33-210(a)(2), the vehicle or carrier is not subject to forfeiture under this part, the seizing officer shall not seek a forfeiture warrant and, upon the request of the owner of the vehicle or carrier, shall immediately be released by the seizing agency to the owner or transporting agent. For purposes of this subsection (b), "commercial vehicle" includes a private passenger motor vehicle that is used for retail rental for periods of thirty-one (31) days or less.

(c) Upon the seizure of any personal property subject to forfeiture pursuant to § 40-33-201, the seizing officer shall provide the person found in possession of the property, if known, a receipt titled a "Notice of Seizure." The notice of seizure

shall contain the following:

(1) A general description of the property seized and, if the property is money, the amount seized;

(2) The date the property was seized and the date the notice of seizure was given to the person in possession of the seized property;

(3) The vehicle identification number (VIN) if the property seized is a motor vehicle;

(4) The reason the seizing officer believes the property is subject to seizure and forfeiture;

(5) The procedure by which recovery of the property may be sought, including any time periods during which a claim for recovery must be submitted; and

(6) The consequences that will attach if no claim for recovery is filed within the applicable time period.

(d) Upon the seizure of any personal property subject to forfeiture pursuant to § 40-33-201 where the person in possession is not being arrested, the seizing officer shall provide the person found in possession of the property, if known, a notice entitled "Notice of Forfeiture Warrant Hearing". This notice shall contain the following:

(1) The date, time, and court in which the seizing officer will be seeking a forfeiture warrant against the property pursuant to § 40-33-204;

(2) A statement that the person in possession is entitled to appear in court at the stated date and time to contest the issuance of a forfeiture warrant against the seized property and that this hearing shall be civil in nature pursuant to § 40-33-204(b); and,

(3) A statement that if the person in possession does not appear in court, a forfeiture warrant may be issued and the property subject to the forfeiture process set forth in title 40, chapter 33, part 2 and as stated in the Notice of Seizure.

40-33-204. Forfeiture warrant. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

(a) Once personal property is seized pursuant to an applicable provision of law, no forfeiture action shall proceed unless a forfeiture warrant is issued in accordance with this section by a general sessions, circuit, criminal court or popularly elected city judge. The forfeiture warrant shall authorize the institution of a forfeiture proceeding under this part. As used in this subsection (a), "popularly elected city judge" means a licensed attorney who is elected to the office of city judge pursuant to title 16, chapter 18, part 2.

(b) The officer making the seizure shall apply for a forfeiture warrant by filing a sworn affidavit within five (5) working days following the property seizure. The forfeiture warrant shall be based upon proof by affidavit and shall have attached to it a copy of the notice of seizure. The hearing on the application for a forfeiture warrant shall be ex parte and shall be recorded. It is the duty of the court to maintain the recording. Certified copies of the proceeding shall be made available to any party requesting them, and the same shall be admissible as evidence. The affidavit in support of a forfeiture warrant shall be sworn to and state the following:

(1) The legal and factual basis making the property subject to forfeiture;

(2) If the owner or co-owner of the property was not the person in possession of the property at the time of seizure and can be determined from

public records of titles, registrations or other recorded documents, the affidavit shall state with particular specificity the officer's probable cause for believing that the owner or co-owner of the property knew that the property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture as well as the legal, and factual basis for forfeiture of the interest; and

(3) If the interest of a secured party with a duly perfected security interest as reflected in the public records of titles, registrations or other recorded documents, is sought to be forfeited, the affidavit shall state with particular specificity the officer's probable cause that the secured party's interest in the property is nevertheless subject to forfeiture as well as the legal and factual basis for forfeiture of the interest.

(c)(1) The judge shall issue the forfeiture warrant if the judge finds that the offered proof establishes probable cause to believe that:

(A) The property is subject to forfeiture; and

(B) If the property is owned by one whose interest is described in public records of titles, registrations or other recorded documents, that the owner's interest is subject to forfeiture under the applicable provision of law.

(2) If the seizing officer asserts to the judge that the officer was unable to determine the owner of the seized property or whether the owner's interest is subject to forfeiture within the required five-day period, the judge may grant up to ten (10) additional days to seek a forfeiture warrant if the judge finds that the seizing officer has:

(A) Exercised due diligence and good faith in attempting to determine the owner of the property or whether the owner's interest is subject to forfeiture; and

(B) Made a factual showing that because of the existence of extraordinary and unusual circumstances an exception to the five-day forfeiture warrant requirement is justified.

(3) General sessions judges may authorize magistrates or judicial commissioners to issue forfeiture warrants. Prior to the authorization, the judges shall train and certify that the magistrates or judicial commissioners understand the procedure and requirements relative to the issuance of a forfeiture warrant.

(d) If the person in possession of the property is not the registered owner as determined from public records of titles, registrations or other recorded documents, the judge may consider other indicia of ownership that proves that the possessor is nonetheless an owner of the property. Other indicia of ownership shall include, but is not limited to, the following:

(1) How the parties involved regarded ownership of the property in question;

(2) The intentions of the parties relative to ownership of the property;

(3) Who was responsible for originally purchasing the property;

(4) Who pays any insurance, license or fees required to possess or operate the property;

(5) Who maintains and repairs the property;

(6) Who uses or operates the property;

(7) Who has access to use of the property; and

(8) Who acts as if they have a proprietary interest in the property.

(e) If the owner or co-owner of the property was not the person in possession

of the property at the time of the seizure and can be determined from public records of titles, registrations or other recorded documents, the judge shall put the seizing officer under oath and ask the following questions:

(1) What is the officer's probable cause that the owner or co-owner of the property knew that the property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture;

(2) What is the officer's probable cause that the co-owner or co-owners who are not in possession of the property at the time it was seized were co-conspirators to the activity making the property subject to forfeiture; and

(3) Any other questions necessary to determine the legal and factual basis for forfeiture.

(f) If a secured party's interest is sought to be forfeited, the judge shall put the seizing officer under oath and ask the following questions:

(1) What is the officer's probable cause that the secured party is a co-conspirator to the activity making the property subject to forfeiture;

(2) Did the secured party at the time the interest attached, have actual knowledge of the intended illegal use of the property; and

(3) Any other question deemed necessary to determine the legal and factual basis for forfeiture of the secured party's interest.

(g) Upon issuance of the forfeiture warrant, the judge shall retain the affidavit relied upon in support of the warrant and the officer shall, within seven (7) working days, send the warrant, a copy of the affidavit and the notice of seizure to the applicable agency. By signing and issuing the forfeiture warrant, the judge is affirming that the required finding of probable cause necessary to issue the warrant has been made. Upon receipt of the documents, the applicable agency shall notify any other owner, as may be determined from public records of titles, registrations or other recorded documents, or secured party that a forfeiture warrant has been issued. Upon receipt of the notice of seizure and forfeiture warrant and after interviewing any witnesses, the applicable agency shall release the property if there is no legal and factual basis for forfeiture. The seizing agency shall maintain a copy of the notice of seizure for all property seized at its main office and the notices and receipts shall be public records.

(h) If no forfeiture warrant is issued, and the property is not needed for evidence in a criminal proceeding, the seizing agency shall immediately return the property to the owner, as determined from public records of titles, registrations or other recorded documents, or if the owner cannot be determined, to the person in possession of the property at the time of seizure.

(i) Upon the request of any general sessions, circuit, criminal court or popularly elected city judge, the administrative office of the courts shall provide a cassette tape recorder for the purpose of recording the hearing on the application for a forfeiture warrant. As used in this subsection (i), "popularly elected city judge" means a licensed attorney who is elected to the office of city judge pursuant to title 16, chapter 18, part 2.

40-33-204. Forfeiture warrant. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

(a) Once personal property is seized pursuant to an applicable provision of law, no forfeiture action shall proceed unless a forfeiture warrant is issued in accordance with this section by a general sessions, circuit, criminal court or

popularly elected city judge. The forfeiture warrant shall authorize the institution of a forfeiture proceeding under this part. As used in this subsection (a), "popularly elected city judge" means a licensed attorney who is elected to the office of city judge pursuant to title 16, chapter 18, part 2.

(b)(1) Any affidavit in support of a forfeiture warrant shall be sworn to and state the following:

(A) The legal and factual basis making the property subject to forfeiture;

(B) If the owner or co-owner of the property was not the person in possession of the property at the time of seizure and can be determined from public records of titles, registrations or other recorded documents, the affidavit shall state with particular specificity the officer's probable cause for believing that the owner or co-owner of the property knew that the property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture as well as the legal, and factual basis for forfeiture of the interest; and

(C) If the interest of a secured party with a duly perfected security interest as reflected in the public records of titles, registrations or other recorded documents, is sought to be forfeited, the affidavit shall state with particular specificity the officer's probable cause that the secured party's interest in the property is nevertheless subject to forfeiture as well as the legal and factual basis for forfeiture of the interest.

(2) If an arrest was made at the time of the seizure, the officer making the seizure shall apply for a forfeiture warrant by filing a sworn affidavit within five (5) working days following the property seizure. The forfeiture warrant shall be based upon proof by affidavit and shall have attached to it a copy of the notice of seizure. The hearing on the application for a forfeiture warrant shall be ex parte and based upon the application, the affidavit, and any testimony as may be required in this section.

(3) If no arrest was made at the time of the seizure, the officer making the seizure shall present to the court, at the date and time specified on the notice of forfeiture warrant hearing, the application for a forfeiture warrant, the affidavit in support, the notice of seizure, and the notice of forfeiture warrant hearing. At the hearing on the forfeiture warrant application, the court shall:

(A) Review the application for a forfeiture warrant and the affidavit in support and take testimony from the seizing officer regarding the probable cause to issue a forfeiture warrant, including any testimony as may be required in this section; and

(B) Review any evidence presented by and take testimony from the person in possession at the time of the seizure regarding why no probable cause exists to issue a forfeiture warrant.

(4) If the person in possession at the time of the seizure does not appear at the hearing and has received notice of the hearing, then the court shall review the application for a forfeiture warrant ex parte as under subsection (b)(2).

(5) The taking of testimony shall consist solely of the judge putting the seizing officer and person in possession under oath and asking questions to determine if probable cause exists for a forfeiture warrant to be issued under this section. Any examination by the judge of the seizing officer shall in no form or manner extend to whether the seizure is part of an ongoing investigation, nor shall the judge's examination extend in any form or manner to the source of any confidential information used in making a stop leading to seizure of the property.

(6) All hearings on applications for forfeiture warrants under this section shall be recorded. It is the duty of the court to maintain the recording. Certified copies of the proceeding shall be made available to any party requesting them, and the same shall be admissible as evidence.

(c)(1) The judge shall issue the forfeiture warrant if the judge finds that the offered proof establishes probable cause to believe that:

(A) The property is subject to forfeiture; and

(B) If the property is owned by one whose interest is described in public records of titles, registrations or other recorded documents, that the owner's interest is subject to forfeiture under the applicable provision of law.

(2) In a proceeding under subdivision (b)(2), if the seizing officer asserts to the judge that the officer was unable to determine the owner of the seized property or whether the owner's interest is subject to forfeiture within the required five-day period, the judge may grant up to ten (10) additional days to seek a forfeiture warrant if the judge finds that the seizing officer has:

(A) Exercised due diligence and good faith in attempting to determine the owner of the property or whether the owner's interest is subject to forfeiture; and

(B) Made a factual showing that because of the existence of extraordinary and unusual circumstances an exception to the five-day forfeiture warrant requirement is justified.

(3) General sessions judges may authorize magistrates or judicial commissioners to issue forfeiture warrants. Prior to the authorization, the judges shall train and certify that the magistrates or judicial commissioners understand the procedure and requirements relative to the issuance of a forfeiture warrant.

(d) If the person in possession of the property is not the registered owner as determined from public records of titles, registrations or other recorded documents, the judge may consider other indicia of ownership that proves that the possessor is nonetheless an owner of the property. Other indicia of ownership shall include, but is not limited to, the following:

(1) How the parties involved regarded ownership of the property in question;

(2) The intentions of the parties relative to ownership of the property;

(3) Who was responsible for originally purchasing the property;

(4) Who pays any insurance, license or fees required to possess or operate the property;

(5) Who maintains and repairs the property;

(6) Who uses or operates the property;

(7) Who has access to use of the property; and

(8) Who acts as if they have a proprietary interest in the property.

(e) If the owner or co-owner of the property was not the person in possession of the property at the time of the seizure and can be determined from public records of titles, registrations or other recorded documents, the judge shall put the seizing officer under oath and ask the following questions:

(1) What is the officer's probable cause that the owner or co-owner of the property knew that the property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture;

(2) What is the officer's probable cause that the co-owner or co-owners who are not in possession of the property at the time it was seized were co-conspirators to the activity making the property subject to forfeiture; and

(3) Any other questions necessary to determine the legal and factual basis for forfeiture.

(f) If a secured party's interest is sought to be forfeited, the judge shall put the seizing officer under oath and ask the following questions:

(1) What is the officer's probable cause that the secured party is a co-conspirator to the activity making the property subject to forfeiture;

(2) Did the secured party at the time the interest attached, have actual knowledge of the intended illegal use of the property; and

(3) Any other question deemed necessary to determine the legal and factual basis for forfeiture of the secured party's interest.

(g) Upon issuance of the forfeiture warrant, the judge shall retain the affidavit relied upon in support of the warrant and the officer shall, within seven (7) working days, send the warrant, a copy of the affidavit and the notice of seizure to the applicable agency. By signing and issuing the forfeiture warrant, the judge is affirming that the required finding of probable cause necessary to issue the warrant has been made. Upon receipt of the documents, the applicable agency shall notify any other owner, as may be determined from public records of titles, registrations or other recorded documents, or secured party that a forfeiture warrant has been issued. Upon receipt of the notice of seizure and forfeiture warrant and after interviewing any witnesses, the applicable agency shall release the property if there is no legal and factual basis for forfeiture. The seizing agency shall maintain a copy of the notice of seizure for all property seized at its main office and the notices and receipts shall be public records.

(h) If no forfeiture warrant is issued, and the property is not needed for evidence in a criminal proceeding, the seizing agency shall immediately return the property to the owner, as determined from public records of titles, registrations or other recorded documents, or if the owner cannot be determined, to the person in possession of the property at the time of seizure.

(i) Upon the request of any general sessions, circuit, criminal court or popularly elected city judge, the administrative office of the courts shall provide a cassette tape recorder for the purpose of recording the hearing on the application for a forfeiture warrant. As used in this subsection (i), "popularly elected city judge" means a licensed attorney who is elected to the office of city judge pursuant to title 16, chapter 18, part 2.

40-33-210. Hearing.

(a) In order to forfeit any property or any person's interest in the property pursuant to §§ 39-14-307, 47-25-1105, 53-11-451, 55-10-414, 55-50-504(h), 57-3-411, 57-5-409, 57-9-201, 67-4-1020 or 70-6-202, the state shall have the burden to prove by a preponderance of evidence that:

(1) The seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture under the sections set out in this subsection (a); and

(2) The owner or co-owner of the property knew that the property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture, or, in the case of a secured party, that the standards set out in subsection (f) are met.

(b)(1) Failure to carry the burden of proof shall operate as a bar to any forfeiture and the property shall be immediately returned to the claimant.

(2) Notwithstanding that the hearing officer found that the state carried its burden of proof and recommended forfeiture of the property, the administrative head of the applicable agency may, in the interests of justice, order that the seized property be returned to the claimant.

(c)(1) The interest of a co-owner or co-owners who were not in possession of the property at the time it was seized may be forfeited if the co-owners:

(A) Were co-conspirators to the activity making the property subject to forfeiture;

(B) Knew that the property was of a nature making its possession illegal; or

(C) Knew that it was being used in a manner making it subject to forfeiture and consented to the use.

(2) If the state meets its burden of proof as to one (1) co-owner of the seized property but fails to do so as to one (1) or more other co-owners, the property shall be forfeited subject to the interest of the innocent co-owners.

(d) If it is determined that the state has carried the burden of proof with regard to all parties claiming an interest in the property, and the ruling of the administrative head of the applicable agency is adverse to the claimant or claimants, the property shall be sold or disposed of as provided in § 40-33-211.

(e) If the interest of the owner or co-owner of seized property is forfeited pursuant to this section but the interest of the secured party is not, the administrative head of the applicable agency may, at the request of the secured party, return the seized property for disposition in accordance with the security agreement or other contract. If the property is not returned to the secured party, the forfeiture shall be subject to the secured party's interest.

(f) A secured party's interest may be forfeited if, from evidence presented at the hearing, the administrative head of the applicable agency finds that:

(1) The secured party is a co-conspirator to the activity making the property subject to forfeiture; or

(2) The secured party, at the time the interest attached, had actual knowledge of the intended illegal use of the property. A secured party who acquired an interest in the ordinary course of business shall be presumed to have no actual knowledge of an intended illegal use and shall have no duty to inquire as to the record or reputation of a borrower.

(g) The expenses of storage, transportation and other similar costs shall be adjudged as part of the cost of the proceeding in such manner as the administrative head of the applicable agency shall determine.

40-33-211. Property disposition.

(a) The proceeds from all seizures, confiscations and sales made by a state agency pursuant to § 39-14-307, § 47-25-1105, § 53-11-451, § 55-10-414, § 57-3-411, § 57-5-409, § 57-9-201, § 67-4-1020 or § 70-6-202, shall be transmitted to the state treasurer and deposited in the state treasury. All the seizures, confiscations and sales made by county or municipal law enforcement personnel shall be paid to the county trustee or city recorder, respectively, and shall be used exclusively for the benefit of the seizing county or municipality for law enforcement or drug education purposes. All such seizures, confiscations and sales derived from the activities of a judicial district drug task force shall be paid to an expendable trust fund maintained by the county mayor in a county designated by the district attorney general, and shall be used

exclusively in a drug enforcement or drug education program of the district as directed by the board of directors of the judicial district drug task force. If any other provision of law requires that the proceeds from seizures, confiscations and sales made under one (1) of the sections set out in this subsection (a) be deposited in a special fund, the provisions of that other provision shall control.

(b) Funds derived from seizures, confiscations and sales shall not be used to supplement the salaries of any public employee or law enforcement officer. All purchases made from the proceeds shall be made in accordance with existing purchasing statutes, including private acts, which establish purchasing provisions or requirements for the county or municipality.

(c) Notwithstanding the provisions of subsections (a) and (b) to the contrary, the revenue derived from the sale of vehicles forfeited under the authority of § 55-50-504(h) shall be distributed as follows:

(1) The revenue shall be retained by the entity, either the state or local government, which was responsible for the seizure. The revenue shall be used during each fiscal year to compensate the entity for reasonable and direct expenses involved in the confiscation, towing, storage, and sale of the forfeited vehicles. All expenses claimed by the entity shall be subject to audit and review by the comptroller of the treasury for the purpose of determining that expenses claimed by the entity are direct and reasonable;

(2)(A) Any remaining revenue shall be transmitted to the department of mental health and substance abuse services no later than June 30 of each fiscal year. This revenue shall be placed in a special fund to be known as the "alcohol and drug addiction treatment fund" and shall be available for use after July 1, 1998, to pay the cost of alcohol and drug addiction treatment for persons certified for the treatment by order of either general sessions or criminal court judges, pursuant to a plan and procedures developed by the department of mental health and submitted to the general assembly prior to July 1, 1998. Any moneys in the alcohol and drug addiction treatment fund administered by the state treasurer shall be transferred to the alcohol and drug addiction treatment fund administered by the department of mental health on April 8, 1998. The alcohol and drug addiction treatment fund shall be administered pursuant to rules promulgated by the department of mental health and substance abuse services, which shall establish criteria for application of the funds;

(B) The rules promulgated by the department of mental health and substance abuse services shall include application of a portion of the funds up to a total of two hundred thousand dollars ($200,000), and any grants, gifts, contributions, or other appropriations made to supplement the funds for services related to compulsive gambling disorder, to provide prevention, early intervention, assessment or referral, and evaluation services related to compulsive gambling disorder which shall include all of the following:

(i) Establishing an information and referral hotline to provide public education regarding compulsive gambling and to make treatment referrals;

(ii) Coordinating activities, services and gathering data on the prevalence of problems regarding compulsive gambling;

(iii) Training personnel in the prevention of gambling disorders and in the screening and assessment of these disorders;

(iv) Making assessment services available through local treatment

providers; and

(v) Providing development and maintenance of treatment services only to the extent that funds exist to do so and still accomplish the goals intended by creation of the alcohol and drug treatment addiction fund;

(C) Subdivision (c)(2)(B) shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to subdivision (c)(2)(B) unless the proposed improvement for the alcohol and drug treatment fund for fiscal year 2004-2005 is included in the general appropriation act; and

(3)(A) If a court of competent jurisdiction orders a person to operate only a motor vehicle that is equipped with a functioning ignition interlock device and the judge makes a specific finding that the person is indigent, all costs associated with the lease, purchase, installation, removal and maintenance of such device or with any other cost or fee associated with a functioning ignition interlock device required by title 55, chapter 10, part 4, shall be paid exclusively from the interlock assistance fund established pursuant to § 55-10-419;

(B) Notwithstanding any other provision of title 55, chapter 10, no funds from the alcohol and drug addiction treatment fund administered by the department of mental health and substance abuse services shall be used for the lease, purchase, installation, removal or maintenance of such device or for any other cost or fee associated with a functioning ignition interlock device required by title 55, chapter 10, part 4.

(d)(1) An owner of property whose interest is forfeited after being arrested for, or charged with, any felony shall be ineligible to purchase the property from, or to bid at any sale of the property conducted by, the seizing agency or its agent.

(2) An owner whose interest is forfeited after being arrested for, or charged with, any felony, shall also be ineligible to redeem the property from, or to bid at any sale of the property by, a secured party acting pursuant to the agreement, contract or title 47, chapter 9.

(e) Nothing in this section shall be construed as prohibiting a state, county or municipal agency from using a seized vehicle in accordance with § 53-11-201(b).

(f) Notwithstanding the provisions of subsections (a) and (b) to the contrary, the revenue derived from the sale of vehicles forfeited under the authority of § 55-10-414 shall be distributed as follows:

(1) The revenue shall be retained by the entity, either the state or local government, which was responsible for the seizure. The revenue shall be used during each fiscal year to compensate the entity for reasonable and direct expenses involved in the confiscation, towing, storage, and sale of the forfeited vehicles. All expenses claimed by the entity shall be subject to audit and review by the comptroller of the treasury for the purpose of determining that expenses claimed by the entity are direct and reasonable;

(2) Any remaining revenue shall be transmitted to the department of mental health and substance abuse services no later than June 30 of each fiscal year. This revenue shall be placed in a special fund to be known as the "alcohol and drug addiction treatment fund" and shall be available for use after July 1, 1998, to pay the cost of alcohol and drug addiction treatment for persons certified for the treatment by order of either general sessions or criminal court judges, pursuant to a plan and procedures developed by the

department of mental health and submitted to the general assembly prior to July 1, 1998. Any moneys in the alcohol and drug addiction treatment fund administered by the state treasurer shall be transferred to the alcohol and drug addiction treatment fund administered by the department of mental health on April 8, 1998; and

(3)(A) If a court of competent jurisdiction orders a person to operate only a motor vehicle that is equipped with a functioning ignition interlock device and the judge makes a specific finding that the person is indigent, all costs associated with the lease, purchase, installation, removal and maintenance of such device or with any other cost or fee associated with a functioning ignition interlock device required by title 55, chapter 10, part 4, shall be paid exclusively from the interlock assistance fund established pursuant to § 55-10-419;

(B) Notwithstanding any other provision of title 55, chapter 10, part 4, no funds from the alcohol and drug addiction treatment fund administered by the department of mental health and substance abuse services shall be used for the lease, purchase, installation, removal or maintenance of such device or for any other cost or fee associated with a functioning ignition interlock device required by title 55, chapter 10, part 4.

(g)(1) Notwithstanding the provisions of this section, the proceeds from all forfeitures of conveyances or real or personal property used in the commission of an offense under title 39, chapter 17, part 10 shall be transmitted to the general fund, where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the child abuse fund. Moneys from the fund shall be expended to fund activities authorized by § 39-13-530. Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this section, and shall not revert to the general fund at the end of the fiscal year. Any excess revenues or interest earned by the revenues shall not revert at the end of the fiscal year, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from the reserve shall not revert to the general fund at the end of the fiscal year, but shall remain available for expenditure in subsequent fiscal years.

(2) The general assembly shall appropriate, through the general appropriations act, moneys from the child abuse fund to the department of finance and administration for the child abuse fund. The appropriations shall be specifically earmarked for the purposes set out in § 39-13-530.

(h)(1) Notwithstanding this section, the proceeds from all forfeitures of conveyances or real or personal property used in the commission of an offense under title 39, chapter 13, part 5, shall be transmitted to the general fund where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the child abuse fund. Moneys from the fund shall be expended to fund activities authorized by § 39-13-530. Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this section, and shall not revert to the general fund on any June 30. Any excess revenues or interest earned by the revenues shall not revert on any June 30, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from the reserve shall not revert to the general fund on any June 30, but shall remain available for expenditure in subsequent fiscal years.

(2) The general assembly shall appropriate, through the general appropriations act, moneys from the child abuse fund to the department of finance and administration for the child abuse fund. The appropriations shall be specifically earmarked for the purposes set out in § 39-13-530.

40-33-214. Rules.

Any applicable agency authorized to conduct forfeiture hearings pursuant to § 39-14-307, § 47-25-1105, § 53-11-451, § 55-10-414, § 55-50-504(h), § 57-3-411, § 57-5-409, § 57-9-201, § 67-4-1020, or § 70-6-202 may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to supplement and administer this part. However, no such rules shall be inconsistent with this part.

40-34-102. Authority to establish program.

The commissioner of correction and the board of parole are authorized to establish a contract sentencing program, and to promulgate rules and regulations governing it, consistent with this chapter. The rules and regulations shall include eligibility requirements, procedures and the general form and substance of agreements that may be entered into under the program.

40-34-103. Sentence agreements — Notice to officials and victims.

(a) Any prisoner sentenced to a period of imprisonment under supervision of the department of correction and who is otherwise eligible to participate in the contract sentencing program may enter into an agreement with the department and the board of parole for a sentence agreement. The department and the board may establish objectives or programs for each eligible prisoner who wishes to enter into an agreement under the contract sentencing program.

(b) The sentence agreement may include the promise of the prisoner to complete certain enumerated objectives, or certain programs offered for prisoners by the department, in return for:

(1) The promise of the board to parole the prisoner on a definite, specified named date or a specific date in relation to the release eligibility date of the eligible prisoner; and

(2) The promise of the department to provide the means by which the prisoner may have access to the programs and services necessary for the prisoner to fulfill the prisoner's part of the agreement.

(c) Notwithstanding any other law to the contrary, if an inmate has served a minimum of ten (10) consecutive years in continuous confinement in correctional facilities and has entered into a sentencing agreement, there shall be no statutory restriction on the minimum amount of time that the inmate must serve before being paroled pursuant to the terms of the sentencing agreement. No offender who has been convicted as an habitual offender or has been convicted of a crime against the person, no offender who has been convicted of first degree murder, and no offender who has been convicted of a sexual offense as contained in §§ 39-13-501 — 39-13-506, 39-13-507 [repealed], 39-13-101 and 39-12-101 shall be eligible to participate in the contract sentencing program authorized by this subsection (c).

(d) No agreement entered into under this chapter shall be legally binding or enforceable by any of the parties to the agreement.

(e) The commissioner shall notify the district attorney general who pros-

ecuted the case, or the district attorney general's successor, the trial judge in whose court the conviction occurred, or the trial judge's successor, and the victim or the victim's next of kin prior to the execution of a sentencing agreement under subsection (c).

40-34-105. Establishment of alternative objectives of programs — Removal of prisoner from program.

(a) If the objectives of the agreement cannot be met by the department of correction, or if programs or services referred to in the agreement are not available, the department and the board of parole may establish alternative objectives or programs for the prisoner.

(b) If the prisoner cannot complete the prisoner's part of the agreement for disciplinary reasons, the commissioner of correction, or the commissioner's designee, may, for disciplinary purposes or for the safety of the institution, remove the prisoner from the contract sentencing program, in which event the agreement shall be void; provided, that a new agreement may later be entered into with the prisoner in the discretion of the commissioner and the board.

40-34-107. Report to state and local government committees.

(a) The commissioner of correction shall prepare and transmit monthly a report to the state and local government committee of the senate and the state government committee of the house of representatives. The report shall provide details about each sentencing contract entered into after December 11, 1985, pursuant to the authority granted in §§ 40-28-115, 40-28-116, 40-34-103 and 40-35-501. The report shall not allow the identification of individual persons, but shall provide the following for each person released:

(1) The offense and length of sentence originally received;

(2) The amount of time served or to be served under the terms of the contract;

(3) The amount of sentence reduction provided if the contract is fulfilled; and

(4) The obligations of the inmate both prior to and after release.

(b) The commissioner shall also report monthly to the committees on the following:

(1) The number of sentencing contracts revoked since the last reporting period and the reasons for the revocations;

(2) The number of sentencing contracts completed successfully since the last reporting period; and

(3) Any other information the committees may request.

40-35-121. Criminal gang offenses — Enhanced punishment — Procedure.

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

(1) "Criminal gang" means a formal or informal ongoing organization, association or group consisting of three (3) or more persons that has:

(A) As one (1) of its activities the commission of criminal acts; and

(B) Two (2) or more members who, individually or collectively, engage in or have engaged in a pattern of criminal gang activity;

(2) "Criminal gang member" is a person who is a member of a criminal gang, as defined in subdivision (a)(1), who meets two (2) or more of the

following criteria:

(A) Admits to criminal gang involvement;

(B) Is identified as a criminal gang member by a parent or guardian;

(C) Is identified as a criminal gang member by a documented reliable informant;

(D) Resides in or frequents a particular criminal gang's area, adopts their style or dress, their use of hand signs or their tattoos and associates with known criminal gang members;

(E) Is identified as a criminal gang member by an informant of previously untested reliability and the identification is corroborated by independent information;

(F) Has been arrested more than once in the company of identified criminal gang members for offenses that are consistent with usual criminal gang activity; or

(G) Is identified as a criminal gang member by physical evidence such as photographs or other documentation;

(3) "Criminal gang offense" means:

(A) A criminal offense committed prior to July 1, 2013 that:

(i) During the perpetration of which the defendant knowingly causes, or threatens to cause, death or bodily injury to another person or persons and specifically includes rape of a child, aggravated rape and rape; or

(ii) Results, or was intended to result, in the defendant's receiving income, benefit, property, money or anything of value from the commission of any aggravated burglary, or from the illegal sale, delivery, or manufacture of a controlled substance, controlled substance analogue, or firearm; or

(B) The commission or attempted commission, facilitation of, solicitation of, or conspiracy to commit any of the following offenses on or after July 1, 2013:

(i) First degree murder, as defined in § 39-13-202;

(ii) Second degree murder, as defined in § 39-13-210;

(iii) Voluntary manslaughter, as defined in § 39-13-211;

(iv) Assault, as defined in § 39-13-101;

(v) Aggravated assault, as defined in § 39-13-102;

(vi) Kidnapping, as defined in § 39-13-303;

(vii) Aggravated kidnapping, as defined in § 39-13-304;

(viii) Especially aggravated kidnapping, as defined in § 39-13-305;

(ix) Robbery, as defined in § 39-13-401;

(x) Aggravated robbery, as defined in § 39-13-402;

(xi) Especially aggravated robbery, as defined in § 39-13-403;

(xii) Carjacking, as defined in § 39-13-404;

(xiii) Rape, as defined in § 39-13-503;

(xiv) Aggravated rape, as defined in § 39-13-502;

(xv) Rape of a child, as defined in § 39-13-522;

(xvi) Aggravated burglary, as defined in § 39-14-403;

(xvii) Especially aggravated burglary, as defined in § 39-14-404;

(xviii) Aggravated criminal trespass, as defined in § 39-14-406;

(xix) Coercion of witness, as defined in § 39-16-507;

(xx) Retaliation for past action, as defined in § 39-16-510;

(xxi) Riot, as defined in § 39-17-302;

(xxii) Aggravated riot, as defined in § 39-17-303;

(xxiii) Inciting to riot, as defined in § 39-17-304;

(xxiv) The illegal sale, delivery or manufacture of a controlled substance or controlled substance analogue, as defined in §§ 39-17-417 and 39-17-454;

(xxv) Possession of a controlled substance or controlled substance analogue with intent to sell, deliver, or manufacture, as defined in § 39-17-417(a)(4) and § 39-17-454;

(xxvi) Unlawful carrying or possession of a weapon, as defined in § 39-17-1307;

(xxvii) Trafficking for commercial sex acts, as defined in § 39-13-309.

(4)(A) "Pattern of criminal gang activity" means prior convictions for the commission or attempted commission of, facilitation of, solicitation of, or conspiracy to commit:

(i) Two (2) or more criminal gang offenses that are classified as felonies; or

(ii) Three (3) or more criminal gang offenses that are classified as misdemeanors; or

(iii) One (1) or more criminal gang offenses that are classified as felonies and two (2) or more criminal gang offenses that are classified as misdemeanors; and

(iv) The criminal gang offenses are committed on separate occasions; and

(v) The criminal gang offenses are committed within a five-year period;

(B)(i) As used in this subsection (a), "prior conviction" means a criminal gang offense for which a criminal gang member was convicted prior to the commission of the instant criminal gang offense by the defendant and includes convictions occurring prior to July 1, 1997;

(ii) "Prior conviction" includes convictions under the laws of any other state, government or country that, if committed in this state, would have constituted a criminal gang offense. In the event that a conviction from a jurisdiction other than Tennessee is not specifically named the same as a criminal gang offense, the elements of the offense in the other jurisdiction shall be used by the Tennessee court to determine if the offense is a criminal gang offense;

(iii) Convictions for multiple criminal gang offenses committed as part of a single course of conduct within twenty-four (24) hours are not committed on "separate occasions." However, acts that constitute criminal gang offenses under subdivision (a)(3)(A) shall not be construed to be a single course of conduct.

(b) A criminal gang offense committed by a defendant who was a criminal gang member at the time of the offense shall be punished one (1) classification higher than the classification established by the specific statute creating the offense committed.

(c) A criminal gang offense committed by a defendant who was not a criminal gang member at the time of the offense but who committed the offense for the purpose of and with the intent to fulfill an initiation or other requirement for joining a criminal gang as defined in subdivision (a)(1) shall be punished one (1) classification higher than the classification established by the

specific statute creating the offense committed.

(d) If the criminal gang offense subject to enhancement under subsection (b) or (c) is a Class A felony, the presumptive sentence for the offense shall be the maximum sentence within the range from which the defendant is to be sentenced.

(e) A criminal gang offense committed by a defendant who was a criminal gang member at the time of the offense shall be punished two (2) classifications higher than the classification established by the specific statute creating the offense committed if the criminal gang member was also a leader or organizer of the criminal gang at the time the offense was committed.

(f) If the criminal gang offense subject to enhancement under subsection (e) is a Class A or B felony, the criminal gang member shall be sentenced as a Class A felon and the presumptive sentence for the offense shall be the maximum sentence within the range from which the defendant is to be sentenced.

(g) If the defendant is charged with a criminal gang offense and the district attorney general intends to seek enhancement of the punishment under subsection (b), (c) or (e), the indictment, in a separate count, shall specify, charge and give notice of the subsection under which enhancement is alleged applicable and of the required prior convictions constituting the gang's pattern of criminal gang activity.

(h)(1) If the defendant is convicted of the underlying criminal gang offense, the jury shall then separately consider whether the defendant was at the time of the offense:

(A) A criminal gang member;

(B) A criminal gang member and a leader or organizer of the gang; or

(C) Not a criminal gang member but committed the offense for the purpose of joining a criminal gang.

(2) If the jury convicts the defendant under subdivision (h)(1)(A), (h)(1)(B) or (h)(1)(C), the court shall pronounce judgment and sentence the defendant as provided in this section.

(i) For purposes of establishing a "pattern of criminal gang activity" the following offenses may be considered:

(1) Criminal gang offenses, as defined by subdivision (a)(3)(A), committed prior to July 1, 2013; and

(2) Criminal gang offenses, as defined by subdivision (a)(3)(B), committed on or after July 1, 2013.

40-35-216. First hours served hour for hour.

Notwithstanding any other provision of law or judgment of conviction to the contrary, the first forty-eight (48) hours of any sentence that a defendant is permitted to serve on nonconsecutive days, or in any manner other than continuous confinement or day for day, shall be served hour for hour. This section shall only apply to sentences imposed pursuant to § 55-10-402.

40-35-303. Probation — Eligibility — Terms.

(a) A defendant shall be eligible for probation under this chapter if the sentence actually imposed upon the defendant is ten (10) years or less; however, no defendant shall be eligible for probation under this chapter if

convicted of a violation of § 39-13-304, § 39-13-402, § 39-13-504, § 39-13-532, § 39-15-402, § 39-17-417(b) or (i), § 39-17-1003, § 39-17-1004 or § 39-17-1005. A defendant shall also be eligible for probation pursuant to § 40-36-106(e)(3).

(b) A court shall have authority to impose probation as part of its sentencing determination at the conclusion of the sentencing hearing. There shall be no petition for probation filed by the defendant and probation shall be automatically considered by the court as a sentencing alternative for eligible defendants; provided, that nothing in this chapter shall be construed as altering any provision of present statutory or case law requiring that the burden of establishing suitability for probation rests with the defendant.

(c)(1) If the court determines that a period of probation is appropriate, the court shall sentence the defendant to a specific sentence but shall suspend the execution of all or part of the sentence and place the defendant on supervised or unsupervised probation either immediately or after a period of confinement for a period of time no less than the minimum sentence allowed under the classification and up to and including the statutory maximum time for the class of the conviction offense.

(2)(A) Except as provided in subdivision (c)(2)(B), if probation is to be granted to a defendant convicted of any of the misdemeanor offenses set out in subdivision (c)(2)(C), the provisions of subdivision (c)(1) shall govern the length of the term of probation.

(B) Notwithstanding the provisions of subdivision (c)(2)(A), the judge may sentence a defendant convicted of any of the misdemeanor offenses set out in subdivision (c)(2)(C) to a period of probation not to exceed two (2) years, if the judge finds that the period of probation is necessary:

(i) For the defendant to complete any appropriate treatment program or programs, including, but not limited to, a sanctioned batterer's intervention program, an anger management program or any court-ordered drug or alcohol treatment program;

(ii) To make restitution to the victim of the offense;

(iii) To otherwise effect a change in the behavior of the defendant, including, but not limited to, imposing any of the conditions set forth in subsection (d); or

(iv) To protect and better ensure the safety of the victim or any other member of the victim's family or household, as set out in subsections (m) and (n).

(C) The offenses to which this subdivision (c)(2) applies are:

(i) Domestic assault, as prohibited by § 39-13-111;

(ii) Assault as prohibited by § 39-13-101, vandalism as prohibited by § 39-14-408, or false imprisonment as prohibited by § 39-13-302, where the victim of the offense is a person identified in § 36-3-601(5);

(iii) Violation of a protective order, as prohibited by § 36-3-612; and

(iv) Stalking, as prohibited by § 39-17-315.

(d) Whenever a court sentences an offender to supervised probation, the court shall specify the terms of the supervision and may require the offender to comply with certain conditions that may include, but are not limited to:

(1) Meet the offender's family responsibilities;

(2) Devote the offender to a specific employment or occupation;

(3) Perform, without compensation, services in the community for charitable or governmental agencies;

(4) Undergo available medical or psychiatric treatment and enter and remain in a specified institution whenever required for that purpose by voluntary self-admission to the institution pursuant to § 33-6-201;

(5) Pursue a prescribed secular course of study or vocational training;

(6) Refrain from possessing a firearm or other dangerous weapon;

(7) Remain within prescribed geographical boundaries and notify the court or the probation officer of any change in the offender's address or employment;

(8) Submit to supervision by an appropriate agency or person and report as directed by the court;

(9) Satisfy any other conditions reasonably related to the purpose of the offender's sentence and not unduly restrictive of the offender's liberty or incompatible with the offender's freedom of conscience, or otherwise prohibited by this chapter;

(10) Make appropriate and reasonable restitution to the victim or the family of the victim involved pursuant to § 40-35-304; or

(11)(A) Undergo an alcohol and drug assessment or treatment, or both an assessment and treatment, if the court deems it appropriate and licensed treatment service is available;

(B) Unless the court makes a specific determination that the person is indigent, the expense of the assessment and treatment shall be the responsibility of the person receiving it. If the court finds that the person is indigent under the same standards as used in § 55-10-402(h)(2), the expense or some portion of the expense may be paid from the alcohol and drug addiction treatment fund provided in § 40-33-211, pursuant to a plan and procedures developed by the department of mental health and substance abuse services.

(e) Probation shall be granted, if at all, at the time of the sentencing hearing except for sentences served in a local jail or workhouse, or except during the time a defendant sentenced to the department of correction is being housed in a local jail or workhouse awaiting transfer to the department as provided in § 40-35-212(d).

(f) The trial judge shall not have the authority to require that the defendant either secure or pay the costs accrued in the case at the instance of the state as a condition of conducting a hearing on the defendant's request for suspension of sentence and probation.

(g) The powers granted in this section shall be exercised by the judge of the trial court presiding at the trial of original conviction or by any successor judge holding court in that jurisdiction.

(h) No probationer shall be allowed to leave the jurisdiction of the probationer's probation officer without the express permission of the trial judge.

(i)(1) In misdemeanor cases, as a condition precedent, the defendant must pay not less than ten dollars ($10.00) nor more than forty-five dollars ($45.00) per month as part payment of expenses incurred by the agency, department, program, group or association in supervising the defendant. The payment shall be made to the clerk of the court in which proceedings against the defendant were pending, to be sent to the agency, department, program, group or association responsible for the supervision of the defendant, unless the defendant is found to be indigent and without anticipated future funds with which to make the payment. The clerk of the court collecting the payment is permitted to retain five percent (5%) of the

proceeds collected for the handling and receiving of the proceeds. The court may order the payments to be made directly to the agency, department, program, group or association responsible for the supervision of the defendant in lieu of making the payments to the clerk of the court.

(2) In addition to the costs imposed by subdivision (i)(1), the court may require the defendant to pay any or all costs for the defendant's supervision, counseling or treatment in a specified manner, based on the defendant's ability to pay.

(3) Willful failure to pay the supervision fee imposed by this subsection (i) to the supervising entity shall be grounds for revocation of probation and the supervising entity shall report all instances of nonpayment to the sentencing court.

(j) The provisions of this section relative to the payment of a supervision fee shall not apply to any person subject to the provisions of chapter 28, part 2 of this title.

(k) The commissioner of correction, sheriff, warden, superintendent or other official having authority and responsibility for convicted defendants may contract with any appropriate public or private agency not under the commissioner's, sheriff's, warden's, superintendent's or other official's control for custody, care, subsistence, education, treatment or training of the defendants. The cost of the contract services shall be paid by the appropriate state or local entity to the department or the local jail or workhouse.

(*l*) A probation officer shall make reasonable and diligent effort to notify a victim of any felony that involved violence or the threat of violence that the defendant convicted of that offense is statutorily eligible for probation and that a hearing will be held to determine whether the defendant should be granted probation. The notice shall be given at least three (3) days prior to the hearing. If the victim is less than eighteen (18) years of age or is otherwise unavailable, the probation officer shall make all reasonable and diligent efforts to so notify the family, if any, of the victim.

(m) In determining whether a person convicted of the offense of stalking, aggravated stalking or especially aggravated stalking, as defined in § 39-17-315, or any criminal offense defined in title 39, chapter 13, in which the victim falls within the definition set forth in § 36-3-601(5), should be granted probation, the court shall consider the safety and protection of the victim of the offense and of any other member of the victim's family or household.

(n) If the court grants probation to a person convicted of an offense specified in subsection (m), it may condition the probation on compliance with one (1) or more orders of the court, including, but not limited to:

(1) Enjoining the perpetrator from threatening to commit or committing acts of violence against the victim or other household members;

(2) Prohibiting the perpetrator from harassing, annoying, telephoning, contacting or otherwise communicating, either directly or indirectly, with the victim;

(3) Requiring the perpetrator to stay away from the residence, school, place of employment or a specified place frequented regularly by the victim and by any designated family or household member;

(4) Prohibiting the perpetrator from possessing or consuming alcohol, controlled substances or controlled substance analogues; and

(5) Prohibiting the perpetrator from using or possessing a firearm or any other specified weapon and requiring the perpetrator to surrender and

forfeit any weapon currently possessed.

(o)(1) Probation officers meeting the requirements of this subsection (o) shall have the authority to serve warrants and make arrests solely relating to their duties as probation officers. A probation officer shall also have the authority to bring probationers before the court when directed by the court to do so. While acting in the performance of their duties as probation officers, the probation officers shall have the same authority as a peace officer while serving warrants and making arrests that relate solely to their duties as probation officers.

(2) The provisions of subdivision (o)(1) shall only apply to a probation officer:

(A) In any county having a charter form of government with a population of less than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(B) Employed by a probation office operated by a governmental entity;

(C) Who has completed training equal to the training required by the standards of the peace officer's standards and training commission (POST); and

(D) Who successfully completes at least forty (40) hours of appropriate in-service training each year.

(3) Because a probation officer meets the standards and requirements of subdivision (o)(2) does not mean the officer is eligible for the pay supplement for state certified officers authorized in § 38-8-111.

(4) This subsection (o) shall not apply to a state probation officer employed by the department of correction and paid by the state of Tennessee.

(p)(1) If a defendant is granted probation pursuant to this section and is released to the department charged by law with the supervision of probationers, the department may contract with an approved private probation provider to furnish probation supervision and services to such defendant if:

(A) The defendant's conviction offense was for a Class E felony; and

(B) The caseloads of state probation officers where the defendant is being supervised are high, resulting in the likelihood that the probationer may receive increased supervision and services from a private probation provider; or

(C) The private probation provider offers specialized services, treatment or training that would be beneficial to a probationer but would not be available if the probationer is supervised by the department.

(2) To contract with the department for the supervision of felons described in subdivision (p)(1)(A), a private probation provider shall:

(A) Meet all qualifications established by the private probation council for entities providing misdemeanor probation services;

(B) Keep all records in an electronic format that is accessible upon demand by an approved state agency;

(C) Maintain professional liability insurance of not less than one million dollars ($1,000,000) in addition to a general liability policy; and

(D)(i) Have been a private provider of misdemeanor probation services for courts exercising criminal jurisdiction in this state for at least fifteen (15) years; or

(ii) Have been a private provider of misdemeanor probation services for courts exercising criminal jurisdiction in this state for at least two (2) years and a state probation officer for at least thirteen (13) years.

(3)(A) A private probation provider who meets the requirements of subdivision (p)(2) and who wants to contract with the department to provide probation services to felons described in subdivision (p)(1)(A), may register with the department and the private probation council.

(B) At the time of registration, the private provider shall submit to the department and council:

(i) Such documentation as is necessary to demonstrate that it meets the requirements of subdivision (p)(2); and

(ii) A specific plan demonstrating how the use of such provider to supervise and provide services to felons described in subdivision (p)(1)(A), who have been granted probation will further the overall goal of reducing the recidivism rate of probationers. Such plan shall also contain statistics for misdemeanor probation services provided by the private provider for the previous ten (10) years. At a minimum, the statistics contained in the plan shall contain the same information required to be maintained by subdivision (p)(5).

(C) If the documentation and recidivism rate reduction plan presented by the private provider demonstrates that it meets the requirements of subdivision (p)(2), the department and council shall approve the private provider and place such provider on a list of companies eligible to contract with the department pursuant to this subsection (p).

(4) A supervision contract authorized by this section shall be between the department and the private provider and the department. Once the court grants a person's petition for probation, the department shall be the sole entity that determines who supervises the probationer. No probationer meeting the criteria set out in subdivision (p)(1)(A) shall be placed under the supervision of or supervised by a private provider that has not contracted with the department and is not on the list of companies approved by the department and the council.

(5) Any private provider who contracts with the department pursuant to this subsection (p) shall maintain statistics on the probationers supervised pursuant to this subsection (p) and shall submit a quarterly report of such statistics to the person or agency designated by the department. The statistics shall include, but not be limited to:

(A) The number of felony probationers described in subdivision (p)(1)(A) the private provider has contracted to supervise;

(B) The style of the case which resulted in the defendant being placed on probation;

(C) The number of felons described in subdivision (p)(1)(A), whose probation was revoked prior to the end of supervision; and

(D) The recidivism rate of the felony probationers supervision by the private provider under a contract authorized by this subsection (p).

(6)(A) A private provider contracting to supervise felons described in subdivision (p)(1)(A) may charge a supervision fee not to exceed sixty dollars ($60.00) per month. However, if a probationer cannot afford all or part of the supervision fee, the probationer may go before the court placing the defendant on probation and petition that it be waived or reduced. For good cause shown, the court may waive or reduce the supervision fee in appropriate cases.

(B) Willful nonpayment of the supervision fee to the private probation provider shall be grounds for revocation and the provider shall report instances of nonpayment to the department in the manner specified in the

contract.

(7) No employee of a private provider of probation services shall supervise a felon described in subdivision (p)(1)(A) unless the employee has a bachelor of science degree from an accredited college or university or at least two (2) years of related work experience.

(8) This subsection (p) shall not apply to offenders who are governed by the Interstate Compact for Supervision of Adult Offenders, codified in § 40-28-401. The supervision of those offenders shall be controlled by the compact.

40-35-314. Confinement in local jail or workhouse — Eligibility — Jurisdiction of sentencing court — Transfer for violation of jail rules.

(a) If confinement is directed, the court shall designate the place of confinement as a local jail or workhouse if required pursuant to § 40-35-104(b) or, if the sentence is eight (8) years or less and combined with periodic or split confinement not to exceed one (1) year, the court shall designate the place of confinement as a local jail or workhouse. If confinement in a local jail or workhouse is not mandated by § 40-35-104(b), § 40-35-306 or § 40-35-307, all convicted felons sentenced after November 1, 1989, to continuous confinement for a period of one (1) year or more shall be sentenced to the department of correction. After November 1, 1989, if a court sentences or has sentenced a defendant to a local jail or workhouse when the court was not authorized to do so by this chapter, it shall be deemed that the sentence was a sentence to the department, and the commissioner of correction shall have the authority to take the defendant into the custody of the department.

(b)(1) When imposing the sentence to the local jail or workhouse, the defendant is eligible for release classification status as provided in this chapter; however, the court may specify an earlier percentage of eligibility for all programs except parole. This percentage shall be expressed in one (1) of the following numeric percentages: zero percent (0%), ten percent (10%), twenty percent (20%), thirty percent (30%), forty percent (40%) or fifty percent (50%); provided, that the percentage shall be no higher than the release eligibility percentage under § 40-35-501.

(2) In the event the judgment does not specify a percentage as provided in subdivision (b)(1), the defendant shall be eligible for the programs, except parole, six (6) months prior to release eligibility date under § 40-35-501.

(c) The court shall retain full jurisdiction over the defendant during the term of the sentence and may reduce or modify the sentence or may place the defendant on probation supervision where otherwise eligible. Following the first application, applications to reduce or to alter the manner of the service of the sentence may be made at no less than two (2) month intervals.

(d) If a defendant serving a felony sentence violates any condition or rule of the local jail or workhouse, the court shall have full authority to sentence the defendant to continuous confinement in the department of correction for a period not to exceed the remainder of the full sentence originally imposed.

(e) If a defendant serving a felony sentence in a local jail or workhouse develops medical problems that the local jail or workhouse is not equipped to treat, the court shall have full authority to transfer the defendant to the department of correction. If transfer is ordered under this subsection (e), the court shall retain full jurisdiction over the defendant to reduce or modify the

sentence.

(f) The provisions of subsection (b) also apply to defendants sentenced to the department during the time the defendants are being housed in a local jail or workhouse awaiting transfer to the department as provided in § 40-35-212(d).

(g)(1) Any defendant convicted of a felony and sentenced to serve such sentence in a local jail or workhouse pursuant to this section, § 40-35-104(b), § 40-35-306, or § 40-35-307 shall be ordered, as a part of the sentence, to participate in any work program operated by the jail or workhouse in which the defendant is incarcerated.

(2) The sheriff may opt the county out of the requirements of this subsection (g) if the sheriff's local jail or workhouse does not operate a work program or, if it does operate such a program, the increased number of inmates participating would exceed the sheriff's ability to provide security, transportation, or requested work projects.

(3) The sheriff may excuse any one (1) or more individual inmates sentenced to the work program if, in the judgment of the sheriff:

(A) The inmate would pose a security or escape risk to the public or other inmates if allowed to participate in a work program outside the facility;

(B) The inmate has physical or mental health conditions that would preclude the inmate from successfully participating in a work program or would endanger others if allowed to participate; or

(C) The county cannot afford to provide the security or transportation for one (1) or more inmates sentenced to the work program pursuant to this section.

(4) Any inmate who knowingly refuses to participate in a work program after being sentenced to do so pursuant to this section shall be considered to have violated a rule of the local jail or workhouse and the court may act upon such violation as provided in subsection (d).

(5) The liability of any county whose local jail or workhouse operates a work program shall not be increased or changed solely because the work program uses inmates sentenced to the program pursuant to this subsection (g).

40-35-501. Release eligibility status — Calculations.

(a)(1) A felony sentence to the department of correction or to a local jail or workhouse shall be served according to this chapter. An inmate shall not be eligible for parole until reaching the inmate's release eligibility date; provided, that nothing in this section shall be construed as prohibiting the offender, in the discretion of the commissioner or sheriff, from participating in work crews that are under direct guard supervision.

(2) Except for inmates who receive sentences of imprisonment for life without possibility of parole, only inmates with felony sentences of more than two (2) years or consecutive felony sentences equaling a term greater than two (2) years shall be eligible for parole consideration.

(3) Notwithstanding any other provision of law, inmates with felony sentences of two (2) years or less shall have the remainder of their original sentence suspended upon reaching their release eligibility date. The release shall not occur for sentences of two (2) years or less when the sentences are part of a consecutive sentence whose term is greater than two (2) years. The

department of correction shall notify the district attorney general and the appropriate sheriff, jail administrator, workhouse superintendent or warden of the release eligibility date of all felons with sentences of two (2) years or less in the institution.

(4) No inmate shall be released under this section until at least ten (10) days after receipt of all sentencing documents by the department and ten (10) days after the department has sent notice of the release eligibility dates to the district attorney general and the appropriate sheriff, jail administrator, workhouse superintendent or warden.

(5) Suspension of sentence in this manner shall be to probation supervision under terms and conditions established by the department.

(6)(A) The district attorney general or the appropriate sheriff, jail administrator, workhouse superintendent or warden acting through the district attorney general may file a petition with the sentencing court requesting denial of suspension of sentence based on disciplinary violations during time served in the institution. The district attorney general may file a petition with the sentencing court requesting denial of suspension of sentence based on the offender's threat to public safety as indicated by a pattern of prior violent or drug-related criminal behavior evidenced by convictions for at least two (2) crimes against the person or two (2) drug offenses under § 39-17-417. The district attorney general shall promptly send a copy of any petition filed under this subsection (a) to the appropriate sheriff, jail administrator, workhouse superintendent, warden and defense attorney.

(B) The court may deny suspension for the remainder of the sentence or any portion of the sentence after a hearing to determine the merits of the petition. The hearing shall be held within twenty (20) days of filing or the petition is deemed to be denied and may be continued by the court for reasonable cause. The inmate may petition the court for review of the denial of probation after sixty (60) days have elapsed since a hearing denying release under this subsection (a). There shall be no appeal from a court order or judgment under this subsection (a). Upon denial of suspension of sentence the clerk of the court shall promptly notify the department.

(7)(A) The court is authorized to revoke probation pursuant to the revocation proceedings of § 40-35-311. If the sentencing court revokes probation, the sentencing court may cause the defendant to commence the execution of the judgment as originally entered, less any credit for time served, plus any sentence credits earned and retained by the inmate. Any defendant whose probation has been revoked pursuant to this subsection (a) is not eligible for release on the same sentence pursuant to the terms of subdivision (a)(3).

(B) Nothing in subdivision (a)(7)(A) prohibits the sentencing court from:

(i) Suspending the original sentence at any time prior to its expiration, notwithstanding whether the offender is incarcerated in a local jail or a prison; or

(ii) Resentencing the defendant for the remainder of the unexpired sentence to any community-based alternative to incarceration authorized by chapter 36 of this title; provided, that the violation of probation is a technical one and does not involve the commission of a new offense.

(b) Release eligibility for each defendant sentenced as an especially miti-

gated offender shall occur after service of either twenty percent (20%) or thirty percent (30%) of the actual sentence imposed, less sentence credits earned and retained by the defendant. The percentage of service shall be stated on the judgment order. If the order is silent, release eligibility shall occur after service of twenty percent (20%) of the actual sentence imposed.

(c) Release eligibility for each defendant sentenced as a Range I standard offender shall occur after service of thirty percent (30%) of the actual sentence imposed less sentence credits earned and retained by the defendant.

(d) Release eligibility for each defendant sentenced as a Range II multiple offender shall occur after service of thirty-five percent (35%) of the actual sentence imposed less sentence credits earned and retained by the defendant.

(e) Release eligibility for each defendant sentenced as a Range III persistent offender shall occur after service of forty-five percent (45%) of the actual sentence imposed less sentence credits earned and retained by the defendant.

(f) Release eligibility for each defendant sentenced as a career offender shall occur after service of sixty percent (60%) of the actual sentence imposed less sentence credits earned and retained by the defendant.

(g) There shall be no release eligibility for a defendant receiving a sentence of imprisonment for life without parole as a repeat violent offender.

(h)(1) Release eligibility for each defendant receiving a sentence of imprisonment for life for first degree murder shall occur after service of sixty percent (60%) of sixty (60) years less sentence credits earned and retained by the defendant, but in no event shall a defendant sentenced to imprisonment for life be eligible for parole until the defendant has served a minimum of twenty-five (25) full calendar years of the sentence, notwithstanding the governor's power to reduce prison overcrowding pursuant to title 41, chapter 1, part 5, any sentence reduction credits authorized by § 41-21-236 or any other provision of law relating to sentence credits. A defendant receiving a sentence of imprisonment for life for first degree murder shall be entitled to earn and retain sentence credits, but the credits shall not operate to make the defendant eligible for release prior to the service of twenty-five (25) full calendar years.

(2) There shall be no release eligibility for a defendant receiving a sentence of imprisonment for life without possibility of parole for first degree murder.

(i)(1) There shall be no release eligibility for a person committing an offense, on or after July 1, 1995, that is enumerated in subdivision (i)(2). The person shall serve one hundred percent (100%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236 or any other provision of law, shall operate to reduce the sentence imposed by the court by more than fifteen percent (15%).

(2) The offenses to which subdivision (i)(1) applies are:

(A) Murder in the first degree;

(B) Murder in the second degree;

(C) Especially aggravated kidnapping;

(D) Aggravated kidnapping;

(E) Especially aggravated robbery;

(F) Aggravated rape;

(G) Rape;

(H) Aggravated sexual battery;

(I) Rape of a child;

(J) Aggravated arson;

(K) Aggravated child abuse;

(L) Aggravated rape of a child;

(M) Sexual exploitation of a minor involving more than one hundred (100) images;

(N) Aggravated sexual exploitation of a minor involving more than twenty-five (25) images; or

(O) Especially aggravated sexual exploitation of a minor.

(3) Nothing in this subsection (i) shall be construed as affecting, amending or altering § 39-13-523, which requires child sexual predators, aggravated rapists, child rapists and multiple rapists to serve the entire sentence imposed by the court undiminished by any sentence reduction credits.

(j) There shall be no release eligibility for a person committing a violation of § 39-17-1324(a) or (b) on or after January 1, 2008, until the person has served one hundred percent (100%) of the minimum mandatory sentence established in § 39-17-1324(a) or (b) and imposed by the court less sentence credits earned and retained; however, no sentence reduction credits authorized by § 41-21-236 or any other law shall operate to reduce the mandatory minimum sentence imposed by the court by more than fifteen percent (15%).

(k)(1) There shall be no release eligibility for a person committing aggravated robbery, as defined in § 39-13-402(a)(1), on or after July 1, 2010, until the person has served eighty-five percent (85%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce below seventy percent (70%) the percentage of sentence imposed by the court such person must serve before becoming release eligible.

(2) There shall be no release eligibility for a person committing aggravated robbery, as defined in § 39-13-402, on or after January 1, 2008, if the person has at least one (1) prior conviction for aggravated robbery, as defined in § 39-13-402, or especially aggravated robbery, as defined in § 39-13-403. The person shall serve one hundred percent (100%) of the sentence imposed by the court less sentence credits earned and retained; however, no sentence reduction credits authorized by § 41-21-236 or any other provision of law shall operate to reduce the sentence imposed by the court by more than fifteen percent (15%).

(3)(A) "Prior conviction" means, for purposes of this section, unless the context otherwise requires, that the person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of an aggravated robbery or especially aggravated robbery prior to or at the time of committing an aggravated robbery on or after January 1, 2008.

(B) "Prior conviction" includes convictions under the laws of any other state, government or country that, if committed in this state, would constitute the offense of aggravated robbery. If an offense involving a robbery accomplished by use of a firearm in a jurisdiction other than this state is not identified as aggravated robbery or especially aggravated robbery in this state, it shall be considered a prior conviction if the elements of the felony are the same as the elements for aggravated robbery or especially aggravated robbery.

(4) "Separate period of incarceration or supervision" includes a sentence to any of the sentencing alternatives set out in § 40-35-104(c)(3)-(9). An aggravated robbery shall be considered as having been committed after a separate period of incarceration or supervision if the aggravated robbery is committed while the person was:

(A) On probation, parole or community correction supervision for an aggravated robbery or especially aggravated robbery;

(B) Incarcerated for an aggravated robbery or especially aggravated robbery;

(C) Assigned to a program whereby the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, educational release, restitution release or medical furlough for an aggravated robbery or especially aggravated robbery; or

(D) On escape status from any correctional institution when incarcerated for an aggravated robbery or especially aggravated robbery.

(5) There shall be no release eligibility for a person committing attempted first degree murder as defined in § 39-13-202 where the victim suffers serious bodily injury as defined in § 39-11-106, on or after July 1, 2013, until the person has served eighty-five percent (85%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce below seventy-five percent (75%) the percentage of sentence imposed by the court such person must serve before becoming release eligible.

(6) There shall be no release eligibility for a person committing aggravated child neglect or endangerment as defined in § 39-15-402, on or after July 1, 2013, until the person has served seventy percent (70%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce below fifty-five percent (55%) the percentage of sentence imposed by the court such person must serve before becoming release eligible.

(7) There shall be no release eligibility for a person committing aggravated assault as defined in § 39-13-102, that results in death of another, on or after July 1, 2013, until the person has served seventy-five percent (75%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce below sixty percent (60%) the percentage of sentence imposed by the court such person must serve before becoming release eligible.

(*l*) The release eligibility date provided for in this section is separately calculated for each offense for which a defendant is convicted. For consecutive sentences, the periods of ineligibility for release are calculated for each sentence and are added together to determine the release eligibility date for the consecutive sentences.

(m) The release eligibility date provided for in this section is the earliest date an inmate convicted of a felony is eligible for parole. The date is conditioned on the inmate's good behavior while in prison. For a violation of any of the rules of the department of correction or institution in which the inmate is incarcerated or while on any release program other than parole, the commissioner or the commissioner's designees may defer the release eligibility

date so as to increase the total amount of time an inmate must serve before becoming eligible for parole. This increase may, in the discretion of the commissioner, be in any amount of time not to exceed the full sentence originally imposed by the court and shall be imposed pursuant to regulations promulgated by the commissioner that give notice of the length of discretionary increases that may be imposed for a violation of each of the rules of the department or institution.

(n)(1) The department of correction shall not certify an inmate for a parole grant hearing, other than an initial grant hearing, if, at the time the department of correction would otherwise have certified the inmate as eligible, the inmate is classified as close custody. The decertification shall continue for the duration of the classification and for a period of one (1) year thereafter.

(2) The department of correction shall not certify an inmate for a parole grant hearing, other than an initial grant hearing, if, at the time the department of correction would otherwise have certified the inmate as eligible, the inmate is classified as maximum custody. The decertification shall continue for the duration of the classification and for a period of two (2) years thereafter.

(o) Extensions in the release eligibility date provided for in this section and in other sections of this chapter shall only be imposed following a hearing conducted in accordance with due process of law.

(p) Notwithstanding any other provision of this chapter relating to release eligibility and when acting pursuant to the Tennessee Contract Sentencing Act of 1979, compiled in chapter 34 of this title, the board of parole is authorized to grant a prisoner parole as specified in a sentence agreement entered into by the prisoner and the board. In granting the parole, the board may impose any conditions and limitations that the board deems necessary.

(q) Notwithstanding any other provision of the law to the contrary, the department is responsible for calculating the sentence expiration date and the release eligibility date of any felony offender sentenced to the department and any felony offender sentenced to confinement in a local jail or workhouse for one (1) or more years.

(r) To assist the department in fulfilling the duty specified in subsection (o), the clerk of the court shall send a copy of each judgment document for a felony conviction to the department. These copies shall be forwarded to the department no less than one (1) time each month so that all judgments rendered in one (1) calendar month have been received by the department by the fifteenth day of the following month.

40-36-105. Duties of the department of correction.

In addition to those otherwise provided by law, the department of correction has the following powers, duties and responsibilities:

(1) Administer this chapter within the goals and mandates of this chapter;

(2) Conduct statewide public education concerning the purposes and goals of this chapter and make a report to the criminal justice committee of the house of representatives, judiciary committee of the senate, and fiscal review committee regarding the effectiveness of diversion of offenders from state correctional institutions;

(3) Provide technical assistance and training to local governments, private agencies and local community corrections advisory boards regarding community corrections and the provisions of this chapter;

(4) Facilitate the development of local community corrections plans;

(5) Develop minimum standards, policies and administrative rules in accordance with the requirements of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the statewide implementation of this chapter;

(6) Develop and implement an application process and procedures;

(7) Review community corrections plans and provide grant funding; and

(8) Conduct an annual program evaluation of all programs once per year or as often as needed to ensure program accountability.

40-38-103. Rights of crime victims — Generally.

(a) All victims of crime shall, upon their request, have the right to:

(1) Be fully informed orally, in writing or by video tape by the office of the district attorney general, acting through the appropriate victim-witness coordinator, of the following:

(A) The various steps and procedures involved in the criminal justice system;

(B) The procedure and basis for continuances in the proceedings;

(C) The procedure involved in the plea-bargaining process and how to request input into the process;

(D) The times, dates and locations of all pertinent stages in the proceedings following presentment or indictment by the grand jury;

(E) The methods by which the victim may have input into a convicted defendant's sentence, including the presentence report and the sentencing hearing;

(F) The stages in the appellate process and how to obtain information concerning appellate action that has an effect on the defendant's conviction or sentence and the date a defendant's sentence becomes final;

(G) How to obtain pertinent information relating to the possible release of an appropriate inmate, including notification of any department of correction decision permitting the inmate's release into the community or any scheduled hearing by the board of parole concerning the inmate's parole or application for executive clemency;

(H) The methods by which the victim may obtain restitution directly from the defendant and information about obtaining assistance in obtaining restitution; and

(I) The methods by which the victim may obtain a monetary award or other benefits from the criminal injuries compensation fund and information about obtaining assistance in securing the award or benefits;

(2) Whenever possible, be advised and informed of plea bargaining discussions and agreements prior to the entry of any plea agreement where the victim is a victim of violent crime involving death of a family member or serious bodily injury, speak at parole hearings, submit a victim impact statement to the courts and the board of parole and give impact testimony at court sentencing hearings;

(3) Be informed that § 41-21-240 requires the department to notify them, upon their request, at least ninety (90) days prior to the date an inmate with

a sentence of two (2) years or more is scheduled to be released by reason of expiration of the inmate's sentence and be informed how the request of the department is made; and

(4) Be compensated for expenses actually and reasonably incurred as the result of traveling to and from the trial of the defendant or defendants and traveling to and from appellate, postconviction or habeas corpus proceedings resulting from the trial of the defendant or defendants alleged to have committed a compensable offense subject to the provisions of title 29, chapter 13, part 1, and the availability of funds in the criminal injuries compensation fund.

(b) Upon the request of a victim of violent crime involving serious bodily injury or death of a relative, the victim shall be supplied information and a request form by the law enforcement agency responsible for the investigation of the crime or the arrest of the defendant, the sheriff or other custodian of the defendant or the victim-witness coordinator as to how the victim or relative of a victim may request and secure notification of the release from custody of an offender from a jail or detention facility prior to trial. The jailer, sheriff or other custodian of criminal offenders shall maintain a record or file of the request forms and, prior to the release of an offender about whom a notification request has been made, give immediate and prompt notice of the release to the requesting victim or family member of a victim by the most direct means available, including telephone, messenger or telegram. Any identifying information contained in the request forms shall be confidential. For purposes of this subsection (b), "identifying information" means the name, home and work addresses, telephone numbers and social security number of the person being notified or requesting that notification be provided.

40-38-303. Victim's immunity from suit except for testimony that is intentionally and maliciously false and defamatory.

(a) In order for a victim of crime to meaningfully exercise the victim's constitutional right to be heard, when relevant, at all critical stages of the criminal justice process, a victim is immune from civil liability or any civil cause of action brought by the offender that arises from the victim's testimony at the offender's hearing before the board of parole or a panel of the board. The immunity from suit shall not apply if the victim's testimony is intentionally and maliciously false and defamatory.

(b)(1) If the offender brings a cause of action against the victim based upon the victim's testimony before the board of parole or a panel of the board, in spite of the immunity conferred by subsection (a), as an attachment to the complaint, the offender shall proffer all statements made by the victim alleged to be intentionally and maliciously false and defamatory. Within five (5) days the court shall examine the offender's complaint to determine if the statements of the victim proffered by the offender could reasonably be construed as sufficient to overcome the victim's immunity conferred by this section.

(2) If the court finds that the victim's statements to the board of parole or a panel of the board may reasonably be construed as intentionally and maliciously false and defamatory, it shall allow the cause of action to proceed.

(3) If the court finds that the offender has not produced sufficient evidence to overcome the victim's immunity conferred by subsection (a), it shall

dismiss the cause of action with prejudice.

(4) If the court finds that, not only was the action without merit but was brought for the purpose of intimidating, harassing or abusing the victim in violation of Constitution of Tennessee, art. I, § 35, it:

(A) Shall notify the appropriate warden of the offender's institution and recommend disciplinary action against the offender, including the loss of sentence reduction credits; and

(B) May prohibit the offender from filing any future actions of a similar nature in the court.

40-39-306. Sharing of criminal incident information across state agencies and with vendor — Correlation reports.

Notwithstanding any other provision of law, the department of correction, the board of parole, the Tennessee bureau of investigation and all local law enforcement agencies are specifically authorized to share criminal incident information, limited to the time, place and nature of the crime, with each other and the vendor selected by the department to carry out the purposes of this part, and the department is authorized to direct the vendor so chosen to use data collected pursuant to § 40-39-302(b) in preparing correlation reports as described in that subsection for distribution to and use by state and local law enforcement agencies.

41-1-116. Qualifications of correction officers.

Any person employed as a correctional officer by the department of correction shall:

(1) Be at least eighteen (18) years of age;

(2) Be a citizen of the United States;

(3) Be a high school graduate or its equivalent as determined by the board of control of the Tennessee corrections institute;

(4) Have fingerprints on file with the Tennessee bureau of investigation;

(5) Have passed a physical examination by a licensed physician;

(6) Have a good moral character as determined by investigation;

(7) Have been certified by a Tennessee licensed health care provider qualified in the psychiatric or psychological field as being free from any impairment, as set forth in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association at the time of the examination, that would, in the professional judgment of the examiner, affect the applicant's ability to perform any essential function of the job, with or without a reasonable accommodation; and

(8) Have successfully completed appropriate basic training at the Tennessee corrections institute as prescribed by the board of control of the institute. This requirement must be met within six (6) months from the initial date of employment. An extension of this time period may be granted to present correctional employees by the board of control of the institute. The employees shall also complete appropriate refresher courses each year as prescribed by the board of control of the institute.

41-1-123. Diversion centers for technical violators.

(a) The department of correction, in cooperation with the board of parole, is authorized to establish a diversion program at one (1) or more locations in the state. The program shall provide a structured environment for selected parole technical violators based upon a therapeutic community model. Participants in the program shall, at a minimum, be required to take part in counseling, educational and other programs as the department deems appropriate, to provide community service and to submit to drug and alcohol screening.

(b) Parole technical violators referred by the board of parole for participation in the diversion program shall not be placed in the program, unless and until the offender has been classified by the department as a suitable candidate for the program, in accordance with policies and guidelines developed jointly by the department and the board.

(c) At its discretion, the department is authorized to operate any program established under this section in conjunction with the special probation technical violator program established under the authority of title 40, chapter 20, part 3.

(d) As used in this section, "parole technical violator" means an offender who has violated the conditions of parole other than by the commission of a new felony offense.

41-1-125. Local pre-release programs.

(a) The commissioner is authorized to enter into agreements with local governmental entities for the transfer of appropriate department of correction inmates to confinement in a local facility to participate in local pre-release programs. Participation by any county in such a program is voluntary.

(b) No inmate shall be considered for transfer under an agreement authorized by this section unless expiration of the inmate's sentence is anticipated to occur within one (1) year after the transfer, or unless the inmate has been recommended for release on parole by the board of parole.

(c) No inmate shall be considered for transfer under an agreement authorized by this section unless the inmate is considered a non-violent offender.

(d) The transfer of a department of correction inmate to physical custody in a local facility under this section does not operate to reinvest the trial court with jurisdiction over the manner of the inmate's sentence service. An inmate transferred under this section will be removed from the program and returned to the physical custody of the department at the sole discretion of the department.

41-1-501. Part definitions.

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

(1) "Board" means the board of parole;

(2) "Commissioner" means the commissioner of correction;

(3) "Designated capacity" means the number of adult male and female inmates who may be confined in all state correctional facilities under humane and constitutional conditions, as determined by the commissioner;

(4) "In-house population" means the total number of adult male or female inmates physically present within all state correctional facilities on a given day;

(5) "Parole" means the release of an inmate to the community by the board of parole prior to the expiration of the inmate's term, subject to conditions imposed by the board and to its supervision, or where a court or other authority has issued a warrant against the prisoner and the board in its discretion has released the prisoner to answer the warrant of the court or authority;

(6) "Prisoner" means an inmate confined in a state correctional facility or a felony offender confined in a local jail or workhouse who is serving a sentence of one (1) or more years; and

(7) "Relevant designated capacity" means the capacity of the state correctional facilities housing all adult male or all adult female inmates, or both, under the conditions set forth in the definition of "designated capacity."

(b) For purposes of this part, and with reference to prisoners sentenced for offenses occurring prior to July 1, 1982, references to release eligibility dates are deemed references to a prisoner's earliest release date.

41-1-502. Report to general assembly on designated capacities and in-house populations — Construction of part.

(a) On February 1 of each year, or on more frequent occasions during periods of construction or when there is a change in designated capacity, the commissioner shall inform the speakers of the senate and house of representatives, the chairs of the judiciary and state and local government committees of the senate and the criminal justice and state government committees of the house of representatives as to the relevant designated capacity and in-house population of all adult male and all adult female correctional facilities administered by the department and the reasons for any changes in the designated capacities.

(b) Nothing in this part shall be construed to affect the authority of the general assembly to appropriate funds for the construction, renovation or alteration of correctional facilities administered by the department.

(c) Nothing in this part shall be construed to affect the authority of the state building commission to review, approve and oversee projects relating to the construction, renovation or alteration of correctional facilities administered by the department.

41-1-503. Certification of excess population — Declaration of prison overcrowding emergency.

(a) When the commissioner determines that the in-house population has for thirty (30) consecutive days exceeded ninety-five percent (95%) of the relevant designated capacity, or has reasonable grounds to believe that within thirty (30) days the in-house population will, for at least thirty (30) consecutive days, exceed ninety-five percent (95%) of the relevant designated capacity, the commissioner shall so certify to the governor.

(b) Upon receiving the certification from the commissioner, the governor may declare that a state of overcrowding emergency exists. If the governor so declares, the governor shall immediately notify the state and local government committee of the senate, the state government committee of the house of representatives, and the attorney general and reporter that a state of prison overcrowding exists and the approximate number of inmates in the system that is in excess of ninety percent (90%) of the relevant designated capacity.

41-1-507. Governor's report to state and local committees and attorney general and reporter.

(a) Each month or part of a month that a state of prison overcrowding exists that results in the invocation of powers authorized by this part, the governor shall transmit to the state and local government committee of the senate, the state government committee of the house of representatives, and the attorney general and reporter the following information on any inmates who were granted early parole or whose commitment was delayed:

(1) The number of inmates in each category;

(2) The distribution of offenses for which inmates in each category were convicted;

(3) The length of sentences of inmates in each category;

(4) The amount of time served by inmates granted early parole;

(5) The amount of time inmates granted early parole were released prior to regular parole eligibility or release classification dates; and

(6) Any other information concerning early releases on parole or delayed commitments that may be requested by the state and local government committee of the senate and the state government committee of the house of representatives.

(b) Within thirty (30) days of the end of a state of prison overcrowding emergency, the governor shall also transmit a summary of the information listed in this section to the officials listed in this section. The summary shall be applicable to all inmates granted early parole or whose commitment was delayed during the most recent state of prison overcrowding emergency.

(c) The commissioner and the chair of the board of parole shall report monthly and publicly to the state and local government committee of the senate and the state government committee of the house of representatives the number of early releases by primary offense.

41-2-128. Prisoners who may apply for release — Procedure.

(a) Whenever any person has been sentenced to undergo imprisonment in a county workhouse, referred to as the "workhouse" in this chapter, for the commission of a crime defined as a misdemeanor by the laws of the state of Tennessee, the county board of commissioners, if there is one, or, otherwise, the judge of the circuit court, criminal court or general sessions court having jurisdiction in the county where the person is imprisoned, upon application made therefore by the warden, superintendent, prison keeper or other administrative head of a workhouse, may, by order, direct the warden, superintendent, prison keeper or other administrative head of a workhouse to permit the prisoner to leave the workhouse during necessary and reasonable hours for the purpose of working at the prisoner's employment, conducting the prisoner's own business or other self-employed occupation, including, in the case of a woman, housekeeping and attending to the needs of the woman's family, seeking employment, attendance at an educational institution or securing medical treatment. Similarly, the judge of the circuit court, criminal court or general sessions court having jurisdiction in the county where the person is imprisoned may, upon application of the sheriff, enter a like order for the same purpose for jail prisoners. The order may be rescinded or modified at any time with or without notice to the prisoner.

(b) Whenever any person has been sentenced to undergo imprisonment in a

county workhouse due to the violation of a criminal statute that is a felony under the laws of the state of Tennessee, then the individual may be allowed to leave the county workhouse during necessary and reasonable hours for occupational, scholastic or medical purposes. Any individual serving a felony sentence based on a crime against person or property who has a previous sentence defined as a felony against person or property, as defined by the laws of the state of Tennessee or any other state of the United States or by the criminal statutes of the government of the United States, shall not be eligible to apply for release from the county workhouse during reasonable and necessary hours for occupational, scholastic or medical purposes as provided in §§ 41-2-127 — 41-2-132.

(c)(1) Notwithstanding the provisions of this section, § 55-10-402 or § 55-50-504(a)(2) to the contrary, the judge may sentence persons convicted of a second violation of § 55-10-401 or § 55-50-504(a)(2), to the work release program established pursuant to this section if, prior to doing so, the following conditions have been met:

(A) An investigative report is completed and considered by the judge, with the report confirming the defendant's employment and the employer's willingness to participate in the work release program, including, but not limited to, reports to monitor the defendant's attendance, performance and response to treatment;

(B) A plan acceptable to the judge is established to provide for the monitoring of the defendant's whereabouts while at or on the defendant's job; and

(C) The defendant agrees to defray, to the best of the defendant's ability, the cost of incarceration and treatment.

(2) No person convicted of a second violation of § 55-10-401 that results in personal injury to, or the death of, another shall be sentenced to the work release program.

(3) As a condition to participation in the work release program, the defendant must agree to be screened, at least daily, for the purpose of determining whether the defendant has consumed alcohol or illegal drugs.

(4) A defendant permitted to participate in a work release program pursuant to this section shall not be permitted to operate a motor vehicle while participating in the program and shall at all times, when not actually at the place of employment or while being transported to or from the place of employment, remain in actual incarceration as provided by law.

(5)(A) The judge shall, at the time of sentencing, cause the sentencing order to reflect the defendant's cost of incarceration and treatment and shall affix to the order, taking into consideration the defendant's ability to pay, the time and manner in which the costs are to be paid. The court shall enter the necessary orders requiring that the costs of incarceration and treatment be paid or secured, including, but not limited to, orders of probation that include, as a condition thereof, the payment of costs covered by this subdivision (c)(5).

(B) When a defendant alleges inability to pay pursuant to the terms set out by the order, the defendant may petition the court for modification as to the terms of payment. When it is determined that the defendant is unable to pay the entirety of the costs covered by this subdivision (c)(5) in the time and manner imposed by the court, any costs imposed against the defendant shall be pursuant to a schedule promulgated by the chief administrative officer of the county, or the officer's designee, with the

schedule to be based upon the defendant's ability to pay the same.

(C) In promulgating the schedule governing costs and the amount thereof to be paid by the defendant, the chief administrative officer of the county, or the officer's designee, shall consider the defendant's ability to pay and the disbursement schedule set forth in § 41-2-129 and shall incorporate payments ordered in this subsection (c) into the schedule.

(D) In no event shall a person be denied access to this program or be denied discharge from incarceration as a result of that person's inability to pay.

(6) A county that permits a person convicted of a second offense violation of § 55-10-401 to be sentenced to a work release program shall maintain records sufficient to allow an annual determination of whether participation in any way diminishes the effectiveness of § 55-10-402.

(7)(A) On an annual basis, the county legislative body shall conduct a public hearing to examine, monitor and evaluate the work release program operating under the authority of this subsection (c) to ensure that all requirements of this subsection (c) are being complied with and that the program is being operated in accordance with this subsection (c). As part of the public hearing, the county legislative body shall discuss the program's effectiveness and compliance and hear the opinions of the public concerning the program. The county legislative body shall give notice of the public hearing at least thirty (30) days prior to the meeting.

(B) If the county legislative body finds through its public hearing or any other information the body may obtain that the work release program is being operated in compliance with this subsection (c), it shall so certify the program. The certification shall be transmitted to all judges having jurisdiction over the offense of driving under the influence of an intoxicant in the county.

(C) If the board finds that a work release program is not being operated in compliance with this subsection (c), it shall not certify the program. The failure of certification shall be transmitted to all judges having jurisdiction over the offense of driving under the influence of an intoxicant in the county.

41-4-144. Jailer qualifications.

(a) After July 1, 2006, any person employed as a jail administrator, jailer, corrections officer or guard in a county jail or workhouse shall:

(1) Be at least eighteen (18) years of age;

(2) Be a citizen of the United States;

(3) Be a high school graduate or possess its equivalency, which shall include a general educational development (GED®) certificate;

(4) Not have been convicted of, or pleaded guilty to, or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or municipal ordinances relating to force, violence, theft, dishonesty, gambling, liquor, controlled substances or controlled substance analogues;

(5) Not have been released or discharged under any other than honorable discharge from any of the armed forces of the United States;

(6) Have the person's fingerprints on file with the Tennessee bureau of investigation;

(7) Have passed a physical examination by a licensed physician;

(8) Have a good moral character as determined by a thorough investigation conducted by the sheriff's office; and

(9) Have been certified by a Tennessee licensed health care provider qualified in the psychiatric or psychological field as being free from any impairment, as set forth in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association at the time of the examination, that would, in the professional judgment of the examiner, affect the person's ability to perform an essential function of the job, with or without a reasonable accommodation.

(b)(1) Requirements for minimum qualifications as set forth in subsection (a) shall be mandatory and binding upon any municipality, county or political subdivision of this state.

(2) Any person who appoints any applicant who, to the knowledge of the appointor, fails to meet the minimum qualifications as set forth in subsection (a), and any person who signs the warrant or check for the payment of the salary of any person who, to the knowledge of the signer, fails to meet the minimum qualifications as set forth in this section, commits a Class A misdemeanor and upon conviction shall be subject to a fine not exceeding one thousand dollars ($1,000).

(3) This section shall not apply to any jail administrator, jailer, corrections officer or guard hired by any municipality, county, or political subdivision of this state prior to July 1, 2006.

(c) Nothing in this chapter shall be construed to preclude an employing agency from establishing qualifications and standards for hiring and training jail or workhouse employees that exceed those set forth in this section.

41-6-204. Wages. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

Any agreement pursuant to § 41-6-203 shall contain provisions assuring that the wages paid to inmates shall be no less than prescribed by the Prevailing Wage Act of 1975, compiled in title 12, chapter 4, part 4.

41-6-204. Wages. [Effective on January 1, 2014. See the version effective until January 1, 2014.]

Any agreement pursuant to § 41-6-203 shall contain provisions assuring that the wages paid to inmates shall be no less than the mean wage for the applicable occupation under the "construction and extraction occupations" published in the Tennessee Occupational Wages Report, as defined in § 12-4-907.

41-7-104. Students eligible — Fees.

(a) In addition to correctional personnel from other jurisdictions within the state, students pursuing a degree with a major in any field within the area of criminal justice in a college or university of this state should also be eligible for enrollment and training at the institute, the same as if they were correctional personnel.

(b) The institute may charge reasonable fees to cover costs of any food, lodging, instrumental materials, equipment or services furnished to trainees, as may be established by the board.

(c) A fee of ten cents (10¢) shall be collected for each completed telephone

call made by an inmate housed in a local jail or workhouse. Such fees shall be remitted by the telephone service provider to the state treasurer each quarter and credited to a special account in the state general fund designated as the local correctional officer training fund to be used exclusively to fund certification training provided through the institute for local correctional personnel within the state. The institute's board of control shall approve all expenditures from the fund. Funds deposited in the account shall not revert to the general fund at the end of any fiscal year. On or before February 1, 2013, and by February 1 of each subsequent year, the institute shall report to the chairs of the state and local government and finance, ways and means committees of the senate and the local government and finance, ways and means committees of the house of representatives on the fund's reserves and expenditures, which report shall include at least the following information for the prior calendar year:

(1) The amount of available reserves;

(2) The amount of expenditures made from the fund; and

(3) The manner of making such expenditures.

41-7-106. Powers of board.

(a) The board is authorized to enter into a contract or contracts with state, local, municipal, county or metropolitan correctional and criminal justice officials as may be necessary in order to carry out title 40, chapter 28, this chapter and chapter 21 of this title. In addition, the board has the power to contract with appropriate officials in other states who wish to utilize the services of the institute. The power to contract shall include the power to contract with public agencies or officials for enrolling trainees in general courses or establishing special courses and study projects designed to meet the needs of agencies or units of government.

(b) The board is authorized to accept and expend local, federal or foundation funds, contributions or grants as may be received and allotted for the purposes of this chapter.

(c) The board shall promulgate rules and regulations for the implementation and the effective operation of this chapter.

(d) The board has the right and power to call on the office of the attorney general and reporter for any necessary legal representation or assistance.

(e) The board may authorize its executive director or other official of the institute to execute contracts and take such other actions as it may specify from time to time.

(f) The board is empowered to and shall establish criteria for determining whether to waive the minimum qualifications required to be a jail administrator, workhouse administrator, jailer, corrections officer, or guard in a county jail or workhouse, as provided in § 41-4-144.

(g) The board shall not grant waivers for any person hired as a jail administrator, workhouse administrator, jailer, corrections officer, or guard in any county jail or workhouse who has been dishonorably discharged from the military, has any mental impairment which affects the person's ability to perform any essential function of the job with or without a reasonable accommodation, has a conviction for domestic assault or a felony conviction.

(h) The board's decision to grant waivers under subsection (f) shall be appealable to the chancery court.

(i) The board shall adopt rules and regulations in accordance with the

Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement subsection (f).

41-8-105. Submission and review of county plans.

(a) Any county is authorized to submit a plan to the commissioner in which it seeks to participate in the program.

(b) The plan shall be submitted in the manner established pursuant to the rules promulgated by the commissioner pursuant to this chapter. The commissioner shall notify the state and local government committee of the senate and the state government committee of the house of representatives upon receipt of each application.

(c) The plan shall be approved by the county commission and the county sheriff before it will be considered by the commissioner.

(d) The jail inspection division of the Tennessee corrections institute shall provide any assistance requested by the commissioner in the review and evaluation of any plan submitted by the counties and of the county's implementation of a plan that is approved.

41-10-101. Chapter definitions.

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

(1) "Board" means the board of parole;

(2) "Chair" means the chair of the board of parole;

(3) "Commissioner" means the commissioner of correction;

(4) "Department" means the department of correction;

(5) "Institution" means an institution of the department;

(6) "Offender" means a person who is under the authority of the department, pursuant to a court order, a pending court disposition in a Tennessee criminal case or under the authority of the board, pursuant to release under probation or parole supervision, or some other release program from any correctional institution;

(7) "Region" means a probation region of the department of correction;

(8) "TCRB" means the Tennessee community resource board; and

(9) "Volunteer" means any person who, after fulfilling appropriate policy requirements, is assigned to a volunteer job and provides a service without pay from the department or board except for compensation for those expenses incurred directly as the result of volunteer services as defined in this chapter. A "volunteer" may present any grievance related to volunteer services to the TCRB, which shall make recommendations to the commissioner or the board, as appropriate, and may appeal any decision of the TCRB to the commissioner or to the board, as appropriate.

41-21-236. Sentence reduction credits.

(a)(1) Those persons committed to the custody of the department of correction shall be assigned to work, educational and/or vocational training programs when positions in those programs are available.

(2)(A) Each inmate who exhibits good institutional behavior or who exhibits satisfactory performance within a program may be awarded time credits toward the sentence imposed, varying between one (1) day and sixteen (16) days for each month served, with not more than eight (8) days

for each month served for good institutional behavior and not more than eight (8) days for each month served for satisfactory program performance in accordance with the criteria established by the department.

(B)(i) In addition to the time program performance credit awarded pursuant to subdivision (a)(2)(A), the department shall provide an educational good time credit of sixty (60) days to any qualifying prisoner who successfully receives a graduate equivalency diploma (GED®) or a high school diploma, a two-year or four-year college degree, or a two-year or four-year certification in applied sciences, or who receives a vocational education diploma as provided and defined by the department. No credit shall be given for any diploma, degree or certification unless the particular course of study, including the institution or entity through which it is offered, has received the prior approval of the department. A qualifying prisoner may receive no more than one (1) credit of sixty (60) days, regardless of the number of programs completed.

(ii) It is the legislative intent that this credit be implemented by the department in a manner that maximizes the potential of prisoners who will return to the community to become working and productive members of society through the benefit of their educational diploma or certificate. It is further the legislative intent that existing educational and vocational programs offered by the department shall not be increased in size as a result of the provisions of this subdivision (a)(2). Priority in enrollment in existing educational and vocational programs shall be given to prisoners who will be eligible for parole or release upon completion of their sentence and who can reasonably be expected to re-enter the workforce. Priority in enrollment shall also be given to prisoners who will be incarcerated by the department for such period of time that they will receive the full credit for sentence reduction provided in this subdivision (a)(2). Once these priorities have been met, enrollment in educational and vocational programs by other prisoners shall be available on a space-available basis, without any sentence reduction credit for any diploma or certification received.

(iii) The provisions of this subdivision (a)(2)(B) permitting an additional sixty (60) days of educational credit for obtaining a diploma shall not apply to any prisoner convicted of an offense that requires service of at least eighty-five percent (85%) of the sentence under § 40-35-501(i) or one hundred percent (100%) of the sentence under § 39-13-523.

(C) No inmate shall have the right to any such time credits, nor shall any inmate have the right to participate in any particular program, and may be transferred from one (1) assignment to another without cause. The provisions of this section shall also apply to any inmate sentenced to the department of correction who is being held on a contract basis by a private correctional corporation.

(D) The sixty (60) days of educational good time credit authorized by subdivision (a)(2)(B) shall also apply to any inmate who successfully received one (1) of the degrees specified in subdivision (a)(2)(B) prior to July 1, 2006, as well as those receiving degrees after July 1, 2006.

(3) Sentence credits shall not be earned or credited automatically, but rather shall be awarded on a monthly basis to an inmate at the discretion of the responsible warden in accordance with the criteria established by the

department, and only after receipt by the warden of written documentation evidencing the inmate's good institutional behavior or satisfactory program performance or both.

(4) Sentence credits may not be awarded toward a period of less than one (1) calendar month or for any month in which an inmate commits a Class A disciplinary offense of which the inmate is found guilty. No sentence credits for good institutional behavior may be awarded for any month in which an inmate commits any disciplinary offense of which the inmate is found guilty.

(5) An inmate may be deprived of those sentence credits previously awarded pursuant to this section only for the commission of any major infraction designated by the department as a Class A disciplinary offense, including, but not limited to, rape, arson, riot, escape or assault with a deadly weapon, or refusal to participate in an assignment.

(6) The refusal of an inmate to participate in any assigned work, educational or vocational training program shall constitute a disciplinary offense for which the inmate can be penalized by the loss of sentence credits previously awarded.

(7) Sentence credits shall not be earned or credited to any inmates classified as maximum security or being held in punitive segregation.

(b) The allowances that can be awarded pursuant to this section shall be referred to as inmate sentence reduction credits and shall affect release eligibility and sentence expiration dates in the same manner as time credits affected parole eligibility and sentence expiration dates prior to September 1, 1980.

(c)(1) Any provision of title 40, chapter 35 to the contrary notwithstanding, persons convicted under that chapter may be awarded sentence reduction credits as set forth in this section.

(2) Any provision of titles 39 and 40 to the contrary notwithstanding, all persons who commit Class X felonies on or after December 11, 1985, shall be eligible for the sentence reduction credits authorized by this section.

(3) Any person who committed a felony, including any Class X felony, prior to December 11, 1985, may become eligible for the sentence reduction credits authorized by this section by signing a waiver, in writing, of the right to serve the sentence under the law in effect at the time the crime was committed. However, sentence reduction credits authorized by this section may be awarded only for conduct or performance from and after the date a person becomes eligible under this subsection (c).

(d) Sentence reduction credits for good institutional behavior as authorized by this section shall likewise apply in accordance with the terms of this section, and under the criteria, rules and regulations established by the department, to all felony offenders serving sentences of one (1) or more years in local jails or workhouses and to all inmates serving time in county jails or workhouses because the inmate's commitment to the department has been delayed due to invocation of the governor's emergency overcrowding powers or through an injunction from a federal court restricting the intake of inmates into the department. When this section is applied to those offenders, references to "warden" in this part shall be deemed references to the superintendent or jailer, as appropriate. Such felony offenders shall not be eligible to receive any other sentence credits for good institutional behavior; provided, that, in addition to the sentence reduction credits for good institutional behavior as authorized by this section, such felony offenders may receive any credits for which they are eligible under chapter 2 of this title for work performed or

satisfactory performance of job, educational or vocational programs.

(e)(1) Sentence reduction credits for good institutional behavior as authorized by this section shall also be awarded to all convicted felons for the time incarcerated prior to the imposition of sentence. The total credit to which a convicted felon may be entitled shall be calculated by determining the number of days actually served in jail prior to imposition of sentence and by adding to that number the sentence reduction credits awarded for good institutional behavior, if any, based upon the number of days served.

(2) The sentence reduction credits authorized by subdivision (e)(1) shall be awarded at the rate of eight (8) days for each month served prior to imposition of sentence unless there is an objection filed by the superintendent or jailer. If the superintendent or jailer objects to the number of sentence reduction credits awarded to a particular felon, the superintendent or jailer shall provide written documentation to the department stating the objection and the number of sentence credits, if any, the felon should be awarded. If an objection is filed in accordance with this subdivision (e)(2), the department shall adjust the number of sentence reduction credits awarded to conform to the number recommended in the superintendent's or jailer's written objection.

(3) Notwithstanding the fact that in the absence of an objection from the superintendent or jailer the sentence reduction credits authorized by this subsection (e) are awarded automatically, no convicted felon shall have a right to the credits nor shall the felon have a right to appeal the superintendent's or jailer's determination concerning the number of sentence reduction credits a particular felon should be awarded as set out in the superintendent's or jailer's written objection to the department.

(f)(1) Except as provided in subdivision (f)(2), an inmate serving a misdemeanor sentence in a county jail, workhouse or other local facility who exhibits good institutional behavior or who exhibits satisfactory performance within a program shall be awarded inmate sentence reduction credits toward the inmate's release and expiration dates at the same rate and in the same manner as is provided in this section for inmates serving felony sentences.

(2) If an inmate is serving a misdemeanor sentence in a local facility that awards sentence credits at a different rate than provided by this section for felons, the inmate may elect to receive the sentence credits either under the system provided in this section for felons or under the system in effect at the local facility.

(3) In no event may an inmate receive credits cumulatively under both systems or receive credits at a rate that is less than that provided by this section for felons.

(4) In imposing a misdemeanor sentence, the court shall fix a percentage of the sentence that an inmate shall serve before release from confinement. After service of that percentage and allowance for credits authorized in this section, the defendant shall be released from confinement. The percentage shall be expressed as thirty percent (30%), forty percent (40%), fifty percent (50%), sixty percent (60%), seventy percent (70%), eighty percent (80%), ninety percent (90%) or one hundred percent (100%). In no event shall the application of sentence credits result in more than a twenty-five percent (25%) reduction in the inmate's release percentage.

(g) The department is authorized to continue the application of the previ-

ously enacted sentence credit systems formerly codified in §§ 41-21-212 [repealed], 41-21-213 [repealed], 41-21-214 [repealed], 41-21-215 [repealed], 41-21-228 [repealed], 41-21-229 [repealed], 41-21-230 [repealed], 41-21-231 [repealed], 41-21-232 [repealed] and 41-21-233 [repealed], to any inmates to whom they currently apply and who do not sign written waivers as provided in subsection (c). Any sentence credits earned or awarded under previously enacted systems shall continue to remain in full force and effect unless and until they are taken away in accordance with the procedures established by the previously enacted systems.

(h) Nothing in this section shall operate to reduce the minimum sentence of a person convicted of the offense of driving under the influence of an intoxicant as prohibited by §§ 55-10-401 and 55-10-402.

(i) Notwithstanding any other provision of law to the contrary, no sentence credits authorized by this section or any other provision of law, nor a sentence contract authorized by §§ 40-28-115, 40-28-116, 40-34-103 and 40-35-501 or any other provision of law, shall have the effect of reducing the amount of time an inmate must serve before the inmate's earliest release eligibility date, undiminished by any sentence credits, by more than thirty-five percent (35%). For inmates sentenced for offenses committed on or after January 1, 1988, no sentence credits or sentence contract shall have the effect of reducing the amount of time an inmate must serve before the inmate's earliest release eligibility date, undiminished by the sentence credits, by more than thirty percent (30%).

(j) As used in this section, "sentence credits" includes any credit, whether called that or not, that results in a reduction of the amount of time an inmate must serve on the original sentence or sentences. The provisions of this section shall not be applicable when the powers granted pursuant to this title are in effect to reduce prison overcrowding.

41-21-238. Educational and vocational training plan — Documentation.

(a) In addition to the education plan authorized by § 41-21-509, the commissioner of education, with the assistance of the commissioner of correction and a representative from the board of regents and the University of Tennessee system, shall by January 1, 1995, formulate a plan to increase the educational and vocational opportunities currently available to inmates in the custody of the department of correction. This plan shall emphasize basic educational skills such as reading and writing, but shall also include possible use of existing community colleges and vocational schools for inmates who are acceptable security risks and are in need of a marketable free-work skill that cannot be obtained within the confines of a correctional institution.

(b) [Deleted by 2011 amendment, effective July 1, 2011.]

(c) Upon implementation of the plan, the commissioner of correction, with the assistance of the board of parole, shall monitor and document the effectiveness of the plan. Documentation shall include:

(1) The number of inmates who participate;

(2) The amount of improvement in educational or vocational skills achieved by the participating inmates;

(3) The percentage of participating inmates able to obtain employment upon their release from custody; and

(4) The recidivism rate of inmates who participated in the plan.

(d) The results of the monitoring of the plan, as well as any recommendations for improving the plan, shall, on an annual basis, be submitted to the state and local government committee of the senate, the state government committee of the house of representatives, the education committee of the senate and the education committee of the house of representatives for review.

41-21-243. Family Visitation and Crime Reduction Act.

(a) This section shall be known and may be cited as the "Family Visitation and Crime Reduction Act."

(b) The general assembly finds that maintaining an inmate's family and community relationships is an important correctional resource that can improve an inmate's behavior in the correctional facility, and upon an inmate's release from a correctional facility, assist in reducing recidivism.

(c) The department shall maintain a visitation program. Policies may include a system for prior approval of visitors and restrictions on visitation deemed appropriate by the commissioner. Each state institution shall have an area designated for visitation. The commissioner of correction shall have the authority to suspend visitation in the event of emergency circumstances as defined in department of correction policies.

(d) The department of correction shall provide, at designated visitation areas for approved visitors in each state correctional facility, information relating to applicable visiting regulations, dress codes and visiting procedures. Visitors not complying with applicable visiting regulations, dress codes and visiting procedures may be denied the privilege to visit in accordance with department policy.

(e) Correctional officers assigned to visitation areas shall receive training on effective communication with family members and children of inmates, for the purpose of improving the quality of family visitation.

(f) The department of correction is encouraged to provide an area for child visitors.

(g) The department of correction shall report at least annually to the state and local government committee of the senate and the state government committee of the house of representatives concerning the department's progress on implementing procedures and services that enhance, improve and encourage visitation.

41-21-244. Study and audit of number of incarcerated nonviolent offenders who have not been convicted.

The comptroller of the treasury is urged to study and audit the department of correction concerning the number of nonviolent offenders incarcerated in correctional institutions of the department of correction who have been incarcerated for offenses for which they have not been convicted. The general assembly requests that, if any such study and audit are undertaken, the comptroller of the treasury report to the state and local government committee of the senate and the state government committee of the house of representatives concerning such study and audit on or before the date of the submission of the next regularly scheduled audit of the department of correction.

41-21-906. Inmates required to cooperate — Lack of cooperation consideration in parole determination.

(a) An inmate shall fully cooperate with the state by providing complete financial information for purposes under this part.

(b) The failure of an inmate to fully cooperate as provided in subsection (a) may be considered by the board of parole for purposes of a parole determination.

41-22-116. Sale of prison-made goods in open market prohibited — Exceptions.

(a) Except as provided in subsections (c)-(f), no goods, wares or merchandise manufactured, in whole or in part, by inmates, except inmates on parole or probation, shall be sold or offered for sale in this state by any person, firm, association or corporation or by any federal authority, state or political subdivision of the federal authority or state. Nothing in this section shall be construed to forbid the sale, exchange or disposition of those goods to any institution supported wholly or in part by funds derived from public taxation and operated under the supervision of the United States, the state of Tennessee, or any other state of the union, or any political subdivision thereof. In addition, goods, wares and merchandise may be offered for sale to private nonprofit corporations and charitable organizations that are duly chartered as such under the laws of the state of Tennessee and to private contractors if the goods purchased will subsequently be used by a public agency or a nonprofit organization.

(b) Notwithstanding subsection (a), this section shall not be construed so as to limit the display and casual sale to the public of arts and crafts made by adult and juvenile inmates at any approved departmental outlets, art and craft exhibitions, state parks or any appropriate display or exhibition program.

(c) The state or a prison contractor operating pursuant to the Private Prison Contracting Act of 1986, compiled in chapter 24 of this title, is authorized to develop industry programs in correctional facilities, pursuant to which inmates shall manufacture goods to be sold on the open market. No goods may be manufactured for sale on the open market pursuant to this section unless the goods are determined by the department of economic and community development to be goods not otherwise manufactured in Tennessee. For any programs for manufacture of goods for sale on the open market, the TRICOR board shall establish a wage rate for inmates and shall establish a rate of payment by inmates to reimburse the state for providing room and board.

(d) The TRICOR board may contract with food processors for the purposes of processing and packaging agricultural products produced in whole or in part by inmates, except inmates on parole or probation, or exchanging the agricultural products for food products of comparable value.

(e) The TRICOR board is authorized to develop joint ventures with private sector businesses upon such terms and conditions as the TRICOR board may deem to be in the best interest of the state. These ventures shall operate pursuant to the Private Sector Prison Industry Enhancement Certification Program (PS/PIEC) (P.L. 96-157, as amended) and in accordance with §§ 41-6-204, 41-6-205(a) and (c), 41-6-206 and 41-6-207. Section 41-6-205(b) also applies to ventures in which inmates are employed by private industries. Eligibility for participation will not be extended to those businesses that have

ceased Tennessee operations within twenty-four (24) months of the initiation of the venture or during such venture. If the private sector business is doing business in Tennessee, the venture shall not cause the loss of jobs for Tennessee employees. Goods produced in these ventures may be sold on the open market.

(f) The TRICOR board is authorized to develop policies for the sale of TRICOR products to state, city and county employees. Any products sold directly to these employees shall not be made available for commercial resale. The board shall designate two percent (2%) of total annual sales from state, city and county employees to inmate educational programs. Policies developed by the TRICOR board as authorized by this section shall be reviewed by the state and local government committee of the senate and the state government committee of the house of representatives prior to implementation of the sale of products to state, city and county employees. Policies developed by the TRICOR board shall take into account possible competition with retail merchants and the impact on state and local sales tax collections.

(g) The TRICOR board is authorized to develop policies for the sale of goods, wares or merchandise to inmates who are within the custody of the department of correction.

(h) Each violation of this section by a person, firm or corporation is a Class C misdemeanor.

41-22-405. Appointment — Membership.

(a)(1) The board shall be appointed by the governor and shall be accountable to the governor and shall be accountable to the general assembly through the state and local government committee of the senate and the state government committee of the house of representatives.

(2) Members shall be nominated by the board established under subdivision (a)(1) for appointment by the governor. If any nominated member fails to be appointed, another shall be nominated by the board for gubernatorial appointment. A person with a conflict of interest with TRICOR or with the state of Tennessee may not serve on the board.

(b) The board shall consist of nine (9) voting members who are citizens and residents of Tennessee, one (1) of whom shall be the executive director of TRICOR. The commissioner or the commissioner's designee shall serve as an ex officio nonvoting member of the board.

(c) Board members shall have the following qualifications:

(1) At least one (1) member shall be a person of eminence in the field of manufacturing, preferably with experience in management at the executive level;

(2) At least one (1) member shall be a person of eminence in the field of labor, preferably having served as an official representing organized labor at the state level;

(3) At least one (1) member shall be a person of eminence in the field of agriculture, preferably having a strong decentralized farm management background;

(4) At least one (1) member shall be a person of eminence in fiscal management of a company or organization;

(5) One (1) member shall be an attorney with a strong background in business or corporate law;

(6) One (1) member shall be the executive director of the Tennessee state employees association;

(7) The remaining members shall be persons with professional experience appropriate for assisting in carrying out the mission of TRICOR, in disciplines such as sales and marketing and human resources and relations; and

(8) In making appointments to the board, the governor shall ensure that at least one (1) person appointed to serve on the board is a member of a racial minority and at least one (1) person appointed to the board is a female.

(d) In making initial appointments to the board, two (2) members shall be appointed to terms of one (1) year, two (2) members shall be appointed to terms of two (2) years, two (2) members shall be appointed to terms of three (3) years, and two (2) members shall be appointed to terms of four (4) years. Thereafter, all appointments shall be for terms of four (4) years. A vacancy occurring in the board shall be filled by the governor for the balance of the unexpired term. When a board member's term expires, the board may elect to have the incumbent continue to serve until a new appointment is made.

(e) The governor may remove a board member only for good cause and, in so doing, the governor shall submit in writing to the member and to the general assembly the basis for the removal.

41-22-406. Powers and duties of board.

(a)(1)(A) The board has such powers as are necessary to effectively carry out its mission as defined in § 41-22-403. It is the intent of the general assembly that the board should be as free as is possible to operate its facilities and to pursue its mission with the principles of free enterprise. Notwithstanding any law to the contrary, the board, with the approval of the commissioner of human resources, may adopt policies governing supplemental pay plans. These plans shall reward performance of the employees of TRICOR and relate to the unique responsibilities of TRICOR.

(B) Any compensation awarded under this section shall not be considered as an addition to base pay and is further limited to the period outlined in the approved policy. Supplemental pay policies shall ensure that funds are distributed in a fair manner without bias on account of race, color, sex, age, national origin or political affiliation.

(C) The supplemental pay policies shall be based on measurable criteria to reward performance. Pay plans shall be consistent with the mission of TRICOR and shall emphasize safety and security in the workplace.

(D) The guidelines and criteria for receiving supplemental pay shall be developed in the best interest of all TRICOR employees and the criteria shall be clearly communicated with all affected employees. Employee input will be considered in the development process.

(E) The state and local government committee of the senate and the state government committee of the house of representatives shall review any proposed supplemental pay plan and shall make comments to the commissioner of personnel prior to its implementation. Any comment shall be made within thirty (30) days after receipt by the committee of the proposed supplemental pay plan.

(2) Notwithstanding any provision of law to the contrary, the board has the authority to cause to be purchased and to develop the method for

purchasing raw materials, supplies, services, not to include ongoing personnel, and equipment necessary for the production and timely delivery of TRICOR products.

(3) Notwithstanding title 12, chapter 7, part 1, or any other law to the contrary, the TRICOR board shall have the authority to authorize the preparation and use of publications for the marketing and public education needs of TRICOR products and services in order to effectively carry out its mission.

(b) Notwithstanding any other provisions of law to the contrary, it is the responsibility of the board to develop policies and procedures to ensure, to the extent practicable, that purchases made on behalf of TRICOR are at the lowest possible price, while at the same time ensuring quality and timely delivery. The TRICOR board of directors shall file the policies and procedures with the procurement commission for the commission's review and approval.

(c) The board has the authority to purchase supplies, services and equipment through the procurement office and is encouraged to exercise the option to purchase through the office under the provisions of title 12, chapter 3, in circumstances that are advantageous for the timely delivery of low cost, quality products.

41-22-408. Contracts for services — Budgets — Operating plans — Monitoring.

(a) Notwithstanding any provision of law to the contrary, the board has the authority to contract for professional services, for which reimbursement may be established on an incentive basis, and for the lease or purchase of property and equipment, to be provided for TRICOR, that is necessary for the efficient discharge of its duties to manage and operate.

(b) The board shall establish the budget for TRICOR based on its mission and shall submit its budget directly to the commissioner of finance and administration independent from the department of correction budget.

(c) The board shall approve the annual operating plan of TRICOR.

(d) The board shall establish and review, as necessary, the pricing policies for products and services provided by TRICOR.

(e) The board shall have such other powers as are necessary to accomplish the mission of TRICOR as the board establishes for itself and as are reviewed by the state and local government committee of the senate and the state government committee of the house of representatives and the governor.

(f)(1) The board has the duty to monitor TRICOR's operation and management and to impose such limitations as are prudent and necessary to assure that freedoms and powers are not abused. The board and TRICOR are subject to audit by the comptroller of the treasury as provided by law. With the approval of the comptroller of the treasury, the board may engage the services of a public accounting firm.

(2) The board shall assist TRICOR in maintaining the quality of management processes and reporting, providing for the adequacy of financial and accounting control systems and serving as a communications channel between TRICOR managers and auditors.

(3)(A) The board shall adopt and publish bylaws to govern its operation and to provide an orderly change process by which its powers, responsibilities and functions may from time to time be modified. The bylaws of TRICOR shall be altered, rescinded or amended in the manner described

in subdivision (f)(3)(B).

(B) The adopted bylaws may be altered, rescinded or amended by a two-thirds (⅔) vote of any regular or special meeting of the board of directors, if a copy of the proposed amendment is submitted in writing to each director at least ten (10) days before the meeting at which a vote upon the proposal is to be taken and upon ratification by the state and local government committee of the senate, the state government committee of the house of representatives and the governor or the governor's designee.

41-22-411. Performance evaluation.

Board performance shall be evaluated on the basis of the degree to which TRICOR accomplishes the elements of its mission. Performance shall be reported each year in an annual report by TRICOR through the board to the governor and to the general assembly through the state and local government committee of the senate and the state government committee of the house of representatives.

41-23-103. Powers of commissioner of correction.

(a) The commissioner of correction is authorized and directed to do all things necessary or incidental to the carrying out of the compact in every particular and may, in the commissioner's discretion, delegate this authority to the deputy commissioner of correction.

(b) The commissioner shall make a written report to the speakers of the senate and the house of representatives and the chairs of the senate judiciary committee and the criminal justice committee of the house of representatives, at least once each year. The report shall be made no later than February 1. The report shall advise the officials and committees on the number of participants in the compact.

41-24-103. Contracts for correctional services.

(a) The commissioner is authorized to enter into contracts for correctional services only as provided in this chapter.

(b) Contracts for correctional services, may be entered into subject to the requirements and procedures of former §§ 12-4-109 and 12-4-110 [See the Compiler's Notes] and any additional requirements specified in this chapter.

(c) A contract for correctional services as defined in § 41-24-102(2)(F) is authorized only for one (1) medium security or minimum security facility opened after July 1, 1991, and only according to the requirements and procedures specified in this chapter. No contract shall be authorized for a facility intended primarily to serve special needs inmates.

(d) Any inmate sentenced to confinement in the department shall be legally eligible to be incarcerated in a facility in which a prison contractor is providing correctional services pursuant to this chapter.

(e) Contracts for correctional services may include incentives or disincentives; provided, that the incentives or disincentives are based on quantifiable measurements of performance that are described in the request for proposal and contract. The total of all incentive payments shall not exceed five percent (5%) of the total contract price per annum. This subsection (e) shall not be construed to prohibit or restrict the use of liquidated damages as a remedy for a contractor's breach of contract.

41-24-104. Review and approval of contract proposals — Price and cost adjustments — Cancellations.

(a) Any contract for correctional services as defined in § 41-24-102(2)(F) shall be entered into only after each of the following requirements and/or conditions are met:

(1) Any request for proposals, any original contract, any contract renewal and any price or cost adjustment or any other amendment to any contract shall first be approved by the following:

(A) The state building commission;

(B) The attorney general and reporter; and

(C) The commissioner;

(2)(A) The fiscal review committee shall review any request for proposals, any original contract and any proposed contract renewal and may submit comments to the authorities listed in subdivision (a)(1). Any comment shall be submitted to such authorities no later than thirty (30) days after receipt of the request for proposals, original contract or proposed contract renewal by the committees. The authorities listed in subdivision (a)(1) shall withhold their final action until such thirty-day period has ended or until they have received the committee's comments, whichever first occurs;

(B) Any request for proposals, any original contract and any proposed contract renewal shall be submitted by the department of correction to the state and local government committee of the senate and the state government committee of the house of representatives. The committees may review and submit comments to the authorities listed in subdivision (a)(1). Any comment shall be submitted to those authorities no later than thirty (30) days after receipt of the request for proposals, original contract or proposed contract renewal by the committees. The authorities listed in subdivision (a)(1) shall withhold their final action until such thirty-day period has ended or until they have received the committee's comments, whichever first occurs;

(3) To be considered for an award of a contract, the proposer must demonstrate to the satisfaction of each of the officials set forth in subdivision (a)(1) that it has:

(A) The qualifications, operations and management experience and experienced personnel necessary to carry out the terms of the contract;

(B) The ability to comply with applicable correctional standards and specific court orders, if required; and

(C) Demonstrated history of successful operation and management of other correctional facilities; and

(4) Proposer must agree that the state may cancel the contract at any time after the first year of operation, without penalty to the state, upon giving ninety (90) days' written notice.

(b)(1) Any contract pursuant to this section may provide for annual contract price or cost adjustments; provided, that any adjustments may be made only once each year effective upon the anniversary of the effective date of the contract. If any adjustment is made pursuant to terms of the contract, it shall be applied to total payments made to the contractor for the previous contract year and shall not exceed the percent of change in the average consumer price index (all items-city average), which is published by the United States department of labor, bureau of labor statistics, between that

figure for the latest calendar year and the next previous calendar year.

(2) Any price or cost adjustments to any contract different than those authorized by subdivision (b)(1) may be made only if the general assembly specifically authorizes those adjustments and appropriates funds for that purpose, if required.

(c)(1) No award of any contract shall be made unless an acceptable proposal is received pursuant to any request for proposal. An "acceptable" proposal means a proposal that meets all the requirements or conditions or both set forth in this chapter and meets all the requirements in the request for proposal.

(2) No proposal shall be accepted unless:

(A) The proposal offers a level and quality of services that are at least equal to those that would be provided by the state in accordance with the provisions of § 41-24-105; and

(B) The cost of the private operation and the cost to the state to monitor the private operation, shall be at least five percent (5%) less than the state's cost for essentially the same services in accordance with the provisions of § 41-24-105 as determined by the department of correction and reviewed by the office of the comptroller.

(3) Should the state be required to assume the operation of any facility contracted under the provisions of this chapter, preference in state employment shall be given to persons who are employees of the contractor at the time of the state's assumption of operation of that facility.

(4) Any preference in employment must be in compliance with the provisions of title 8, chapter 30, and § 41-1-116, and performance of duties as an employee of the contractor must have been satisfactory.

41-24-106. Standards of security — Resumption of state control on termination of contract.

Notwithstanding any other provision of this chapter to the contrary, prior to entering a contract for providing the security function for any prison, such as providing correctional officers or other persons providing security and control over inmates, the following requirements shall be met:

(1) A plan shall be developed and certified by the governor that demonstrates the method by which the state would resume control of the prison upon contract termination. This plan shall be submitted for review and comment to the state and local government committee of the senate and the state government committee of the house of representatives and the committees shall solicit comments from law enforcement agencies, district attorneys general, and criminal judges in the county in which the prison is located and the surrounding counties. State officials responsible for approving any contract for the security function or any contract that includes provision of security are encouraged to await the comments of the select oversight committee on corrections prior to executing any such contract; and

(2) The commissioner shall certify to the state and local government committee of the senate and the state government committee of the house of representatives that the security procedures proposed by the contractor are equal or superior to the security procedures in effect at existing state-operated prisons and the commissioner shall comment on the relationship of the procedures proposed by the contractor to each standard of security and

control specified in the standards for adult correctional institutions by the American Correctional Association.

41-24-109. Monitoring of contractor performance — Reports.

In addition to other powers and duties prescribed by law, the commissioner shall monitor any contracts with prison contractors providing correctional services and shall report at least annually, or as requested, to the state and local government committee of the senate and the state government committee of the house of representatives or any other legislative committee regarding the performance of the contractor. The comptroller of the treasury shall audit the performance of the department of correction and the private contractor to ensure that the state is receiving the quality and level of services as described in the contract based upon the performance criteria, the monitoring process and any applicable sanctions that might be incurred. The comptroller shall report annually, or as otherwise requested, to the state and local government committee of the senate and the state government committee of the house of representatives.

41-52-101. [Repealed.]

41-52-102. [Repealed.]

41-52-103. [Repealed.]

41-52-104. [Repealed.]

42-1-203. Testing of persons arrested for violating § 42-1-201.

(a) Any person who operates or attempts to operate, or acts or attempts to act, as a crewmember of any aircraft in this state and who is arrested for a violation of § 42-1-201 is considered to have given consent to one (1) or more tests of the crewmember's blood, breath and urine, or combination thereof, for the purpose of determining the alcohol concentration or the presence of a substance that affects the crewmember's faculties in any way contrary to safety.

(b) Testing for alcohol concentration or other substances shall be done in the same manner and by the same people as set out in § 55-10-406, and the defendant shall have the same rights as provided by § 55-10-406 with regard to refusing to take the test.

(c) Refusing to take a test pursuant to subsection (a) after having been requested to do so and advised of the consequences of refusal is a Class B misdemeanor with a minimum period of imprisonment of forty-eight (48) hours.

(d) A conviction for a violation of § 42-1-201 shall not bar a conviction for refusal to take tests for alcohol or other substances pursuant to this section. A conviction for refusal to take tests for alcohol or other substances pursuant to this section shall not be a bar to a conviction for a violation of § 42-1-201.

43-1-607. Biennial report.

The board shall prepare a report to be delivered to the chair of the agriculture and natural resources committee of the house of representatives

and the chair of the energy, agriculture and natural resources committee of the senate by February 15 of each odd-numbered year. The report shall provide information regarding the activities of the board for the previous two (2) years.

43-1-704. Certification of fees required — Promulgation of fee schedule.

(a) Notwithstanding any law to the contrary, the commissioner of finance and administration shall certify to the commissioner of agriculture the amount of fees required by each program for the subsequent fiscal year based on the general appropriations act for that year. Upon receipt of such certification, all fee schedules shall be reviewed by the commissioner of agriculture. All fees and procedures for collecting fees shall be adopted pursuant to rulemaking procedures set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. In adopting the rules, the commissioner of agriculture shall consider detailed information regarding salary and staffing improvements and other costs to be funded by the proposed fee schedule or fee increases. The commissioner of agriculture shall not increase fees in any year general state revenues have decreased from the previous year. Pursuant to recommendations of the commissioner of agriculture, and within sixty (60) days after receiving the commissioner of finance and administration's certification of the amount of fees required by each program, the commissioner of agriculture shall submit to the commissioner of finance and administration an official estimate of fees to be collected by each program for the fiscal year. It is the intention of the general assembly that any fees authorized in this part become established by promulgation of rules and regulations within twelve (12) months of passage.

(b) The fee schedule promulgated by each of the entities listed in § 43-1-703 shall not, when added to their individual program fund balance for prior years, exceed one hundred fifty percent (150%).

(c)(1) Beginning in fiscal year 2003-2004 and each year thereafter, the commissioner shall prepare a report that summarizes all program expenditures and revenues associated with implementation of those statutes listed in § 43-1-701. The report shall be submitted to members of the committee specified in § 43-1-701(f) as well as the chair of the agriculture and natural resources committee of the house of representatives and the chair of the energy, agriculture and natural resources committee of the senate.

(2) Beginning in 2007 and at least every five (5) years thereafter, the commissioner shall evaluate fee schedules associated with the department's regulatory services and recommend adjustments as may be appropriate. The report shall be submitted to the chair of the agriculture and natural resources committee of the house of representatives and the chair of the energy, agriculture and natural resources committee of the senate.

43-6-502. Study of biological suppression program.

(a) The University of Tennessee shall initiate and administer a two-year black fly suppression program using a biological control agent in the Greenbrier Valley and the areas adjacent to the Pigeon River under the supervision of the department of agriculture. The university shall study the biological and socioeconomic effects of the suppression program on the region. The university shall report its findings to the department of agriculture and the department

of environment and conservation. The university shall also report the results of the program to the energy, agriculture and natural resources committee of the senate and the agriculture and natural resources committee of the house of representatives.

(b) The Tennessee wildlife resources agency is authorized to participate in the black fly suppression program in order to promote wildlife management by improving the quality of hunting and fishing conditions in the subject area.

(c) None of the funds for the program authorized by this section shall be expended until all authorizations required by law have become final and effective, including, but not limited to, a permit required by the Water Quality Control Act of 1977, compiled in title 69, chapter 3, part 1.

43-24-102. Chapter definitions.

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

(1) "Commissioner" means the commissioner of agriculture;

(2) "Community garden" means a piece of property, either on vacant public land or on private land, cultivated by residents of a neighborhood or community, or members of a homeowners or condominium owners association for the purpose of providing vegetables, herbs, fruit, or flowers for use of residents of the neighborhood or community or members of the homeowners or condominium owners association;

(3) "County agent" includes county extension agents and any other agent of the department of agriculture;

(4) "Department" means the department of agriculture;

(5) "Garden" means a piece of land appropriate for the cultivation of herbs, fruits, flowers or vegetables;

(6) "Local government" means any municipality, any county, and any metropolitan government;

(7) "Use" means, when applied to gardening, to make use of, without conveyance of title or any other ownership; and

(8) "Vacant public land" means any land owned by the state of Tennessee, or participating local governments, that is not in use for public purpose.